

Nathaniel A. Hunter, Petitioner

December 14, 2024

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SC Court of Appeals

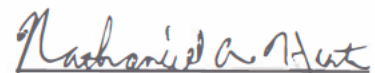
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Nathaniel A. Hunter #372378 v. State of South Carolina
2023-001611

Dear Ms. Kitchings: ATTN: VERY URGENT MATTER

Please find enclosed Petitioner's letter to inform this Court of the PCR Court's default judgment as well as the PCR Court's void judgment in the PCR Court's Order of Dismissal of Petitioner's application for Post-Conviction-Relief. Also, Petitioner is submitting the two issues that were raised at Petitioner's PCR hearing and in Petitioner's Memorandum of Law In Support of Petitioner's application for Post-Conviction-Relief that were not ruled upon by the PCR Court. Lastly, Petitioner is submitting his pre-trial Schmerber Hearing Transcript to this Court due to Petitioner's PCR counsel Ashley A. McMahan's failure to submit Petitioner's Schmerber Hearing Transcript into evidence at Petitioner's PCR hearing.

Sincerely,



Nathaniel A. Hunter #372378

Petitioner

Question Presented

Did the PCR Court err when the PCR Court ruled on Petitioner's claim that Petitioner's appellate counsel on direct appeal was not ineffective for failing to raise Petitioner's request for a continuance at Petitioner's Schmerber Hearing when Petitioner's PCR counsel failed to submit the Schmerber Hearing Transcript into evidence at the PCR hearing?

The PCR Court's dismissal of Petitioner's application for Post-Conviction-Relief in reference to the Schmerber Hearing continuance request claim's judgment is void and is in default pursuant to the South Carolina Rules of Civil Procedure Rule 55(e) Judgment Against the State and Certain Other Parties, stating, "No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court". In Petitioner's case, the record reflects that Petitioner has established evidence satisfactory to the Court when this Court reviews Petitioner's Schmerber Hearing Transcript which is the same transcript Petitioner's PCR counsel failed to submit into evidence at Petitioner's PCR hearing violating S.C. Code Ann. 17-27-70(a) Court Procedure on Receipt of Application. At Petitioner's Schmerber Hearing Petitioner's trial counsel Dayne Phillips did an excellent job of explaining to the trial court why Petitioner should have been granted a continuance at Petitioner's Schmerber Hearing, see Petitioner's

Johnson Pro Se Response (pages 12-15) and Petitioner's Schmerber Hearing Transcript that was submitted as an attachment to this letter. The reviewing court defers to the PCR court's factual findings and will uphold them if supported by any evidence in the record. Smalls v. State, 422 S.C. 174, 179-181, 810 S.E. 2d 836, 839 (2018). Furthermore, the reviewing court affords great deference to a PCR court's credibility findings. Goins v. State, 397 S.C. 568, 573, 726 S.E. 2d 1, 3 (2012). Questions of law are reviewed de novo, and this Court will reverse the PCR Court if its decision is controlled by an error of law. Jamison v. State 410 S.C. 456, 465, 765 S.E. 2d 123, 127 (2014). In Petitioner's case, the PCR court's decision was controlled by an error of law when the PCR court ruled on this specific issue without Petitioner's Schmerber Hearing Transcript rendering Petitioner's lower court record incomplete. The circuit court is guaranteed a chance to "rule properly after it considered all relevant facts, law and arguments" so that the appellate court is provided with everything needed to properly review the ruling within the limits of the applicable standard of review. l'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E. 2d 716, 724 (2000). In Petitioner's case, the appellate court is not provided with a platform for a meaningful appellate review. At Petitioner's Schmerber Hearing Petitioner's trial counsel Dayne Phillips intensively argued how important a Touch -Dna expert and other Touch- DNA evidence was needed in order to provide a meaningful defense and adversarial testing to the state's case against Petitioner and also to ensure that Petitioner's Constitutional and South Carolina Constitutional Rights we're not violated. However, Petitioner's Constitutional Rights we're violated when the trial court denied Petitioner's motion for a continuance and the PCR court erred considering the fact that Petitioner's Schmerber Hearing Transcript was very critical in

order for the PCR Court to make a ruling on that claim . Petitioner recently received the last section III of his appendix and discovered that the Schmerber Hearing Transcript was not included in the appendix. So how could the PCR court rule on this issue without the transcript considering the fact that Petitioner's Touch-Dna on a cap was the "key" piece of evidence used to arrest, indict and convict Petitioner whereas the Schmerber Hearing was to determine if there was probable cause that Petitioner committed the crime. The PCR court's judgment should be rendered void pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure which provides a court may "upon such terms as are just," relieve a party from a void judgment or order. Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process. In Petitioner's case, the PCR court failed to provide due process based upon the fact that Petitioner's trial counsel Dayne Phillips testimony at the PCR hearing was not enough evidence for the PCR court to make Findings of Fact and Conclusions of Law pursuant to S.C. Code Ann. 17-27-80, see (Appendix page 1246, lines 23-25 and pages 1247 thru 1248, line 2). Petitioner's appellate counsel Katherine Hudgins testimony at the PCR hearing was also not enough evidence or testimony to satisfy the court to make a decision on that claim, see (Appendix page 1290, lines 10-22). However, Petitioner's Schmerber Hearing Transcript was critical and very much needed for the PCR court to make a ruling on that claim whereas Petitioner's trial counsel Dayne Phillips explained in detail why Petitioner should have been granted a continuance at Petitioner's Schmerber Hearing. If the PCR court would have reviewed Petitioner's Schmerber Hearing Transcript, the PCR court would have discovered

