

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Beaufort County

S.C. SUPREME COURT

Honorable G.D. Morgan, Jr., Circuit Court Judge

VARSHEEN ANTUAN SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000551

APPENDIX

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INDEX

TRIAL TRANSCRIPT DATED FEBRUARY 20, 2018	1
TRIAL TRANSCRIPT DATED FEBRUARY 21-22, 2018	63
INDICTMENTS AND SENTENCE SHEETS.....	400
STATE’S EXHIBIT #8 (SPRINT RECORDS).....	409
APPLICATION FOR POST-CONVICTION RELIEF	424
RETURN.....	431
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	450
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED NOVEMBER 16, 2022	451
ORDER GRANTING APPLICATION FOR POST-CONVICTION RELIEF.....	549
NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDER GRANTING POST-CONVICTION RELIEF	570
ORDER OF DISMISSAL.....	588

State of South Carolina.,) In the Court of General
) Sessions of Beaufort
)
County of Beaufort.) Case No.: 2015-GS-07-01890
 2015-GS-07-01908
 2015-GS-07-01909

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-) Transcript of Record
) Jury Qualifications
Varsheen Antuan Smith.,)
)
Defendant.)
)
)

February 20, 2018
York, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, judge, and a jury.

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I-N-D-E-XE-X-A-M-I-N-A-T-I-O-NWITNESSBY:PAGE NO.

Striking of the Jury P.54-60

Court Reporter's Certificate Page P.62

Clerk of Court Random Strike Sheet. P.63-64

I-N-D-E-XE-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD.</u>

No Exhibits were received into the record.

1 (JURY SWORN AT 10:20 AM/ROLL CALL AT 10:20 AM.)

2 (BEAUFORT COUNTY GENERAL SESSIONS COURT IN SESSION
3 TUESDAY, FEBRUARY 20, 2018, ON THE RECORD AT 10:35 AM.)

4 THE COURT: Good morning, ladies and gentlemen.
5 Please be seated.

6 As you heard just a moment ago, ladies and gentlemen,
7 my name is Brooks Goldsmith. I am a retired Circuit judge
8 but working what's called an active schedule for a retired
9 circuit judge. About four years ago the mandatory
10 retirement rule got me and at that time I was living in
11 Lancaster, South Carolina. When I was required to retire I
12 then moved to Edisto Island, which is where I live now, and
13 working normally two or three weeks each month, and mostly
14 in the Low country.

15 It's my pleasure to be with you for this one-week term
16 of General Sessions Court, sometimes referred to as
17 Criminal Court. In just a few minutes I'm going to begin
18 asking you some questions to determine your qualifications,
19 and your eligibility to serve as jurors.

20 For the most part most of the questions will not apply
21 to you and therefore you won't need to respond, but I do
22 ask you if you need to respond, please stand, state your
23 name, give your juror number and tell me why you stood.
24 Before you do any of that, take a deep breath so you can
25 speak loudly enough for me to hear and understand what

1 you're saying.

2 It is possible, as to a couple of you, a couple of the
3 questions you may find to be personal, and you may prefer
4 not to answer the question in the presence of everyone in
5 the courtroom, and if that's the way you feel that's fine.
6 Just let me know that, and at the end of all the
7 questioning I'll let you come down front, and we'll speak
8 about it a little more privately. But once again, for the
9 most part, most of you that won't apply to.

10 For instance, the first question, ladies and
11 gentlemen, is, is there any member of the jury panel who is
12 not a citizen of the United States of America; if so,
13 please stand?

14 (NO RESPONSE.)

15 THE COURT: Is there any juror who is not a resident
16 and citizen of Beaufort County, South Carolina; if so,
17 please stand?

18 (NO RESPONSE.)

19 THE COURT: Is there any member of the jury panel who
20 is unable to read, write, speak, or understand the English
21 language; if so, please stand?

22 (NO RESPONSE.)

23 THE COURT: Does any member of the jury panel have
24 less than a sixth-grade education, or, it's equivalent; if
25 so, please stand?

1 (NO RESPONSE.)

2 THE COURT: Is there any member of the jury panel who
3 is unable, because of a mental or physical infirmity, to
4 render efficient jury service this week? For example, does
5 any member of the jury panel have a medical condition that
6 would prevent you from serving on jury duty this week?

7 And before everybody stands up, we normally try to
8 accommodate people who have back problems. I've actually
9 even had a juror who was blind serve on a jury. Nobody
10 objected, the juror wanted to serve, we let him serve
11 pursuant to the law.

12 So if anyone has a medical condition that would
13 prevent you from serving on jury duty this week, please
14 stand?

15 (NO RESPONSE.)

16 THE COURT: Has any member of the jury panel been
17 convicted by way of a guilty plea, or trial, in a state or
18 federal court of record of a crime punishable by
19 imprisonment for more than one year, and your civil rights
20 have not been restored by way of pardon or amnesty?

21 Punishable by more than one year means that you could
22 have received a sentence of more than one year regardless
23 of what sentence you may have actually received.

24 So, if that applies to you, please stand.

25 Yes, sir, your -- The guy in the back of the room

1 stood first, I'm gonna let him give me his answer first.

2 (WHITE MALE STANDING.)

3 A. Mark Jennings, Juror 182, possession of a controlled
4 substance.

5 THE COURT: 182. Was that here?

6 JUROR 182: Yeah, that was here.

7 SOLICITOR JONES: That wouldn't disqualify him.

8 THE COURT: And did you -- Were you convicted or plead
9 guilty to that charge?

10 JUROR 182: Yes, sir.

11 THE COURT: And how long ago was that?

12 JUROR 182: Three years.

13 THE COURT: And is that the only offense that we might
14 need to talk about?

15 JUROR 182: Yes, that's it.

16 THE COURT: Well, that actually I don't believe
17 carries a penalty of more than one year.

18 JUROR 182: Oh.

19 THE COURT: But thank you for standing.

20 And yes sir, your name and number?

21 (WHITE MALE STANDING.)

22 A. Richard Ivens, Juror 177, and habitual violator.

23 I had three DUI's back in the state of Georgia back in
24 84, '85, and '86.

25 THE COURT: And you're correct. You might want to

1 consider -- That does disqualify you. You might want to
2 consider since it was so long ago -- I'm trying to see if
3 Georgia -- the state of Georgia has any rule that would
4 permit you to have that taken off of your record. Some
5 states have different rules that permit it to be done. I
6 don't know, but we can't do anything about what happened in
7 Georgia. We can though tell you, thank you for coming and
8 you're excused from serving on jury duty.

9 JUROR 177: Thank you.

10 THE COURT: Yes, sir.

11 (JUROR 177 DISMISSED FROM JURY SERVICE.)

12 THE COURT: Is there any member of the jury panel who
13 is a clerk or a duty clerk of court, a constable, a
14 sheriff, or some other commissioned law enforcement
15 officer, or a probate judge, or a county commissioner, a
16 magistrate, or some other county officer, or, are you
17 employed within the walls of any courthouse; if so, please
18 stand?

19 (NO RESPONSE.)

20 THE COURT: Is there any member of the jury panel who
21 has previously served on jury duty in circuit court, and
22 that's where we are now, as opposed to city court, or
23 magistrates court, or federal court, this calendar year?
24 Since January the 1st have you served on jury duty in
25 circuit court this year; if so, please stand?

1 (NO RESPONSE.)

2 THE COURT: And has any member of the jury panel
3 served as a member of the Beaufort County Grand Jury in the
4 past several years? Have you served on the Grand Jury in
5 the past several years, please stand?

6 (HISPANIC FEMALE STANDS.)

7 A. I'm not sure but a couple of years ago I --

8 THE COURT: Let me get your name and number.

9 A. Esmeralda Espinoze, 113.

10 THE COURT: What was that again? What number?

11 A. 113.

12 THE COURT: 113?

13 JUROR 113: Yes.

14 THE COURT: And you served several years ago?

15 JUROR 113: Yes.

16 MADAM CLERK: We'll look her up.

17 THE COURT: We'll check on you in just one second.

18 JUROR 113: Okay.

19 THE COURT: But stay with us until you hear otherwise.

20 JUROR 113: Okay.

21 THE COURT: Ladies and gentlemen, we now move to jury
22 exemptions. The State law provides for several exemptions
23 to jury duty. You may be qualified but the Legislature has
24 determined that for certain individuals, or certain
25 categories of people, you don't have to serve on jury duty.

1 If you don't want to and all you have to do is say I choose
2 not to serve on jury duty.

3 The first category deals with those who may be sixty-
4 five years of age or older. If you're sixty-five or older
5 and you wish to be exempted, please stand?

6 (WHITE FEMALE STANDS.)

7 THE COURT: Yes, ma'am, your name and number?

8 A. Lynn Jersild, Number 183.

9 THE COURT: 183. You don't want to stay? You don't
10 want to stay with us? You don't have to stay with us at
11 all.

12 JUROR 183: I've served in court before.

13 THE COURT: You're excused then. Thank you for
14 coming.

15 JUROR 183: Thank you so much.

16 (JUROR 183 EXCUSED FROM JURY SERVICE.)

17 THE COURT: Another exemption concerns prior jury
18 service. No person is required to serve on jury duty more
19 often than once every three calendar years; therefore, if
20 any member of the jury panel that served on jury duty, once
21 again in Circuit Court, in the prior two calendar years,
22 and, you wish to be exempted, please stand?

23 (NO RESPONSE.)

24 THE COURT: A similar question deal -- dealt with
25 members of the Grand Jury but if you've served in the last

-11-

1 five years on the Grand Jury, you have the right to be
2 exempted. And we are still checking on Juror 113.

3 MADAM CLERK: I can't fine it.

4 THE COURT: You can't find it?

5 MADAM CLERK: Was it here?

6 THE COURT: I forgot to ask her that.

7 MADAM CLERK: Was it another state maybe?

8 THE COURT: You served on the Grand Jury in Beaufort
9 County?

10 JUROR 113: Yes.

11 THE COURT: The Clerk can't find a record of it. How
12 long ago was it?

13 JUROR 113: Two and a half years, three years.

14 THE COURT: You sure it was the Grand Jury?

15 JUROR 113: Yes.

16 THE COURT: How many times did you come to the
17 courthouse when you were serving on the Grand Jury?

18 JUROR 113: A couple of time.

19 THE COURT: I'm sorry?

20 JUROR 113: Three times is all.

21 THE COURT: Three separate times? I'm gonna followup
22 on this question. The Grand Jury in Beaufort County
23 normally, and almost always, meets one day a month for
24 twelve months. That's what I'm trying to figure out if you
25 served on some other jury other than the Grand Jury.

1 MADAM CLERK: She's not showing up on the system and
2 we went back to 2013.

3 THE COURT: Say again?

4 MADAM CLERK: We went back in 2013 in the system and
5 she has not served.

6 THE COURT: On the Grand Jury?

7 MADAM CLERK: On a jury.

8 THE COURT: So it may have been the regular jury as
9 opposed to the Grand Jury?

10 JUROR 113: Yeah.

11 THE COURT: Okay. All right. Thank you.

12 The next exemption deals with those of you who have
13 legal custody of young children, but you may be exempted
14 from jury duty if you have a child under the age of seven
15 and you have legal custody of the child, and, you're
16 primarily responsible taking care of the child, and, you're
17 unable to make adequate arrangements for caring for the
18 child while you are on jury duty.

19 So, if all of these requirements apply to you and you
20 wish to be exempted, please stand.

21 (NO RESPONSE.)

22 THE COURT: If you are the primary care taker of a
23 person who is sixty-five years of age or older, or,
24 severely disabled and such individual is unable to be left
25 alone to take care of themselves, and you are unable to

-13-

1 find anyone else to care for that person while you're
2 serving on jury duty you may be exempted. So if that
3 applies to you and you wish to be exempted, please stand.

4 (NO RESPONSE.)

5 THE COURT: The next exemption deals with those who
6 may be attending school at this time or working at a school
7 in some capacity. And if you are a full-time student, or
8 working at a school in some capacity, and you wish to be
9 transferred, we'll be glad to take your application. So if
10 you're a full-time student, or working at a school and
11 wished to be transferred to another term, please stand.

12 THE COURT: Yes, ma'am, your name and number.

13 (WHITE FEMALE STANDING.)

14 A. Katie Gottschalk, 145.

15 THE COURT: 145.

16 JUROR 145: I'm not full time but I am a
17 part time student.

18 THE COURT: Well, --

19 JUROR 145: So. I was threatened by my
20 instructor to let you know that, so.

21 THE COURT: I need to ask you to really, when do you
22 attend school? What days or hour?

23 JUROR 145: Monday and Wednesday's from
24 --- Monday from Wednesday from like twelve or one to two
25 o'clock.

1 THE COURT: How long you gonna be doing this?

2 JUROR 145: Until May and then summer break off and
3 then back.

4 THE COURT: And so would sometime in the summer work
5 for you?

6 JUROR 145: Sure.

7 THE COURT: All right, if you'll come -- If you'll
8 come down front we'll arrange to have you transferred.

9 You didn't sound very happy about that though.

10 Is there any member of the jury panel who is employed
11 with the Department of Corrections at a penitentiary and
12 would like to be exempted; if so, please stand?

13 Yes, sir, your name and number?

14 (WHITE MALE STANDS.)

15 A. Drew Fisher, 121.

16 THE COURT: 121?

17 JUROR 121: Yes, sir, retired corrections officer.

18 THE COURT: You are retired?

19 JUROR 121: Retired, yes, sir.

20 THE COURT: And you're not currently working?

21 JUROR 121: At the Department of Corrections, no, sir.

22 THE COURT: You're not working at the Department of
23 Corrections?

24 JUROR 121: No, sir.

25 THE COURT: Well, if you were still working at the

-15-

1 Department of Corrections you would be entitled to be
2 exempt. Thank you for standing.

3 Is there any juror who performs services for a
4 business, a commercial or agricultural enterprise, and you
5 are so essential to the operation of that business that if
6 you're required to serve on jury duty, the business would
7 be required to close or cease functioning? If that applies
8 to you and you wish to be exempted, please stand.

9 (NO RESPONSE.)

10 THE COURT: Ladies and gentlemen, that actually
11 concludes the statutory list of qualifications and
12 exemptions for jury duty. It may be that you're qualified
13 and no specific exemption applies to you, but nevertheless,
14 it still turns out to be a terrible week for you, and under
15 hardship conditions we could arrange to have you
16 transferred to another term of court, so does anyone wish
17 to apply for a hardship transfer; if so, please stand?

18 And this lady first.

19 (ASIAN FEMALE STANDS.)

20 THE COURT: And your name and number?

21 A. Natalie Alvarez, number 8.

22 THE COURT: Number 8?

23 JUROR 8: Yes.

24 THE COURT: Ms. Alvarez.

25 JUROR 8: I have a PhD interview on Thursday and

1 Friday.

2 THE COURT: All right.

3 JUROR 8: And for the lab that I work for I'm doing
4 time sensitive biomedical experiments from now until June,
5 the end of June.

6 THE COURT: Okay. We could transfer you to another
7 term. When would you like to come back to see us?

8 JUROR 8: Between mid-July and mid-August since I am
9 going to start my Ph.D program in August.

10 THE COURT: We can probably do that. If you'll come
11 on up front we can probably work that out.

12 Anyone else?

13 (NO RESPONSE.)

14 THE COURT: All right, I now find the jury panel to be
15 qualified.

16 SOLICITOR JONES: Your Honor, may we approach?

17 THE COURT: You may.

18 If you'd like to stand up, ladies and gentlemen, and
19 stretch just a minute; I need to speak with the attorneys
20 about something.

21 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
22 THE JURY AT 10:53 A.M.)

23 THE COURT: Can I see Juror 2-0-9, Mr. James Lewis?

24 Could I see you down front for just a moment, Mr.

25 Lewis? I got a question I need to ask you.

-17-

1 (COURT LEFT THE BENCH.)

2 THE BAILIFF: Juror 2-0-9, your Honor.

3 (BLACK MALE COMES FORWARD.)

4 THE COURT: Let me ask you a question. The Solicitor
5 has obtained something that looks like it's your rap sheet.
6 And they have this sheet, she finds on it a conviction in
7 Texas, Huntsville, Texas I believe it was, or, I've lost
8 it.

9 JUROR 209: Child support.

10 THE COURT: Child support, okay.

11 JUROR 209: A -- might a been a conviction.

12 SOLICITOR JONES: It's on page 6, your Honor.

13 THE COURT: Let me find it here. They had something
14 that was unclassified but was called a felony from 1999.
15 Does that ring, does that ring a bell with you at all?

16 JUROR 209: No, sir.

17 THE COURT: All right. Let me make sure we got the
18 right social on here. Did you live in Texas for a while?

19 JUROR 209: Yes, in '99.

20 THE COURT: '99, in 1999?

21 JUROR 209: Okay. I don't remember that cause I was a
22 truck driver in '99.

23 THE COURT: Okay.

24 JUROR 209: Is there a social security number?

25 THE COURT: Let me see, where is my social here?

1 Where is my social here?

2 Do you know where his social on here is?

3 SOLICITOR JONES: It should be right there. There it
4 is. It's one of those.

5 JUROR 209: Well --

6 SOLICITOR JONES: Either one of those numbers?

7 JUROR 209: No, ma'am.

8 SOLICITOR JONES: That's not your social?

9 JUROR 209: No, ma'am.

10 THE COURT: All right. Thank you. Okay. Thank you,
11 sir.

12 THE BAILIFF: Judge, I got Juror number 144.

13 (BLACK FEMALE COMES FORWARD.)

14 THE COURT: The bailiff said you wanted to talk to me
15 about something.

16 JUROR 144: In 1998.

17 THE COURT: 19 what?

18 JUROR 144: '98.

19 THE COURT: She can't hear.

20 JUROR 144: Oh. 1998 forgery.

21 THE COURT: 1998, forgery. Where was that?

22 JUROR 144: Jackson County.

23 THE COURT: And did you plead guilty or get found
24 guilty or did they dismiss the charges?

25 JUROR 144: No, guilty and probation.

-19-

1 SOLICITOR JONES: We don't have that but there may be
2 an issue with her serving though.

3 MS. GIBBES: She knows my client Varsheen Smith.
4 That's my client.

5 SOLICITOR JONES: I don't have her rap sheet.

6 THE COURT: What are you asking her?

7 MS. GIBBES: If she knows my client. Either friends.

8 JUROR 144: We're not friends. I know him.

9 THE COURT: Okay. I'll be asking that question in a
10 little while. But you sure you got a conviction and
11 probation? I guess you know don't you?

12 JUROR 144: That was twenty years ago.

13 THE COURT: And it was for forgery?

14 JUROR 144: Forgery.

15 THE COURT: And it was probation?

16 JUROR 144: I got off for good behavior. Every time I
17 put in for a job that would come up and I never got it
18 expunged.

19 THE COURT: Okay. All right.

20 JUROR 144: I can go?

21 THE COURT: I think so.

22 JUROR 144: Thank you.

23 THE COURT: All right. Thank you.

24 (JUROR 144 EXCUSED FROM JURY SERVICE.)

25 THE BAILIFF: I have two more, your Honor.

1 Juror number 320, your Honor.

2 (WHITE MALE COMES FORWARD.)

3 THE COURT: How are you doing, sir?

4 JUROR 320: I was a victim of a violent crime when I
5 was thirteen.

6 THE COURT: You were a victim of a violent crime when
7 you were thirteen?

8 JUROR 320: Yes, sir.

9 THE COURT: Okay.

10 JUROR 320: I also have quite a few immediate family
11 members who are either current or in private law
12 enforcement and due to the circumstances I don't believe I
13 could be very fair in judgement as a juror.

14 THE COURT: You don't think you could listen to the
15 evidence and be fair?

16 JUROR 320: I won't. And when I say -- I don't know.
17 I mean, you know, what I went through was very emotional.
18 This was all here in this courthouse so it was, you know, a
19 tough thing to process.

20 THE COURT: Did you have to come to court?

21 JUROR 320: Yes, sir. He pled guilty in the courtroom
22 but it was a process.

23 THE COURT: And you're afraid that that's gonna
24 influence your ability to be fair and impartial in this
25 case?

-21-

1 JUROR 320: Yes, sir. Yes, sir.

2 THE COURT: And that was approximately how long ago?

3 JUROR 320: I'm going on twenty-two, I was thirteen at
4 the time so it was many years ago.

5 THE COURT: All right. I'll let you go. Thank you
6 for coming though.

7 JUROR 320: Thank you, sir.

8 (JUROR 320 EXCUSED FROM JURY SERVICE.)

9 THE BAILIFF: Juror number 148, your Honor.

10 (WHITE MALE COMES FORWARD.)

11 THE COURT: How you doing, sir.

12 JUROR 148: Yes, sir. I'm the head archery coach at
13 John Paul II catholic school and we have got our state
14 tournament on Friday. I can serve up to Friday and I know
15 that doesn't help you much.

16 THE COURT: Well it does. We have no intention of
17 having a case going on on Friday.

18 JUROR 148: Okay. Then that will be perfect. I just
19 need to be in Columbia by three o'clock.

20 THE COURT: On Friday?

21 JUROR 148: Yes, sir.

22 THE COURT: No problem at all. You're good.

23 JUROR 148: All right. Thank you, sir.

24 THE COURT: Thank you.

25 THE BAILIFF: Juror 189, your Honor.

1 (WHITE MALE COMES FORWARD.)

2 THE COURT: Hey, how you doing?

3 JUROR 189: I suffer from cancer and I've had surgery
4 and I could sit on the jury but breaks could become an
5 issue.

6 THE COURT: What I often tell jurors, potential
7 jurors, about that kind of an issue, is that if you need a
8 break, or if he needs a break, or she needs a break, all
9 you have to do is say hey, Judge, I need a break and we'll
10 take a break.

11 JUROR 189: I just didn't want to disrupt your court.

12 THE COURT: No. I mean we can go for fifteen or
13 twenty minutes at a time between breaks. I jokingly say,
14 you know, if I need a break all I do is say we're gonna
15 take a break, but you can do the same thing. So if you get
16 selected and you need a break, just tell us you need a
17 break.

18 JUROR 189: Thank you, your Honor.

19 THE COURT: You're good. Yes, sir.

20 THE BAILIFF: Juror number 341, your Honor.

21 THE COURT: 341.

22 (WHITE MALE COMES FORWARD.)

23 THE COURT: Yes, sir. How you doing, sir?

24 JUROR 341: Robert Thatcher. Actually I have a
25 question. I'm a senior in high school and I didn't know if

-23-

1 I could stay or be excused if I was on the jury if I need
2 to just --

3 THE COURT: We can transfer you to summer if you want
4 to -

5 JUROR 341: Can I just - -

6 THE COURT: --- because you need to be in class this
7 week. You got today off though.

8 JUROR 341: Up to noon, so hopefully I got the day
9 off.

10 THE COURT: All right. You're a senior where?

11 JUROR 341: Beaufort High School.

12 THE COURT: We'll transfer you. Go around the corner
13 and talk to this lady there.

14 (JUROR 341 TRANSFERRED TO ANOTHER TERM OF COURT.)

15 THE BAILIFF: Juror Number 225, your Honor.

16 THE COURT: 225.

17 (BLACK FEMALE COMES FORWARD.)

18 THE COURT: Yes, ma'am, come on.

19 JUROR 225: Yes, sir, I have a thirteen-
20 year-old child and who has T cells that goes to USC. We
21 have an appointment on Thursday to determine whether or not
22 we have to keep taking treatments twice a week and I need
23 to know if this is gonna interrupt what could be going on
24 with my child.

25 THE COURT: All right. So you have to take your child

1 to USC?

2 JUROR 225: We have to be there to -- Thursday at one
3 forty-five. We have an appointment there at two and it's
4 to determine whether or not how it should go and have to
5 continue treatment which would be twice a week so I need to
6 know. I came into this with that effect.

7 THE COURT: All right. And how long is it gonna take
8 you to get there?

9 JUROR 225: We really don't know until Thursday on how
10 to go forward with everything. We have to go each time to
11 like the tenth floor.

12 THE COURT: Okay. We can transfer you to another term
13 of court. Would that work?

14 JUROR 225: I live here in Beaufort County.

15 THE COURT: We can transfer you to come back in the
16 summer or something like that if that would suit your
17 schedule better.

18 JUROR 225: Well we can see what's going on. I really
19 don't' know what's going on or what's gonna happen.

20 THE COURT: With him, yeah, I understand. But
21 everything may be fine by then, we hope.

22 JUROR 225: Okay. That will be fine.

23 THE COURT: If you'll go over there and talk to that
24 lady and she'll arrange for it. The one on the far end.

25 JUROR 225: Okay. Thank you.

1 THE BAILIFF: Juror number 325, your Honor.

2 (HISPANIC MALE COMES FORWARD.)

3 THE COURT: How you doing, sir?

4 JUROR 325: I was arrested about four or five months
5 ago for DUI. I have not yet been convicted.

6 THE COURT: We don't count arrest but thank you for
7 letting us know. You still qualify to sit on the jury even
8 though you've been arrested because you haven't been
9 convicted.

10 JUROR 325: Okay. All right, sir.

11 THE COURT: Have a seat. Thank you.

12 THE BAILIFF: Juror number 65, your Honor.

13 THE COURT: How you doing? Come right over.

14 JUROR 65: How are you?

15 THE COURT: I'm fine.

16 JUROR 65: So I have two children in school and my
17 husband is a traveler, he travels a lot. He has a
18 conference this week that he has to speak at out of town
19 and I'm the only other -- I don't really have family in
20 town to pick up my kids if they need to be picked up from
21 school or anything or needed something so. I mean I would
22 be able to do eight to five but if I needed to pick them
23 up, I mean I would be able to be here at eight thirty to
24 five but I'd have to pick up my children from school. And
25 then not having a cell phone I can't be available if I

1 needed to go pick them up.

2 THE COURT: So another week would work better for you
3 as opposed to summer time or?

4 JUROR 65: Yes, sir. Yeah, probably summer time, yes,
5 sir.

6 THE COURT: We can transfer you then.

7 JUROR 65: Okay.

8 THE COURT: If you'll go around and see the lady and
9 they'll take care of that.

10 JUROR SIXTY-FIVE: Yes, sir.

11 (JURY NUMBER 65 TRANSFERRED.)

12 (THE COURT RETURNS TO THE BENCH.)

13 THE COURT: Ladies and gentlemen, in just a few
14 moments we'll begin selecting a jury in a specific case and
15 I'll need to go through a number of questions to ask each
16 of you, or ask all of you. It may take a little while but
17 I want to make sure that nobody needs a break. But if
18 anybody needs a break we'll all take a break so does
19 anybody want a break?

20 All right. I have one hand. Three hands, four hands.

21 All right, let's take a ten minute recess, ladies and
22 gentlemen.

23 (COURT IN RECESS AT 11:09 AM.)

24 (COURT BACK IN SESSION AT 11:15 AM.)

25 THE COURT: And this is in which case?

-27-

1 SOLICITOR JONES: Right now we're in 2015-GS-07-1890,
2 1908 and 1909. There was some sort of mishap on the
3 publication of the docket for this term of court, and for
4 whatever reason the two gun charges that Mr. Smith has been
5 indicted for were left off of the docket for this term of
6 court. All three of these charges are one instance, one
7 set of circumstances, one set of facts; but for the
8 kidnaping we wouldn't even get to the gun charges that he
9 has pending.

10 I believe Ms. Gibbes is going to argue that she didn't
11 have notice on these charges. It's one set of discovery.
12 Everything has always been provided. I actually have a
13 copy of a motion that Ms. Gibbes filed back in November of
14 2017 where she includes all of them. She knew these
15 charges were pending; she knew they came out of this one
16 set of circumstances, and the State argues that it was just
17 a mishap for whatever reason they weren't actually
18 published on the docket. It has always been the intent of
19 the State to try the kidnaping with the gun charges that go
20 along with it.

21 THE COURT: And this involves the State versus
22 Varsheen -- Is it Antuan Smith?

23 SOLICITOR JONES: Yes, your Honor.

24 MS. GIBBES: Yes, your Honor, may it please the Court.
25 I would argue I did not get notice. I think that is

1 extremely important because that's how I can prepare to
2 what my client's facing at trial and, you know, where does
3 it stop, but right now it's gun charges. It could be -- He
4 also has an accessory after the fact to murder. At what
5 point, you know, notice of notice and I did not get notice.

6 And there is also something going on in the Clerk's
7 office web site where it's showing the charges as
8 dismissed. I know the State disputes that they are pending
9 but they are. I'm not sure what happened where it shows
10 it's dismissed so I would add I saw that before coming into
11 it today and just argue improper notice.

12 THE COURT: Well let me ask you this. The Solicitor
13 says that the facts are the same for each of these three
14 charges.

15 MS. GIBBES: They do rise out of the same set of
16 facts, your Honor, which is as opposed to the other
17 charges.

18 THE COURT: I think the State is saying that it wasn't
19 intentional, and it wasn't any attempt to deceive, and I
20 think the State's saying that there's no prejudice so let
21 me ask you about the prejudice.

22 MS. GIBBES: I would just add it's prejudice because I
23 don't have the -- you know I did not prepare for that
24 charge as far as my questioning and my cross-examination of
25 witnesses.

1 This morning I was served I believe not at the same
2 time as the original kidnaping warrant, and I would just
3 argue improper notice as to what the jury hears.

4 THE COURT: All right. Solicitor.

5 SOLICITOR JONES: And, your Honor, if I may, all three
6 charges were indicted together on the same day March, I
7 believe it's March 17th of 2016. The facts for the
8 kidnaping have always been that at the time Varsheen Smith
9 kidnaped Andre Frazier he had a gun in his hand. But for
10 the facts of the kidnaping we don't even get to the gun
11 charges. They are one set of facts, one set of
12 circumstances, and the jury has already heard the
13 information about the gun and these are just the additional
14 gun penalties for the possession by Mr. Smith which has
15 always been the facts for this particular case.

16 The accessory after the fact is a separate set of
17 circumstances.

18 MS. GIBBES: And I would agree with the State's
19 argument that the accessory after the fact is a separate
20 set of circumstances, your Honor.

21 THE COURT: All right, I'm gonna deny the Defense
22 motion. I don't see any prejudice to the Defendant. It
23 doesn't appear to be anything done intentionally to gain --
24 by the Solicitor's office to gain advantage over the
25 Defendant, so I'll permit the State to go forward on all

1 three indictments. What else?

2 SOLICITOR JONES: I believe that's it prior to jury
3 selection, your Honor, from the State.

4 THE COURT: We need to take -- Y'all want to take five
5 minutes before we --

6 SOLICITOR JONES: I would love to take five minutes,
7 your Honor.

8 THE COURT: All right. We'll be at ease for five
9 minutes.

10 (COURT IN RECESS AT 11:19 A.M.)

11 (COURT BACK IN SESSION AT 11:24 A.M.)

12 THE COURT: And, Solicitor, is the State ready to
13 proceed in a case?

14 SOLICITOR JONES: The State's ready, your Honor.

15 THE COURT: Which case would you call?

16 SOLICITOR JONES: Your Honor, the State calls Varsheen
17 Smith on Indictments 2015-GS-07-1890; 19-0-8 and 19-0-9.

18 One charge of kidnaping; possession of a weapon during
19 the commission of a violent crime, and possession of a
20 weapon by a person convicted of a crime of violence.

21 THE COURT: All right. And is the Defense ready to
22 proceed?

23 MS. GIBBES: Yes, your Honor.

24 THE COURT: Ladies and gentlemen, as you just heard
25 we're about the begin the selection of a jury in the case

1 of the *State of South Carolina versus Varsheen Antuan Smith*
2 who is charged with three indictments. One a kidnaping and
3 that Indictment alleges in part that on, or about, October
4 the 25th of 2015 the said Defendant did kidnap, or carry
5 away, one Andrew[sic] Frazier in violation of the laws of
6 this state.

7 The other two indictments alleging possession of a
8 handgun by a person convicted of a violent crime and
9 possession of a weapon during a violent crime. Both allege
10 that the events occurred at the same time as the
11 allegations relating to the kidnaping.

12 I'll tell you that because in just a few moments I'm
13 going to begin asking you some questions about your
14 knowledge, or lack of knowledge, with the people involved
15 in this including the attorneys who are going to be
16 presenting the case, potential witnesses in the case and
17 the Defendant himself.

18 First I'm gonna ask the attorneys if they will, stand
19 and identify themselves to you, and any other attorneys
20 that might be assisting them on the case, as well as the
21 names of any potential witnesses that may be called and
22 we'll begin with the State.

23 Solicitor.

24 SOLICITOR JONES: Thank you, your Honor.

25 Good morning, my name is Mary Jones and I'm the

1 Assistant Solicitor here in Beaufort County. Assistant
2 Solicitor is just a fancy name for prosecutor.

3 Seated with me throughout this trial is Kimberly
4 Smith. She is also a prosecuting attorney here in Beaufort
5 County. Also with me this week is Investigator Georgia
6 Dial of the Beaufort Police Department. And while not at
7 the table right now Investigator Bill Carter with the
8 Solicitor's Office will also be assisting

9 Potential witnesses this week are Allison Moreira from
10 Beaufort County Dispatch. Janice Steve of Hampton, South
11 Carolina. Heidi Light Beaufort County Sheriff's Office
12 formerly of the Beaufort Police Department. Jill Sparks of
13 Sprint wireless. Tony Re Beaufort Police Department.
14 Andrea Frazier Beaufort, South Carolina. Josh Dowling
15 Beaufort Police Department. Darrell Gruel Beaufort Police
16 Department. Charles Raley Beaufort Police Department.
17 Shabonda Milledge of Beaufort, South Carolina. Paul Patel
18 of Beaufort, South Carolina. Pam Burris Beaufort County
19 Clerk of Court. Pete Singleton Beaufort, South Carolina.
20 Owen Goethie Beaufort Police Department. Bill Wadman
21 Beaufort Police Department. Donna Broome from the South
22 Carolina Department of Motion Vehicles in Bluffton, South
23 Carolina. And Christina Matthews of Beaufort, South -- of
24 Beaufort, South Carolina. Thank you.

25 THE COURT: Thank you, Solicitor. And for the

1 Defense.

2 MS. GIBBES: Good morning, my name is Courtney Gibbes.
3 I'm the attorney for Varsheen Smith. I'm an attorney on
4 Hilton Head, I have my own practice. And this is my client
5 Varsheen Smith. Thank you.

6 THE COURT: And, ladies and gentlemen, my first
7 question is this. Is any member of the jury panel ever
8 been related by blood, or related by marriage, to any of
9 the attorney's involved in the case, or, to any of the
10 witnesses that have been identified to you, or, to the
11 defendant himself? Have you ever been related by blood or
12 related by marriage to any of those individuals; if so,
13 please stand?

14 (NO RESPONSE.)

15 THE COURT: Has any member of the jury panel ever had
16 a close personal, or social, relationship with any of the
17 attorneys involved in this case; any of the witnesses that
18 have been identified to you, or, with the defendant
19 himself; if so, please stand? And give me your name and
20 juror number. I'm gonna begin on the left side of the --
21 the gentleman standing there, and I'll come back across.

22 (ASIAN MALE STANDING.)

23 A. Yes, sir, 97, Dela Cruz.

24 THE COURT: Ninety -- 97.

25 JUROR 97: I know Courtney Gibbes.

1 THE COURT: I'm' sorry.

2 JUROR 97: I know Courtney Gibbes.

3 THE COURT: How long?

4 JUROR 97: Two, three years.

5 THE COURT: Do y'all belong to any of the same
6 organizations?

7 JUROR 97: Play tennis.

8 THE COURT: Do what?

9 JUROR 97: Play tennis and she knows my family so.

10 THE COURT: Have you ever visited in her home?

11 JUROR 97: No, but she has visited my family some.

12 THE COURT: Okay. And how often in an average month
13 would you see her?

14 JUROR 97: I would say happening under tendencies to
15 see each other more in the spring time to start out so not
16 in the winter months.

17 THE COURT: When's the last time you had a
18 conversation with her that lasted more than five minutes,
19 the last time?

20 JUROR 97: A few months.

21 THE COURT: Okay. All right, sir. Now would those
22 facts that you've just described to us interfere with your
23 ability to be a fair and impartial juror in this case?

24 JUROR 97: I do not know. I've never been a juror so
25 I have no experience.

1 THE COURT: All right. Well let me ask you the
2 question a different way.

3 JUROR 97: Okay.

4 THE COURT: Do you think you could sit on the jury,
5 listen to the facts, and make a decision in this case, a
6 fair and impartial decision in this case based on --

7 JUROR 97: Yes, sir.

8 THE COURT: --- the evidence presented in the
9 courtroom?

10 JUROR 97: Yes, sir.

11 THE COURT: Okay. All right. Thank you, sir.

12 And, yes, sir.

13 (WHITE MALE STANDING.)

14 A. Andrew McCleskey, Juror 234. I've known Ms. Gibbes
15 for about thirty-eight years now.

16 THE COURT: All right.

17 JUROR 234: Ms. Gibbes and myself played tennis as a
18 youth and went to school together on Hilton Head. As an
19 adult I haven't seen much of Ms. Gibbes. I probably saw
20 her a year ago out at a restaurant. I probably would be
21 impartial on the jury.

22 THE COURT: What kind of tennis rating does she have?

23 JUROR 234: Don't gamble against her because you're
24 gonna loose your money.

25 THE COURT: Would that relationship that you've just

1 described to us interfere with your relationship to be a
2 fair and impartial juror in this case?

3 JUROR 234: No, sir.

4 THE COURT: You could listen to the evidence and be
5 fair in your decision making?

6 JUROR 234: Yes, sir.

7 THE COURT: All right. Thank you, sir.

8 JUROR 234: Yes, sir.

9 THE COURT: And yes, ma'am.

10 (WHITE FEMALE STANDING.)

11 A. Number 378, Monica Wilkinson.

12 THE COURT: What was it, 378?

13 JUROR 378: Yes, sir.

14 THE COURT: Thank you.

15 JUROR 378: Yes. And our family is friends with the
16 Urdell family. My husband also works for the sheriff's
17 office so there's a connection there as well.

18 THE COURT: And how long has that relationship lasted?

19 JUROR 378: We're members in the same church so I'm
20 guessing ten or twelve years probably.

21 THE COURT: I'm not gonna ask you how many times a
22 month you might see each other at church. But outside of
23 church do y'all have a relationship?

24 JUROR 378: I do not, no, but my husband does.

25 THE COURT: Would that relationship that you've just

-37-

1 described interfere with your ability to be a fair and
2 impartial juror in this case?

3 JUROR 378: Probably.

4 THE COURT: You think it would?

5 JUROR 378: Uh-huh.

6 THE COURT: You think the relationship would cause you
7 to not be fair in your decision making process?

8 JUROR 378: It -- I imagine it would bias my opinion
9 of what I hear.

10 THE COURT: All right. Thank you, ma'am.

11 JUROR 378: Uh-huh.

12 THE BAILIFF: One standing, your Honor.

13 (WHITE FEMALE STANDS.)

14 THE COURT: Oh, yes.

15 A. My name is Corinne Woodman, Juror 389.

16 THE COURT: 389: Yeah.

17 JUROR 389: I know Josh Dowling. He's a licensed real
18 estate agent in the same publisher where I work. I've had
19 very few contact with him on the work that he does. I've
20 only had a relationship with him on that basis but I know
21 him.

22 THE COURT: Okay.

23 JUROR 389: I don't think -- I think I would be fine
24 serving on this jury.

25 THE COURT: In other words you think you could be fair

1 to both the State and to the Defendant -

2 JUROR 389: Yes, sir.

3 THE COURT: --- in sitting on the jury?

4 JUROR 389: Yes, sir.

5 THE COURT: Okay. All right, thank you, ma'am. Thank
6 you for standing.

7 Is any member of the jury panel or a member of your
8 immediate family ever been represented by any of the
9 attorneys involved in this case; if so, please stand?

10 (WHITE MALE STANDS.)

11 THE COURT: Yes, sir, your name and number?

12 A. Brad Kaiser, 1-8-8. Ms. Gibbes and I had a mutual
13 client when I was a property manager that we evicted and
14 went through the eviction process at the Bluffton court.

15 THE COURT: And approximately how long ago was that?

16 JUROR 188: About two years.

17 THE COURT: All right. And in the past two years have
18 you had any contact, I won't say contact, any kind of
19 relationship with her?

20 JUROR 188: No, sir.

21 THE COURT: Would that event you just described to us
22 interfere with your ability to be a fair and impartial
23 juror?

24 JUROR 188: No, sir. Just wanted to disclose it.

25 THE COURT: Thank you, sir.

1 Is there any member of the jury panel who is related
2 by blood, or related by marriage, or, is a close personal
3 friend of anyone involved in law enforcement including the
4 Beaufort County Sheriff's Department, South Carolina Law
5 Enforcement Division, and the Jasper County Sheriff's
6 Department? If you have been related by blood or marriage,
7 or a close personal friend of any of those individuals, or
8 any of those categories of people, please stand?

9 And we'll start again on my left.

10 Yes, ma'am, your name and number.

11 (WHITE FEMALE STANDING.)

12 A. Caitlin Boulware, Juror number 33.

13 THE COURT: 33.

14 JUROR 33: My dad's step brother is a police officer,
15 Brandon Core of Beaufort County.

16 THE COURT: Okay. All right, thank you.

17 Yes, sir.

18 (WHITE MALE STANDING.)

19 A. Juror number a hundred and fifteen, Thomas Farabaugh.

20 One of my best friends is Shawn Janson with the
21 Beaufort County Sheriff's Department.

22 THE COURT: All right. Thank you.

23 And, yes, ma'am.

24 (WHITE FEMALE STANDING.)

25 A. Number 378, Monica Wilkinson. My husband David has

1 been employed by the Beaufort County Sheriff's Office for
2 twenty years.

3 THE COURT: Thank you, ma'am.

4 Yes, sir.

5 (WHITE MALE STANDING.)

6 A. John Graves, Juror number 148. I was a reserve deputy
7 sheriff for the Beaufort County Sheriff's Office for four
8 years.

9 THE COURT: And the last time?

10 JUROR 148: I -- It's been '97 since I've been there
11 so it's been a while.

12 THE COURT: All right. Thank you, sir.

13 And the gentleman closest to me.

14 (WHITE MALE STANDING.)

15 A. Jamie Earle, 107. Worked with law enforcement a good
16 bit of my job but nothing I would consider close personal
17 friends.

18 THE COURT: All right. Thank you, sir.

19 Yes, sir.

20 (WHITE MALE STANDING.)

21 A. Andrew McCluskey, Juror 234. My new foreman's brother
22 is Christopher Malphrus the sheriff of Jasper County.

23 THE COURT: Okay. All right. Thank you, sir.

24 Is any member of the jury panel related to or a close
25 personal friend of anyone employed by the office of the

-41-

1 Attorney General, or the office of the Solicitor of this
2 circuit, or, any prosecuting attorneys office; if so,
3 please stand? If you're related by blood, or marriage, or
4 a close friend to anyone in those categories, please stand?

5 (WHITE FEMALE STANDS.)

6 A. I'm not sure if this qualifies. Tony Dowling,
7 Antonio Dowling, Juror 1-0-2.

8 THE COURT: 1-0-2.

9 JUROR 102: And I work for a law firm and two of the
10 attorneys in my office are prosecuting attorneys for I
11 guess the magistrate.

12 THE COURT: Okay. All right. Thank you, ma'am.

13 Yes.

14 (WHITE FEMALE STANDING.)

15 A. Shannon Gould, Juror number 146. I don't know if
16 this has anything to do with it, my mom works for LLR and
17 she works in the attorney's office there and so she works
18 with --

19 THE COURT: Okay. Thank you.

20 Has any member of the jury panel ever been employed
21 by, or worked as a civilian, or military law enforcement
22 agency? If you've not already answered that question,
23 please stand?

24 (WHITE MALE STANDING.)

25 THE COURT: And your name and numbers?

1 A. Brad Kaiser, 1-8-8. Communications officer and
2 dispatched for Bloomington, Illinois Police Department.

3 THE COURT: How long ago?

4 JUROR 188: 2006, 2007.

5 THE COURT: All right. Thank you, sir.

6 Is any member of the jury panel, or a member of your
7 immediate family, ever been a witness to, or a victim of, a
8 witness to or a victim of, a violent crime; if so, please
9 stand? And I'll begin the same way I been doing this.

10 I'll start on my left with the gentleman on my far
11 left. Yes, sir, your name and number?

12 (WHITE MALE STANDING.)

13 A. Dan Morgan, 251.

14 THE COURT: 251?

15 JUROR 251: Yeah.

16 THE COURT: Yes, sir.

17 JUROR 251: Good morning, your Honor. My wife has
18 been actually in several crimes. One I can tell you she
19 was robbed at gun point. Another one --

20 THE COURT: And the last time she was a victim would
21 have been how long ago approximately?

22 JUROR 251: About eight years ago, eight years ago.

23 THE COURT: Would the fact that your wife has been the
24 victim that you've just mentioned -- been a victim as you
25 just mentioned to us, interfere with your ability to be a

1 fair and impartial juror?

2 JUROR 251: Yeah, absolutely. I think so.

3 THE COURT: All right. Thank you, sir.

4 And yes, sir, your name and number?

5 (WHITE MALE STANDING.)

6 A. Drew Fisher, 121. Inmate assault.

7 THE COURT: I'm sorry.

8 JUROR 121: Inmate assault in prison.

9 THE COURT: Oh. How long ago?

10 JUROR 121: A few years.

11 THE COURT: Okay. Would that fact interfere with your
12 ability to be a fair and impartial juror?

13 JUROR 121: I think so.

14 THE COURT: You don't think you could listen to the
15 facts of the case and be fair to both sides?

16 JUROR 121: I mean fourteen years of listening to -- I
17 don't know. Kind of partial to one side.

18 THE COURT: All right. Thank you, sir.

19 And yes, sir.

20 (WHITE MALE STANDING.)

21 A. Both of my parents are involved --

22 THE COURT: I've got to get your name and number, I'm
23 sorry.

24 A. Mark Jennings, 182. Both of my parents are - uh -
25 like murdered -- murderer, convicted of murderer.

1 THE COURT: Your parents were murdered?

2 JUROR 182: No, they were convicted of murder.

3 THE COURT: Convicted. Okay. And how long ago would
4 the last conviction have occurred?

5 JUROR 182: Twenty years ago.

6 THE COURT: Twenty years ago.

7 JUROR 182: Yeah, right. Correct.

8 THE COURT: Well would those events that you've just
9 described interfere with your ability to be a fair and
10 impartial juror?

11 JUROR 182: One hundred percent. One hundred percent,
12 yeah, they would.

13 THE COURT: Okay. Thank you, sir.

14 And, yes.

15 (BLACK MALE STANDING.)

16 A. Jonathan Ford, number 125.

17 THE COURT: 125. Yeah.

18 JUROR 125: My younger brother was robbed at gun point
19 last year. And also one of my best friends was murdered
20 last year.

21 THE COURT: Okay. And would those facts interfere
22 with your ability to be a fair and impartial juror?

23 JUROR 125: Yes, it would.

24 THE COURT: You don't think you could be fair and
25 listen to both sides?

1 JUROR 125: No, sir, I do not.

2 THE COURT: All right. Thank you, sir.

3 And, yes.

4 (WHITE MALE STANDING.)

5 A. Scott Sullivan, Juror 3-3-5.

6 THE COURT: 3-3-5.

7 JUROR 335: My wife was working at a men's store and
8 was robbed approximately twenty years ago.

9 THE COURT: And would that fact interfere with your
10 ability to be a fair and impartial juror?

11 JUROR 335: I believe I can be fair.

12 THE COURT: You think you could be fair?

13 JUROR 335: Yes.

14 THE COURT: In other words you could put that behind
15 you and listen to the evidence and be fair to both the
16 State and to the Defendant?

17 JUROR 335: Yes, sir.

18 THE COURT: All right. Thank you, sir.

19 And the gentleman in the white shirt closest to me.

20 (WHITE MALE STANDING.)

21 A. Andrew McCleskey, Juror 234. My children's
22 grandmother

23 was shot in the head and her house was burnt down to hide
24 evidence at Thanksgiving time and I can be partial to the
25 jury.

1 THE COURT: You think you could not be fair then?

2 And this event occurred how long ago?

3 JUROR 234: At Thanksgiving time.

4 THE COURT: All right. Thank you, sir.

5 And yes, ma'am.

6 (WHITE FEMALE STANDING.)

7 A. Jodi Hutchins, number 174.

8 THE COURT: 174.

9 JUROR 174: I was a witness to a stabbing and also a
10 victim of a domestic assault.

11 THE COURT: The stabbing occurred approximately how
12 long ago?

13 JUROR 174: Two thousand and five.

14 THE COURT: Were the people involved in that stabbing
15 people that you knew?

16 JUROR 174: Yes.

17 THE COURT: And the other event you just mentioned
18 occurred approximately how long ago?

19 JUROR 174: I would guess around 2004.

20 THE COURT: Would those events that you've just
21 described interfere with your ability to be a fair and
22 impartial juror?

23 JUROR 174: I don't believe so.

24 THE COURT: You think you could be fair to both the
25 State and to the Defense?

1 JUROR 174: Yes, sir.

2 THE COURT: Okay. Thank you.

3 Yes, ma'am.

4 (WHITE FEMALE STANDING.)

5 A. Dana Glaser, number 143.

6 THE COURT: 143.

7 JUROR 143: My husband was robbed at knife point but
8 this occurred twenty years ago.

9 THE COURT: And do you think you could put those facts
10 out of your mind and be a fair and impartial juror in this
11 case?

12 JUROR 143: I hope so. I don't know.

13 THE COURT: Well do you think you could make a
14 decision in this case without letting those events affect
15 your decision?

16 JUROR 143: Yes.

17 THE COURT: So you could be fair to both the State and
18 to the Defendant in making a decision?

19 JUROR 143: Yes.

20 THE COURT: All right. Thank you, ma'am.

21 Yes, sir.

22 (WHITE MALE STANDING.)

23 A. Tom Farabaugh, one hundred and fifteen. My wife was
24 a victim of a violent crime inside our home about eighteen
25 months ago.

1 THE COURT: In your home? Would those facts interfere
2 with your ability to be fair and impartial in this case?

3 JUROR 115: I believe it would yes, sir.

4 THE COURT: You think you could not put those facts
5 out of your mind and just listen to the evidence and make a
6 fair decision in the case?

7 JUROR 115: No, your Honor.

8 THE COURT: And your number again was what?

9 JUROR 115: One hundred and fifteen.

10 THE COURT: Okay. 115. I gotcha. All right. Thank
11 you, sir.

12 Yes, ma'am.

13 (HISPANIC FEMALE STANDING.)

14 A. My name is Genevieve Legge. My number is 2-0-6.

15 THE COURT: I couldn't -- 2-0-6? 206. You got to
16 speak up for me.

17 JUROR 206: I'm sorry. It's hard for me to bring this
18 up. I myself am a victim of domestic violence as well as
19 children being kidnaped from me so I could not be part of
20 this jury.

21 THE COURT: Thank you, ma'am.

22 JUROR 206: Do you mind if I just leave?

23 THE COURT: I'm sorry.

24 JUROR 206: Am I allowed to just leave the room?

25 THE COURT: Can you leave the room?

1 JUROR 206: Yes.

2 THE COURT: If you'll come back yes, ma'am, you may.

3 (JURY 206 EXITS COURTROOM.)

4 THE COURT: And yes, sir.

5 (BLACK MALE STANDING.)

6 A. Ramon Robinson, Juror number 307. And I have been
7 personally held at gunpoint as a manager --

8 THE COURT: You dropped your voice, I couldn't
9 understand you.

10 JUROR 307: I was held up at gunpoint as a manager of
11 a supermarket and it's been back in the '90s.

12 THE COURT: How long ago did that occur?

13 JUROR 307: About '94. 1994.

14 THE COURT: Okay. Now would those facts interfere
15 with your ability to be a fair and impartial juror in this
16 case?

17 JUROR 307: No, sir.

18 THE COURT: You think you could be fair to both the
19 State and to the Defendant?

20 JUROR 307: Yes, sir.

21 THE COURT: Okay. Thank you, sir.

22 Has any member of the jury panel read, seen, or heard
23 anything about the allegations in this case, the ones I
24 referred to earlier about the kidnaping and the possession
25 of a weapon during a violent crime and the possession of a

1 handgun; if so, please stand?

2 Let me get your name and number then.

3 (WHITE MALE STANDING.)

4 A. 188, Kaiser Brad.

5 THE COURT: Anyone else? Okay. And did you read
6 about it?

7 JUROR 188: Yeah, your Honor, it was in the --

8 THE COURT: How long ago? This morning?

9 JUROR 188: No. It was about like, what, two years
10 ago? I believe I reported it. I used to work for the
11 media.

12 THE COURT: Would those facts interfere with your
13 ability to be a fair and impartial juror?

14 JUROR 188: It shouldn't.

15 THE COURT: I'm sorry.

16 JUROR 188: It shouldn't.

17 THE COURT: Okay. You can be fair to both the State
18 and to the Defense ---

19 JUROR 188: Yes.

20 THE COURT: --- and put that, whatever you read, out
21 of your mind?

22 JUROR 188: Yes.

23 THE COURT: Is that yes? Okay. All right. Thank
24 you, sir.

25 Has any member of the jury panel formed or expressed

-51-

1 an opinion about any issue or any matter involved in this
2 case; if so, please stand?

3 (NO RESPONSE.)

4 THE COURT: Several jurors have already told me that
5 they did not think they could be fair to both the State and
6 the Defendant. If you've already told me you could not be
7 fair, you don't need to respond to this next question
8 because the next question is: Does any member of the jury
9 -- Is any member of the jury panel aware of any bias or any
10 prejudice that they might have towards the State or to the
11 Defendant; if so, please stand?

12 (NO RESPONSE.)

13 THE COURT: All right. Is any member of the jury
14 panel a member of the Grand Jury which issued the
15 indictment in this case which was done in 2016; if so,
16 please stand?

17 (NO RESPONSE.)

18 THE COURT: Is there any member of the jury panel who
19 is a member of, or a contributor to, any group which has as
20 it's primary concern the promotion of law enforcement, or
21 promotion of victim's rights? Those groups would include
22 but would not be limited to MADD or SADD or CAV or any such
23 similar group; if so, please stand.

24 (NO RESPONSE.)

25 THE COURT: Does any member of the jury panel know of

1 any reason whatsoever why he or she should not serve as a
2 juror in this case with particular emphasis being placed on
3 your ability to be fair and impartial to both the State and
4 to the Defendant; if so, please stand?

5 (NO RESPONSE.)

6 THE COURT: Additional questions from the State?

7 SOLICITOR JONES: None from the State, your Honor.

8 THE COURT: From the Defense?

9 MS. GIBBES: No, your Honor.

10 THE COURT: Let me see the attorneys at a quick side
11 bar before we begin this selection.

12 If you all would like to stand and stretch just a
13 minute, you're welcome to if you'd like to.

14 (SIDE BAR HELD OFF THE RECORD AT 11:53 A.M.)

15 THE COURT: In just a minute, ladies and gentlemen,
16 the computer will randomly select names. There were some
17 names, as you probably noticed, that we're having to take
18 out of the pool by people who indicated they could not be
19 fair to one side or the other or to both. As soon as they
20 do that we will begin selecting the jury. And each side
21 has the opportunity, or the right, to have a certain number
22 of strikes available to them which means they have the
23 right to refuse a certain juror, and the State goes first
24 and then the Defense follows.

25 We'll ask you to come forward and stand at the rail

-53-

1 while they look at you. And they don't have to tell us --
2 they don't have to tell us who or why they are rejecting
3 somebody. They can just -- All they have to do is say
4 excuse this juror. And it can be for virtually any reason.
5 What kind of work you do, where you live, what your spouse
6 does, what you wore to court today, you know, just whether
7 you're bald or have a beard or just they don't have to give
8 any reasons. Any moment the computer is gonna give us the
9 names.

10 And I tell this story often times but before the
11 computer -- before we had computers, the names were put in
12 capsules and then in a big drum and the names were rolled
13 around in the drum and then were picked out one at a time
14 like that. And at one time before that the State law
15 required the names to be drawn by either a person who was
16 legally blind, or, a minor child. And so at the beginning
17 of a term of court like this the Clerk of Court would have
18 already made arrangements for a blind person to be at the
19 court to draw the names, or in the summer time have a minor
20 child, somebody the Clerk knew, to be sitting there to draw
21 the names. Of course that was a long long time ago.

22 In any minute the computer is gonna give us . . .

23 Can I see counsel at a quick side bar about another
24 matter that's come up?

25 (SIDE BAR CONFERENCE OFF THE RECORD AT 12:00 P.M.)

1 THE COURT: Madam Clerk will give us a jury please.

2 MADAM CLERK: Number 325, Jose Solis-Reyes.

3 What says the State?

4 MADAM CLERK: Come on up, Mr. Solis-Reyes. Stand
5 right here in the middle.

6 (HISPANIC MALE COMES FORWARD.)

7 SOLICITOR JONES: Please excuse the juror.

8 MADAM CLERK: He is excused.

9 Number 265, Laurie O'Grady.

10 (WHITE FEMALE COMES FORWARD.)

11 MADAM CLERK: And what says the State?

12 SOLICITOR JONES: Please present the juror.

13 MADAM CLERK: And the Defense?

14 MS. GIBBES: Please excuse this juror.

15 MADAM CLERK: Number 15, Hellen Barker.

16 (WHITE FEMALE COMES FORWARD.)

17 MADAM CLERK: What says the State?

18 SOLICITOR JONES: Please present the juror.

19 MADAM CLERK: And the Defense?

20 MS. GIBBES: Please excuse this juror.

21 MADAM CLERK: Number 363, Robert Wall.

22 (WHITE MALE COMES FORWARD.)

23 MADAM CLERK: What says the State?

24 SOLICITOR JONES: Please present the juror.

25 MADAM CLERK: What says the Defense?

1 MS. GIBBES: Please seat this juror.

2 MADAM CLERK: Number 318, Quentin Simmons.

3 (BLACK MALE COMES FORWARD.)

4 MADAM CLERK: What says the State?

5 SOLICITOR JONES: Please present the juror.

6 MADAM CLERK: What says the Defense?

7 MS. GIBBES: Please excuse this juror.

8 MADAM CLERK: Number 2-0-8, Kathy Levey. I'm sorry,
9 the correct last name is Kathy Levey.

10 Thank you.

11 (WHITE FEMALE COMES FORWARD.)

12 MADAM CLERK: What says the State?

13 SOLICITOR JONES: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MS. GIBBES: Please seat this juror.

16 THE BAILIFF: Take a seat in the jury box, please.

17 MADAM CLERK: Number 389, Corinne Woodman.

18 (WHITE FEMALE COMES FORWARD.)

19 MADAM CLERK: What says the State?

20 SOLICITOR JONES: Please present the juror.

21 MADAM CLERK: What says the Defense?

22 MS. GIBBES: Please excuse this juror.

23 MADAM CLERK: Number 209, James Lewis.

24 (BLACK MALE COMES FORWARD.)

25 MADAM CLERK: What says the State?

1 SOLICITOR JONES: Please present the juror.

2 MADAM CLERK: What says the Defense?

3 MS. GIBBES: Please seat this juror.

4 THE BAILIFF: Take a seat in the jury box, please,
5 sir.

6 MADAM CLERK: Number 134, Kimberly Furr.

7 (WHITE FEMALE COMES FORWARD.)

8 MADAM CLERK: What says the State?

9 SOLICITOR JONES: Please present the juror.

10 MADAM CLERK: What says the Defense?

11 MS. GIBBES: Please excuse this juror.

12 MADAM CLERK: Number 41, Cachet Brink.

13 (WHITE FEMALE COMES FORWARD.)

14 MADAM CLERK: What says the State?

15 SOLICITOR JONES: Please present the juror.

16 MADAM CLERK: What says the Defense?

17 MS. GIBBES: Please seat this juror.

18 THE BAILIFF: Take a seat in the jury box, please.

19 MADAM CLERK: Number 239, Elizabeth McVey.

20 (WHITE FEMALE COMES FORWARD.)

21 MADAM CLERK: What says the State?

22 SOLICITOR JONES: Please present the juror.

23 MADAM CLERK: What says the Defense?

24 MS. GIBBES: Please excuse this juror.

25 MADAM CLERK: Number 153, Amy Greene-Saunders.

-57-

1 (BLACK FEMALE COMES FORWARD.)

2 MADAM CLERK: What says the State?

3 SOLICITOR JONES: Please present the juror.

4 MADAM CLERK: What says the Defense?

5 MS. GIBBES: Please seat this juror.

6 THE BAILIFF: Take a seat in the jury box please,
7 ma'am.

8 MADAM CLERK: Number 116, William Faucett.

9 (WHITE MALE COMES FORWARD.)

10 MADAM CLERK: What says the State?

11 SOLICITOR JONES: Please present the juror.

12 MADAM CLERK: What says the Defense?

13 MS. GIBBES: Please seat this juror.

14 THE BAILIFF: Take a seat in the jury box, sir.

15 MADAM CLERK: Number 141, Patricia Giuliani.

16 (WHITE FEMALE COMES FORWARD.)

17 MADAM CLERK: What says the State?

18 SOLICITOR JONES: Please present the juror.

19 MADAM CLERK: What says the Defense?

20 MS. GIBBES: Please excuse this juror.

21 THE BAILIFF: This way. Go ahead. You can go ahead.

22 MADAM CLERK: Number 172, Marisol Hunt.

23 (HISPANIC FEMALE COMES FORWARD.)

24 MADAM CLERK: What says the State?

25 SOLICITOR JONES: Please present the juror.

1 MADAM CLERK: What says the Defense?
2 MS. GIBBES: Please seat this juror.
3 THE BAILIFF: Take a seat in the jury box please.
4 MADAM CLERK: Number 189, Glendon Keaton.
5 (WHITE MALE COMES FORWARD.)
6 MADAM CLERK: What says the State?
7 SOLICITOR JONES: Please present the juror.
8 MADAM CLERK: What says the Defense?
9 MS. GIBBES: Please seat this juror.
10 THE BAILIFF: Take a seat in the jury box, sir.
11 MADAM CLERK: Number 99, Catherine Diller.
12 (WHITE FEMALE COMES FORWARD.)
13 MADAM CLERK: What says the State?
14 SOLICITOR JONES: Please present the juror.
15 MADAM CLERK: What says the Defense?
16 MS. GIBBES: Please seat this juror.
17 MADAM CLERK: Number 380, Kalchuet Williams.
18 (BLACK FEMALE COMES FORWARD.)
19 MADAM CLERK: What says the State?
20 SOLICITOR JONES: Please present the juror.
21 MADAM CLERK: What says the Defense?
22 MS. GIBBES: Please seat this juror.
23 MADAM CLERK: Number 398, Eunice Wynn.
24 (WHITE FEMALE COMES FORWARD.)
25 MADAM CLERK: What says the State?

1 SOLICITOR JONES: Please present the juror.

2 MADAM CLERK: What says the Defense?

3 MS. GIBBES: Please excuse this juror.

4 MADAM CLERK: Number 257, Jeffery Murphy.

5 (WHITE MALE COMES FORWARD.)

6 MADAM CLERK: What says the State?

7 SOLICITOR JONES: Please present the juror.

8 MADAM CLERK: What says the Defense?

9 MS. GIBBES: Please seat this juror.

10 MADAM CLERK: Number 327, Michael Sparks.

11 (WHITE MALE COMES FORWARD.)

12 MADAM CLERK: What says the State?

13 SOLICITOR JONES: Please present the juror.

14 MADAM CLERK: What says the Defense?

15 MS. GIBBES: Please seat this juror.

16 MADAM CLERK: Selecting one alternate.

17 Number 275, Katherine Parmenter.

18 (WHITE FEMALE COMES FORWARD.)

19 MADAM CLERK: What says the State?

20 SOLICITOR JONES: Please present the juror.

21 MADAM CLERK: What says the Defense?

22 MS. GIBBES: Please excuse this juror.

23 MADAM CLERK: Number 143, Dana Glaser.

24 (WHITE FEMALE COMES FORWARD.)

25 MADAM CLERK: What says the State?

1 SOLICITOR JONES: Please present the juror.

2 MS. GIBBES: I'm sorry, what number?

3 MADAM CLERK: 143.

4 MS. GIBBES: Please excuse this juror.

5 MADAM CLERK: Number 214, Laura Loman.

6 (WHITE FEMALE COMES FORWARD.)

7 MADAM CLERK: What says the State?

8 SOLICITOR JONES: Please present the juror.

9 MADAM CLERK: What says the Defense?

10 MS. GIBBES: Please seat this juror.

11 THE COURT: Now any matters of law the Court needs to
12 consider concerning the composition of the selection of the
13 jury from the State?

14 SOLICITOR JONES: No, your Honor.

15 THE COURT: And from the Defense?

16 MS. GIBBES: No, your Honor.

17 THE COURT: All right. Ladies and gentlemen, ladies
18 and gentlemen, due to a shortage of court reporters, and we
19 only have one with us today, we were scheduled to have two,
20 but actually there's a state wide shortage of court
21 reporters, but in just a few minutes another judge is gonna
22 come into the courtroom and select another jury. It will
23 be his jury for his case.

24 You are my jury, the case that we've just been talking
25 about. I'm gonna let you go until tomorrow morning at ten

-61-

1 o'clock. I remind you you can't talk to anybody about this
2 case. You can't let anybody talk to you about this case,
3 and see you at ten o'clock in the morning. The bailiff
4 will show you where to go and what to do. If you have any
5 questions the bailiff will take care of you. You're
6 excused, ladies and gentlemen, until tomorrow morning.

7 THE BAILIFF: Follow me please.

8 (PETIT JURY EXITS COURTROOM AT 12:16 P.M.)

9 THE COURT: And you, ladies and gentlemen, we're gonna
10 take a ten-minute break. The judge is gonna be back in
11 here in a few minutes and he's gonna select another jury in
12 another matter. We're in recess for ten minutes.

13 (COURT IN RECESS IN THE MATTER OF THE STATE VERSUS
14 VARSHEEN ANTUAN SMITH AT 12:22 P.M.)
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit 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 General Sessions for Beaufort County, South Carolina, on 20th day of February, 2018.

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

Wanda Nelson

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Circuit Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: March 23 / 2018

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BEFORE :

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The Honorable Brooks P. Goldsmith

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INDEX PAGE

1	INDEX	
2	WITNESS:	PAGE:
3	ANDRE FRAZIER	
	Direct Examination By Ms. Jones	5
4	Cross Examination By Ms. Gibbes	13
	Redirect Examination By Ms. Jones	20
5	Re-Cross Examination By Ms. Gibbes	21
6	GEORGE ERDEL	
	Direct Examination By Ms. Jones	22
7	Cross Examination By Ms. Gibbes	25
	Redirect Examination By Ms. Jones	26
8	HEIDI LIGHT	
9	Direct Examination By Ms. Jones	64
	Cross Examination By Ms. Gibbes	66
10	JANICE STEVE	
11	Direct Examination By Ms. Jones	67
	Cross Examination By Ms. Gibbes	72
12	ANDRE FRAZIER	
13	Direct Examination By Ms. Jones	83
	Cross Examination By Ms. Gibbes	113
14	PETE SINGLETON	
15	Direct Examination By Ms. Jones	164
	Cross Examination By Ms. Gibbes	169
16	PAUL PATEL	
17	Direct Examination By Ms. Jones	170
18	DARRELL GRUEL	
	Direct Examination By Ms. Jones	174
19	DONNA BROOME	
20	Direct Examination By Ms. Jones	182
21	JILL SPARKS	
	Direct Examination By Ms. Jones	189
22	BILL WADMAN	
23	Direct Examination By Ms. Jones	191
	Cross Examination By Ms. Gibbes	197
24	OWEN GOETHIE	
25	Direct Examination By Ms. Jones	199

INDEX PAGE

1	GEORGE ERDEL		
	Direct Examination By Ms. Jones		202
2	Cross Examination By Ms. Gibbes		210
3	SHABONDA MILLEDGE		
	Direct Examination By Ms. Jones		243
4	Cross Examination By Ms. Gibbes		247
	Redirect Examination By Ms. Jones		254
5	JOSH DOWLING		
6	Direct Examination By Ms. Jones		255
	Cross Examination By Ms. Gibbes		256
7	PAM BURRIES		
8	Direct Examination By Ms. Jones		257
9	Cross Examination By Ms. Gibbes		259
10	Court's Exhibits:	Marked:	Received:
11	1 Miranda	46	46
	2 disc	46	46
12	3 note from jury	310	310
	4 note from the jury	318	318
13			
14	State's Exhibits:		
15	2-4 photos	92	92
	5 disc	173	173
16	6 Miranda	178	178
	1 video	179	179
17	7 DMV report	187	187
	8 Sprint records	191	191
18	9 sentencing sheet	258	258
19			
20			
21			
22			
23			
24			
25			

PRE-TRIAL MOTIONS

1 THE COURT: All right. The the court reporter
2 indicates that the she is ready, Solicitor.

3 MS. JONES: Thank you, Your Honor. The State is
4 ready to go forward on the pre-trial matters in the
5 State of South Carolina versus Varsheen Smith. I
6 believe that the first motion the State has is the
7 404(b). And res gestae may be depositive of the
8 other motions, so we would ask to hear that one
9 first.