that Petitioner should have been granted a continuance and there is a reasonable probability that Petitioner would have been granted relief in his application for Post-Conviction-Relief.

Question Presented

Did the PCR Court err when the PCR court failed to rule on two meritorious issues that were raised at Petitioner's PCR hearing and in Petitioner's Memorandum of Law In Support of Petitioner's Amended Application for Post-Conviction-Relief?

Petitioner respectfully requests this Court to correct the PCR Court's failure to make a ruling on two claims that Petitioner raised at the PCR hearing pursuant to Fishburne v. State 427 S.C. 505 (2019), (holding, the Supreme Court held that remand was required for trial court to make Findings of Fact and Conclusions of Law on duly raised PCR claim of ineffective assistance of counsel, even though defendant did not file a motion for ruling on claim). Petitioner requested counsel McMahan to file a motion for Rule 59(e) if all of the claims that were raised at the PCR hearing were not ruled upon by the PCR court. See, Pruitt v State 423 S.E.2d 127, 128 (1992), holding, (vacating and remanding the PCR court's order, despite lack of Rule 59(e) motion to address the failure of many PCR orders to address all the issues raised) and McCray v State 408 S.E.2d 241 (1991), holding, (reversing order denying applicant relief and remanding for a new PCR hearing where the PCR's court order failed to make specific findings of fact and conclusions of law sufficient for appellate review).

The two issues that were raised at the PCR hearing and in Petitioner's Memorandum of Law that were not ruled upon are as follows:

Issue# 3 Memorandum of Law: Applicant's Fifth Amendment Right To a Fair Trial and his Fourteenth Amendment Right To Due Process was violated when the trial court instructed both counsels to withhold the victim's identification of Applicant at the Jackson v. Denno hearing from the jury.

Petitioner argued this issue at the PCR hearing and in Petitioner's Memorandum of Law which is apart of the record in the appendix. To view Petitioner's argument at the PCR hearing for this meritorious issue, see (Appendix page 1221, lines 19-25, page 1222, lines 1-25, page 1223, lines 1-25 and page 1224, lines 1-25). What makes the PCR court's error so grave is that not only did Petitioner raise this meritorious issue at the PCR hearing, Petitioner also raised it in more detail in his Memorandum of Law and the PCR court's failure to rule upon this issue was a direct violation of Petitioner's Fourteenth Amendment Right To Due Process under the Constitution of the United States as well as Petitioner's Due Process under the South Carolina Constitution Article I Sections 3 and 14. See Petitioner's Memorandum of Law, (Appendix pages 1323-1325). I respectfully request this court to vacate the PCR court's Order of Dismissal due to the egregious errors made by the PCR Court when the PCR court failed to address all the issues Petitioner raised at his PCR hearing.

Issue# 4 Memorandum of Law: Applicant's Fifth and Fourteenth Amendment Rights were violated when the State failed to correct false testimony at Applicant's trial when the victim testified.

Petitioner also argued this meritorious issue at the PCR hearing in which the PCR court did not rule upon, see (Appendix page 1177, lines 10-25 thru page 1178, lines 1-8). This issue is also apart of the record in Petitioner's Memorandum of Law, see (Appendix pages 1326-1328). Petitioner submits this in the form of a letter to prevent this Court from issuing Petitioner a No Action Letter deeming this action as hybrid representation. The purpose of this letter is to inform this Honorable Court of the fundamental unfairness Petitioner has endured during pre-trial proceedings, trial, direct appeal, Post-Conviction-Relief and Writ of Certiorari proceedings. Petitioner has had his due process violated in each critical stage of these proceedings and respectfully requests this Court to correct the procedural irregularities, fundamental unfairness and egregious errors made by each Court in Petitioner's direct and collateral review proceedings.

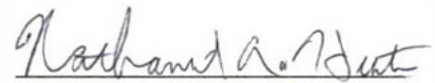
PLEASE BE ADVISED that Petitioner was forced to go forward in his Writ of Certiorari Appeal with an existing conflict of interest with his current counsel Ashley A. McMahan who was also Petitioner's PCR counsel that rendered incompetent and inadequate representation of Petitioner before, during, and after Petitioner's PCR proceedings. Petitioner filed several motions to relieve Ashley McMahan as his writ of certiorari appellate counsel with the Supreme Court of South Carolina which was denied. It appears that the Supreme Court's clerk of court denied Petitioner's motion and not the actual judges considering the fact that the Sixth Amendment Right To Counsel forbids representation of a defendant with an existing conflict of interest with his counsel. No court in this State has the authority to force a defendant to be represented by counsel with an existing conflict of interest.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court to reverse the PCR court's Order of Dismissal of Petitioner's application for Post-Conviction-Relief, reverse Petitioner's convictions and sentences and grant Petitioner's case to be dismissed with prejudice prohibiting further prosecution of Petitioner by the State.

SUBSCRIBED AND SWORN TO

BEFORE ME.



Nathaniel A. Hunter #372378

Petitioner

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State of South Carolina) In the Court
County of Lexington) Of General Sessions

Indictment No.: 2014-A-32211-01285-92

State of South Carolina,)
Plaintiff,)
vs.) Transcript of Record
Nathaniel A. Hunter,)
Defendant.)

December 2, 2014

Lexington, South Carolina

BEFORE:

The Honorable Thomas A. Russo, Judge

APPEARANCES:

Suzanne Mayes, Assistant Solicitor
Attorney for the State

Dayne Phillips, Assistant Public Defender
Attorney for the Defendant

ORIGINAL

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1 Thereupon, the following proceedings were had,

2 (Whereupon, Defendant's Exhibit #1 and #2 marked for
3 Evidence.)

4 MS. MAYES: May it please the Court.

5 THE COURT: Yes, ma'am.

6 MS. MAYES: Your Honor, this is a Schmerber motion
7 by the state and I'm going to go ahead and submit up to
8 the Court a copy of the state's motion in support of the
9 collection of suspect standards as well as the affidavit
10 submitted by Investigator Thomas Griffin of West
11 Columbia Police Department. Mr. Phillips has received
12 copies as well.

13 THE COURT: All right. I'm going to receive these.
14 I know Mr. Phillips has a motion he would like to be
15 heard on before we get started or if we go down this
16 road.

17 MR. PHILLIPS: Yes, Your Honor. I do have a motion
18 requesting a continuance in this matter. I have marked
19 two things as Defendant's exhibits.

20 One, I filed a supplemental discovery motion
21 requesting specifically DNA, all the evidence related to
22 the DNA evidence in this case and the testing procedure
23 as well as cell tower information regarding the cell
24 phone information which neither the DNA nor the cell
25 tower information has been provided to the defense at

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1 this point, Your Honor.

2 Defendant's exhibit 1 is the notice of motion,
3 supplemental motion for disclosure production and
4 inspection of documents under Brady and Rule 5. That
5 was filed on October 8th, Your Honor, and I did make
6 that Defendant's exhibit number 1. And then yesterday I
7 did send an e-mail to Your Honor copying the solicitor
8 requesting the motion and giving kind of the background
9 of laying procedural framework of when the discovery was
10 requested, kind of what I have received up to this
11 point, what I haven't received up to this point. That
12 is marked as Defendant's exhibit number 2, Your Honor.

13 It is our contention that going forward without
14 this DNA evidence and the cell tower information would
15 be fundamentally unfair for several reasons. We believe
16 that this requested information is essential to ensure
17 the defendant's Constitutional rights are not violated
18 under the Fifth, Sixth, and Fourteenth Amendments to the
19 United States Constitution and Article 1, Sections 3 and
20 14 of the South Carolina Constitution.

21 Specifically, Your Honor, it would deny his right to
22 confront the witnesses that will be presented during
23 this hearing and to adequately cross examine them as to
24 their testimony, as well as it would prevent the
25 defendant from calling the witnesses in his defense such

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1 as a DNA expert to challenge the state's witnesses, the
2 CODIS hit or any of the SLED witnesses that would
3 testify today. With that it would also deny his right
4 to present a full and complete defense and due process
5 under law. With that, Your Honor --

6 THE COURT: This is just a Schmerber hearing.

7 MR. PHILLIPS: I agree, Your Honor, but with that he
8 is denied bond. This is a very serious case with very
9 serious charges. It's our contention that there is no
10 reason -- And this is not for purposes of delay. This
11 is for purposes just to ensure his rights. With that
12 there is no reason for this hearing to be continued for
13 the state to comply with our discovery request and then
14 to have the hearing. They're certainly not trying to
15 push that off as just -- The only evidence in this case
16 that links him to the scene of the crime is the DNA
17 evidence, and then obviously the cell tower information
18 could be - we have no idea what that would show, Your
19 Honor. Those two pieces of information are critical in
20 establishing essentially probable cause, Your Honor.