10 I provided Your Honor as well as Ms. Gibbes a
11 copy of my motion as well as the Adams case in
12 support of my argument. I have two witnesses, if
13 Your Honor would like to hear testimony regarding
14 that.

15 THE COURT: Brief testimony.

16 MS. JONES: Very brief. We can start with Andre
17 Frazier.

18 Thereupon,

19 ANDRE FRAZIER

20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. JONES:

24 Q Mr. Frazier, good afternoon.

25 A How are you doing?

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

1 Q Pretty good. Where do you live? Do you live
2 here in Beaufort County?

3 A Yes, ma'am.

4 Q Do you remember October 25th, 2015?

5 A Yes, ma'am.

6 Q Why do you remember that day?

7 A It was a bad day for me.

8 Q Okay. Without going into a whole lot of detail,
9 essentially what happened to you that evening?

10 A I had a gun pulled on me. Pretty much I was
11 kidnapped.

12 Q And who was the person that did this to you?

13 A Varsheen Smith."

14 Q I see that you are nodding your head. Do you
15 see Varsheen Smith today?

16 A Right there.

17 MS. JONES: May the record reflect that the
18 witness did identify the Defendant. Thank you.

19 Q Why you -- where was this happening?

20 A On Greene Street. I don't exactly know the
21 address.

22 Q Who lives at this Greene Street address?

23 A My best friend, Ver'mon Steve.

24 Q When was the last time that you saw Mr. Steve?
25 Was it that day?

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

- 1 A Yes, ma'am.
- 2 Q Is that -- did Mr. Steve go by another name?
- 3 A Monte.
- 4 Q Is that what you knew him by, Monte?
- 5 A Or whatever, I just say whatever comes.
- 6 Q When you are being kidnapped by this man right
- 7 here, is he saying anything to you?
- 8 A Yes, ma'am.
- 9 Q What is he saying?
- 10 A Caught you slipping, I got you. He said so
- 11 many -- he said a lot of things, but you know, when you
- 12 have got a gun to your head and your head going a thousand
- 13 miles an hour, I'm trying to pray at the same time.
- 14 Everything. He be saying things like, You snitch. Got
- 15 your snitching ass.
- 16 Q Did he say anything specifically about Monte?
- 17 A No.
- 18 Q He didn't ask you any questions about Monte?
- 19 A When I first got there, he did. When I first
- 20 got out of the car.
- 21 Q Okay. What is he asking you then?
- 22 A If I talked to him.
- 23 Q What else did he say?
- 24 A I told him -- well, I told him, Yeah. But I
- 25 just asked him where he is. And then he kept saying, Let

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

1 me holler at you.

2 Q Did this man say anything else about Monte's
3 whereabouts to you that night?

4 A That night, yes. .

5 Q What else did he say?

6 A Well, he said things like, If he didn't want me
7 in the house, he should have told me.

8 Q When you say "he," who is Varsheen Smith
9 referring to?

10 A Ver'mon, Ver'mon Steve.

11 Q Okay. And what else was he saying?

12 A He was saying things like -- well, I was
13 basically asking him where was he. And he was not giving
14 me an answer at first.

15 Q Okay.

16 A And then, before I left when I asked him where
17 was he again, he said he thought that I was going to shoot
18 him so he ran.

19 Q Okay. Does he -- does the Defendant say
20 anything to you about the time that you got to the house?

21 A Yes, ma'am.

22 Q What does he say about that?

23 A When I got there, I pound them up. Got in the
24 yard. Started looking at Ver'mon's car. He asked me, Did
25 you talk to Monte? And I told him, Yes. I wasn't

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

1 thinking nothing. I thought that he was trying to play
2 me, you know, like I can't come up here if I didn't talk
3 to him. That was going through my head. But I told him,
4 Yes, I talked to Monte. He said, What did he say. I
5 said, He didn't say nothing. I told him that I was coming
6 here. Like that.

7 Q Okay. Did the questions about Monte continue
8 while you were tied up?

9 A It was more of me saying like, Why is you doing
10 this and stuff like that. But it wasn't too many talk
11 about Monte at the time, because I didn't even know what
12 was really going on. I was tied up. I was trying to
13 figure out why this was happening, period.

14 Q Okay. Do you remember speaking with myself and
15 Investigator Carter who is in the back of the courtroom a
16 couple of times?

17 A Yes, ma'am.

18 Q Okay. One was just last week here at the
19 courthouse downstairs?

20 A Yes, ma'am.

21 Q And you remember telling us that this man also
22 told you, It sure is a funny time you are here?

23 A Yeah.

24 Q Okay. Tell me --

25 A I couldn't figure it out. They both kept saying

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

1 that, him and Tyrone.

2 Q Okay. Who is Tyrone?

3 A The other guy that was there.

4 Q Okay. Do you know his last name?

5 A Wallace.

6 Q Okay. So, that is another question that he's
7 asking you, or another statement that he's making to you?

8 A Yes, ma'am.

9 Q Is there anything else that he's saying about
10 Monte while -- from the moment that you get to the house
11 until you are released?

12 A Basically, he was saying a lot about Monte. I
13 know a little bit more about what was happening, but I
14 couldn't figure out what was happening. I thought that he
15 was trying to rob me at first.

16 Q But he wasn't trying to rob you?

17 A No, he told Tyrone to take -- to run my pockets,
18 to take everything out of your pockets. I didn't do it,
19 Tyrone did it before I got tied up.

20 Q But then after that happens, do they keep your
21 stuff?

22 A No, he told Tyrone to give -- he said, I'm not
23 robbing him, give him his shit back.

24 Q So, this wasn't a robbery?

25 A All he kept was a black and mild, that was it.

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

1 Q Okay. But this wasn't a robbery?

2 A He told him to give the stuff back.

3 Q Okay. Did you ever see Monte again after this
4 night?

5 A No, ma'am.

6 Q And how did you get out of that house that
7 night?

8 A Well, actually, I -- that is when I was in the
9 second room. You know, I went through all of the rooms,
10 but I was in the second room. And Varsheen had the gun
11 pointed at me from one side of the wall and I was to the
12 other side of the wall, kept telling me to lay down on the
13 ground and I wouldn't. I was pretty much braced up
14 against the wall with a rag in my mouth. And my belt that
15 I had on my pants was tied up behind my back. And he was
16 just saying harsh words, I got y'all. He was just saying
17 a lot of things and my mind was going a thousand different
18 ways. And Tyrone came and knocked on the door and said,
19 Let me holler at you right quick. And Tyrone walked
20 out -- so, him and Tyrone walked out of the house. And he
21 give me my stuff back, and I had my phone in there and
22 they didn't realize, you know, they had given me my phone
23 so I started reaching while I had the belt behind my back
24 and my phone was in my back pocket. I reached for my
25 phone and I called -- tried to call one of my friends and

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

1 I tried to call the police. And then I heard the cracks
2 in the door and before he left out the door he cut the
3 lights off so I thought that he saw the light from my
4 phone from the house being dark. So I, Damn, should I
5 hang the phone up or, you know, leave it for the 911 to
6 hear it. But it was so quiet in the room I had to make a
7 quick decision, so what I did was just hang the phone up.
8 So I felt like, Dang, I hang the phone up. The reason why
9 I hung the phone up because I didn't want 911 to be
10 saying, hello, hello, hello when he come back in there and
11 you'd never know what would happen.

12 Q When he come back in, did he untie you?

13 A Yes, he had a different mentalality. He wasn't
14 this angry guy like that no more.

15 Q You eventually get to the front door, correct?

16 A Yes, ma'am.

17 Q And why do you think they let you out?

18 A Because the police was right there. Right then
19 he said, You see 12 right there. And I looked and the
20 police was right there.

21 Q Okay. And then you were let go?

22 A I mean, not just right away. I mean, you know,
23 the police stay right there for a minute. He told me,
24 Bitch, you better not say nothing. He had the gun in his
25 hoodie like that. He said, You better not say nothing.

PRE-TRIAL DIRECT EXAMINATION OF A. FRAZIER BY JONES

1 And, shit, I didn't say nothing.

2 Q What time was all of this happening?

3 A Well, from the time that I left the Shell gas
4 station, I forgot to pump my gas, so I went back and got
5 gas, I came back. Like I told you, when you are in a
6 situation like that it probably was 20 minutes, but it
7 felt like an hour.

8 Q Do you know about what time you were at the
9 Shell gas station?

10 A Right after the football game.

11 Q The football game ended about 7 or so, 7:30?

12 A It was the 4:00 game, it was the Dallas Cowboys
13 against the Giants. Giants is my team and me and my
14 friend was there watching the game.

15 Q Okay.

16 MS. JONES: Beg the Court's indulgence.

17 (Pause.)

18 MS. JONES: Ms. Frazier, I have no further
19 questions for you. If you would answer anything that
20 Ms. Gibbes has for you.

21 CROSS EXAMINATION

22 BY MS. GIBBES:

23 Q May it please the Court. How are you, Mr.
24 Frazier?

25 A All right. Yes, ma'am.

PRE-TRIAL CROSS EXAMINATION OF A. FRAZIER BY GIBBES

1 Q So you were at Buffalo Wild Wings?

2 A Yes, ma'am.

3 Q And Monte left at some point during the game,
4 correct?

5 A He left within about five minutes or something,
6 five or ten minutes.

7 Q He said he had to run some errands, maybe go to
8 Wal-Mart or something like that?

9 A No, he didn't say that. He said, I'm going
10 home. He said, If there ain't no girls in here I'm going
11 home. When me and Petey was about to go inside there he
12 said, I am going to come in. He had left his window
13 cracked. My homeboy said, You left your window cracked.
14 And he was like, I ain't staying that long. He really
15 don't care about sports like that. But we are all friends
16 and we linked up that day. So he was like, If there ain't
17 no girls in here I'm going home.

18 We went in there. It was one female in there
19 that he ended up talking to, but it wasn't, you know, no
20 big-time talk. And we came back and then we walked outside
21 on the side of Buffalo Wild Wings. And we started watching
22 T.V. for a minute and he said that he was going home to
23 paint his grill on his car. He was at Wal-Mart before he
24 came to Buffalo Wild Wings.

25 Q I was confused about that. So, he had to leave

PRE-TRIAL CROSS EXAMINATION OF A. FRAZIER BY GIBBES

1 because he wanted to go home and paint the grill on his
2 car, right?

3 A Yes, ma'am.

4 Q And then at a certain point while you were at
5 Buffalo Wild Wings he called you twice, right?

6 A Two or three times.

7 Q He wanted you to come over so you could look at
8 the car, right?

9 A No, it wasn't that. I told him that -- he was
10 painting. I wanted to really see how the paint looked on
11 the front of his hood becuae on my Buick it was all
12 cracked up, so I went to the junkyard and got another
13 piece but it wasn't the same color, so I wanted to get him
14 to paint it. But we was going to link up regardless
15 because I told him when he left, I told him that I was
16 coming anyway. But that was yes, ma'am.

17 Q Okay. So, you had plans to go over there?

18 A Yes, I had plans to go over there, yeah.

19 Q Okay. And then when you left, you stopped at
20 the Shell gas station, right?

21 A Yes.

22 Q And you went in and bought a cigar?

23 A Yes, got a black and mild.

24 Q And put money on the pump, right?

25 A Yes, I put a ten on pump five, bought one White

PRE-TRIAL CROSS EXAMINATION OF A. FRAZIER BY GIBBES

1 Owl cigar and I don't know if it was one or two black and
2 milds. But, yes, I did that. And then I went to my car
3 and forgot to pump the gas and went straight to Monte's
4 house and got to the stop sign. When I got to the stop
5 sign I ended up looking at my gas tank and I was, Oh, I
6 forgot to pump my gas. So I took a right because before I
7 got to the Shell, if I'm not mistaken, the dude was
8 locking one side of the door. He was locking one side of
9 the door so the Shell looked like it was about to close.
10 And so I rushed back and got my gas on pump five.

11 Q So, the dude that worked at the store looked
12 like he was trying to maybe close the store down?

13 A When I walked in there, normally when they are
14 getting ready to shut down he shuts down one side of the
15 door, and that is what he was doing when I got there.

16 Q Okay. So, you got your gas and when you left
17 you actually called Monte again on the way, right?

18 A No, I called Monte before I left Buffalo Wild
19 Wings and told him I was on my way. I stopped to the
20 Shell. When I stopped to the Shell I was on my way to his
21 house. I got to his stop sign and realized that I forgot
22 to get my gas. Then I went back to the Shell and got my
23 gas on pump five before somebody else got it. And I came
24 back to his house. I didn't have to call him no more
25 because, I called him and told him that I was on my way

PRE-TRIAL CROSS EXAMINATION OF A. FRAZIER BY GIBBES

1 already. It was just the fact that I forgot to pump my
2 gas.

3 Q Okay. And then you spoke to him and he said
4 that he was there at the house?

5 A Yes, he was like, What up son. I told him I was
6 on my way.

7 Q Okay. And did he say he was working on just the
8 car? I mean, did he finish painting his car?

9 A The game was like three and a half hours. It
10 was in the mix of getting dark.

11 Q And by the time that you got to the house it was
12 dark, right?

13 A Kind of in the mix. it was getting dark.

14 Q Okay. Then when you got there, you testified
15 that you saw who you identified as Varsheen Smith,
16 correct?

17 A Yes, ma'am.

18 Q And you are saying he asked you, Where is Monte,
19 right?

20 A He asked me if I talked to Monte.

21 Q Okay. And you said that you did speak to Monte?

22 A Yes.

23 Q And he actually -- he was trying to call Monte
24 as well, right?

25 A I don't know nothing about that.

PRE-TRIAL CROSS EXAMINATION OF A. FRAZIER BY GIBBES

1 Q You don't?

2 A No. I know when I left he said, You call him
3 and see if he answer the phone. that is what he told me.

4 Q So he didn't know where Monte was? By your
5 testimony or your impression you didn't know --

6 A Monte was supposed to be in the house.

7 Q Okay. But Varsheen said he didn't know where he
8 was, right?

9 A No, he did not say that.

10 Q Well, he asked where Monte is.

11 A When I started looking because I already knew
12 that he was up to something, after he asked me if I talked
13 to him when I was sitting in the yard I started looking at
14 Monte's paint on his car, what he supposedly did, I saw
15 it. He was like, You ever see a nigger put purple and
16 sprinkles on a white Cadillac, that shit is ugly and
17 started talking crazy. He said, Come here, let me holler
18 at you right quick. And I was like just looking at him
19 and he was like, Let me holler at you right quick. I was
20 like, Where's Monte, you know. And then, Monte in the
21 house, like that. And I kind of knew that it was
22 something because all of the lights was on, the door was
23 open and I thought that he was in the house, but I kind of
24 feel something fishy, but knowing that that is my best
25 friend, yes, I took my chances on going in the house, but

PRE-TRIAL CROSS EXAMINATION OF A. FRAZIER BY GIBBES

1 I didn't go all the way in the house. I stepped one foot
2 on the floor and attempted to turn around.

3 Q Okay. So while you are in there you didn't see
4 Monte?

5 A No, that is why I really kind of attempted to
6 turn around, because when I came to the front door I sees
7 nothing.

8 Q Okay. And then you mentioned when he, at some
9 point, something about running your pockets, at first you
10 thought that you were being robbed?

11 A Running my pockets?

12 Q Yes.

13 A Yes, he had Tyrone to run my pockets. He was
14 giving the orders.

15 Q Okay. And then he took everything out?

16 A Yes.

17 Q Including your cell phone?

18 A Yes.

19 Q And then I know you have already testified, but
20 when you left this house, you tried to call Monte; right?

21 A Yes, ma'am.

22 Q Okay. And then you didn't report this to -- you
23 never called the police about this, correct?

24 A Not right away.

25 Q Okay. And then when you did finally speak to the

PRE-TRIAL CROSS EXAMINATION OF A. FRAZIER BY GIBBES

1 police, at that point Monte was just missing, correct?

2 A Yes, ma'am.

3 MS. GIBBES: Okay. I have no further questions.

4 REDIRECT EXAMINATION

5 BY MS. JONES:

6 Q You testified earlier, Mr. Frazier, that this
7 man said, If he didn't want me in the house, he should
8 have told me?

9 A Yes, ma'am.

10 Q What does that the mean?

11 A By telling --

12 MS. GIBBES: Speculation, Your Honor.

13 MS. JONES: If he knows he can testify to it.

14 THE COURT: I'll let him answer the question,
15 overruled.

16 THE WITNESS: He said -- say it again.

17 BY MS. JONES:

18 Q If he didn't want me in the house, he should
19 have told me?

20 A Yes, on the way walking out the door, when his
21 mentality changed, when we started walking out the door
22 that is when he started saying, If he ain't want me
23 walking in the house, he could have told me like a man, he
24 should have just told me, I have to find out from people.

25 Q Why did he say that?

PRE_TRIAL REDIRECT EXAMINATION OF A. FRAZIER BY MS.
JONES

1 A Because Monte didn't want him in his house.

2 Q Did Monte do something to let him know?

3 A No.

4 Q Well, was Mr. Smith in the process of moving out
5 of the house?

6 A No, he wanted him -- been wanting him out.

7 Q Okay. How did Monte go about getting Mr. Smith
8 out of the house?

9 A He put a for rent sign in his yard and he stayed
10 from home for a week and pretended that he didn't live
11 there no more and took some of his clothes out, majority
12 of his clothes out of the house.

13 Q Did he make up a story about eviction?

14 A Yes, he did that.

15 Q So, when he's asking you about this, If he
16 didn't want me to the house he should have told me, it is
17 because Monte told him they were being evicted?

18 A Yes, I'm pretty sure he had that conversation
19 with him.

20 Q But they weren't being evicted?

21 A No, he just wanted him out of the house.

22 MS. JONES: Okay. I have no further questions
23 for this witness.

24 RE-CROSS EXAMINATION

25

PRE_TRIAL RE-CROSS EXAMINATION OF A. FRAZIER BY MS.
GIBBES

1 BY MS. GIBBES:

2 Q You have no evidence that Varsheen actually knew
3 that Monte was faking an eviction?

4 A That I didn't have no evidence, he have already
5 ran that across me before he died. He already said what
6 he was trying to do to get him out of the house.

7 Q My question was, you don't have any evidence
8 that Varsheen knew that Monte was trying to trick him?

9 A That Monte was trying to trick him?

10 Q Yes.

11 A I don't know, you know, because I don't live in
12 the house.

13 MS. GIBBES: No further questions.

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

15 MS. JONES: The State would call Investigator
16 Erdel.

17 Thereupon,

18 GEORGE ERDEL

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. JONES:

23 Q I will try to keep it brief, Investigator Erdel.

24 A Yes, ma'am.

25 Q Were you the assigned investigator on the case

PRE-TRIAL DIRECT EXAMINATION OF G. ERDEL BY MS.
JONES

1 that we are here for today?

2 A I was.

3 Q And were you also assigned the missing person
4 case of Ver'mon Steve, also known as Monte?

5 A That's correct.

6 Q Okay. How did you discover these cases were
7 linked?

8 A Well, Ms. Steve, the victim's --

9 Q When you say "victim, " since we have two -- --

10 A I am sorry, Ver'mon Steve's mother reported to
11 the police that Mr. Frazier had told her about the
12 kidnapping incident and she has reported that Ver'mon had
13 not come home. So, we initiated an investigation to find
14 Ver'mon and Ver'mon was ultimately found deceased. His
15 remains were recovered on St. Helena Island.

16 Q Okay. And when was the last time that anybody
17 saw Ver'mon Steve?

18 A It would have been the night of the, I believe
19 it was the 25th of October at 20:50.

20 Q Okay. And when did Ms. Steve contact the police
21 about her son being missing?

22 A The next day, the 26th of October.

23 Q Okay. And you mentioned that, in fact, Monte's
24 remains were found?

25 A Yes, ma'am.

PRE-TRIAL DIRECT EXAMINATION OF G. ERDEL BY MS.
JONES

1 Q And when was that?

2 A That was November 18th of 2015.

3 Q I want to go back to October 25th of 2015.

4 Through your investigation, were you able to discover that
5 Beaufort City officers were on or about Greene Street that
6 night?

7 A They were, yes, ma'am.

8 Q And how many times do you have them being in the
9 area?

10 A There was a disturbance call at 7:51 p.m. that
11 they responded to. And then there was a subsequent "shots
12 fired" call in that same area reported at 8:34 p.m. on
13 that evening.

14 Q Okay. And were those the only two calls that
15 night from that area?

16 A Correct.

17 Q Okay. And I know that we are skipping over a
18 lot of the investigation, but when the investigation was
19 concluded you ultimately arrested multiple people for
20 these various charges, correct?

21 A Yes.

22 Q Who did you arrest for the kidnapping of Andre
23 Frazier?

24 A Varsheen Smith and Tyrone Wallace.

25 Q Okay. And the murder of Ver'mon Steve?

PRE-TRIAL DIRECT EXAMINATION OF G. ERDEL BY MS.
JONES

1 A Tyrone Wallace.

2 Q And anybody else with the accessory?

3 A With accessory, it was Dominique Cook and Taquan
4 Lampkin were arrested on after-the-fact charges.

5 Q One more person, Mr. Smith?

6 A Yes, sorry, Varsheen Smith.

7 Q That's okay. He was charged with accessory?

8 A Yes.

9 Q Of the murder of Mr. Ver'mon Steve?

10 A Yes, that's correct.

11 MS. JONES: Investigator Erdel, I have no
12 further questions for you.

13 CROSS EXAMINATION

14 BY MS. GIBBES:

15 Q Just briefly, investigator. So, Mr. Frazier
16 actually didn't contact police, correct?

17 A That's correct.

18 Q So, he came in after Ver'mon's mother contacted
19 you, correct?

20 A Yes, ma'am.

21 Q All right. So, after you spoke to Andre
22 Frazier, that is when you got the kidnapping warrants for
23 Tyrone Wallace and Varsheen, correct?

24 A Yes.

25 Q So, there was no other investigation involved

PRE TRIAL CROSS EXAMINATION OF G. ERDEL BY MS.
GIBBES

1 besides Andre Frazier's statement that authorized you to
2 get those warrants; is that correct?

3 A I mean, as far as when I initially got the
4 warrants, that was the basis for, you know, the initial
5 warrant obviously. There was more investigation that
6 followed the warrant being procured. And then there were
7 subsequent things that were revealed after that. That was
8 not the only basis for the arrest, but that was what I got
9 the warrant on.

10 Q You got the warrant right after that?

11 A Yes, correct.

12 Q And then as far as the murder and accessory
13 after the fact, that was not until, was it January or
14 something like that?

15 A I would have to dig through this.

16 Q I mean, just in general if was several months
17 later?

18 A Yes, that's correct.

19 MS. GIBBES: Okay. I have no further questions.

20 REDIRECT EXAMINATION

21 BY MS. JONES:

22 Q Briefly. Investigator Erdel, were you ever able
23 to determine any motive for the kidnapping of Andre
24 Frazier?

25 A Basically, after the investigation it was --

PRE_TRIAL REDIRECT EXAMINATION OF G. ERDEL BY MS.
JONES

1 there was a ruse to --

2 MS. GIBBES: I would object to hearsay.

3 MS. JONES: It is pre-trial. Hearsay is
4 admissible. I wouldn't get into this at trial.

5 MS. GIBBES: That is the basis of the motion,
6 Your Honor. It is trying to prove motive and it is
7 all based on hearsay, Your Honor.

8 MS. JONES: I'll withdraw that question.
9 Nothing further.

10 THE COURT: All right. You may step down, sir.

11 THE WITNESS: Yes, sir.

12 MS. JONES: Those are the only witnesses that
13 the State has for this motion. Argument, Your Honor?
14 Your Honor, you have received my motion. Much of my
15 argument would be laid out in my motion that I did
16 submit to the Court. I did want to touch on a few
17 different things regarding today's testimony and why
18 I believe it assists in showing that this is
19 admissible evidence. I want to first turn to the res
20 gestae theory. I believe that that's more
21 appropriate here. While I do feel that Lyle also is
22 appropriate, but I feel that res gestae is where we
23 are in today's facts. Res gestae is a theory.

24 And I have handed Your Honor as well as opposing
25 counsel the Adams case and it says that prior bad

PRE TRIAL MOTION BY THE STATE

1 acts, they are admissible if it furnishes part of the
2 context of the crime necessary for a full
3 presentation of the case, intimately connected with
4 the crime charged and is so much of a setting of the
5 case that its proof is appropriate to complete the
6 story of the crime.

7 They also have to be so linked together in point
8 of time and circumstances and it is necessary to show
9 a full presentation of the offense. The offense on
10 trial.

11 Your Honor, here we have that Mr. Frazier was at
12 [REDACTED] Greene Street, which was Monte's residence, the
13 night of October 25th. He is there sometime after 7
14 and before 7:51. 7:51 is the original call that
15 brings police to the area, as Investigator Erdel
16 testified to. And he is there after the football
17 game and it's about a three-hour football game.
18 "Shots fired" call comes in at 8:34 p.m.

19 Those are the only shots from that night on
20 Greene Street. And the State would argue that those
21 are the shots that, in fact, did kill Mr. Ver'mon
22 Steve. The proximity in time of all of these
23 circumstances are so close. We are talking about
24 less than an hour. You heard from Andre Frazier that
25 this was not a robbery, this was not a drug deal.

PRE TRIAL MOTION BY THE STATE

1 This was not some prior beef that these two
2 individuals had with Mr. Frazier. They were asking
3 him about Monte. They want to know, have you talked
4 to him, where is he.

5 Mr. Smith even goes so far as to say, If he had
6 wanted me gone all he had to do was say, tell me.
7 And then he says, You are here at a funny time. The
8 State could argue that those are questions that the
9 defendant is using to get information from Andre
10 Frazier in regards to the whereabouts of Ver'mon
11 Steve.

12 Mr. Steve and Wallace was at Monte's residence
13 that night with one goal, and that was to confront
14 Monte about this supposed eviction of Varsheen Smith
15 from Greene Street. Andre Frazier got in their way.
16 He wasn't supposed to show up. They did not expect
17 him to come. They were waiting on Monte to come.
18 And instead it is Andre Frazier who comes. They have
19 to react.

20 They tie him up. They gag him. Adn they hold
21 him at gun point and they try to get information out
22 of him. When they realize he's no more use to him
23 and when they maybe get spooked because the police
24 are right outside, they let him go. They don't let
25 him go because they robbed him. They don't let him

PRE TRIAL MOTION BY THE STATE

1 go because they got the drugs off of him that they
2 wanted. They let him go because they got the
3 information from him that they wanted.

4 Which, essentially, was no information, but they
5 realized that he didn't know what was going on. He
6 was no use to him, so they let him go.

7 It is not enough that the jury know that Ver'mon
8 Steve was ultimately killed and that his remains were
9 dumped on Pea Patch Road, they have to know that this
10 man that was involved in that. It puts in context
11 why Andre Frazier was tied, gagged, and held at gun
12 point.

13 If they are not allowed to know that, inferences
14 are going to be drawn, negative inferences towards
15 Mr. Frazier that are just not true. They are going
16 to think that it is a drug deal, they are going to
17 think that he owed them something. They are going to
18 think that they had a prior fight. And none of that
19 is true.

20 The reason that he was tied up and gagged was
21 because he was in their way. It finishes the story.
22 There's no way to explain the kidnapping without
23 getting into the disappearance of Ver'mon Steve. And
24 when I look at Lyle, it's essentially the same
25 argument.

PRE TRIAL MOTION BY THE STATE

1 I would argue that it's admissible under Lyle
2 because it does go to motive. I would argue that it
3 was the motive of these two individuals that led to
4 the kidnapping of Andre Frazier because they were
5 looking for Ver'mon Steve. They were not looking for
6 Andre Frazier, they were looking for his best friend.

7 It also goes to intent. They intended to tie
8 him up and gag him and hold him at gun point because
9 they were trying to get information from him.

10 And it is also one common scheme or plan. This
11 is one series of events. And I'm sure that
12 Ms. Gibbes is going to comment that yesterday I said
13 that it was two separate circumstances. It's two
14 separate circumstances in that, had I joined these
15 cases together much more additional testimony would
16 be necessary to prove what Mr. Smith is charged with.
17 He's not charged with the murder.

18 The State does not contend that he pulled the
19 trigger that ended Mr. Steve's life. He assisted in
20 the dumping of Mr. Steve and the burning of his
21 remains on Pea Patch Road. That takes more evidence,
22 more witnesses, more testimony than we would be
23 prepared to present today at this trial. That is why
24 I said that it was two separate circumstances.

25 The proximity of the events, the motive, the no

PRE_TRIAL MOTION BY THE STATE

1 other explanation for the kidnapping, this all tends
2 to prove that this is one event. And the evidence of
3 disappearance and ultimate murder of Monte is
4 necessary to prove why this happened to Andre. And
5 if it doesn't, the State will be forced to
6 fragmentize our case and I'll be deprived of the
7 opportunity to fully present the facts to the jury.
8 Thank you.

9 THE COURT: Help me, I don't understand one
10 thing. If, is it Tyrone?

11 MS. JONES: Wallace is the co-Defendant.

12 THE COURT: Co-Defendant was separately charged
13 with the murder?

14 MS. JONES: He was.

15 THE COURT: Okay. I am sorry, go ahead.

16 MS. GIBBES: Thank you, Your Honor. May it
17 please the Court. Judge, I would argue, the State
18 has already chosen to fragment their case, first by
19 not calling the accessory after the fact that my
20 client is charged with. He's been sitting in jail
21 for over two years on these charges. We are finally
22 up for trial and for months, from the prior solicitor
23 to Ms. Jones, we have heard that they are only
24 calling the kidnapping case. And my first would be
25 they are trying to lessen their burden because if

PRE TRIAL MOTION BY THE STATE

1 they actually had to call the accessory fter the fact
2 they would be held to the standard of beyond a
3 reasonable doubt. I would be in a position to
4 subpoena witnesses in my defense. I have an expert
5 witness that is exculpatory specifically towards the
6 accessory after the fact, and now I am unable to call
7 because I didn't have notice of accessory after the
8 fact. And my client is prejudiced by that.

9 And I think that the solicitor knows that she's
10 unable to prove that case and that is why she's
11 trying to get in under the lesser burden of clear and
12 convincing evidence under 404(b), that is an
13 exclusionary rule, obviously, that says prior bad
14 acts can't come in unless under one of these
15 exceptions.

16 I note, in looking at this motion presented by
17 the State, the line that she says the motive is, the
18 defendant and co-Defendant were at Steve's home to
19 confront him about the rumored eviction and murder
20 him. Based on that, I don't know why -- it sounds
21 like they are trying to also convict my client for
22 murder as well in front of the jury. He is obviously
23 not charged with that. It is the only way for her to
24 prejudice my client in front of the jury.

25 So, I don't think that it meets one of these

PRE TRIAL MOTION BY THE STATE

1 exclusionary rules under 404(b), and I don't think
2 that it's met clear and convincing evidence because
3 Andre Frazier, he testified that, you know, he was
4 invited over to the house by Monte to go over there,
5 completely separate circumstances. And he alleges
6 that my client and his co-Defendant were over there.
7 They are trying to -- I think it is a leap to say
8 that all of this stuff has happened because of an
9 eviction.

10 Andre Frazier did not testify to this in the
11 beginning of the investigation. This is, I think,
12 coming later as they are hearing more as the time has
13 gone on. And he did say that it did start out as a
14 robbery. He also did not say that there was any
15 meeting of the minds that he actually knew that
16 Varsheen Smith knew anything about him being tricked
17 that he was being evicted.

18 So, I think that it is a stretch to think that,
19 that his testimony that my client was angry enough to
20 murder somebody over this, that is a stretch. It is
21 unrelated.

22 THE COURT: Well, let me ask you a question.

23 MS. GIBBES: Yes, sir.

24 THE COURT: Do you think that the State would be
25 prohibited from introducing the fact that there was a

PRE TRIAL MOTION BY THE STATE

1 murder? Start with that. The murder --

2 MS. GIBBES: Yeah, I mean, if they want to
3 introduce that -- first, I would say that at the time
4 that this kidnapping was charged Mr. Steve was
5 missing. So, first, I would submit that I would have
6 no problem for the jury to hear that he's missing.

7 Now, about the murder, if they want to say that
8 eventually there was a murder charge and that Tyrone
9 Wallace was charged with that murder and leave it at
10 that so that there's some closure as to what
11 happened. But any evidence as far as accessory after
12 the fact, which is completely unrelated. I mean, and
13 this goes into res gestae, this is not the same set
14 of facts. They are not intertwined.

15 We have two separate victims. Two separate time
16 periods. Different codefendants. The codefendants
17 of the accessory are not the codefendants of the
18 murder -- I mean the kidnapping. And it is a
19 different time frame enough that the State, as part
20 of their evidence, gave me cell phone records of
21 Mr. Smith's tower locations to try and prove that he
22 was in the area of Pea Patch Road when the remains
23 were disposed of.

24 So, that is a different -- almost a different
25 burden as to where -- the location of each crimes are

PRE TRIAL MOTION BY THE STATE

1 separate. Mr. Smith, in his statement, admits that
2 he was at the location. So, they don't need to prove
3 location as to the kidnapping. And I would just
4 argue, this is completely prejudicial. They are
5 trying to -- trying to get in through the
6 investigator who is -- it's all hearsay. I mean,
7 anything that he tries to get into about what all of
8 the codefendants said or anything like that, if they
9 are not here to testify, then it's hearsay.

10 They can't get into it. It's extremely
11 prejudicial to my client and I don't think that it
12 should be allowed in.

13 MS. JONES: Very briefly, Your Honor. I know
14 that we have a jury waiting. All I wanted to be able
15 to get into is very limited, was that the last time
16 Monte was seen alive was at Buffalo Wild Wings and
17 that was with an Andre Frazier and Pete Singleton.

18 Mr. Frazier would then get into the kidnapping.
19 He would get into the questions about Monte. Which
20 the questions by the defendant are all about Monte.
21 They are not about anything else. All Varsheen Smith
22 was worrying about was Monte.

23 That City police officers were on Greene Street
24 at 7:51, that there were shots fired at 8:34. Monte
25 was reported missing the next day. He was found on

PRE_TRIAL MOTION BY THE STATE

1 11-18 by inves -- and his remains are found on 11-18.
2 He was shot and murdered and that subsequent to that
3 this investigator charged Mr. Smith with accessory
4 after the fact.

5 I will make it very clear that he was not
6 charged with the murder, that Tyrone Wallace was
7 charged with the murder and the other two were also
8 charged with accessory. Surely had I asked to try
9 all of these cases together, Ms. Gibbes would have
10 asked them to be severed.

11 THE COURT: Ms. Gibbes agrees, I think, with
12 everything that you said about what you want to put
13 up except for the fact of the charge of accessory.
14 Isn't that right?

15 MS. GIBBES: Yes, Your Honor. And, you know,
16 obviously she didn't mention anything about any sort
17 of motive as far as related to the murder and any
18 connection to the murder, but yes, I would object
19 absolutely that he was charged with accessory after
20 the fact or any charge of accessory after the fact,
21 or any discussion at all that he may be involved at
22 all with the murder.

23 MS. JONES: Your Honor, I would just reiterate
24 that the State contends that it was his motive for
25 the kidnapping of Andre Frazier was to get

PRE TRIAL MOTION BY THE STATE

1 information for Ver'mon Steve, and subsequently he
2 was involved with the disappearance of Andre -- of
3 Ver'mon Steve.

4 THE COURT: Wait a minute now. To the last
5 thing that you said, was that this defendant was
6 involved with the experience of Mr. Steve?

7 MS. JONES: By assisting and dumped his remains
8 on the Pea Patch Road.

9 MS. GIBBES: Judge, again, that is related to
10 the accessory. I object to that. Again, I have
11 exculpatory evidence and if they are allowed to get
12 into that I may be in a position that I need to
13 request a continuance so that my expert can be here
14 to show that any inference that they can prove that
15 he was on Pea Patch Road, I have got a cellular
16 expert, who has been in law enforcement, who analyzed
17 the records. Indigent Defense paid him thousands of
18 dollars to do this to show that he was not in the
19 area of Pea Patch Road.

20 That was a totally separate crime, a totally
21 separate location than this kidnapping which
22 allegedly happened at Greene Street with a different
23 victim. So, anything that relates that Varsheen had
24 anything to do with the disappearance or anything
25 like that, I didn't hear anything on that stand that

PRE TRIAL MOTION BY THE STATE

1 they have proven that there is any motive that was
2 involved with the disappearance or the disposal. We
3 are here about a kidnapping, Judge.

4 THE COURT: I agree with the argument and the
5 position taken by defense counsel as to evidence on
6 accessory after the fact. As far as the rest of the
7 State's motion is concerned, about what they can
8 introduce, I agree and grant that motion based on
9 what we went through just a few moments ago. Let's
10 see, the theory behind the motive would be argument,
11 wouldn't it, as opposed to evidence?

12 MS. JONES: I think so, Your Honor.

13 THE COURT: All right. Any questions about the
14 ruling?

15 MS. JONES: Just to clarify, I can go as far as
16 to say the others were charged, but not him; correct?

17 THE COURT: Yes. How many were charged?

18 MS. JONES: Three total.

19 THE COURT: Yes.

20 MS. JONES: Okay.

21 THE COURT: What you are trying to do is tie it
22 in through Tyrone who was there.

23 MS. JONES: He was.

24 THE COURT: Right.

25 MS. JONES: Okay. Thank you, Your Honor.

PRE TRIAL MOTION BY THE STATE

1 MS. JONES: Your Honor, we have two other
2 motions. We have the Jackson v Denno. Well, first
3 we have the motion for admissibility of flight
4 evidence. Mr. Smith fled. He wasn't arrested until
5 November 16th of 2015, so roughly three weeks after
6 the kidnapping. He actually was -- was apprehended
7 by the US Marshals in, I think that it was Hampton
8 County, Georgia. Hall County, Georgia, my apologies.
9 About 5½ hours from here.

10 I would plan on eliciting testimony from a
11 former friend of Mr. Smith's who said that she was in
12 contact with him throughout the time that he was on
13 the run. She specifically asked him about Andre,
14 told him the police was looking for him. He said,
15 I'm not going down for something that I didn't do.

16 And then I have Investigator Dowling with the
17 Beaufort Police Department who actually went to
18 Georgia and picked him up. There's a statement by
19 Mr. Smith when he is being interviewed by Captain
20 Gruel and Investigator Erdel, he says the reason that
21 he ran, he says that he was afraid that he was going
22 to fail a drug test because he was on Federal parole
23 or probation, I believe. And the State would just
24 argue that Ms. Milledge's testimony would give the
25 inference that he fled because of his knowledge of

PRE TRIAL MOTION BY THE STATE

1 these charges.

2 MS. GIBBES: Judge, I would obviously object to
3 that. I do agree with the State's assessment that
4 there was an issue, my client was on probation.
5 There was a statement made about failing a drug test.
6 There was concern about failing a drug test. It is
7 my understanding when he was extradited they went to
8 Georgia and I think part of -- before they were able
9 to arrest him there was discussion and communication
10 with his Federal probation agent to try to bring him
11 in so that they could get him like that.

12 So I think that probation would be a big --
13 obviously I would not bring that up in front of the
14 jury, but for pre-trial purposes I believe that would
15 be more of any motive that he was in Georgia. But as
16 far as the witness who was supposedly communicating
17 with Mr. Smith, I disagree. But I ask that she be
18 put on the stand and proffer that testimony. Because
19 this is the first that I have heard of what she was
20 saying that she said -- she didn't say this in past
21 statements -- about him being, not coming back for
22 something that he didn't do and things like that. I
23 think that there's discrepancies in her statements
24 and I would just ask that there be a proffer of the
25 testimony before a ruling is made, Judge.

PRE TRIAL MOTION BY THE STATE

1 THE COURT: Is she going to testify differently
2 than her statement?

3 MS. JONES: Her statement is not as detailed as
4 what she told me yesterday. I was able to meet with
5 her for the first time yesterday. And as soon as I
6 spoke with her I spoke to Ms. Gibbes about what she
7 relayed to me, what the witness Ms. Milledge relayed
8 to me. It's not different, but her testimony would
9 have additional facts. It doesn't change anything,
10 but it is additional information. But she's here if
11 Your Honor would like to hear her brief testimony.

12 MS. GIBBES: My only thought -- I don't mean to
13 interrupt, Judge," but maybe this is something that,
14 if they can prove it in front of the jury then maybe
15 she can ask for a jury charge. I'm not sure that
16 there needs to be --

17 MS. JONES: It is improper to charge flight. I
18 would just be asked to argue it.

19 THE COURT: It can't go to the jury.

20 MS. JONES: Right.

21 MS. GIBBES: Or argument, yes, I am sorry that
22 is what I meant, she can argue it to the jury if that
23 burden has been met, Judge. And we have had this
24 discussion before but I am not sure -- if this needs
25 to be determined pre-trial, that is fine, but I think

PRE TRIAL MOTION BY THE STATE

1 that either way would work.

2 THE COURT: Tell me why can't she testify to
3 everything that I have heard that y'all have been
4 talking about, with exception of the probation issue;
5 why can't she testify?

6 MS. GIBBES: Actually, Judge, I don't know if
7 she has personal knowledge about the probation. I
8 believe that it is actually another witness who --

9 THE COURT: There is another witness.

10 MS. GIBBES: Another witness, Ms. Matthews, I
11 think.

12 MS. JONES: She does know about him being on
13 probation because they were friends, but obviously,
14 she would be instructed not to mention that he was on
15 probation.

16 THE COURT: Well, why couldn't she testify to
17 the rest of what he said to her?

18 MS. GIBBES: Yes, and I would be able to -- I
19 mean, in pre-trial or just in general in front of the
20 jury.

21 THE COURT: In the trial of the case.

22 MS. GIBBES: Yes, that's fine and I would be
23 able to impeach her on anything that she says, yes.

24 THE COURT: Yes.

25 MS. GIBBES: Yes.

PRE TRIAL MOTION BY THE STATE

1 THE COURT: But with the abnomition that she is
2 not going to bring up the fact that he is on
3 probation.

4 MS. JONES: Correct.

5 THE COURT: She can say that he was afraid that
6 he would fail a drug test.

7 MS. JONES: We won't even -- we are not going to
8 touch failing the drug test, Your Honor, we are not
9 going to touch any of that.

10 THE COURT: All right.

11 MS. GIBBES: Now that I think -- I mean, my
12 thought process, I think that that may be an
13 important part of whether or not he -- I mean, you
14 know, I think that maybe it might be appropriate to
15 at least get out whether or not you know -- my
16 argument would be probation would be a reason why he
17 was out of state and it had nothing to do with
18 running from whatever was going on here.

19 THE COURT: Do you want probation testimony or
20 not?

21 MS. GIBBES: Yes, sir. I'm sorry.

22 THE COURT: She's not going to object to
23 testimony about probation.

24 MS. GIBBES: Well, I mean, I meant pre-trial if
25 this were just going to be -- if we are going to deal

PRE TRIAL MOTION BY THE STATE

1 with this in trial, then, yes, I don't want the jury
2 to hear anything about probation or failing a drug
3 test, obviously unless I get into that. But not -- I
4 don't want the jury to hear that he's on probation.
5 But it might be something that can be pre-trial if
6 you would like more information about that.

7 THE COURT: When is she going to testify?

8 MS. JONES: Your Honor, she is here now if we
9 need to proffer her testimony. I'm not certain. As
10 an officer of the Court, I have said what she's going
11 to say. She will be instructed not to testify about
12 probation or a drug test when she's in front of the
13 jury.

14 MS. GIBBES: That is fine, Judge.

15 MS. JONES: Okay.

16 THE COURT: You will make her cross her heart.

17 MS. JONES: I will make her pinky promise that
18 she's not going to say it.

19 Your Honor, the next motion, we do have the
20 Jackson versus Denno. You, I believe, were able to
21 review the recorded statement. I believe Ms. Gibbs
22 and I were able to agree on redactions in that
23 interview. If you need testimony, or we can
24 stipulate that it was voluntary.

25 MS. GIBBES: Judge, I would stipulate that it's

PRE TRIAL MOTION BY THE STATE

1 voluntary. The most important thing is to make sure
2 that it is -- we have had discussions about things
3 that we wanted to make sure were edited out that the
4 jury didn't hear and I guess that I would just like a
5 copy of the redacted version before it was put out to
6 the jury to make sure that everything was caught.

7 MS. JONES: Okay. I have a copy for Ms. Gibbes.
8 I also would like to make Court's exhibits, for the
9 matters of this hearing, the Miranda form as well as
10 the disc. Your Honor did review it I believe
11 partially on a thumb drive and partially on a disc.
12 I will make it Court's 1 and Court's 2 for the
13 Miranda and the disc.

14 *(Whereupon, Court's Exhibit No(s). 1 marked for*
15 *identification and received in evidence.)*

16 *(Whereupon, Court's Exhibit No(s). 2 marked for*
17 *identification and received in evidence.)*

18 MS. JONES: And Your Honor, I believe that that
19 concludes -- I do have one more issue. Your Honor,
20 the State has come across a jail phone call that Mr.
21 Smith made last night. I have provided a copy this
22 morning to Ms. Gibbes. I don't know if I plan on
23 admitting it or not. I need to listen to it again
24 honestly. I would like to just voir dire the jury on
25 Jeffrey Maxwell. He would be an extra witness and he

PRE TRIAL MOTION BY THE STATE

1 is just the records custodian of the Detention Center
2 to admit the phone call if I do decide to use it.
3 And I believe that Ms. Gibbes has no objection to it.

4 MS. JONES: Yes, I haven't had an opportunity to
5 listen to this call. From the brief, what Ms. Jones
6 has told me the content is, I think that I would be
7 objecting if they do choose to admit it. But I would
8 ask to reserve my right to object until after I
9 listen to it.

10 THE COURT: Sure. You want me to voir dire the
11 jury on who?

12 MS. JONES: Jeffrey Maxwell. He is of the
13 Beaufort County Detention Center.

14 THE COURT: Anything else?

15 MS. JONES: That is it from the State, Your
16 Honor.

17 MS. GIBBES: Just for housekeeping, the only
18 other motions that I have were to sequester the
19 witnesses, which I have already spoken to Ms. Jones
20 about. Renewing Rule 5, which obviously we have
21 already spoken about. And if there's any -- if the
22 witnesses are making any additional statements that
23 they didn't make before in their statements that are
24 materially different, I would ask that you just
25 disclose that as well.

PRE TRIAL MOTION BY THE STATE

1 THE COURT: Okay.

2 MS. JONES: Okay.

3 THE COURT: If she knows it. All right. So,
4 just to make sure that we are on the same wavelength
5 about the statement of the defendant, the Court
6 finds, in the absence of any other evidence or
7 argument, that it was given freely and voluntarily
8 and he was aware of his rights under Miranda.

9 MS. GIBBES: Yes, sir.

10 THE COURT: Okay. And therefore it would be
11 admissible, except as to those matters that have been
12 redacted by agreement.

13 MS. GIBBES: Yes, sir.

14 THE COURT: And defense counsel will have an
15 opportunity to review that before we submit it.

16 MS. GIBBES: Yes. Thank you, Judge.

17 THE COURT: What do you think, y'all ready for
18 the jury?

19 MS. JONES: Please.

20 THE COURT: Do y'all need five minutes?

21 MS. JONES: Yes, could we please have five
22 minutes?

23 THE COURT: In recess for five minutes.

24 (Brief recess.)

25 (The jury enters the courtroom.)

QUESTIONING OF THE JURY

1 THE COURT: Welcome. Thank you for your
2 patience once again. We do have a court reporter.
3 Now we can transact business.

4 But Before we actually begin, I need to ask you
5 as a juror a few questions about a potential witness
6 that may be called whose name was not given to you
7 earlier to ask you about your relationship with that
8 such a witness. That individual is one Jeffrey
9 Maxwell who is with the Beaufort County Detention
10 Center. He is a deputy of sorts. Is that correct?

11 MS. JONES: That's correct, Your Honor.

12 THE COURT: I just need to ask if any of you are
13 related by blood or related by marriage to that
14 individual? If so, please raise your right-hand. Or
15 are any of you close, personal friends of Jeffrey
16 Maxwell or his family? If so, would you please stand
17 and raise your right-hand. Do any of you know any
18 reason why you should not sit on the jury if he's
19 going to be a witness in the case?

20 (No response.)

21 THE COURT: Let the record show that nobody
22 stood or raised their hands. At this time, ladies
23 and gentlemen, I am going to ask the clerk if she
24 will administer to you your oath as jurors. Madam
25 Clerk.

JURY IS SWORN

1 (Whereupon, the jury was sworn.)

2 THE COURT: Just a few words before we actually
3 begin the trial of the case, ladies and gentlemen.
4 As you know, the defendant is charged by way of three
5 defendant indictments with three different criminal
6 offenses. The elements of these offenses will be
7 explained to you at a later time. I just need to
8 tell you that the indictment is the vehicle that
9 brings this case into the courtroom and is not
10 evidence to be considered by you at all. The
11 allegations in it are allegations.

12 The burden is upon the State to prove these
13 allegations to you beyond a reasonable doubt because
14 the defendant in this case has plead not guilty to
15 each one of these indictments. At the end of the day
16 it'll be your duty, ladies and gentlemen, to
17 determine whether or not the State has met its burden
18 of proof. Your purpose as jurors is to determine the
19 facts of this case.

20 You are the sole judges of the facts of the
21 case. The law does not permit me to express an
22 opinion in your presence about the facts of the case.
23 My duty is to preside over the trial, to rule on the
24 admissibility of evidence. Your job is to determine
25 the facts of the case and take the law as I tell you

JURY INSTRUCTIONS BY THE COURT

1 that it is at the end of the day and apply the law to
2 the facts as you find them to be.

3 The -- in a few minutes the attorneys will make
4 to you their opening statements where they tell you
5 what they think the case or the facts are going to
6 show or not show. And then typically witnesses take
7 the witness stand, examine, cross-examine. And after
8 all of the evidence is presented to you, the
9 attorneys will make their closing arguments to you to
10 try to convince you to see the case the way that they
11 see it. And then I'll tell you about the law that
12 applies in the case.

13 Until that time, meaning until the case is
14 completely over, you can't discuss the case with
15 anybody. You can't let anybody discuss the case with
16 you. And, believe it or not, even in the jury room,
17 among yourselves, you can't discuss the case. Not
18 until everything is over with.

19 Having said all of that, I think that it is now
20 time to receive opening statements from the
21 attorneys. And we will begin with the Solicitor.

22 OPENING STATEMENT BY THE STATE

23 MS. JONES: Thank you, Your Honor. May it
24 please the Court. Ms. Gibbes. Andre Frazier is a
25 Giants fan. He loves his New York Giants. And on

OPENING STATEMENT BY THE STATE

1 October 25th of 2015, it is Sunday, he's going to go
2 watch the Giants play the Cowboys. He went to
3 Buffalo Wild Wings, right around the corner from here
4 not too far with two of his friends, Pete Singleton
5 and Ver'mon Steve. The three had been friends since
6 childhood, they grew up in Beaufort together, and
7 they all made their lives here. Three go over to
8 Buffalo Wild Wings to hang out and watch the football
9 game. See Andre Frazier is cheering on his Giants.
10 And Pete, he is a Cowboys fan. But all rivalries
11 aside, they get together and have a pretty good time
12 that night.

13 Now, Ver'mon, you who you may hear referred to
14 as Monte throughout this trial is not really into
15 football, he is not really a football fan, he doesn't
16 have a dog in the fight, he is just there for the
17 camaraderie and to hang out with his friends. So, he
18 leaves early and he goes to his house. And he lives
19 on Greene Street, [REDACTED] Greene Street, about two
20 blocks, three blocks from where we are today. Him,
21 Andre and Pete all say their good-byes. And Andre
22 and Monte decided that they were going to hang out
23 after the football game was over. A 4:00 game, about
24 7, 7:30 the game should be ending. Well, Monte had a
25 new car and Andre wanted to come see it, so that is

OPENING STATEMENT BY THE STATE

1 what they are going to do. Monte leaves, they say
2 their good-byes. Little did Pete and Andre know that
3 that was the last time they were ever going to see
4 Monte alive.

5 Well, the night gets better for Andre because
6 the Giants win, they beat the Cowboys 27 to 20.
7 Andre is on cloud nine, he starts heading over to
8 Greene Street, over to Monte's house. And he needs
9 gas. So, he stops at the Shell gas station, right on
10 Boundary Street where all of the construction is
11 going on. I'm sure that y'all are familiar with it.
12 Well, maybe it is the excitement of the win or
13 whatever it may be, he didn't pump his gas. He goes
14 inside, he pays, but he leaves.

15 Well, when he realizes that he didn't get his
16 gas he is already on Greene Street, already close to
17 Monte's house. He sees two people out front of
18 Monte's house. Well, the first one, he didn't really
19 think much of it, was Monte's roommate. And the
20 other one was a man who he knew by the name of Tyrone
21 Wallace. See, Tyrone Wallace is a cousin of a girl
22 that Andre used to date. And he knew them. He knew
23 both of them.

24 The roommate of Monte is a man named Varsheen
25 Smith. And he is seated at that table. Well, Andre

OPENING STATEMENT BY THE STATE

1 goes and gets his gas and comes back to Greene
2 Street. It might be, some people call it sixth sense
3 or intuition, but something doesn't feel right for
4 Andre when he pulls into his driveway. Monte's car
5 is there. He doesn't see Monte. What he does see is
6 Varsheen Smith and Tyrone Wallace. Well, he knows
7 both of them.

8 So, he goes and he says his hellos and they are
9 talking and that man is asking him, Where's Monte,
10 have you talked to Monte, where is he? I'm trying to
11 get in touch with him. Andre hadn't talked to him
12 since he left the football game, he was watching the
13 football game.

14 Poor Andre turned out of the doorway of that
15 house, Varsheen Smith is on top of him. He has a gun
16 in his face and he's trying to force him inside the
17 house. Andre starts to resist, so Tyron Wallace
18 jumps in. The two men force Andre in the house, take
19 his own belt off of him, gag him, and put him on his
20 knees. All the while that man right there, Varsheen
21 Smith, is holding a chrome colored gun at him the
22 entire time.

23 The questions continue. "Where is Monte? Have
24 you talked to Monte? If he didn't want me living
25 here, why didn't he tell me?" It's starting to

OPENING STATEMENT BY THE STATE

1 register with Andre. See Monte had a plan, he was
2 going to tell Varsheen that he was being evicted. He
3 didn't want him living there anymore. They were not
4 really being evicted, but that is the way that he was
5 going about getting Varsheen out of his house.

6 Andre is in shock. This quick visit to his
7 friend's house has now turned into a nightmare. He's
8 forced into the back bedroom. He is pushed down on
9 his knees. Gagged with a sock in his mouth. Hands
10 behind his back. And a gun pointed at him the entire
11 time. A gun in one person's hands, and that is that
12 man's right there.

13 Now, I talked about a sixth sense earlier or
14 intuition and talked about maybe it was coincidence
15 or a miracle, or some might call it divine
16 intervention. Because something happened that night,
17 that Andre thinks, he will tell you, that he thinks
18 saved his life. Two Beaufort city officers responded
19 to a call on Greene Street, unrelated, noise
20 complaint, disturbance call, has nothing to do with
21 what is going on inside [REDACTED] Greene Street. But they
22 are there. That man sees him. Tyron Wallace sees
23 him. And they know that they have to let Andre go.

24 Andre is no longer of use to him. Not a
25 robbery. They didn't want his money. They wanted

OPENING STATEMENT BY THE STATE

1 information. They are done with him. So, they let
2 him go. But not before one final threat out of that
3 man right there. While holding the gun he tells
4 Andre, Don't you dare tell anything, don't you talk.
5 to the police, keep your mouth shut. And Andre
6 listened. Andre grew up on the streets of Beaufort
7 and maybe the street mentality overpowers his logic,
8 but he doesn't call the police. He doesn't want to
9 be known as a rat or a snitch because he knows if you
10 are labeled one of those words, it's not good. So,
11 he doesn't call the police.

12 He is terrified of that man right there, that
13 man that kidnapped him, who tied him up, who gagged
14 him and pushed him to his knees. He doesn't tell
15 anyone. He keeps his mouth shut. Now, it wasn't too
16 late for him, but he keeps his mouth shut. But it
17 was too late for Ver'mon Steve, see, Ver'mon Steve
18 was never seen again after October 2th, 2015.
19 Ver'mon Steve's remains were found on November 18th,
20 2015. He had been shot. He had been burned and he
21 had been discarded on a rural road on St. Helena
22 Island.

23 Andre finally had the courage to talk to the
24 police two days after he was kidnapped, and he tells
25 them everything and he is going to tell you today

OPENING STATEMENT BY THE STATE

1 everything that he told them. The investigation then
2 begins into the missing person and Ver'mon Steve and
3 kidnapping of Andre Frazier, because at this time no
4 one knows what has happened to Monte.

5 Soon the police, Investigator Erdel with the
6 Beaufort City Police Department, has a warrant for
7 Tyron Wallace for the kidnapping of Andre Frazier.
8 And for that man right there, Varsheen Smith, for the
9 kidnapping, for possession of a weapon, and for
10 possession of a weapon by a person convicted of a
11 crime of violence because of his prior record. But
12 you see, they don't find him quickly because, while
13 Varsheen is big and bad that night inside [REDACTED] Greene
14 Street, he runs, and he cowards and he hides. And he
15 hides because he knows what he's done.

16 It takes the United States Marshals to intervene
17 to find him in a rural county in Georgia, about 5½
18 hours from here. He is extradited back to South
19 Carolina and he's interviewed. And he talks, and you
20 are going to hear that interview.

21 That interview is riddled with lies. The first
22 question that he's asked, he responds with a lie.
23 You are going to watch that and you are going to hear
24 that. And I want you to watch him, watch his actions
25 and listen to his responses.

OPENING STATEMENT BY THE STATE

1 Now, at the end of this trial you are, after you
2 have heard all of the testimony and have seen all of
3 the evidence, you are going to be instructed by Judge
4 Goldsmith on what the law is. And whatever I say, if
5 it differs in any way shape or form from what he
6 says, ignore what I say and go with Your Honor.

7 But Varsheen Smith has been charged with
8 kidnapping. We have all seen the movies. We have
9 all seen Badlands, we have all seen Liam Neeson.
10 That is not kidnapping in the real world. Hollywood
11 gives us crazy ideas of what kidnapping is. There is
12 dark and dirty basements, ransom notes, there's
13 cross-country trips with someone thrown in the trunk
14 of a car. That is not real life and we know that.
15 And because of that, South Carolina has structured
16 their law accordingly.

17 And in South Carolina kidnapping -- one is
18 guilty of kidnapping if they unlawfully receive,
19 confine, finagle, decoy, kidnap, abduct, or carry
20 away any person by any means whatsoever without
21 authority of law. Unlawfully seized. Unlawfully
22 confined. Unlawfully abducted. That is what
23 happened to Andre Frazier inside Monte's home that
24 night. He was forced against his will at gun point,
25 tied up, gagged, and forced to his knees and

OPENING STATEMENT BY THE STATE

1 threatened with a gun. Simply put, under South
2 Carolina law he was kidnapped.

3 Varsheen Smith is also guilty of possession of a
4 weapon during the commission of violent crime, and
5 that is because in South Carolina kidnapping is a
6 violent crime. And you are going to hear the Judge
7 instruct you on that. Finally, he's been charged
8 with possession of a weapon by a person convicted of
9 a crime of violence. It is a long statute name, but
10 it means because of his prior record he cannot own a
11 gun. He cannot hold a gun. He cannot have a gun.
12 And he did. He had it that night and he had it in
13 Andre's face.

14 Now, today, is Varsheen Smith's day in court.
15 It is not Tyron Wallace's, it is not anybody else's,
16 it is his. So, today I ask you, listen to the
17 testimony from the witness stand and ask yourself
18 what makes sense. Each and every single one of you
19 brought your life experiences and your common sense
20 when you walked through that door for jury selection.

21 And I am asking you to use that, use your common
22 sense and ask yourself if it makes sense. Does it
23 make sense that what Andre is telling the truth?
24 Yes. Does it make sense that he didn't call the
25 police, he was scared, didn't want to be a snitch?

OPENING STATEMENT BY THE STATE

1 Absolutely. Does it make sense that that man ran and
2 hid in Georgia? It makes sense because he's guilty.
3 And does it make sense that once he was finally
4 caught he lied to the police repeatedly about simple
5 things that they knew that he was lying about? He
6 lied because he's guilty.

7 And I am confident after you hear all of the
8 testimony and you listen to the interviews and you
9 look at the evidence, you will not hesitate and you
10 will be firmly convinced that that man right there,
11 Varsheen Smith, sits before you a guilty man.

12 THE COURT: Ladies and gentlemen, Ms. Gibbes.

13 OPENING STATEMENT BY THE DEFENSE

14 MS. GIBBES: Thank you. Good afternoon. My
15 name is Courtney Gibbes and I represent Varsheen
16 Smith. And the State is right, we are on trial today
17 for kidnapping. And I do agree, it is not about a
18 little child being taken away in the back of a car,
19 that is not the case. We are not here about the
20 murder of Ver'mon Steve. That is something that they
21 want to throw out there for sympathy. It is very bad
22 and I am sympathetic, but we are not here about that.
23 Tyron Wallace was charged with that murder. So,
24 let's just move on from that.

25 We are here about a kidnapping. And the victim

OPENING STATEMENT BY THE DEFENSE

1 in this case is Andre Frazier. When I say "victim,"
2 I'm going to put quotes around it because Andre
3 Frazier, he is a grown man. He is somebody that has
4 lived in the area, he knows Varsheen, he knows Tyron.
5 Beaufort is a small community. And he is not some
6 innocent, football-loving man. That is a nice way to
7 kind of talk about Andre Frazier, to tell about his
8 innocence and he loves to watch football and eat
9 wings with his friends.

10 You heard no mention about drugs. You heard no
11 mention about a love triangle that exists between
12 Varsheen Smith and Andre Frazier. You haven't heard
13 that this entire case, this entire case, is based on
14 statements of Andre Frazier. That is it. The whole
15 case. And you will get to hear from him. He will be
16 on the stand. He is not credible. His statement has
17 changed over and over again and it's going to change
18 when he gets into court later today or tomorrow when
19 he testifies from the recorded interview. He did not
20 report it to the police. He did not tell anybody.
21 He didn't flag anybody down. And (coughing) because
22 he lied over and over again.

23 And in fact, the investigator in the case, the
24 lead investigator, made reference in his report. He
25 was worried about his credibility. He didn't think

OPENING STATEMENT BY THE DEFENSE

1 that he had enough to make a case based on the
2 statement. He didn't think that he could make a
3 conviction because of how unbelievable his statement
4 was.

5 But here we are, just based on that statement,
6 Varsheen Smith is here facing kidnapping charges,
7 extremely serious charges. Extremely serious. So,
8 I'll leave it to you to listen to the evidence,
9 because besides his testimony there's nothing else.
10 There's no forensic evidence. There is no DNA.
11 There is no fingerprints. No weapon. Nothing found
12 inside the house to show that Andre Frazier was in
13 the house or that Varsheen Smith was in the house.
14 Nothing. No witnesses. It's all based on the
15 statement of Andre Frazier.

16 And if I do my job, I hope that I can show you
17 that he had motive to lie. There are things that he
18 did not tell the police. He was inconsistent. The
19 State has to prove beyond a reasonable doubt that
20 Varsheen Smith committed this crime. How can they do
21 that based on one lying witness? If a witness lies
22 once, if he says it once and the time lines don't
23 match up so much that the investigator was, Wait a
24 minute, your story doesn't make sense. And he
25 changes it to make it look better. And he still

OPENING STATEMENT BY THE DEFENSE

1 says, You are not making sense.

2 So, based on that, he got a warrant and that is
3 why we are here. So how can you, if you can't trust
4 him, if you think that he lied about one little
5 thing, if you think that he's misleading you about
6 the whole thing, I submit that the State hasn't met
7 their burden. Burden of proof that they have is
8 proof beyond a reasonable doubt, which is an
9 extremely high burden.

10 And the State, the last thing that she said to
11 you, he's sitting here before you as a guilty man.
12 That is ridiculous. He has a shroud of innocence
13 over him right now. He is an innocent person. That
14 is why you are here. He is an innocent person and
15 the State has to prove him guilty beyond a reasonable
16 doubt. And if you don't trust one witness and
17 everything else you must dismiss. The police officers
18 show that there's no other physical evidence or
19 anything else, that is it, he is not guilty. That is
20 it, reasonable doubt.

21 And I will come back before you and hopefully I
22 will be able to point out everything that I have
23 said, all of the lies, all of the misstatements, all
24 the misleading, all of the other things that we
25 haven't heard about to show their motive. And I'll

OPENING STATEMENT BY THE DEFENSE

1 ask you to find him not guilty. Thank you for your
2 time.

3 THE COURT: Thank you, Ms. Gibbes.

4 MS. GIBBES: Thank you.

5 THE COURT: You may call your first witness.

6 MS. JONES: Thank you, Your Honor. The State
7 calls Heidi Light.

8 Thereupon,

9 HEIDI LIGHT

10 was called as a witness, having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. JONES:

14 Q Good afternoon Deputy Light. You are wearing a
15 Sheriff's Office uniform today?

16 A Yes, ma'am.

17 Q How long have you been with the Sheriff's
18 Office?

19 A Almost a month.

20 Q Okay. Where were you employed prior to the
21 Shariff's Office?

22 A Beaufort City Police Department.

23 Q Okay. When you were at Beaufort City Police
24 Department what were some of your duties?

25 A I was initial call taker, so calls that came on

DIRECT EXAMINATION OF HEIDI LIGHT BY MS. JONES

1 911, any walk-ups, that is what I would take care of.

2 Q Okay. Did you respond to a call that initially
3 came into the Sheriff's Office on October 25th, 2015?

4 A Yes, ma'am.

5 Q Who did you have the opportunity to meet with?

6 A I met with Janice Steve. It was a walk-up to
7 the Sheriff's Department, but it was discovered that it
8 was Beaufort City's jurisdiction, so they called a
9 Beaufort City officer over.

10 Q Okay. Did you speak with her about that?

11 A Yes, ma'am.

12 Q Okay. And based on what she told you, what did
13 you do?

14 A She was concerned about her son that was
15 missing. So, we went to her residence at [REDACTED] Greene
16 Street to check on the residence, to see if there was
17 anyone at the residence, anything astray at the residence.

18 Q Did you discover anything astray?

19 A I did not.

20 Q What was Ms. Steve's demeanor that afternoon?

21 A Worried, upset. It was -- she gave you the true
22 belief that, you know, she knew something was wrong.

23 Q As a result of speaking with Ms. Steve and
24 taking this report, did you keep the case or was it
25 eventually handed over to investigation?

DIRECT EXAMINATION OF HEIDI LIGHT BY MS. JONES

1 A It was handed over to investigation.

2 Q Okay. Do you know who the case was assigned to?

3 A Originally, Investigator Raley showed up there
4 to help me initially. I believe it that was turned over
5 to Investigator Erdel.

6 Q Okay. So, more than one officer was involved in
7 this?

8 A Yes, ma'am.

9 Q Okay. [REDACTED] Greene Street, is that here in
10 Beaufort County?

11 A It is.

12 Q Thank you.

13 MS. JONES: I have no further questions for you.

14 THE COURT: Cross examination.

15 MS. GIBBES: Just briefly.

16 CROSS EXAMINATION

17 BY MS. GIBBES:

18 Q So, as part of your duties, you took the call;
19 was that through 911?

20 A It was a walk-up at the Sheriff's Department. A
21 deputy originally responded. Due to the address of [REDACTED]
22 Greene Street is Beaufort City jurisdiction, so they
23 requested a city officer meet with Janice Steve to file a
24 report for her.

25 Q Okay. So you were not involved in filing a

CROSS EXAMINATION OF HEIDI LIGHT BY MS. GIBBES

1 report or anything like that?