21 Now, going specifically to the probable cause of
22 the Schmerber hearing, as far as the CODIS hit having
23 that information and being able to consult with a DNA
24 expert the defense could then properly cross examine the
25 SLED person who testifies regarding the Schmerber, the

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1 CODIS hit, Your Honor. With that because probable cause
2 is determined solely based on this CODIS hit that SLED
3 has done we believe we won't be able to adequately - I
4 won't be able to adequately defend him without having
5 the specific discovery request.

6 THE COURT: Ms. Mayes.

7 MS. MAYES: Yes, sir, Your Honor. As to the cell
8 tower information, we have provided the data that was
9 given by the phone company for both Mr. Hunter's phone
10 and the girlfriend's phone. Apparently what that data
11 on the CD did not contain is the actual coordinates that
12 go with cell towers. Investigator Griffin is present in
13 the courtroom. He says he can provide that information
14 on a CD in a short time. However, I do want to go ahead
15 and state on the record that by all indications the cell
16 phone was turned off during the time frame of this
17 offense during a several hour period in which this event
18 allegedly occurred, and because it's turned off there is
19 no cell tower locations for the time of the offense.

20 Now, there's going to be cell tower locations for
21 other days and things of that nature because I believe
22 they went ahead and requested a full month on the phone
23 so that information will be provided.

24 Now, as to the DNA, I want the record to be clear,
25 we have provided all of the DNA and serology reports

1 that have been generated by the State Law Enforcement
2 Division. That started with our evidence processing
3 where they actually processed the clothing items that
4 were submitted and obtained swabs. Then it went to DNA
5 in April and in April DNA was able to develop the
6 profile of an unidentified male which they entered into
7 CODIS. CODIS then returned a hit for the defendant
8 Nathaniel Hunter, and as a result of that CODIS issued
9 a letter stating we're requesting a second sample which
10 is routine whenever there is a CODIS hit to have a
11 second sample done for additional comparison analysis by
12 the lab. Then in July a final DNA report was issued
13 that compared the victim's blood samples and buccal swab
14 samples to the evidence that had been submitted.

15 So that sort of, I guess you would say, is an
16 addendum to the original DNA report. That tells us
17 which items are matching the victim and which still have
18 an unidentified male subject. There will eventually be
19 an additional DNA report once a sample is obtained from
20 Mr. Hunter and then compared to the items. But that's
21 where we are now and all of those reports have been
22 supplied to Mr. Phillips.

23 What he's asking for is generally quality assurance
24 type information, operation manuals. He's asking for
25 materials that aren't ordinarily provided to the

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1 solicitor as part of the case file that we receive.
2 SLED is working on this. The analyst in this case
3 Maryann Boehm was actually out on maternity leave, I
4 believe, when that DNA request came in so Lieutenant
5 Robin Taylor at the lab went ahead and started working
6 on it herself. She has told me that she is somewhat
7 through the process. There are certain things that he
8 is requesting that they just don't have and don't
9 provide and I can give more details about that later if
10 we have a separate aspect of this hearing on the actual
11 the discovery matters. But what they will provide is
12 ultimately the case jacket and case reports that include
13 the underlying data that was generated by the analyst
14 that lead to those reports that she generated. That
15 they will provide and they will provide the operations
16 manual.

17 They will also provide a memorandum guaranteeing
18 that the analyst involved in the case has successfully
19 passed her proficiency testing.

20 THE COURT: Why does this lead to the admissibility
21 of these matters and not necessarily to the purpose of
22 this hearing?

23 MR. PHILLIPS: Yes, Your Honor. And I forgot to
24 pass up your copy of both court's exhibits that I
25 printed out for you.

XXX
1 THE COURT: Thank you.

2 MR. PHILLIPS: Thank you, Your Honor.

3 Now, going directly to your question, the reason is
4 we cannot properly cross examine this witness to
5 establish the probable cause of whether this - the
6 reliability of this CODIS hit.

7 Our Court of Appeals have recently in State v.
8 Jenkins, Your Honor, had addressed the issue as to when
9 you're looking at it, you're looking at where the
10 detective obtained the information, how reliable the
11 information is, the totality of the circumstances. The
12 main thing is the reliability.

13 We have all this information as the solicitor stated
14 that goes to again the quality assurance, all these
15 things that with an expert that could review could
16 change the nature of this hearing and your decision as
17 to whether probable cause is established to make that
18 connection whether a CODIS hit was proper.

19 The reliability prong, Your Honor, we are not able
20 to address that without that information. Again, he's
21 denied bond. He's not going anywhere. And I know this
22 is somewhat an unusual request, however, the request
23 that I have, if Your Honor takes a look in the
24 supplemental discovery motion, are not unusual. Based
25 on my research those are the things that a DNA expert

1 needs. Those requests are not unusual. Those are the
2 usual requests for a DNA expert to challenge the
3 evidence or at least to review the evidence to tell me
4 where there might be problems as to the veracity of the
5 witness, the credibility.

6 THE COURT: Well, here is what it sounds like to me.
7 You're hoping through, if you get all this discovery,
8 you get your expert on board, you're hoping to then, and
9 I'm assuming, discredit the state's evidence to the
10 point that it's not admissible, therefore, there is no
11 need to take a sample from your client to proceed?

12 MR. PHILLIPS: Let me clarify. There's not
13 admissibility. With this hearing we are not saying that
14 what she's testifying to would not be --

15 THE COURT: I know we are not at the admissibility
16 stage. I understand that but --

17 MR. PHILLIPS: We are saying the that expert would
18 be able to argue to Your Honor given the fact -- I don't
19 know what he would be able to argue, Your Honor. That's
20 kind of the point. That's why we have to wait and
21 that's our position. With that if Your Honor hears the
22 expert's testimony, you might not realize that probable
23 cause has been established; that a proper CODIS hit
24 wasn't in place. That's the whole part of the
25 speculation. There is no reason for the delay. I mean,

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1 that's the reason for why we need a continuance, Your
2 Honor.

3 Again, this is the state's motion so the burden is
4 on them with that they have to prove. We need the
5 proper documents to present a full and complete
6 defense.

7 THE COURT: Anything further, Ms. Mayes?

8 MS. MAYES: Yes, sir, Your Honor. I will also
9 submit to the Court a copy of State versus Baccus which
10 sets forth the criteria for the Schmerber hearing today
11 which is a showing of probable cause to believe that the
12 suspect has committed a crime, a clear indication that
13 relevant material evidence will be found, and finally
14 that the method used to secure it is safe and reliable.
15 With those factors being the limited scope of today's
16 proceeding we feel that the items Mr. Phillips is
17 requesting would go way beyond the scope of just
18 establishing the probable cause necessary for this
19 hearing. This is State versus Baccus.

20 MR. PHILLIPS: Your Honor, just to reiterate, in
21 State v. Jenkins, that's 398SC215, this is a Court of
22 Appeals case out of 2012, one of the things, of course
23 you're looking at the validity in that case of the
24 search warrant in discussing the probable cause that the
25 defendant committed the crime. In addressing that prong

1 one of the first things that they look at is it says
2 quote "First the affidavit must set forth facts as to
3 why the police believe the suspect whose DNA is sought
4 is the person who committed the crime."

5 That probable cause determination what we've
6 requested goes directly to challenging that probable
7 cause and until I have it I'm unable to properly address
8 that and present a full and complete defense, confront
9 the witnesses against him, and of course, the compulsory
10 process of the Sixth Amendment of getting my own
11 witnesses, Your Honor.

12 THE COURT: Anything further?

13 MS. MAYES: Yes, sir, Your Honor. Of the 31 items
14 that have been requested pursuant to this supplemental
15 request for DNA, in talking with the lab some of these
16 items they don't even maintain. It's not even a
17 situation where we can provide it at a later date. Some
18 of the references are to SBI which is the State Bureau
19 of Investigation in Georgia, the SBI form. There is
20 also references to other things that appear to be, it
21 appears to indicate this is a request from another state
22 and they are using a different DNA model than even the
23 State Law Enforcement Division would be using. So I
24 just wanted to make clear that even among the items he's
25 requesting it's so broad that we are not able to provide

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1 all of these items.

2 MR. PHILLIPS: Your Honor --

3 THE COURT: You've received a good many items. Have
4 you submitted anything to your expert?

5 MR. PHILLIPS: Out of what we have I have not
6 submitted that yet because the one thing that we did get
7 she did send over the DNA. Let he me find the date. It
8 was very recent she sent me the entire packet. We
9 received the new disk of all the information. The
10 original discovery packet was sent to me on July 25th.
11 We received new discs of information on November 18th.
12 With that, Your Honor, again the things that she stated
13 that they still have to give because she's admitted
14 here in court that there are many things that they still
15 have in their possession to give us, that there are
16 things that are not applicable. I don't know without
17 some type of written response saying these things are
18 not applicable, these are the things we do have, most of
19 which I just found out in court, it makes it very
20 difficult other than the one packet I do have of what
21 they had and our argument would be that that would be
22 insufficient.

23 Your Honor, I guess we could make what I have been
24 given a court's exhibit.

25 THE COURT: What are you looking to get here in your

1 Schmerber request?

2 MS. MAYES: A buccal swab sample from the defendant
3 for further comparison analysis. The CODIS hit is
4 considered a preliminary match and SLED routinely
5 requests a second sample for confirmation.

6 THE COURT: All right. I'm going to deny the motion
7 to continue. I don't think it's -- I don't think
8 there's any violation of --

9 MR. PHILLIPS: I'm certainly not arguing that
10 there's a discovery violation.

11 THE COURT: Yes, I understand.

12 MR. PHILLIPS: We're just saying we're requesting
13 the continuance in order for them to comply with the
14 discovery request.