2 A I filed a missing persons report for Janice
3 Steve.

4 Q Okay. And you did not take -- did you take her
5 statement, written statement?

6 A Yes.

7 Q So you actually sat down while she wrote a
8 statement, that was part of your duty?

9 A Yes.

10 Q Okay.

11 MS. GIBBES: I have no further questions.

12 THE COURT: Thank you, ma'am. You may step
13 down. Call your next witness.

14 MS. JONES: The State calls Janice Steve.

15 Thereupon,

16 JANICE STEVE

17 was called as a witness, having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. JONES:

21 Q Good afternoon, Ms. Steve.

22 A Good afternoon.

23 Q You doing okay?

24 A I'm okay.

25 Q Okay. I just want to ask you a couple of

DIRECT EXAMINATION OF J. STEVE BY MS. JONES

1 questions.

2 A Okay.

3 Q Who is Ver'mon Steve?

4 A Ver'mon Steve is my baby son.

5 Q Okay. And when was the last time you talked to
6 him?

7 A I talked to Ver'mon the very Sunday before he
8 disappeared.

9 THE COURT: You have to get a little bit closer
10 to that microphone.

11 THE BAILIFF: I would ask also because my jurors
12 did not hear anything. Thank you.

13 THE COURT: If you have any problems in the
14 future like that, please do the same thing, get
15 someone's attention.

16 A Ver'mon Steve was my baby son and I spoke with
17 him the Sunday before he disappeared. I was at his house.

18 Q Okay. And how was Monte acting that afternoon?

19 A We call him Monte. A little uneasy,
20 uncomfortable, different for him because he's always been
21 a very happy-go-lucky, que sera, everything is good kind
22 of person. This day he was just a little uneasy at home,
23 back and forth. Just uneasy.

24 Q And was he living over on Greene Street at this
25 time?

DIRECT EXAMINATION OF J. STEVE BY MS. JONES

1 A Yes.

2 Q Okay. Was that [REDACTED] Greene Street?

3 A Yes, if I'm not mistaken.

4 Q And who lived with him?

5 A Well, I was introduced to him as Twiz, but
6 Mr. Varsheen Smith.

7 Q Okay. So you know Varsheen Smith as Twiz?

8 A Well, I knew him as a kid as Varsheen, and then
9 when all of this happened I -- the name that was given to
10 me was Twiz.

11 Q Okay. And do you see him in the courtroom
12 today?

13 A Yes.

14 Q Okay. Can you please point him out for the
15 jury?

16 A In the blue and white shirt.

17 Q Okay.

18 MS. JONES: May the record reflect that the
19 witness identified the defendant.

20 THE COURT: So noted.

21 BY MS. JONES:

22 Q Was there anything particular that stood out to
23 you in Monte's front yard that day?

24 A In his front yard was a sign that was in the
25 yard, and I think that it was on a big tree in the yard

DIRECT EXAMINATION OF J. STEVE BY MS. JONES

1 that said, "For rent."

2 Q Okay. Was his house actually for rent?

3 A No.

4 Q Okay. Why was the sign in the front?

5 A He was planning on, if I can say, he just had --
6 he decided that --

7 MS. GIBBES: Your Honor, I would object to
8 speculation. I apologize.

9 MS. JONES: Your Honor, if she knows why the
10 signs were in the front yard, I believe she can
11 testify why they were there.

12 THE COURT: Sustain the objection.

13 BY MS. JONES:

14 Q There was a for sale or for rent sign?

15 A Yes.

16 Q But the house was not for rent?

17 A No.

18 Q Okay. Do you remember October the 26th of 2015?

19 A Yes.

20 Q And did you have an opportunity to speak with
21 Andre Frazier that day?

22 A Yes.

23 Q How do you know Andre Frazier?

24 A Andre and Ver'mon have been friends ever since
25 elementary school. We actually lived -- we moved from

DIRECT EXAMINATION OF J. STEVE BY MS. JONES

1 Jackson, Mississippi next door to Andre's grandmother and
2 that is where he lived, so they grew up together from that
3 time.

4 Q How did you -- how did you speak with Andre; did
5 you call him?

6 A No, actually I got a call from Andre.

7 Q Okay.

8 A And he called me and said, Ms. Steve, Monte is
9 missing and I think something bad has happened.

10 Q Okay. What is Andre's demeanor when he was
11 talking to you?

12 A He was upset. He sounded upset. And after
13 we -- you know, after he explained to me what he was
14 talking about, then he sounded, in my opinion, afraid for
15 himself.

16 Q Okay. And based on that, what did you do?

17 A Came to Beaufort, myself and my oldest daughter,
18 and filed a missing persons report.

19 Q Okay. And that is when you met with the
20 Beaufort Police Officer Light?

21 A Yes.

22 Q How soon after you spoke with Andre did you
23 report Monte missing?

24 A It took me 45 minutes to get from Hampton to
25 Beaufort.

DIRECT EXAMINATION OF J. STEVE BY MS. JONES

1 Q Okay. Because you live in Hampton?

2 A Yes.

3 Q And after, after that date, you never saw Monte
4 again; did you?

5 A No.

6 MS. JONES: Ms. Steve, I have no further
7 questions for you?

8 THE WITNESS: Thank you.

9 THE COURT: Any cross examination?

10 MS. GIBBES: Thank you, Your Honor. May it
11 please the Court.

12 CROSS EXAMINATION

13 BY MS. GIBBES:

14 Q Just briefly, Ms. Steve. Okay. You just
15 testified that the last time you saw your son was you
16 actually went to the house on Greene Street on the 25th?

17 A On -- yes, no, on the Sunday prior to him
18 disappearing I saw him.

19 Q Okay. So, would that be a week prior?

20 A The week before, yes.

21 Q Okay. So, you are not speaking about the 25th,
22 but the Sunday before is what you are talking about?

23 A The Sunday before he disappeared.

24 Q Okay. And then, the last time you actually --
25 you got a text from him; is that correct? The last time

CROSS EXAMINATION OF J. STEVE BY MS. GIBBES

1 you heard from him was on the 25th?

2 A Yes, he texted me, yes.

3 Q Okay. And then after you spoke to Andre Frazier
4 you contacted the police, correct?

5 A Correct.

6 Q Okay. And you made a statement based on the
7 information that he gave you?

8 A Yes.

9 Q And it was a written statement?

10 A I don't remember writing anything down, but I
11 remember telling them that my son was missing and I knew
12 something had to be wrong because this was not in his
13 character.

14 Q Okay. If I may approach the witness, if I may
15 show you your statement you actually -- is that your
16 writing?

17 A My daughter may have written it for me and I
18 signed. I just don't remember.

19 Q You just don't remember?

20 A No.

21 Q Okay.

22 THE COURT: Try to speak up a little louder,
23 Ms. Steve.

24 BY MS. GIBBES:

25 Q So you signed the statement, but you don't

CROSS EXAMINATION OF J. STEVE BY MS. GIBBES

1 remember you actually gave the name of Varsheen as the
2 person actually living with your son?

3 A Yes, because that is the name that I remembered
4 as a child, so, yes, I probably did.

5 Q Okay. And Andre gave you information about what
6 he said happened at the house; is that correct?

7 A Yes.

8 Q And he also gave you information about how he
9 was able to leave the house; is that correct?

10 A Yes.

11 Q And this was after supposedly he said whatever
12 Varsheen and Tyron did; is that correct?

13 A Yes.

14 Q And you actually, you wrote in your statement or
15 your daughter wrote in your statement that you signed that
16 from your understanding, that Andre was able to escape --

17 MS. JONES: Objection, getting into hearsay.

18 MS. GIBBES: Your Honor, I was just going to
19 question her about what she wrote in her statement.

20 THE COURT: You can ask her about her statement.

21 MS. JONES: It is what she's saying Andre told
22 her.

23 THE COURT: I'll sustain that objection.

24 BY MS. GIBBES:

25 Q And so, to your knowledge, Ver'mon and -- did he

CROSS EXAMINATION OF J. STEVE BY MS. GIBBES

1 have a lease with Varsheen?

2 A No, he allowed him to stay with him because he
3 was homeless and he said that he needed a place and
4 Ver'mon allowed him to stay there, supposedly for a few
5 days.

6 Q Okay.

7 MS. GIBBES: Beg the Court's indulgence, Your
8 Honor.

9 (Pause.)

10 MS. GIBBES: I have no further questions.

11 THE COURT: Thank you, ma'am. You may step
12 down. And you may call your next witness, Solicitor.

13 MS. JONES: The State calls Andre Frazier.

14 THE COURT: Ladies and gentlemen. I'll ask you
15 if you would please step in the jury room for just a
16 few minutes and I'll be back in touch with you
17 shortly.

18 THE BAILIFF: All right. Follow me please.

19 (The jury exits the courtroom at 3:33 p.m.)

20 THE BAILIFF: Jury is clear, Your Honor.

21 (Pause.)

22 THE BAILIFF: May I approach, Your Honor?

23 (Off-the-record discussion held.)

24 THE COURT: The bailiff indicates to me that the
25 conversation she had with the juror on the far end

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 was that that juror did not recognize the name when
2 the case was announced and the witness' names were
3 read out, but she does recognize the next witness.
4 All I know is that that's what she said. I think
5 that I need to bring her out and ask her some more
6 questions. Any objection to that?

7 MS. GIBBES: No objection.

8 THE COURT: General voir dire?

9 MS. JONES: No, Your Honor.

10 THE COURT: Does anyone know her name and
11 number? Please bring her back in and announce what
12 her name is.

13 THE BAILIFF: Judge, this is Amy
14 Greene-Saunders, number 153.

15 THE COURT: Hey, Ms. Saunders, how are you
16 doing? The bailiff indicated that you told her a
17 moment ago that you now realize that you know or knew
18 the next witness.

19 THE JUROR: Uh-huh. (Indicating affirmatively.)

20 THE COURT: And I need to ask you a few
21 questions.

22 THE JUROR: Uh-huh. (Indicating affirmatively.)

23 THE COURT: Okay. How long have you known Andre
24 Frazier?

25 THE JUROR: Many years.

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 THE COURT: Many years?

2 THE JUROR: Uh-huh. (Indicating affirmatively.)

3 THE COURT: Is he a close friend of yours, or
4 just known him?

5 THE JUROR: Well, he used to date one of my
6 family members.

7 THE COURT: Speak up.

8 THE JUROR: He used to date someone in my
9 family.

10 THE COURT: Okay. How long ago?

11 THE JUROR: Two years.

12 THE COURT: Two?

13 THE JUROR: Few years. And one of my cousins is
14 raising two of his kids.

15 THE COURT: One of your cousins is raising two
16 of his children?

17 THE JUROR: Yeah. She has them, raising two of
18 his kids.

19 THE COURT: Okay. And the last time you would
20 have had a conversation with him would have been how
21 long ago?

22 THE JUROR: Years, I don't see him often so.

23 THE COURT: I want to make sure that we are
24 talking about the same thing. Do you belong to any
25 of the same organizations?

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 THE JUROR: No.

2 THE COURT: How long has it been since he's been
3 in your home?

4 THE JUROR: Years, years, years.

5 THE COURT: How long has it been -- have you
6 ever been in his home?

7 THE JUROR: No, no.

8 THE COURT: He's obviously going to be a witness
9 in the case and testify. Would the fact that you
10 have known him, as you have described just a moment
11 ago, would that interfere with your ability to be a
12 fair and impartial juror in the case?

13 THE JUROR: Um, I can't really say. My anxiety
14 kicked in so --

15 THE COURT: Speak up.

16 THE JUROR: I said, like when I saw him my
17 anxiety kicked in kind of.

18 THE COURT: More anxious?

19 THE JUROR: Yes, made me nervous, real nervous,
20 uh-huh.

21 THE COURT: Additional questions from the State?

22 MS. JONES: No, Your Honor, I think that she's
23 expressed that she's anxious.

24 THE COURT: Anything?

25 MS. GIBBES: Maybe say why she's nervous about

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 him, maybe get a little bit more into that.

2 MS. JONES: I don't think that has anything to
3 do with her ability.

4 THE COURT: I think that I need to ask a few
5 more questions. Did you mention that a moment ago
6 that you are nervous generally?

7 THE JUROR: I deal with anxiety, but it got
8 worse when I saw him.

9 THE COURT: You have anxiety issues?

10 THE JUROR: Yes.

11 THE COURT: You do?

12 THE JUROR: Yes, I have anxiety, uh-huh.

13 THE COURT: Okay. Does the fact that you saw
14 him cause you any greater or less anxiety?

15 THE JUROR: More, my heart started palpitations
16 kind of more.

17 THE COURT: Would you be able to continue
18 sitting on this jury and --

19 THE JUROR: I mean, the way that I feel right
20 now, I -- because I'm just kind of like, feeling like
21 I'm going to pass out up there, I'm just -- just
22 hearing it kind of. I'm nervous, that is all there
23 is to it.

24 THE COURT: You are nervous?

25 THE JUROR: Very. Maybe I should have said

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 something about it yesterday.

2 THE COURT: Were you ever nervous before he came
3 in?

4 THE JUROR: A little, a little jittery, but it
5 got really worse, worse now.

6 THE COURT: All right. Will you be able to sit
7 on the jury and listen to the evidence presented and
8 make a decision based on what happens here in the
9 courtroom, putting aside any knowledge you may have
10 or -- yeah, any knowledge that you may have with him.

11 THE JUROR: No, I don't think so because just
12 listening, coming in and listening to it, I got
13 nervous. So I really don't think that I could stand
14 listening to it, you know. I mean, to be honest I
15 don't even watch the news because I get nervous and
16 jittery. I guess I should --

17 THE COURT: You don't think that you could be
18 fair to the State and to the defendant?

19 THE JUROR: I could be fair. But just how am I
20 going to get through it? Like, I could be fair with
21 it, but it is just the nervous part of, you know,
22 just listening to it. I don't think I could listen
23 to it.

24 THE COURT: It is going to make you anxious?

25 THE JUROR: Yes, just listening to the opening.

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 I thought that I could do it. I kind of mentioned to
2 the bailiff late yesterday evening, but you know just
3 sitting in here listening I got nervous, you know, so
4 I should have said something yesterday about how I
5 felt, you know, with my anxiety. It just started --
6 my anxiety just really started.

7 THE COURT: Do you take any medication for that?

8 THE JUROR: Yes, yes.

9 THE COURT: Do you have any with you?

10 THE JUROR: No, I don't have any with me. I
11 take it at night. It makes me sleepy. I can usually
12 drink a tea that I drink daily. That usually helps
13 me.

14 THE COURT: Okay. Do me a favor, step out in
15 the hallway with the bailiff and I'll be back in
16 touch with you in just a minute, okay.

17 (The juror exits the courtroom.)

18 THE COURT: The bailiff had previously told me
19 that one of the jurors previously expressed anxiety
20 issues, and apparently that was the juror. What say
21 the State?

22 MS. JONES: Your Honor, I think that she needs
23 to be excused. I don't think that she could be fair
24 and impartial.

25 MS. GIBBES: I would agree, Your Honor.

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 THE COURT: Just the 12. All right. Bring her
2 back in and we will let her go. I will explain it to
3 her.

4 (Juror enters the courtroom.)

5 THE COURT: Everybody wants to give you a chance
6 to get out of here and not make you sit through this,
7 so I'm going to thank you for coming. If you want
8 to, you can sit and be a spectator out in the
9 courtroom.

10 THE JUROR: Huh-uh (indicating in the negative).

11 THE COURT: I didn't think that you wanted to.
12 But we are going to excuse you.

13 THE COURT: Thank you so much.

14 THE COURT: Okay. The bailiff will show you how
15 to get out. Thank you so much.

16 (Juror is released from jury duty.)

17 MS. JONES: May Ms. Steve stay in the courtroom?
18 She is no longer -- I don't anticipate her taking the
19 stand again.

20 THE COURT: Who?

21 MS. JONES: Ms. Steve who just testified.

22 MS. GIBBES: I have no objection.

23 THE COURT: Okay, sure.

24 (The jury enters the courtroom.)

25 THE COURT: Welcome back, ladies and gentlemen.

JUROR ISSUE, EXAMINATION AND RELEASE OF JUROR

1 You might realize we are missing one of our jurors.
2 That juror was having some anxiety issues, both
3 parties agreed not to make her go through the process
4 anymore. Which means, Ms. Loman, you are no longer
5 an alternate.

6 THE JUROR: Okay.

7 Thereupon,

8 ANDRE FRAZIER

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. JONES:

13 Q Good afternoon, Mr. Frazier.

14 A Hey.

15 Q Can I call you Andre?

16 A Yes, ma'am.

17 THE COURT: Mr. Frazier, you need to speak up.

18 MS. JONES: This lady, Ms. Mona, is taking down
19 everything you say, so you need to speak up, okay?

20 THE WITNESS: All right. Does that sound better?

21 THE COURT: Much better.

22 BY MS. JONES:

23 Q Mr. Frazier, how old are you?

24 A Thirty-eight.

25 Q Thirty-eight. And are you from -- originally

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 from Beaufort?

2 A Yes, ma'am.

3 Q And did you know a man named Ver'mon Steve?

4 A Yes, ma'am.

5 Q How did you know him?

6 A He was my best friend.

7 Q Okay. How long had y'all been friends?

8 A Since fourth or fifth grade.

9 Q How did y'all become friends?

10 A We fought each other when we first met each
11 other. We got into a little conflict when we first met
12 each other in the hallway, but it was a little scratch in
13 the neck and push. And we became friends after that. He
14 ended up moving next door.

15 Q And y'all remained friends for the next --

16 A Yes, ma'am.

17 Q -- 30 some odd years?

18 A Yes, ma'am.

19 Q Do you know a man named Pete Singleton?

20 A Who?

21 Q Pete Singleton.

22 A Yes, ma'am.

23 Q And who is that?

24 A That is my third best friend. He is like --

25 Monte is my best friend, but he is like the third guy, us

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

- 1 three.
- 2 Q Okay. You have been friends with him for a
- 3 while too?
- 4 A Yes, ma'am.
- 5 Q And do you know a man named Tyron Wallace?
- 6 A Yes, ma'am.
- 7 Q How do you know Tyron Wallace?
- 8 A I used to date his cousin, Shabonda.
- 9 Q You met him through Shabonda?
- 10 A Yes, ma'am.
- 11 Q And do you know a man named Varsheen Smith?
- 12 A Yes, ma'am.
- 13 Q Do you know him by another name?
- 14 A Twiz.
- 15 Q How do you know him?
- 16 A I have known him almost all of my life too,
- 17 but -- childhood friends.
- 18 Q Okay. Y'all grew up together essentially?
- 19 A Something like that.
- 20 Q Okay. So, you have known him for over 30 years?
- 21 A Yes, ma'am.
- 22 Q Do you remember October 25th of 2015?
- 23 A Yes, ma'am.
- 24 Q Why do you remember that day?
- 25 A A tragedy occurred, or something bad happened to

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 me.

2 Q To you?

3 A Yes, ma'am.

4 Q And where did it happen? .

5 A At Ver'mon Steve's house.

6 Q I want to go back a little bit that night with
7 you, okay.

8 A Okay.

9 Q Before you go to Ver'mon Steve's house, what are
10 you doing that night?

11 A Before I went to his house?

12 Q Yes.

13 A I was at Buffalo Wild Wings watching the Cowboys
14 versus the New York Giants.

15 Q And who were you there with?

16 A Peter Singleton.

17 Q And who else?

18 A Ver'mon Steve.

19 Q About what time did that game start that day?

20 A It was the second game, so it was probably
21 around 4:15 or something like that.

22 Q And who did you pull for in that game?

23 A Giants.

24 Q How about Pete?

25 A Cowboys.

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

- 1 Q Okay. Did y'all have a little rivalry?
- 2 A Yes, ma'am.
- 3 Q That is why y'all went that day?
- 4 Q Yes, ma'am.
- 5 Q Whose team won that day?
- 6 A The Giants.
- 7 Q And that is your team?
- 8 A Yes.
- 9 Q So you were having a good night that night?
- 10 A Very good night.
- 11 Q Did Ver'mon stay the whole time and watch the
- 12 game with y'all?
- 13 A No, ma'am.
- 14 Q And why did he leave?
- 15 A Before we left out of the car, Peter said, You
- 16 left your window down. Steve was like, I'm not going to
- 17 stay that long if there's no girls in here. So, he came
- 18 in for a little while, he talked to one female, it wasn't
- 19 really about nothing going on. And we went on the side
- 20 for a minute before he left and then he was like, he was
- 21 going home.
- 22 Q So he was not there for the football game?
- 23 A He didn't stay for about, probably a couple of
- 24 seconds in the first quarter, and he just left.
- 25 Q He was -- he was there to meet a girl?

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 A No, he came with us because we all went there
2 when I got off of work. Actually he called me earlier
3 that day and asked me what I was doing that day and I
4 said, Me and Pete might go to Buffalo Wild Wings to watch
5 our game, you know, at Buffalo Wild Wings. He was like,
6 Word, just call me when you get there. And when he
7 called -- when I called and said we are there, me and Pete
8 sat in the car and wait for his car to pull up until he
9 got there.

10 Q Okay. He was there moreso to hang out, not to
11 watch the football game?

12 A He don't too much care about the sports.

13 Q He don't care about sports? "

14 A But we are all friends, and we barely see each
15 other because we all be working so when we do get a chance
16 to see each other, you know, we celebrate it some kind of
17 way like that, you know, just to be around each other.

18 Q Okay. Do you talk to Ver'mon again that night
19 before the game is over?

20 A Before the game was over?

21 Q Yes.

22 A Yes.

23 Q And what do y'all decide you are going to do?

24 A Actually, during the game he called one time and
25 asked if I was still watching, you know, if we still was

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 there. And then another time he called and he was just
2 talking and one of his friends got on the phone that I
3 knew, and he was like, Oh, the Giants are going to lose,
4 just talking trash to me, just playing or whatever like
5 that. And then he hung up the phone and was like, I will
6 holler at you later. And he ended up calling me again
7 before the game was over.

8 Q Okay. And were you supposed to go to Monte's
9 house after the game?

10 A Yes, ma'am.

11 Q So the game ends and your team wins?

12 A Yes, ma'am.

13 Q What do you do after the Giants win?

14 A Well, exactly what I did after they won is me
15 and Petey left and we got outside and I told Monte I was
16 going to call him before I come to his house so I don't
17 have to go into Beaufort when I'm staying in Burton at the
18 time to make a far trip, so I told him that I was going to
19 call him before I come and I called him and asked him if
20 he was still there. You know, I was like, You still at
21 the crib? He was like, Yeah, son. So I said, I'm on my
22 way, just like that. So, that is when I left.

23 Q Did you make any stops before going to Monte's?

24 A Yes, ma'am.

25 Q Where did go?

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 A Shell gas station.

2 Q What did you do when you get to the Shell gas
3 station?

4 A I bought one black and mild -- maybe one or two
5 black and milds and a cigar, a White Owl cigar, and paid
6 for \$10 worth of gas but gorgot to pump it.

7 Q Okay. What kind of car were you driving back
8 then?

9 A Silver Impala, Chevy Impala.

10 Q Like a little sedan, four door?

11 A Chevy Impala, four door.

12 Q Okay. Well, when do you realize that you didn't
13 actually pump your gas?

14 A Once I got close to Ver'mon's house, when I was
15 at the stop sign, before I was talking a left, I end up
16 looking at the meter and it was still almost on E.

17 Q Can you see Monte's house from that stop sign?

18 A Yes, ma'am.

19 Q What do you see outside of Monte's house?

20 A Two individuals with hoodies.

21 Q Do you know who these individuals are?

22 A When I went back around I knew who it was.

23 Q And who was it?

24 A It was Varsheen Smith and Tyron Wallace.

25 Q You knew them by sight, you recognized them?

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 A Yes, ma'am. When I first got out of the car I
2 thought that it was Monte and another friend because I
3 couldn't really park my car in the yard. It was a truck
4 and it was his car, so I parked -- it was like an
5 abandoned house like right next door and I parked in front
6 of that.

7 Q Okay.

8 A And I got out of car. and when I got out of the
9 car and started approaching the yard I was thinking that
10 it was Monte and, you know, just another friend. But when
11 I approached, it wasn't Monte and another friend, it was
12 Varsheen Smith and Tyron Wallace.

13 Q Okay. I want to backtrack a little bit. We are
14 going to get there in a second. After you realize that
15 you didn't get your gas, you go back and get it?

16 A Yes, ma'am.

17 Q And then you come back to GreenGreen Street?

18 A Yes, ma'am.

19 Q That is here in Beaufort County?

20 A Yes, ma'am.

21 Q So I want to show you some pictures,
22 Mr. Frazier.

23 MS. JONES: Permission to approach the witness?

24 THE COURT: Yes, ma'am.

25 MS. JONES: Andre, I am going to show you what's

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 been marked as State's 2, 3, and 4. Do you mean
2 recognize those pictures?

3 A Yes.

4 Q What are those pictures of?

5 A Ver'mon's house.

6 Q Okay. And are those fair and accurate pictures
7 of Ver'mon's house?

8 A Yes, ma'am.

9 Q And Nothing appears to be changed or altered?

10 A Same way.

11 MS. JONES: Your Honor, at this time the State
12 moves State's 2, 3, and 4 into evidence.

13 MS. GIBBES: Without objection.

14 THE COURT: Motion is granted.

15 *(Whereupon, State's Exhibit No(s). 2-4 marked*
16 *for identification and received in evidence.)*

17 MS. JONES: Your Honor, if I may ask Mr. Frazier
18 to step off of the stand.

19 (Witness complies.)

20 BY MS. JONES::

21 Q Mr. Frazier, I'm going to use a diagram when you
22 are telling us about that night so you can tell us where
23 you went, okay.

24 A Okay.

25 Q These photographs, which were depicted in

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 State's 2, 3, and 4, what are those pictures of?

2 A Ver'mon's house.

3 Q Okay. Where did you park that night?

4 A There was an abandoned house right there. I was
5 parked in the front and a truck was parked right there
6 and --

7 Q Okay. And you don't have a microphone on you,
8 so you have to speak up, okay?

9 A Okay. Y'all hear me?

10 Q Okay. Now, when you get -- when you get to
11 Ver'mon's house, who was outside?

12 A Varsheen Smith and Tyron Wallace.

13 Q You knew that it was them; you recognized both
14 of them?

15 A At first I didn't know who it was. But when I
16 got out of the car and got close to the house they had the
17 hoodie on, but then I know.

18 Q So, you were not confused, they just had hoodies
19 on and you couldn't see?

20 A Right.

21 Q When you get to the house, where do you start
22 walking up to?

23 A Okay. Right there. (Pointing.)

24 Q Maybe that will help. Does that help?

25 A Okay, I started walking, I approached myself and

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 I came and I approached myself and they were like here.

2 Q Okay.

3 A I started walking. I pound them up and I ask
4 where Monte is at and they were like (demonstrating).

5 Q Sorry, you asked where Monte was?

6 A Uh-huh. (Indicating affirmatively.)

7 Q And nobody answered you.

8 A More like --

9 THE COURT REPORTER: I am sorry, I can't hear.

10 MS. JONES: If you can face this way.

11 A They asked me -- I mean, I asked them where
12 Ver'mon was at and it was kind of like they were ignoring
13 the question I asked.

14 Q Okay.

15 A So, when I came walking, they was right like
16 there, I pound them up. I came right there. And
17 Ver'mon's white car was right there. I came to about
18 right here. and that is when I was asked, Did you talk to
19 Monte.

20 Q Who asked you that?

21 A Varsheen.

22 Q Okay.

23 A VarsheenI told him, Yeah. I was thinking that I
24 was happy my Giants won, that is what I had in my head. I
25 told him, Yeah, I talked to him. So, Ver'mon car was

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 right there and so I just turned around and started to
2 look at the paint that he said that he was going to do
3 that day to his car.

4 And as I am looking at the paint Varsheen
5 came and was like, You looking at that ugly ass, you know,
6 paint like that or whatever, you know. And at the same time
7 he ask me, you know, did I speak to him and I told him,
8 Yeah. So, I'm looking at the paint and he was like, That
9 ugly ass paint this and that and I was like, All right, you
10 know. And he said, He did that yesterday. and I was like,
11 He didn't do that yesterday. I know that he didn't do that
12 because he just came into Buffalo Wild Wings and I knew he
13 just bought the paint from Wal-Mart before he came to
14 Buffalo Wild Wings.

15 And he kind of kept on and I asked him again,
16 Where's Ver'mon. I said, Monte. And he was like, Let me
17 holler at you right quick. And then I asked him again,
18 Where's Monte. Let me holler at you. And I asked him
19 again, Where Monte. Man, Monte in the house. I kind of
20 believed him, but knowing that that was my best friend and
21 what type of guy he was I took that, but I started walking
22 toward the house. As I started walking toward the house he
23 came behind me and Tyron came behind him and I kind of feel
24 a funny situation. And so he asked me if I had another
25 black and mild. I had my White Owl and my black and mild in

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 my hand.

2 So, I started walking in the house.

3 Something told me don't go into the house because by the
4 time I got there the lights were on and the door was open. .

5 MS. GIBBES: Judge, may I interrupt? Can the
6 Solicitor ask questions and he answer, not this
7 demonstrative just kind of general conversation
8 instead of an ask and answer, Your Honor.

9 THE COURT: Sustained. Next question.

10 BY MS. JONES::

11 Q When you get to the front of the house, what
12 happens? Do you get to the front steps of the house?

13 A When I got to the front -- when I started
14 approaching the lights was on and the door was open. When
15 I start approaching the house, him and Tyron was right
16 there. He started approaching me, he said, Man, go on in
17 the house. The door was kind of like open. And when I
18 normally go to the house to see him he will bust out of
19 the house, Hey, man, what's up, what's up, you know.
20 Always like that. That wasn't the case.

21 I just got off of the phone with him. So
22 when I got toward the house and I put my first foot on the
23 floor and I realized that I didn't see nothing, just
24 something in my mind told me, you know, it is bad, do not go
25 into the house. When I attempted to turn around, that is

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 when I got the elbow to my back.

2 Q Whose elbow was that?

3 A Twiz.

4 Q Okay.

5 A I told him, What is up, ma, like that. And when
6 I told him, What's up, the next thing you know he tried to
7 take me out with a cell phone. I don't know if it hit a
8 button or something but the light on the phone caught the
9 side of my eyes and I saw him swinging. So while he was
10 swinging I turned like that because I saw the light and he
11 kind of fall over my shoulder because he missed. I
12 grabbed his pants because he was already trying to push me
13 in the house. And as he grabbed my pants it was a quick
14 tussle to where I felt like I was going to get him out but
15 the other guy came behind him and they both was pushing me
16 in the house.

17 Q Who was the other guy?

18 A Tyron Wallace.

19 Q Okay.

20 A And it was a quick shuffle until I saw a silver
21 pistol in my stomach.

22 Q And who was holding a silver pistol?

23 A Varsheen Smith.

24 Q And when it went to my stomach, I couldn't do
25 nothing, that is when I actually got in the house. He was

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 like, You can stop the shit now. And then I'm in the
2 house.

3 Q All right. Now, when you get in the house,
4 where do you enter the house?

5 A Actually, okay, this is the front porch.

6 Q Yes.

7 A When I put my foot right there, that is where
8 the scuffle is and everything. And when I finally got in
9 the house I am right there.

10 Q And you have a gun at you?

11 A He had a gun to my stomach, that is why I
12 stopped.

13 Q Okay.

14 A And you know, just did what he told me to do.

15 Q Okay. And after that does he -- does Varsheen
16 say anything to you?

17 A I asked him, What's up. I thought he was trying
18 to rob me, you know, so I was -- I ain't got nothing you
19 know.

20 Q Were they trying to rob you?

21 A Eventually he got Tyron to give it back to me.

22 Q Okay. Did you get that stuff back?

23 A Yes except for the black and mild.

24 Q So, they were not robbing you?

25 A No, he told him to give it back to me. He said,

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 I'm not robbing you.

2 Q When you get inside the house, do you stay in
3 this living room?

4 A As soon as I got in the house he shut the door.

5 Q Who shut the door?

6 A I can't remember whether it was Varsheen or
7 Tyron, but I remember him shutting the door. And I'm
8 right here and he told me to get on the floor. And I
9 said, I ain't got nothing. And he told Tyron to go
10 through my pockets. In my pockets I had \$15, I had my ID
11 card and I had my cell phone and the black and mild. And
12 he took it all out, but after that he just came and try to
13 get me to the ground.

14 Q Are you free to move, free to leave at this
15 time?

16 A No.

17 Q Okay. Where are your hands?

18 A My hands?

19 Q Yes.

20 A My hands are like this. I was like, I ain't
21 have nothing.

22 Q Do they eventually go to a different position?

23 A Tyron came in there and took everything out of
24 my pockets and everything like that for a few seconds and
25 then after that, that is when Varsheen came around and had

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 the gun to the back of my head, the pistol.

2 Q He had what to the back of your head?

3 A He had the gun to the back of my head, the
4 pistol. He told me to get on the floor. I wouldn't get
5 on the floor. He told me to get on my knees.

6 Q Okay. Are you -- did they do something with a
7 belt?

8 A Yes, ma'am.

9 Q What?

10 A After he run my pockets and took everything out
11 of my pockets, I had a belt, it is not like this, but it
12 is a belt, just like a belt that you can just stick and
13 turn it like that and get it tight, one of those types of
14 belts, and he took the belt off and my pants dropped down
15 a little bit and he put the belt on my hands behind my
16 back.

17 Q Okay. Who actually tied you up?

18 A Tyron because Twiz told him.

19 Q Okay. Was Twiz asking you anything at this
20 point?

21 A No, I'm asking him, What is going on, and stuff
22 like that. And he --

23 Q And what is he actually saying to you?

24 A More inside the house he was saying everything,
25 slipping, snitches.

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 Q What does that mean?

2 A Slipping is just like I did, went in the house
3 and shouldn't have went in there, slipping.

4 Q And he called you a snitch?

5 A Yes.

6 Q Okay. What else did he say to you?

7 A He was saying, just saying, I'm going to get
8 y'all and --

9 THE COURT REPORTER: I cannot hear anything.

10 THE COURT: You need to speak up.

11 BY MS. JONES::

12 Q Okay. When you are in the house, what is Twiz
13 saying to you?

14 A He is saying things like, You are snitch, I
15 caught you slipping. He was just saying all kinds of
16 crazy words, like bad things.

17 Q Again, what does slipping mean? I am sorry.

18 A Like I did, shouldn't have went in the house,
19 but you did anyway, now I got you pretty much.

20 Q Did he say anything about the time that you were
21 there?

22 A Yes, he said that before I even went in the
23 house.

24 Q What did he say?

25 A He said, Funny time you came up here. And I was

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 just trying to figure out why he was saying that. And
2 then Tyron say, laughing, Funny time you came up here. I
3 couldn't figure out what they were saying.

4 Q After you are in this room, the front room, did
5 you go anywhere else in the house? You have to face
6 Ms. Mona.

7 A I have to face you? All right. When I first
8 got in there when he had the gun to the back of my head,
9 he was saying things and looking back and forth out of the
10 window. And I was on my knees then, he had done took the
11 belt. I was on my knees with the belt tied up in the back
12 of my back.

13 Q Who told you to get on your knees?

14 A He told me to lay on the floor, but I just
15 didn't do it. So he hit me in the back of the head with
16 the gun and I got on the floor.

17 Q Okay. This is Varsheen telling you this?

18 A Yes, ma'am.

19 Q He told you to lay down, so you get on your
20 knees instead?

21 A Yes, ma'am.

22 Q You are in the front room still?

23 A Yes, ma'am.

24 Q Then where do you go?

25 A He kept threatening me, telling me to lay down.

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 And I won't lay down. He told Tyron -- and Tyron came
2 back and -- he told him to put something in my mouth and
3 he came back with a rag and stuffed it in my mouth while
4 my hands were behind my back.

5 Q Who stuffed the rag in your mouth?

6 A Tyron.

7 Q Who told him to do that?

8 A Varsheen.

9 Q Do you eventually end up in this bathroom?

10 A Yes, I -- when -- yes, Tyron picked me up,
11 Varsheen told him to do it, grab my arm, and walked to the
12 first room to the right. I mean just me and Tyron. Me
13 and Tyron in there. Varsheen went back outside. And while
14 me and Tyron was in the room I asked him, I said, That is
15 what you are going to do. Because I met him one time
16 through his cousin. And I said, I feed you and you are
17 going to do me like that. And he said, That is just how
18 it is. And I said, All right, all right.

19 MS. GIBBES: Object to hearsay.

20 THE COURT: Sustained.

21 BY MS. JONES::

22 Q Andre, you can't say what other people told you,
23 unless it's Varsheen. All right. Is Monte in the house
24 anywhere?

25 A No, ma'am.

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 Q Okay. Does Varsheen ever come back in the room?

2 A Yes, ma'am.

3 Q Okay. And what happens then?

4 A When Varsheen came back in the room he told
5 Tyron to go outside. So, Tyron went outside. Now I'm in
6 the room with Varsheen. And while we are in the room --
7 no, when Varsheen came back inside him and Tyron stood
8 right there and talked for a minute before I went to the
9 next room. I went to the next room. When I went into the
10 next room that is when Tyron went outside and now it is me
11 and Varsheen in the room together and this is the second
12 room.

13 Q Okay. And what are you doing in that room; are
14 you standing up?

15 A No, I'm still tied up. But I actually spit the
16 rag out of my mouth and I was talking to Tyron in the room
17 to ask him the question that I asked him. When I got to
18 this room, then Varsheen stuck the rag back in my mouth
19 and it was just me and him in the room.

20 Q Okay. Is he saying anything to you?

21 A Yes, pretty much.

22 Q What is he saying?

23 A First of all, when I came back -- when we first
24 got in this room, the first thing he did was came in the
25 room and pulled down the blinds, I mean, down the windows.

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 After he downed the windows and the blinds, after that, he
2 told me to get on the floor again. That was just
3 something that I couldn't do. The most I did, I got on my
4 knees. I was on one side of the wall, he was on the other
5 side of the wall. I was on my knees with the rag in my
6 mouth, tied up.

7 Q Do you still have that gun pointed at you?

8 A Yes, ma'am, that is when it got really scary.

9 Q Did he ever say anything about the gun in his
10 hand?

11 A He was bugging out. He was saying, Yeah, I told
12 you I was going to get y'all, you a snitch, slip, saying
13 things like that while he was pointing the gun at my face.

14 Q Okay. Did you -- Mr. Frazier, you can go back
15 on the witness stand.

16 (witness complies.)

17 BY MS. JONES:

18 Q Mr. Frazier, did you ever get to leave Monte's
19 house that night?

20 A Yes, ma'am.

21 Q How?

22 A Well, when I was in that second room, when he
23 was pointing the gun and everything like that, and like I
24 said, Tyron went back outside, Tyron came back in the
25 house and he knocked on the door while me and Varsheen was

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 in the room and he told Varsheen, Come here, let me holler
2 at you right quick. When he told him, Let me holler at
3 you right quick, he told me not to try to go anywhere.

4 And they went outside. and before he went outside, he cut
5 the light off. And they went outside and both of them was
6 outside and I was still in the room tied up.

7 Q Adn then after they go and talk, do they come
8 back in the room with you?

9 A Eventually they did after I was on the phone --
10 well, try to get on the phone.

11 Q Tell me about that.

12 A When they went outside -- when they took
13 everything out of my pocket, they gave it back. And when
14 he gave it back he didn't realize that he gave me my phone
15 back. And I had my hands tied up with the belt with my
16 hands behind my back. I made it some kind of way to get my
17 phone out of my back pocket. And the last number I called
18 was a friend, but I didn't call him. The second number I
19 said, I'm going to call the police, you know, because I
20 thought that it was that serious. So I was attempting to
21 call the police at that time and can hear -- well, I saw
22 the light, the phone light -- the room was dark, so when I
23 cut my phone on the light brightened the whole room up and
24 I thought that he saw that because the door opened back
25 up, the front door. So, I had a choice to either hang up

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 or let the operator hear what was going on. But it was a
2 quick choice, but at that time I was like, I think that
3 I'll hang up because it was so quiet in the room he might
4 come back in the room and hear the people saying hello,
5 hello, hello. And I didn't want to put myself in that
6 kind of situation, something bad might have happened, so
7 that choice for me hanging that phone up was a hard
8 choice. But I hang the phone up just in case he hear the
9 operator or whoever answers the phone for the police.

10 Q Does Varsheen Smith ever come back in that room?

11 A Yes, they came to the door with a different
12 mentality.

13 Q What do you mean?

14 A He didn't look evil then. Not that evil. He
15 was looking, you know, pretty evil, but now he didn't look
16 evil like he was.

17 Q Okay. What does he say to you?

18 A When he came back into the room he was like, All
19 right, Tyron, you can let him go. I mean, he told Tyron
20 to untake the belt from my hand and stuff like that. And
21 I was just going with it. I mean, he -- take the belt
22 off, started walking towards the front.

23 Q Okay. Are you walking by yourself to the front?

24 A No, he put his right hand on my shoulder on this
25 side.

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 Q Who?

2 A Varsheen. And started talking about Ver'mon.

3 Q What was he saying?

4 A He was like, If he didn't want me to stay -- if
5 your homeboy didn't want me to stay here, why couldn't he
6 tell me like a man. Why do I have to hear it through the
7 grapevine that he didn't want me to stay here.

8 And then we went by the third room, which
9 just had bags inside the room, two bags, and I believe that
10 was Ver'mon's bags. And he was saying, If he moved then why
11 he got these bags in his room, like that, you know. And
12 basically he is trying to talk to me like that and trying to
13 figure out. He could have told me told me if he didn't want
14 me to live in his house. And that was on the way walking
15 out of the house.

16 Q Okay. And when you get to the stoop, to the
17 front porch area, do you immediately go to your car?

18 A Nope.

19 Q Is there anything out there that you remember
20 seeing that stood out?

21 A Yes, ma'am.

22 Q What is that?

23 A Police.

24 Q Okay. And what are they doing?

25 A His car was parked like on the side in the

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 middle of the road. Not like in the middle but on the
2 side but in the road.

3 Q Okay. Do you yell for the police?

4 A No, ma'am.

5 Q Why not?

6 A Because he told me I better not say nothing. He
7 had his gun inside his shirt. And I didn't want to take
8 that chance.

9 Q Who had?

10 A Varsheen.

11 Q Okay. What does he tell you about the police?

12 A That I better not say shit. When I first walk
13 out he said, You see 12.

14 Q What is 12?

15 A It is the police. But I played dumb like I
16 didn't know what they was either at first. And I was
17 like, Who are you talking about? He said, Look, the
18 police right there. I looked and the police is right
19 there.

20 Q He had just held you at gun point, tied you up
21 and gagged you and you didn't run for the police?

22 A No, ma'am.

23 Q Why not?

24 A Because that gun. I just didn't want to take a
25 chance. I'm standing right next to him, so by me running

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 for the police if he shoot that trigger I ain't going to
2 be here no more. I don't want to die like that.

3 Q Where was the gun when you are on the front
4 porch?

5 A I saw when he stick the gun in his jacket before
6 we even went back outside, so I knew he had the gun in his
7 jacket just like that.

8 Q Okay.

9 A And he told me I better not say nothing.

10 Q While pointing the gun through his jacket at
11 you?

12 A Yeah, he had it.

13 Q Okay. Did you eventually leave Monte's house
14 that night?

15 A Yes, ma'am.

16 Q How did you leave?

17 A Well, when we saw the police, we all just stayed
18 right there. And when we stayed right there, I mean, I
19 ain't move. Police didn't really pay us no attention.
20 Well, he did look and I could see his computer, you know,
21 he had.

22 Q Who is this, the police officer?

23 A Yes, I could kind of see -- I couldn't see his
24 face, but I know that it was a white guy, white-colored
25 guy. You could see it from the screen. He looked in the

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 yard but he didn't stop or nothing. Stopped at the stop
2 sign and took a right.

3 Q So you watched the police drive away?

4 A Yes, ma'am.

5 Q After that, you leave. Did you ever try to get
6 in touch with Monte again?

7 A Yes, ma'am.

8 Q And How is that?

9 A I called him because I was mad at him. I was
10 mad because before I left I was asking him these questions
11 and I asked him where was Monte and he said that he
12 thought that I was going to shoot him and he ran. And so
13 now I'm mad at Monte because I thought, you know, if you
14 ran and you know this situation is happening and I am
15 coming to your house, why didn't you call me and tell me
16 and let me walk into this situation. But he never
17 answered the phone. The phone rang all night.

18 Q And you never talked to Monte again after that?

19 A (Nods in the negative.)

20 Q You didn't call the police that night, did you?

21 A No, ma'am.

22 Q Why not?

23 A Because, for number one, I have kids. I know
24 what kind of guy he is, so I had to really think what I
25 was going to do, you know, make sure that I made the right

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 choice to know what I was going to do. And not that, I
2 was looking for Monte that night. When he said he ran, I
3 kind of believed him. It was a throw-off but I kind of
4 believed him. And I thought that he ran and went to one
5 of his girlfriend's house, because he had a few
6 girlfriends.

7 Q Okay. Were you scared?

8 A Yeah, I couldn't sleep.

9 Q What was going on through your mind the whole
10 time that you are tied up?

11 A Well, tied up, to be honest with you, when he
12 had the gun to the back of my head, being tied up and me
13 turning back and forth and him shoving me and all of that,
14 and hit me in the back of the head, my adrenalin was so
15 high I didn't feel it hit from the gun, my hat flew off,
16 and I was just waiting for my head to pop.

17 Q When you were in Monte's home, up until the last
18 minute, were you free to leave?

19 A In his home?

20 Q Yes.

21 A Outside?

22 Q Yes.

23 A Yes. Yes, ma'am.

24 Q Could you get away?

25 A Yes, ma'am.

DIRECT EXAMINATION OF ANDRE FRAZIER BY MS. JONES

1 Q While you are tied up?

2 A No no, no, he had already walked me out of the
3 house then. You are talking about?

4 Q Before that, when you were inside the home.

5 A No, I was not free to go, I was trapped in the
6 room.

7 Q All right. Who had the gun?

8 A Varsheen Smith.

9 Q Do you see Varsheen Smith in the courtroom
10 today?

11 A Yes, ma'am.

12 Q Can you please point him out?

13 A Right there.

14 Q May the record reflect that the witness did
15 point to the defendant.

16 THE COURT: So noted.

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

18 (Pause.)

19 MS. JONES: Andre, I have no further questions
20 for you. You can answer any that Ms. Gibbes may
21 have.

22 THE COURT: Cross examination.

23 MS. GIBBES: May it please the Court.

24 CROSS EXAMINATION

25

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 BY MS. GIBBES:

2 Q All right. How are you Andre?

3 A How are you?

4 Q All right. Okay. So, you have testified that
5 this whole night started when you were at Buffalo Wild
6 Wings, correct?

7 A Yes, ma'am.

8 Q Okay. And you are there with Ver'mon and Pete
9 Singleton?

10 A Yes, ma'am.

11 Q And at some point, as you testified, Monte left
12 to go work on the grill of his car and there were no women
13 there for him, right?

14 A Yes, ma'am.

15 Q Okay. And you mentioned that you got a couple
16 of calls from him while you were sitting at the table
17 watching the game?

18 A Yes, ma'am.

19 Q Okay. And during those calls basically you
20 discuss that you were going to come over to his house?

21 A Basically when he left he called, I would say,
22 the first call came in probably about 45 to an hour.
23 Like, Y'all boys still watching the game over there. I was
24 like, Yeah. And he said, All right. Word. I'm here.

25 And the game keep going on. He called again.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 And the second time when he called there was a friend that
2 stay across the street from him, he was bragging, he got on
3 the phone started talking trash. Giants gonna lose. Monte
4 let him get on his phone and, you know, we were all friends.
5 And he hung up because that friend, you know, was messing
6 with me about the game.

7 And the third time he called he was like,
8 Y'all -- he say, You still there. I was like, Yeah I'm
9 here, the game almost over. And I believe the guy from the
10 Giants -- Dallas had just scored a touchdown and then the
11 guy from the Giants came back and scored back. So that
12 third time he called I was happy and yelling, you know, like
13 that at that time. And I told him that, you know, I'll be
14 over there when the game was over.

15 Q And I'm just a little bit confused. You
16 remember at some point you did speak to investigators
17 about what happened, correct?

18 A Yes, ma'am.

19 Q And you know that your statement was recorded;
20 do you know that?

21 A Yes, ma'am.

22 Q Okay. So, just backing up, I am a little
23 confused because what you are saying is a little different
24 than what you said before. Now, you mentioned that you
25 got a couple of calls from Monte in your original

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 statement, now you are saying he called you three times
2 during the game?

3 A I know he called me.

4 Q Okay.

5 A I know he called me. Like I'm saying, I was so
6 into the game and when he called me it was -- he didn't
7 call me about nothing negative, he was just trying to see
8 if I was still there.

9 Q Let me ask you about this friend because you
10 didn't mention this friend in the original statement. Who
11 is this friend? Do you know his name, that lived across
12 the street from him, from Monte?

13 A Yes.

14 Q What is his name?

15 A I just called him DC, because he is from DC.

16 Q DC?

17 A Yes.

18 Q He lives like directly across the street or next
19 door to Greene Street?

20 A Yes, he live right across the street.

21 Q Okay. He was over there watching -- he was over
22 there with Monte?

23 A No, I guess Monte was probably outside or
24 something or whatever. But he just -- I don't know, I was
25 at Buffalo Wild Wings and we were just talking on the

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 phone.

2 Q So, that was -- by the time that his friend got
3 on the phone, y'all were celebrating because the game was
4 over, right?

5 A No, that game was not over.

6 Q How much longer was left in the game?

7 A I can't remember how much time was remaining in
8 the game, but I know that he was messing with me because
9 the Giants was losing at the time.

10 Q Okay. And do you know about how long passed
11 between you speaking to that friend on the phone and you
12 getting, getting to Monte's house the first time?

13 A From me speaking to his friend?

14 Q Yes.

15 A That wasn't the last phone call.

16 Q Okay. So, he called you -- explain.

17 A No, I know that that wasn't the last phone call
18 because Monte called me again before the game was actually
19 over. And I told him that the game was almost over and I
20 told him that I would call him before I come to his house.

21 Q Okay. But from these phone calls, it is your
22 understanding he was with some other people, with DC at
23 least, at some point?

24 A Yes, I heard a few people in the back.

25 Q Oh, a few people?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A I mean, I just hear it, you know, as I was
2 talking to him.

3 Q Okay. And it sounds like they were almost -- I
4 know you said that Monte doesn't really like football, but
5 it sounds like it was kind of a celebration in a way.

6 A No, that DC guy, he like Philly, that is his
7 football game. What we do is when Dallas and Philly and
8 Washington play, we all hate each other, so we joke on
9 each other's teams. So, when his team lose, I laugh, you
10 know, it is a rivalry. So, that is just how that is, and
11 he just wanted to talk a little junk.

12 Q Okay. And so do you know who else was there
13 with Monte and DC?

14 A No, because I didn't speak with nobody but that
15 other person on the phone.

16 Q Okay. But from your impression nobody was upset
17 at that time?

18 A Who?

19 Q At that point it sounds like nobody was scared
20 or upset?

21 A No.

22 Q Now, after that call, and I think that I just
23 asked you this, about how long was it before you left to
24 go to the Shell gas station?

25 A When the game was over, shoot, we got up and me

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 and Petey started walking towards the car. And I told
2 Monte I was going to call him before I came to the house,
3 so when we started walking towards the car, Petey thought
4 about it. We were both going to ride over there before we
5 go home. I had to be to work at 7 in the morning, I get
6 up at 6:00. So, I didn't want to make a blank trip all
7 the way to Beaufort and I live in Burton at that time so I
8 had to make sure that he was home when I called.

9 Q I am sorry. Were you at the -- what Buffalo?

10 A When I made the phone call?

11 Q Where is that Buffalo Wild Wings located?

12 A Across the street from Golden Corral.

13 Q In Beaufort?

14 A Yes, ma'am.

15 Q So, that is not far from his house?

16 A Yes, ma'am.

17 Q So, what would you say, about 20 minutes?

18 A If I were to ride just straight there, 5, 10
19 minutes.

20 Q So, it was pretty close, after you spoke with
21 him and you left to go to his house?

22 A No, I went to the Shell gas station first.

23 Q Right, and I'll move on. But you called him
24 before you left and told him that you were on the way?

25 A Yeah.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q And then you went to the Shell gas station?

2 A Yes.

3 Q And you said that you forgot -- you bought gas
4 but then you left without getting it; right?

5 A Yes, ma'am.

6 Q Now, at that point it's dark out?

7 A You said, is it dark?

8 Q Yes.

9 A It was in the mix.

10 Q But it was not --

11 A It was just in the mix. The time was in the mix
12 of getting dark and like that.

13 Q Do you remember when you spoke to the
14 investigators you said that you were in the Shell gas
15 station about 9:00, close to closing?

16 A 9:00, I don't think that it was 9:00.

17 Q But that is what you told investigators?

18 A I probably thought that it was 9:00 or something
19 like that. But the game started at 4:00. And maybe -- I
20 know that they close on a regular night around 9:00, so
21 yeah.

22 Q So you told investigators that, you may have
23 been mistaken, but you did tell investigators that is
24 about when they were closing; is that right?

25 A 9:00?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q 9:00.

2 A I just know that that store close at 9:00, so my
3 intentions was, when I finished watching the game and I
4 went to the store and I saw that guy close one side of the
5 door, that is automatic in my head, not thinking that it
6 was Sunday.

7 Q Okay. And then you testified -- right now you
8 are saying that it wasn't really dark yet?

9 A If you think about it, after a 4:15 game, the
10 game should be over around 7 or 8 or 7 something, as you
11 think about it. But when you have got a lot of stuff
12 going on and a lot of stuff just happened, I am just
13 thinking that the store close at 9 on a regular night, but
14 I'm not thinking that it was a Sunday.

15 Q Okay. What I am talking about is you left the
16 gas station the first time and drove towards Monte's house
17 on Greene Street, right?

18 A Yes, ma'am.

19 Q You said that was only a couple of minutes away,
20 right?

21 A Yes, ma'am.

22 Q Did you make that right after the Brick's
23 restaurant?

24 A To get there?

25 Q To get there.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Yes, ma'am.

2 Q Okay. So, you made the right?

3 A Went up two stop signs.

4 Q Two stop signs, and that is the stop sign at
5 Greene Street, correct?

6 A Yes, ma'am.

7 Q If you are at that stop sign and you look to the
8 right, that is Monte's house?

9 A No, if you are at the stop sign and you look to
10 the left, that is where his house is at.

11 Q The left. What -- do you remember what
12 street -- I mean, you made the right after Brick's?

13 A No, I make the right -- okay, from the tennis
14 courts, I get to Brick's I'm on the side of Brick's Road.
15 I get to the first stop sign is the stop sign, I get to
16 the second stop sign and Monte's house is right there on
17 the left.

18 Q On the left, okay. Now, you testified that when
19 you pulled up you said you saw two black dudes, right,
20 standing in the yard?

21 A Yes, ma'am.

22 Q And you mentioned that they were wearing black,
23 right?

24 A Yes, ma'am.

25 Q And you didn't mention anything about hoodies in

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 your first statement, right?

2 A That is what they had on. I believe that I did.
3 He had dreads at the time. I couldn't see the dreads,
4 that is why I thought that he was Ver'mon when I first got
5 there.

6 Q Even though that it was dark you were able to
7 see --

8 A By the time I went back to the Shell station and
9 got gas and everything, yeah, it was dark. Approaching
10 dark. It wasn't super dark, but it was approaching.
11 Yeah, it was dark though.

12 Q Monte's house doesn't have a light, right?

13 A But his lights was on.

14 Q But it doesn't have a porch light, right?

15 A I don't remember if it had a porch light. I know
16 the lights were on.

17 Q You mean the lights were all on in the house?

18 A Just a little bright. I know that the inside
19 lights was on for sure.

20 Q Okay. So, when you pulled up, I think that you
21 just testified that you saw two guys but you thought one
22 was Monte and one was Wallace, correct?

23 A No, I ain't thought -- I didn't thought one was
24 Wallace because I'm not used to seeing Wallace in Beaufort
25 period. I thought that it was Monte and another friend.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q Another friend.

2 A No not particular friend because we had friends.

3 Q Sure. And it was dark enough when you pulled up
4 that you actually, you wanted to look at Monte's paint
5 job, right, on his car?

6 A Yes, I had my phone with me and I did like that.

7 Q So it was dark?

8 A Yes, it got pretty -- it got dark, by the time
9 that I came back from the Shell gas station, it was
10 really -- it was different.

11 Q Okay. And then, as you said, there was a --
12 like a brown SUV parked?

13 A Yes, ma'am.

14 Q Okay. Next to the fence?

15 A Yes, ma'am.

16 Q And then Monte's car was parked in front of the
17 house?

18 A Yes, ma'am.

19 Q And then you parked to the right?

20 A I parked, there is an abandoned house before you
21 get to Monte's house. I couldn't park in the yard because
22 there was no room for me to park. And a sidewalk right
23 there, and a white Cadillac and there was a brown SUV. So
24 I parked in front of that abandoned house.

25 Q Now, that SUV was a pretty big truck, right?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Yes, ma'am.

2 Q I mean, that probably gets in the way a little
3 bit of your view of the porch, I would say?

4 A It just look -- with that one car and that brown
5 truck it didn't look like I needed to park in the yard
6 because it just looked tight.

7 Q Now when you spoke to the investigators you told
8 them that when you pulled up you saw a police officer?

9 A When I pulled up?

10 Q Uh-huh.

11 A To the house?

12 Q When you pulled up to the house.

13 A No, I don't remember saying that.

14 Q But you -- it is a recorded statement?

15 A I didn't see no policeman when I pulled up to
16 the house, I don't remember that. At the same time a
17 tragedy just happened. And I'm trying to still remember
18 everything. Your head is going a thousand miles an hour
19 when you have got a bullet, I mean, a gun to your head.
20 But I don't remember saying a police car pulled up as soon
21 as I got there, a police car pulled up when I got out of
22 the house -- well, the police car was already outside when
23 I got out of the house.

24 Q You mentioned the door was opened to the house?

25 A I think that the door was open.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q Wide open. And you said that you started
2 talking to Varsheen and you said that you dapped him up,
3 you said hello?

4 A I dapped Tyron first and him second.

5 Q Okay. And then you all talked about the paint
6 job, right?

7 A I tried to throw him off because I know that
8 something wasn't right. I know that he was up to
9 something, but I wasn't 100 percent sure. Just by the way
10 that he give me that pound I just didn't feel it. I
11 didn't feel no love from the pound.

12 Q Just from saying hello?

13 A I mean, we already -- stuff already happened
14 before that, so we didn't really get along like that. I
15 just didn't hang around him. I just didn't come around him
16 no more.

17 Q All right. Now, when you spoke to investigators
18 you mentioned that when you got to the front door he was
19 actually facing you out to the street?

20 A Who, Varsheen?

21 Q Varsheen.

22 A When I got out of the car, him and Tyron was
23 standing right next to each other. A little before you
24 get to the sidewalk, but they were standing right next to
25 each other. When I walk up I thought that it was Ver'mon

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 until I got kind of close and realized it was him, and to
2 myself, I went like, This mother fucker, you know, like
3 that. So I pound Tyron and he give me a regular pound and
4 I pound Varsheen and he give me stink pound and his face
5 was all frowned up.

6 Q But at that point -- I mean, I know you just
7 described there was some sort of tussle.

8 A Not right then, when -- after he done tricked me
9 to go into the house.

10 Q I am confused because you just testified that
11 the tussle is what made you go into the house.

12 A No, I did not. I put one foot on the floor and
13 I told -- I said to myself that, Something ain't right. I
14 didn't see Ver'mon or nobody or nothing like that. And
15 when I attempted to turn around because I felt that
16 something wasn't right, that is when he hit me in the back
17 and the tussle happened right at the door.

18 Q Well, if you recall when you spoke to
19 investigators you didn't tell them that exact story, you
20 told them that he hit you in your back and was trying to
21 shove you into the house and that is how you fell into the
22 house?

23 A That is the same thing that I was showing you,
24 when he bumped me in the back like that, try to hit me
25 with the phone, I see the phone. And his body weight came

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 down a little bit and I grabbed his pants and it was just
2 a quick tussle until a gun was to my stomach. Tyron -- I
3 was trying to push him back, but Tyron was helping him
4 push me in the house. I gave up when that gun was in my
5 stomach.

6 Q So, you didn't make the decision to go in the
7 house?

8 A No, when I stuck one foot on the floor and I
9 realized I didn't see anything in the house, normally I
10 know my best friend, if there were lights and stuff on
11 that day, he would be done come out of the house by now.
12 But by him saying, I asked him, Where's Monte? Man, he in
13 the house. And then before that he was saying, Let me
14 holler at you right quick in the house. So, when I went
15 towards the house and I stick the first foot on the floor,
16 something told me not to come into the house. And then
17 that is when there was a tussle.

18 Q So, Varsheen was able to hit you with the phone
19 and put a gun at you?

20 A No, he didn't hit me with the phone.

21 Q He tried to?

22 A Yes, and then a tussle happened. And as we are
23 tussling and Tyron behind him, that is when the gun
24 appeared to my stomach, and I give up. That is how I got
25 in the house.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

- 1 Q Okay. So, you get inside?
- 2 A Yes, ma'am.
- 3 Q And you mentioned you didn't immediately get
4 tied up. There was some conversation before that
5 happened?
- 6 A Yes, ma'am.
- 7 Q There was a conversation about racking your
8 pockets?
- 9 A Running my pockets.
- 10 Q Yeah. And then you didn't tell investigators
11 about that, did you?
- 12 A What, running my pockets? I did tell them that
13 they took the stuff out of my pocket but he give them
14 back.
- 15 Q In your original statement to the police you
16 didn't tell them about racking your pockets. You did tell
17 them that he wasn't going -- that they didn't take
18 anything, they give my stuff back; right?
- 19 A They took the stuff out of my pockets, just like
20 I explained it up there. And then they eventually give it
21 back and say, I'm not robbing you. That is how I was able
22 to try to make the phone call. If they didn't give it
23 back, how would I make the phone call?
- 24 Q Okay. You got tied up with your own belt,
25 right?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Yes, ma'am.

2 Q Hands behind your back?

3 A Yes, ma'am, pants coming down a little bit too.

4 Q Somehow you were able to get your phone out and
5 text?

6 A When I had my phone behind my back like this,
7 when you are in a situation like that and you are going to
8 try to find any way you can get out of that situation like
9 that you are going to try to do it. My hands was tied
10 behind my back, yes, I was able to dig in my back pocket
11 and grab my phone and was looking. That is why it really
12 kind of took a while to get the call off to who you want
13 to call. "

14 Q So, you were not -- you were kind of like this
15 trying to work your phone?

16 A Do you want me to show you?

17 Q Please.

18 A (Demonstarting) Tied up I'm like this. He goes
19 out of the door. And I turn my fingers but the belt was
20 tight around my wrist though, but I was able to stick my
21 hand in my back pocket and get my phone. Got the phone,
22 it was hard to see and that is why it was taking so long
23 for me to do what I had to do. I see my friend number, I
24 am about to call him, and nah, I said I'll call the
25 police. As soon as I was about to call the police and hit

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 the doggone thing I heard the door, like the front door.
2 When you open the front door it made a noise through the
3 whole house so you know somebody is coming in. I said,
4 Dog, and you could see the light from the phone because it
5 was dark in there. Dog.

6 So, I had a choice to either put the phone
7 back in my pocket, hit the end button and put it back in my
8 pocket or leave it, you know, push the button for the
9 operator to hear us or something like that. I didn't want
10 to take that chance so I just hung the phone or I didn't
11 call. I didn't want them to come in the room and say, Oh,
12 he trying to call somebody. Because it was quiet in the
13 room. And there could have been somebody on the phone
14 saying, Hello, hello. And if you hear that, there is no
15 telling what would have happened. I didn't have no help at
16 the time.

17 Q Tell me, the friend, that is, again, the first
18 you ever mentioned that you saw the friend, the last
19 friend that you called and you didn't try to call him or
20 her.

21 A When I saw that number my head was going a
22 thousand miles per hour, because I feel that I had a
23 chance. My friend, I just finished talking trash to him,
24 that is why his number still was up, one of the last
25 numbers that I called because we beat they team and I just

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 finished talking trash to him.

2 Q So, you went through the process of looking at
3 his number and saying, I'm not going to push that number?

4 A That was the easiest number first.

5 Q Actually you told the investigators that you
6 were able to start dialing 911 but could not push the last
7 one?

8 A If I'm not mistaken, I know that whatever I was
9 doing, it was with the police and it was either hang the
10 phone up or take a chance of them hearing that somebody
11 was going to be on the phone.

12 Q What I'm saying is you were actually able to
13 dial two numbers?

14 A Was I able to actually dial two numbers?

15 Q You told investigators that you were able to
16 push the nine and the one, but just could not push the
17 last one, you remember that?

18 A I could just remember trying to call the police
19 and either hanging up or I hung up before I did. But like
20 I say, my head is going a thousand miles an hour, I am
21 trying to get out of this situation. And I either hung up
22 before I even pushed it, but I know I pushed my friend's
23 number and then I was like, No, I'm calling the police.
24 So I probably did push nine and one and didn't push the
25 other one and probably just hang up.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 All I know I hung up because I didn't want
2 to -- if I push send or if I did push send they would hear
3 something. So all I know is I hung the phone up. My
4 decision was to either hung the phone up or push the button
5 and let them hear. When I heard the door open, that is when
6 I just made that decision. And everything was going through
7 my mind.

8 Q So you are saying now that you actually
9 connected with your friend?

10 A Huh?

11 Q You are saying now that you actually dialed the
12 number for your friend and hung up?

13 A No, I saw the number for my friend. I think I
14 was pushing numbers to dial, actually, and I saw that name
15 up first, started going down the list. I had my hands
16 behind my back so I'm not looking at my phone like this to
17 be able to get a good accurate, you know, to see who I was
18 going to call.

19 Q You dialed nine and one?

20 A Like I say, I don't remember. All I remember is
21 me either calling 911 and hanging up the phone, or I
22 didn't want them to hear me or hear them on the phone
23 saying, hello, hello, hello. So, I either had a choice to
24 let him hear them saying hello, hello, or hang up the
25 phone and hope that God get me out of the situation.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q I'm not trying to be difficult.

2 A I understand.

3 Q I am just trying to understand, did you actually
4 connect with the people on the other end?

5 A I can't remember, it was two and a half years
6 ago.

7 MS. JONES: Your Honor, Objection.

8 THE COURT: Overruled. Go ahead.

9 BY MS. GIBBES::

10 Q You are saying different things, and I will move
11 on from this but you were tied up behind your back and you
12 just demonstrated how you pushed the buttons on your phone
13 or how you looked through your phone, right?

14 A Yes, ma'am.

15 Q Okay. And so, at a certain point, even though
16 maybe you dialed 911 or you didn't, but you stopped?

17 A All I know is that I was shooked up at the time
18 and if anybody have a gun in their hand and they are
19 shooked up at the time and they see a free opportunity to
20 try to get out of this situation, you are going to try to
21 do it.

22 Q It just seems a little bit lack. You mentioned
23 that you had a rag in your mouth, correct?

24 A Yes.

25 Q It had some sort of chemical on it?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Yes.

2 Q You then also mentioned that you were able to
3 spit it out at some point?

4 A I spit it out the first time when I talked to
5 Tyron in the first room.

6 Q Okay. And it just doesn't seem like that belt
7 wasn't very tight if you were able to --

8 A It was one of those belts -- I wish I had the
9 belt, but it is one of those belts with the two loops on
10 there, it doesn't have holes in it, you can just tighten
11 it like that. The more you pull it the more tighter it
12 gets. It wasn't a belt with holes in it.

13 Q Okay. Let's talk about. All of a sudden things
14 change, right?

15 A Okay.

16 Q And you said that the demeanor of Tyron and
17 Varsheen changed at some point, right?

18 A Yes, ma'am.

19 Q And you are saying because police were there,
20 right?

21 A I mean, that is what I assume after, you know, I
22 mean, at the time when his demeanor change, I didn't know
23 the police was outside, I been trying to figure out why.
24 That was a big break. At that time I can't see the
25 police, I'm in the room. Him and Tyron doing the walking

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 back and forth outside. So, Tryone -- when he was in the
2 room with me, Tyron walked outside and when Tyron came
3 back he said, Let me holler. And when they both went out,
4 that is when I tried to do everything.

5 Q Okay. And let me back up. You said that you
6 saw some bags in the second room when you were leaving?

7 A Yeah, that room to the far -- yeah, if you are
8 coming down the hall, it is the first door on the left.
9 But when you are in the house, the first room that I went
10 into was the back room on the right. The second room I
11 went into was the room right across from that. And then
12 when we came back up, that is the room with the bags,
13 supposed to be Ver'mon's room.

14 Q Is that the third room?

15 A I'm so used to saying the third room, because
16 that is the third room that we talked about. After I went
17 in the first room, the second room, and that was the third
18 room. But if you want to call it, as in the house, that
19 is the first room you walk through on the left when you
20 are going through the hallway.