15 THE COURT: Yes, and I am going to respectfully deny
16 that. I think Mr. Hunter's Constitutional rights --
17 You're an outstanding attorney, Mr. Phillips, and I
18 believe you're doing a great job of protecting his
19 rights. I don't think continuing this is going to
20 affect the purposes of this hearing as to whether or not
21 there is probable cause to order the buccal swab so I'm
22 going to - we are just going to proceed and let the
23 state proceed with their presentation.

24 MR. PHILLIPS: Thank you, Your Honor.

25 MS. MAYES: The state calls agent Maryann Boehm.

1 THE COURT: Ms. Boehm, if you will, please, come
2 around.

3 THE CLERK: Will you raise your right hand, please?

4 Do you swear or affirm any testimony you give the
5 Court is the truth, the whole truth, and nothing but the
6 truth so help you God?

7 MS. BOEHM: I do.

8 THE CLERK: Thank you. Have a seat and state your
9 name, please, and spell your last name for the record.

10 THE WITNESS: My name is Maryann Boehm, B-o-e-h-m.

11 DIRECT EXAMINATION

12 BY MS. MAYES:

13 Q. All right. And Agent Boehm, where are you currently
14 employed?

15 A. The South Carolina Law Enforcement Division commonly
16 known as SLED.

17 Q. And in what capacity?

18 A. I am assigned to the DNA case work department.

19 Q. All right. How long have you been conducting work
20 as an analyst in the field of DNA?

21 A. Approximately nine years.

22 Q. Now, can you give us a little information about your
23 educational background and training that led to you becoming
24 a DNA analyst?

25 A. I received a Bachelor of Science in integrated

1 science and technology with a concentration in biotechnology
2 from James Madison University and that's in Harrisonburg,
3 Virginia.

4 Q. All right. And specifically is it possible to
5 estimate how many cases you have worked on in which you
6 actually conducted DNA analysis or comparison analysis
7 yourself?

8 A. It's really hard to estimate. I do approximately
9 100 to 200 a year I would say.

10 Q. All right. And you have been at the State Law
11 Enforcement Division nine years?

12 A. Yes, ma'am.

13 Q. And have you testified previously as an expert in a
14 court of law in the field of DNA analysis?

15 A. Yes, I have.

16 MS. MAYES: Your Honor, at this time the state would
17 offer Maryann Boehm as an expert in the field of DNA
18 analysis.

19 THE COURT: Any objection to that?

20 MR. PHILLIPS: No, Your Honor.

21 THE COURT: Without objection.

22 BY MS. MAYES:

23 Q. Now, Ms. Boehm, I'm going to refer you specifically
24 to reports that have been generated by the State Law
25 Enforcement Division in connection with SLED lab number

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1 L1404723. Do you have those items with you today?

2 A. I have the DNA reports that I have issued as well as
3 the CODIS report.

4 Q. All right. And I'm going to show you a collection
5 of reports generated in connection with the DNA in this case
6 and ask you whether or not you're familiar with these
7 items?

8 A. I am familiar with all of these.

9 Q. Okay. Can you tell us whether or not that includes
10 the evidence processing report issued on April 25th of 2014
11 in connection with this case?

12 A. Yes, ma'am, it does.

13 Q. And can you tell us whether or not it also includes
14 your initial DNA analysis report generated on April 17th of
15 2014?

16 A. Yes, ma'am, it does.

17 Q. And can you tell us whether or not it includes your
18 subsequent or amended DNA analysis report issued on July 4th,
19 2014?

20 A. Yes, it does.

21 MS. MAYES: At this time, Your Honor, we would ask
22 that these items, this collection of DNA and State Law
23 Enforcement Division lab reports be marked as court's
24 exhibit 1.

25 MR. PHILLIPS: No objection, Your Honor. Just to

1 clarify for the previous motion that those documents is
2 what I was provided.

3 THE COURT: Okay. All right. Without objection
4 we'll mark those as court's exhibit 1.

5 (Whereupon, Court's Exhibit #1 marked for Evidence.)

6 BY MS. MAYES:

7 Q. Now, Agent Boehm, referring specifically to the DNA
8 report that you generated on April 17th, I'm going to ask you
9 whether or not you were able to develop any DNA profiles from
10 the clothing items that were submitted to you?

11 A. I was.

12 Q. All right. What DNA profiles were you able to
13 identify?

14 A. I developed a DNA profile from our lab item number
15 1.1 which was a swab - or coming from a cloth, 1.2 which was
16 a cutting from a cloth, 2.1 which was a cutting from the
17 hoodie. I also was able to develop a DNA profile from item
18 2.2 which was a swab from the hoodie. I also was able to
19 develop a DNA profile from my 3.1 which was a swab from the
20 cap in bag with hoodie.

21 Q. All right. Now I'm going to ask you specifically
22 about item 3.1 and that is the swab that was taken from a
23 cap.