21 Q So, you are saying that those bags were in the
22 room that Ver'mon stayed in?

23 A Yes, I believe it was Ver'mon's.

24 Q Do you remember when you spoke to investigators
25 you actually --

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Told them that it was -- that he said that it
2 was his. Yes, I remember saying that because at the time
3 when those bags was in the room he was trying to talk to
4 me and do my head -- you know, throw me off a little bit.
5 I couldn't remember if he said that that was his bags or
6 Monte's bags, but all I know is that that situation was
7 about he ain't living there no more. Or, you know, Monte
8 tried to pretend like he wasn't staying there no more.

9 Q Okay. In your conversations with Monte, you
10 talking about eviction, to your knowledge, Varsheen didn't
11 know that Monte was trying to trick him into moving out;
12 right?

13 A You said that Varsheen didn't know that Monte
14 was trying to trick him?

15 Q Right.

16 A I mean, I don't know if he sniff out what
17 another person trying to do, I can't tell you that.

18 Q In your conversations with Monte --

19 A In my converstaions with Monte is that he feel
20 that he have to put a for rent sign to fake like he's
21 moving so he can get him out of his house. But, you know,
22 he feel like Monte should have came and talked to me like
23 a man. Monte didn't want him in his house, so he put a
24 for rent sign up and didn't come home for like a whole
25 week.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q Okay. Now, so at a certain point they just
2 changed their mind and decide to let you go, right?

3 A Yes, I figure they let me go when I walked
4 outside and realized that the police out there. Why would
5 you want to keep somebody if the police right there. They
6 don't know why the police there. They don't know if
7 somebody saw them stuffing me in the house. There could
8 have been somebody across the street watching them doing
9 what they did and call the police. They don't know. All
10 they know is they see the police now. But all I know is
11 when he came in the room I was happy when he said, Oh, you
12 are straight now and let the stuff go. That was a little
13 relief.

14 And when I walked outside that is the first
15 thing I saw was the police. That is the only thing that I
16 could think of. If I was still in that room, I don't know
17 what would have happened to me. At that time I was getting
18 threatened before Tyron came back in and knocked on the
19 door.

20 Q But when you walked outside you saw the police?

21 A Yes, ma'am.

22 Q You are now testifying today that Varsheen had a
23 gun in the pocket of his jacket, right?

24 A He had a gun the whole time.

25 Q Now, you just testified that it was a silver

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 gun, right?

2 A Yes.

3 Q Do you remember telling investigators that it
4 was a chrome gun?

5 A Silver, chrome. When you have got a gun at you
6 and you see a color like that you are not going to say,
7 Oh, is that gray. I know that it's that kind of color,
8 silver or chrome.

9 Q And what color was the jacket that he was
10 wearing?

11 A Black.

12 Q And the whole time that you were out there -- I
13 mean, you have mentioned this, but you didn't flag down
14 the police?

15 A I'm not about to get knocked off. What the
16 police going to do if he knock me off? Now you really
17 straight. Pow, then what, he right next to me. That is a
18 decision. It doesn't matter. A police can't be a super
19 hero at every little thing. He can pop me right when that
20 happened. The police in his car passing us by, once he
21 got in his car or once he started to leave.

22 Q Okay. Now, and it seems like Varsheen didn't
23 worry about the police if he had a gun?

24 A He sure didn't. That is why I didn't figure
25 nothing else happened.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q So the police is there, but he was standing
2 there holding you hostage?

3 A He was not holding me at the time. We was just
4 standing there. When I walk outside he was not holding me
5 no more.

6 Q You were free to leave?

7 A No, I wasn't free to leave either. He was
8 walking with me. He was walking with me out there. As
9 soon as I got on the porch. He said, See 12. I try to
10 play dumb like I don't know what 12 is. Yeah, it is right
11 there. I looked and that police car was sitting right
12 there.

13 Q Where are the neighbors in all of this?

14 A I can't tell you where the neighbors are. There
15 is an abandoned house next door. Now, there is people that
16 live across the street and there is a house on the right
17 side, but there's an abandoned house next door. That is
18 where my car was parked.

19 Q And you haven't mentioned this yet, but in your
20 statement to investigators you said you actually saw some
21 other people around, right?

22 A That person came late, he came walking around.
23 Okay, if you want to know about that, that is when he
24 tried to throw me off. And once that police left he went
25 around the corner, and that is when the talk was more of

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Monte, my friend, who I came to see. And that is where
2 the throw-off began. You hear that? Acorns dropping. I
3 said, I ain't hear nothing. And then I saw a phone light
4 and now you have an abandoned house, you have a blue house
5 right next to that abandoned house. I saw a big phone
6 light, like you could tell that somebody had it by their
7 ear or whatever and Varsheen was right here and the police
8 was around the corner. And when I saw that phone light he
9 said, You saw that shit. And I try to -- I fake that
10 stuff off, I said, No, I didn't see it because I thought
11 it was my friend hiding. I just told him that I didn't
12 see it. So then, after that, he walked over there with
13 the gun on the side of the house and started saying,
14 Monte, come out, come out, wherever you are, Monte come
15 out, like that, with the gun.

16 Q That is the first time that you have ever in
17 this whole investigation said that that happened, correct?

18 A I told it. I don't know if they probably didn't
19 record it the first time. But that is what happened. It
20 was a throw-off, but that had something to do with Monte's
21 case.

22 Q You spoke with the investigators one time,
23 correct?

24 A Yes, ma'am, the investigators.

25 Q They recorded the entire statement?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Okay.

2 Q What you just said you never said?

3 A Because so much happened, but that is what
4 happened too.

5 Q Okay. Now, let me ask you this: So you keep
6 talking about Varsheen asking, Where's Monte; right?

7 A Yes, ma'am.

8 Q He was actually trying to call Monte as well,
9 right?

10 A You said he's asking me, Where's Monte?

11 Q Right.

12 A No, I'm asking him where's Monte.

13 Q Well, you testified he was asking where Monte
14 was.

15 A No, he asked me that, one time. He said, no he
16 asked me, he said, When you see Monte, tell him to holler
17 at me.

18 Q Okay.

19 A He can't be asking me where Monte at, because
20 Monte was home. That would be crazy for him to ask me
21 when I know I just talked to Ver'mon on the -- I mean, I
22 just talked to Ver'mon on the phone and know that he
23 should be home because he was home. He knew that I was
24 coming there.

25 Q Okay. So, now you are telling me that Varsheen

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 also wasn't calling Monte at the same time when you first
2 come up, right?

3 A Calling him at the same time?

4 Q Right.

5 A When I first came up, he asked me if I talked to
6 Monte. Remember I say he asked me if I talk to Monte, and
7 I told him yes. I thought that he was trying to play me
8 like I had to talk to my homeboy just to come to his
9 house.

10 Q I'm asking about, did you see Varsheen on the
11 phone calling Monte because he was looking for him?

12 A No, I ain't seen nothing, I never seen nothing
13 like that.

14 Q Just like you don't remember seeing the police
15 when you first got there?

16 A No.

17 Q Okay. Now, and then at that point after
18 Varsheen had talked to his buddy, you walked around the
19 corner; right?

20 A Who walked around the corner? I didn't say I
21 walked around the corner.

22 Q You are talking about the guy who showed up who
23 came around the corner.

24 A Yeah, he came from around the corner.

25 Q And that was Taquan?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Yes, ma'am.

2 Q That is who I am talking about.

3 A Okay.

4 Q He was talking to Taquan, right?

5 A Yes.

6 Q And you are just standing there?

7 A When Taquan came around the corner and I guess
8 he try to act like he didn't know what was going on. What
9 up, Drae, he dabbed me and he walked passed me. Tyron was
10 right there. He, him and Twiz had a little argument, I
11 don't know what he was arguing about or whatever, and him
12 and Varsheen had a little argument and I don't know if
13 they were arguing or fussing or faking or whatever, but
14 they had a little argument. And everybody right here. I
15 wasn't free to go until he tell me to leave.

16 Q Even though you are getting dabbed up and
17 everything like that?

18 A Tyron tried -- I mean, Taquan tried to pretend
19 like he didn't know what was going on. I wouldn't say
20 that he did know what was going on because I didn't see
21 him at the time that all of this happened.

22 Q So, you told investigators you were there -- the
23 total time that you were there was about 30 minutes,
24 right?

25 A When you have got a gun to your head time is

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 different. It could have been about 30 minutes, but it
2 felt like an hour. But it wasn't an hour.

3 Q What I'm trying to get it is how long -- I mean,
4 after you left the house and you were hanging out front
5 with the police you were there, what, 15 minutes out
6 there?

7 A After the police left.

8 Q I am talking about, when you walked out there
9 and you saw the police and everybody was outside with you,
10 including Taquan?

11 A No, Taquan was not there when the police was
12 there, he came after the police left.

13 Q Okay. So, you were there long enough for
14 somebody else to come and hang out and --

15 A I couldn't go nowhere. I couldn't go nowhere
16 right there, right then he was still talking trash and
17 stuff. I just couldn't go. He didn't just let me go and
18 say, Go ahead and leave. What he did was put on a front
19 and starting saying things about -- you know, he started
20 talking about Monte and stuff like that, you know, trying
21 to cover whatever he had up.

22 Q Okay. But --

23 A And he tell me to tell Monte to holler at him
24 like a real man when I see him, if I see him.

25 Q So, probably, estimate, y'all were in front of

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 the house, what, 20 minutes?

2 A No, I don't think that I was in there that long
3 either, I'm not sure. But I don't remember it being that
4 long.

5 Q Okay.

6 A I was just trying to do whatever I could to get
7 the heck out of there.

8 Q Your car was right there, right?

9 A Yes, ma'am.

10 Q So eventually you got in your car, right?

11 A Yes, ma'am.

12 Q You got in there, and you didn't immediately
13 drive off, you immediately got on your phone, right?

14 A I remember, I remember, if I'm not mistaken I
15 remember trying to call Monte or whatever. And that was
16 what I was doing all night, trying to get in touch with
17 him. His phone was ringing, it was not going to voice
18 mail. But when he told me that he thought Monte was going
19 to shoot him and he ran, I figured Monte ran and the
20 reason why he was not answering his phone is because I
21 figure if he ran he may have dropped his phone or
22 something and went to one of his girlfriend's house.

23 Q And do you remember when you went and spoke to
24 investigators you showed them -- you showed investigators
25 your cell phone showing the text that you sent Monte to

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 who?

2 Q To Monte.

3 A Yes.

4 Q And that was sent at 8:26 p.m.?

5 A It was so long, I mean, I guess, whatever they

6 asked I --

7 Q Okay. So you agree it was 8:26, it was 8:26

8 p.m.?

9 A 8:26?

10 Q Yeah.

11 A I know that I was calling him a bunch of times.

12 I know that I called him when I left there too.

13 Q Okay. And you also remember investigators

14 questioned you about the timing because it didn't really

15 match up to what the police reported?

16 A Yes, we found out --

17 Q So you basically changed your story and you

18 said -- you said you must have called him from when you

19 were in the house; do you remember that?

20 A I just couldn't remember when I called. But I

21 know I was just trying to call people to help period.

22 Q While you were tied up you were trying to call

23 everybody?

24 A No, no. When I was tied up the only person that

25 I tried to call was the last person that I called and the

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 police. And it just didn't go through or whatever that
2 situation was. All I know is that I hung the phone up
3 because I didn't want the worst to happen.

4 Q Okay. When the investigators confronted you you
5 said that you must have sent Monte a text while you were
6 in the house as well, right?

7 A All I remember -- when your head is going a
8 thousand miles an hour and you are trying to get out you
9 are trying to do all sorts of stuff just to get up out of
10 this situation. I never had a gun hold to my head before.
11 I was never chopped with a gun. I'm not used to that.

12 So, when you can't think because of all of
13 this stuff happening to you you don't even got time to pray,
14 you are just thinking, Am I going to get out of here or
15 what. I was looking at this wooden floor like I was just
16 happy because of the game, now look at happy turn to this in
17 a matter of seconds.

18 My head is going a thousand miles an hour.
19 You can't imagine being in a position with a gun to your
20 head or a gun in the back of your head waiting for a pop to
21 go off. That is a not a cool situation. So, my head going
22 a thousand miles per hour. Just believe me, I was trying to
23 get out of there.

24 Q I am not saying that I don't believe you. But I
25 also will say that you did not tell investigators that

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 there was a gun to your head?

2 A At what point?

3 Q When you spoke to investigators --

4 A In the house?

5 Q -- you didn't mention that there was a gun to
6 your head.

7 A In the house?

8 Q When you spoke to investigators. When you told
9 them --

10 A I did told them. He had a gun in the back of my
11 head. He chopped me with the gun in the back of my head
12 also.

13 Q I am not trying to insult you, I'm trying to get
14 logistics.

15 A I understand you are doing your job.

16 Q You know, it just --

17 A It is getting to me, but it's all good. You are
18 doing your job.

19 Q It is just your story has changed. I understand
20 your feelings, but first you tell investigators that you
21 texted Monte from your car. They told you that that
22 couldn't work, right, because of the time?

23 A You say I told them that I text him from my car?

24 Q You texted Monte at 8:26 and you showed
25 investigators that text.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A You are confusing me. Hold on, hold on. You
2 say I told them that I text Monte from my car?

3 Q Yes, you told them --

4 A I text Monte all night.

5 Q I'm just talking about, when you left the house
6 you got in your car. When you spoke to Investigator
7 Ritter (phonetic) you told him that you sent Monte a text
8 at 8:26 p.m. from your car, right?

9 A I probably did.

10 Q Then you were told by investigators, that time
11 doesn't match when police would have been out there, so
12 are you sure that that is when you texted Monte from your
13 car? Right, do you remember them questioning your timing?

14 A Yes, I remember that.

15 Q Okay. So then you told them you must have --
16 you texted Monte from in the house?

17 A It could have been possible.

18 Q Okay.

19 A It could have been possible. What did the text
20 say? That is what the thing is. What did the text say?
21 Monte, what are you? Where you at?

22 Q Right.

23 A That is for help. That is not for no other
24 Monte reason, so if I knew where Monte was at I wouldn't
25 be texting him.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q There's a difference between "where you at" and
2 "help," I'm putting that out there; all right?

3 A Okay.

4 Q Now, while you are there you didn't hear any gun
5 shots, right?

6 A No, ma'am.

7 Q And again, when you left you didn't call 911?

8 A Not right off, no.

9 Q Okay.

10 A I raised my son from three years old and he
11 lives with me and at that time my daughter was staying
12 with me too, so at that time I really had to think what I
13 was doing. I didn't want to put my kids in a situation,
14 when you have cobbbers (phonetic) running in the woods and
15 doing crazy stuff. I have kids that I am raising, I have
16 a job, I have good things going on for me that I didn't
17 want to sink, but sometimes when a person really got to do
18 what they got to do, they got to do what they got to do,
19 you get tired of it.

20 Q Okay, I am just asking.

21 A Right.

22 Q So, you then -- now, on the way home you passed
23 by a police station, right, and you didn't stop there?

24 A No, I went straight home.

25 Q You didn't get any sort of medical treatment to

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 make sure that you were not hurt?

2 A Trust me, my adrenalin was so high when he
3 chopped me with that gun it felt like he didn't even touch
4 me.

5 Q Now, okay, so you went home and got up and went
6 to work the next day, right?

7 A Yeah. Actually, I had been up all night trying
8 to get in touch with Monte. And I don't know, I probably
9 nodded off like a few minutes and then got up and went to
10 the job. I passed by his house that morning and I was
11 kind of afraid to go in the yard. But I went to the job
12 because the job was not too far away from his house. When
13 I got to work I told my cousin what happened, one of my
14 older cousins, and he felt that when I told him that story
15 he felt me that something wasn't right and he said I need
16 to go find my boy.

17 Q You mentioned talking to him, it seems like you
18 told the story to a few people before you actually got to
19 the police, right?

20 A I told Pete Singleton was the first person I
21 told, and I told my cousin when we got to the job. He is
22 my big cousin so . . .

23 Q You also told Ms. Steve?

24 A Yes, I told her too.

25 Q You actually told her that you escaped by

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 jumping out of the window, do you remember that?

2 A I don't remember telling her that.

3 Q Okay.

4 A I mean, at the time when she hear something like
5 that, that could probably, you know, her adrenalin going
6 up, things going through her head too. That is her child.

7 Q You told her that you reported it to the police,
8 so you told Ms. Steve that you jumped out of the window?

9 A No, I don't remember saying that.

10 Q Okay.

11 A Because that didn't happen. I couldn't, if I
12 wanted to, with the belt tied up behind my back.

13 Q Can you figure out how Ms. Steve would get that
14 idea?

15 A That is her son. I mean, when -- I'm telling
16 her I don't know, you know, I didn't see Monte. And
17 telling her what happened to me is the only thing that I
18 could tell her. I couldn't tell her nothing what happened
19 to him because I didn't see him when I got there.

20 Q Okay.

21 A And that is her son, so I mean, a mother -- I
22 was scared to even tell her. Because I was trying to find
23 Monte and do the things that I have to do myself because
24 he just told me like a few weeks before that even happened
25 that his moms had something going on with her heart, so I

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 didn't want to come at her like that if I wasn't sure I
2 was going to see Monte. We wanted to make sure that we
3 didn't give her no false statement before we go to her
4 with that.

5 Q So, you are saying what you told her was the
6 truth so she could report it to the police, right?

7 A Yes.

8 Q Okay.

9 A I couldn't tell her nothing about Monte because
10 I didn't see him when I got to the house.

11 Q Okay. So you told her that you jumped out of
12 the window and she reported it to the police, right?

13 A I don't remember saying that.

14 Q All right. And you also tell her not to call
15 the police, right?

16 A Huh?

17 Q You told her not to call the police because you
18 didn't want to be involved?

19 A No, I don't remember telling her not to call the
20 police. I called her and it wasn't really too much more
21 to talk about for me to tell her -- I ain't telling a
22 mother not to call the police. I just tell her what
23 happened to me and the situation, could be something wrong
24 with her son. That would not be right for me --

25 Q Maybe you didn't tell her not to, but you told

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 her that you didn't want to call the police; is that
2 right?

3 A At that time I was trying to find him because
4 when Twiz told me that he ran and he thought that I was
5 going to shoot him, I never thought nothing happened to
6 him because that is what he be doing. And at that time
7 Monte got several girlfriends, he could have ran and
8 dropped his phone. The only thing that I didn't really
9 thought nothing really bad happened to him because the
10 phone rang all night through to the next day.

11 Q I'm just asking you what you told Ms. Steve, you
12 know. I get it, obviously you want to protect her
13 feelings, it is a traumatic time because you are looking
14 for her son, but you did not want to be involved in this
15 investigation, correct?

16 A No, I didn't never say that. I just wanted to
17 be careful about what I'm doing becuae I have kids, I
18 don't need nobody come looking for me or doing no crazy
19 stuff when I have kids that I'm raising by myself.

20 Q And you also talked to Shabondaa Milledge about
21 this, right?

22 A Yes, I had to get her cousin name. I knew him,
23 but I had to get his name and I picked his name out of the
24 photo lineup.

25 Q Now, Shabonda, you used to date Shabonda; right?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Yes, ma'am.

2 Q And then Varsheen started talking to her, right?

3 A Yes, ma'am.

4 Q It seems like y'all overlapped a little bit in
5 y'all's relationship; is that right?

6 A You mean Shabonda?

7 Q Yes.

8 A I mean, at that time that he started talking to
9 her our relationship was over a whole year before that. I
10 had already moved and been in my own place.

11 Q Well, it seems like there was a time that she
12 was talking to both of y'all?

13 A Then she was playing that game and she did it
14 good, I don't know.

15 Q Now, when you went to speak to the police you
16 actually called Shabonda on the speaker phone while you
17 were in there, right?

18 A Yes, ma'am.

19 Q And you wanted to get the name of her cousin?

20 A Yes, ma'am.

21 Q Now, you dated her so you were at her house a
22 lot, right?

23 A Ma'am?

24 Q You dated Shabonda so you were at her house a
25 lot, right?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Not at this time. Shabonda, I been done left
2 her alone.

3 Q No, no, I am talking about when you were with
4 her you were at her house?

5 A Oh, when I was with her before the incident?

6 Q Yeah.

7 A Yeah, like a year before the incident.

8 Q Now, but you didn't know her cousin's name?

9 A Huh?

10 Q You didn't know her cousin's name?

11 A I remember him because one day she was like,
12 Dra, can my cousin spend the night because him and his
13 mama are doing through some difficulties. And I was like,
14 Sure. So he spent the night to the house. So, that is
15 how I even got to know who he even was.

16 Q Okay. Now, you went, backing up, you have been
17 to Ver'mon Steve's house a lot, right?

18 A No, not a lot. Not since he started coming over
19 there, because me and him didn't get along. When he
20 started coming over there I wasn't there that long because
21 Monte just got the house. I don't think he stayed there a
22 month.

23 Q Well, you mentioned that in the whole fake
24 eviction, Monte had actually left the house for a week
25 prior to this, right?

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 A Yes, he wasn't home.

2 Q So, on this day it just so happened everybody
3 was coming to hang out at this house, even though he had
4 been gone for a whole week?

5 A To be honest with you, I was surprised of that
6 too becuae Ver'mon had two jobs and I had a job and we
7 only hang when we have free time. And I even worked that
8 Sunday but I got off at 2 -- I don't think I got off
9 before 3:00 so when I left work -- well, he called me
10 early while I was at work that day and asked what's up,
11 what we was going. So, we was just going to chill that
12 day or whatever. Me and Petey pretty much had the plan to
13 go to Buffalo Wild Wings, so you know, like I said, Monte
14 was at Wal-Mart and we told him we will probably go to
15 Buffalo Wild Wings to watch the game. And when he left
16 Wal-Mart that is where we met him.

17 Q Okay. Now, the investigators asked you about
18 the drugs, right? Do you remember that?

19 A Drugs?

20 Q Drugs.

21 A I don't recall.

22 Q You don't sell drugs?

23 A No.

24 Q You don't use drugs?

25 A No.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 Q So it would surprise you if it was recorded in
2 the investigation that you did sell drugs?

3 A I don't believe that I even have a drug charge.
4 I only got a ticket.

5 Q Now, tell me about Jazz. You mentioned somebody
6 named Jazz in your interview.

7 A Jazz?

8 Q Jazz.

9 A That is my cousin.

10 Q Is she one of Monte's girlfriends?

11 A Oh, the girl Jazz. I have got a cousin named
12 Jazz too. Yes, Jazz is the girl that Monte was dating,
13 one of the girls that he was dating at the time.

14 Q You actually spoke to her that night, right?

15 A Jazz?

16 Q Jazz.

17 A The same night all of that happened?

18 Q Yes.

19 A No, I don't remember. If I did, if I did I was
20 calling to see if she had seen Monte or something.

21 Q You don't remember talking to her about
22 arranging to meet Monte at his house that night?

23 A Who me?

24 Q Yes.

25 A I think that she was supposed to had came there

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 too.

2 Q Right, that night.

3 A Yes, I think she was supposed to come. I know
4 she was saying something about, Oh, I -- she was going to
5 come over or something, she had friends over there.

6 MS. JONES: Objection, Your Honor, this is
7 hearsay.

8 MS. GIBBES: Your Honor, I don't even know what
9 she said, but I just wanted to establish that there
10 were other people at this house than he previously
11 testified to that night, including this Jazz.

12 THE WITNESS: I know she was supposed to --

13 THE COURT: Hold on one second. The objection
14 is that you are interjecting into the answer what
15 other people told you. I sustained the objection.
16 In other words, you can't say what these other people
17 said to you. Does that make sense?

18 THE WITNESS: I can't kind of understand. I was
19 just trying to answer the question that she asked. I
20 didn't know no other way to say it.

21 THE COURT: That's okay. Good.

22 BY MS. GIBBES:

23 Q So, Jazz came by that night at some point?

24 A I don't think that he ever made it to see her.

25 MS. GIBBES: Beg the Court's indulgence.

CROSS EXAMINATION OF A. FRAZIER BY MS. GIBBES

1 (Pause.)

2 THE COURT: About ready to wrap it up?

3 MS. GIBBES: Yes, Your Honor.

4 BY MS. GIBBES:

5 Q And do you remember telling, when you spoke to
6 Shabonda, do you remember telling her how you escaped?

7 A I don't think me and her talked about -- I don't
8 remember us talking about that.

9 Q Okay. You didn't have that conversation?

10 A The only thing that I was saying is that the
11 police saved my life and he didn't even know it.

12 MS. GIBBES: Okay. I have no further questions.

13 MS. JONES: No redirect, Your Honor.

14 THE COURT: Thank you, sir. You may step down.

15 THE BAILIFF: Watch your step.

16 THE COURT: Time to break for the evening. 9:30
17 tomorrow morning. Are there going to be any problem
18 with you being here tomorrow morning? I have an
19 order from Columbia that says that she will be with
20 us.

21 I need to tell you a couple of things before you
22 leave. I told you before, don't discuss the case or
23 let anybody discuss the case with you. Also, don't
24 talk to your family, friends, and loved ones about
25 these kinds of cases, even if you aren't talking

RELEASING THE JURY FOR THE DAY

1 specifically about this case. Don't do any Internet
2 research about this case or about cases like this, or
3 about people involved in this case or issues involved
4 in this case. And finally, when you get back in the
5 morning, I would like you to, before you come out, if
6 you could, select a foreperson to represent the jury.
7 If you can't, that's fine. I don't want y'all to get
8 in a fuss or fight about who ought to serve as a
9 foreperson. I can pick somebody.

10 Anybody have any problems or anything that we
11 need to take care of? Ladies and gentlemen, see you
12 tomorrow morning at 9:30.

13 THE BAILIFF: Follow me.

14 (The jury exits the courtroom at 5:17 p.m.)

15 THE COURT: The only thing that they were
16 worried about is whether we were going to have a
17 court reporter tomorrow.

18 Anything that we need to take care of?

19 MS. JONES: Nothing from the State, Your Honor.

20 MS. GIBBES: Nothing, Your Honor.

21 THE COURT: Court is adjourned until 9:30
22 tomorrow morning.

23 MS. JONES: Thank you.

24 * * *

25

2-22-2018 PROCEEDINGS

1 (The following proceedings were held on the 22nd of
2 February, 2018)

3 THE COURT: All right. All jurors are present.
4 Is the State ready for the jury?

5 MS. JONES: The State is ready, Your Honor.

6 MS. GIBBES: Yes, Your Honor.

7 THE COURT: Get the jury.

8 (Off-the-record discussion held.)

9 THE COURT: The bailiff indicates that we have
10 another issue with our jury. Two jurors had
11 expressed to the bailiff that they cannot stay after
12 5:30 today. For planning purposes, I thought that I
13 would let you know.

14 MS. JONES: Okay, thank you.

15 THE COURT: The jury has selected a foreperson
16 and we believe that it'll be Marisol Hunt, Juror 172.
17 Very wise decision that the jury has made in this
18 case. And I believe that we are ready to resume the
19 presentation of the evidence by the State.
20 Solicitor.

21 MS. JONES: Thank you, Your Honor. The State
22 calls Pete Singleton.

23 Thereupon,

24 PETE SINGLETON

25 was called as a witness, having been first duly sworn,

DIRECT EXAMINATION OF P. SINGLETON BY MS. JONES

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. JONES:

4 Q Good morning, Mr. Singleton. You have to speak
5 up. This lady, Ms. Mona, has to take down everything that
6 you say. All right?

7 A Okay.

8 Q Mr. Singleton, where do you live?

9 A I live in Beaufort.

10 Q Have you lived in Beaufort your whole life?

11 A Yes.

12 Q Did you know a man named Ver'mon Steve?

13 A Yes.

14 Q Where did you know him from?

15 A From around the neighborhood.

16 Q How long were you friends?

17 A All of my life.

18 Q Do you know someone named Andre Frazier?

19 A I know Andre.

20 Q How do you know Andre?

21 A From around the neighborhood. His mom and my
22 aunt were best friends.

23 Q When was the last time you saw Ver'mon?

24 A October 25th, Buffalo Wild Wings.

25 Q Was that 2015?

DIRECT EXAMINATION OF P. SINGLETON BY MS. JONES

- 1 A Yes.
- 2 Q And who were you at Buffalo Wild Wings with?
- 3 A Monte and Andre.
- 4 Q That would be Ver'mon Steven and Andre Frazier?
- 5 A Right.
- 6 Q What were y'all doing there?
- 7 A Watching the football game.
- 8 Q Who was playing that night?
- 9 A Dallas and the Giants.
- 10 Q Who were you pulling for?
- 11 A Dallas.
- 12 Q Did they win?
- 13 A Nope.
- 14 Q Who was -- who was Andre pulling for?
- 15 A The Giants.
- 16 Q And they won?
- 17 A Yes.
- 18 Q So, he had a good night?
- 19 A Yeah.
- 20 Q Did Monte stay at Buffalo Wild Wings all night?
- 21 A No, he stayed for maybe 15, 10 minutes.
- 22 Q Where did he go after that?
- 23 A He said that he was going to his house.
- 24 Q Okay. The jury is having trouble hearing you,
- 25 speak up.

DIRECT EXAMINATION OF P. SINGLETON BY MS. JONES

- 1 A Say he was going to his house.
- 2 Q Okay. And where did he live?
- 3 A Greene Street, Beaufort.
- 4 Q. Did he have a roommate?
- 5 A No.
- 6 Q Okay. Was someone staying with him?
- 7 A No.
- 8 Q You just don't know?
- 9 A No.
- 10 Q Okay. After Buffalo Wild Wings, where did you
- 11 go?
- 12 A I went home to go eat because my wife had
- 13 cooked. And that is where I went.
- 14 Q Where did Andre go?
- 15 A He went to Monte's house.
- 16 THE COURT: Let's me interrupt one more time.
- 17 Let's try something. What is your last name?
- 18 THE WITNESS: Singleton.
- 19 THE COURT: Say it louder.
- 20 THE WITNESS: Singleton.
- 21 THE COURT: Say it louder.
- 22 THE WITNESS: Singleton.
- 23 THE COURT: One more time.
- 24 THE WITNESS: Singleton.
- 25 THE COURT: Okay. Try to keep it up at that

DIRECT EXAMINATION OF P. SINGLETON BY MS. JONES

- 1 level because the jurors can't hear you.
- 2 THE WITNESS: All right.
- 3 Q Let's go back a little bit in case they didn't
4 hear you.
- 5 A All right.
- 6 Q You testified that you were at Buffalo Wild
7 Wings?
- 8 A Right.
- 9 Q With Andre and Monte?
- 10 A Correct.
- 11 Q Monte didn't stay there the whole game?
- 12 A No, he stayed maybe 15 minutes.
- 13 Q Okay. After the game, where did Andre go?
- 14 A He went to Monte's house.
- 15 Q Where did you go?
- 16 A I went home.
- 17 Q Did you ever talk to Monte again after that?
- 18 A No.
- 19 Q How about Dre?
- 20 A Yeah, he called and he talked to him. He called
21 him to let him know that he was on the away down there.
- 22 Q Down where?
- 23 A To his house.
- 24 Q To Monte's house?
- 25 A Correct.

DIRECT EXAMINATION OF P. SINGLETON BY MS. JONES

1 Q All right. Did you talk to him again after
2 that?

3 A No.

4 Q All right. How about the next day?

5 A No.

6 Q Did you ever try to find Monte?

7 A Yes.

8 Q How did you go about doing that?

9 A We stopped by a couple of friends' house.

10 Q Who is "we"?

11 A Me and Dre.

12 Q Okay.

13 A And we stopped by a couple of friends' house,
14 rode around the neighborhood, couldn't find him.

15 Q Okay. When was this; was this the day after?

16 A Yes.

17 Q And you never saw Monte again?

18 A Nope.

19 Q Did you tell Andre to call somebody?

20 A His mother.

21 Q Whose mother?

22 A Monte's mother.

23 Q Okay. And did he do that?

24 A Excuse me?

25 Q Did he call --

DIRECT EXAMINATION OF P. SINGLETON BY MS. JONES

1 MS. GIBBES: Your Honor, I would object to
2 speculation.

3 BY MS. JONES:

4 Q In your presence did he call Ms. Steve?

5 A Yes.

6 THE COURT: Overruled.

7 MS. JONES: Okay. Mr. Singleton, I have no
8 further questions for you. If you could answer any
9 that Ms. Gibbs may have for you.

10 THE WITNESS: Yes, ma'am.

11 CROSS EXAMINATION

12 BY MS. GIBBES:

13 Q And just to be clear, Andre did not call you the
14 next day?

15 A Excuse me?

16 Q After Buffalo Wild Wings, Andre did not call you
17 the next day; correct?

18 A Yes, he did call me.

19 Q He did call you?

20 A Yes, he did.

21 Q You just said that you didn't talk to Andre the
22 next day?

23 A Excuse me?

24 Q You just testified that you did not talk to
25 Andre the next day.

CROSS EXAMINATION OF P. SINGLETON BY MS. GIBBES

1 A I did talk to Andre the next day.

2 Q Okay. So you are changing your testimony?

3 A No, I'm not changing my testimony.

4 MS. GIBBES: No further questions.

5 THE COURT: Thank you, sir. You may step down.

6 And you may call your next witness.

7 MS. JONES: May Mr. Singleton stay in the
8 courtroom if he so desires?

9 MS. GIBBES: No objection.

10 THE COURT: Certainly.

11 MS. JONES: The State calls Paul Patel.

12 Thereupon,

13 " PAUL PATEL

14 was called as a witness, having been first duly sworn,

15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. JONES:

18 Q Good morning, Mr. Patel.

19 A Yes.

20 Q I see that you have a Shell station shirt on?

21 A Yes.

22 Q Is that where you work?

23 A Yes.

24 Q Do you actually own it?

25 A Yes.

DIRECT EXAMINATION OF P. PATEL BY MS. JONES

- 1 Q And where is that? Is that here in Beaufort?
- 2 A Beaufort, South Carolina, yes.
- 3 Q Is that where all of the construction is going
- 4 on?
- 5 A Yes.
- 6 Q How long have you owned and worked at that Shell
- 7 station?
- 8 A Eight plus years.
- 9 Q Do y'all have a video recording system in place?
- 10 A Yes.
- 11 Q And how does that the work?
- 12 A It just -- I have got cameras all over the
- 13 property and it records. And then I have got the screen,
- 14 the DVD player and all of that.
- 15 Q Okay. And it records real time what is
- 16 happening?
- 17 A Yes.
- 18 Q Is there audio?
- 19 A Audio, no.
- 20 Q No audio, just video?
- 21 A Yes.
- 22 Q And as far you know, on October, 25th, 2015,
- 23 were those cameras working?
- 24 A Yes, ma'am.
- 25 Q And were you asked to pull some footage for the

DIRECT EXAMINATION OF P. PATEL BY MS. JONES

1 case that we are here for today?

2 A Yes.

3 Q And did you in fact do so?

4 A Yes.

5 Q Okay.

6 MS. JONES: Permission to approach, Your Honor?

7 THE COURT: Certainly.

8 MS. JONES: Thank you.

9 BY MS. JONES:

10 Q Mr. Patel, I am going to show you what's marked
11 as State's Exhibit N.

12 A OKay.

13 Q Can you identify that disc?

14 A Yes, that is from our gas station. I have got
15 my initials on it.

16 Q Okay. And those are your initials on it?

17 A Yes.

18 Q And did you review this disc?

19 A Yes.

20 Q And that is a fair and accurate copy of the
21 recording from your gas station?

22 A Yes.

23 MS. JONES: Your Honor, at this time the State
24 moves State's 5 into evidence.

25 MS. GIBBES: Without objection.

DIRECT EXAMINATION OF P. PATEL BY MS. JONES

1 THE COURT: Granted.

2 *(Whereupon, State's Exhibit No(s). 5 marked for*
3 *identification and received in evidence.)*

4 MS. JONES: And permission to publish?

5 THE COURT: Granted.

6 BY MS. JONES:

7 Q And that is outside of your gas station?

8 A Yep. Yes.

9 Q And is that a time stamp on the bottom with the
10 date and time?

11 A Yes.

12 Q Thank you.

13 A You are welcome.

14 Q Those are just multiple camera views?

15 A (Nods in the affirmative).

16 Q That is the same front view?

17 A Yes.

18 Q It appears to be a few minutes later?

19 A Yes.

20 Q Thank you. That is the same view, again, just a
21 few minutes later?

22 A Yes.

23 MS. JONES: Thank you. I have no further
24 questions.

25 MS. GIBBES: I have no questions.

DIRECT EXAMINATION OF P. PATEL BY MS. JONES

1 MS. JONES: May he be excused from his subpoena?

2 THE COURT: Yes. Have a great day. Thank you.

3 Thereupon,

4 DARRELL GRUEL

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. JONES:

9 Q Good morning, Captain Gruel. Where do you now
10 work?

11 A I work for Beaufort Police Department.

12 Q And what capacity do you work for with the
13 police department?

14 A Currently I am captain in charge and oversee the
15 patrol division and investigation.

16 Q Okay. How long have you been with the police
17 department?

18 A Twenty-seven years.

19 Q So, you were there back on October 25th, 2015?

20 A Yes, at that time I was a lieutenant overseeing
21 the investigations.

22 Q Did you assist in the investigation of the case
23 we are here for today?

24 A Yes, I did.

25 Q And did you have the opportunity to interview

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

- 1 this man, Varsheen Smith?
- 2 A Yes, I did.
- 3 Q Was that on or about November 17th, 2015?
- 4 A That's correct.
- 5 Q Where was that interview?
- 6 A We did that at the Beaufort Police Department.
- 7 Q And was that recorded?
- 8 A Yes.
- 9 Q And who was present in that interview?
- 10 A I myself, Investigator Erdel, and obviously
- 11 Mr. Smith.
- 12 Q Okay. Prior to speaking with Mr. Smith, was he
- 13 threatened?
- 14 A No.
- 15 Q Did you promise him anything?
- 16 A No.
- 17 Q Did you coerce him into speaking with you?
- 18 A Not at all.
- 19 Q Did he voluntarily speak with you?
- 20 A Yes.
- 21 Q And he, in fact, did speak with you?
- 22 A Correct.
- 23 Q Did you read Mr. Smith his Miranda rights?
- 24 A He was given Miranda rights by Investigator
- 25 Erdel while I was in the room.

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

1 Q Okay. And what are Miranda rights?

2 A Oh, it is basically the -- well, it is the
3 warnings against self-incrimination and to alert a person
4 being interviewed that they have the right to an attorney,
5 that they have the right to remain silent, and that they
6 can terminate the interview if they choose to at any time
7 or they can choose not to speak at all or whatever.

8 Q Okay. And Mr. Smith was advised of these?

9 A Yes.

10 Q I'm going to show you State's 6. What is that?

11 A The Miranda Rights form that we use at the
12 police department this is the one that we filled out with
13 Mr. Smith on that November date.

14 Q Okay. What does that rights form say?

15 A Well, verbatim. It says, "Before we ask you any
16 questions you must understand your rights. The first
17 thing is you have a right to remain silent. Anything you
18 say can and will be used against you in a court of law.
19 You have the right to talk with an attorney and have them
20 present with you while you are being questioned. If you
21 cannot afford to hire an attorney one will be appointed to
22 represent you before any questions, if you wish.

23 And, lastly, you can decide at any time to
24 exercise these rights and not answer any questions or make
25 any statements. And then we also have a place on here for

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

1 the person being interviewed to let us know how high of an
2 education they have, and in that particular place it was
3 stated that the eleventh grade was the highest grade that he
4 completed in school.

5 There's a spot on here for the person to
6 acknowledge and initial that he's read his rights and that
7 he understands them. If he can't read, there's a spot on
8 here that says that, I can't read but the rights have been
9 read to me and I understand them.

10 And there is the following where it says, I'm
11 willing to make a statement and answer questions. I do not
12 want an attorney at this time. I understand and know what I
13 am doing. No promises, threats, pressure, or coercion of
14 any kind have been used against me.

15 And we have them initial by each one of those
16 rights as we read them so they understand each individual
17 right and we ask them if you understand each individual
18 right if they would initial to the side, initial the
19 appropriate one stating that they have read their rights and
20 they understand them and that they are willing to talk.

21 Q And -- my apologies.

22 A That is all right. And then they sign it.

23 Q And that is the actual -- well, that is a copy
24 of the actual one that Mr. Smith signed that day?

25 A Correct.

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

1 MS. JONES: Your Honor, at this time the State
2 move's State's 6 into evidence.

3 MS. GIBBES: No objection.

4 THE COURT: Motion granted.

5 MS. JONES: Thank you.

6 *(Whereupon, State's Exhibit No(s). 6 marked for*
7 *identification and received in evidence.)*

8 BY MS. JONES:

9 Q And those are Mr. Smith's initials?

10 A Yes.

11 Q Indicating that he understood his rights?

12 A That's correct.

13 Q Did he, in fact, waive these rights?

14 A He did.

15 Q At any time did he appear to not understand what
16 these rights were?

17 A No.

18 Q At any time was he unintelligible when speaking
19 with you?

20 A Nope.

21 Q And you did speak with him?

22 A Yes, we did.

23 Q Okay. And I asked -- that interview was
24 recorded?

25 A Correct, audio and video.

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

1 Q Okay.

2 MS. JONES: Permission to approach, Your Honor.

3 THE COURT: Yes.

4 BY MS. JONES:

5 Q Captain Gruel, I'm showing you what's been
6 marked as State's Exhibit 1. What is that?

7 A This is a copy of the audio/video recording of
8 our interview with Mr. Smith on that day.

9 Q Okay. And is that a fair and accurate copy of
10 that interview?

11 A Yes, it is.

12 Q Did you mark on that interview that you reviewed
13 it prior to trial?

14 A I did.

15 Q Are those your initials on it?

16 A That is my initials, yes.

17 MS. JONES: Your Honor, at this time the State
18 moves State's Exhibit 1 into evidence.

19 MS. GIBBES: Without objection.

20 THE COURT: Motion is granted.

21 MS. JONES: And permission to publish?

22 THE COURT: Certainly.

23 *(Whereupon, State's Exhibit No(s). 1 marked for*
24 *identification and received in evidence.)*

25 THE COURT: Let me interrupt the jury just one

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

1 minute. If you are closer here it may be too
2 difficult for you to look up. If you wish to, you
3 may move to the back row. This is going to be a
4 while.

5 (Video began playing at 10:05 a.m.)

6 BY MS. JONES:

7 Q In that interview, You mentioned to Varsheen,
8 Nobody would have reported; why did you say that?

9 A It is kind of common in our line of work.

10 MS. GIBBES: Speculation, Your Honor.

11 MS. JONES: PErsonal experience in law
12 enforcement, I think that he can testify to that.

13 THE COURT: I'm not sure that that question is
14 supported by the evidence.

15 MS. JONES: Could we have a sidebar, Your Honor?

16 THE COURT: On this side.

17 (Off-the-record discussion held.).

18 THE COURT: I will overrule the objection.

19 MS. GIBBES: Thank you, Judge.

20 MS. JONES: Thank you, Your Honor.

21 BY MS. JONES:

22 Q You said on the recording, Nobody would have
23 reported -- nobody would have reported had Monte not come
24 up missing?

25 A Yes.

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

1 Q And why did you say that?

2 A Well, there was a slight delay in the incident
3 and it being reported. And in our line of work and in my
4 experience there is a code of silence, particularly with
5 incidences that we deal with, it's kind of been heard
6 about the no snitch rule so it's tough at times and very
7 common for people not to provide us or report important --
8 to come forward with information that they know about a
9 crime.

10 In this particular incident, I don't think
11 that he would have come forward, this would have probably
12 went unreported. Obviously, it would have been a concern of
13 his, but I don't think that he would have brought it to our
14 attention, but it was a more important thing of Ver'mon
15 being missing and he had to tell his mother that Ver'mon was
16 missing and this is what happened to me. So I don't
17 think -- I just don't think that it would have came to our
18 attention otherwise.

19 Q So it's not uncommon for crimes not to be
20 reported?

21 A No, it is not uncommon. Probably happens more
22 than I would like.

23 MS. JONES: Lieutenant -- my apologies, Captain
24 Gruel, I have no further questions for you.

25 MS. GIBBES: I have no questions for this

DIRECT EXAMINATION OF D. GRUEL BY MS. JONES

1 witness.

2 THE COURT: Thank you. You may step down. Any
3 jurors need a break before we take the next witness?
4 Are you okay? The jury is okay. .

5 MS. JONES: The next witness is here, Your
6 Honor. The State calls Donna Broome. And, Your
7 Honor, may Captain Gruel remain in the courtroom?

8 MS. GIBBES: No objection.

9 THE COURT: Certainly.

10 Thereupon,

11 DONNA BROOME

12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows: -

14 DIRECT EXAMINATION

15 BY MS. JONES:

16 Q Good morning, Ms. Broome.

17 A Good morning.

18 Q Where do you currently work?

19 A South Carolina Department of Motor Vehicles in
20 Bluffton, South Carolina.

21 Q And how long have you worked for the DMV?

22 A The second round, going on 11 years.

23 Q Okay. And as part of the DMV, do y'all keep
24 records?

25 A Yes, we do.

DIRECT EXAMINATION OF D. BROOME BY MS. JONES

1 Q Okay. And were you asked to locate at a record
2 in reference to the case that we are here for today?

3 A Yes, ma'am.

4 Q And these records are kept in the ordinary
5 course of business?

6 A Yes, they are.

7 Q And they are not altered, they are kept so they
8 can be accessed at a later time?

9 A Correct.

10 MS. GIBBES: Your Honor, may I approach?

11 MS. JONES: Your Honor, I believe that we need a
12 five-minute recess, if we could.

13 THE COURT: Ladies and gentlemen, let's take a
14 short recess and step to the jury room. And I'll
15 remind you that it's too early to begin discussing
16 the case.

17 (The jury exits the courtroom at 11:06 a.m.)

18 MS. JONES: This is an accident report that the
19 State is attempting to admit. Ms. Gibbes said that
20 she doesn't have it. I'm fairly confident that we
21 emailed it to her. We are just trying to pull up the
22 email right now. The purpose of admitting this
23 document is that this is the document that
24 Investigator Erdel got Tyron Wallace's phone number
25 off of. He references it in his report. He has the

MOTION MADE BY THE DEFENSE

1 number in his report. This is just the physical
2 document that he used to get it.

3 (Pause.)

4 MS. JONES: Your Honor, it appears that this was
5 sent to Wallace's attorney, not Ms. Gibbes. It
6 contains information referenced in the incident
7 report. It is not new information. This is just the
8 physical document by the way that Investigator Erdel
9 pulled the information up. We just assumed that they
10 would be easier to authenticate through the DMV since
11 it is their record. It is not new information. It
12 is information that's always been contained in the
13 report.

14 MS. GIBBES: Your Honor, I object. I have not
15 been provided this report. I have never seen it
16 before. I do think that it needs to be -- you know,
17 to go through that route to try to get in his phone
18 number, I don't even know why it's relevant to this
19 case. We seem to have kind of gone off on a tangent
20 to the murder case a little bit through that
21 statement that we are going through now. And I would
22 just object to that and I would object to this
23 witness. It is hearsay to get in the phone number,
24 Judge.

25 THE COURT: The witness is not new?

MOTION MADE BY THE DEFENSE

1 MS. JONES: No, she was on the voir dire. She
2 has been on my witness list.

3 THE COURT: Okay. So it is the document that is
4 new?

5 MS. GIBBES: Yes, Your Honor.

6 MS. JONES: The information is not new.

7 THE COURT: The purpose, the information is not
8 new.

9 MS. GIBBES: The phone number, it is noted in
10 the report that Investigator Erdel got the phone
11 number, but it's just mentioned in the report.

12 MS. JONES: From an accident report, and this is
13 the accident report.

14 THE COURT: And the prejudice is, if it's
15 allowed, is what?

16 MS. GIBBES: I think that it'll -- it is
17 something that I do not know about. I haven't had a
18 chance to really look at it. I'm not sure of the
19 relevance, to be honest.

20 THE COURT: I'll overrule the objection and I'll
21 permit it. Are y'all ready?

22 MS. JONES: If I could have just a minute?

23 THE COURT: Everybody take three.

24 Let me give everybody a heads-up. We are going
25 to have a short lunch break today. I'm ordering

MOTION MADE BY THE DEFENSE

1 sandwiches for the jury. So y'all might need to get
2 somebody to get stuff for y'all too. And we will
3 have a short lunch break. Anyhow, are we ready?

4 MS. JONES: Yes.

5 MS. GIBBES: Yes, sir.

6 THE COURT: Let's see if we can get the jury
7 back in here. We are ready.

8 (The jury enters the courtroom at 11:21 a.m.)

9 BY MS. JONES:

10 Q Ms. Broome, how are DMV records stored?

11 A In our database.

12 Q Is that electronic?

13 A It is. No, well, the actual paper goes into
14 headquarters and then they input it at that location.

15 Q So, you could access copies of the report?

16 A Yes.

17 MS. JONES: Permission to approach?

18 THE COURT: Yes.

19 BY MS. JONES:

20 Q Ms. Broome, I'll hand you what's been marked as
21 State's 7. And do you recognize that form?

22 A I do.

23 Q What is that?

24 A Excuse me?

25 Q What is that form?

DIRECT EXAMINATION OF D. BROOME BY MS. JONES CONTD

1 A It is an accident report. This is not a form
2 that we own, however the last destination is our agency.

3 Q Okay. So, that is a record that the DMV keeps?

4 A Yes, it is.

5 Q And it is kept in the ordinary course of
6 business?

7 A Yes, it is.

8 Q And does that appear to be altered in any way?

9 A No, it doesn't.

10 Q That is a fair and accurate copy of, you called
11 it an accident report?

12 A Yes, ma'am.

13 MS. JONES: Your Honor, I move this into
14 evidence.

15 MS. GIBBES: Your Honor, my objection.

16 THE COURT: Okay. I overrule the objection
17 discussed off the record previously. The Court
18 grants the motion and denies the objection.

19 MS. JONES: Thank you, Your Honor.

20 *(Whereupon, State's Exhibit No(s). 7 marked for*
21 *identification and received in evidence.)*

22 BY MS. JONES:

23 Q Ms. Broome, what is the date of that accident
24 report?

25 A 2017.

DIRECT EXAMINATION OF D. BROOME BY MS. JONES CONTD

1 Q What is the name of the individual as to driving
2 unit number one?

3 A Tyron Wallace.

4 Q Is there a phone number listed for Tyron
5 Wallace?

6 A Yes, there is.

7 Q And what is that phone number?

8 A 304 -- excuse me, 859-1076. Would you like for
9 me to repeat that?

10 Q Yes.

11 A 304-859-1096.

12 Q Okay. Nine six, thank you.

13 A Yes.

14 MS. JONES: Ms. Broome, I have no further
15 questions for you.

16 MS. GIBBES: No questions of this witness.

17 THE COURT: Thank you, ma'am. You may step
18 down. Solicitor, you may call your next witness.

19 MS. JONES: Thank you. The State calls Jill
20 Sparks. And may Ms. Broome be excused from her
21 subpoena?

22 THE COURT: She may.

23 MS. JONES: Thank you.

24 Thereupon,

25 JILL SPARKS

DIRECT EXAMINATION OF JILL SPARKS BY MS. JONES

1 was called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. JONES:

5 Q Good morning, Ms. Sparks.

6 A Good morning.

7 Q Where do you work?

8 A Sprint.

9 Q What is your job at Sprint?

10 A Custodian of records.

11 Q Is that Sprint Wireless?

12 A Yes, a cellular company.

13 Q What is your duties?

14 A To comply with legal demands served upon Sprint
15 as well as testify to those records when subpoenaed to do
16 so.

17 Q And Sprint keeps records?

18 A Yes, we do.

19 Q And are these records kept in the ordinary
20 course of business?

21 A Yes.

22 Q And you provided records for the case that we
23 are here for today, correct?

24 A Correct.

25 Q Okay.

DIRECT EXAMINATION OF JILL SPARKS BY MS. JONES

1 MS. JONES: Permission to approach, Your Honor?

2 THE COURT: Yes.

3 BY MS. JONES:

4 Q Ms. Sparks, I'm handing you what's been marked
5 as State's Exhibit 8. Do you recognize that item?

6 A I do.

7 Q And what is that?

8 A This is called detailed records for phone number
9 843-476-0259.

10 Q What are those detailed records; what does that
11 mean?

12 A Call detail records indicate calling number, the
13 called number, the duration, start date and start -- time
14 and start -- the time that the phone call started, ended,
15 the duration, things of that nature.

16 Q Okay. So, it is a call log essentially?

17 A Correct.

18 MS. JONES: Beg the Court's indulgence briefly.

19 (Pause.)

20 BY MS. JONES:

21 Q Is that a fair and accurate copy of State's
22 Exhibit 8?

23 A Yes.

24 Q It doesn't appear to be altered in any way?

25 A No.

DIRECT EXAMINATION OF JILL SPARKS BY MS. JONES

1 Q Your Honor, at this time the State moves State's
2 Exhibit 8 into evidence.

3 MS. GIBBES: No objection.

4 THE COURT: Motion granted.

5 MS. JONES: I have no further questions for you.

6 MS. GIBBES: No questions.

7 THE COURT: Thank you, ma'am. You may step down
8 and you may be excused from your subpoena.

9 *(Whereupon, State's Exhibit No(s). 8 marked for*
10 *identification and received in evidence.)*

11 THE COURT: Next witness please.

12 MS. JONES: The State calls Officer Wadman.

13 Thereupon,

14 BILL WADMAN

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. JONES:

19 Q Where are you currently employed?

20 A Currently employed at Beaufort City Police
21 Department.

22 Q And how long have you been at the police
23 department?

24 A Approximately eight years.

25 Q And what is your role with the police

DIRECT EXAMINATION OF BILL WADMAN BY MS. JONES

1 department?

2 A I am a patrolman. I basically assess all duties
3 of a patrolman, answer calls, and handle anything
4 involving traffic-related accidents.

5 Q Okay. Do you remember responding to some calls
6 on October 25th, 2015?

7 A Yes, I do.

8 Q Okay. And I -- were you -- how were you told to
9 respond?

10 A The initial call was originally at -- basically
11 just a noise complaint.

12 Q Okay. Do you know what time that was?

13 A The second call, I responded was about 8:30.
14 And the noise complaint was approximately 30 minutes prior
15 to.

16 Q Okay. And what was the second call for?

17 A The second call was a "shots fired" call.

18 Q Okay. And were both of these calls in the same
19 area of Beaufort City?

20 A Exactly. Exactly in the same area.

21 Q Okay. Your Honor, may I ask the witness to step
22 down from the stand?

23 THE COURT: All right. Yes, sir, go ahead.

24 THE WITNESS: Thank you, sir.

25

DIRECT EXAMINATION OF BILL WADMAN BY MS. JONES

1 BY MS. JONES:

2 Q Officer Wadman, I am going to show you a map
3 just to aid the jury. What is this a map of?

4 A All right. This is basically an area of what we
5 call, like a zone area. It is basically an area where
6 Boundary Street and you have Ribaut Road and you have
7 Carteret and Bay Street. It is just one big square area.

8 Q Okay. And the first call, I believe that you
9 said came about 7, 7:30?

10 A Yes, I think that it was a little, like a little
11 before 8:00, like maybe 7:55.

12 Q Okay. Where did you respond on this map?

13 A The initial call was basically in this quadrant
14 right here. There were also two other officers
15 responding. We had had problems in the area within this
16 time, 2015. We don't like to take anything lightly in
17 this area, so I came just to kind of back up and just to
18 check the area. Other than that, like I said, it was
19 pretty much in this area. Maybe like a two- to
20 three-block square area.

21 Q Who did you respond with; who were the other two
22 officers?

23 A Sergeant Goethie had responded, and also Officer
24 Olsen.

25 Q Okay. When you say that you were in this area,

DIRECT EXAMINATION OF BILL WADMAN BY MS. JONES

1 do you cover Greene Street?

2 A Right. Well, basically when I came down I was
3 on Wilmington Street and I was crossing -- I came down
4 Congress and back on Wilmington and back towards
5 Washington on the initial one.

6 Q Okay. And did you get out of your car and walk
7 around?

8 A Not on the initial one.

9 Q On the second one?

10 A On the second one, yes.

11 Q All right. When you are in this vicinity, do
12 you see any people, see anybody?

13 A Talking about the first call or second call?

14 Q Yes.

15 A First call, no. Like I said, there were two
16 other responding officers. I was, basically, just in case
17 anything broke out.

18 Q Okay. Peripheral?

19 A Yes.

20 Q Okay. But from where you were, you saw nobody
21 standing around?

22 A No. Like I say, it was a noise complaint that
23 came in. The main thing that we were looking at was
24 basically making sure that nothing out of the ordinary was
25 happening on the streets and people. It was still, like I

DIRECT EXAMINATION OF BILL WADMAN BY MS. JONES

1 said, it was around 8:00. So the way I look at it,
2 nothing good happens after 10:00 so we heighten up our
3 awareness a little bit. But the main thing I was looking
4 to see if anyone was out walking around, someone I could
5 make contact with, which I was unable to make contact with
6 anyone.

7 Q How about the second call at 8:30?

8 A That was a little different. That was a "shots
9 fired" call. I was on Ribaut Road, which in this case it
10 was up here. And I was coming down, and because it was a
11 "shots fired" call it was a pretty tough couple of years
12 around that time, so I immediately went right to the area
13 that they had said. The call came out that it was a
14 "shots fired" call south of Congress Street, so I
15 immediately went to the Congress area and started doing
16 that same pattern again.

17 I did make contact, I think that it was a
18 green-colored Suburban, it was a male driver, he had
19 indicated that he was at the tennis courts with another
20 person and they were playing tennis. And he had stated to
21 me that they heard three distinct gunshots. And they said
22 that it was in the vicinity south of Congress. They
23 observed a silver Yukon leave the area and then a few
24 minutes later come back and circle the area. He stated that
25 it was at that time that he felt uncomfortable and his

DIRECT EXAMINATION OF BILL WADMAN BY MS. JONES

1 friend and himself decided to leave the area.

2 Q Were you able to locate anybody aside from him?

3 A No. Because what had happened was, after I made
4 contact with him there were other units coming to the
5 area. And I got that information out to them, so if they
6 came in contact with that vehicle to make sure that they
7 pulled it over and find out, you know, basically
8 investigate it a little further.

9 Q Okay. So, let me retract. The original call,
10 no contact?

11 A No contact.

12 Q And did you respond any other time to this area
13 that night?

14 A No, it was -- the only time were those two
15 times. And then the second time, just to let you know,
16 you had asked me as far as if I ever got out of the
17 vehicle, the second time is when I did get out of the
18 vehicle. It was more so -- I think that it is 1411
19 Wilmington Street. I think that I parked my car in this
20 area.

21 Q OKay.

22 A There is a -- sorry, Washington Street. So,
23 1411 Washington Street right here. I exited my car up
24 here and I began walking this area. The reason why I did
25 that was because there is a vacant lot right here that we

DIRECT EXAMINATION OF BILL WADMAN BY MS. JONES

1 usually get a lot of problems, people running. I was also
2 joined -- I believe that Sergeant Goethie came down and
3 there were -- I think that there was one other officer
4 that came down and we actually walked this area and along
5 here. But like I said, we made no contact with anyone.

6 MS. JONES: Thank you, Officer Wadman. You can
7 have a seat back on the witness stand. And I have no
8 further questions for you. Thank you.

9 MS. GIBBES: Briefly, Officer Wadman.

10 CROSS EXAMINATION

11 BY MS. GIBBES:

12 Q You said at the first call, you didn't get out
13 of the car; correct?

14 A Yes, that's correct.

15 Q Was it Sergeant Olsen that got out of the car?

16 A I believe so. I believe that he got out. But I
17 never made contact with him. I basically just combed the
18 area in case someone ran or something happened there would
19 be a unit to assist.

20 Q To your knowledge, it was basically a loud music
21 call?

22 A Yes, it was just a noise call.

23 Q A noise call, okay. And just to be clear, in
24 the second call you testified that some of the witnesses
25 said that there was a silver Yukon that may be, might be a

CROSS EXAMINATION OF BILL WADMAN BY MS. GIBBES

1 vehicle to look out there for?

2 A I actually approached the vehicle and made
3 contact with someone. I'm not sure if that was the actual
4 complainant or not. But that person had specified that
5 they clearly observed three shots fired. And I even asked
6 them, Are you sure that it wasn't fireworks or something
7 like that because sometimes they get that confused. And
8 they verified that that is what it was. And they were in
9 that vehicle, they were in a green Suburban. I believe
10 that it was green.

11 Q So, you spoke to somebody in a green Suburban
12 but there was also a report of a silver Yukon?

13 A The people that I made contact with, that was
14 the vehicle that they observed in the area at the time.

15 Q I think that I'm confused. So, they observed
16 the green car?

17 A No, they observed the silver Yukon.

18 Q I am confused I guess.

19 A They were -- the complainant or the people I
20 made contact with, they were in the Suburban.

21 Q Okay. And they saw the silver Yukon?

22 A Yes.

23 Q Thank you.

24 A No problem.

25 MS. JONES: I have no further questions.

CROSS EXAMINATION OF BILL WADMAN BY MS. GIBBES

1 THE COURT: Thank you. You may step down. The
2 State calls Officer Owen Goethie.

3 Thereupon,

4 OWEN GOETHIE

5 was called as a witness, having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. JONES:

9 Q Officer Goethie, where do you work?

10 A Beaufort City Police Department.

11 Q How long have you been with the police
12 department?

13 A About 11 years.

14 Q And what are your duties at the police
15 department?

16 A My duties, basically, are shift supervisor. I
17 maintain the patrol division.

18 Q Were you working with the police department on
19 October 25th, 2015?

20 A I was.

21 Q Okay. And in what capacity were you working
22 with the police department?

23 A Just the shift supervisor for that night.

24 Q Okay. Did you respond to some calls that night?

25 A I did.

DIRECT EXAMINATION OF O. GOETHIE BY MS. JONES

1 Q And do you remember responding to the area of
2 Greene Street?

3 A Yes, it was a loud noise call. I think that we
4 responded to 1414 Greene Street.

5 Q Okay. Do you know about what time that was?

6 A It was around 7, 7:06 in the evening.

7 Q Okay. If I may ask you to step down from the
8 stand.

9 A Sure.

10 Q And I have a map. Do you recognize this map?

11 A I do.

12 Q Okay. And where would -- you responded, you
13 said 14?

14 A It was, it was 1414 Greene Street right here.

15 Q Okay. And when you get there, what do you do?

16 A We were dispatched to a loud noise call, myself
17 and Officer Olsen. And for the music we were dispatched
18 to, we stood outside and we waited for approximately six
19 minutes in front of the residence and didn't hear
20 anything.

21 Q Okay. You stood outside; you were out of your
22 car?

23 A Yes, I was.

24 Q Okay. Do you see anybody?

25 A No, at that time nobody was outside.

DIRECT EXAMINATION OF O. GOETHIE BY MS. JONES

1 Q Okay. Are you able to see [REDACTED] Greene Street
2 from where you are?

3 A Yes, you can.

4 Q Did you see anybody outside of [REDACTED] Greene
5 Street?

6 A No, we weren't -- our attention wasn't diverted
7 to [REDACTED] and we were not dispatched there but we didn't see
8 anybody on the lot.

9 Q Okay. There was nobody to make contact with?

10 A No, ma'am.

11 Q Okay. You can go back to the witness stand.
12 And did you respond a second time to that area of
13 Beaufort?

14 A I did. For a "shots fired" call.

15 Q About what time was that?

16 A That was, I think about 30 minutes afterwards.

17 Q Okay. Could that have been about 8:34?

18 A Yes.

19 Q Okay. And what did you do with this call?

20 A When I was in route, I think Officer Wadman, he
21 was already there on scene collecting information. And he
22 broadcast over the radio of a silver Yukon possibly
23 involved in the shooting. So, when I was traveling to the
24 incident I went to the tennis court and I checked that
25 location first. I didn't locate any silver Yukon and then

DIRECT EXAMINATION OF O. GOETHIE BY MS. JONES

1 I re-positioned my patrol vehicle to Bladen and Greene
2 Street. At that time I got out and began to walk.

3 Q Did you locate anybody in the area at that time?

4 A No, we did not.

5 MS. JONES: I have no further questions for you,
6 Officer Goethie. Thank you.

7 MS. GIBBES: I have no questions for this
8 witness, Your Honor.

9 THE COURT: Thank you. You may step down. You
10 may call your next witness.

11 MS. JONES: The State calls Investigator George
12 Erdel.

13 Thereupon,

14 GEORGE ERDEL

15 was called as a witness, having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. JONES:

19 Q Investigator Erdel, you have been with us all
20 week. Where do you work?

21 A Yes, ma'am. I work at the Beaufort Police
22 Department.

23 Q In what capacity do you work for the police
24 department?

25 A I currently am the investigative division

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 supervisor reporting to Captain Gruel.

2 Q Did you have to receive special training to
3 become a supervisor?

4 A It is kind of a culmination of all of the
5 training that I have had. And basically it is kind of, I
6 would say, to be the supervisor would be a mix of
7 experience and training, and obviously I had to compete
8 for it.

9 Q Okay. And tell me a little bit about your
10 experience in law enforcement.

11 A Well, as a smaller agency -- well, I started in
12 law enforcement, technically, 1996 in the Marine Corp, I
13 was a military policeman for almost eight years. And then
14 I came to the police department here in Beaufort in 2003
15 and was working patrol division for about six years. And
16 in 2009 I became an investigator and have been in the
17 investigation division ever since.

18 Q Okay. So, back in October 2015 you were in
19 investigations?

20 A Yes, that's correct.

21 Q Okay. And how do investigations, or different
22 investigators -- how are y'all assigned cases?

23 A Usually the investigation supervisor will do it.
24 Like, for this particular case, I was assigned by then
25 Lieutenant Gruel to do this case. If you are on call,

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 generally it is like you catch it, you clean it, you know,
2 whatever you get on call. But that's not always the case.
3 So, as the supervisor, he did at the time and I can now
4 override it and say, Hey, I want you to work this case for
5 any particular reason.

6 Q So, you were assigned the case with Andre
7 Frazier?

8 A Yes, that's correct.

9 Q Were you also assigned the missing person case
10 of Ver'mon Steve?

11 A I was because it was really intertwined. It was
12 reported simultaneously, so it was really one
13 investigation into the totality of the circumstances
14 surrounding both the kidnapping and the disappearance of
15 Mr. Steve. They were really the same investigation.

16 Q Did you have an opportunity to meet with Andre
17 Frazier during this investigation?

18 A I did.

19 Q And you spoke with him?

20 A I did.

21 Q When was this?

22 A That would have been on the -- I have the 28th
23 of October.

24 Q Okay. Of 2015?

25 A 2015, yes, ma'am.

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 Q Where do you speak with him?

2 A At the Beaufort Police Department in the
3 interview room.

4 Q Is there anybody else in the interview room with
5 y'all?

6 A Then Lieutenant Gruel was with me.

7 Q Does Andre contact the police department or does
8 the police department contact Andre?

9 A I don't remember the specifics of it, but I know
10 that we contacted him.

11 Q Do you know if he called to report his
12 kidnapping?

13 A To my knowledge he did not.

14 Q Okay. Have you experienced that before?

15 A Yes.

16 Q Can you explain a little bit your experience
17 with that?

18 A It is basically the same thing that Captain
19 Gruel said. You know, there is kind of a street
20 mentality, so to speak. You know, people are typically
21 afraid for any number of reasons, they don't want to be
22 labeled a snitch, they may want to handle it themselves.
23 It is not uncommon for things like that to go unreported.

24 Q When you meet with Mr. Frazier, what is his
25 demeanor; how is he acting?

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 A He was pretty nervous about being there. I
2 would say that his nervousness kind of devolved as the
3 interview progressed to outright fear. He cried pretty
4 hard. Probably -- he was probably about as scared as I
5 have ever seen anybody in an interview room and that is
6 saying something. He was pretty scared.

7 Q And after speaking with Mr. Frazier, what did do
8 you?

9 A Well, obviously we -- you know, we went further
10 with the investigation as far as to corroborate the
11 elements of what he said, tried to locate the people that
12 he referenced.

13 Q Were you able to corroborate some of what he
14 told you?

15 A Yes.

16 Q And what was that?

17 A Well as far as -- a lot of things, but I think
18 that the next thing in sequence would have been, you know,
19 I went to the gas station and pulled the video to see if,
20 you know, his account of his time leading up to getting to
21 the residence was able to be verified, which it was.

22 Q Okay. And did you review any sort of calls for
23 service?

24 A Oh, yes. Yes, because he referenced certain
25 events. So, the calls that you -- that the jury has

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 already heard about, basically I looked at the CAD data to
2 verify the times and kind of pinpoint when those calls
3 took place.

4 Q Okay. And were they consistent with
5 Mr. Frazier?

6 A They were.

7 Q We saw earlier you were part of an interview
8 with the defendant, Varsheen Smith?

9 A Yes, ma'am.

10 Q Okay. After speaking with witnesses and
11 corroborating Mr. Frazier's statement, did you ever come
12 across any evidence that these circumstances stem from a
13 drug-related incident?

14 A No.

15 Q No, okay. After you interview Mr. Smith does he
16 give y'all a phone number in that interview?

17 A He did. He gave us his phone number.

18 Q Okay. What was that?

19 A If you will pardon me just one moment while I --
20 I know that I have it here. That was 843-476-0259.

21 Q Okay. And when you get that phone number, what
22 do you do?

23 A Send a subpoena for records for that phone
24 number.

25 Q Did you receive these records?

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 A I did.

2 Q And these were Sprint records?

3 A Yes.

4 Q Okay. I'm going to show you what has been
5 previously admitted as State's 8. Are those the phone
6 records that you received?

7 A Yes.

8 Q Okay. Were you also able to get a phone number
9 for Tyron Wallace?

10 A I was.

11 Q How did you go about getting that phone number?

12 A I located an accident report involving
13 Mr. Wallace and his phone number was listed under the
14 block as the operator of unit number one in that accident
15 report.

16 Q Okay. And I'm going to hand you what has been
17 admitted as State's 7. Is that the accident report that
18 you used?

19 A It is.

20 Q And what is the phone number listed for Tyron
21 Wallace?

22 A 304-859-1096.

23 Q Okay. When you have these two phone numbers and
24 you have the phone records, what do you do?

25 A Particularly as it relates to the phone records,

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 I looked for contact between Mr. Smith and Mr. Wallace
2 through the phone records.

3 Q Okay. Were you able to find contact?

4 A Yes.

5 Q And was this on the date of October 25th, 2015?

6 A That's correct.

7 Q Okay. I'm going to direct you to the time
8 between 1:04 p.m. and 5:49 p.m., were there any
9 communication between the two phone numbers?

10 A There were.

11 Q How many?

12 A Seven.

13 Q Between the hours of 5:49 p.m. and 8:08 p.m.,
14 were there any communications?

15 A There were not.

16 Q Between the hours of 8:08 p.m. and going into
17 the morning of October 26th, at 9:59 a.m., were there any
18 communications?

19 A There were seven calls.

20 Q Thank you. And are those calls all from
21 Mr. Smith, or all from Mr. Wallace, or a combination?

22 A It looks like a combination.

23 Q Okay. Investigator Erdel, did you have an
24 opportunity to ever discover the location of Mr. Steve?

25 A Yes.

DIRECT EXAMINATION OF G. ERDEL BY MS. JONES

1 Q Was he ever located?

2 A His remains were located on St. Helena Island.

3 Q When was that?

4 A That was November the 18th, if I remember
5 correctly.

6 Q Okay.

7 A Yeah, it was the 18th of November.

8 Q And who was charged with his murder?

9 A Tyron Wallace.

10 Q Did you have an opportunity to speak with Tyron
11 Wallace?

12 A I did.

13 Q And did he speak with you?

14 A He did.

15 Q And as a result of speaking with Tyron Wallace,
16 what did you do?

17 A I served the warrant for kidnapping that I had
18 obtained while he was at large.

19 MS. JONES: And I have no further questions for
20 you. Thank you.

21 THE COURT: Cross examination.

22 MS. GIBBES: Thank you, Your Honor. May it
23 please the Court.

24 CROSS EXAMINATION

25

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 BY MS. GIBBES:

2 Q How are you, Investigator?

3 A You didn't say briefly.

4 Q Briefly, I'm not going to be brief. A little

5 brief.

6 A Yes, ma'am.

7 Q So, you are the lead investigator of this case,

8 correct?

9 A That's correct.

10 Q So, basically everything goes through you?

11 A That is the idea, yes, ma'am.

12 Q So, as part of that you -- I mean, as you

13 testified, you interviewed witnesses; right?

14 A Yes, ma'am.

15 Q You collected evidence, if there was any

16 evidence; right?

17 A Yes, ma'am.

18 Q You are in charge of writing the incident report

19 of everything?

20 A Yes, ma'am.

21 Q Okay. And basically, what you would do is as

22 soon as you learned information from witnesses you would

23 put it in the incident report, right?

24 A To the extent that I can, yes. I try to do it

25 contemporaneously so I don't screw up. That is the idea.

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 Q Okay. So the first person that contacted you
2 was Janice Steve, right?

3 A She didn't contact me specifically. I have to
4 look through my report to remember who I spoke to. But I
5 knew that she made the report so I started the
6 investigative report once I was assigned. So, it wasn't
7 like she contacted me, per se, but she was the first one
8 to initiate contact with the police, generally, so we
9 could get the ball rolling, yes, ma'am.

10 Q Okay. And basically, that purpose of her
11 contacting the police was to report her son missing after
12 she spoke to Andre Frazier, correct?

13 A Yes, that's correct.

14 Q And basically her written statement was
15 basically what Andre Frazier told her and she put that in
16 the written statement?

17 A I don't recall what the specific verbatim words
18 were in her written statement, to be honest with you. I
19 just kind of had a general idea, which is why we had to
20 obviously talk to Andre to get more details.

21 Q Sure. But before you spoke to Andre, you
22 actually went over to [REDACTED] Greene Street?

23 A Yes.

24 Q And looked in the house and you didn't see any
25 signs of struggle or anything like that?

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 A I didn't see anything really. The house was
2 like -- I wouldn't say it was completely empty. There was
3 a fridge, there were a very few minor things, but by and
4 large it was empty, there was not much in there at all.

5 Q There were some clothes in the closet?

6 A Yes, ma'am.

7 Q You didn't see any bags?

8 A I don't recall any bags. I would have to go
9 back and look at everything to make sure. But I don't
10 recall any bags. I do recall clothes. I do recall some
11 very few food items. It was mostly empty though. As far
12 as rooms being furnished, there was no furniture.

13 Q Okay. And was the door locked?

14 A When I first went there, yes, because I had to
15 go in through an unlocked window.

16 Q Okay. And so, based on basically exigent --
17 based on the fact that you wanted to get in the house
18 quickly to see what was going on?

19 A Right, because we didn't know what was going on.

20 Q So you got a warrant to investigate the house
21 and see if there was any evidence?

22 A Say that last part again.

23 Q You got that warrant so you could get in the
24 house and collect any evidence?

25 A That came later. If we are talking about the

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 initial response, initially I used what I believed were
2 exigent circumstances to go in just to check to make sure
3 that Ver'mon Steve was not in there and needed assistance
4 or anything like that.

5 Q Okay. And you didn't collect anything?

6 A Not at that time.

7 Q So then you brought Andre Frazier in for an
8 interview, correct?

9 A Yes.

10 Q And as you stated, he wasn't the one who wanted
11 to come in, right?

12 A I am sorry, can you repeat that?

13 Q As you have stated already, he wasn't the one
14 who initiated coming in to talk to you?

15 A Right, did not. To my understanding, he did not
16 make the report directly to the police, but when we
17 reached out to him he agreed to come in.

18 Q So, this is the only time that you spoke to
19 Andre Frazier, right?

20 A As it relates to this case, yes, it was.

21 Q It was a recorded interview?

22 A Yes.

23 Q Now, after he told you his story of what
24 supposedly happened, you seemed to question him on certain
25 points that maybe you thought didn't quite match up; is

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 that right?

2 A Yes, but it's important to remember, at that
3 time we didn't know, obviously, like everything that we
4 know now. This was the beginning stages so we were trying
5 to get a time line of what happened. Again, as it relates
6 to the kidnapping. And we were also wondering where
7 Mr. Steve is. So, we were trying to make sense of it.

8 So, it was -- obviously we are having to
9 question him going backward and forwards, like we do with
10 everybody, to see if anything he says leads us in a
11 direction of what happened, where is Mr. Steve, and of
12 course, the mechanics of the kidnapping.

13 So, yes, we questioned him as far as the
14 events went, yes.

15 Q Okay. At least we do know the time of one thing
16 because he showed you a text that he sent to Monte,
17 correct?

18 A Yes, that's correct.

19 Q And that was at 8:26 p.m.?

20 A Yes, that's correct.

21 Q And basically he just said, Pick up Mr. X?

22 A Yes.

23 Q And that was sent when he got in the car to
24 leave?

25 A Can I say what he said like specifically or like

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 --

2 Q I mean, your initial during, when you are
3 talking to him about the time line, it was his report that
4 the text was sent while he was in the car, correct?

5 A He did say that. He said that and then I asked
6 him -- the reason I asked him the question about the time
7 is because -- and I am trying to remember why we -- we
8 were trying to come up with theories for what happened for
9 the entirety of the situation. So, our initial working
10 theory was, well, maybe he heard the shots. So, for us,
11 we are like, all of these people heard the shots. So,
12 that is why we are focusing on that time frame.

13 Ultimately we determined he had left prior to
14 the shots being fired. So, obviously I wrote this after --
15 close to after the interview with him. So, I thought that
16 might have been a point that was going to be a big deal, but
17 it really wasn't in the long term scheme of things.

18 Once we got into the investigation it was --
19 what I thought might be, We need to look into this. But it
20 seemed to add up to us at the end. At the time that I'm
21 asking him this we are pretty confused as to the sequence of
22 events, we still don't know where Ver'mon is. We are trying
23 to make sense of this gigantic, you know, ball of
24 circumstances so to speak.

25 Q Sure, but you questioned him because the time

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 didn't match up with what you were saying, so you
2 questioned him that it might have been -- he might have
3 sent it at a different place or different . . .

4 A Well, I asked him that. I asked him to clarify
5 that. And again, he was -- I even wrote this in my
6 report. It was very difficult for him, as far as in his
7 state of mind at that time being so nervous, so upset to
8 hold a train of thought. So I didn't know if it was -- I
9 just asked him to clarify that point.

10 And again, the working theory at the time
11 was, Well, maybe he was there, why didn't he hear the shots.
12 I was trying to rectify that in my mind. Ultimately I
13 discovered that he had left prior to the shots being fired.
14 So, I hope that answers the question. Hopefully I am not
15 rambling.

16 Q No, you are good. I mean, it turns out he
17 actually sent that text while he was in the house,
18 correct?

19 A I think that he said, Maybe I sent it while I
20 was in the house, maybe I was in the car. I don't know if
21 it was -- I can't recall how committal he was at that
22 point. I know that when I asked him about the other time
23 he said while he was in the house. But I think that he
24 testified to that while he was here so --

25 Q Now, the text, you didn't take a picture of that

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 or put that into evidence or anything like that?

2 A I don't guess that I did.

3 Q You didn't look through Andre's phone records?

4 A No.

5 Q Now, you also questioned Andre about how he
6 actually was able to get out of the house; am I right?

7 A Yes, I did.

8 Q And the reason you questioned him on that,
9 because you had spoken to Ms. Steve at that point, right?
10 Or you at least had a report from Ms. Steve?

11 A I think so, yes. Yes, yes.

12 Q So you asked him whether or not he escaped out
13 of a window?

14 A Yes, and I think, as he testified, there was
15 a -- it was a miscommunication initially. So I was just
16 basically trying to clear up. You know, I wanted to get
17 from the horse's mouth. According to him he didn't say
18 that to Mrs. Steve. I think that he testified to that
19 here. So, I had to take him at his word. I mean, I
20 just -- it was an issue that needed to be clarified, of
21 course.

22 I asked him and his answer satisfied my
23 curiosity on that point, so there was nothing else to say
24 about it or go much further than that. I said, Did you say
25 that? He said that he didn't. And that was the end of that

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 particular point.

2 Q I'll skip around, but you did also -- you
3 interviewed Shabonda Milledge, correct?

4 A I did.

5 Q As part of your questions, you questioned her
6 about how Andre got out of the house; right?

7 A I don't remember if I did or not. To be honest
8 with you, I really don't. And I am looking at my notes
9 and I kind of summarize, so I don't know, I mean, I don't
10 recall that particular question.

11 Q I mean, you were asking Shabonda about that
12 because Shabonda had been speaking to Andre about what
13 happened, right?

14 A I asked Shabonda questions about, had she spoken
15 to Andre, but I don't recall. I may have, but I just
16 don't recall if that particular part came up.

17 Q Okay. So you don't remember questioning her
18 about Andre leaving out the back door?

19 A As far as -- I honestly don't remember. I mean,
20 I may have.

21 Q Okay. And you mentioned, I mean, his demeanor
22 at the time?

23 A Yes, ma'am.

24 Q And you noted in your report that he couldn't
25 seem to hold a train of thought; is that right?

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 A Right. And what I mean by that, he was frantic.
2 You know, we were trying to -- you know, because
3 obviously -- and it was in the video earlier, I said job
4 one was finding Ver'mon. Obviously we were taking a .
5 report on the kidnapping. That was important too. So, we
6 are trying to find out what is going on. He was, by all,
7 you know, accounts, and what he presented to me, afraid of
8 what is going to happen if he's cooperating and trying to
9 keep all of these things together.

10 So, we are trying to keep him on an even keel
11 as far as, Hey, dude, you have got to stick with us so we
12 know what is going on. But he was crying to beat the band.
13 I mean, he was very upset. He stood up, he was pacing "
14 around. That is what I mean when I said he was literally
15 one of the most -- I have never seen -- I am trying to think
16 of an example of anybody else that looked that scared and
17 that upset in an interview room. And maybe I have seen it,
18 but he comes to the top of the list in my mind. I can't
19 think of anyone who beats him for that kind of fear in the
20 interview room.

21 So, I mean, the interview room. That is why
22 when I said that he had a hard time holding his train of
23 thought together, he was very upset. We had to keep
24 refocusing him.

25 Q And then based on his statement, you got

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 Varsheen Smith for the kidnapping?

2 A It was based on a couple of things. It was
3 based on the fact that I believe it should be at that
4 point we knew that Varsheen had fled town, as well as
5 Mr. Wallace. So, it was -- I wouldn't say that it was
6 solely based on that, but it was based heavily on what he
7 told us and what we perceived as flight at the time. So,
8 in my mind it made sense at the time.

9 Q You didn't -- you didn't have Varsheen Smith's
10 name, though? I mean, I know that Ms. Steve wrote a
11 statement and put the name Varsheen and then, you know,
12 the next day you spoke to Andre Frazier and got his name,
13 but it doesn't seem that you had been investigating
14 Varsheen at that point?

15 A Based on talking to a bunch of people, we ended
16 up -- we got Varsheen's name and it was never -- and
17 Mr. Frazier had a history. We went into a great deal of
18 history of how he knew Varsheen. I mean, there was no
19 question that the Varsheen that he was talking about was
20 Mr. Smith.

21 Q But he was basically the first person that you
22 got that name from, besides Ms. Steve?

23 A Well I think it was based on -- I think that we
24 initially developed it off of a phone number and Facebook.
25 I think that we did a little background into his street

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 name and other things. I want to say that is how we
2 initially, initially found out who he was and then,
3 obviously, based our questions on that.

4 Q Okay. And so you didn't charge anybody with
5 armed robbery of Andre Frazier, right?

6 A No, I did not.

7 Q Okay. Because, in your investigation, you
8 didn't get any information that Varsheen told Wallace to
9 "run his pockets" or anything like that?

10 A I mean, I know that that was said. But
11 basically, according to Mr. Frazier and I believe that he
12 testified to that effect, that he said that, you know, it
13 wasn't about taking his stuff. So they put everything
14 back except for the Black and Mild.

15 Q Okay. That wasn't in his original interview?

16 A I don't remember.

17 Q And then you also didn't charge anybody with the
18 assault of Andre Frazier, right?

19 A I just kind of -- the circumstances to me was,
20 the force was used in the -- you know, I'm not a lawyer.
21 I do the best that I can with a cop's education, but to me
22 the situation was the force was there to restrain him to
23 put him in a position to be kidnapped, so that is what I
24 charged.

25 Q You didn't have any information that he had been

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 hit in the head with a gun or anything like that?

2 A I know he referenced a tussle, he referenced
3 being tied up, he referenced a sock with a chemical taste
4 being put in his mouth. I don't remember if he
5 specifically said anything about being hit in the back of
6 the head with a gun during the interview.

7 Q Okay. And so as testified, there were two
8 reports of officers coming to the area, this immediate
9 area, kind of very closely related to this time period,
10 right, the shots fired and the noise disturbance?

11 A Yes, ma'am.

12 Q Okay. And so, the noise complaint was at
13 7:56 p.m.; is that right?

14 A I wrote in my notes -- I would have to look at
15 the CAD, and I don't have the actual CAD. I thought that
16 it was 7:51, but I may be mistaken. But in that time
17 frame, yes, ma'am.

18 Q Okay. All right. So, 7:51. Now, you mentioned
19 that you -- you know, part of your investigation, you went
20 and got the video from the Shell station to show that
21 Mr. Frazier went to the gas station?

22 A Yes, ma'am.

23 Q Right?

24 A Uh-huh. (Indicating affirmatively.)

25 Q And when I was looking at those times, did you

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 know those times -- I mean, it seems like the first time
2 that he was there was about 7ish; is that right?

3 A Right, I think that there was a disparity
4 between the system time maybe. I don't know, but I -- I
5 can't remember the time that was on the video.

6 Q And then came back about 7:15, do you remember?

7 A Yeah, I think whatever -- what it showed on the
8 screen, yes.

9 Q Okay. And from your knowledge and from speaking
10 with Mr. Frazier, he was at the home at Greene Street for
11 about 20 to 30 minutes, is that about the estimate?

12 A Based on like the time line of what he said?

13 Q Yes.

14 A I believe so.

15 Q Okay. Then the text he said was at 8:26 p.m.?

16 A Right.

17 Q So, if he got there about 7:20 he would have
18 stayed there longer than 20, 30 minutes? An hour, a
19 little longer than an hour, if he sent it at 8:26, right?

20 A I guess.

21 Q Okay. Now, in your reports I know that you
22 write -- I notice that there were a couple of conflicts,
23 and I think it's explained. But I just want to verify,
24 you know, we have heard from Officer Wadman and Sergeant
25 Goethie and they responded, and they responded to both the

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 shots fired and noise disturbance, correct?

2 A Yes.

3 Q I mean, it seems that there's been overlap. I
4 mean, do you think -- they all seemed to all be in the
5 area and they just stayed for the whole time?

6 A You will have to ask them that. I wasn't there,
7 I couldn't say.

8 Q As a result of these calls, you didn't interview
9 any immediate neighbors? I mean, did you go back and talk
10 to the people at the noise complaint house?

11 A No.

12 Q That was pretty much right next door, pretty
13 close?

14 A I wouldn't say that it was right next door. To
15 my recollection, I think that it was a little bit away.
16 Not far, but to my recollection it wasn't right next door.

17 Q You didn't interview DC?

18 A I don't remember if I heard about DC when I
19 talked to Frazier.

20 Q I mean, he never brought it up and that is what
21 I'm wondering. So, you never got any information to go
22 interview DC?

23 A Not to my recollection, no.

24 Q Okay. And what about Monte's girlfriend Jazz,
25 you didn't ever interview her?

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 A No, I don't know if I ever got contact
2 information for her. No, I did not.

3 Q Okay. So, you didn't hear anything about her
4 coming by the house at Greene Street that night?

5 A No.

6 Q Now, when Andre was in there he was actually
7 wearing the belt in the interview that was used to tie him
8 up, is that right?

9 A Yes, ma'am.

10 Q But you didn't take that into evidence?

11 A I did not.

12 Q You didn't test it for DNA or fingerprints or
13 anything like that?

14 A No, ma'am.

15 Q And during your investigation, you didn't
16 recover a sock?

17 A No, I looked. Obviously, he referenced a sock.
18 When we went back I didn't see a sock as he described.

19 Q No chemicals or anything of that nature?

20 A No, but again when I went in the first time I
21 didn't see those things either, and that was before I knew
22 that I should even be looking for those things. So they
23 were not there the first time.

24 Q So, based on your interview with Frazier, you
25 spoke with Shabonda Milledge; is that right?

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 A I did.

2 Q And basically, I don't know if you ever said
3 that, but you got that name because Andre actually dialed
4 her while he was in the interview room with you, is that
5 correct?

6 A Yes.

7 Q And basically, from your understanding, they had
8 been communicating about what happened and talking -- you
9 know, supposedly they had been communicating about what
10 happened at Greene Street and after the fact, right?

11 A Yes, and I don't recall what he said as far as
12 about how much they had been communicating, but obviously
13 we had him call her because there had been some level of
14 communication, that's correct.

15 Q So, when you spoke to -- I mean, you had
16 information from Andre that he used to date Shabonda; is
17 that correct?

18 A Did I get that information from Shabonda?

19 Q Well, from both Andre and Shabonda?

20 A Yes, I think they said they had been like that
21 in the past. But not that they were dating currently, at
22 the time frame of this report. To the best of my
23 recollection.

24 Q And that Shabonda was also dating Varsheen?

25 A I don't remember the sequence as far as -- I

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 think at that point, that she had dated him. But I don't
2 remember as far as -- if she said that it was at the same
3 time or not.

4 Q Okay. And do you remember -- I mean, I know
5 that it's recorded, but you expressed concerns to her
6 about the credibility of Andre's statement?

7 A I think I did. Basically just to you -- you
8 know, because again we are trying to figure out primarily,
9 job one, and I know that it's kind of confusing and
10 frustrating, but they are intertwined and we are trying to
11 find out where is Ver'mon, you know, at this point. When
12 I'm talking to her I don't just, you know, maybe
13 Mr. Frazier, you know, did he see more and he is scared to
14 go further and is he -- if something appears to be a
15 contradiction, is that going to make it look bad, is that
16 going to hinder us, but I felt that these were the
17 questions that I had to ask at the time.

18 Subsequent to my interview with Shabonda and
19 for the rest of the investigation, some of the reasons that
20 I asked those questions I felt had been satisfied. So, you
21 know, while I would say that while I was talking to
22 Shabonda, things happened in the investigation that kind of
23 dispelled those concerns for me as it pertains to his
24 credibility, at least to me.

25 Q And at the time that you interviewed Shabonda

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 you already had a warrant for Varsheen Smith for
2 kidnapping, right?

3 A At the time that I interviewed Andre?

4 Q At the time that you interviewed Shabonda, I am
5 sorry.

6 A Okay, let me look. It is like an 80-page
7 report. And that may be correct, but I'm not prepared a
8 hundred percent to say that yet.

9 (Pause.)

10 A Okay, I got arrest warrants on October 30th.
11 And I spoke to her -- did we already talk about what day I
12 spoke to her? I apologize.

13 Q No, and actually I didn't write that down.

14 A So, I may have spoken to her before I got them.
15 I have got -- I'm still looking. Okay, yeah, I got the
16 warrant on 10-30 and then Shabonda Milledge was
17 interviewed on November 2nd.

18 Q Okay. And then you also told Shabonda on the
19 video that Andre's story wasn't enough to convict
20 Varsheen, do you remember that, it was only enough to
21 arrest him and not convict?

22 A Yes, I probably said something like that.

23 Q You told her that there were differences in his
24 stories due to the fact that he told different people
25 different things, between you and Ms. Steve and Shabonda;

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 correct?

2 A I don't recall if I said that specifically.
3 Again, the things that have been obviously brought up here
4 at trial, you know, when you are trying to put together a
5 case, and you are trying to figure out what happened and
6 there is somebody out there that is missing and you
7 strongly believe that they are probably dead but you want
8 to find out, these are all things that you are concerned
9 with. But, again, by the end of the investigation those
10 concerns were dispelled.

11 You know, I knew what I knew at that time
12 when I was speaking with her. Obviously a lot more
13 developed after that. So, while I would say, yes, it was
14 true that these could potentially be problematic while in
15 the initial stages of the investigation. A lot of time and
16 a lot of pages came after that. So, I will concede, yes, I
17 had those concerns, some slight concerns about that, but
18 they were dispelled by the end of the investigation.

19 Q So, at that time you already had the warrant for
20 kidnapping against Varsheen?

21 A Yes.

22 Q And you also told Shabonda that you needed him
23 to come back and talk to you because you were worried that
24 things would fall apart when this case got to Court?

25 A I don't know if I said that or not, but

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 obviously we are here so things came together.

2 Q But you are not denying you said that?

3 A I can't recall. I may have said it.

4 Q Okay.

5 A If I may clarify, so the purpose of the
6 interview and what I -- I'm trying to get the information,
7 so I don't necessarily -- it's not about what I said in
8 the moments trying to, you know, get her to talk to me or
9 convince her that I need to know information. Because I
10 don't know what she is going to say, you know, and I
11 apologize I didn't write down why I said this and why I
12 said that, I'm taking the report of what she tells me.

13 So I understand that it may be on there, but
14 I wasn't focused on what I was saying, I was focused on what
15 she said.

16 Q But she responds to the things that you ask her?

17 A Sure, yes.

18 Q Basically you were trying to get out of her was
19 Andre's story wasn't consistent and you needed her help to
20 get him back in to clear it up?

21 A Right, so it would be if we have -- if I don't
22 know what happened, at that point I didn't, and I need
23 clarification. As far as I know she may have the keys to
24 the kingdom, she may know a whole bunch of things, so I
25 articulate my concerns. There is multiple reasons for

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 that.

2 One is, you know, every witness could
3 theoretically be the most important one. So, I want to
4 convince her of that so that she will talk to me. So that
5 is -- you know, that is where I was at that time. That is
6 things that I said to her, yes.

7 Q Okay. And you also -- you questioned her about
8 whether or not there was anything involving drugs; is that
9 correct?

10 A I may have.

11 Q And you also wanted to know if Mr. Ver'mon Steve
12 sold drugs?

13 A If you are asking, I must have said it but I
14 can't recall specifically.

15 Q Okay. So, you were present when you interviewed
16 Varsheen, right?

17 A Yes.

18 Q You obviously --

19 A Captain Gruel did most of the interview there.

20 Q And during that interview you got the
21 information that he actually went -- he said while -- he
22 was moving at that time, right?

23 A Yes.

24 Q I know that it is late, so I'm not getting back
25 into everything, but one thing that I wanted to point out

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 was you questioned him about what car did he get into when
2 he left; is that right?

3 A Either me or Captain Gruel.

4 Q Either of y'all.

5 A Yes.

6 Q I mean, there was a question about, you wanted
7 to know how did he leave?

8 A Correct, yes.

9 Q The information that you got was he was with
10 Taquan Lampkin in his mother's Chevy suburban, correct?

11 A His mother's Chevy SUV, yes.

12 Q Okay. Because he was dating his mother, which
13 was Trista Hobbs?

14 A Yes.

15 Q So you never found who was actually driving the
16 silver Yukon after the shots were fired?

17 A No, I don't.

18 Q Now, there's some dispute about whether or not
19 Varsheen actually lives at the Greene Street house. I
20 mean, you never investigated to see if there was a lease
21 or anything with his name on it.

22 A I mean he said that himself, he said he wasn't
23 on the lease. I mean, it wasn't like that unofficial, I'm
24 going to give you notice that I'm moving in. It was like,
25 Ver'mon took him in kind of thing. And that came out of

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 his mouth.

2 Q I mean, you just didn't look any further into
3 that?

4 A I did not.

5 Q Okay. And also during the interview Varsheen
6 told y'all that he had spoken to Ver'mon on the phone that
7 day?

8 A I believe that he said that, yes.

9 Q And he was saying that he was calling Ver'mon
10 while Andre was there because he was looking for him,
11 right?

12 A I think that he said that.

13 Q And so you pulled -- obviously you pulled
14 Varsheen's records?

15 A Uh-huh. (Indicating affirmatively.)

16 Q I know that you have already testified about the
17 communication between Wallace -- well, first, Wallace had
18 a couple of nicknames, correct, Tie and Black; did you
19 hear that?

20 A I don't think that I heard anything about Black,
21 no.

22 Q But you heard Tie?

23 A At some point I heard that he goes by Tie.

24 Q I'm assuming because you were looking for Monte,
25 you were -- I mean, you were trying to see if there were

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 communications between Monte and Varsheen on those phone
2 records?

3 A I think so, yes.

4 Q Okay. And you did find that there was
5 communication between them that day?

6 A I will have to look at the records, I don't
7 recall.

8 MS. GIBBES: Okay. If I may approach.

9 THE COURT: Sure.

10 BY MS. GIBBES:

11 Q Where are those records?

12 A Here.

13 Q I would just ask you to look at October 25th at
14 about 12:47.

15 A Let me get that page. At what time?

16 Q 12:47.

17 A Are you talking about the 59 --

18 Q Maybe I can show you my copy. I wrote on it.
19 Yes, Varsheen's phone number ends in -- it ends in 0259.

20 A No, this is sequential. You said -- what was
21 the time again? I apologize.

22 Q At October 25th at 12:47 p.m.

23 A I don't see that number. I see -- I see a 12:35
24 and then a 13:05.

25 Q I mean this is where you see it?

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 A Right, right.

2 Q Right here.

3 A Oh, you mean at 0047?

4 Q Yes, 0047.

5 A So, that would have been early that morning,
6 Sunday morning at 47 minutes after midnight Sunday
7 morning.

8 Q Okay. So, there's a call --

9 A Early in the morning, right, before 1 a.m., yes,
10 I see that.

11 Q Okay. And then there is another call right
12 here.

13 A Yes, at 2:35 in the afternoon.

14 Q And then it looks like there's a bunch of calls,
15 it looks like there's one, two, three, four, five calls,
16 if you wouldn't mind just reading out the times.

17 A 1940, 1941, 1945.

18 Q Is that like 7:40 p.m., 7:41?

19 A Right. Right.

20 Q And then it looks like Varsheen called Mr. Steve
21 at 7:50 and then he also called -- this is on October
22 25th, what is that, 8:04?

23 A Yes.

24 Q Okay. And that is about -- I mean, that is the
25 same time that Varsheen was actually telling you in his

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 interview that he was actually calling Mr. Steve to get
2 the key back to him, right?

3 A I don't remember what he said the purpose was,
4 but he said that he called him, yes.

5 Q Obviously that is in the video. Now, you also,
6 I mean, obviously in this investigation there is a lot
7 going on, it is kind of confusing, right?

8 A Yes, that is correct.

9 Q So, after you serve the warrant on Varsheen for
10 kidnapping, you continued the investigation obviously
11 because you were looking for Monte?

12 A Yes.

13 Q And part of your investigation you interview
14 Tyron Wallace, right?

15 A I did, yes.

16 Q And he actually -- his story changed. I mean,
17 you spoke to him several times?

18 A That's correct.

19 Q And I'll not get into what he said, but
20 obviously he changed his story several times; is that
21 correct?

22 A I don't know how much I can -- I mean it was --
23 I would say that more information was revealed --
24 progressively more information got revealed. So, once
25 that information was revealed it didn't necessarily

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 change, just more came out, would be the way that I would
2 categorize it.

3 Q Okay. But based on his statements you charged
4 him with murder?

5 A Yes, that's correct.

6 Q Now, you never retrieved any guns in this case?

7 A Correct, because they were disposed of.

8 Q And, I mean, we are here -- we are here about
9 the kidnapping. There's no -- you never had any
10 indication that there were any shots fired during the time
11 period that Andre Frazier claims he was in that house,
12 right?

13 A Right, he never mentioned any shots being fired
14 while he was there?

15 Q And you never tested the house at [REDACTED] Greene
16 Street for DNA or fingerprints or anything like that?

17 A We were looking for things related to Ver'mon
18 Steve, so we processed it with leucocrystal violet looking
19 for blood stains or anything like that, but found nothing.

20 Q Nothing.

21 A Nothing.

22 Q Now, the clothes in the house, do you have any
23 idea whose clothes those were?

24 A I can't remember.

25 Q But I mean, besides the statement you have no

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 forensic or physical evidence that Andre Frazier was even
2 in that house, correct?

3 A I wouldn't say besides -- I would have, if I can
4 say this, another statement besides Andre Frazier's
5 statement that put Andre Frazier in that house.

6 Q Well, I'm talking about physical, I mean, I'm
7 not talking about statements.

8 A No, right, right.

9 Q Okay. And at some point you got a duffle bag of
10 Varsheen Smith's clothing?

11 A I think so. I think we did, yes.

12 Q It was basically a black duffle bag with men's
13 clothes in it?

14 A Right.

15 Q And you didn't find a black hoodie in that bag?

16 A I don't remember, sorry.

17 Q I mean, your investigation -- I mean, you never
18 had anything with a black hoodie come up in your
19 investigation?

20 A As far as like physically having a black hoodie,
21 I don't recall that, no.

22 Q Okay. So you didn't test any clothing for gun
23 shot residue or anything like that?

24 A I don't think so, no.

25 MS. GIBBES: Beg the Court's indulgence.

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 THE COURT: All right.

2 (Pause.)

3 BY MS. GIBBES:

4 Q Now, just going back to Andre's statement. You
5 never got any indication from him that Varsheen actually
6 was waving -- you know, pointing a gun in the back of the
7 yard saying Monte was back there and waving a gun around?

8 A I don't remember him saying that, no.

9 Q Okay. And then we talked about the -- you know,
10 he didn't say anything about Varsheen telling him to run
11 his pockets.

12 A Telling who to run his pockets, telling Wallace
13 to run his pockets?

14 Q Telling -- yes, for Varsheen to tell Wallace.

15 A I just remember he said. I want to say that he
16 said that he ran his pockets. But I don't recall if he
17 said that Varsheen said it or not. He may have said that
18 or not, but I don't remember. As far as Varsheen giving
19 him verbal instructions to do that, I don't know. He said
20 that he ran his pockets.

21 Q Again you didn't charge him with armed robbery?

22 A Yes, because ultimately nothing was taken.

23 Q Because he didn't say that?

24 A No, I didn't charge it because nothing was
25 taken. He said that Varsheen said, Give him the stuff

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 back. So he didn't keep the stuff so I didn't -- and,
2 again, you have got to remember the overriding concern is,
3 where is Ver'mon.

4 So, you know, I did get into the nuance of he
5 went in his pockets, but then the stuff went back so that
6 wasn't a concern of mine. But my primary number one
7 overriding concern was -- you know, it was really two-fold,
8 it was the kidnapping and it was Ver'mon. So, I was doing
9 both of those things at the same time. So, to me, I mean, I
10 guess that I could have parsed out, yeah, I could do armed
11 robbery on it but he said that he got his stuff back. I
12 just didn't think of that particular aspect of that at that
13 time.

14 Because, again, we were marshalling every
15 resource we could to find Ver'mon. I mean, every time
16 something came in, well, hearsay about, Ver'mon might be
17 here, Ver'mon might be there, even if I was off I would run
18 and look for Ver'mon. I mean, that was -- it was a lot of
19 moving parts.

20 Q You actually got other reports that other people
21 may have shot Ver'mon like Jordan Burgess?

22 A Yes, we had to wade through a lot of hearsay.

23 Q Now, do you remember when Andre was interviewed
24 he kind of acted out supposedly what happened. I mean,
25 obviously he likes to get up and act things out.

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 A Uh-huh. (Indicating affirmatively.)

2 Q Adn he was trying to explain how he was able to
3 text while his hands were tied; do you remember that?

4 A Yes, I remember he did it. I would not say that
5 I remember every, like, motion. I would say that it was
6 consistent with what he demonstrated here to the best of
7 my recollection.

8 Q Well, the one thing I noticed was different on
9 that, you noticed that that is actually in the video he
10 actually said he pulled his phone out of his front pocket?

11 A He may have said that. I don't remember.

12 Q Okay. Andre Frazier never came back and made
13 another statement to you?

14 A No, ma'am, he did not.

15 MS. GIBBES: Beg the Court's indulgence real
16 quick. I don't want to forget anything.

17 (Pause.)

18 MS. GIBBES: I have no further questions, thank
19 you.

20 MS. JONES: No further questions from the State,
21 Your Honor.

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

23 Do you have a short witness?

24 MS. JONES: Well, if we can maybe talk about
25 scheduling sidebar Your Honor?

CROSS EXAMINATION OF G. ERDEL BY MS. GIBBES

1 THE COURT: Okay. If you would like to stand
2 and stretch. And we have ordered lunch for you.

3 THE BAILIFF: It is here and set up, Your Honor.

4 THE COURT: You can find out if you want a lunch
5 break now or later. But I'll talk to the attorneys.

6 (Off-the-record discussion held.)

7 THE COURT: The attorneys think, ladies and
8 gentlemen, that they can finish the presentation of
9 all of the State's evidence before 1:00. They would
10 like to go ahead and try to push through unless the
11 jury has an objection to that.

12 (No response.)

13 THE COURT: Call your next witness.

14 MS. JONES: Thank you, Your Honor. The State
15 calls Shabonda Milledge.

16 Thereupon,

17 SHABONDA MILLEDGE

18 was called as a witness, having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. JONES:

22 Q Good afternoon, Ms. Milledge. Can I call you
23 Shabonda?

24 A Sure.

25 Q How do you know Andre Frazier?

DIRECT EXAMINATION OF SHABONDA MILLEDGE BY MS. JONES

1 A I used to date him.

2 Q And how long did y'all date?

3 A About four and a half, five years.

4 Q How long ago was that?

5 A Probably about 2012.

6 Q Okay. And do you know -- do you know a man
7 named Varsheen Smith?

8 A I do.

9 Q How do you know him?

10 A I met him at my mother's birthday party.

11 Q When was that?

12 A That was on [REDACTED].

13 Q Okay. And did you have communications with him
14 after that?

15 A Slightly.

16 Q Okay. Were y'all dating?

17 A No.

18 Q Was he pursuing you?

19 A Yes.

20 Q But you didn't reciprocate those feelings?

21 A No.

22 Q After you met Mister -- the defendant,
23 Mr. Smith, would you call him or would he call you?

24 A He called me.

25 Q Okay. Did he ever show up at your house?

DIRECT EXAMINATION OF SHABONDA MILLEDGE BY MS. JONES

- 1 A Yes.
- 2 Q And when was that?
- 3 A Several times. I mean, it was like different
- 4 times.
- 5 Q Was it close to when y'all first initially met?
- 6 A Yes, ma'am, some of them.
- 7 Q Okay. And who is Tyron Wallace?
- 8 A That is my cousin.
- 9 Q Okay. And how is he your cousin?
- 10 A His mother is my first cousin. Her mother is my
- 11 aunt.
- 12 Q Okay. Did you ever see Tyron Wallace and
- 13 Varsheen together?
- 14 A Yes, ma'am.
- 15 Q And where was this?
- 16 A At my house.
- 17 Q So, this man right here knows Tyron Wallace?
- 18 A Yes.
- 19 Q And I pointed over here; who is this man sitting
- 20 at this table?
- 21 A That is Varsheen Smith.
- 22 Q Do you know him by another name?
- 23 A Twiz.
- 24 Q Do you remember October 26th of 2015?
- 25 A Yes.

DIRECT EXAMINATION OF SHABONDA MILLEDGE BY MS. JONES

1 Q Did the defendant call you?

2 A He did.

3 Q And what did he -- did he ask you anything about
4 Andre Frazier?

5 A He did. He asked me if I knew where Andre
6 lived.

7 Q Did he ask you anything else about Andre?

8 A He just really asked me if I had Andre's phone
9 number and if I knew where he lived, and if I did know
10 where he lived would I take him to his house.

11 Q Did you know the answer to either of those
12 questions?

13 A I did, but I didn't tell him that.

14 Q Okay. So, you did know where Andre lived?

15 A Yes.

16 Q But you didn't tell him?

17 A No.

18 Q Okay. From October 26th until about
19 November 16th of 2015, were you in communication with the
20 defendant?

21 A I was.

22 Q And you actually spoke with him on the phone?

23 A Yes, ma'am.

24 Q Did you ever ask him about Andre?

25 A I just asked him questions like, if he wasn't

DIRECT EXAMINATION OF SHABONDA MILLEDGE BY MS. JONES

1 guilty of what they were accusing him of, why was he
2 running. He asked me more questions about Andre.

3 Q What was he asking you about Andre?

4 A He just asked me, you know, stuff like if I
5 spoke to Andre and is Andre accusing him of what they said
6 and stuff like that.

7 Q Okay. Did you tell him that the police were
8 looking for him?

9 A He told me that.

10 Q He told you that the police were looking for
11 him?

12 A Uh-huh. (Indicating affirmatively.)

13 Q And where was he?

14 A He would never tell me where he was. He wasn't
15 in Beaufort.

16 Q Okay. Did he tell you that he was going to come
17 back?

18 A Yes.

19 Q Did he?

20 A No.

21 MS. JONES: Ms. Milledge, I have no further
22 questions for you.

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25 BY MS. GIBBES:

CROSS EXAMINATION OF SHABONDA MILLEDGE BY MS. GIBBES

1 Q How are you, Shabonda?

2 A Good.

3 Q Good. Just backing up just a little bit.

4 You -- obviously you went and spoke to investigators,
5 correct?

6 A I did.

7 Q Okay. And you were video recorded during that
8 interview, right?

9 A (Nods.)

10 Q You told investigators the last time that you
11 saw Monte was at Wal-Mart, Sunday the 25th?

12 A Yes.

13 Q And you estimated that was about 4 p.m. because
14 you were dropping your son off at work?

15 A Yes.

16 Q You actually had a conversation with Monte?

17 A I did.

18 Q It was about Varsheen?

19 A It was.

20 Q He actually brought it up, and he asked you when
21 the last time you saw Varsheen was, right?

22 A Right.

23 Q You told him that you hadn't talked to Varsheen
24 in over a month?

25 A Well, it was like two and a half weeks.

CROSS EXAMINATION OF SHABONDA MILLEDGE BY MS. GIBBES

1 Q He told you that he was getting evicted out of
2 his house?

3 A He did.

4 Q And that basically -- he was kind of implicating
5 that Varsheen may need your help because he was not going
6 to have a place to live?

7 A Correct.

8 Q And so, let me ask you this: Was your phone
9 number at the time, if you remember, 843-476-2232?

10 A It was.

11 Q Okay. And now -- so you are saying that you
12 hadn't spoken to him -- I mean, when, if it had been over
13 a couple of weeks, I mean, when was it, like in September
14 was the last time you spoke to him, in 2015, something
15 like that?

16 A I can't be specific, but it had been a few
17 weeks, a couple of weeks since I talked to him when I saw
18 Monte.

19 Q Okay. So it would surprise you if I told you
20 that his phone records actually say that you called him
21 two or three times on October 22nd?

22 A That I called him?

23 Q That you called him.

24 A Yes, it would surprise me.

25 Q It would. Okay. And would it help if I showed

CROSS EXAMINATION OF SHABONDA MILLEDGE BY MS. GIBBES

1 you the records?

2 A That is fine.

3 Q Okay. Now, and I don't know if you remember

4 this phone number off of the top of your head --

5 A No.

6 Q But up here, this is number, Varsheen's phone

7 number, 8434760259.

8 A Okay.

9 Q And then this is for October 25th, 2015 and it
10 looks like the conversation lasted about 181 seconds. And
11 this shows, this is from his phone and this is your
12 number; correct?

13 A Uh-huh. (Indicating affirmatively.)

14 Q That was outgoing, which means -- let's see.
15 Yeah, that you called him for 181 seconds, okay. And then
16 let's see. It looks like you called him again. And this
17 is your number again, right?

18 A Uh-huh. (Indicating affirmatively.)

19 Q 476-2232. And that is incoming and that looks
20 like on October 26th at 1:17?

21 A Uh-huh. (Indicating affirmatively.)

22 Q Okay, so, on the 26th you actually -- you just
23 testified that he called you on the 26th, right?

24 A Yes, it says incoming on the 26th.

25 Q Right. Because this is his phone, it says

CROSS EXAMINATION OF SHABONDA MILLEDGE BY MS. GIBBES

1 incoming?

2 A Incoming call, uh-huh. (Indicating
3 affirmatively.)

4 Q Right, incoming. Incoming from you.

5 A No, outgoing would be from me.

6 Q Well, and then let's see -- and you talked to
7 him again -- I mean, it looks like you talked to him twice
8 on October 26th?

9 A Uh-huh. (Indicating affirmatively.)

10 Q Okay. And there's also more to it -- I mean,
11 when you spoke to Varsheen you didn't mention anything
12 about him being in Georgia, right?

13 A I didn't know that he was in Georgia.

14 Q You didn't know. I mean, he wanted you to take
15 a mason jar to his mom?

16 A He did ask me that, yes.

17 Q Okay. And the investigators, they actually
18 asked you where Varsheen was, right?

19 A They asked me if I knew where he was, yes.

20 Q Okay. And you told him that he was either in
21 Walterboro or Charleston?

22 A Well, that is what he had told me, yes.

23 Q Okay. So, he did tell you where he was?

24 A No, he was not there, but that's where he told
25 me he was.

CROSS EXAMINATION OF SHABONDA MILLEDGE BY MS. GIBBES

1 Q And during this time you are also communicating
2 with Andre, right?

3 A I am.

4 Q Okay. And y'all are basically talking about
5 what happened?

6 A Well, we are basically talking that he called me
7 asking for information, yes.

8 Q But he gave you an idea of what Andre was
9 talking about, what he was saying happened at Greene
10 Street?

11 A Slightly, yes.

12 Q Okay. And he also told you that he was able to
13 escape out of the back door of that house?

14 MS. JONES: Objection, Your Honor, this is
15 hearsay.

16 THE COURT: Sorry, I couldn't hear you.

17 MS. JONES: Hearsay.

18 THE COURT: Sustained.

19 BY MS. GIBBES:

20 Q Now, when you spoke to the investigators, he
21 actually wanted you to get Andre to come back in and clean
22 up his story, correct?

23 A That is not true.

24 Q You don't remember him talking to you about the
25 inconsistencies in his statement?

CROSS EXAMINATION OF SHABONDA MILLEDGE BY MS. GIBBES

1 A I do not.

2 Q You don't?

3 A No.

4 Q And he wanted your help to get him to come back
5 in?

6 A Not Andre, no.

7 Q Tell me about Tyron. He has a nickname, Black?

8 A I don't know him by that.

9 Q You know him by Tie?

10 A I know him by Tie or Little Man, that is what we
11 call him.

12 Q Okay.

13 MS. GIBBES: Beg the Court's indulgence.

14 (Pause.)

15 BY MS. GIBBES:

16 Q All right. If you don't mind very quickly. I
17 want to verify again. I obviously got confused with the
18 call records. I mean, okay. So, on the 25th you actually
19 called him?

20 A Okay.

21 Q But you didn't mention that to the police?

22 A I mean, well, I wasn't asked those questions.

23 And, yes, if he's accused of something I would like to
24 know where he is, yeah, I probably did.

25 Q Okay. So, you basically -- we have got now that

CROSS EXAMINATION OF SHABONDA MILLEDGE BY MS. GIBBES

1 you did. Okay, it hadn't been a couple of weeks, I mean,
2 it had been since the 22nd when you had talked to him.

3 A Okay.

4 Q Okay. And then when the investigator was asking
5 you when was the last time that you spoke to him you said
6 the 26th, but actually the phone records show the 25th?

7 A Okay.

8 MS. GIBBES: All right. Thank you.

9 THE WITNESS: You are welcome.

10 REDIRECT EXAMINATION

11 BY MS. JONES:

12 Q Ms. Milledge, I have one quick follow-up
13 question. Talking about phone records, when Varsheen,
14 that man, was calling you while he was on the run, was he
15 calling from a local number?

16 A He started from a local number and then he
17 switched to an out-of-state number.

18 MS. JONES: Thank you. I have no further
19 questions.

20 MS. GIBBES: I have no further questions.

21 THE COURT: Thank you, ma'am. You may step
22 down. Call your next witness.

23 MS. JONES: May Ms. Milledge be dismissed from
24 her subpoena?

25 THE COURT: Yes, without objection.

REDIRECT EXAMINATION OF S. MILLEDGE BY MS. JONES

1 MS. JONES: Thank you. The State would call
2 Investigator Josh Dowling.

3 Thereupon,

4 JOSH DOWLING

5 was called as a witness, having been first duly sworn,
6 was examined and testified as follows:

7 THE CLERK: If you would state your name for the
8 record, please.

9 THE WITNESS: My name is Joshua Dowling

10 DIRECT EXAMINATION

11 BY MS. JONES:

12 Q Investigator Dowling, where do you work?

13 A With the City of Beaufort Police Department.

14 Q In what capacity do you work with the police
15 department?

16 A I work in the capacity as an investigator.

17 Q How long have you been there?

18 A I have worked for the City for approximately 11
19 years now.

20 Q Did you assist in the investigation of the case
21 that we are here for today?

22 A I did.

23 Q Did you have an opportunity to come into contact
24 with Varsheen Smith, the defendant?

25 A I did.

DIRECT EXAMINATION OF J. DOWLING BY MS. JONES

1 Q And how did that come about?

2 A I was involved with the transportation of the
3 defendant on November 16th, 2015.

4 Q Who had arrested the defendant?

5 A He was arrested by the United States Marshals
6 out in the State of Georgia.

7 Q And when was this?

8 A It would have been approximately the time period
9 of November 2015.

10 Q Okay. And where in Georgia was he arrested?

11 A He was arrested in a county, it is identified as
12 Hall County in the State of Georgia. It is in the
13 outskirts of Atlanta.

14 Q How far away is that from Beaufort County?

15 A It took approximately 5½ hours to get there. It
16 was a very rural county. It is on the northern region of
17 the city of Atlanta.

18 MS. JONES: I have no further questions. Thank
19 you.

20 THE COURT: Thank you.

21 CROSS EXAMINATION

22 BY MS. GIBBES:

23 Q Just briefly. Mr. Smith was cooperative when he
24 was arrested, he didn't try to run away from you or
25 anything like that?

CROSS EXAMINATION OF J. DOWLING BY MS. GIBBES

1 A Yes, he was handcuffed and in leg shackles and
2 there was another officer with me.

3 Q Okay. Did you do any investigation of his
4 wife's address in that area of Georgia?

5 A There was no interviews or anything of that
6 sort, I was simply involved in the transportation.

7 MS. GIBBES: I have nothing further.

8 MS. JONES: Nothing further.

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

10 THE WITNESS: Thank you, Your Honor.

11 MS. JONES: The State calls Pam Burries.

12 Thereupon,

13 PAM BURRIES

14 was called as a witness, having been first duly sworn,
15 was examined and testified as follows:

16 THE CLERK: If you would just state your name
17 for the record.

18 THE WITNESS: Pam Vanessa Burries.

19 B-U-R-R-I-E-S.

20 DIRECT EXAMINATION

21 BY MS. JONES:

22 Q Good afternoon, Ms. Burries. Where do you work?

23 A Clerk of Court.

24 Q And what are your duties at the Clerk of Court?

25 A I am a judicial clerk for general sessions.

DIRECT EXAMINATION OF P. BURRIES BY MS. JONES

1 Q Is that the Beaufort County Clerk of Court?

2 A Yes.

3 Q Okay. And were you asked to pull some records
4 for the case that we are here for today?

5 A I did. I was, yes.

6 Q And did you, in fact, pull records?

7 A Yes.

8 Q Okay. And are these -- I'll show you what's
9 been marked as State's Exhibit 9 previously shown to
10 defense counsel. And what is that? Is that the record
11 that you pulled?

12 A Yes, a sentencing sheet.

13 Q Okay. And are these records kept in the
14 ordinary course of business with the Clerk of Court?

15 A Yes, they are.

16 MS. JONES: Your Honor, at this time State moves
17 State's 9 into evidence.

18 MS. GIBBES: Without objection.

19 THE COURT: Granted.

20 *(Whereupon, State's Exhibit No(s). 9 marked for*
21 *identification and received in evidence.)*

22 BY MS. JONES:

23 Q And what is this record?

24 A A sentencing sheet.

25 Q And who is the person who is sentenced on this

DIRECT EXAMINATION OF P. BURRIES BY MS. JONES

1 sheet, on this sentencing sheet?

2 A Varsheen Smith.

3 Q Okay. Does he have a middle initial?

4 A A.

5 Q What is this -- does this sentencing sheet
6 depict a conviction?

7 A It does.

8 Q What is the conviction for?

9 A Burglary second.

10 Q Okay. Does it have a date on it?

11 A March 21st, '94.

12 Q Okay.

13 MS. JONES: I have no further questions, thank
14 you.

15 MS. GIBBES: Just briefly.

16 CROSS EXAMINATION

17 BY MS. GIBBES:

18 Q You said burglary second, but it also says
19 non-violent as to burglary second?

20 A It does.

21 MS. GIBBES: Thank you. Nothing further.

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

24 MS. JONES: Your Honor, at this time the State
25 rests.

CROSS EXAMINATION OF P. BURRIES BY MS. GIBBES

1 THE COURT: Let's take a 30-minute lunch break,
2 ladies and gentlemen. If you need more than 30, that
3 will be fine. I need to talk to the attorneys about
4 something anyhow. I'll remind you that it's too
5 early for you to begin discussing the case. If you
6 will retire to the jury room.

7 (The jury exits the courtroom.)

8 THE COURT: Motions.

9 MS. GIBBES: Yes, Your Honor, at this time I
10 would move for directed verdict in this case. I
11 would argue that the facts that have been presented
12 by the State --

13 THE BAILIFF: Let's have order.

14 MS. GIBBES: I would argue that the State has
15 not met its burden to prove kidnapping and that the
16 possession of the weapon charges, I think that if you
17 listen to the testimony it seems to me that the
18 alleged victim was able to leave at a certain point,
19 so he's not unlawfully constrained. I think that
20 there are differences in the statements that do not
21 reach the level, and I do not think that the State
22 has reached its burden. And no weapon was recovered.

23 THE COURT: I understand the argument. However,
24 I find that there is sufficient evidence for all of
25 these charges to be submitted to the jury and deny

CROSS EXAMINATION OF P. BURRIES BY MS. GIBBES

1 the motion.

2 MS. GIBBES: Thank you.

3 THE COURT: Should I take this opportunity to
4 discuss with your client his right to testify?

5 MS. GIBBES: Yes, Your Honor.

6 THE COURT: Mr. Smith, at this time I'll explain
7 certain of your rights. If at any time you don't
8 understand what I'm saying or want me to clarify
9 something, just please let me know. We have now
10 reached a stage in this trial where you have a right
11 to present your defense. I need to tell you that you
12 have the right to claim the protections given to you
13 by the fifth amendment of the Constitution of the
14 United States of America which states in part as
15 follows: That no person shall be compelled to be a
16 witness against themselves in any criminal case.

17 This means that you cannot be required to
18 testify. You have the right to testify, however, no
19 one can make you testify. This is a personal right
20 that you have that no one can waive except you. If
21 you decide to testify you would be subject to the
22 same rules that govern other witnesses and you may be
23 examined and cross-examined on any relevant issue in
24 this case.

25 In addition, if you have any convictions

CROSS EXAMINATION OF P. BURRIES BY MS. GIBBES

1 involving dishonesty or false statement or crimes
2 punishable by imprisonment of more than one year and
3 this Court determines that the probative value of
4 admitting such outweighs the prejudicial effect to
5 you the solicitor would be able to use your record to
6 attack your credibility.

7 If you decide to testify, this decision on your
8 part must be made freely and voluntarily with the
9 knowledge and the protection given to you by the
10 fifth amendment. If you decide not to testify I'll
11 instruct the jurors that they cannot give that fact,
12 the fact that you didn't testify, any consideration
13 whatsoever. Because there's no prejudice -- should
14 be no prejudice to you as a result of you not
15 testifying. This is left completely up to you. You
16 can discuss it with your attorney, family, friends,
17 or anyone else. But you have to make the final
18 decision.

19 Do you understand so far what I have said?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had a chance to discuss
22 this matter with your attorney?

23 THE DEFENDANT: No, not right now.

24 THE COURT: You would like some more time to
25 discuss it?

CROSS EXAMINATION OF P. BURRIES BY MS. GIBBES

1 THE DEFENDANT: Yes.

2 THE COURT: All right, certainly. We will take
3 a lunch break and come back after that.

4 MS. JONES: Thank you.

5 THE COURT: Let's take 30.

6 (Lunch recess.)

7 THE COURT: While we are waiting on the
8 defendant, let me ask you a couple of questions.
9 Have we talked at all about any jury charges?

10 MS. JONES: No, sir.

11 THE COURT: Does anyone have any request for the
12 jury charges?

13 MS. JONES: No additional ones from the State.

14 THE COURT: Does anybody have any objections to
15 charges to the jury?

16 MS. GIBBES: I don't believe so. The only
17 additional one that I would have is I would request
18 one about inconsistent statements, Your Honor.

19 THE COURT: About what?

20 MS. GIBBES: Inconsistent statements, Basically
21 that they can look at inconsistent statements and
22 decide whether, you know, how that goes to the weight
23 of the credibility. Your Honor, I would argue that
24 we had a couple of witnesses that did make
25 inconsistent prior statements, or they are

MOTIONS

1 inconsistent between today and the original.

2 THE COURT: Any objection to that?

3 MS. JONES: Your Honor, I don't feel that there
4 were inconsistent statements.

5 MS. GIBBES: I can list whatever. I mean, I
6 know of at least a couple. Your Honor, I believe
7 that Mr. Frazier did change his story around about as
8 far as texting on his cell phone. And then as far as
9 what he did in the car or in the house. I think that
10 there are -- as far as Shabonda Milledge --

11 THE COURT: Let me ask you this. This here is
12 what is required. I'm not sure that I was following
13 exactly what you said. Is there evidence, testimony
14 on the witness stand that is different than the
15 testimony at some other time?

16 MS. GIBBES: Yes, I believe that Mr. Frazier,
17 some of his testimony was different than what his
18 original statement was. As far as the timing, the
19 cell -- you know, as far as using the cell phone, he
20 was able to, you know, either use it in the car or
21 use it in the house, he changed the statement a
22 little bit about whether it was in the front or back.

23 Ms. Milledge, she committed that, you know, she
24 didn't call Mr. Smith one day and the phone records
25 show that she actually did. I do think that there

MOTIONS

1 were inconsistencies that go to the weight of the
2 credibility and that the jury should be instructed
3 that they can consider that towards their credibility
4 if their statement has changed at any time, you know,
5 from their prior statements to now.

6 MS. JONES: I would just argue that Mr. Frazier
7 was never inconsistent. He said in his original
8 interview to Investigator Erdel that he was unsure of
9 where he was when he sent that text message and he
10 was unsure of the timing. And up on the stand he
11 still said he was unsure and he just clarified. It
12 was no -- nothing inconsistent from what he had said
13 previously.

14 And regarding Ms. Milledge's phone records, I
15 think that everybody can agree that those phone
16 records and how they were attempted to be explained
17 was pretty convoluted. And even Ms. Milledge herself
18 was a little confused as to what calls were placed
19 and received.

20 MS. GIBBES: I admit I did mess up things. I
21 think at the end I admitted that and showed that.
22 And she admitted that she had made these calls when
23 she had said very adamantly that she, you know,
24 didn't talk to him on the 25th, that it was on the
25 26th and that she hasn't talked to him over weeks and

MOTIONS

1 she had spoken to him on the 22nd. I mean, she did
2 admit to all of that, even though I was a bit
3 convoluted and had to pull it out at the end. I
4 think that shows inconsistencies.

5 THE COURT: That was my recollection as to the
6 way that it went down too.

7 MS. JONES: I guess, with regards to
8 Ms. Milledge, she was a little confused. I guess for
9 protection of the record it wouldn't hurt to do the
10 inconsistent statement.

11 MS. GIBBES: Thank you.

12 THE COURT: I'll grant that motion.

13 MS. GIBBES: Thank you, Your Honor.

14 THE COURT: Let me ask you this: On the charge
15 of possession of a firearm by a person convicted of a
16 crime of violence, what is the charge that the State
17 wants on that, if any?

18 MS. JONES: It is the burglary conviction. And
19 the statute doesn't differentiate. I have a copy of
20 the statute. It doesn't differentiate between the
21 degree of burglary to constitute a crime of violence.

22 THE COURT: I think that you are right. And as
23 a matter of law.

24 MS. GIBBES: Yes, it is a different part of the
25 statute as to the other crime of violence statute.

MOTIONS

1 MS. JONES: Your Honor, I would ask that it be
2 made clear to the jury that while the sentencing
3 sheet does say, non-violent, that it is still in fact
4 a crime of violence.

5 THE COURT: Well, what I thought that I would
6 do -- let me see if I can find that language.

7 (Pause.)

8 THE COURT: In the possession charge, possession
9 of a weapon during the commission of a violent crime,
10 you tell the jury that under the law of this state if
11 you find that the defendant is guilty of kidnapping,
12 and I tell you that that is a violent crime, then you
13 can find him guilty of it. But you can't find him
14 guilty if you find him not guilty of kidnapping. So,
15 in other words, you go ahead and tell the jury that
16 kidnapping is a violent crime. You tell them that
17 under the, the same thing about burglary, that it is
18 a crime of violence. Isn't that right?

19 MS. GIBBES: Right. And basically if they find
20 him not guilty of kidnapping they can't necessarily
21 go on to the next -- they can't go to the next.

22 THE COURT: They can't, that is right.

23 MS. GIBBES: Right.

24 MS. JONES: I agree, Your Honor.

25 THE BAILIFF: We have made another call, Judge.

MOTIONS

1 I have called him twice, Judge, and they assure me
2 that he is on the way.

3 THE COURT: Has your client had sufficient
4 opportunity to discuss with you the issue of
5 testifying?

6 MS. GIBBES: Yes, Your Honor. It is my
7 understanding he's not going to testify.

8 THE COURT: Is that correct?

9 MS. GIBBES: Yes, sir.

10 THE COURT: Is that correct, Mr. Smith, you have
11 had sufficient time to discuss it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Your decision is not to testify?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Your case, are you ready to present?

16 MS. GIBBES: Yes, Your Honor, I am ready to rest
17 on the record, I believe, Judge.

18 THE COURT: Rest on the record. Okay. And both
19 ready to go to argument, 30 minutes max each, right?

20 MS. JONES: Yes, Your Honor.

21 MS. GIBBES: Yes, Your Honor.

22 THE COURT: All right.

23 THE BAILIFF: The jury is entering the
24 courtroom.

25 (The jury enters the courtroom at 1:50 p.m.)

MOTIONS

1 THE COURT: If you can slide it one direction or
2 the other, or farther back. That is fine right
3 there. Welcome back, ladies and gentlemen, if you
4 recall before lunch, at our lunch break, the
5 plaintiff rested or ceased presenting evidence,
6 Plaintiff's evidence. The defendant now has the
7 opportunity to present evidence should the defendant
8 decide to do so. As I told you earlier, the
9 defendant is not required to produce any evidence.

10 MS. GIBBES: Your Honor, the defense would rest.

11 THE COURT: The defense rests or does not wish
12 to present any evidence. The attorneys again are
13 ready to make to you their closing arguments. The
14 statement made to you by the attorneys, though, are
15 not evidence. It is merely what the attorneys say.
16 The attorneys may, for instance, say that they think
17 witness number one said A, B, C. If you think that
18 witness number one said D, E, then what your
19 recollection of what the testimony is far outweighs
20 what an attorney says he or she believes the
21 testimony is. That he make arguments to you and is
22 after which, I'll then tell you about the law that
23 applies to the case. And we will begin with the
24 state.

25 CLOSING ARGUMENT BY THE STATE

CLOSING ARGUMENT BY THE STATE.

1 MS. JONES: Thank you, Your Honor. May it
2 please the Court.

3 "I didn't even have time to pray. I did not
4 even have time to pray." That is what Andre Frazier
5 told you when he got on this witness stand right here
6 and relived his nightmare of October 25th of 2015.
7 He recanted very detailed specifics of what happened
8 to him that night. And the defense wants you to not
9 believe anything he says, and I am going to ask that
10 you do believe him. Andre got on that witness stand
11 and he came down here and he told you that he had
12 been with his friends Petey and Monte earlier that
13 night at Buffalo Wild Wings. How do we know that is
14 true? Because Pete Singleton came up here and told
15 you that. He corroborated it. He was consistent.

16 Andre also told you that the Giants had won, he
17 was excited. He went to the Shell gas station, he
18 was excited, he couldn't really think straight, but
19 he didn't pump his gas. How do we know that is true?
20 Because Mr. Patel from the Shell gas station came
21 here and showed you the video. You saw the video of
22 Andre in his silver car, pulls up to the pump, goes
23 inside, he goes back, he doesn't get his gas. He
24 goes and comes back a few minutes later and gets his
25 gas and then off to Greene Street he goes.

CLOSING ARGUMENT BY THE STATE.

1 And you can look at the time stamp on that video
2 and see that that happened a little after 7:00 that
3 night, consistent with a 4:00 football game that
4 lasts about three hours. That puts him right there a
5 little after 7:00 that night. He told you, after he
6 got to Monte's house that night he didn't park over
7 on the side because there was a truck in the driveway
8 and Monte's car was out front.

9 And when he gets there he sees two people
10 outside. He thinks that it's Monte and a friend,
11 some other person. When he gets closer he realizes
12 that it's not a friend, it is not Monte. It is that
13 man right there, Varsheen Smith and Tyron Wallace.
14 He says his hellos. He starts to walk inside to see
15 Monte, because according to that man over there Monte
16 is inside. We know that is a lie.

17 Well, Andre puts his foot inside that door and
18 that sixth sense that I talked to you about the other
19 day, that intuition, it takes over. But before he
20 can get out of there, before he can walk away, he has
21 a gun and he is being over-powered and he is being
22 forced inside. Once he's inside come the questions.
23 Where is Monte, have you talked to Monte, have you
24 seen Monte, where is he, that is a funny time that
25 you are here today. Why does that make sense? Why

CLOSING ARGUMENT BY THE STATE.

1 do those questions resonate now? Because we know
2 that the kidnapping of Andre Frazier was never about
3 Andre Frazier, it was always about Monte. Now, those
4 questions make sense.

5 Well, Andre is stunned, he is shocked, he is
6 scared, he doesn't understand what is happening.
7 He's told you, he's never been in this type of
8 situation before. He has a sock forced in his mouth.
9 He has his hands tied behind his back. And he is led
10 room by room by room in that house until he
11 eventually ends up in the back room. He is forced
12 onto his knees. And that man right there, nobody
13 else, that man right there holds a gun at him, at his
14 stomach, and threatens him. Andre told you all he
15 could focus on was the sound that that gun was going
16 to make when it went off. That pop he knew he was
17 going to hear.

18 But he didn't hear that pop. Instead they let
19 him go. Why did they let him go? Andre told you
20 that a police officer he had never even met saved his
21 life that night. And you met that police officer.
22 His name was Officer Bill Wadman and he told you that
23 he was in the area, he was on Greene Street at 7:51
24 that night, which coincides with the time frame that
25 Andre gives of watching the football game, being at

CLOSING ARGUMENT BY THE STATE.

1 the Shell station, and being at Monte's house.

2 Officer Wadman says he is there, he didn't see
3 anybody outside, and he leaves. Andre swears deep
4 down inside that that police officer being there that
5 night is the only reason he is alive today. They
6 don't let him go immediately, he is not released, he
7 is not free to leave. He tells you, even when he's
8 outside, that man right there, and if you can't see
9 him I'll move this. There he is. That man right
10 there still has a gun in his hoodie pocket pointing
11 it at him. None of the other people can see it, it
12 is in his jacket pocket. But Andre saw it. And
13 Andre knew that this was his life line and he had to
14 do what he was told because that man right there, he
15 didn't care. He had already threatened him. Already
16 held a gun at him, already attacked him, had him tied
17 up, had him gagged.

18 You heard from Investigator George Erdel. He
19 was the one -- he was, according to Andre, the third
20 person he told that this had happened to him. Andre
21 said he told Petey. Andre said he told Ms. Steve.
22 And because of what Andre said to Ms. Steve, she
23 called the police. She went to the police station
24 and reported Monte missing. She also described that
25 when she is talking to Andre, he was upset, he was

CLOSING ARGUMENT BY THE STATE.

1 really upset, he was scared. He's scared because his
2 life was just threatened and now his best friend is
3 missing.

4 You heard from Investigator Erdel, and he was in .
5 here while Andre testified and he told you that when
6 Andre put his back up against this wall right here,
7 he knelt down with his hands behind his back. That
8 is exactly what he did, that is exactly how he showed
9 him back on October 27th of 2015. Why is that
10 exactly how he showed him? Because that is what
11 happened. And the truth you can remember. Lies you
12 can't.

13 We heard Investigator Erdel say that Andre was
14 scared, he was terrified, he was upset, he was in
15 fear. He was frightened and he was crying. He even
16 went so far to say that he put his fear at the top of
17 the list of anybody he had ever questioned and he
18 told you that he's been in law enforcement since the
19 '90s. Andre is a scared man. And rightfully so.

20 Andre did not call the police when this
21 happened. You heard from Investigator Erdel and
22 Captain Gruel that it is not uncommon for people to
23 not call the police. Unfortunately there is a sect
24 of the population who they don't trust the police,
25 they have this street mentality that this justice,

CLOSING ARGUMENT BY THE STATE.