24 A. Yes, ma'am.

25 Q. As to item 3.1 were you able to develop enough of a

1 Q. As to item 3.1 were you able to develop enough of a
2 DNA profile to submit it into what is known as the CODIS
3 system?

4 A. Yes. I was able to develop a DNA profile from my
5 3.1. It was a mixture. However, there was a DNA profile of
6 a major contributor that I was able to enter into the
7 combined DNA index system.

8 Q. And prior to entering it into the system, could you
9 determine whether that unidentified DNA profile was a male or
10 a female?

11 A. Yes. It was a male.

12 Q. All right. So the unidentified male profile was
13 entered into the CODIS system. Can you generally tell us
14 what that system is used for?

15 A. Sure. It is a database maintained nationwide by the
16 FBI. There is also a portion of CODIS which is maintained by
17 the state. It's called the State DNA Index System. That's
18 maintained at SLED in the DNA database department. It has
19 several DNA profiles from various individuals. At this time
20 there was approximately 160,000 individuals that the profile
21 that I entered into was compared to. We use it for
22 investigative purposes only. We are able to put DNA profiles
23 of unknown, unsolved crimes into this database and search it
24 and hopefully there will be a hit on a person that is found
25 in the database.

1 Q. Okay. Does CODIS contain DNA from certain convicted
2 offenders for example?

3 A. Yes, ma'am.

4 Q. And in this particular case once the unidentified
5 male DNA profile was entered into CODIS by you what happened
6 next?

7 A. I entered the DNA profile and then I called someone
8 from the CODIS department to run the search. She ran the
9 search and it hit on an individual. It's just a unique
10 number given to that DNA profile that appears on the computer
11 screen, then they have to find that CODIS sample, rerun it to
12 confirm that that profile is the correct profile that is in
13 the computer system and also the fingerprints that are
14 associated with that CODIS sample are compared by a latent
15 print expert to determine that the fingerprints are from said
16 person.

17 Q. All right. Who is the person that was the CODIS hit
18 in this case to the DNA profile you developed from item 3.1,
19 the swab from the cap?

20 A. Nathaniel Hunter.

21 Q. All right. Now, specifically you mentioned that
22 there is an ID number affiliated with CODIS and the
23 individual?

24 A. Yes, ma'am.

25 Q. And also latent prints?

1 A. Yes, ma'am.

2 Q. What is the purpose of having the latent prints
3 analysis as part of CODIS?

4 A. It is another way to confirm that that sample is
5 from that specific person.

6 Q. All right. So in addition to getting a hit on the
7 DNA profile, can you tell us whether or not there was
8 separate confirmation through prints of Nathaniel Hunter?

9 A. Yes, there was.

10 Q. Okay. So in other words, the prints on file with
11 CODIS were compared to known prints from Nathaniel Hunter?

12 A. Yes, ma'am.

13 Q. And what is your understanding of that print
14 analysis or comparison analysis?

15 A. That that CODIS sample came from Nathaniel Hunter.

16 Q. So in other words, it's a further way to confirm the
17 entry into CODIS?

18 A. Yes, ma'am.

19 Q. I'm going to show you an item and ask you whether or
20 not you recognize it?

21 A. Yes. This is the CODIS hit notification letter that
22 goes out.

23 Q. Okay. And is that standard procedure at the State
24 Law Enforcement Division?

25 A. Yes, ma'am.

1 of what?

2 A. Of an investigative lead.

3 Q. Okay. And does it include the name of the
4 offender?

5 A. Yes, ma'am.

6 Q. In this case Nathaniel Hunter?

7 A. Yes, ma'am.

8 MS. MAYES: Your Honor, this will be court's exhibit
9 2.

10 (Whereupon, Court's Exhibit #2 marked for Evidence.)

11 BY MS. MAYES:

12 Q. Now, once the West Columbia Police Department was
13 notified of the CODIS hit as to item 3.1, the swab from the
14 cap from the hoodie, were additional items submitted by West
15 Columbia Police Department for further DNA analysis?

16 A. Yes. A buccal swab from the victim was submitted.

17 Q. And the victim being Lerenda Simon?

18 A. Yes, ma'am.

19 Q. And when that buccal swab from the victim was
20 submitted, were you able to match any items to her?

21 A. I did.

22 Q. Okay. And what were the items you were able to
23 match to her?

24 A. Items 1.1 and 1.2 which were cuttings from that
25 cloth, and item 2.1 which was a cutting from the hoodie, and

XXX

1 A. Items 1.1 and 1.2 which were cuttings from that
2 cloth, and item 2.1 which was a cutting from the hoodie, and
3 the DNA I developed from item 2.2 which was a swab from the
4 hoodie was a mixture of at least two individuals and Lerenda
5 Simon cannot be excluded as a possible contributor to that
6 item.

7 Q. Okay. Now, just to clarify, how would a buccal swab
8 sample from the suspect in this case Nathaniel Hunter be
9 beneficial for further investigation?