1 this courtroom justice, isn't for them. So Andre
2 doesn't call the police.

3 You also heard from invest -- from Officer
4 Wadman that back in 2015, that quadrant in Beaufort,
5 that area that we showed on the map, that was a
6 problem area. They had a lot of calls there and they
7 never took anything lightly. When anything was
8 called there, they all responded. Why? Because it
9 wasn't safe back then. People weren't calling the
10 police like they should. And Andre fell subject to
11 that. He told you that he was scared of this man.
12 This man is a big intimidator. You heard that on the
13 recording. And more importantly he told you, I have
14 kids. I have two kids that I take care of and they
15 live with me and I have to think about their safety.
16 I'm raising those kids, no one else. Andre couldn't
17 be a snitch. You don't live in this world, you don't
18 live on those streets having the title snitch. And
19 Andre wasn't going to do that, he had children that
20 he had to live for.

21 Now, the defense tried to discredit everything
22 that Andre said to you, everything. He was up on
23 that witness stand for quite some time and tried to
24 discredit him because he didn't report to the police.
25 We know why he didn't report. That makes sense why

CLOSING ARGUMENT BY THE STATE.

1 he didn't report. They tried to discredit him
2 because of his timing while he was at the Shell
3 station, what he told the police didn't match up with
4 what the cameras told you. And he also told you that
5 he was not thinking about the times, he was thinking
6 about the pop that that gun was going to make when it
7 was up against the back of his head and it was
8 pointed at his stomach. He wasn't concerned with
9 what time he was at the Shell gas station that night.
10 We have the video for that.

11 They want you to think that he's not telling the
12 truth because now the defendant and his co-Defendant,
13 Tyron Wallace, are wearing hoodies. When you are
14 recanting a nightmare that Andre had just relived and
15 you are terrified and you are crying and you are
16 scared and you are thinking about the safety of your
17 children, details like that, they may not come. He's
18 not not telling the truth. He's always been
19 consistent.

20 They ask you -- the defense wants you to think
21 that maybe it was too dark that night. You don't
22 really know who was on the sidewalk that night. He
23 told you the inside of that house, every single light
24 was on, it was bright. He knew that it was Tyron
25 Wallace and he knew that it was that man, Varsheen

CLOSING ARGUMENT BY THE STATE.

1 Smith. And he's never once wavered on that.

2 She asked, Why didn't you stop at the police
3 department that night, you passed right by it, why
4 didn't you seek medical attention. After he left
5 that house that night his focus shifted. His fear
6 for his well-being went now to the fear of where his
7 friend is. He's not worried about himself right now.
8 Monte is missing and he knows something bad has
9 happened to him. And he was right. He's looking
10 that whole night for Monte. He's calling him. He is
11 texting him.

12 And this question on when you sent the text
13 message, was it while you were inside, was it while
14 you were outside. He told you he was texting and
15 calling him all night long. So, this one text
16 message at 8:26 that they want to make a big deal out
17 of, he sent it. He was looking for his friend who
18 was missing, that little did he know, had been shot
19 and killed.

20 They also want you to think that Andre is not
21 telling the truth because maybe he told Ms. Steve
22 that he had to escape by jumping out of the window.
23 He never said that. Ms. Steve, in her distraught
24 mind, she has a missing child, she knows in her gut
25 deep down inside something has happened to her child,

CLOSING ARGUMENT BY THE STATE.

1 she's trying to remember what he told her. And in
2 her mind, if you are kidnapping, I guess you have to
3 escape and that is what she comes up with. Andre
4 never said it. Andre never said it from day one.
5 Andre never said it when he took the stand and
6 testified. That is not an inconsistency.

7 And finally, the last inconsistency that I
8 just -- I won't say comical, but "When you talked to
9 the police, Andre, you said that that handgun was
10 chrome, well, today you say it's silver." That is
11 the same thing. We all know that. He's not being
12 inconsistent, he is telling the truth. And why is he
13 telling the truth? Because he lived it. And it's
14 easy to remember the truth. Do you know what is not
15 easy to remember? Lies.

16 And you know who is a liar and who lied for
17 almost an hour straight? Varsheen Smith. From the
18 minute he opened his mouth when he was being
19 interviewed by Captain Gruel and Investigator Erdel
20 he lied. He lied about everything. First question,
21 How long have you been living in Beaufort? I don't
22 live in Beaufort. That is a lie. We know that is a
23 lie. How do we know it is a lie? Because he was
24 living with Monte on [REDACTED] Greene Street. Ms. Steve
25 told us that. Andre told us that. Why would

CLOSING ARGUMENT BY THE STATE.

1 Ms. Steve lie about her son's roommate? That makes
2 no sense.

3 Why would he lie about it? Because he knows
4 that he did something bad at [REDACTED] Greene Street and
5 is trying to cover up for it. What else did he lie
6 about? First he says he didn't live there and then
7 he says, Well, I lay my head there. Well, I have one
8 bag of clothes I had to get out. Well, I had a
9 couple bags of clothes I had to get out. Well, I had
10 to borrow my friend Trista's truck to move out.
11 Which was it? Which is it? You don't live there.
12 Are you just laying your head there? You only have
13 one bag of clothes? You have so much stuff that you
14 need a truck to move out? He can't keep it straight.
15 He can't keep it straight because he's lying. He is
16 lying because he knows he lived there, he knows he
17 was there on October 25th, and he knows what he did
18 to Andre.

19 He also lies when he's asked about the shots
20 fired. You remember in that video he says, They are
21 over here, no, they are over here. He's trying to
22 think of what is the best answer for him. And when
23 you have to recall a lie, it is hard. You can't do
24 that. If you have to recall the truth, it is easy.
25 It is in your memory and you can do it. He can't do

CLOSING ARGUMENT BY THE STATE.

1 it because he is lying.

2 He also lies about knowing Monte was missing.
3 That may be one of the biggest lies of the day. He
4 finally backtracks and he says, Yeah, you know, he
5 acknowledges that he knew Monte was missing. Why
6 would he lie about that?

7 He lies about the third person. We all know who
8 that third person is. He's not here today. It is
9 not his day in court. His name is Tyron Wallace. We
10 know that is the third person. And we know that
11 based on what he told Investigator Erdel, he was
12 served with a kidnapping warrant, the kidnapping of
13 Andre Frazier. And Varsheen Smith goes so far to
14 say, No, there wasn't a third person here. I don't
15 know Tyron Wallace. Who is Tyron Wallace? Another
16 lie. Another lie. And another lie that we can prove
17 he's lying about. Shabonda got on that stand and she
18 told you, they know each other, I've seen them
19 together at my house. Tyron is my cousin. I know
20 Varsheen. And they have been together.

21 We also have the phone records that show that
22 they were in communication all day and all night on
23 October 25th and into the morning of October 26th.
24 (inaudible) a little bit.

25 He also can't keep straight whether he was

CLOSING ARGUMENT BY THE STATE.

1 inside the house, or whether he was outside of the
2 house, whether he was inside Andre's car, whether he
3 was outside Andre's car. Oh, No, we were outside, he
4 stayed outside. We were in the car. We were outside
5 of the car. Well, I don't know which one it is.
6 Which one is it? If he was telling the truth, he
7 would have said one thing, not four. He's lying
8 because we can disprove what he's saying. He was not
9 outside of the house.

10 Goethe and Wadman took that stand and said, We
11 walked around, we didn't see anybody. We were there
12 for both phone calls, both 911 calls, one at 7:51 and
13 one at 8:34 and not a sole. The only person that
14 they can make contact with was the one man playing
15 tennis at the tennis courts who called 911 for the
16 shots fired. Not Varsheen Smith just hanging around
17 outside like he wants you to think.

18 Not only did Varsheen Smith lie, and lie, and
19 lie the entire time that he's being questioned by the
20 police, he doesn't care that he's being questioned by
21 the police. Remember his demeanor, remember his
22 attitude, remember his laughs, his smirks, his eyes
23 rolling back and forth. He doesn't want to be there
24 but he's there because he is on a fact finding
25 mission too, he wants to know what they have. He

CLOSING ARGUMENT BY THE STATE.

1 doesn't want to play a cat and mouse game, as he
2 said. Will you talk, Varsheen? It depends, that is
3 what he said. He is there to talk about his missing
4 roommate and a kidnapping at gun point of somebody
5 and he finds it comical. He is laughing. He's
6 smirking. He does not care. He is smug.

7 Why do we believe Andre Frazier over Varsheen
8 Smith? That is because Andre Frazier has been
9 consistent. His testimony has been corroborated.
10 He's always said the same thing. He is emotional, he
11 is a scared man, and he took that stand and he
12 relived that terrible night for you. And why can't
13 we believe that man over there? Because he is a liar
14 and you can't believe a liar.

15 What do we know after all of this happens, after
16 Andre is kidnapped, after Monte goes missing? That
17 man right there, like the coward that he is, he
18 flees. He runs away and he hides in rural Georgia.
19 He's not there visiting his wife. Or his girlfriend
20 is in Walterboro, so maybe he is visiting his wife in
21 Georgia, but that is beside the point. No, he is not
22 there visiting his wife. He's hiding. He told
23 Shabonda, I know the police are looking for me. She
24 didn't ask him that, he gives her this information.

25 So, does he come in? No, he runs, he hides, and

CLOSING ARGUMENT BY THE STATE.

1 it takes the U.S. Marshals to track him down and find
2 him and it takes a Beaufort police officer to bring
3 him back to South Carolina. He doesn't visit any
4 family, he was hiding from this courtroom.

5 The phone records. I wanted to talk briefly
6 about those phone records. The phone records, you
7 heard a lot about the phone records. It got a little
8 confusing, incoming, outgoing. But you heard that
9 Tyron Wallace's phone number was 304-859-1096. It is
10 in his accident report. That is his phone number.
11 And you heard from Varsheen's own mouth that his
12 phone number was 843-476-0259. That is his phone
13 number. He didn't keep it for long, because
14 according to Shabonda he changed it and started
15 calling from an out-of-state phone number.

16 What do we know about these two numbers, about
17 this phone number who Varsheen swears is a stranger.
18 We know that on October 25th they are talking to each
19 other, and they were talking a lot. And we know that
20 between 1:04 and 5:49 they talk seven times, both,
21 each calling each other. We know that from 8:08
22 until 9:59 the next morning they talk again seven
23 times. All night long they are talking. All day
24 long they are talking. All night long they are
25 talking. What do we know about between 5:49 and

CLOSING ARGUMENT BY THE STATE.

1 8:08, they are not talking on the phone to each
2 other. Why are they not talking on the phone to each
3 other? When you are with somebody you don't have to
4 call them on the phone, they are together. And where
5 are they? They are at [REDACTED] Greene Street. And what
6 are they doing? They are waiting for Monte. But who
7 shows up? Andre Frazier. And he shows up after the
8 football game a little after 7, about 7:30. Are they
9 talking to each at 7:30? No, they are not talking to
10 each other on the phone because they are physically
11 together holding Andre at gun point, tied up and
12 gagged.

13 The defense also brought in some questions
14 about, was this drug related, did they have any drugs
15 on them. There was never any indication that this
16 had anything to do with drugs. Investigator Erdel
17 testified to that. He said, No, absolutely not.
18 This was never a drug investigation. This was always
19 about Monte. Andre Frazier was in the way. Andre
20 Frazier had information. And that is what Tyron
21 Wallace and Varsheen Smith was using him for.

22 Varsheen Smith has been charged with three
23 separate crimes. He has been charged with
24 kidnapping. He's been charged with possession of a
25 weapon during the commission of a violent crime. And

CLOSING ARGUMENT BY THE STATE.

1 he's been charged with possession of a weapon by a
2 person convicted of a crime of violence. Now, I said
3 this the other day when I came forward to you, but
4 kidnapping in South Carolina is not what it is in the
5 movies, it is not what we see on CSI, it is not what
6 we see in the Liam Neeson movies, it is not.
7 Kidnapping in South Carolina is exactly what happened
8 to Andre. He was tied up. He was held at gun point.
9 And he was gagged. And he was moved from room to
10 room to room. And he was not free to leave. And he
11 was threatened. And his life flashed before his
12 eyes. And all he could think of was the sound, the
13 pop, the gun was going to make. He was kidnapped.

14 He is also charged with possession of a weapon
15 during the commission of a violent crime. The Judge
16 is going to instruct you that in South Carolina
17 kidnapping is a violent crime. And finally,
18 possession of a weapon by a person convicted of a
19 crime of violence. I wonder what this shows you?
20 This isn't the first time Mr. Smith has seen the
21 inside of a courtroom. He's been convicted of
22 burglary. Breaking into somebody's house. The Judge
23 is going to instruct you that burglary in South
24 Carolina is defined as a crime of violence.

25 I want to leave you with one last thing, and

CLOSING ARGUMENT BY THE STATE.

1 that is Varsheen Smith. Look at this man. This is a
2 man who doesn't care. This is a man who thinks that
3 he is invincible. This is a man who thinks that
4 nobody is going to snitch on him. This is not a man
5 who is going to tell the truth. This is a man who
6 was just told his roommate was missing and this is
7 how he's acting. A man that laughs at a missing
8 person. A man that laughs at a kidnapping. That is
9 an evil man.

10 And that is what Andre told you. He said, He is
11 an evil man. And a man that can have that sort of
12 reaction in speaking with police is not only an evil
13 man, he is a guilty man. And I ask that you use your
14 common sense. And you know that this man, this evil
15 man who finds all of this comical for another
16 person's nightmare is just a laugh to him. He is an
17 evil man and he is a guilty man. Thank you.

18 THE COURT: Thank you, Solicitor. Ms. Gibbes.

19 CLOSING ARGUMENT BY THE DEFENSE

20 MS. GIBBES: Thank you, may it please the Court.
21 Good afternoon. I am back to see you again as I told
22 you at the beginning. I am back to try and clear up
23 and get back with you on what I told you at the
24 beginning. There are inconsistencies, there are
25 things that don't match up. And this whole trial

CLOSING ARGUMENT BY THE DEFENSE

1 that the State has put up is basically trying to
2 convict Varsheen Smith of murder, basically. Because
3 wasn't most of what you heard in the questioning --
4 and we heard a lot about Monte. That whole video
5 that you had heard, of Varsheen's statement, they
6 were asking about Monte. They didn't mention
7 anything about the kidnapping.

8 Everything, all of the questioning,
9 everything -- and I understand that there was a
10 missing person and that is -- obviously that was the
11 focus of the investigators. Which they should, they
12 were looking for a man who was murdered. But he
13 wasn't murdered by big, bad evil Varsheen. That is
14 what everybody wants to say, big bad Varsheen. He
15 was murdered by Tyron Wallace, that is why he's
16 charged with murder. Wallace, he didn't come in here
17 and testify to explain whether or not that was true.

18 And the murder has nothing to do with it. They
19 want you to feel that you need to give some justice
20 for Ver'mon Steve by convicting Varsheen Smith. They
21 are trying to prejudice you, your sympathies, your
22 emotions, because that is truly tragic, it is truly
23 sad. But when it comes down to it, have you really
24 heard any evidence that Varsheen and Monte had any
25 issues at all? I mean, they lived together or didn't

CLOSING ARGUMENT BY THE DEFENSE

1 live there. It sounds like it was a very, you know,
2 lax kind of situation where he could stay there. And
3 Monte's friend Pete said he didn't have a roommate.
4 Varsheen said he stayed there sometimes. This whole,
5 you know, trying to get some bad blood because there
6 is -- you know, let's trick Varsheen and make him
7 think that we are going to get evicted so he will
8 move out. I didn't hear anything about that where
9 Varsheen knew that was going on or anything like
10 that.

11 And honestly, I mean, when you listen to what
12 Varsheen said in his statement, he said he and Monte
13 didn't have any problems. He said that he was living
14 there a little bit. He said that they had gotten
15 evicted as far as he knew. That on that day, the
16 25th, he was moving out and he was getting his stuff
17 together. He didn't have that much stuff. He had
18 some bags there he got together.

19 He said when Andre Frazier showed up he was
20 waiting on Monte to come back so he could get the
21 key, or he could give him the house key so he could
22 leave. He was trying to leave in his friend's brown
23 Chevy Tahoe that he borrowed to help move out some of
24 his stuff. And it was proven that he was telling the
25 truth about that. He had called Monte. I got that

CLOSING ARGUMENT BY THE DEFENSE

1 out through the investigator by his phone records.
2 Varsheen Smith at the exact time that he was
3 supposedly kidnapping Andre Frazier, at about 7:40,
4 he called Monte. And 7:41 he called Monte. And 7:50
5 he called Monte. That is about the exact same time
6 where Andre was talking about he was getting tied up.
7 And you remember, Andre said he didn't call Monte, he
8 never called Monte on the phone. Well, that is not
9 true, it is proven on the records. It can't be true.
10 What Andre said can't be true.

11 And from this point I just want to move on.
12 Let's not focus on the awful thing that happened to
13 Ver'mon Steve because that is not what we are here
14 about. We are only here about Andre Frazier and this
15 kidnapping case. Well, that is what he's charged
16 with, nothing else. And I know everybody kind of
17 made fun of me and I looked maybe a little
18 ridiculous, maybe a little nitpicky when Andre
19 Frazier was on the stand. I get the chrome and
20 silver, I get it. I mean, that -- but I did that to
21 prove a point. Because we are here about Varsheen
22 Smith. It is his day in court. And when somebody
23 like Andre Frazier, who goes into the police, not
24 because he wanted to, not because he made that
25 decision, he had to because at some point Tyron

CLOSING ARGUMENT BY THE DEFENSE

1 Wallace had murdered Varsheen -- I mean, had murdered
2 Ver'mon Steve so he was missing.

3 So, because of that his poor mother was
4 wondering where he was. And I think Andre was in a
5 position where he -- he had to come in and he had to
6 commit to some story because he knew that there was
7 an investigation into his friend. And Andre didn't
8 tell the truth. I'm sorry. When you go in and you
9 report a crime and something as serious as a
10 kidnapping, details matter. Details matter. And his
11 statement was recorded. Which I kept reminding him.
12 And the story didn't make sense. It changed.
13 Because, one, yeah, he had several opportunities to
14 go to the police. He even was standing in front of
15 the house for how long where the police was right
16 there? And he was just hanging out with everybody.
17 He was free to leave at that point. He could have
18 left. That doesn't make sense. He went in there.

19 And let's start with Buffalo Wild Wings.
20 Buffalo Wild Wings is maybe five minutes at the most
21 from that house on Greene Street. He said that he
22 was watching football, Monte was there, and he left
23 to go paint his car. And then at some point, you
24 know, he talked to Monte a couple of times and they
25 made plans for him to come over there and check out

CLOSING ARGUMENT BY THE DEFENSE

1 his car. Now, these conversations he spoke to him
2 pretty soon before he got there, so it was really
3 close. And by his conversations Monte was having a
4 good ol' time. He was talking to DC, which the first
5 time that we ever heard about DC, so he forgot about
6 that in his statement. He said there were other
7 people hanging out at the house, they were having a
8 good ol' time, talking about football, hanging out
9 together. Where are these other people? Nobody
10 would talk to them.

11 They are just trying to make you think that
12 Varsheen and Tyron were the sinister -- and I am just
13 going to talk about Varsheen, honestly, but there was
14 a sinister presence there. He was probably there
15 hanging out, watching football and -- or maybe not
16 watching, but talking about football, hanging out.
17 There were people there. They were having a good
18 time. There is no indication of anything going
19 wrong.

20 Because when Andre left, he stopped at the gas
21 station, first he talked to Monte. "Hey you still
22 there? Yeah, come on." No indication of anything
23 wrong. Went to the Shell station and you saw the
24 video, it was dark. And I don't think that I am
25 silly for asking that. I try to identify things. He

CLOSING ARGUMENT BY THE DEFENSE

1 won't even commit that it was dark. You saw how dark
2 it was. He went. And I think between going there
3 and then coming back to get gas and going back to the
4 house, he must have got there about 7:20. Now, the
5 only point of reference we have got is that time,
6 7:20, and then there is a text that he sent to
7 Ver'mon at 8:26. So, that is about over an hour. He
8 told the police that he was only there about 20, 30
9 minutes this whole thing happened. So, what else is
10 going on? There is a lot going on. So, that time
11 frame is wrong.

12 He said he got to the house and he couldn't
13 recognize who was there. And you see how long
14 Varsheen's dreads were in that picture, I mean in
15 that interview. I think they were out to here. He
16 was trying to claim that, Oh, that hoodie, I couldn't
17 see who it was because they were covered. You can't
18 cover with a hoodie with dreads that look like that.
19 And that might seem nitpicky, but that is a big deal
20 because in his original interview he never said
21 anything about a hooded sweatshirt, he just said
22 wearing black. He never said anything about putting
23 a gun in his pocket.

24 In his original interview he was saying Varsheen
25 was waving the gun all around, holding it to him,

CLOSING ARGUMENT BY THE DEFENSE

1 making it so he couldn't leave. And now it is in his
2 pocket and this hoodie, this is the first time he
3 ever mentioned it. It never came up in
4 investigation. I am sorry, but I think that's
5 important.

6 And i think that it's also important the
7 differences between how he described how he got in
8 the house. He first said, I made the decision to go
9 into the house. And then he said, in his statement,
10 you know, there was a tussle where you know, they
11 both grabbed each other and, you know, got -- the
12 first thing was he got, you know, hit with a phone
13 and then a gun pulled on him and put in his stomach.
14 The next statement was, oh, there was a gun by the
15 back of my head. Well, there is a difference. It
16 doesn't make sense. It means something, that there's
17 a difference.

18 Because remember he was also very clear that
19 Varsheen was trying to say that, Oh, Monte is in the
20 house. We know that he wasn't saying that because
21 Varsheen was calling Monte at that time, that exact
22 time. Or in, you know, in the same general -- you
23 know, 7:40, 7:41, 7:50. He wasn't kidnapping Andre,
24 he was calling Monte. So, he couldn't be saying all
25 of that.

CLOSING ARGUMENT BY THE DEFENSE

1 And there is a difference, was the front door
2 open? First it was open and then it was closed. The
3 lights were on in the house and then it was too dark
4 in the room. And I am sorry, the whole thing about
5 he had this belt wrapped around him but he was able
6 to -- but he could not -- I'm sorry. He kept trying
7 to explain it. I mean, he likes to get on the ground
8 and try to act things out. It is impossible. He
9 could not commit. So, what was he doing? He told
10 the police, Oh, I was trying to dial 911 but I
11 couldn't do the last number. But then in here he
12 said, Oh, I dialed my friend. He never mentioned
13 that to investigators. Oh, well, you know, they
14 picked up or they didn't. I mean, I couldn't pin him
15 down. So, I mean, I know -- please don't hold it
16 against my client if I was offensive in the way that
17 I questioned him, but I think that it's important
18 that he is trying to make you think that he's so
19 confined and so scared, but somehow manipulative, you
20 know. He dialed the number. And you have no idea
21 whether he actually did or not.

22 And then there's a question about, you know he
23 texted Monte at 8:26. And when he first got to the
24 police he said that he did that when he got in his
25 car and was leaving. And then when he got questioned

CLOSING ARGUMENT BY THE DEFENSE

1 about that, that that couldn't have been true. Then
2 he said, Oh, yeah, I must have done that in the
3 house. Okay, so now he is also texting Monte behind
4 his back when actually, you remember, he said I was
5 just texting, I need help. He texted this directly,
6 "Pick up." That is not, "Help, where are you? Are
7 you okay?" It was just, "Pick up." How can somebody
8 do that tied up, belt around him. And now it is dark
9 in the room when, remember, it was light in the whole
10 house.

11 And to me I think that it's odd how all of a
12 sudden this is all of a sudden an evil kidnapping.
13 Big, bad, evil Varsheen. And he is the one with the
14 gun. Remember he is not charged with murder. And
15 then all of a sudden it is like, Oh, no, you can
16 leave. Or let's put a sock in his mouth but he could
17 spit it out at some point and have a whole
18 conversation with somebody at a different time and
19 then he put it back in his mouth. I mean, this just
20 seems like the slackest kidnapping I can think of.
21 There's more to this story. These aren't strangers.
22 You heard they grew up together. What else is going
23 on?

24 Twenty to 30 minutes of terror, or really he was
25 over there over an hour as we know by the time that

CLOSING ARGUMENT BY THE DEFENSE

1 that is true. Something else is going on. Then all
2 of a sudden he's allowed to leave. Now, he told --
3 and I'm sorry, he gave different accounts of how he
4 was able to leave.

5 Now, I admit I did not -- he said he didn't say
6 that, but what he told Ms. Steve, how he got out of
7 the house, she wrote it in the statement and turned
8 it into the police. And based on that statement the
9 investigator asked Andre, So you jumped out the
10 window? Well, what about jumping out the window?
11 So, somehow, maybe it was miscommunication or maybe
12 that is what he told her and that is why, I mean,
13 obviously Ms. Steve isn't going to say anything
14 different because she wants to find her son. There's
15 that.

16 And then there is Shabonda. There's also some
17 report, and again he didn't admit it. Shabonda
18 didn't really talk about it. I asked the
19 Investigator Erdel about that. So, I'm asking you to
20 read between the lines, but there was also something
21 about, got out the back door. And then there's the
22 story that you heard. I just went out the front.
23 Went out the front. And then somebody else came up,
24 we dapped, we talked. The gun was on me so I
25 couldn't move. The police were there. We hung out

CLOSING ARGUMENT BY THE DEFENSE

1 like 20 minutes. And other people were there. That
2 is the weirdest kidnapping that I have ever heard of.

3 The people knew each other. He said he
4 maneuvers himself enough to send a text on his phone,
5 call people or not call people. I'm just asking you
6 to please just think about it. We are here for
7 Varsheen and they have to prove beyond a reasonable
8 doubt whether or not this happened. And this has
9 nothing to do with the murder. In fact, you heard
10 that on the shots fired call the suspect vehicle was
11 a silver Yukon. Well, Varsheen was driving a brown
12 Chevy Tahoe during that time. Shots fired. That was
13 just a way to make you think about sinister things so
14 you will think that he had something to do with it
15 and that is just not true, it just doesn't make
16 sense.

17 Now, Shabonda, that is next person. And I admit
18 I got a little screwed up, and please don't blame
19 that on my client. I did, I mixed up outgoing and
20 incoming a little bit. But my problem with Shabonda,
21 she won't even admit that she was in a romantic
22 relationship with Varsheen Smith. That is crazy,
23 just wrong, for whatever reason. She was. And she
24 was also in a romantic relationship with Andre
25 Frazier. We know that is true. She told that to

CLOSING ARGUMENT BY THE DEFENSE

1 investigators.

2 And she lied about her communication with
3 Varsheen. She was still talking with Varsheen before
4 this happened supposedly on the 22nd. I cleared that
5 up. She did about three times on the 22nd. And she
6 was calling him. And then she said, Oh, he called me
7 on the 26th. Well, actually the 25th there is
8 actually a phone call. I mean, it just seems like
9 she is distancing herself from Varsheen and she's
10 lying about it. And she is being used as a witness
11 to prove that he fled to Georgia. There's no
12 evidence of that. I mean, he has a wife in Georgia.
13 He was cooperative when he was arrested. The most
14 that I have heard is maybe -- he said, Why would I --
15 I mean, I didn't do it so why would I come back.
16 (Inaudible, juror coughing.) Take what you want from
17 that.

18 I think that he's making that a big thing. But
19 she's lying. I mean, she was communicating with
20 Andre. Andre said, Oh, I didn't talk to Shabonda
21 about what happened. Yes, you did. Shabonda said
22 you did. The investigator said he did. And during
23 Shavonda's interview he was trying to clean up
24 Andre's crazy, twisted, screwed-up statement that
25 didn't make sense. You know, the time line didn't

CLOSING ARGUMENT BY THE DEFENSE

1 make sense, the story didn't make sense. And he was
2 able to get a warrant based on it. But he knew that
3 if it didn't get cleaned up he wouldn't have enough.
4 I mean, he said that.

5 He told Shabonda he needed her to get Andre back
6 in and clean this up because if not we are going to
7 be in trouble. That is how the investigator felt
8 about the star witness in this case. Shabonda even
9 lied about that. She said, Oh, no. I mean, she got
10 mad at me but she did, the investigator -- you know,
11 that conversation happened.

12 He never came back in and never fixed up his
13 story, with all of the twists and the turns and the
14 things that are missing, and that is enough. The
15 investigator doesn't even believe in the case. I
16 mean, he believes in the case but not the credibility
17 of his star witness. That is reasonable doubt.
18 Because if you think Andre Frazier just said one lie,
19 you can't believe anything. You are going to get a
20 jury instruction about that. That if there are
21 inconsistent statements with Andre, like with
22 Shabonda, you can use that towards credibility. That
23 goes against their credibility.

24 And then the last thing, there's no physical
25 evidence. There's none. There's no gun. There's no

CLOSING ARGUMENT BY THE DEFENSE

1 evidence whatsoever for him to get DNA, fingerprints,
2 hair, anything to show that Andre Frazier was even in
3 that house. There's no -- the belt didn't get
4 tested. I mean, Andre supposedly brought this belt
5 in to the police station and it didn't even get taken
6 into evidence. You would think -- I mean, this is
7 supposedly the day after -- there would still be some
8 evidence on that, tie him up, fingerprints, DNA.
9 They didn't take it into evidence.

10 We are just missing so much. And they are
11 trying to mislead you by making you think about this
12 other thing, and it is a big deal. But it's nothing
13 to do with Varsheen Smith. Because Andre Frazier,
14 that is what you have to look at. And if you don't
15 believe what he said or if you at least think that
16 some of it is true but not all of it, you must find
17 my client not guilty. Because it is important when a
18 witness comes and gets on that witness stand is held
19 to the highest oath, puts his hand on that Bible and
20 says, I'm going to tell the truth. And if not
21 everything is true or doesn't add up, like Varsheen
22 was actually talking to Monte at the time, or calling
23 Monte at the same time that he was supposed to be
24 kidnapping, that is reasonable doubt.

25 And because of all of that, all of the issues, I

CLOSING ARGUMENT BY THE DEFENSE

1 know that there's a bunch of people here who loved
2 Ver'mon Steve dearly and want justice for him. But
3 today is not about justice for him. Today is about
4 Varsheen Smith and whether or not he did this crime,
5 whether or not they can prove that he did it. How
6 can -- all they have is him, Andre, that is it. So
7 I'm going to ask you to listen to what you heard and
8 all of the differences and everything that is wrong,
9 and I'm going to ask you to hold the State to the
10 highest burden and find Varsheen Smith not guilty of
11 kidnapping.

12 And because if he's not guilty of kidnapping,
13 he's not guilty. And one last thing, this possession
14 of a weapon by somebody convicted of a crime of
15 violence. He was convicted of a burglary in 1994.
16 That was a long time ago. We are not here about
17 that. I ask you not to hold that against him. It
18 was a non -- I mean, under the statute, it is
19 considered violent but the burglary was actually
20 non-violent, which means that it was not, you know, a
21 home invasion. I mean, it was different. And it was
22 in 1994. They actually got sentenced under Youthful
23 Offender Act, as children do, people who are under
24 age. Not under age, but they are youth.

25 So, I just ask you to, not let everything else

CLOSING ARGUMENT BY THE DEFENSE

1 bog you down, focus on the very little evidence that
2 they have, that they haven't met their burden of lies
3 and different stories. And I am going to ask you to
4 find him not guilty. Thank you again for your time.

5 JURY CHARGE

6 THE COURT: Thank you, Ms. Gibbes.

7 Ladies and gentlemen, I remind you that the fact
8 that the defendant was indicted in this case, was
9 arrested, was charged, is not evidence in this case.
10 It cannot be considered by you as evidence in this
11 case, nor does any of that create any presumption or
12 any inference of guilt. As I told you earlier, these
13 documents, the indictments, are merely the
14 instruments that bring the case into the courtroom.

15 The defendant has pled not guilty to these
16 indictments and that plea puts the burden on the
17 State to prove to the defendant guilty. I will tell
18 you that a person committing a criminal offense in
19 South Carolina -- excuse me, a person charged with
20 committing a criminal offense in South Carolina is
21 never required to prove himself innocent.

22 I further tell you that it is an important rule
23 of law that a defendant at a criminal trial, no
24 matter what the seriousness of the charges may be,
25 will always be presumed to be innocent of the crime

JURY CHARGE

1 for which an indictment was issued unless guilt has
2 been proven by evidence that satisfies you, the jury,
3 of that guilt beyond a reasonable doubt.

4 This presumption of innocence doesn't end when
5 you begin your deliberations but it accompanies the
6 defendant throughout the trial until you reach a
7 verdict of guilt based on the evidence that satisfies
8 you of that guilt beyond a reasonable doubt. The
9 presumption of innocence is like a robe of
10 righteousness placed about the shoulders of the
11 defendant which remains with the defendant until it's
12 been stripped from the defendant by evidence that
13 satisfies you of the defendant's guilt beyond a
14 reasonable doubt. The presumption of innocence is
15 not mere legal theory. It is not just a legal
16 phrase. It is a substantial right to which every
17 defendant is entitled unless you the jury is
18 satisfied from the evidence of the defendant's guilt
19 beyond a reasonable doubt.

20 Reasonable doubt is the kind of doubt that would
21 cause a reasonable doubt to hesitate to act. Proof
22 beyond a reasonable doubt is proof that leaves you
23 firmly convinced of the defendant's guilt. Of course
24 there are very few things in this world that we know
25 of with absolute certainty. In criminal cases the

JURY CHARGE

1 law does not require proof that overcomes every
2 possible doubt. Based upon your consideration of the
3 evidence you are firmly convinced that the defendant
4 is guilty of the crimes charged, you must find the
5 defendant guilty. If, on the other hand, you think
6 that there's a real possibility that the defendant is
7 not guilty you must give the defendant the benefit of
8 the doubt and find the defendant not guilty.

9 I'll remind you that during this trial you and I
10 have had different obligations and responsibilities.
11 During the trial I have the duty to charge you and
12 tell you about a law that applies in this case. As
13 the trial judge I am the sole judge of the law of
14 this case and it is your duty, ladies and gentlemen,
15 to accept the law and apply it as I now state it to
16 you. If you have any idea that the law is different
17 than what I tell you, or should be different, it does
18 not agree with what I tell you now, under your oath
19 you must accept the law as I give it to you and apply
20 it as I state it to you.

21 As I've also told you before, every case in this
22 court tried before the jury, the jury becomes the
23 sole and exclusive judge of the facts of the case. A
24 trial judge such as myself cannot intimate, state,
25 comment on or make any statement to a trial jury

JURY CHARGE

1 about the facts of a case.

2 Since you are the sole judges of the facts of
3 the case, you cannot infer from anything that I may
4 have said or anything that I may have done that I
5 have an opinion about the facts of this case.

6 Necessarily, ladies and gentlemen, you must
7 determine the credibility of the witnesses who have
8 testified. And this simply means the believability.
9 It becomes your duty as jurors to analyze and to
10 evaluate the evidence and determine which evidence
11 convinces you of its truth. In determining the
12 believability of the witnesses who have testified,
13 you may believe one witness over several witnesses or
14 several witnesses over one witness. You may believe
15 part of a testimony of a witness and reject the
16 remaining testimony of that very same witness. You
17 may believe the testimony of a witness in its
18 entirety or reject the testimony of a witness in its
19 entirety. And you may consider whether the witness
20 exhibited any interest, bias, motive, or prejudice in
21 this case. And you may consider the appearance and
22 the manner of a witness while on the witness stand.

23 There's been evidence presented that a witness
24 may have made prior statements which are inconsistent
25 with statements that a witness made on the witness

JURY CHARGE

1 stand. You may use this evidence to decide whether
2 to believe that witness. You may also use evidence
3 of the earlier contradictory statements to determine
4 the truth of these statements. It's up to you to
5 decide whether to believe the earlier statement or
6 the statement given at trial. If a witness is shown
7 to knowingly testified untruthfully concerning any
8 material matter, you may consider this in determining
9 whether to trust the witness' testimony as to other
10 matters. As I told you earlier, you may reject
11 testimony of that witness or give all or part of the
12 testimony the weight that you believe it deserves.

13 I instruct and emphasize that the fact that the
14 defendant did not testify is not a factor to be
15 considered by you in any way in your deliberation and
16 in your consideration on the question of guilt or
17 innocence of a defendant. It must not be considered
18 by you in any manner whatsoever. I repeat, under
19 your oath you are to draw no conclusions whatsoever
20 from the fact that the defendant in this case did not
21 testify. The fact that the defendant did not testify
22 should not even be discussed in the jury room.

23 The burden of proof, as I've stated it to you,
24 is upon the State. The defendant is not required to
25 prove his innocence. The burden of proof remains on

JURY CHARGE

1 the State to prove guilt that satisfies you beyond a
2 reasonable doubt.

3 As you know, the defendant is charged with
4 kidnapping. The State must prove beyond a reasonable
5 doubt that the defendant knowingly and unlawfully
6 seized or kidnapped or held another person without
7 the authority of law. To do a thing unlawfully is to
8 do it willfully and against the law. And knowingly
9 means with knowledge and consciously, not
10 accidentally. Seize means to take hold of suddenly
11 or forcibly. Confine means to limit, restrict, or
12 enclose, or imprison, or shut in, or keep up.

13 The State does not have to prove that the
14 defendant did all of these things. If you find that
15 the State -- that the defendant did any of these
16 things, you may find the defendant guilty of
17 kidnapping. The kidnapping does not have to be for
18 any personal or monetary gain for any illegal
19 purpose, but it may be for any reason whatsoever.

20 The defendant is also charged with possession of
21 a weapon during the commission of or attempt to
22 commit a violent crime. The State must prove beyond
23 a reasonable doubt that the defendant was in the
24 possession of a firearm or visibly displayed a
25 firearm during the commission of a violent crime.

JURY CHARGE

1 In order to find the defendant guilty of
2 possession of a weapon during the commission of a
3 violent crime you must first find the defendant
4 guilty of committing a violent crime or attempting to
5 commit a violent crime. I tell you, as a matter of
6 law in this state, the offense of kidnapping is a
7 violent crime.

8 I'll tell you under South Carolina Code Section
9 16-23-30, it is also unlawful for a person who has
10 been convicted of a crime of violence to possess a
11 handgun. And under the law, a crime of burglary is
12 considered a crime of violence.

13 As you know, the different indictments in this
14 case allege three separate offenses against the
15 defendant. Each indictment charges a separate and
16 distinct offense. You must decide each indictment
17 separately and apply the law to it uninfluenced by
18 your decision as to any other indictment. The
19 defendant may be convicted or acquitted on each of
20 these or none of these.

21 As to the offense of possession of a weapon
22 during the commission of a violent crime, you may not
23 find the defendant guilty of that offense unless you
24 also find the defendant guilty of the charge of
25 kidnapping.

JURY CHARGE

1 In just a moment I'm going to ask you to retire
2 to the jury room and begin your deliberations.
3 Before you do that, though, I'll send to the jury
4 room the exhibits that you have already seen that
5 have been introduced into evidence. Once you receive
6 those, along with the indictments, that will be your
7 queue to begin deliberations. I'll ask our
8 foreperson if she would, on behalf of the jury, when
9 the jury has reached a unanimous verdict, and of
10 course it must be a unanimous verdict on -- as to
11 each of these, considered separately, if you would
12 write on the back of the indictment either the word
13 guilty or not guilty. And sign your name.

14 You can see that there's a -- there's a place
15 with blue -- in blue that says, True billed. So,
16 right above that you would write the verdict, the
17 unanimous verdict of the jury, either guilty or not
18 guilty, and sign your name. And once you do that,
19 advise the bailiff that you have made a decision in
20 this case and they will come in -- we will then have
21 you come back in the courtroom.

22 So, if you would now please retire to the jury
23 room and I hope to send this with you shortly, or
24 send this to you shortly.

25 (The jury exits the courtroom at 2:59 p.m.)

JURY DELIBERATING

1 THE COURT: Exceptions?

2 MS. JONES: None, Your Honor.

3 THE COURT: Exceptions?

4 MS. GIBBES: None, Your Honor.

5 THE COURT: We have all of the exhibits ready?

6 MS. JONES: I believe so.

7 MS. JONES: Okay. All of the exhibits are
8 there.

9 THE COURT: I forgot to tell you, the bailiff
10 indicated that the jurors that said earlier they had
11 to leave by 5:30 have changed their plans and they
12 don't have to leave. They are going to stay here all
13 night.

14 MS. JONES: Good.

15 (Jury deliberations begin at 3:00 p.m.)

16 THE COURT: Our jury has a number of questions.
17 I may -- y'all may want to look at the handwriting,
18 I'm not sure if I'm interpreting what they are asking
19 correctly. But as soon as your client gets here I
20 will -- well, why don't y'all come over and look at
21 it while we are waiting on him.

22 (Off-the-record discussion held.)

23 *(Whereupon, Court Exhibit No(s). 3 marked for*
24 *identification and received in evidence.)*

25 THE COURT: All right. As I said a moment ago,

QUESTIONS FROM THE JURY

1 the jury has a number of questions. Question number
2 one, if I read this correctly is: Did we see the
3 entirety of the video of State's Exhibit No. 1? Do
4 y'all agree that that is what the question is?

5 MS. JONES: Yes.

6 THE COURT: Okay. The next is the audio of
7 State's Exhibit No. 1 purposely removed or was it a
8 mechanical failure. That is number two.

9 And number three, do we have a copy of Andre's
10 testimony in court?

11 Four, can we have all phone numbers to be
12 brought up, all phone numbers to -- all brought up in
13 court, Monte's and Shabonda.

14 And lastly, can we see a copy on our guidelines
15 on how to reach our verdicts.

16 On the question number one and two about did
17 they see the entire thing, and the other part about
18 was part of it removed, I don't know the answer to
19 number one.

20 MS. JONES: They saw everything that they were
21 allowed to see.

22 MS. GIBBES: Yeah.

23 THE COURT: Well, wouldn't we want to answer
24 both of those by saying that there were portions of
25 that video that the Court deemed not appropriate or

QUESTIONS FROM THE JURY

1 relevant to the issues before the Court?

2 MS. JONES: I think so.

3 THE COURT: And therefore the Court, me, ordered
4 it done.

5 MS. JONES: Yes.

6 MS. GIBBES: Yes.

7 (Pause.)

8 THE COURT: Question number three regarding
9 having a copy of the testimony. I think all I can do
10 is tell them we don't have the capability of
11 providing a copy of the testimony.

12 MS. GIBBES: Yes, Your Honor.

13 MS. JONES: We don't have a copy, no, but I
14 don't know if Mona can play it for them.

15 MS. GIBBES: They are asking for a copy, so I
16 would say that "we don't have a copy" is sufficient.

17 THE COURT: Do we have a copy?

18 THE COURT REPORTER: I can play it back.

19 THE COURT: And on number four, can we have all
20 of the phone numbers. I mean, there were some
21 numbers mentioned. There are numbers in the
22 document, aren't they, in the exhibit?

23 MS. JONES: There are numbers in the document.
24 The only numbers testified to, as to who they
25 belonged to, though, were defendant and Tyron

QUESTIONS FROM THE JURY

1 Wallace, and I believe that they are asking for
2 Monte's and Shabonda's, and those are not in the
3 testimony.

4 MS. GIBBES: Well, Judge, actually I asked -- I
5 know Shabonda, I asked her, this is your number, and
6 I read the number. And then for Monte, I am almost
7 positive that Investigator Erdel pointed out at least
8 the last four numbers, 8259.

9 I mean, we pointed that out so you could look at
10 the number, okay, this is Monte's. I mean, I just
11 don't remember so I don't want to mislead you at all.
12 But I do recall Shabonda discussing -- I pointed to
13 this number and this is your number. So, I don't
14 know because I testified to it or because maybe
15 Investigator Erdel didn't say the whole number. I
16 don't know what is proper, but I ask that they go
17 back.

18 THE COURT: What goes back?

19 MS. GIBBES: I would ask that we give them the
20 numbers because I did -- there was testimony, at far
21 as -- at least I know that I testified about what
22 Shabonda's number was and asked her about it. She
23 pointed out that it was her number. Because I did, I
24 said, this was your number at that time and she said,
25 Yes. So, I know for a fact that I asked her about

QUESTIONS FROM THE JURY

1 that and she said yes.

2 THE COURT: I'm not going to give the jury any
3 facts unless both of y'all agree that that is what
4 the facts were.

5 MS. GIBBES: Yes, sir. I agree with that. So,
6 I don't want to mislead. But I do submit that I, in
7 crossing Shabonda, I asked her, Your number at the
8 time was this number and I read it out and she said,
9 Yes. I know that.

10 And then I know from -- and maybe the
11 investigator might remember a little bit, but I
12 did -- we pointed out and he agreed that it was
13 Monte's number and I believe that he at least read
14 out the last four numbers. I mean, I just honestly
15 don't recall. I didn't put anything in evidence. I
16 did not -- you know, I didn't write it on a board, I
17 did not do anything like that.

18 THE COURT: I am not going to give them any
19 numbers or other evidence unless both of y'all agree
20 as to what should be done.

21 MS. JONES: Your Honor, I think that the
22 documents they have has numbers on them.

23 MS. GIBBES: And, I am not sure, is it possible
24 to at least find that portion of the recording? I
25 mean, I know that I asked Shabonda about it, but the

QUESTIONS FROM THE JURY

1 only thing that I am a little bit weary on is exactly
2 what I brought up with Investigator Erdel when we
3 were going through the records. I just don't
4 remember.

5 THE COURT: Now, I'll be glad to hear from each
6 of you on, both of you, on how to respond to their
7 last question. They want a copy of the guidelines on
8 how to reach a verdict.

9 MS. JONES: I mean, Your Honor, if you are
10 inclined to --

11 THE COURT: I can recharge them.

12 MS. JONES: You can recharge them, or if they
13 want a copy I have no objection to sending back the
14 entire jury charge.

15 THE COURT: I don't have the entire jury charge
16 in a format to give them.

17 MS. GIBBES: Judge, I would agree, I think that
18 recharging them is the only remedy that I can think
19 of. And to completely recharge them.

20 THE COURT: All right. Bring the jury in.

21 THE BAILIFF: Yes, Your Honor.

22 (The jury enters the courtroom at 4:53 p.m.)

23 THE COURT: I got a note from the jury asking
24 several questions. I'll try to answer them as best
25 as I can. You are probably not going to be satisfied

QUESTIONS FROM THE JURY

1 with my answers. But question number one relates to
2 whether or not you saw the entirety of the video of
3 State's Exhibit No. 1. And related to that, I think,
4 is the audio of State's Exhibit No. 1 purposely
5 removed or was there a mechanical failure.

6 Portions of that video were redacted at the
7 instructions of the Court. The Court determined that
8 portions of this video were not relevant or
9 statements made were not admissible as evidence, and
10 therefore the video was in fact altered at the
11 instructions of the Court after the Court had an
12 opportunity to view it before you did. That happens
13 a lot.

14 The next question is: Do you have a copy of
15 Andre's testimony in court. I can't actually do
16 that. We don't have that capability. We could
17 replay portions of it from the recording if you could
18 tell us what you wanted -- if there's any special
19 section you wanted to hear. Or we could potentially
20 have it played back, his entire testimony.

21 And then you asked another question. The phone
22 numbers that were mentioned in Court, and I hate to
23 tell you this, you are going to have to use your
24 collective memory related to this issue because I
25 can't give you any other evidence unless you wish for

QUESTIONS FROM THE JURY

1 us to replay testimony -- a portion again of the
2 testimony of a witness.

3 And then finally I think that you are talking
4 about a copy of the guidelines on how to reach a
5 verdict, and I think that you are talking about the
6 portion where I spoke to you and told you about the
7 law and the rules. I don't actually have that
8 capability, but I can go through it again and tell
9 you what I told you earlier.

10 So, why don't y'all recess back to the jury room
11 one more time and decide what you want to do about my
12 responses. In other words, I will try to go through
13 them one more time. We can provide portions of
14 testimony, or the entire testimony of a witness. If
15 you want portions of it it'll take us a few minutes
16 to figure out where it is, but we can do that.

17 And then if you want me to tell you again about
18 the law and your obligations and my obligations, I'll
19 be glad to do that also.

20 So, go back to the jury room and decide
21 collectively what it is you want. I'm guessing you
22 don't all know yet.

23 (The jury exits the courtroom.)

24 THE COURT: Any exceptions to the statements
25 made by the Court to the jury?

JURY DELIBERATING

1 MS. JONES: No, Your Honor.

2 MS. GIBBES: No, Your Honor.

3 THE COURT: All right. We will be at ease
4 again.

5 One has a swim team and she has to make a call
6 to the swim team to tell them that she cannot be
7 there to coach them this evening.

8 MS. GIBBES: I have no objection, as long as
9 she's instructed not to talk about the case or
10 anything like that.

11 THE COURT: We will send a bailiff with her and
12 I'll ask that he instruct the remaining jurors when
13 he takes her out to stop deliberations, they cannot
14 talk about the case until this juror returns.

15 THE BAILIFF: Yes, sir.

16 *(Whereupon, Court Exhibit No(s). 4 marked for*
17 *identification and received in evidence.)*

18 THE COURT: Okay. Message two from the jury.
19 Question number one: Can we know the penalty for
20 kidnapping and sentencing. I think that it says
21 number of years.

22 THE BAILIFF: Amount.

23 THE COURT: Amount of years, all right.

24 MS. GIBBES: They are not allowed to hear that.

25 MS. JONES: No.

JURY DELIBERATING

1 THE COURT: Typical response to that kind of
2 question is that the potential penalty or sentence is
3 not within the purview of the jury. And it is not
4 their duty to determine, something like that.

5 MS. GIBBES: Yes, Your Honor.

6 THE COURT: And next question. Can we see the
7 video of Smith's interview starting at 30 minutes in.
8 I'll tell them that we can. I think.

9 MS. JONES: We can. We can put it up there
10 or --

11 THE COURT: You just have to find 30 minutes in.

12 MS. JONES: A specific mark? Okay. This is
13 trial question.

14 THE COURT: We are ready whenever you can find
15 it.

16 THE BAILIFF: The jury is entering, Your Honor.

17 (The jury enters the courtroom at 5:42 p.m.)

18 THE COURT: Welcome back, ladies and gentlemen.
19 Once again, as you may anticipate, if you wish to
20 move around and change seats, that is fine. I have a
21 note from the jury posing two questions to the Court.
22 One of which I can answer for you. The other I
23 cannot.

24 The first question is -- relates to the
25 potential penalty for kidnapping. Earlier I told you

JURY DELIBERATING

1 that you and I had different responsibilities and
2 yours are to determine the facts of the case and
3 therefore determine guilt or innocence. I preside
4 over the trial to tell you what the law is. And in
5 the event that there is a conviction of any offense
6 it is the obligation of the Court, the Judge, to
7 impose sentence.

8 The jury does not, at least in this case, does
9 not have anything to do with the issue of sentencing.
10 It is not a matter for you to concern yourself with.

11 However, the last 30 minutes is what I
12 understand the jury wishes to see, or 30 minutes in?

13 JURORS: Yes, sir.

14 THE COURT: I think that we are there. And I
15 think that we are ready to play that.

16 (Video with audio playing.)

17 THE COURT: Is that enough, ladies and
18 gentlemen?

19 JURORS: Yes.

20 THE COURT: Okay. Thank you. If you will
21 return to the jury room and resume your
22 deliberations.

23 (The jury exits the courtroom at 6:18 p.m.)

24 THE BAILIFF: The jury is clear, Your Honor.

25 THE COURT: We will be at ease.

MOTION BY THE DEFENSE

1 MS. GIBBES: Judge, if I may. After listening
2 to that video, and I know that it's odd. This video
3 was already listened to in evidence. Hearing it
4 again just now I heard where the investigator did
5 mention in the interview that Varsheen Smith had just
6 gotten out of prison. I obviously missed it. My
7 client thought he heard it the last time that it was
8 played and I had it in my notes. I didn't hear it.
9 I didn't object and I didn't object to it last time.

10 It has been brought to my attention again. I
11 don't think that a curative instruction will fix it.
12 I make a motion for a mistrial. I missed that. I
13 think that they may be prejudiced because I have now
14 heard, "been in prison" and it was not redacted out,
15 Your Honor.

16 MS. JONES: Your Honor, I don't remember hearing
17 that whatsoever. She said that --

18 THE COURT: I don't remember hearing it, but
19 there was also evidence that he was already -- that
20 he was -- excuse me, convicted of something before.

21 MS. GIBBES: Yes, sir. And that was an old
22 charge, and I guess my only concern is that they
23 would think that it was a recent charge and I would
24 be concerned that he's prejudiced by something that I
25 missed. He pointed it out and I didn't object. So,

MOTION BY THE DEFENSE

1 I would like to reserve that issue. I think that the
2 jury has been prejudiced and there's no way to cure
3 that if they have heard that and take anything out of
4 that.

5 THE COURT: Suppose that it was said, suppose
6 that it was said on the tape, what is your position?

7 MS. JONES: Your Honor, Ms. Gibbes had a copy of
8 the disc yesterday. She had it before it was
9 submitted into evidence. It was submitted into
10 evidence without objection, even after it was played
11 in its entirety. And I feel that the objection is
12 not timely. The evidence has already been submitted
13 to the jury.

14 THE COURT: Okay. I understand the motion for a
15 mistrial, but I'm going to deny the motion.

16 MS. GIBBES: Thank you, Your Honor.

17 THE COURT: And we will be at ease.

18 (Jury continues deliberating.)

19 THE COURT: Ready for the jury?

20 MS. GIBBES: Yes, Your Honor.

21 THE BAILIFF: The jury is entering the
22 courtroom, Your Honor.

23 (The jury enters the courtroom at 6:44 p.m.)

24 THE COURT: Welcome back, ladies and gentlemen.
25 Ms. Hunt, let me ask you a question. As foreperson

VERDICT BY THE JURY

1 of the jury, has the jury reached a verdict in the
2 case?

3 FOREPERSON: Yes, sir, we have.

4 THE COURT: Did you reach a verdict as to each
5 indictment?

6 FOREPERSON: Yes, sir we have.

7 THE COURT: Was it a unanimous verdict, meaning
8 that all of you agreed?

9 FOREPERSON: Yes, sir, it was.

10 THE COURT: Would you please pass the
11 indictments forward? And, Madam Clerk, would you
12 please publish the verdict.

13 THE CLERK: Yes, Your Honor. In indictment
14 number the State versus Varsheen Antuan Smith,
15 indictment number 2015GS0701890, We the jury find the
16 defendant guilty.

17 And on indictment number 2015GS0701908, We the
18 jury find the defendant guilty.

19 And on indictment number 2015GS0701909, We the
20 jury find the defendant guilty.

21 Shall we poll the jury?

22 THE COURT: Does the defense requests polling?

23 MS. GIBBES: Yes, Your Honor.

24 THE CLERK: Okay.

25 THE COURT: Juror number 363, is this your

POLLING OF THE JURY

1 verdict?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: Juror Number 208. Is this your
6 verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Juror Number 41. Is this your
11 verdict?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes, ma'am.

15 THE CLERK: Juror Number 116, is this your
16 verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Juror Number 172, is this your
21 verdict?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Is it still your verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Juror Number 189, is this your

POLLING OF THE JURY

1 verdict?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: Juror Number 99, is this your

6 verdict?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Is it still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror Number 380, is this your

11 verdict?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Is it still your verdict?

14 THE JUROR: Yes, ma'am.

15 THE CLERK: Juror number 257, is this your

16 verdict?

17 THE JUROR: Yes, ma'am, it is.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Juror Number 327, is this your

21 verdict?

22 THE JUROR: Yes, ma'am.

23 THE CLERK: Is it still your verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Juror Number 214, is this your

POLLING OF THE JURY

1 verdict?

2 THE JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: Juror Number 327, is this your
6 verdict? Did I ask you? Okay, I apologize. I
7 believe that I'm done.

8 THE COURT: You have called it.

9 THE CLERK: I have called all 12, yes, Your
10 Honor.

11 THE COURT: All 12, okay. Thank you, Madam
12 Clerk. Anything before the jury is discharged from
13 the plaintiff? From the State, excuse me?

14 MS. JONES: No, Your Honor.

15 THE COURT: From the defense?

16 MS. GIBBES: No, Your Honor.

17 THE COURT: Ladies and gentlemen, I want to
18 thank you for your service. When we asked you to
19 serve on jury duty we didn't tell you that it was
20 going to be an easy job. I'm getting ready to let
21 you go. I want to say a couple of things first. I
22 told you previously you could not discuss the case.
23 Now you are free to discuss the case or not, as you
24 see fit.

25 I don't have any reason to believe that anyone

RELEASE OF THE JURY

1 is going to bug you or bother you about your verdict.
2 If they do and you don't want to talk to them, tell
3 them that I told you that. If they further persist,
4 just report them to the clerk of court. I tell every
5 jury the very same thing.

6 I also say, ladies and gentlemen, there's no one
7 in a position to argue with you about your verdict.
8 Only the 12 of you sat there, observed the witnesses,
9 observed the testimony, heard the attorneys and then
10 had me tell you about the law of the case. And then
11 went in there and sat around the table and listened
12 to what your fellow jurors thought. Only the 12 of
13 you did that. I'm getting ready to let you go. Any
14 questions? Any problems? Anything that we can
15 handle for you?

16 It's highly likely what will happen in the next
17 few minutes, in the next five or ten minutes, the
18 Court, as I told you before, will be obligated to
19 impose a sentence on the defendant on each of these
20 charges. You are welcome to stay or not. I'm going
21 to let you exit the way that you came in. The
22 bailiff will arrange for you, if you wish to, to come
23 in the back and sit in the back of the courtroom, or
24 in the front of the courtroom if you wish to be here
25 for that. If you don't, that's fine.

RELEASE OF THE JURY

1 If you want to find out what happened you can
2 call the clerk's office tomorrow and they will
3 probably tell you, or the solicitor's office. Any
4 problems, ladies and gentlemen? Thank you for your
5 service. You are excused.

6 (The jury exits the courtroom.)

7 THE COURT: Anything else from defense counsel?

8 MS. GIBBES: Yes, Your Honor. I would just like
9 to renew all prior motions and objections for the
10 record, Your Honor. And I would also make a motion
11 for a new trial at this time, especially based on my
12 previous motion about -- for a mistrial, based on the
13 prejudice that might have been imposed on my client
14 due to the fact they watched that video and they
15 heard he was in prison and they came back fairly
16 quickly. I think that this shows that there might
17 have been a violation of due process due to the fact
18 that they heard that prejudicial information and I
19 missed that information and didn't object timely to
20 that when it was originally put before the jury, Your
21 Honor.

22 And I would also argue, as far as any other
23 facts that were associated with the murder case might
24 have also unfairly prejudiced my client. And so I
25 would just make a motion for a new trial at this

POST-TRIAL MOTIONS

1 time, Your Honor.

2 THE COURT: I understand the motion and I
3 understand the grounds for the motion, but I believe
4 that there was sufficient evidence, and as previously
5 stated, the motions for mistrial was going to be
6 denied and I therefore deny the motion for a new
7 trial. Anything else?

8 MS. GIBBES: No, Your Honor.

9 THE COURT: Is there any reason that the Court
10 should not impose sentence tonight?

11 MS. GIBBES: No, Your Honor.

12 MS. JONES: No, Your Honor. I'm preparing the
13 paperwork.

14 THE COURT: I thought you might be, okay.

15 (Pause.)

16 MS. JONES: Thank you, Your Honor. I don't
17 think it's necessary to go into the facts of this in
18 detail. You heard everything. And as I said before,
19 there's no way to tell the story of what happened to
20 Andre Frazier without going into what happened to
21 Monte, Ver'mon Steve. I contend that from day one,
22 like I said, to today and from here on out that it
23 was always connected. And the reason that this
24 happened to Andre was Varsheen was trying to get
25 information about Mr. Steve because he was mad at

SENTENCING

1 him.

2 This is not the defendant's first time in the
3 courtroom. He's had an extensive criminal history
4 ever since a juvenile. Your Honor, his criminal
5 record goes back to 1993. Two counts of burglary
6 second. Petty larceny. 1994, unlawful carry. 1995,
7 two counts of possession with intent to distribute
8 crack cocaine.

9 1998, public disorderly conduct. Criminal
10 domestic violence. 2000, assault and battery third
11 degree. And in '01, felon in possession of a weapon.

12 He seemed to have had a hiatus from the criminal
13 justice system at that point and it is because he was
14 in Federal prison for that felon with a weapon
15 charge. He served 14 years in the Federal
16 penitentiary on that charge. This is a man who was
17 not rehabilitated. He has zero regard for the laws
18 of this state. He has zero regard for the safety of
19 others.

20 And in his mind what says goes. And that night
21 he didn't care who he was put in danger. Your Honor,
22 I feel that no sentence less than 30 years is
23 appropriate for Mr. Smith. And, Your Honor, at the
24 appropriate time Ms. Steve would like to address the
25 Court.

SENTENCING

1 THE COURT: I will be glad to hear from her,
2 certainly.

3 MS. STEVE: I would like to say Your Honor --

4 THE COURT: Try to speak up as best as you can.

5 MS. STEVE: I would like to say that I agree
6 that 30 years is not even enough for this man.
7 Nothing would have happened that night had it not
8 been for him, and I will always believe that.
9 Nothing that happened would have happened if it
10 wasn't for him.

11 My son took him in when he had no place to go.
12 And I feel like for my son to feel like he had to
13 come up with a scheme to get him out of his house, he
14 was afraid of him. And he knew -- my son came to me
15 on [REDACTED] and, like I could not say before, on
16 his birthday, and told me, Mom if you never see me
17 again, just know that I given my life to the Lord.
18 And I honestly and truthfully believe it was because
19 he knew that this man would probably kill him at some
20 point. I don't think that he should have anything
21 less than 30 years in prison, if not life. Thank
22 you.

23 THE COURT: Thank you, ma'am.

24 MS. JONES: Thank you, Your Honor.

25 THE COURT: Anything else solicitor?

SENTENCING

1 MS. JONES: Your Honor, I do have certified
2 copies of some of his prior convictions that I would
3 like to give to the Court.

4 THE COURT: All right.

5 MS. JONES: And Your Honor, I want to reiterate,
6 why Mr. Smith was a free man he was in and out of
7 trouble his entire life. The only time he was not in
8 and out of the criminal justice system is when he was
9 locked up.

10 THE COURT: Ms. Gibbes.

11 MS. GIBBES: May it please the Court, Your
12 Honor. Respectfully to the family, again, my client
13 is not charged with murder. And I would ask that you
14 please disregard any insinuation that he had
15 something to do with murder. He was never charged
16 with that. Varsheen has a family that loves him.
17 His mother and his brother are here. They are
18 wonderful people. Varsheen Smith in his
19 representation has always been very forthcoming, he
20 has always maintained his innocence. But he's here,
21 he's standing before you today asking for mercy, Your
22 Honor.

23 And I would respectfully ask that you do not
24 sentence him to something like 30 years, which is the
25 same sentence as a murder sentence Your Honor. And

SENTENCING

1 if appropriate, my client would actually like to
2 address the Court. I am sorry, actually he doesn't
3 want to address the Court. But I would ask for the
4 minimum sentence that we can receive, Your Honor.
5 And he's been in jail since November 2015.

6 MS. JONES: November 2016.

7 MS. GIBBES: I apologize.

8 THE COURT: Let me ask you this: If you
9 mentioned it, solicitor, I didn't catch it and I may
10 have been writing down too many things when you were
11 talking. You gave me his criminal conviction record.

12 MS. JONES: I did.

13 THE COURT: And you asked that the Court
14 consider pending charges.

15 MS. JONES: No, sir, none of what I recited was
16 a pending charge.

17 THE COURT: As I understand it, he was charged
18 with something else that is pending?

19 ATTORNEY 1: He has an accessory after the fact
20 to murder that is pending.

21 THE COURT: My question would be, do you wish
22 for the Court to consider that?

23 MS. JONES: Your Honor, I think that there's
24 facts presented at this trial as having a
25 relationship to this case. That is how -- the State

SENTENCING

1 believes that it's appropriate to consider it as it
2 is related to the facts of this case.

3 MS. GIBBES: If I just may, very briefly. I
4 actually -- I mean, obviously I have a defense to
5 that charge, due to the cell phone records that was
6 not talked about. We are not here for that charge.
7 I would ask that -- he's not being convicted of that
8 charge and I would ask that you not consider that,
9 Your Honor, please, respectfully.

10 THE COURT: One reason that I asked the question
11 is that it may make a difference as to what happens
12 in that case as to whether the Court in this case
13 states affirmative that the Court considers that or
14 not considers that. In other words, is that -- I
15 guess nobody here knows what is going to happen to
16 that case. But just suppose that there is a
17 conviction in that case and the Court has already
18 considered that, those charges, in imposing this
19 sentence, it may affect a Judge if he knows it.

20 On the other hand, if the Court does not
21 consider it and affirmatively states, I'm not going
22 to consider that, then a Judge down the road who is
23 handling the sentencing in that case may say, Well,
24 the first Judge didn't give it any consideration at
25 all, but I am.

SENTENCING

1 MS. GIBBES: I will leave that to your
2 discretion, Your Honor.

3 THE COURT: Mr. Varsheen Smith, on the charge of
4 possession of a handgun by a person convicted of a
5 crime of violence, I sentence you to the Department
6 of Corrections for a period of five years. That
7 sentence will be concurrent with the others, with the
8 other sentences, and you get credit for time served
9 as stated.

10 On the charge of possession on a weapon during
11 the commission of a violent crime, I sentence you to
12 the Department of Corrections for a period of five
13 years. That will be concurrent and you get credit
14 for time served.

15 On the charge of kidnapping, I do not consider
16 the fact that you are separately charged with
17 accessory after the fact of murder. And therefore I
18 would assume that the other Judge, if it ever comes
19 before another Judge for sentencing, that he should
20 not think that I considered that when I imposed a
21 sentence in this case. And on that charge, I
22 sentence you to the Department of Corrections for a
23 period of 25 years, it will be concurrent, and you
24 get credit for time served. Good luck to you.

25 (Whereupon, the trial was concluded.)

SENTENCING

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CERTIFICATE PAGE

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 6th day of June, 2018.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

WITNESSES

George Erdel- Bft PD

ARREST WARRANT NUMBER

2015A0720100145

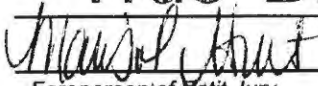

Foreperson of Grand Jury

Date: MAR 17 2016

VERDICT

Guilty

True Bill


Foreperson of Petit Jury

Date: 2/23/18

INDICT

DOCKET NO. 2015GS0701890

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

March Term 2016

THE STATE

vs.

Varsheen Antuan Smith

Indictment For

Kidnapping

SC Code: 16-3-910

CDR Code: 0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

)
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INDICTMENT

COUNTY OF BEAUFORT

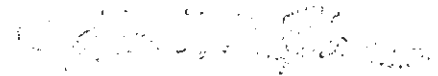
2015GS0701890

At a Court of General Sessions, convened on March 17, 2016, the Grand Jurors of Beaufort County present upon their oath:

Kidnapping

That in Beaufort County, South Carolina, on or about October 25, 2015, the Defendant, Varsheen Antuan Smith, did seize, confine, inveigle, decoy, kidnap, abduct or carry away Andre Frazier without authority of law, all in violation of Section 16-3-910, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
STATE

AKA:

Race: B Sex: M Age: 41

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Greene St.

City, State, Zip: Beaufort, SC 29902

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: Kidnapping

In violation of § 16-03-0910

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor: May C. Jones 100353 SC Bar # [REDACTED] Defendant: [REDACTED] Attorney for Defendant: C. J. [REDACTED] SC Bar # 74595

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.-
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.-
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 3.75
TOTAL		\$ 128.75

Clerk of Court/Deputy Clerk

Court Reporter: [REDACTED]

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015 -GS-07-1890

AW#: 2015 A07 20100145

Date of Offense: 10/25/15

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(def.'s initials)

☐ Recommendation by the State.

Attorney for Defendant

☐ County Detention Center,

years

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.

☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State

Department of Corrections.

☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

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:

☐ Appointed PD or appointed other counsel

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code: 2139

Sentence Date

February 22, 2018

WITNESSES

DOCKET NO. 2015GS0701908

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

The State of South Carolina
County of Beaufort

Defendant

COURT OF GENERAL SESSIONS

March Term 2016

I
hereby appear in my own proper person and plead guilty to the within indictment or to

THE STATE

vs.

Varsheen Antuan Smith

ARREST WARRANT NUMBER

2015A0720100147

Indictment For

Possession of a Handgun by Person
Convicted of Crime of Violence

SC Code: 16-23-30(B), 16-23-30(A)(1)

CDR Code: 2364

Defendant

[Signature]
Foreperson of Grand Jury

Date: MAR 17 2016

Witness:

VERDICT

Guilty

True Bill

[Signature]
Foreperson of Petit Jury

Date: 2/22/18

INDICT

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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INDICTMENT

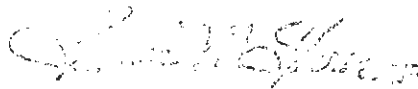
2015GS0701908

At a Court of General Sessions, convened on March 17, 2016, the Grand Jurors of Beaufort County present upon their oath:

Possession of a Handgun by Person Convicted of a Crime of Violence

That in Beaufort County, South Carolina, on or about October 25, 2015, the Defendant, Varsheen Antuan Smith, did possess or acquire a handgun within this State and Varsheen Antuan Smith had been convicted of a crime of violence in a court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia, all in violation of Section 16-23-30(B), 16-23-30(A)(1), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Beaufort

AKA:

Varsheen A. Smith

Race:

B

Sex:

M

Age:

14

DOB:

SS#:

Address:

City, State, Zip:

Beaufort SC 29902

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Possession of Handgun by Person Convicted of Crime of Violence

In violation of §

of the S.C. Code of Laws, bearing CDR Code # 2364

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ \$17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Max C. Doney
Solicitor100353
SC Bar #

Defendant

C. H. [Signature]
Attorney for Defendant7155
SC Bar #

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections☐ County Detention Center,

for a determinate term of

5

days/months/years) or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$

plus 20% fee:

\$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.-

\$14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

\$56-5-2995 (DUI Assessment)

\$12

\$

\$56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

\$14-1-212 (Law Enforce. Funding)

\$25

\$ 25.-

\$14-1-213 (Drug Court Surcharge)

\$150

\$

\$50-21-114 (BUI Breath Test Fee)

\$50

\$

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

\$ 3.75

TOTAL

\$ 128.75

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:

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date

February 22, 2018

WITNESSES

George Erdel- Bft PD

ARREST WARRANT NUMBER

2015A0720100148

Foreperson of Grand Jury

Date:

MAR 17 2016

VERDICT

Guilty

True Bill

Foreperson of Petit Jury

Date:

2/22/18

INDICT

DOCKET NO. 2015GS0701909

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

March Term 2016

THE STATE

vs.

Varsheen Antuan Smith

Indictment For

Possession of Weapon During
Violent Crime

SC Code: 16-23-490

CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive
presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper
person and plead guilty to the within
indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

)
)
)

INDICTMENT

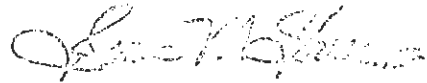
2015GS0701909

At a Court of General Sessions, convened on March 17, 2016, the Grand Jurors of Beaufort County present upon their oath:

Possession of Weapon During Violent Crime

That in Beaufort County, South Carolina, on or about October 25, 2015, the Defendant, Varsheen Antuan Smith, did possess a firearm, visibly displayed what appeared to be a firearm, or visibly displayed a knife during the commission of a violent crime, to wit: Kidnapping and Varsheen Antuan Smith was convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, to wit: Kidnapping, all in violation of Section 16-23-490, et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
STATE

Varshen vs smi tn

AKA:

Race: [redacted] Sex: M Age: 41

DOB: [redacted] SS#: [redacted]

Address: [redacted]

City, State, Zip: Beaufort, SC 29902

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: Poss. weapon during a violent crimeIn violation of § of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

May C Jones
Solicitor100353
SC Bar #Defendant [Signature]Attorney for Defendant [Signature]74595
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections** ☐ **County Detention Center**,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPSObtain 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:

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2139

Sentence Date

February 22, 2018

Recipient:

*Fine:

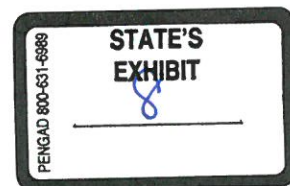
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 47.9 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
Proviso 90.5 (SCCA Surcharge)	\$5	\$	
3% to County (if paid in installments)	\$	\$	3.75
TOTAL		\$	128.75

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/22/2015 00:01:30	10/22/2015 00:01:33	3	39	631	40057	40057
(843) 597-6236	(843) 476-0259	(843) 476-0259	Incoming	10/22/2015 00:04:35	10/22/2015 00:05:23	48	39	631	40057	40057
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(843) 476-5108	(843) 476-0259	(843) 476-0259	Incoming	10/22/2015 00:52:47	10/22/2015 00:52:49	2	39	631	40057	40057
(843) 476-2232	(843) 476-0259	(843) 476-0259	Incoming	10/22/2015 01:12:19	10/22/2015 01:12:21	2	39	631	0	0
(843) 476-2232	(843) 476-0259	(843) 476-0259	Incoming	10/22/2015 01:12:56	10/22/2015 01:13:01	5	39	631	40057	40057
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/22/2015 01:57:13	10/22/2015 01:57:17	4	39	631	40057	40057
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(843) 476-0259	(843) 592-4657	(843) 592-4657	Outgoing	10/22/2015 11:36:45	10/22/2015 11:37:04	19	39	631	40057	40057
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CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R #	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
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(843) 263-7087	(843) 476-0259		Incoming	10/22/2015 20:44:58		0	228	530	0	0
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(843) 597-6236	(843) 476-0259	(843) 476-0259	Incoming	10/22/2015 20:57:28	10/22/2015 20:57:59	31	39	631	30057	40057
(843) 476-0259	(843) 263-7087		Outgoing	10/22/2015 21:16:00		0	227	297	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/22/2015 21:16:06		0	227	297	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/22/2015 21:20:04		0	229	526	0	0
(843) 476-0259	(843) 597-6236	(843) 597-6236	Outgoing	10/22/2015 21:33:40	10/22/2015 21:34:22	42	39	631	40057	40057
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(843) 592-4657	(843) 476-0259		Incoming	10/23/2015 04:46:57		0	192	512	0	0
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(843) 476-0259	(843) 597-6236	(843) 597-6236	Outgoing	10/23/2015 06:22:35	10/23/2015 06:23:15	40	39	631	40057	40057
(843) 476-0259	(843) 592-4657	(843) 592-4657	Outgoing	10/23/2015 06:23:39	10/23/2015 06:24:15	36	39	631	40057	40057
(843) 592-4657	(843) 476-0259	(843) 476-0259	Incoming	10/23/2015 06:26:17	10/23/2015 06:27:22	65	39	631	40057	40057
(843) 476-0259	(800) 659-0450	(1800) 659-0450	Outgoing	10/23/2015 06:39:04	10/23/2015 06:39:13	9	39	631	40057	40057
(843) 597-6236	(843) 476-0259	(843) 476-0259	Incoming	10/23/2015 06:41:28	10/23/2015 06:41:54	26	39	631	40057	40057
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/23/2015 06:47:04	10/23/2015 06:47:36	32	39	631	40057	40057

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(843) 476-0259	(843) 209-1477		Outgoing	10/23/2015 07:13:05		0	229	533	0	0
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 07:38:14	10/23/2015 07:38:17	3	39	631	40057	40057
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 07:47:06	10/23/2015 07:47:11	5	39	631	0	0
(843) 476-0259	(843) 597-6236	(843) 597-6236	Outgoing	10/23/2015 08:03:53	10/23/2015 08:04:37	44	39	631	40057	40057
(843) 476-0259	(843) 597-6236	(843) 597-6236	Outgoing	10/23/2015 08:04:42	10/23/2015 08:05:23	41	39	631	40057	40057
(843) 476-0259	(843) 597-6236	(843) 597-6236	Outgoing	10/23/2015 08:05:28	10/23/2015 08:06:19	51	39	631	40057	40057
(843) 209-1477	(843) 476-0259		Incoming	10/23/2015 08:52:11		0	192	512	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/23/2015 09:14:42		0	228	532	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/23/2015 09:24:24		0	192	296	0	0
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 09:54:45	10/23/2015 09:54:52	7	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 10:01:41	10/23/2015 10:01:48	7	39	631	40057	40057
(828) 458-7076	(843) 476-0259		Incoming	10/23/2015 10:11:31		0	192	512	0	0
(843) 592-4657	(843) 476-0259		Incoming	10/23/2015 11:08:25		0	192	292	0	0
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 11:18:22	10/23/2015 11:18:27	5	39	631	40057	40057
-9016	(843) 476-0259		Incoming	10/23/2015 11:37:25		0	192	508	0	0
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 11:49:45	10/23/2015 11:49:47	2	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 11:53:17	10/23/2015 11:53:22	5	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 11:54:50	10/23/2015 11:54:55	5	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 12:03:18	10/23/2015 12:03:22	4	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 12:08:07	10/23/2015 12:08:11	4	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 12:36:52	10/23/2015 12:37:22	30	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 12:44:47	10/23/2015 12:44:49	2	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 13:29:15	10/23/2015 13:29:19	4	39	631	40057	40057
(843) 575-5397	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 13:31:20	10/23/2015 13:31:23	3	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 13:49:03	10/23/2015 13:49:11	8	39	631	40057	40057
-9016	(843) 476-0259		Incoming	10/23/2015 13:55:25		0	192	510	0	0
			Null mobile role	10/23/2015 14:02:34		0	39	631	40057	0
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 14:54:32	10/23/2015 14:55:20	48	39	631	0	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 15:06:29	10/23/2015 15:06:33	4	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 16:16:20	10/23/2015 16:16:24	4	39	631	40057	40057
(843) 226-6325	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 16:26:37	10/23/2015 16:26:45	8	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 16:36:07	10/23/2015 16:36:11	4	39	631	30057	30057
-9016	(843) 476-0259		Incoming	10/23/2015 16:38:05		0	192	512	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/23/2015 16:52:28		0	227	506	0	0
(843) 592-4657	(843) 476-0259	(843) 476-0259	Incoming	10/23/2015 16:58:46	10/23/2015 16:58:48	2	39	631	0	0
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 17:14:01	10/23/2015 17:14:04	3	39	631	40057	40057
(843) 592-4657	(843) 476-0259	(843) 476-0259	Incoming	10/23/2015 17:18:49	10/23/2015 17:19:00	11	39	631	40057	40057
(843) 263-7087	(843) 476-0259		Incoming	10/23/2015 17:29:18		0	229	525	0	0
(843) 226-6325	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 17:37:17	10/23/2015 17:38:00	43	39	631	40057	40057
(843) 226-6325	(843) 476-0259	(843) 476-0259	Incoming	10/23/2015 17:38:17	10/23/2015 17:38:24	7	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 17:52:12	10/23/2015 17:52:15	3	39	631	0	0
-9016	(843) 476-0259		Incoming	10/23/2015 18:06:47		0	192	506	0	0
(843) 263-7661	(843) 476-0259		Incoming	10/23/2015 18:06:56		0	228	523	0	0
(404) 561-3639	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 18:16:06	10/23/2015 18:16:10	4	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 18:46:58	10/23/2015 18:47:09	11	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 19:06:23	10/23/2015 19:06:45	22	39	631	40057	40057
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 19:27:48	10/23/2015 19:27:53	5	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 20:12:22	10/23/2015 20:12:28	6	39	631	40057	40057

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 20:34:08	10/23/2015 20:34:11	3	39	631	40057	40057
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 20:34:46	10/23/2015 20:34:50	4	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 20:42:28	10/23/2015 20:42:30	2	39	631	40057	40057
(843) 597-6236	(843) 476-0259		Incoming	10/23/2015 20:44:43		0	192	508	0	0
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 20:50:18	10/23/2015 20:50:21	3	39	631	40057	40057
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 21:09:23	10/23/2015 21:09:26	3	39	631	40057	40057
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 21:31:47	10/23/2015 21:31:50	3	39	631	40057	40057
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 21:38:40	10/23/2015 21:38:46	6	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/23/2015 22:26:57	10/23/2015 22:27:00	3	39	631	40057	40057
(843) 441-3935	(843) 476-0259		Incoming	10/23/2015 23:11:36		0	228	523	0	0
(843) 473-0455	(843) 476-0259	(843) 476-0259	Incoming	10/23/2015 23:39:50	10/23/2015 23:40:15	25	39	631	40057	40057
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 01:04:15	10/24/2015 01:04:18	3	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 01:54:00	10/24/2015 01:54:06	6	39	631	40057	40057
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 02:09:30		0	226	296	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 02:45:40		0	227	294	0	0
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 03:07:12	10/24/2015 03:07:17	5	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 09:18:00	10/24/2015 09:18:04	4	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 09:34:09	10/24/2015 09:34:12	3	39	631	40057	40057
(843) 476-0259	(843) 209-1477		Outgoing	10/24/2015 10:12:47		0	226	507	0	0
(843) 476-0259	(843) 209-1477		Outgoing	10/24/2015 10:12:51		0	227	509	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 10:16:56		0	229	526	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 10:16:57		0	229	522	0	0
(843) 476-0259	(404) 561-3639	(404) 561-3639	Outgoing	10/24/2015 11:10:49	10/24/2015 11:11:22	33	39	631	40057	40057
(404) 561-3639	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 11:11:31	10/24/2015 11:12:16	45	39	631	40057	40057
(843) 263-7087	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 11:17:52	10/24/2015 11:18:07	15	39	631	40057	40057
(843) 476-0259	(843) 263-7661		Outgoing	10/24/2015 11:21:35		0	228	520	0	0
(843) 263-7661	(843) 476-0259		Incoming	10/24/2015 11:22:17		0	229	522	0	0
(843) 263-7661	(843) 476-0259		Incoming	10/24/2015 11:23:44		0	226	511	0	0
(843) 476-0259	(843) 263-7661		Outgoing	10/24/2015 11:25:03		0	227	507	0	0
(843) 263-7661	(843) 476-0259		Incoming	10/24/2015 11:26:03		0	229	521	0	0
(843) 476-0259	(843) 441-3935		Outgoing	10/24/2015 11:26:07		0	226	506	0	0
(843) 476-0259	(843) 263-7661		Outgoing	10/24/2015 11:27:05		0	226	295	0	0
(843) 476-0259	(843) 263-7661		Outgoing	10/24/2015 11:29:11		0	229	521	0	0
(843) 263-7661	(843) 476-0259		Incoming	10/24/2015 11:29:45		0	228	525	0	0
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 11:48:02	10/24/2015 11:48:04	2	39	631	40057	40057
(843) 476-0259	(304) 859-1096	(304) 859-1096	Outgoing	10/24/2015 12:20:03	10/24/2015 12:20:34	31	39	631	30057	30057
(304) 859-1096	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 12:21:21	10/24/2015 12:22:53	92	39	631	40057	30057
(843) 476-0259	(510) 406-1733	(510) 406-1733	Outgoing	10/24/2015 12:28:08	10/24/2015 12:29:24	76	39	631	30057	30057
(843) 263-7661	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 12:28:56	10/24/2015 12:29:18	22	39	631	30057	30057
(843) 476-0259	(843) 263-7661	(843) 263-7661	Outgoing	10/24/2015 12:54:57	10/24/2015 12:59:29	272	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/24/2015 13:01:20	10/24/2015 13:01:58	38	39	631	30057	30057
(843) 476-0259		(304) 859-1096	Outgoing	10/24/2015 13:03:32	10/24/2015 13:04:05	33	39	631	30057	30057
(843) 473-0455	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 13:15:56	10/24/2015 13:16:19	23	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/24/2015 15:00:50	10/24/2015 15:01:32	42	39	631	20057	20057
(843) 476-0259		(843) 263-0575	Outgoing	10/24/2015 15:26:27	10/24/2015 15:26:51	24	39	631	20057	20057
(843) 476-0259	(843) 263-0575	(843) 263-0575	Outgoing	10/24/2015 15:27:28	10/24/2015 15:28:03	35	39	631	40057	40057
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/24/2015 16:12:30	10/24/2015 16:14:38	128	39	631	40057	20057
(843) 476-0259	(910) 568-1242		Outgoing	10/24/2015 16:18:45		0	226	506	0	0

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
-3333	(843) 476-0259		Incoming	10/24/2015 16:36:35		0	228	525	0	0
-3333	(843) 476-0259		Incoming	10/24/2015 16:36:36		0	228	520	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 16:50:47		0	227	297	0	0
(843) 476-0259	(843) 476-9668	(843) 476-9668	Outgoing	10/24/2015 16:51:25	10/24/2015 16:52:16	51	39	631	20057	20057
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 16:51:35		0	228	533	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 16:53:16		0	229	529	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 16:54:42		0	229	521	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 16:54:50		0	226	296	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 16:55:44		0	226	298	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 16:56:52		0	229	533	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 16:57:15		0	226	291	0	0
(843) 263-7087	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 17:00:48	10/24/2015 17:17:28	1000	39	631	20057	20057
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 17:01:46		0	228	516	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 17:04:39		0	229	528	0	0
(843) 476-0259	(910) 568-1242	(910) 568-1242	Outgoing	10/24/2015 17:18:03	10/24/2015 17:18:34	31	39	631	20057	20057
(843) 476-0259	(910) 568-1242	(910) 568-1242	Outgoing	10/24/2015 17:29:53	10/24/2015 17:30:29	36	39	631	20057	20057
(843) 476-9668	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 17:47:35	10/24/2015 17:47:38	3	39	631	20057	20057
(843) 476-0259	(843) 476-9668	(843) 476-9668	Outgoing	10/24/2015 17:49:39	10/24/2015 17:50:03	24	39	631	40057	20057
(843) 476-0259	(843) 473-5888	(843) 473-5888	Outgoing	10/24/2015 18:02:44	10/24/2015 18:03:16	32	39	631	20057	20057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/24/2015 18:03:52	10/24/2015 18:20:01	969	39	631	40057	20057
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 18:21:07		0	227	507	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/24/2015 18:23:47		0	228	525	0	0
-3333	(843) 476-0259		Incoming	10/24/2015 18:25:07		0	228	518	0	0
-3333	(843) 476-0259		Incoming	10/24/2015 18:27:58		0	228	521	0	0
-3333	(843) 476-0259		Incoming	10/24/2015 18:27:59		0	228	522	0	0
-3333	(843) 476-0259		Incoming	10/24/2015 18:28:38		0	228	528	0	0
-3333	(843) 476-0259		Incoming	10/24/2015 18:28:39		0	228	516	0	0
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/24/2015 18:28:42	10/24/2015 18:29:13	31	39	631	40057	40057
(843) 476-5691	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 18:36:08	10/24/2015 18:36:11	3	39	631	20057	20057
(843) 476-5691	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 18:36:44	10/24/2015 18:36:49	5	39	631	40057	40057
(843) 476-3466	(843) 476-0259		Incoming	10/24/2015 19:03:50		0	227	507	0	0
(843) 476-0259	(843) 476-3466		Outgoing	10/24/2015 19:07:00		0	227	514	0	0
(843) 476-3466	(843) 476-0259		Incoming	10/24/2015 19:08:08		0	229	518	0	0
(843) 476-3466	(843) 476-0259		Incoming	10/24/2015 19:08:43		0	228	530	0	0
(843) 476-0259	(843) 476-3466		Outgoing	10/24/2015 19:08:56		0	229	528	0	0
(843) 476-0259	(843) 476-3466		Outgoing	10/24/2015 19:09:39		0	226	297	0	0
(843) 476-0259	(843) 592-4657	592-4657	Outgoing	10/24/2015 19:22:29	10/24/2015 19:22:35	6	39	631	20057	20057
(803) 616-3356	(843) 476-0259		Incoming	10/24/2015 19:26:27		0	192	509	0	0
(843) 476-0259	(803) 616-3356		Outgoing	10/24/2015 19:30:38		0	226	507	0	0
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 19:30:44	10/24/2015 19:30:47	3	39	631	20057	20057
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 19:32:43		0	227	514	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/24/2015 19:39:42		0	227	295	0	0
(803) 616-3356	(843) 476-0259		Incoming	10/24/2015 19:44:05		0	192	292	0	0
(843) 263-7087	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 20:12:02	10/24/2015 20:13:11	69	39	631	20057	20057
(803) 616-3356	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 20:15:37	10/24/2015 20:15:41	4	39	631	0	0
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 20:15:56	10/24/2015 20:16:01	5	39	631	20057	20057
(803) 616-3356	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 20:19:50	10/24/2015 20:19:53	3	39	631	40057	40057
(843) 476-0259	(803) 616-3356	(803) 616-3356	Outgoing	10/24/2015 20:29:28	10/24/2015 20:30:09	41	39	631	40057	40057

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/24/2015 20:31:21	10/24/2015 20:31:52	31	39	631	40057	40057
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/24/2015 20:31:58	10/24/2015 20:32:09	11	39	631	40057	40057
(843) 476-0259	(843) 368-1497		Outgoing	10/24/2015 20:34:31		0	228	520	0	0
(803) 616-3356	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 20:35:16	10/24/2015 20:36:18	62	39	631	40057	40057
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/24/2015 20:36:32	10/24/2015 20:36:47	15	39	631	40057	40057
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/24/2015 20:36:52	10/24/2015 20:37:06	14	39	631	40057	40057
(843) 592-4657	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 20:37:57	10/24/2015 20:38:16	19	39	631	40057	40057
(843) 592-4657	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 20:44:44	10/24/2015 20:45:05	21	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/24/2015 21:03:00	10/24/2015 21:03:55	55	39	631	40057	40057
(843) 476-0259	(843) 592-6988	(843) 592-6988	Outgoing	10/24/2015 21:07:40	10/24/2015 21:08:22	42	39	631	40057	40057
(843) 476-0259	(843) 304-9521	(843) 304-9521	Outgoing	10/24/2015 21:17:50	10/24/2015 21:18:08	18	39	631	40057	40057
(843) 476-0259	(843) 476-5691		Outgoing	10/24/2015 21:24:34		0	226	510	0	0
(843) 476-0259	(828) 458-7076		Outgoing	10/24/2015 21:28:23		0	226	507	0	0
(843) 476-0259	(843) 368-1497	(843) 368-1497	Outgoing	10/24/2015 21:32:00	10/24/2015 21:32:33	33	39	631	40057	40057
(828) 458-7076	(843) 476-0259		Incoming	10/24/2015 21:35:16		0	192	507	0	0
(843) 476-0259	(843) 368-1497	(843) 368-1497	Outgoing	10/24/2015 21:35:25	10/24/2015 21:36:07	42	39	631	40057	40057
(843) 476-0259	(828) 458-7076		Outgoing	10/24/2015 21:36:13		0	228	521	0	0
(843) 476-0259	(828) 458-7076		Outgoing	10/24/2015 21:39:50		0	227	294	0	0
(843) 476-0259	(843) 368-1497	(843) 368-1497	Outgoing	10/24/2015 21:41:36	10/24/2015 21:42:11	35	39	631	40057	40057
(843) 476-0259	(843) 368-1497	(843) 368-1497	Outgoing	10/24/2015 21:42:15	10/24/2015 21:42:59	44	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 22:02:09	10/24/2015 22:02:11	2	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 22:08:31	10/24/2015 22:08:36	5	39	631	40057	40057
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/24/2015 22:23:54	10/24/2015 22:24:23	29	39	631	40057	40057
(843) 476-0259	(912) 358-9802	(912) 358-9802	Outgoing	10/24/2015 22:25:20	10/24/2015 22:26:16	56	39	631	40057	40057
(843) 476-0259	(828) 458-7076	(828) 458-7076	Outgoing	10/24/2015 22:27:17	10/24/2015 22:27:52	35	39	631	40057	40057
(843) 476-5691	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 22:30:08	10/24/2015 22:31:50	102	39	631	40057	40057
(828) 458-7076	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 22:36:58	10/24/2015 22:37:27	29	39	631	40057	40057
(843) 476-0259	(828) 458-7076	(828) 458-7076	Outgoing	10/24/2015 22:38:33	10/24/2015 22:39:10	37	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 22:45:48	10/24/2015 22:45:52	4	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/24/2015 22:46:28	10/24/2015 22:46:35	7	39	631	40057	40057
(843) 473-0455	(843) 476-0259		Incoming	10/24/2015 22:47:52		0	192	506	0	0
(843) 476-0259	(828) 458-7076	(828) 458-7076	Outgoing	10/24/2015 22:50:18	10/24/2015 22:50:34	16	39	631	40057	40057
(843) 473-0455	(843) 476-0259	(843) 476-0259	Incoming	10/24/2015 22:57:21	10/24/2015 22:57:45	24	39	631	40057	40057
(843) 476-0259	(843) 473-0455		Outgoing	10/24/2015 23:08:27		0	227	512	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/24/2015 23:08:43		0	229	524	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/24/2015 23:43:46		0	192	512	0	0
(843) 476-0259	(828) 222-8181	(828) 222-8181	Outgoing	10/25/2015 00:09:51	10/25/2015 00:13:33	222	39	631	40057	40057
(843) 473-0455	(843) 476-0259		Incoming	10/25/2015 00:25:49		0	192	513	0	0
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 00:43:28	10/25/2015 00:43:32	4	39	631	40057	40057
(843) 476-0259	(828) 458-7076	(828) 458-7076	Outgoing	10/25/2015 00:43:44	10/25/2015 00:45:00	76	39	631	40057	40057
(843) 476-0259	(510) 406-1733	(510) 406-1733	Outgoing	10/25/2015 00:46:43	10/25/2015 00:47:20	37	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/25/2015 00:47:50	10/25/2015 00:48:24	34	39	631	40057	40057
(843) 476-0259	(843) 473-5888	(843) 473-5888	Outgoing	10/25/2015 00:49:53	10/25/2015 00:50:25	32	39	631	40057	40057
(843) 694-0081	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 00:50:04	10/25/2015 00:50:21	17	39	631	0	0
(843) 476-0259	(843) 592-5255	(843) 592-5255	Outgoing	10/25/2015 00:51:39	10/25/2015 00:52:23	44	39	631	30057	30057
(304) 859-1096	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 01:04:09	10/25/2015 01:04:43	34	39	631	30057	30057
(843) 476-0259	(214) 288-9175	(214) 288-9175	Outgoing	10/25/2015 01:06:11	10/25/2015 01:06:47	36	39	631	30057	30057
(304) 859-1096	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 01:07:42	10/25/2015 01:08:21	39	39	631	30057	30057

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(828) 458-7076	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 01:10:33	10/25/2015 01:10:56	23	39	631	30057	30057
(843) 476-0259	(214) 288-9175	(214) 288-9175	Outgoing	10/25/2015 01:11:35	10/25/2015 01:12:08	33	39	631	30057	30057
(843) 476-0259	(304) 859-1096	(304) 859-1096	Outgoing	10/25/2015 01:12:30	10/25/2015 01:13:14	44	39	631	30057	30057
-9016	(843) 476-0259		Incoming	10/25/2015 01:41:53		0	192	506	0	0
(843) 476-3466	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 02:31:46	10/25/2015 02:31:53	7	39	631	40057	40057
(843) 694-0081	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 02:41:24	10/25/2015 02:41:50	26	39	631	40057	40057
(843) 263-7087	(843) 476-0259		Incoming	10/25/2015 03:14:27		0	228	517	0	0
(843) 694-0081	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 04:39:52	10/25/2015 04:39:55	3	39	631	40057	40057
(843) 368-1497	(843) 476-0259		Incoming	10/25/2015 04:50:13		0	192	510	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/25/2015 06:58:36		0	229	522	0	0
(843) 476-0259	(843) 368-1497		Outgoing	10/25/2015 07:01:23		0	228	518	0	0
(843) 368-1497	(843) 476-0259		Incoming	10/25/2015 07:05:55		0	192	509	0	0
(843) 476-0259	(843) 368-1497		Outgoing	10/25/2015 07:06:55		0	226	298	0	0
(843) 368-1497	(843) 476-0259		Incoming	10/25/2015 07:09:23		0	192	513	0	0
(843) 476-0259	(843) 368-1497		Outgoing	10/25/2015 07:10:40		0	228	517	0	0
(843) 476-0259		(843) 694-0081	Outgoing	10/25/2015 07:56:30	10/25/2015 07:56:46	16	39	631	40057	40057
(843) 694-0081	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 07:57:39	10/25/2015 07:58:16	37	39	631	40057	40057
-9016	(843) 476-0259		Incoming	10/25/2015 08:39:00		0	192	506	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/25/2015 08:48:08		0	192	513	0	0
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 09:17:29	10/25/2015 09:17:39	10	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 09:38:32	10/25/2015 09:38:54	22	39	631	40057	40057
(843) 327-9527	(843) 476-0259		Incoming	10/25/2015 10:10:14		0	192	291	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/25/2015 10:16:41		0	192	510	0	0
(828) 458-7076	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 10:57:38	10/25/2015 10:57:57	19	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 11:16:04	10/25/2015 11:16:08	4	39	631	40057	40057
(843) 592-4657	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 12:04:03	10/25/2015 12:04:26	23	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 12:08:37	10/25/2015 12:08:39	2	39	631	40057	40057
(843) 263-7087	(843) 476-0259		Incoming	10/25/2015 12:32:53		0	227	293	0	0
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 12:35:54	10/25/2015 12:35:57	3	39	631	40057	40057
(843) 327-9527	(843) 476-0259		Incoming	10/25/2015 13:05:10		0	192	506	0	0
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(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 13:27:31	10/25/2015 13:27:41	10	39	631	40057	40057
(843) 592-4657	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 13:29:43	10/25/2015 13:30:00	17	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 13:30:50	10/25/2015 13:30:52	2	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 13:51:48	10/25/2015 13:51:50	2	39	631	40057	40057
(843) 476-0259	(843) 263-7087		Outgoing	10/25/2015 14:02:56		0	227	509	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/25/2015 14:03:12		0	227	510	0	0
(843) 476-0259	(828) 458-7076		Outgoing	10/25/2015 14:03:29		0	226	506	0	0
-3333	(843) 476-0259		Incoming	10/25/2015 14:04:14		0	228	532	0	0
-3333	(843) 476-0259		Incoming	10/25/2015 14:04:15		0	228	531	0	0
(843) 476-0259	(843) 327-9527		Outgoing	10/25/2015 14:04:17		0	226	509	0	0
(843) 327-9527	(843) 476-0259		Incoming	10/25/2015 14:05:48		0	192	291	0	0
(843) 476-0259	(843) 327-9527		Outgoing	10/25/2015 14:06:20		0	229	532	0	0
(843) 327-9527	(843) 476-0259		Incoming	10/25/2015 14:11:23		0	192	513	0	0
(843) 476-0259	(843) 327-9527		Outgoing	10/25/2015 14:12:01		0	229	531	0	0
(843) 327-9527	(843) 476-0259		Incoming	10/25/2015 14:12:31		0	192	513	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/25/2015 14:13:04		0	192	292	0	0
(843) 476-0259	(843) 327-9527		Outgoing	10/25/2015 14:15:12		0	228	523	0	0

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
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(843) 327-9527	(843) 476-0259		Incoming	10/25/2015 14:17:42		0	192	295	0	0
(843) 522-3130	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 14:17:53	10/25/2015 14:17:55	2	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 14:18:25	10/25/2015 14:18:28	3	39	631	40057	40057
(843) 476-0259	(843) 327-9527		Outgoing	10/25/2015 14:19:24		0	227	294	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/25/2015 14:29:19		0	227	506	0	0
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 14:35:37	10/25/2015 14:35:43	6	39	631	40057	40057
(843) 476-3466	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 14:39:00	10/25/2015 14:39:18	18	39	631	40057	40057
(843) 592-4657	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 14:55:36	10/25/2015 14:55:42	6	39	631	40057	40057
(843) 476-0259	(304) 859-1096	(304) 859-1096	Outgoing	10/25/2015 15:06:39	10/25/2015 15:08:53	134	39	631	40057	40057
(843) 476-0259	(828) 458-7076	(828) 458-7076	Outgoing	10/25/2015 15:15:26	10/25/2015 15:26:35	669	39	631	30057	40057
(843) 476-0259		(843) 263-7087	Outgoing	10/25/2015 15:29:39	10/25/2015 15:29:48	9	39	631	40057	40057
(843) 476-0259		(843) 473-0798	Outgoing	10/25/2015 15:30:28	10/25/2015 15:30:51	23	39	631	40057	40057
(843) 476-0259	(404) 561-3639	(404) 561-3639	Outgoing	10/25/2015 15:31:07	10/25/2015 15:31:43	36	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 16:09:45	10/25/2015 16:09:48	3	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 16:10:27	10/25/2015 16:10:29	2	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 16:16:10	10/25/2015 16:16:12	2	39	631	30057	30057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 16:17:22	10/25/2015 16:17:24	2	39	631	40057	40057
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 16:25:03	10/25/2015 16:25:07	4	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 16:31:14	10/25/2015 16:31:18	4	39	631	40057	40057
(843) 476-0259	(404) 561-3639		Outgoing	10/25/2015 16:36:40		0	226	297	0	0
(304) 859-1096	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 16:39:29	10/25/2015 16:42:09	160	39	631	40057	40057
(843) 476-0259		(304) 859-1096	Outgoing	10/25/2015 16:43:20	10/25/2015 16:43:23	3	39	631	40057	40057
(843) 476-0259		(843) 476-7660	Outgoing	10/25/2015 16:43:30	10/25/2015 16:43:32	2	39	631	40057	40057
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/25/2015 16:43:37	10/25/2015 16:58:11	874	39	631	40057	40057
(803) 616-3356	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 17:31:07	10/25/2015 17:32:17	70	39	631	40057	40057
(843) 476-0259	(843) 327-9527	(843) 327-9527	Outgoing	10/25/2015 17:33:07	10/25/2015 17:33:50	43	39	631	40057	40057
(843) 476-0259	(404) 561-3639	(404) 561-3639	Outgoing	10/25/2015 17:35:33	10/25/2015 17:36:16	43	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 17:44:45	10/25/2015 17:44:48	3	39	631	40057	40057
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 17:45:16	10/25/2015 17:45:19	3	39	631	0	0
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 17:49:06	10/25/2015 17:49:08	2	39	631	40057	40057
(304) 859-1096	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 17:49:48	10/25/2015 17:52:03	135	39	631	40057	40057
(843) 263-7087	(843) 476-0259		Incoming	10/25/2015 18:58:19		0	228	529	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/25/2015 19:06:00		0	229	523	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/25/2015 19:11:04		0	226	295	0	0
(843) 263-7087	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 19:12:54	10/25/2015 19:20:54	480	39	631	40057	40057
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/25/2015 19:21:13	10/25/2015 19:25:10	237	39	631	40057	40057
(843) 473-0455	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 19:30:50	10/25/2015 19:31:43	53	39	631	40057	40057
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 19:33:36	10/25/2015 19:33:40	4	39	631	40057	40057
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/25/2015 19:39:58	10/25/2015 19:40:25	27	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/25/2015 19:40:54	10/25/2015 19:41:27	33	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/25/2015 19:41:53	10/25/2015 19:42:47	54	39	631	40057	40057
(843) 476-0259	(843) 263-7661	(843) 263-7661	Outgoing	10/25/2015 19:45:45	10/25/2015 19:46:50	65	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/25/2015 19:50:43	10/25/2015 19:50:48	5	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/25/2015 19:50:53	10/25/2015 19:50:57	4	39	631	40057	40057
(843) 263-7661	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 19:59:52	10/25/2015 20:00:13	21	39	631	40057	40057
(843) 694-0081	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 20:03:02	10/25/2015 20:03:19	17	39	631	40057	40057
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/25/2015 20:04:15	10/25/2015 20:04:48	33	39	631	40057	40057

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(843) 476-0259	(843) 263-7661	(843) 263-7661	Outgoing	10/25/2015 20:04:59	10/25/2015 20:05:42	43	39	631	40057	40057
(843) 476-5691	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 20:05:44	10/25/2015 20:05:47	3	39	631	40057	40057
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/25/2015 20:06:11	10/25/2015 20:06:47	36	39	631	40057	40057
(843) 476-0259		(304) 859-1096	Outgoing	10/25/2015 20:08:20	10/25/2015 20:08:30	10	39	631	40057	40057
(843) 812-7381	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 20:16:04	10/25/2015 20:16:09	5	39	631	40057	40057
-3333	(843) 476-0259		Incoming	10/25/2015 20:24:41		0	228	523	0	0
-3333	(843) 476-0259		Incoming	10/25/2015 20:24:42		0	228	523	0	0
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 20:30:44	10/25/2015 20:30:50	6	39	631	40057	40057
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 20:31:32	10/25/2015 20:31:36	4	39	631	40057	40057
(843) 476-0259	(304) 859-1096	(304) 859-1096	Outgoing	10/25/2015 20:33:57	10/25/2015 20:34:46	49	39	631	40057	40057
(304) 859-1096	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 20:35:27	10/25/2015 20:35:44	17	39	631	40057	40057
(843) 476-0259	(304) 859-1096	(304) 859-1096	Outgoing	10/25/2015 20:36:34	10/25/2015 20:37:05	31	39	631	40057	40057
(843) 476-0259	(304) 859-1096	(304) 859-1096	Outgoing	10/25/2015 20:37:10	10/25/2015 20:37:28	18	39	631	40057	40057
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 20:37:15	10/25/2015 20:37:19	4	39	631	0	0
(843) 476-7660	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 20:37:33	10/25/2015 20:38:01	28	39	631	40057	40057
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/25/2015 20:44:30	10/25/2015 20:46:55	145	39	631	30056	20058
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/25/2015 20:48:16	10/25/2015 20:50:26	130	39	631	40058	40058
(843) 476-7660	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 20:50:57	10/25/2015 20:51:00	3	39	631	20051	20051
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/25/2015 20:51:41	10/25/2015 20:53:39	118	39	631	40058	40058
(843) 476-7660	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 20:53:47	10/25/2015 20:53:49	2	39	631	40058	40058
(843) 263-7087	(843) 476-0259		Incoming	10/25/2015 21:00:25		0	228	523	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/25/2015 21:00:58		0	228	527	0	0
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/25/2015 21:18:16	10/25/2015 21:19:29	73	39	631	20058	20058
(843) 476-2232	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 21:26:12	10/25/2015 21:27:36	84	39	631	40056	40056
(828) 458-7076	(843) 476-0259		Incoming	10/25/2015 21:28:29		0	192	298	0	0
(843) 476-0259	(828) 458-7076		Outgoing	10/25/2015 21:29:07		0	227	293	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/25/2015 21:29:35		0	192	514	0	0
(843) 476-0259	(828) 458-7076		Outgoing	10/25/2015 21:30:00		0	228	517	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/25/2015 21:30:24		0	192	506	0	0
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 21:44:18	10/25/2015 21:44:24	6	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 21:45:13	10/25/2015 21:45:16	3	39	631	40057	40057
(843) 263-7087	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 21:45:35	10/25/2015 21:46:13	38	39	631	40057	40057
(828) 458-7076	(843) 476-0259		Incoming	10/25/2015 21:52:52		0	192	294	0	0
(843) 476-0259	(828) 458-7076		Outgoing	10/25/2015 21:54:19		0	227	296	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/25/2015 22:09:59		0	229	525	0	0
(843) 476-0259		(843) 263-7087	Outgoing	10/25/2015 22:27:57	10/25/2015 22:28:13	16	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 22:28:14	10/25/2015 22:28:16	2	39	631	0	0
(843) 476-0259	(843) 476-2232	(1843) 476-2232	Outgoing	10/25/2015 22:30:19	10/25/2015 22:33:20	181	39	631	20056	30056
(843) 476-0259	(843) 476-3466	(843) 476-3466	Outgoing	10/25/2015 22:34:47	10/25/2015 22:35:45	58	39	631	20058	20058
(843) 476-0259	(843) 263-7661	(843) 263-7661	Outgoing	10/25/2015 22:35:55	10/25/2015 22:36:41	46	39	631	20058	20058
(843) 263-7661	(843) 476-0259	(843) 476-0259	Incoming	10/25/2015 22:36:56	10/25/2015 22:37:18	22	39	631	30055	20058
(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/25/2015 22:37:29	10/25/2015 22:38:20	51	39	631	20058	20058
(843) 694-0081	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 23:05:16	10/25/2015 23:05:19	3	39	631	40057	40057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 23:08:33	10/25/2015 23:08:38	5	39	631	30057	30057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 23:09:14	10/25/2015 23:09:17	3	39	631	30057	30057
(843) 263-7087	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 23:23:47	10/25/2015 23:23:50	3	39	631	40057	40057
(843) 597-6236	(6245000) 000-0111	(843) 476-0259	Routed	10/25/2015 23:31:35	10/25/2015 23:31:38	3	39	631	0	0
(843) 476-8421		(843) 476-0259	Routed	10/26/2015 00:49:49	10/26/2015 00:49:59	10	39	631	40057	40057

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
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(843) 476-0259	(843) 263-7087	(843) 263-7087	Outgoing	10/26/2015 06:52:55	10/26/2015 06:53:11	16	39	631	20057	20057
(843) 476-0259	(843) 263-7087		Outgoing	10/26/2015 07:23:16		0	226	508	0	0
(843) 263-7087	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 08:03:12	10/26/2015 08:07:18	246	39	631	40057	0
(843) 476-0259	(843) 812-7381	(843) 812-7381	Outgoing	10/26/2015 08:18:37	10/26/2015 08:18:40	3	39	631	40057	40057
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/26/2015 08:18:56	10/26/2015 08:19:24	28	39	631	40057	40057
(843) 476-0259		(304) 859-1096	Outgoing	10/26/2015 08:53:08	10/26/2015 08:53:36	28	39	631	20059	20059
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 08:54:30	10/26/2015 08:54:36	6	39	631	20059	20059
(803) 942-2230	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 08:56:51	10/26/2015 08:56:53	2	39	631	0	0
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 08:56:53	10/26/2015 08:56:56	3	39	631	20059	20059
(803) 942-2230	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 08:56:59	10/26/2015 08:57:01	2	39	631	20059	20059
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 08:58:55	10/26/2015 08:59:07	12	39	631	20059	20059
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 09:10:24	10/26/2015 09:10:28	4	39	631	20051	40058
(843) 476-0259	(828) 458-7076		Outgoing	10/26/2015 09:24:28		0	228	533	0	0
-9016	(843) 476-0259		Incoming	10/26/2015 09:39:55		0	192	506	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/26/2015 09:41:45		0	192	298	0	0
(843) 476-0259	(304) 859-1096	(304) 859-1096	Outgoing	10/26/2015 09:58:38	10/26/2015 09:59:27	49	39	631	20058	20058
(843) 476-0259	(828) 458-7076	(828) 458-7076	Outgoing	10/26/2015 10:23:33	10/26/2015 10:24:10	37	39	631	40057	40057
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 10:35:43	10/26/2015 10:35:46	3	39	631	40057	40057
(843) 476-7660	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 10:35:55	10/26/2015 10:36:14	19	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 10:38:02	10/26/2015 10:39:49	107	39	631	40057	40057
(843) 476-0259	(828) 458-7076	(828) 458-7076	Outgoing	10/26/2015 10:46:20	10/26/2015 10:46:51	31	39	631	40057	40057
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/26/2015 10:47:07	10/26/2015 10:52:20	313	39	631	40057	40057
(843) 476-0259	(843) 304-9521		Outgoing	10/26/2015 11:09:24		0	228	519	0	0
(843) 476-0259	(404) 561-3639		Outgoing	10/26/2015 11:10:37		0	229	516	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/26/2015 11:10:48		0	192	511	0	0
-9016	(843) 476-0259		Incoming	10/26/2015 11:17:21		0	192	514	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/26/2015 11:20:03		0	192	292	0	0
(843) 476-0259	(800) 659-0450	(1800) 659-0450	Outgoing	10/26/2015 11:22:09	10/26/2015 11:22:25	16	39	631	40057	40057
(843) 476-0259	(843) 263-7661	(843) 263-7661	Outgoing	10/26/2015 11:34:17	10/26/2015 11:35:02	45	39	631	40057	40057
-9016	(843) 476-0259		Incoming	10/26/2015 11:41:24		0	192	293	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/26/2015 11:54:16		0	229	531	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/26/2015 12:07:41		0	226	295	0	0
(843) 476-0259	(843) 304-9521	(843) 304-9521	Outgoing	10/26/2015 12:08:08	10/26/2015 12:08:33	25	39	631	20107	20107
(843) 476-0259	(843) 304-9521		Outgoing	10/26/2015 12:08:25		0	227	512	0	0
(843) 476-0259	(843) 304-9521	(843) 304-9521	Outgoing	10/26/2015 12:08:34	10/26/2015 12:08:49	15	39	631	40060	20058
(843) 263-7087	(843) 476-0259		Incoming	10/26/2015 12:09:17		0	228	522	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/26/2015 12:09:36		0	229	527	0	0
(843) 476-0259	(404) 561-3639	(404) 561-3639	Outgoing	10/26/2015 12:09:52	10/26/2015 12:10:27	35	39	631	20056	40057
-9016	(843) 476-0259		Incoming	10/26/2015 12:11:21		0	192	292	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/26/2015 12:11:54		0	192	291	0	0
(843) 525-9298	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 12:16:57	10/26/2015 12:17:18	21	39	631	40057	40057
(843) 525-9298	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 12:17:51	10/26/2015 12:18:06	15	39	631	40057	40057
(843) 525-9298	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 12:39:14	10/26/2015 12:39:34	20	39	631	40057	40057
(843) 525-9298	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 12:40:36	10/26/2015 12:41:19	43	39	631	40057	40057
(843) 476-0259	(404) 561-3639		Outgoing	10/26/2015 12:41:02		0	228	522	0	0
(404) 561-3639	(843) 476-0259		Incoming	10/26/2015 12:45:57		0	192	298	0	0
(843) 476-0259	(404) 561-3639		Outgoing	10/26/2015 12:47:49		0	229	522	0	0

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
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(843) 476-0259	(843) 525-9298	(843) 525-9298	Outgoing	10/26/2015 12:58:01	10/26/2015 13:07:13	552	39	631	40057	40057
(404) 561-3639	(843) 476-0259		Incoming	10/26/2015 13:02:33		0	192	291	0	0
-3333	(843) 476-0259		Incoming	10/26/2015 13:03:28		0	228	526	0	0
(843) 473-0798	(843) 476-0259		Incoming	10/26/2015 13:04:34		0	192	515	0	0
(843) 538-2755	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 13:10:37	10/26/2015 13:10:41	4	39	631	0	0
(843) 538-2729	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 13:10:47	10/26/2015 13:10:52	5	39	631	0	0
(843) 476-5742	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 13:10:52	10/26/2015 13:11:17	25	39	631	0	0
(843) 476-5742	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 13:12:09	10/26/2015 13:13:42	93	39	631	40057	40057
(843) 538-2755	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 13:12:18	10/26/2015 13:14:22	124	39	631	40057	40057
(843) 476-0259		(843) 538-2755	Outgoing	10/26/2015 13:14:31	10/26/2015 13:14:33	2	39	631	40057	40057
(843) 538-2698	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 13:14:37	10/26/2015 13:17:18	161	39	631	40057	40057
(843) 476-2232	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 13:17:49	10/26/2015 13:18:14	25	39	631	40057	40057
(843) 476-0259	(404) 561-3639	(404) 561-3639	Outgoing	10/26/2015 13:19:10	10/26/2015 13:19:26	16	39	631	40057	40057
(404) 561-3639	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 13:25:42	10/26/2015 13:25:46	4	39	631	40057	40057
(843) 476-0259	(828) 458-7076		Outgoing	10/26/2015 13:27:37		0	226	296	0	0
(404) 561-3639	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 13:28:19	10/26/2015 13:29:21	62	39	631	40057	40057
(828) 458-7076	(843) 476-0259		Incoming	10/26/2015 13:33:36		0	192	294	0	0
(843) 476-0259	(828) 458-7076		Outgoing	10/26/2015 13:34:26		0	226	507	0	0
(828) 458-7076	(843) 476-0259		Incoming	10/26/2015 13:34:55		0	192	508	0	0
(828) 458-7076	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 14:08:40	10/26/2015 14:11:21	161	39	631	40057	40057
(828) 458-7076	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 14:13:19	10/26/2015 14:13:42	23	39	631	20056	40057
(214) 288-9175	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 14:42:54	10/26/2015 14:44:06	72	39	631	20056	20056
(843) 476-0259	(214) 288-9175	(214) 288-9175	Outgoing	10/26/2015 14:55:08	10/26/2015 14:55:57	49	39	631	30056	20058
(843) 476-0259	(214) 288-9175	(214) 288-9175	Outgoing	10/26/2015 15:06:29	10/26/2015 15:07:01	32	39	631	40056	20058
(214) 288-9175	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 15:07:31	10/26/2015 15:08:05	34	39	631	20058	20058
(404) 561-3639	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 15:25:27	10/26/2015 15:26:12	45	39	631	20058	40065
(843) 327-9527	(843) 476-0259		Incoming	10/26/2015 16:03:53		0	192	513	0	0
(843) 476-0259	(843) 327-9527		Outgoing	10/26/2015 16:15:53		0	229	522	0	0
(843) 476-1007	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 16:22:40	10/26/2015 16:23:30	50	39	631	20058	20058
(304) 859-1096	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 16:45:43	10/26/2015 16:45:45	2	39	631	20058	20058
			Null mobile role	10/26/2015 16:58:27		0	39	631	20058	0
(828) 458-7076	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 17:42:18	10/26/2015 17:43:31	73	39	631	20058	20058
(843) 538-2729	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 17:42:36	10/26/2015 17:42:40	4	39	631	0	0
(843) 538-2755	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 17:42:44	10/26/2015 17:42:51	7	39	631	0	0
(843) 263-7087	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 17:46:42	10/26/2015 17:47:02	20	39	631	20058	0
(843) 327-9527	(843) 476-0259		Incoming	10/26/2015 18:20:57		0	192	513	0	0
(843) 327-9527	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 18:38:52	10/26/2015 18:38:57	5	39	631	20058	20058
(404) 561-3639	(843) 476-0259		Incoming	10/26/2015 18:48:17		0	192	506	0	0
(843) 476-2232	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 18:50:54	10/26/2015 18:51:04	10	39	631	20058	20058
(843) 592-6814	(843) 476-0259		Incoming	10/26/2015 18:51:48		0	228	528	0	0
(843) 476-5691	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 19:38:52	10/26/2015 19:38:59	7	39	631	20058	20058
(843) 476-0259	(843) 327-9527	(843) 327-9527	Outgoing	10/26/2015 19:51:09	10/26/2015 19:51:38	29	39	631	40056	40056
(843) 327-9527	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 19:51:47	10/26/2015 19:52:02	15	39	631	40056	40056
(843) 476-1007	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 20:11:57	10/26/2015 20:12:11	14	39	631	30053	30053
(843) 476-0259	(843) 476-1007	(843) 476-1007	Outgoing	10/26/2015 20:12:35	10/26/2015 20:13:29	54	39	631	20053	20053
(843) 476-1007	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 20:13:44	10/26/2015 20:14:18	34	39	631	20053	20053
			Null mobile role	10/26/2015 20:26:52		0	39	631	40533	0

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(828) 458-7076	(843) 476-0259		Incoming	10/26/2015 21:14:27		0	192	294	0	0
(404) 561-3639	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 21:20:59	10/26/2015 21:21:58	59	39	631	40533	0
(843) 476-0259	(843) 592-6814		Outgoing	10/26/2015 21:35:40		0	226	291	0	0
			Null mobile role	10/26/2015 21:41:45		0	39	631	20601	0
(843) 592-6814	(843) 476-0259		Incoming	10/26/2015 21:43:19		0	227	508	0	0
			Null mobile role	10/26/2015 22:22:15		0	39	631	20548	0
			Null mobile role	10/26/2015 22:27:12		0	39	631	20549	0
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 22:28:29	10/26/2015 22:28:35	6	39	631	0	0
(828) 458-7076	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 22:31:36	10/26/2015 22:34:18	162	39	631	20601	0
			Null mobile role	10/26/2015 22:31:58		0	39	631	30549	0
			Null mobile role	10/26/2015 22:42:24		0	39	631	40605	0
(843) 599-7633	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 23:14:24	10/26/2015 23:14:26	2	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:14:43	10/26/2015 23:14:46	3	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:15:01	10/26/2015 23:15:33	32	39	631	0	20548
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:19:36	10/26/2015 23:20:08	32	39	631	0	20549
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:23:44	10/26/2015 23:24:16	32	39	631	0	30549
(843) 599-1981	(843) 476-0259	(843) 476-0259	Incoming	10/26/2015 23:30:33	10/26/2015 23:30:35	2	39	631	0	0
(214) 288-9175	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:30:55	10/26/2015 23:30:57	2	39	631	0	0
(912) 631-1830	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:33:52	10/26/2015 23:34:30	38	39	631	0	40605
(843) 476-0259	(912) 631-1830	(912) 631-1830	Outgoing	10/26/2015 23:34:55	10/26/2015 23:35:19	24	39	631	40605	40605
(843) 476-0259	(843) 599-7633	(843) 599-7633	Outgoing	10/26/2015 23:36:15	10/26/2015 23:37:17	62	39	631	30549	20780
(214) 288-9175	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:39:02	10/26/2015 23:39:05	3	39	631	0	0
(843) 476-0259	(214) 288-9175		Outgoing	10/26/2015 23:47:41		0	228	521	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:48:56	10/26/2015 23:48:58	2	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:49:09	10/26/2015 23:49:11	2	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:50:10	10/26/2015 23:50:14	4	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/26/2015 23:50:35	10/26/2015 23:50:43	8	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 00:36:41	10/27/2015 00:36:43	2	39	631	20053	20053
(843) 476-0259	(843) 599-7633	(843) 599-7633	Outgoing	10/27/2015 00:42:17	10/27/2015 00:42:39	22	39	631	20066	20066
(843) 476-0259	(214) 288-9175	(214) 288-9175	Outgoing	10/27/2015 00:42:59	10/27/2015 00:46:44	225	39	631	30066	20065
(843) 599-7633	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 00:43:22	10/27/2015 00:44:02	40	39	631	30066	30066
(843) 476-0259		(912) 358-9802	Outgoing	10/27/2015 00:48:13	10/27/2015 00:49:06	53	39	631	20065	30065
(843) 476-0259	(646) 285-2541	(646) 285-2541	Outgoing	10/27/2015 00:50:43	10/27/2015 00:51:19	36	39	631	40065	40056
(843) 476-0259	(214) 288-9175	(214) 288-9175	Outgoing	10/27/2015 00:51:58	10/27/2015 00:53:20	82	39	631	40056	40056
(843) 476-0259	(843) 592-5255	(843) 592-5255	Outgoing	10/27/2015 01:09:13	10/27/2015 01:09:46	33	39	631	20058	20058
(843) 592-5255	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 01:10:21	10/27/2015 01:12:48	147	39	631	30056	40056
(843) 476-0259	(843) 812-7381	(843) 812-7381	Outgoing	10/27/2015 01:16:50	10/27/2015 01:17:30	40	39	631	20056	40060
(843) 812-7381	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 01:18:34	10/27/2015 01:20:10	96	39	631	40060	40060
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 01:38:28	10/27/2015 01:39:28	60	39	631	40057	40057
(828) 458-7076	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 02:32:13	10/27/2015 02:32:21	8	39	631	40061	40061
(843) 476-7660	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 08:30:01	10/27/2015 08:30:05	4	39	631	40057	40057
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/27/2015 08:39:42	10/27/2015 08:47:49	487	39	631	40057	40061
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 08:48:20	10/27/2015 08:48:51	31	39	631	40057	40061
(843) 476-0259	(912) 358-9802		Outgoing	10/27/2015 08:59:04		0	227	512	0	0
(843) 476-0259	(843) 476-7660		Outgoing	10/27/2015 09:27:26		0	226	292	0	0
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 09:30:07	10/27/2015 09:30:39	32	39	631	20056	40057
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 09:32:48	10/27/2015 09:33:23	35	39	631	30057	30057
(843) 476-0259	(843) 592-5255	(843) 592-5255	Outgoing	10/27/2015 09:33:36	10/27/2015 09:34:08	32	39	631	30057	40060

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
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(843) 263-7087	(843) 476-0259		Incoming	10/27/2015 09:49:43		0	227	506	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/27/2015 09:51:01		0	226	297	0	0
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 09:51:43	10/27/2015 09:52:18	35	39	631	30063	30063
(843) 263-7087	(843) 476-0259		Incoming	10/27/2015 09:51:54		0	228	520	0	0
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/27/2015 09:52:28	10/27/2015 09:54:27	119	39	631	30063	30063
(843) 476-0259	(843) 263-7087		Outgoing	10/27/2015 09:54:49		0	229	524	0	0
(843) 476-0259	(404) 345-1355		Outgoing	10/27/2015 09:55:23		0	229	530	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/27/2015 09:57:43		0	226	292	0	0
(843) 263-7087	(843) 476-0259		Incoming	10/27/2015 09:57:50		0	227	515	0	0
(843) 476-0259	(843) 263-7087		Outgoing	10/27/2015 09:58:08		0	227	294	0	0
(843) 476-0259	(843) 295-8628		Outgoing	10/27/2015 10:10:38		0	227	509	0	0
(843) 295-8628	(843) 476-0259		Incoming	10/27/2015 10:12:14		0	192	296	0	0
(843) 476-0259	(843) 295-8628		Outgoing	10/27/2015 10:12:38		0	228	531	0	0
(843) 476-0259	(843) 295-8628		Outgoing	10/27/2015 10:12:58		0	228	531	0	0
(404) 561-3639	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 10:28:03	10/27/2015 10:28:27	24	39	631	30063	30063
(843) 476-0259	(404) 561-3639	(404) 561-3639	Outgoing	10/27/2015 10:28:33	10/27/2015 10:29:34	61	39	631	30063	30063
(404) 345-1355	(843) 476-0259		Incoming	10/27/2015 10:32:49		0	192	510	0	0
(843) 295-8628	(843) 476-0259		Incoming	10/27/2015 10:41:32		0	192	297	0	0
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 11:02:09	10/27/2015 11:02:42	33	39	631	30063	30063
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/27/2015 11:02:58	10/27/2015 11:05:33	155	39	631	30063	30063
(843) 476-0259	(843) 295-8628	(843) 295-8628	Outgoing	10/27/2015 11:09:14	10/27/2015 11:09:46	32	39	631	30063	30063
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 11:10:40		0	192	294	0	0
(843) 599-7633	(843) 476-0259		Incoming	10/27/2015 11:23:41		0	192	511	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 11:24:57		0	228	529	0	0
(843) 476-0259	(843) 295-8628		Outgoing	10/27/2015 11:25:06		0	227	515	0	0
(843) 476-0259	(843) 599-7633		Outgoing	10/27/2015 11:26:54		0	228	521	0	0
(843) 599-7633	(843) 476-0259		Incoming	10/27/2015 11:27:40		0	192	292	0	0
(843) 476-0259	(843) 599-7633		Outgoing	10/27/2015 11:27:52		0	229	524	0	0
(843) 295-8628	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 11:40:55	10/27/2015 11:40:59	4	39	631	20062	20062
(404) 561-3639	(843) 476-0259		Incoming	10/27/2015 11:54:14		0	192	514	0	0
(843) 476-0259	(843) 476-5691		Outgoing	10/27/2015 11:54:15		0	228	523	0	0
(843) 476-5691	(843) 476-0259		Incoming	10/27/2015 11:55:13		0	227	506	0	0
(843) 476-0259	(843) 476-5691		Outgoing	10/27/2015 11:56:14		0	226	509	0	0
(843) 476-5691	(843) 476-0259		Incoming	10/27/2015 12:03:59		0	227	508	0	0
(843) 476-0259	(843) 599-7633	(843) 599-7633	Outgoing	10/27/2015 12:24:28	10/27/2015 12:24:32	4	39	631	30062	30062
(843) 599-7633	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 12:29:54	10/27/2015 12:30:40	46	39	631	30062	30062
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 12:30:56	10/27/2015 12:34:01	185	39	631	30062	30062
(843) 476-0259	(843) 592-5255	(843) 592-5255	Outgoing	10/27/2015 12:35:34	10/27/2015 12:46:05	631	39	631	30062	30062
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 12:48:16	10/27/2015 12:48:56	40	39	631	20062	20062
(843) 476-0259	(843) 263-7661	(843) 263-7661	Outgoing	10/27/2015 12:49:55	10/27/2015 12:50:43	48	39	631	20062	20062
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 12:53:39		0	192	513	0	0
(843) 476-0259	(800) 659-0450	(1800) 659-0450	Outgoing	10/27/2015 12:58:08	10/27/2015 12:58:23	15	39	631	40063	40063
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 13:04:47	10/27/2015 13:06:01	74	39	631	20060	20060
(843) 592-5255	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 13:09:33	10/27/2015 13:10:15	42	39	631	20060	20060
-9016	(843) 476-0259		Incoming	10/27/2015 13:43:54		0	192	292	0	0
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 14:05:03	10/27/2015 14:05:06	3	39	631	20058	20058
(843) 476-0259	(843) 476-5691	(843) 476-5691	Outgoing	10/27/2015 14:05:11	10/27/2015 14:05:19	8	39	631	20058	20058

CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	NEID	REPOLL_#	1ST_CELL	LAST_CELL
(843) 476-0259	(843) 476-7660	(843) 476-7660	Outgoing	10/27/2015 14:14:01	10/27/2015 14:14:37	36	39	631	30056	30056
(843) 476-0259	(843) 476-2232	(843) 476-2232	Outgoing	10/27/2015 14:15:10	10/27/2015 14:15:47	37	39	631	30056	30056
(843) 476-0259		(843) 263-3755	Outgoing	10/27/2015 14:25:10	10/27/2015 14:25:12	2	39	631	30192	30192
(843) 476-0259	(843) 263-7661	(843) 263-7661	Outgoing	10/27/2015 14:34:36	10/27/2015 14:35:18	42	39	631	20060	20060
(843) 263-7661	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 14:38:56	10/27/2015 14:45:20	384	39	631	20060	40063
(843) 476-2232	(843) 476-0259	(843) 476-0259	Incoming	10/27/2015 14:42:12	10/27/2015 14:42:44	32	39	631	30059	40063
(843) 489-3168	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 14:43:20	10/27/2015 14:43:48	28	39	631	40063	40063
(843) 476-0259	(843) 209-1477	(843) 209-1477	Outgoing	10/27/2015 14:45:33	10/27/2015 14:45:36	3	39	631	40063	40063
(843) 476-0259	(843) 814-8926	(843) 814-8926	Outgoing	10/27/2015 14:45:52	10/27/2015 14:45:57	5	39	631	30063	30063
(843) 476-0259	(843) 489-3168	(843) 489-3168	Outgoing	10/27/2015 14:46:23	10/27/2015 14:48:34	131	39	631	30063	30063
(404) 561-3639	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 15:58:52	10/27/2015 15:58:56	4	39	631	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 16:10:25		0	227	506	0	0
(843) 263-7659	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 16:36:30	10/27/2015 16:36:35	5	39	631	0	0
(843) 263-7659	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 16:36:43	10/27/2015 16:36:45	2	39	631	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 17:09:06		0	192	515	0	0
(843) 476-0259	(304) 859-1096		Outgoing	10/27/2015 17:09:42		0	226	506	0	0
(843) 476-0259	(304) 859-1096		Outgoing	10/27/2015 17:09:43		0	228	518	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 17:10:24		0	192	507	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 17:11:08		0	228	530	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 17:17:32		0	192	510	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 17:47:04		0	192	506	0	0
-9016	(843) 476-0259		Incoming	10/27/2015 17:53:45		0	192	506	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 18:30:54		0	228	529	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 18:31:39		0	192	297	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 18:31:56		0	227	513	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 18:50:19		0	229	529	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 18:51:09		0	192	515	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 18:51:29		0	227	509	0	0
(843) 476-5742	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 18:52:53	10/27/2015 18:53:36	43	39	631	0	0
(843) 476-0259	(843) 304-9521		Outgoing	10/27/2015 19:43:43		0	226	515	0	0
(843) 304-9521	(843) 476-0259		Incoming	10/27/2015 20:22:33		0	192	508	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 21:04:07	10/27/2015 21:04:10	3	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 21:04:15	10/27/2015 21:04:19	4	39	631	0	0
(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 21:04:25	10/27/2015 21:04:27	2	39	631	0	0
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(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 21:11:17	10/27/2015 21:11:20	3	39	631	0	0
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(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/27/2015 22:22:08	10/27/2015 22:22:10	2	39	631	0	0
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(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/28/2015 09:27:17	10/28/2015 09:27:32	15	39	631	0	0
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(843) 599-7633	(6245000) 000-0111	(843) 476-0259	Routed	10/28/2015 11:01:07	10/28/2015 11:01:10	3	39	631	0	0
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(803) 842-7456	(6245000) 000-0111	(843) 476-0259	Routed	10/28/2015 11:52:41	10/28/2015 11:53:11	30	39	631	0	0
(803) 842-7456	(6245000) 000-0111	(843) 476-0259	Routed	10/28/2015 11:53:17	10/28/2015 11:53:20	3	39	631	0	0
(803) 842-7456	(6245000) 000-0111	(843) 476-0259	Routed	10/28/2015 11:55:01	10/28/2015 11:55:03	2	39	631	0	0
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(843) 304-9521	(843) 476-0259		Incoming	10/28/2015 12:02:34		0	192	292	0	0
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FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Varsheen Antuan Smith (#211467)
Full name and prison number (if any) of Applicant

IN THE COURT OF COMMON PLEAS

2021 JUL -8 AM 11:05

2021-CP-07-1235

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Beaufort County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 15GS071890 Kidnapping
 - (b) 15GS071908 Possession of a Weapon by a Felon
 - (c) 15GS071909 Possession of a Weapon During a Violent Crime
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Kidnapping 25 years (2/22/18)
 - (b) Poss. of a Weapon by a Felon 5 years (2/22/18)

- (c) Poss. of a Weapon DVC 5 years (2/22/18)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals, Case No. 2018-000373
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 6/9/21
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2021-UP-199
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel

- (b) Ineffective Assistance of Appellate Counsel
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to object to inflammatory remarks by witnesses (Tr. 40-45, 111, 181, 205-206), failure to object to inadmissible bad character evidence (Tr. 246-247), failure to object to witness bolstering/vouching (Tr. 181, 205-206), failure to properly argue and preserve mistrial motion for appellate review (Tr. 322), failure to object to improper comments by prosecutor during closing argument (Tr. 275, 282, 285).
 - (b) Failure of appellate counsel to raise preserved and meritorious issues on direct 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? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Trial Counsel - IAC claims regarding trial counsel are reserved for PCR Applications.

(b) Ineffective Assistance of Appellate Counsel - IAC claims regarding appellate counsel are reserved for PCR Applications.

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Courtney Gibbes, 14th Circuit Public Defender, Beaufort SC

ii. Robert Dudck, SCCID Appellate Defense Div., Columbia SC

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial & Sentencing

ii. Direct Appeal

iii. _____

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

Vacate conviction & sentence, remand for retrial

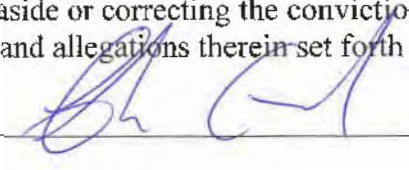
20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
 County of Beaufort)

VERIFICATION

I, Christopher Geel o/b/o Varsheen Smith, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 1
 day of July, 2021.

 (L.S.)
 Notary Public

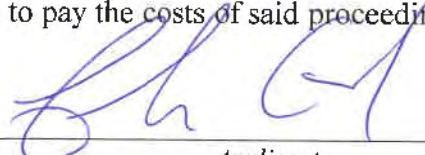
My Commission Expires: 7/31/2030



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

I, Christopher Geel o/b/o Varsheen Smith, 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.



 Applicant

SWORN or affirmed to and subscribed before me this

1 day of July, 2021



 Notary Public

My Commission Expires: 7/31/2030

2021 JUL -8 AM 11:05
 JERRI ANN ROSENEAU
 DEAFORT COUNTY, S.C.
 CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
Varsheen Antuan Smith, SCDC #211467,	)	Case No.: 2021-CP-07-01235
	)	
Applicant,	)	RETURN TO THE APPLICATION
	)	FOR POST-CONVICTION RELIEF
v.	)	(Counsel Retained)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent the State of South Carolina, making its return¹ to the application for post-conviction relief filed by retained counsel Christopher Geel, on behalf of Applicant Varsheen Antuan Smith, on July 8, 2021, and received by the South Carolina Attorney General's office on July 12, 2021, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. During its March 2016 term, the Beaufort County Grand Jury indicted Applicant for kidnapping (2015-GS-07-01890); possession of a handgun by person convicted of a crime of violence (2015-GS-07-01908); and possession of a weapon during a violent crime (2015-GS-07-01909). On February 21-22, 2018, Applicant proceeded to a jury trial before the Honorable Brooks P. Goldsmith. Courtney

¹ Respondent's return was due to be filed on October 11, 2021. *See* Rule 12(a), SCRPC ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Gibbes, Esquire represented Applicant. Mary Jones and Kimberly Smith of the Fourteenth Circuit Solicitor's Office prosecuted the case.

At the conclusion of trial, the jury found Applicant guilty of each charge. Following the verdict, Judge Goldsmith sentenced Applicant to twenty five years' imprisonment for kidnapping and concurrent sentences of five years for each of the weapons charges.

Applicant filed a timely notice of appeal and was represented on appeal by Chief Appellate Defender Robert M. Dudek (Appellate Counsel) from the South Carolina Commission on Indigent Defense – Division of Appellate Defense. Appellate Counsel filed a brief pursuant to *Anders*² on Applicant's behalf and a petition to be relived as counsel. On appeal, Applicant raised one (1) issue:

“Whether the court erred by ruling evidence that Monte Ver'mon Steve was found murdered weeks after the kidnapping in this case was admissible, where it was undisputed the decedent Steve was not present when the victim, Frazier, was allegedly kidnapped, [Applicant] was not charged for Steve's murder, and evidence of Steve's murder was not admissible as part of the *res gestae* or under State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923), and defense counsel correctly predicted evidence of the murder would subsume relevant evidence of the unrelated kidnapping if admitted to [Applicant's] considerable undue prejudice?”

On March 2, 2020, this Court denied Appellate Counsel's motion to be relieved as counsel and requested further briefing on two (2) issues:

1. Is the issue of whether trial court erred in allowing evidence of Monte Ver'mon Steve's death preserved for appellate review?
2. Did the trial court err by permitting the State to present evidence of Steve's death?

On June 9, 2021, following briefing, the Court of Appeals affirmed Applicant's convictions and sentences. *State v. Smith*, 2021-UP-199 (S.C. Ct. App. filed June 9, 2021). The Remittitur was issued on June 29, 2021.

² *Anders v. California*, 386 U.S. 738 (1967).

II. Summary of Factual History

Ver'mon "Monte" Steve (Monte) was Victim Andre Frazier's best friend since fourth or fifth grade. Victim was also good friends with Pete Singleton. The three met on October 25, 2015, at Buffalo Wild Wings to watch a football game. Because all three were working, it was a rare chance to get together. Monte did not stay long and went home; he was planning to paint his car's grill with paint he just purchased from Wal-Mart. During the game, Monte and Victim made plans to get together after the game was over. After the game, Victim called Monte as he left the restaurant to make sure Monte was home, then stopped at the gas station to fill his car and bought some cigars. He paid ten dollars for gas, but he forgot to pump the gas, which he realized as he reached Monte's street, so he returned to the gas station. (R. pp. 84-91).

Upon arriving on Monte's street again, Victim saw Varsheen "Twiz" Smith (Applicant) and Tyrone Wallace standing in front of Monte's apartment although he did not realize it until he walked up to the house because they were wearing hoodies. At the time, Applicant was housemates with Monte. Victim knew Wallace because he used to date Wallace's cousin. He knew Applicant since childhood. Monte's car was parked in the driveway. Victim parked his car in front of an abandoned house. (R. pp. 91-93).

When Victim asked them where Monte was, Applicant and Wallace seemed to ignore his question. Instead of answering Victim's question, Applicant asked Victim, "Did you talk to Monte?" Victim said he had, Applicant commented on the paint job on Monte's car and claimed Monte did that yesterday, which Victim knew was not true. Victim asked about Monte again. Specifically, Victim provided a point and counterpoint report of the conversation to the jury:

And he kind of kept on and I asked him again, Where's Ver'mon. I said Monte. And he was like, Let me holler at you right quick. And then I asked him again, Where's Monte. Let me holler at you. And I asked him again, Where Monte. Man, Monte in the house. I kind

of believed him, but knowing that that was my best friend and what type of guy he was I took that, but I started walking toward the house. As I started walking toward the house, he came behind me and [Wallace] came behind him and I kind of feel a funny situation.

...

(R. p. 95, lines 15-24).

Victim walked to the threshold of the door, but stopped because he had a bad feeling as Applicant and Wallace walked behind him. He explained, "Something told me don't go into the house because by the time I got there the lights were on and the door was open." Wallace told Victim, "Man, go on in the house." (R. pp. 95-96). Applicant and Wallace forced Victim inside the house, Applicant put a silver pistol into Victim's stomach. (R. pp. 96-97).

They shut the front door. Wallace went through Victim's pockets and took out his phone, identification, fifteen dollars in cash, and a cigar. However, they returned everything except a cigar. Applicant put the gun to the back of Victim's head. They used Victim's belt to bind his hands behind his back. (R. pp. 98-100).

Applicant called Victim a snitch and also accused Victim of "slipping." Applicant told Victim, "Funny time you came up here." (R. p. 100, line 24 – p. 101, line 25). Applicant hit Victim in the back of the head with the butt of the gun. They stuffed a rag in Victim's mouth. (R. pp. 100-103).

Victim went into a second room with Applicant while Wallace was elsewhere. When Wallace called for Applicant, Victim found himself alone and dialed 911, but ended the call because his cell phone lit up and he was worried the kidnappers would return and overhear the operator. (R. pp. 104-07).

Applicant and Wallace returned and Applicant's mood changed. Victim explained, beforehand, Applicant was looking "pretty evil." "[B]ut now he didn't look evil like he was." (R. p. 107, lines 11-17). Applicant told Wallace, "Alright Tyrone, you can let him go." (R. p. 107,

lines 18-22). They took the belt off his wrists. Victim did not know why he was released, but he “just went with it.” That is when Applicant started talking about Monte, complaining, “If he didn’t want me to stay – if your homeboy didn’t want me to stay here, why couldn’t he tell me like a man. Why do I have to hear it through the grapevine that he didn’t want me to stay here.” (R. p. 108, lines 4-7). Applicant further remonstrated, “He could have told me told me if he didn’t want me to live in his house.” (R. p. 108, lines 11-15).

Walking out, Victim saw a policeman on the side of the street. However, Victim did not dare yell for the police because Applicant told him not to say anything and Victim knew Applicant still carried his gun. (R. pp. 108-09; p. 151). Victim surmised the reason he was released was because Applicant and Wallace were afraid the police would discover them. Victim observed, “The policeman saved my life and he didn’t even know it.” (R. p. 161). As they walked out of Monte’s house, Applicant further complained, “If [Monte] didn’t want me to stay . . .” (R. pp. 108-09).

Victim explained what Applicant was talking about. Monte had put up a “For Rent” sign and claimed they were being evicted to try to trick Applicant into moving out of the apartment. (R. p. 137). Monte actually moved out for a week to carry out the scheme. (R. pp. 157-58).

On the street, Applicant and Victim walked around the corner. Victim saw a phone light come on by an abandoned house, although he denied seeing it when Applicant asked if he saw it because Victim thought it might be Monte hiding. Applicant walked over by the side of the house with his gun and beckoned, “Monte, come out, come out, wherever you are, Monte come out” (R. p. 140, line 22 – p. 141, line 15).

Before they parted, Victim again asked Applicant where Monte was and Monte said, “[H]e thought that I was going to shoot him and he ran.” (R. p. 111, lines 9-16). Applicant told Victim as he left, “When you see Monte, tell him to holler at me.” (R. p. 142). After Victim left, he tried

to call Monte, with no answer. Victim initially thought Monte “ran” or went into hiding, perhaps staying with one of his girlfriends. (R. pp. 111-12; p. 146).

Victim explained why he did not call the police that evening:

Because, for number one, I have kids. I know what kind of guy he is, so I had to really think what I was going to do, you know, make sure that I made the right choice to know what I was going to do. . . . When he said he ran, I kind of believed him. It was a throw-off but I kind of believed him. And I thought that he ran and went to one of his girlfriends’ house[s], because he had a few girlfriends.

(R. p. 111, line 23 – p. 112, line 6).

Victim later explained on cross-examination, “I just wanted to be careful about what I’m doing because I have kids, I don’t need nobody come looking for me or doing no crazy stuff when I have kids that I’m raising by myself.” (R. p. 155, lines 16-19).

Victim was scared and he could not sleep. (R. p. 112, lines 7-8). Unsuccessful in his attempts to contact Monte by phone, the next day he looked for Monte. When he failed to find Monte, Victim contacted Monte’s mother and told her what happened to him and also told her he was worried something could be wrong with Monte. (R. pp. 152-54).

Pete Singleton testified similarly about the friends meeting at Buffalo Wild Wings. He went home after the game while Victim headed to Monte’s. Singleton never heard from Monte again. Singleton and Victim rode around the neighborhood together looking for Monte to no avail. So Singleton told Victim he needed to call Monte’s mother. (R. pp. 167-68).

The State introduced footage from the Shell station to corroborate Victim’s testimony. (R. pp. 171-72). Monte’s mother, Janice Steve, testified she last saw Monte the Sunday before he disappeared and he seemed uneasy. Monte had a “For Rent” sign in his yard, but the house was not really for rent. Victim called her to warn that Monte was missing, so she drove from her home in Hampton to Beaufort to file a missing person’s report. (R. pp. 68-71). Ms. Steve explained on

cross-examination that Monte let Applicant stay at his house, supposedly for a few days, because Applicant was homeless. (R. p. 75). Deputy Heidi Light, at the time with the Beaufort Police Department, confirmed that Ms. Steve reported her son was missing. (R. p. 65).

Investigator George Irdell was assigned both the kidnapping case involving Victim and the missing person's case for Monte because, Investigator Irdell explained, "[I]t was really intertwined." (R. p. 204, lines 11-15). Victim started off really nervous during his interview with Investigator Irdell and it devolved to outright fear. Victim cried "pretty hard" and Investigator Irdell observed, "[H]e was probably about as scared as I have ever seen anybody in an interview room" (R. p. 206, lines 1-7). On November 18, Monte's remains were found on St. Helena Island. Tyrone Wallace was charged with his murder. (R. p. 210).

On October 26, 2015, Applicant called Shabonda Milledge and asked where Monte lived. She would not tell Applicant. She remained in contact with Applicant until November 16. Applicant told Milledge the police were looking for him. She asked him if he was not guilty, then why is he running. Applicant would not tell her where he was calling from. (R. pp. 244-47). At first he was calling her with a local number, but later switched to an out of state phone number. (R. p. 254).

Applicant was arrested by U.S. Marshalls in Georgia on November 16 in Hall County, a rural county about five and a half hours away from Beaufort. (R. p. 256). On cross-examination, defense counsel asked Investigator Dowling if Applicant was cooperative when he was arrested and whether he tried to run away. Investigator Dowling agreed he did not try and run away because he was handcuffed and wore leg shackles. (R. pp. 256-57).

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this PCR action on July 8, 2021. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of trial counsel
 - a. Failure to object to inflammatory remarks by witnesses;
 - b. Failure to object to inadmissible bad character evidence;
 - c. Failure to object to witness bolstering/vouching;
 - d. Failure to properly argue and preserve mistrial motion for appellate review;
 - e. Failure to object to improper comments by prosecutor during closing argument; and
2. Ineffective assistance of appellate counsel
 - a. Failure of appellate counsel to raise preserved and meritorious issues on direct appeal.

Applicant requests relief as follows:

“vacate conviction & sentence, remand for retrial”.

Attached herewith and incorporated by reference are the Beaufort County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; the records from Applicant’s direct appeal, including the trial transcript; and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts trial counsel was ineffective for failing to object to inflammatory remarks made by witnesses, failing to object to inadmissible bad character evidence, failing to object to witness bolstering/vouching, failing to properly argue and preserve a mistrial motion, and failing to object to improper comments by the solicitor during closing arguments.

A. Ineffective Assistance of Counsel, Generally

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of counsel. 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, 685 (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. *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. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal

quotation marks omitted)).

The 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). 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” demanded of attorneys in criminal cases. *Id.* 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 reasonably 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.

Review of counsel’s actions is hallmarked by deference, 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.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). 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. *Id.* at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

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. 466 U.S. 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. *See id.* at 695 (Where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] 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 691. 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 *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. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. 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; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

B. Failure to Object and Preserve Issues for Appellate Review

Applicant asserts trial counsel was ineffective for failing to object to inflammatory remarks made by witnesses, failing to object to inadmissible bad character evidence, failing to object to witness bolstering/vouching, failing to properly argue and preserve a mistrial motion, and failing to object to improper comments by the solicitor during closing arguments.

Leaving an issue unpreserved does not automatically constitute ineffective assistance of counsel. See *Millidge v. State*, 422 S.C. 366, 374, 811 S.E.2d 769, 800–01 (2018) (stating an applicant must prove both deficiency and prejudice to establish ineffective assistance of counsel for failing to preserve an issue); see also *id.* at 380, 811 S.E.2d at 804 (“[T]he proper inquiry for determining prejudice . . . is whether there is evidence in the record to support the trial court’s finding If so, an appellate court would necessarily have affirmed the trial court’s

[ruling] . . .”).

Similarly, “[a]n ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence.” *Hough v. Anderson*, 272 F.3d 878, 898 (7th Cir. 2001). “If evidence admitted without objection was admissible, then the complained of action fails both prongs of the *Strickland* test: failing to object to admissible evidence cannot be a professionally ‘unreasonable’ action, nor can it prejudice the defendant against whom the evidence was admitted.” *Id.*; see *Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both *Strickland* prongs); *U.S. ex rel. Link v. Lane*, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from failure to object unless there is a legally supportable argument for exclusion of the evidence).

Additionally, the solicitor’s closing argument “must be carefully tailored so as not to appeal to the personal bias of the juror nor calculated to arouse his passion or prejudice.” *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335, 339 (1981). “The solicitor may not rely on statements not in evidence during closing argument.” *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) However, [t]he solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses.” *State v. Raffaldt*, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995). “[C]onsiderable latitude is generally allowed in matters of drawing and arguing inferences and deductions from evidence.” *Johnson v. Life Ins. Co. of Ga.*, 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955).

To prevail on a claim that trial counsel was ineffective for failing to object to a solicitor’s purportedly improper comment during closing argument, the PCR applicant “bears the burden of demonstrating the improper comment deprived him of a fair trial.” *Johnson v. State*, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). “Improper comments do not require reversal if they are not

prejudicial . . . , and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument.” *Randall v. State*, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). In other words, the applicant must demonstrate that, had counsel objected, there is a “reasonable probability . . . that the [jury] would have had reasonable doubt respecting guilt.” *Strickland*, 466 U.S. at 695. “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.” *Huggins*, 325 S.C. at 107, 481 S.E.2d at 116.

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*, nor show trial counsel was ineffective. 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 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”).

V. Response to Allegation of Ineffective Assistance of Appellate Counsel

Applicant claims appellate counsel failed to “raise preserved and meritorious issues on direct appeal”.

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, appellate counsel is *not* obligated to raise every non-frivolous issue that is presented by the record. *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990); *Bell v. Jarvis*, 236 F.3d 149, 164 (4th Cir. 2000); *cf. Jones v. Barnes*,

463 U.S. 745, 752 (1983) (“There 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.”). 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 [courts] to second-guess reasonable professional judgments and impose on [appellate] counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” *Jones*, 463 U.S. at 754.

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)).

For the above-reasons, Applicant cannot show appellate counsel was ineffective. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of appellate counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *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 lower court”).

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 retained an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“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, SCRCRCP. *See also* Rules 15(a)–(b), SCRCRCP. 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), SCRCRCP.

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. As noted above, 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. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VII. Response to Any and All Other Allegations

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

VIII. Conclusion

WHEREFORE, Respondent respectfully requests an evidentiary hearing be held on the allegations of ineffective assistance of counsel and ineffective assistance of appellate counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
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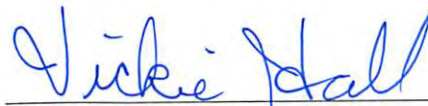
October 13, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	2021-CP-07-1235
	)	
Varsheen Antuan Smith, #211467	)	
	)	
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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher R. Geel, Esquire
Geel Law Firm, LLC
Post Office Box 21771
Charleston, SC 29413

DATED this 13st day of October, 2021.



Vickie Hall, Legal Assistant
For Respondent

State of South Carolina Beaufort County Varsheen Smith v. State of South Carolina	In the Court of Common Pleas For the Fourteenth Judicial Circuit 2022 NOV 16 PM 2:46 Case No(s): 2021-CP-07-01235 JERRI ANN ROSENEAU BEAUFORT COUNTY, S.C. CLERK OF COURT AMENDED PCR APPLICATION

COMES NOW the Applicant, by and through undersigned Counsel, and hereby amends his pending PCR application to include the following grounds for relief. Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* as follows:

1. Failure to object to inflammatory remarks by witnesses (Tr. 40-45, 111, 181, 205-206)
2. Failure to object to inadmissible bad character evidence (Tr. 246-247)
3. Failure to object to witness bolstering/vouching (Tr. 181, 205-206, 220, 274)
4. Failure to redact portion of Defendant's interview that mentioned that Defendant had previously been in prison. (Tr. 320-22); as well as failure to properly argue and preserve mistrial motion for appellate review (Tr. 322)
5. Failure to object to improper comments by the prosecutor during closing argument (Tr. 275, 282, 285)
6. Failure to present phone records (disclosed among Rule 5 materials) that challenged the State's version of events.

On this day, November 10, 2022 it is
 RESPECTFULLY SUBMITTED,



Christopher R. Geel
 Geel Law Firm, LLC
 P.O. Box 21771
 Charleston, SC 29413
 843-277-5080

CERTIFICATE OF SERVICE: I hereby certify that I have served a copy of this document upon the Attorney General's Office via U.S. Mail, on this day, November 10, 2022.

STATE OF SOUTH CAROLINA) SOUTH CAROLINA CIRCUIT COURT
 13
 COUNTY OF BEAUFORT) DOCKET NO. 2021-CP-07-01235

_____ VARSHEEN A. SMITH	)
	)
Plaintiff,	)
versus	)
	)
STATE OF SOUTH CAROLINA	)
_____ Defendant.	)

H E A R I N G
 BEFORE THE HONORABLE G.D. MORGAN, Jr.

DATE: November 16, 2022
 TIME: 2:14 p.m.
 LOCATION: South Carolina Circuit Court 13

 REPORTED BY: Johnny Shaw

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8

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1 INDEX

2

3 Proceedings..... 4

4 Certificate of Transcriber..... 98

5

6 EXHIBITS

7 Exhibit 1..... 7

8 Exhibit 2..... 7

9

10 WITNESSES

11 DIRECT CROSS REDIRECT RE-CROSS

12 VARSHEEN A. SMITH 8 18 22

13 COURTNEY GIBBS 24 68 84 90

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24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

25 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 THE COURT: Clerk, please proceed. All right. I
2 believe we are ready to proceed. Case of Varsheen A. Smith;
3 is that correct?

4 MS. MIMS: Yes, Your Honor.

5 MR. GEEL: That is correct, Your Honor. Yes.

6 THE COURT: All right. I'll call the AG's office to
7 call the case and I'll turn it over to the applicant.

8 MR. GEEL: Your Honor, may I have to move my client
9 over?

10 THE COURT: Yeah. All right. Ms. Mims?

11 MS. MIMS: May I please the Court?

12 THE COURT: Yes, sir -- yes, ma'am.

13 MS. MIMS: I'm Lauren Mims here on behalf of the state.
14 This is the post-conviction relief matter of Varsheen Antoine
15 Smith, docket number 2021-CP-07-01235. And we are here based
16 upon an application of post-conviction relief filed by Mr.
17 Smith on July 8 of 2021.

18 Applicant is presently confined in the South Carolina
19 Department of Corrections during his March, 2016 term. The -
20 - before County Grand jury indicted applicant for kidnaping,
21 possession of a handgun by a person convicted of a crime of
22 violence, and possession of a weapon during a violent crime.
23 On February 21st or 22nd of 2018, applicant proceeded to a
24 jury trial before the Honorable Brooks P. Goldsmith, Courtney
25 Gibbs, Esquire represented applicant.

1 Mary Jones and Kimberly Smith of the 14th Circuit
2 Solicitor's office prosecuted the case. At the conclusion of
3 trial, the jury found applicant guilty of each charge.
4 Following the verdict, Judge Goldsmith sentenced applicant to
5 25 years imprisonment for kidnaping and concurrent sentences
6 of five years for each of the weapons charges. Applicant
7 filed a timely notice of appeal and was represented by --
8 represented on appeal by Chief Appellate Defender Robert M.
9 Dudek from the South Carolina Commission on Indigent Defense.
10 Appellate counsel filed a brief pursuant to Anders D.
11 California on applicant's behalf and a petition to be
12 relieved as counsel on March 2, 2020.

13 The court did not appeal counsel's motion to be
14 relieved as counsel, requested further briefing on two issues
15 on June 9, 2021. Following briefing, the Court of Appeals
16 affirm applicant's conviction and sentences and the remitter
17 was issued on June 29, 2021. And this application follows
18 this time. I ask Your Honor to apres applicant what could
19 happen if he prevails on his case.

20 THE COURT: All right. Mr. Smith you understand that
21 if you are successful this PCR hearing and I grant your
22 motion and grant your relief that it goes back down and
23 basically starts over. So you could be tried again and if
24 you were convicted again, you could actually be sentenced to
25 a greater term than 25 years. You got 25 years on a

1 potential 30 year sentence with the kidnaping and you also
2 got a concurrent terms and those could be consecutive. So
3 you could -- how many weapons charges were there?

4 MS. MIMS: Two.

5 THE COURT: Two. So potentially could be sentenced to
6 40 years if my math is right up to 30 on the kidnaping and
7 the two weapons charges. Knowing that, do you still want to
8 go forward with this hearing?

9 All right. I'll call on the applicant.

10 MR. GEEL: Your Honor, before I begin, I have a couple
11 of brief housekeeping items. We filed an amended list with
12 our finalized list of issues. May I pass this up, Your
13 Honor?

14 THE COURT: Yes.

15 MR. GEEL: So we've alleged six grounds that obviously
16 we'll go into a little bit more detail later, Your Honor.
17 Your Honor, there are also two items that -- that we deal
18 with under grounds four and six, that deal with the way that
19 the certain trial exhibits were handled during trial. This
20 is -- these are phone records as to ground six and a video as
21 to ground four. We have excerpts of both of those trial
22 exhibits. Again, these were both admitted at trial. We have
23 excerpts here. I have disclosed those to the AG's office,
24 Ms. Mims, and I believe she doesn't have any objection. We
25 would move those in as applicant's one and two for the

1 purposes of this hearing. Again, these are just excerpts of
2 trial exhibits, state one and states eight from trial.

3 THE COURT: All right. And those go to grounds number
4 four and six, is that what you said? Okay. Any objection
5 from the state?

6 MS. MIMS: No, Your Honor.

7 THE COURT: All right. Exhibits 1 and 2 are admitted
8 into evidence without objection.

9 (Exhibits 1 and 2 were admitted into evidence.)

10 MR. GEEL: May I approach another mark, Your Honor?

11 THE COURT: Yes. All right.

12 MR. GEEL: Thank you. And so, Your Honor, of our six
13 grounds, one each -- one of grounds four and six, each deal
14 with these exhibits respectively. And the remaining grounds
15 simply deal with failures -- alleged failures of trial
16 counsel to object. So obviously we'll go into the details of
17 those later. We are ready to proceed with our evidence if
18 the court is ready.

19 THE COURT: All right.

20 MR. GEEL: Your Honor --

21 THE COURT: Bring first witness.

22 MR. GEEL: I apologize. Your Honor, at this time we'll
23 call the applicant Varsheen Smith.

24 THE CLERK: Please raise your right hand.

25 VARSHEEN SMITH,

1 being first duly sworn, testifies as follows:

2 DIRECT EXAMINATION BY MR. GEEL:

3 Q. Good afternoon, Mr. Smith.

4 A. Good afternoon.

5 Q. If you have any problem hearing me, just ask me to
6 repeat the question. All right? Am I audible to you now?

7 A. Yes, sir.

8 Q. Just make sure to speak into the microphone.

9 THE COURT: You can pull up my (inaudible).

10 THE WITNESS: Yes, sir.

11 BY MR. GEEL:

12 Q. Just let me know if you need me to repeat
13 anything. Right? Mr. Smith, let's start at the very
14 beginning here. You were questioned in connection with this
15 case on November 17, 2015. Does that sound correct to you?

16 A. Yes, sir.

17 Q. Have you been in custody since that time?

18 A. Yes, sir.

19 Q. Okay. So what -- you were served -- were you
20 served with warrants after that interview took place?

21 A. Yes, sir.

22 Q. Okay. And did you go up for bond at any point?

23 A. Yes, sir.

24 Q. And so you never made bond or you weren't granted
25 bond or weren't able to make bond?

1 A. Didn't have a bond.

2 Q. You didn't have a bond. Okay. Tell the court if
3 you would how long after your initial arrest that you came to
4 be represented by Ms. Gibbs, your attorney.

5 A. I believe it'd be like 30 days after my arrest.

6 Q. (Inaudible).

7 A. Yes. I believe it'd be like 30 days after my
8 arrest.

9 Q. Okay. And did she represent you the entire time?

10 A. Yes, sir.

11 Q. Okay. Talk a little bit about the discussions
12 that you had with Ms. Gibbs. First, generally ballpark, how
13 many times would you say you met with Ms. Gibbs to discuss
14 your case? Prepare for trial from beginning to end, if you
15 had to guess?

16 A. Between five and seven.

17 Q. Between five and seven?

18 A. Yeah.

19 Q. How often would she come and see you?

20 A. I can't really -- I can't really say, because I
21 was there for so long, but it wasn't -- it wasn't like
22 regularly with them.

23 Q. Okay. Did you -- during the time you were in
24 county, did you end up getting your rule five, your discovery
25 materials?

1 A. Yes, sir.

2 Q. Did you have occasion to go over those materials
3 with Ms. Gibbs?

4 A. Yes, sir.

5 Q. Tell the Court a little bit about what those
6 discussions were like as far as how lengthy were they? Did
7 y'all talk about defenses? Things of that nature?

8 A. Okay. Yeah. When we talked -- when we first came
9 about the case, we talked about it and she was like, she
10 asked me, well, do I want to take a plea deal or do I want to
11 go to trial? I was like, "I want to go to trial." I asked
12 for (inaudible) -- first, plea trial or whatever the case may
13 be. We talked about it and she put the motions in, but it
14 was always getting continued, you know, have my people's
15 contact there, you know.

16 And so she came down and talked to me and I asked to do
17 certain things that never manifested and whatnot as far as
18 like actually go to the hotel, get the security camera, get
19 the security footage. She, you know, didn't do that. Then -
20 - well, when she got around to doing it, it was too late. It
21 was gone. Nobody -- nobody knew where nothing at, know what
22 I mean? Then I gave witnesses to go look for, they never
23 manifested.

24 Q. So if -- if I'm understanding you, what you're
25 saying is that you gave her things to investigate and -- and

1 what happened with those items?

2 A. Nothing.

3 Q. Okay.

4 A. They never manifested.

5 Q. Now, did you have an opportunity to review all of
6 your discovery materials thoroughly?

7 A. Yes, sir.

8 Q. When -- when you were in county, did you have
9 copies of your materials basically the entire time?

10 A. Yes, sir.

11 Q. They were never lost or destroyed or anything like
12 that?

13 A. No.

14 Q. Okay. Were you familiar with your case at the
15 facts of your case as you proceeded to trial?

16 A. What I -- well, what I was giving you.

17 Q. From the rule five, right?

18 A. Yes, sir.

19 Q. So you'd reviewed it thoroughly, is that fair to
20 say?

21 A. Yes, sir.

22 Q. Now, one of the items that was in your rule five
23 year discovery materials was some phone records.

24 A. Yes, sir.

25 Q. Do you recall those phone records or at least

1 getting those phone records?

2 A. Yes, sir.

3 Q. Okay. Do you recall having any discussions with
4 your lawyer about those phone records?

5 A. Yes, sir.

6 Q. Tell the Judge, if you wouldn't mind, what those
7 discussions were with your lawyer. What did you feel was
8 significant about these phone records?

9 A. It was the time stamps on them. It was like --
10 like 7:00 to 7:00, 8:00 something. But anyway, it was the
11 time during the commission of the crime that I'm sure I'm on
12 the phone or, so if I'm on the phone, how can I be doing this
13 crime here? And it's not, you know, but she never took it
14 any further than that.

15 Q. Okay. Let's just clarify this a little bit. So
16 these phone records, who -- whose phone were they? The phone
17 records you're talking about?

18 A. My -- my number.

19 Q. Okay. And in -- in your view, those phones, the -
20 - excuse me, those records of your phone activity showed
21 exactly what? What did you feel they showed?

22 A. It gave you my location, it gave you my location
23 of what I'm doing during -- during the period of this crime.
24 Right. Because if you look at the cell -- you go further and
25 look at the pin on the cell towers, it'll show you that I'm

1 in a different location than what the location is on the --
2 on where they say I'm at, I should say.

3 Q. And what about the call logs themselves? The
4 calls that were placed and received? Was there any
5 significance there?

6 A. Yeah. They basically said I made phone calls when
7 I didn't. I mean, I was receiving phone call when they said
8 I was making.

9 MR. GEEL: Okay. Your Honor, may I approach the
10 witness?

11 THE COURT: Yeah.

12 MR. GEEL: For the purpose of the record, Your Honor,
13 I'm showing the witness applicant's 2.

14 BY MR. GEEL:

15 Q. Mr. Smith, if you wouldn't mind, could you just
16 flip to page six of that document? Let me just start off by
17 asking, are these the phone records that you were just
18 talking about?

19 A. Yes, sir.

20 Q. Okay. So are these phone records -- do these
21 reflect your cell phone's activity on the date in question?

22 A. Yes, sir.

23 Q. And are these the same materials that you reviewed
24 in your discovery materials and discussed with your lawyer?

25 A. Yes, sir.

1 Q. Okay. I'd like to, if I could direct your
2 attention to, there's a span of calls that take place between
3 7:12 p.m. on October 25th and 8:16 p.m. on October 25th.
4 What is significant about that stretch of time?

5 A. They say that -- they say this is the time that --
6 that the kidnaping took place.

7 Q. Okay. So between -- at some point between 7:12
8 p.m. roughly and 8:16 p.m. was when the alleged kidnaping
9 took place?

10 A. Yes, sir.

11 Q. And these phone records appear to indicate that
12 there was some phone activity during that time period?

13 A. Yes, sir.

14 Q. What -- what did you think was significant about
15 the phone activity during this time period?

16 A. It -- like, there wasn't no hang-ups, there was
17 like actual conversations going on during these -- during
18 this time period. So if I'm -- well, if my phone's being
19 used at this time, I can't be doing two things at one time.

20 Q. Now, do you recall having any discussions,
21 essentially the point you just made with your lawyer
22 conveying this information to her?

23 A. Yes, sir.

24 Q. What -- what was the nature of the discussions?
25 Did she respond to it in any way? Did she indicate she would

1 use that at trial?

2 A. No. She's like, we got put on no defense. You
3 know, we not calling no witnesses and that because she -- it
4 was something on the lines of -- if someone on the lines of
5 that if she put up a defense then the prosecutor would have
6 the last say. That -- that what she went with. The no
7 defense thing, because she wanted to be at the last say so
8 ...

9 Q. To your recollection, did she argue that this
10 evidence shows that you could not have committed the
11 kidnaping in question?

12 A. No. Not -- not -- not that I recall.

13 Q. Were you surprised that she did not raise that
14 during your trial?

15 A. Yes, sir.

16 Q. Did you feel after your discussions with her that
17 she was going to raise this as an issue, potentially?

18 A. I can't recall, to be honest with you.

19 Q. But you recall discussing this with her?

20 A. Yes, sir.

21 Q. You're saying you don't recall whether she told
22 you what she was going to use it for?

23 A. No. She's -- I just told you that we didn't put
24 up a defense because we -- she didn't want -- she wanted the
25 prosecutor to have the last say. She wanted to be the last

1 voice at the -- that the bomb that the jury heard going into
2 deliberation.

3 Q. Okay. Now, what -- as just a general question,
4 what, if any discussions, did you have with her about your
5 defense at trial? Did you all discuss defenses? Did you ---

6 A. Yeah, I ---

7 Q. --- discuss what the nature of those ---

8 A. --- I gave her -- I produced a witness right? And
9 told her to check into it for me and then manifest about it.

10 Q. Did she tell you what she was going to argue as
11 far as a trial defense?

12 A. No. Not -- not -- not that I recall.

13 Q. Okay. Can you recall how many times? Was it more
14 than one that you discussed these phone records with her?

15 A. Every time.

16 Q. Every time. So would it be five to seven times --
17 -

18 A. Yeah.

19 Q. --- approximately?

20 A. This is my defense here.

21 Q. Mm-hmm.

22 A. I can't be doing this.

23 Q. In your view, you felt that you couldn't have
24 committed the crime if you were on the phone in this ...

25 A. Yes, sir.

1 Q. Okay. Did you have discussions during trial with
2 your lawyer about this?

3 A. Yes, sir.

4 Q. Okay. And were they any different from the
5 discussions you had at the jail?

6 A. No, sir.

7 Q. Again, did she tell you whether she intended to
8 use these records for any purpose? During trial.

9 A. We -- we talked about the -- see -- about the
10 phone records when it came about some incoming outgoing calls
11 that -- that I got from an individual Shavonde (phonetic).

12 Q. Mm-hmm.

13 A. Yeah.

14 Q. That's Shavonde Millege (phonetic).

15 A. Yeah. We talked about that right there. That's
16 when -- that's when the phone calls came into play. Because
17 they kept saying that I've made a phone call to a certain
18 individual when I didn't, when my phone records reflected
19 that I received phone calls from her.

20 Q. Okay.

21 A. So she talked about that during the trial.

22 Q. Okay. And just to be clear for the record, those
23 calls with Ms. Millege are different from these calls that we
24 were discussing here during the incident itself?

25 A. Yes, sir.

1 Q. Just very briefly, the -- tell the Judge that the
2 calls with Shavonde were alleged to have taken place on a
3 separate date, correct?

4 A. Yes, sir.

5 Q. Okay. So we're not talking about Shavonde when
6 we're ---

7 A. No, sir.

8 Q. Okay. Is there anything else about these call
9 records that you recall discussing with your lawyer prior to
10 trial or during trial?

11 A. No, sir.

12 Q. Okay. Is there anything else as far as the
13 defenses and things -- things of that nature at trial that
14 you wanted to address?

15 A. Just like you -- no. Not at this moment.

16 MR. GEEL: Okay. Thank you, Your Honor. Nothing
17 further at this time.

18 THE COURT: All right. Cross examination?

19 CROSS EXAMINATION BY MS. MIMS:

20 Q. Good afternoon, Mr. Smith.

21 A. Good afternoon.

22 Q. You testified that you met with your trial counsel
23 five to seven times?

24 A. Somewhere yeah, that I recall.

25 Q. Okay. And you all reviewed discovery, correct?

1 A. Yes, ma'am.

2 Q. And she provided all the discovery to you,
3 correct?

4 A. Yes, ma'am.

5 Q. She filed pretrial motions on your behalf?

6 A. I believe so.

7 Q. I think you testified a little bit earlier that
8 there was some motions and they kept getting continued,
9 correct?

10 A. Yeah. That was my fast and speedy (inaudible).

11 Q. In regards to the phone records. Did -- you
12 testified that counsel -- you -- you had a discussion with
13 counsel about those records, right?

14 A. Yes, ma'am.

15 Q. And you discussed that you wanted to present a
16 defense?

17 A. Yes, ma'am.

18 Q. And she -- you testified that she told you what
19 her strategy was surrounding your defense, correct?

20 A. Yes, ma'am.

21 Q. And you agreed to that defense?

22 A. I mean, obviously I did.

23 Q. And prior to trial, you knew that counsel would
24 likely not be introducing these records, correct?

25 A. No.

1 Q. Okay.

2 A. All I -- counsel, can I speak?

3 Q. Yes.

4 A. All I knew was that I ain't had no defense. Like
5 I had no witnesses calling, all I knew.

6 Q. So it's your testimony that all you knew was that
7 you weren't calling any -- you weren't calling anyone?

8 A. No.

9 Q. And counsel told you why, correct?

10 A. Yeah.

11 Q. And why was that?

12 A. Because she wanted to speak last.

13 Q. Okay. Did y'all have a conversation about how
14 that may have been important to your defense?

15 A. Yes.

16 Q. And help me remember Mr. Smith, did you testify
17 that you bring that up to trial counsel at the trial?

18 A. Several. Before and during.

19 Q. Okay. So you brought up ---

20 A. We talked about this.

21 Q. Okay. So y'all -- yeah. So just make sure the
22 record's clear. You testified that y'all talked about the
23 cell phone records being, you know, being used as your
24 defense beforehand and she told you that it may not be the
25 best defense.

1 A. No -- no -- no. She said that she didn't want to
2 call any witnesses.

3 Q. Okay.

4 A. That -- you know what I'm saying? The witnesses.
5 She said she didn't call any witnesses because it -- it made
6 the -- prosecution had the last say. So she wanted the last
7 say. So it's nothing about the records she wanted. She
8 didn't want to put in no defense period because she wanted
9 the last say so.

10 Q. And you testified a little bit ago that y'all
11 talked about how that would be helpful for your defense.

12 A. Helpful?

13 Q. Or that would be ---

14 A. No. I see, I -- no, I never said it would be
15 helpful. Yeah. Did I agreed to it. I said I might have --
16 I must have had, because that's how it went down.

17 Q. Okay. But did y'all have a conversation about how
18 -- did y'all have a conversation about how this could be
19 helpful to your defense?

20 A. I can't see it being helpful.

21 Q. Well, I'm not ---

22 A. I know.

23 Q. I'm sorry.

24 A. Yeah.

1 Q. Let me rephrase, if need be. My question is
2 that, did you ever have a conversation about whether or not
3 calling witnesses would be helpful or how that would aid in
4 your defense?

5 A. Yeah. We had that conversation and it -- we
6 obviously -- it went the other way.

7 MS. MIMS: No further questions, Your Honor.

8 THE COURT: All right. Any redirect?

9 MR. GEEL: Very briefly. Thank you, Your Honor.

10 REDIRECT EXAMINATION BY MR. GEEL:

11 Q. Mr. Smith, just to clarify one thing, when you
12 said that you agreed to the defense, your -- your lawyer was
13 the one -- only one who got to speak during the trial?

14 A. Definitely.

15 Q. So I mean, you didn't have the opportunity to
16 present this evidence yourself?

17 A. No.

18 Q. If -- if it were up to you, would this evidence
19 have been presented?

20 A. Yes, sir.

21 Q. Okay. So when you say agreed to defense, I don't
22 want to put words in your mouth ---

23 A. Yeah.

24 Q. --- you were just sitting at counsel's table?

25 A. No say so at all.

1 Q. She was presenting the case, you didn't have a
2 choice?

3 A. No. I didn't -- I didn't during the course of the
4 trial, but I showed her -- showed her things. She told me,
5 "Oh, I didn't hear it, so I can't do nothing about it."

6 Q. Okay. And one other point I'd like to clarify,
7 when you said she, she meaning your trial lawyer, didn't put
8 the defense because she wanted last say so?

9 A. Yes, sir.

10 Q. Do you mean that she wanted to have last closing
11 argument?

12 A. Yes, sir.

13 Q. So you're referring to the fact that she said if
14 she did put in evidence, then she would lose the last closing
15 argument?

16 A. Yes, sir.

17 Q. Okay. And you had a discussion with her about
18 that ---

19 A. Yeah.

20 Q. --- even in light of these phone records?

21 A. (No audible response.)

22 Q. Is that a yes?

23 A. Yes, sir.

24 Q. And did you maintain your position that you wanted
25 the phone records in -- even in spite of that condition?

1 A. Yes, sir.

2 Q. So you never wavered from wanting these phone
3 records?

4 A. No, sir.

5 MR. GEEL: Okay. Thank you.

6 THE COURT: Any re-cross?

7 MS. MIMS: No, Your Honor.

8 THE COURT: All right.

9 You may step down. Thank you, sir.

10 THE WITNESS: Thank you, sir.

11 THE COURT: All right. Next witness.

12 MR. GEEL: Thank you, Your Honor. Applicant calls
13 trial counsel, Courtney Gibbs.

14 COURTNEY GIBBS,

15 being first duly sworn, testifies as follows:

16 DIRECT EXAMINATION BY MR. GEEL:

17 Q. Okay. Good afternoon, Ms. Gibbs. Is the exhibit
18 below there on the witness stand?

19 A. No.

20 Q. Good afternoon, Ms. Gibbs.

21 A. Good afternoon.

22 Q. Can you hear me okay?

23 A. Yes.

24 Q. Just let me know if you have any difficulty ---

25 A. Okay.

1 Q. --- hearing my questions. Okay? Ms. Gibbs, have
2 you had an opportunity to review our amended list of issues
3 here as far as what we're alleging from this trial?

4 A. Yes, I have.

5 Q. So you've had a chance to familiarize yourself a
6 little bit with the trial transcripts and all?

7 A. Yes.

8 Q. Okay. I -- I'd like to start off just by getting
9 right into the transcript.

10 MR. GEEL: Your Honor, may I approach the witness?

11 THE COURT: Yes.

12 THE WITNESS: Okay. I -- oh, you just read them all so
13 I can follow them.

14 MR. GEEL: These are just in order. Exhibits are in
15 order.

16 THE WITNESS: Okay.

17 MR. GEEL: Your Honor, I handed the witness some
18 transcripts, excerpts of the trial transcript, and I'm going
19 to walk through with her.

20 BY MR. GEEL:

21 Q. Ms. Gibbs, let's -- let's start off by talking
22 generally. Do you recall prior to trial expressing some
23 concern to the court about the jury finding out that Mr.
24 Smith was on probation?

25 A. Yes. There's -- we had a pretrial discussion

1 about that about May, I believe there's a Shavonde Millege,
2 one of the witnesses was going to -- or there's a question
3 about whether they could say he fled because he was on
4 probation or something to that effect. So we did have a
5 discussion pretrial.

6 Q. Do you also recall there, I mean, there's an issue
7 with Mr. Smith potentially being on parole and also having
8 some prior convictions, some -- some issues on his record?

9 A. Yes.

10 Q. So would it be fair to say, and feel free to
11 correct me if this is not accurate, you had some concerns
12 about issues of Mr. Smith's character coming up during this
13 trial?

14 A. Yes.

15 Q. Okay. Let's jump to page 111 in the transcript.
16 Do you have that portion handy?

17 A. I do.

18 Q. Okay. I'd like to direct your attention to line
19 20. Now, let's stop before you dive in here. This is
20 testimony of Andre Frasier. Do you recall generally Mr.
21 Frasier's testimony as in terms of his role in this event?

22 A. Yes. He testified, he proffered, pretrial and
23 then an actual trial.

24 Q. Okay. And he -- Mr. Frasier didn't call the
25 police immediately after this alleged incident. Is that

1 consistent with your recollection of the facts of this case?

2 A. Yes.

3 Q. Okay. And now, here on page 111, during his
4 testimony on line 20, the question is, "You didn't call the
5 police that night, did you?" And Mr. Frasier answers, "No,
6 ma'am." And then on line 22, the question's, "Why not?" And
7 then the answer on line 23 is, "Because for number one, I
8 have kids, I know what kind of guy he is, so I had to really
9 think about what I was going to do, you know, make sure that
10 I had the right choice to know what I was going to do." Now,
11 do you have any reason to -- to -- based on context and not
12 think that when he said, "I know what kind of guy he is."
13 That he was referring to Mr. Smith?

14 A. I mean, yeah, I mean that's obviously who he is
15 referring to.

16 Q. Okay. As you sit here now, do you have any
17 concerns about these remarks in terms of what the witness is
18 saying about Mr. Smith?

19 A. Sure. I mean, now that I've read kind of
20 cumulative yeah. I mean, I know a lot of Andre's testimony
21 was talking about his fear and things like that, but some of
22 the general statements, you know, what kind of guy he is, you
23 know, I believe I probably could have objected to that.

24 Another issue we were dealing with is just basic
25 because he was -- one of his charges was possession of a

1 violent -- possession of a weapon by a violent crime. So the
2 thought was the jury was going to hear some of that testimony
3 that he was convicted of a crime of violence. But yeah, I
4 mean that -- some of the general statements I think are
5 objectionable. What kind of guy he is. I know there's some
6 other -- other comments that you pointed out as well.

7 Q. So let's touch on that point very briefly. The
8 prosecution was tasked with proving that Mr. Smith had a
9 prior felony conviction in this case for one of the firearm
10 counts.

11 A. Right.

12 Q. Is that you were just referring to?

13 A. Yes.

14 Q. You would agree though that the prosecution would
15 not be allowed to make any kind of implication about Mr.
16 Smith's character based on that conviction.

17 A. Right.

18 Q. You would agree with that?

19 A. Yes.

20 Q. And that also applies to one of the state's
21 witnesses during his testimony?

22 A. Yeah, I think it would.

23 Q. So an implication that an individual is fearful of
24 the defendant and that that person has kids that he's

1 thinking of, as you sit here now, do you -- do you believe
2 that that's essentially a comment on ---

3 A. Well, I mean, at this point I had heard his
4 pretrial proffer and I mean, the whole of his testimony, he's
5 talking about how he's scared and the, you know. And so I
6 think there is a fine line between him being scared, you
7 know, what he would testify to about his impressions during
8 what he alleged happened versus a general characterization of
9 his character.

10 So yeah, I think a general characterization of his
11 character I should have objected to, but any sort of, he's in
12 fear, I have kids, this is why I do what I do. I would -- I
13 did not see that as objectionable.

14 Q. (Inaudible).

15 A. So it's his testimony to how he felt during that
16 moment.

17 Q. Let me ask you the question in a broader way, and
18 I -- I appreciate that you've already noted that you think
19 you should have objected, but just generally speaking would
20 you agree that it's inappropriate for a witness to say that
21 they are fearful for their safety in terms of cooperating
22 with the state against a defendant at trial in front of a
23 jury?

24 A. I don't know about being fearful. I think,
25 honestly, looking at this -- what you pointed out, I think

1 the problem I would see that I may have missed was "I know
2 what kind of guy he is." More of a general characterization
3 of his character. I think him saying, you know, why he did
4 what he did and that he was scared because of what he says
5 happened I don't know. I -- to me that was not something I
6 needed to object to, but if I'm wrong, I'm wrong.

7 Q. So just to make sure I'm understanding what you're
8 -- what you're saying, the notion that a witness is fearful,
9 you would think that you would separate that out from any
10 kind of comment on the defendant's character?

11 A. Right.

12 Q. Okay. But you would agree that remarks about the
13 defendant's character are not admissible by a witness?

14 A. Yeah. I think general. Any general sort of
15 characterization there's a problem with that.

16 Q. So the phrase in particular, "I know what kind of
17 guy he is." You would concede that minimum that was an
18 objectionable?

19 A. Yes.

20 Q. And let -- let me ask the kind of belaboring the
21 point question. As you sit here today, is there any
22 strategic reason you can recall for not objecting to it? Or
23 is it something that you just didn't latch onto during the
24 ---

25 A. I think I just didn't latch onto it. I think most

1 of these, I didn't latch onto it. I think part of it was --
2 I mean yeah. I mean, I don't think I latched onto that, the
3 specific general comments.

4 Q. Okay. And if we could step forward to page 181,
5 that should just be the next page in that packet. On line
6 three. Well, I'll go through it in a moment, but this is
7 kind of in the same vein so we don't have to step through the
8 same ---

9 A. Right.

10 Q. --- excuse me, list of questions again. But this
11 is a -- this is the testimony of detective Gruel. Can you
12 talk generally, there was some testimony in trial about a
13 kind of code of silence and people not wanting -- Mr. Frasier
14 not wanting to be a snitch. Do you -- what were your
15 thoughts about that testimony during trial?

16 A. I mean, I guess -- I did, I moreso thought it was
17 more of talking about Andre's, you know, saying that he was
18 in the streets or he was in the -- I didn't really take it as
19 against Varsheen's character. You know, them -- him talking
20 about, you know, I didn't want to snitch or I didn't I mean,
21 obviously didn't object.

22 Q. Well, let's walk through those lines just so we're
23 clear what we're talking about. On line two. Detective
24 Gruel says, "Well, there was a slight delay in the incident
25 and it being reported, and in our line of work, and in my

1 experience, there's a code of silence, particularly with
2 incidences that we deal with. It's kind of been heard about
3 the no snitch rule. So it's tough at times and very common
4 for people not to provide us or report important and any
5 pauses to come forward with information that they know about
6 a crime." And that's the end of the quotation. So there are
7 some other references. This isn't the only reference to this
8 code of silence and -- and snitching you. Is that consistent
9 with your recollection of the trial?

10 A. Yes.

11 Q. And -- and as far as you know, and correct me if
12 I'm wrong, the record will speak for itself, but Mr. Frasier
13 was the only person in this trial who expressed fear about
14 coming forward and testifying at trial, correct?

15 A. This is true.

16 Q. So would it be fair to conclude that these remarks
17 about the no snitching and the not coming forward and
18 everything that they're referring to Mr. Frasier
19 specifically?

20 A. Yes.

21 Q. Okay. And again, Mr. Frasier had expressed
22 concern about knowing what kind of guy Mr. Smith was,
23 correct?

24 A. Right. In the earlier statement. As far as like
25 the street -- I mean, some of it, I mean, I think at the time

1 for an officer to talk about in his experience, you know,
2 this is what I, what I think in my experience I obviously did
3 not think that was objectable at the time. I mean, I thought
4 more of a, yes, I think it was obvious they were talking
5 about Andre. But I think -- my thought would be it's, you
6 know, it's -- it wasn't saying Varsheen was in the street or
7 following a code of street justice or anything like that. It
8 was more talking about -- I mean, I guess it would be more
9 speculation is maybe what ---

10 Q. Let me ask you a question.

11 A. --- I could have brought up.

12 Q. I'm sorry to cut you off there.

13 A. Yeah.

14 Q. Let me ask you a question generally about your
15 practice. Do you -- do you practice a lot in general
16 sessions? Do you do a fair amount of criminal work?

17 A. I do.

18 Q. So surely you've encountered the no snitching.

19 A. Right. Yeah.

20 Q. What -- would you agree that one of the concerns
21 with people cooperating with the state is they fear for their
22 own personal safety? Just as a general ---

23 A. Sure.

24 Q. --- as a general.

25 A. Mm-hmm.

1 Q. And so when you talk about no snitching and people
2 not wanting to come into court and testify one of -- one of
3 the -- one of many concerns is for their own personal safety
4 and the safety of their family, correct?

5 A. Correct.

6 Q. Witness intimidation, things of that nature.

7 A. Yes.

8 Q. Okay. Let's move forward, if we could, to page
9 205. And this is the testimony of Ardell (phonetic), I
10 believe it's Officer Ardell, if I'm not mistaken.
11 Investigator Ardell out of Buford City Police. So at line 18
12 on page 205, Ardell says, pardon me, it is basically the same
13 thing that Captain Gruel said. "You know, there's a kind of
14 street mentality, so to speak, you know, people are typically
15 afraid for any number of reasons. They don't want to be
16 labeled a snitch. They may want to handle it themselves. It
17 is not uncommon for things like that to go unreported."

18 And then they go on to ask question. "When you meet
19 with Mr. Frasier, what is his demeanor? How is he acting?"
20 At the top of page 206. The answer is "He was pretty nervous
21 about being there. I would say that his nervousness kind of
22 devolved as the interview progressed to outright fear. He
23 cried pretty hard. Probably, he was probably about as scared
24 as I had ever seen anybody in an interview room. And that is
25 saying something, he was pretty scared."

1 Again, we want -- don't have to go through the same
2 line of questions again, but as you sit here today and -- and
3 look at those remarks, do you -- do you believe that they
4 were objectionable? Do you have an opinion on that here?

5 A. I mean, I guess what you're getting at is a, you
6 know, saying snitch, you're -- it's linking that because he
7 was scared that he had a -- that the term snitch was
8 derogatory towards Mr. Smith. Because he was scared. I
9 mean, I think you know, but he also goes into -- Ardell says,
10 "You know, they want to handle themselves." I mean, he kind
11 of just gave typical reasons. I didn't think it was
12 objectional for him to talk about his -- what he observed
13 while interviewing Andre. I think what I would probably
14 should have object to, and I may be skipping ahead, is
15 something about, oh, when he is saying that this is the
16 scare, you know, the most scared person or whatever he said,
17 more of a general. Yeah. I -- I think if I had caught that,
18 I would've objected to that.

19 Q. Right. And again, this is against the backdrop of
20 Mr. Frasier already having testified.

21 A. Right.

22 Q. That the reason he didn't want to come forward is
23 because he knew what kind of guy Varsheen Smith was. That
24 testimony was already ---

25 A. Right.

1 Q. --- in the record?

2 A. Right.

3 Q. And what we have here is them describing Mr.
4 Frasier as being about as scared as they'd ever seen anyone
5 in an interview room.

6 A. Right.

7 Q. And again, I'm just not to belabor, but you think
8 potentially that portion of these remarks was objectionable?
9 The extent of Mr. ---

10 A. Yeah. Basically saying he's never interviewed
11 somebody this scared in his entire career or however it was
12 framed. I think that would be.

13 Q. You would agree that there's a pretty strong
14 implication there that the person he fears is -- is Mr.
15 Smith?

16 A. Well, sure, but I mean, I he testified to that
17 too. I mean, I think that's the hard thing is he's, you
18 know, Andre got up in pretrial, so I knew what he was going
19 to say as far as, I mean, he did talk about how he was scared
20 and he had kids and he didn't. And so, I mean, I think
21 talking about if the investigator noticed he was in fear
22 during, I mean, I did not think that was objectionable. But
23 obviously I'm -- maybe I'm wrong. But I do think I should
24 have objected when it gets like generalized. I mean, maybe
25 that's just, you know, saying that this is the most scared

1 interview I've ever had. That I believe is objectionable.

2 Q. The -- just to clarify the -- so the latter
3 portion at the top of page 206, you believe was potentially
4 objectionable?

5 A. Yes. He was probably about as scared as I've ever
6 seen anybody in the interview room and that is saying
7 something.

8 Q. Okay. And -- and like the other remarks that
9 we've gone over, was this just something that wasn't caught?
10 Do you recall any specific strategic calculation during this
11 testimony (inaudible) to that?

12 A. No. I mean, I think, just like I said, I thought
13 Andre had already testified to how he was scared. And yeah,
14 I didn't catch that.

15 Q. Okay. Let's pivot over to -- oh, okay. On page
16 220. And again, this is -- these remarks are very similar,
17 so I'll just read them off on page 220. Line five, and this
18 is still Investigator Ardell, so we're trying to find out
19 what is going on. He was, by all accounts what he presented
20 me -- to me, afraid of what was going to happen if he's
21 cooperating and trying to keep all these things together.

22 And then later on in line 15 -- at the end of line 15,
23 he says, "I'm trying to think of an example of anybody else
24 that looked that scared and that upset in an interview room.
25 And maybe I have seen it, but he comes to the top of the list

1 in my mind. I can't think of anyone who beats him for that
2 kind of fear in the interview room." Now, again, same
3 questions as before. This is very similar to the last
4 remarks we went over. So, you know, would you give the same
5 answers to those questions?

6 A. Yes.

7 Q. These remarks?

8 A. Yes.

9 Q. And can you think of a strategic reason for not
10 objecting? That was my thought.

11 A. I mean, I think it was -- it was the same. I
12 think I knew how Andre, what he was testifying to and you
13 know, as far as fear he had already said that. But yeah, I
14 think again, the officer saying, "This is, you know, the most
15 scared I've ever seen anybody in the interview room." You
16 know, I said I should have caught that.

17 Q. And the last point on this enumeration of error
18 here I mean, do you agree or would you dispute the -- the
19 claim that the fear very clearly points to Mr. Smith? I
20 mean, what was implied here is that the reason he's scared is
21 because of what Mr. Smith is going to ---

22 A. Well, I mean there is also somebody else. It
23 could be Tyrone Wallace. I mean, I think part of -- I mean
24 some of the strategy was, you know, that Tyrone Wallace was
25 more of the, you know, he was just the one who was charged

1 with murder and he, you know, I think that could be implied
2 that Andre was scared of Tyron Wallace.

3 Q. Mr. Frasier did though say that he was ---

4 A. Right.

5 Q. --- what kind of guy Mr. Smith was. And that was
6 the reason he didn't come forward though. Correct? And the
7 initial testimony we reviewed.

8 A. Right. Yeah.

9 Q. So he may also have been scared of Mr. Wallace,
10 but he certainly stated on the record that he was -- that he
11 knew what kind of guy ---

12 A. Well, yeah, and I, like I said, I think that was
13 -- that it was a general characterization that I should have
14 objected to.

15 Q. Okay. Moving forward to the testimony of Shavonde
16 Millege. Do you recall the evidence at trial that Ms.
17 Millege had spoken with Mr. Smith on the phone ---

18 A. Yes.

19 Q. --- while after this incident?

20 A. Yes.

21 Q. I'd like to direct your attention to page 246 of
22 the transcript.

23 MR. GEEL: And Your Honor, here, we've moved on to
24 ground number two of our amended application.

25 BY MR. GEEL:

1 Q. At the bottom of page 246. Ms. Millege was asked
2 on line 24, "Did you ever ask him about Andre?" Are you with
3 me then at the bottom of -- okay. "Did you ever ask him
4 about Andre?" Answer, "I just asked him questions like if he
5 wasn't guilty of what they were accusing him of, why was he
6 running." Now, that he in this testimony he is referring to
7 Varsheen Smith, is that consistent with your recollection?

8 A. Yes.

9 Q. And as you sit here today, do you have any
10 thoughts on whether that remark warranted an objection?
11 At the time, I believe I thought it would come in under,
12 like, a statement against interest or statement by a party
13 opponent. You know, in hindsight looking at it, I could see
14 that -- that that is something that I could have objected to.

15 Q. This is Ms. Millege repeating her own words ---

16 A. Right.

17 Q. --- correct?

18 A. Right. Yeah. And I think that was part of my
19 thought, at the time, was that, you know, she was testifying
20 to what she said, not what he said. But I could see, you
21 know, now looking at it that it might characterize him as
22 somebody who would shoot, but I just -- at the time, I
23 believe that it would get around hearsay.

24 Q. Right. We are in agreement that ---

25 A. Right.

1 Q. --- Mr. Smith's statements would've been --

2 A. Right.

3 Q. I mean that is correct. But Ms. Millege's
4 statements as to why was Mr. Smith ---

5 A. Oh, yeah. You're right.

6 Q. That -- that would not be admissible. Do you
7 agree?

8 A. I think at the time I thought because she said it,
9 that it was, but yeah, I think I should have objected to that
10 as well.

11 Q. The implication that Mr. Smith went to Georgia
12 because he was on the run, because, you know, that he went
13 there to -- in order to avoid the police, that -- that was
14 the thing that you were concerned about coming out of trial.

15 A. Right.

16 Q. Would that be fair to say?

17 A. Right.

18 Q. And the concern is this implication that, you
19 know, why are you running if you didn't do the thing?

20 A. Right.

21 Q. The fleeing suggests a guilty mind. You would
22 agree?

23 A. Yeah, I agree.

24 Q. So this is precisely the implication that you were
25 concerned about. Is that fair to say?

1 A. Yes.

2 Q. Okay. And as you sit here today, again, same
3 question. Any strategic reason other than what you've
4 already stated for not objecting to that remark?

5 A. No. I think I just -- I didn't catch it.

6 Q. Okay. Court's in diligence for a moment. Okay.
7 If you wouldn't mind moving forward to page 206, I think I
8 put an extra page in your packet.

9 A. Okay.

10 Q. Are you with me on page 206?

11 A. Yes.

12 Q. I want to talk generally about you -- you're
13 familiar with the issues in cases with vouching or bolstering
14 of witness testimony.

15 A. Yes.

16 Q. Not -- not to put you on the -- on a quiz or
17 anything, but what's your understanding about whether you
18 know, witnesses remarking on the credibility of other
19 witnesses?

20 A. Well, yeah. You're not supposed to pit witnesses
21 against each other or have one witness vouch that the other
22 is, you know, is more credible or more believable. And I
23 think this is the same. I know what you're getting into.

24 Q. Okay. Well, why don't we jump right into page 206
25 there, line seven. After -- the question is, "After speaking

1 with Mr. Frasier, what did you do?" The answer is, "Well,
2 obviously we, you know, we went further with the
3 investigation as far as to corroborate the elements of what
4 he said, tried to locate the people that he referenced." And
5 the question is, "Were you able to corroborate some of what
6 he told you? Answer "Yes." And then the question is, "And
7 what was that?" And then the answer is, "Well, as far as a
8 lot of things." And then the witness begins to list some of
9 the things that were corroborated based on the evidence.

10 As you sit here today and -- and read those remarks the
11 witness indicating that they were able to corroborate Mr.
12 Frasier's statement, do you have any concerns about those
13 remarks?

14 A. Yeah. I mean, I guess the biggest, I mean, this -
15 - the biggest thing he said is "I went to the gas station,
16 pulled a video to verify that." You know, basically what he
17 was saying, you know, the timeline is verified. I think part
18 of -- if what -- I mean, I see what you're saying as far as
19 bolstering or corroborating. I think at the time I was
20 thinking more -- we were using that time as kind of a way
21 too. I mean, I did try and bring out that with that time at
22 the gas station. It -- it kind of messed up what Andre was
23 saying as far as his timeline. I think I pulled that, I
24 mean, I said that in closing.

25 And so I -- I think I wasn't thinking it as bolstering.

1 I think it was just a way for me to use a time, like a number
2 that this was the time he said he was at the gas station.
3 But yeah, I mean, looking at this, I can see what you mean as
4 far as bolstering or corroborating.

5 Q. You would agree that the witness here is saying
6 that he was able to corroborate a number of Mr. Frasier's
7 claims about what happened?

8 A. Yeah. I think what I focused on was the gas
9 station video, but I mean, I guess he did a lot of things,
10 but really the only thing he did was pull the video. That
11 was really the only corroborating.

12 Q. Okay. And can we jump to the top of page 207, the
13 next page. At the middle of line one the witness says, "I
14 looked at the CAD data to verify the times and kind of
15 pinpoint when those calls took place." And just to clarify,
16 we're talking about CAD is -- this refers to 911 calls?

17 A. Right.

18 Q. Okay. So when he's talking about, "I looked at
19 the CAD data to verify the time and pinpoint those calls took
20 place." And the question is, "Okay, and were they consistent
21 with Mr. Frasier?" And the answer is, "They were."

22 A. I mean, I think at the time I just thought that
23 was part of his investigation. He said what he did as part
24 of his investigation.

25 Q. Well, there's certainly things you would agree

1 that there's things that a detective could do as part of
2 their investigation.

3 A. Right.

4 Q. He wouldn't be allowed to testify to necessarily -
5 --

6 A. Sure.

7 Q. --- correct? One of those things would be if the
8 detective arrives at the opinion that the witness is telling
9 the truth, they wouldn't be able to express that opinion to
10 the jury. You would agree?

11 A. Right.

12 Q. And so again, yeah, the notion that these CAD
13 calls are consistent with Mr. Frasier's account would also be
14 inadmissible because of that. You would agree?

15 A. Yeah. I mean, I guess just the generalized -- I
16 mean, I feel like he would be able to say what the CAD data
17 showed, but maybe not saying that -- that it showed he was
18 correct -- showed that he was correct, that would be the
19 issue.

20 Q. Whether the -- Mr. Frasier's account was
21 consistent with the CAD data, it would be something the jury
22 could decipher themselves.

23 A. Right.

24 Q. You agree?

25 A. Yes.

1 Q. The CAD data can be entered and so can Mr.
2 Frasier's testimony.

3 A. Right.

4 Q. And the jury can -- as the fact finder there is
5 their role to decide whether these things are consistent ---

6 A. Yes.

7 Q. --- or corroborated. You would agree?

8 A. I would agree.

9 Q. So as to these two pages, the page 206 and 207,
10 the corroboration and consistent, did -- as you sit here
11 today, are you able to identify a strategic reason for not
12 objecting to the -- well, I'm not sure if you said whether
13 you agree that they're objectionable or not.

14 A. I mean, yeah. Now, like hindsight's 20/20, I think
15 I would object for -- for sure.

16 Q. Okay. And now, as you sit here today, is there
17 any sort of strategic consideration you can identify that was
18 at play in the decision not to?

19 A. I mean, I think the only strategy was, my thought
20 was to try and kind of use their case against them in a way
21 to kind of use, you know, the timeline and, you know, the
22 time, what he's saying and the CAD. But as far as, you know,
23 the bolstering, I could see that that may have been something
24 I should have objected to.

25 Q. Okay. Let's move on to the video that was

1 presented in this case. Let's start from the -- the basics
2 here. There was a video of -- of Mr. Smith, an interview
3 video.

4 A. Yes.

5 Q. On November 17, 2015. Does that sound consistent
6 with the timeline? About a month after this incident?

7 A. Yes.

8 Q. And have you had the opportunity to review that
9 video, at least the portion that I'm ---

10 A. Yes.

11 Q. --- talking about here. So talk a little bit
12 about what concerns did you have? There was some discussion
13 prior pretrial about redacting the video. What do you recall
14 about your concerns?

15 A. I don't -- I mean, I don't remember exactly what I
16 asked to be redacted, but yeah, before, I mean, I definitely
17 had a discussion with the prosecutor about things that need
18 to be redacted out. I have requested that she give me the
19 video early, which she did. I reviewed it and that, that
20 one, that part that's in there, I definitely missed it. And
21 -- and I don't know how that happened, but that should not
22 have been in that video about him being on probation or a
23 parolee or just got out. I don't know how I missed that.

24 MR. GEEL: Okay. And Your Honor, applicant's Exhibit
25 1, as I've mentioned, is an excerpt of that video. It

1 contains the portion. I have that video on my phone and I
2 showed it to Ms. Mims. I could approach the witness and just
3 play the portion.

4 THE COURT: Go on.

5 (Audio played.)

6 BY MR. GEEL:

7 Q. Now, were you able to hear that portion that I
8 just played the audio?

9 A. Yes.

10 Q. And just so that it's completely clear, would you
11 agree that the detective says, "Here's the thing, you're on
12 federal probation." Varsheen answers, "Yes, I am." The
13 detective says, "You're a parolee. You're old enough, you've
14 been through the system." And Varsheen answers -- Varsheen
15 Smith answers, "Yes, I have. I just came home."

16 A. Yes.

17 Q. Is that consistent with what you just heard?

18 A. Yes.

19 MR. GEEL: And Your Honor, for the purposes of the
20 record, that is from the applicant's 1 that is from
21 approximately 1 minute and 40 seconds into that video file if
22 you'd like to review later.

23 BY MR. GEEL:

24 Q. Was this one of the portions of that interview
25 that you were concerned about keeping away from the jury?

1 A. Yes, for sure. I mean, that is something I
2 would've -- I would've wanted redacted.

3 Q. And now what -- let me ask the very basic
4 question. What -- why do you -- would you not want a jury to
5 hear that?

6 A. It's prejudicial.

7 Q. Okay. Learning that he's on federal probation.

8 A. And he'd been to prison.

9 Q. The implication ---

10 A. He's a parolee.

11 Q. --- is that he's ---

12 A. Right.

13 Q. --- committed a crime parolee, the implication
14 he's been to prison. And the phrase I just came home implies
15 that he just came home from prison ---

16 A. Right.

17 Q. --- correct? And so prior to trial, you moved to,
18 is that one of the items that you wanted redacted from the
19 video?

20 A. Yes. And I can't remember exactly all the things
21 that I asked to be, or that was redacted, but I would assume,
22 I mean, to be honest, I don't -- either I missed it, but it
23 was -- it would certainly be something, I mean, I asked for
24 something like that to be redacted. And I believe that would
25 be one of the ones -- one of the things I asked to be

1 redacted, but somewhere along the way it was in -- it was in
2 there.

3 Q. Now, in those pretrial motions. And I'll -- I'll
4 -- if you'd like to review this portion, I'm happy to bring
5 it up there and ---

6 A. That's right.

7 Q. But in the pretrial motions on page 45, on line
8 25, you say, "Judge, I would stipulate that it's voluntary,
9 that the statement is voluntary. The most important thing is
10 to make sure that we've had discussions about things that we
11 wanted to make sure were edited out that the jury didn't
12 hear. And I guess that I would like a copy of the redacted
13 version before it is put out to the jury to make sure that
14 everything was caught." And then Ms. Jones, the prosecutor,
15 on line seven says, "Okay. I have a copy for Ms. Gibbs. I
16 would also like to make it a court's exhibit for the matter
17 of this hearing for Miranda form, as well as the disc." So
18 Ms. Jones indicates there that she has a copy of the redacted
19 version?

20 A. Yes.

21 Q. Do you recall whether she did give you?

22 A. Yes. I believe she did, yes.

23 Q. And did you have an opportunity to review it?

24 A. I did.