10 A. For DNA analysis we need to compare DNA profiles
11 from evidence that we've developed to any known standards
12 submitted in the case. Therefore, if we had a standard
13 submitted from Nathaniel Hunter, I would be able to compare
14 it to all the evidence, DNA profiles that I have generated in
15 this case.

16 Q. All right. Would you compare it to the item 3.1,
17 the unidentified male that went into CODIS?

18 A. Yes, ma'am.

19 Q. All right. So there would be secondary testing or
20 confirmation, I guess I would say, concerning that particular
21 sample?

22 A. Yes, ma'am.

23 Q. All right. And then if it's not Nathaniel Hunter,
24 would that information be included in your report?

25 A. Yes. I would either include or exclude him from all

1 of the chosen samples.

2 Q. All right. And you mentioned a hoodie that was
3 submitted being a mixture of two people. I believe your
4 testimony was one is the victim. Is the other person
5 unidentified?

6 A. Yes, ma'am.

7 Q. Would potentially Nathaniel Hunter's buccal swab
8 sample be compared to that particular item being the
9 hoodie?

10 A. Yes, I would make that comparison.

11 Q. Now, finally let me just ask you about the CODIS
12 system. You mentioned that it's utilized by the FBI as
13 well?

14 A. Yes, ma'am.

15 Q. To the best of your knowledge is that system used
16 among your peers in the field of DNA science?

17 A. Yes, ma'am.

18 Q. And that includes various crime labs across the
19 country?

20 A. Yes, ma'am.

21 Q. And federally with the FBI?

22 A. Yes, ma'am.

23 Q. And based upon your training and experience is the
24 CODIS system generally reliable?

25 A. Yes, ma'am.

1 MS. MAYES: That's all from the state as to this
2 witness, Your Honor.

3 THE COURT: Mr. Phillip, any questions?

4 MR. PHILLIPS: Yes Your, Honor.

5 CROSS EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Now, in the CODIS system how many profiles are
8 searched within that system?

9 A. Well, CODIS is comprised of state databases as well
10 as the national database. There's hundreds of thousands in
11 the national.

12 Q. And in this case you searched which one?

13 A. The state database.

14 Q. Okay. So in the state database how many profiles?

15 A. Still a hundred thousand. There's a 160,
16 approximately 160,000 known individuals. There's also DNA
17 profiles from other crime scenes that are also searched, the
18 case to case hits versus a case to a person hit.

19 Q. Approximate number, how many profiles do you think
20 is in the state system?

21 A. All?

22 Q. Total.

23 A. Maybe 500,000. I'm really not positive.

24 Q. If you don't know, just say --

25 A. I know for a fact that there's approximately 160,000

1 individuals.

2 Q. That are known?

3 A. Yes. That are in, yes.

4 Q. And you don't know how many are unknown?

5 A. Right.

6 Q. But you assume it could be upwards of half a
7 million?

8 A. Yes, sir.

9 Q. Okay. Now, you entered the DNA sample in this case,
10 correct?

11 A. Yes, sir.

12 Q. Okay. You said another person ran the search?

13 A. Yes, sir.

14 Q. Who was the other person?

15 A. That would be Theresa Hines.

16 Q. Okay. When she ran the search, were you there when
17 she ran the search?

18 A. I was.

19 Q. Okay. And when she ran the search, you said she
20 needed to go get the CODIS sample and rerun the sample.
21 Throughout this process you were present with her as she did
22 each one of these steps?

23 A. No, sir.

24 Q. Okay. So you can't say what she did with the sample
25 when she actually went to go get Mr. Hunter's CODIS sample to

1 rerun the sample, you weren't there?

2 A. No, sir.

3 Q. Okay. So as far as whether the reliability of how
4 she did it you would have no idea because you weren't
5 there?

6 A. Well, she is proficiency tested each year so.

7 Q. But you wouldn't know?

8 A. I guess not, no.

9 Q. Right. Because we can't speculate.

10 A. That's correct.

11 Q. Okay. Now, you said they went and got the prints
12 from the CODIS. Did you go get the fingerprints?

13 A. No. My job after I entered into CODIS, I was
14 done.

15 Q. You were done?

16 A. Mm-hmm.

17 Q. So really you submitted the DNA sample and you did
18 nothing further?

19 A. Yes, as far as the CODIS goes.

20 Q. So actually comparing the CODIS sample of Mr. Hunter
21 and all these reliability steps that you build in to make
22 sure, you didn't handle any of that?

23 A. No, sir. I did not make confirmation of that.

24 Q. And you weren't present for any of that?

25 A. No.

XXX

1 Q. Okay. Now, when you have a CODIS hit, does it put
2 out a list of possibilities and a person chooses? Just
3 trying to figure out the process.

4 A. Well, I'm not a CODIS worker so I can tell you from
5 the part that I do know. When there is a hit, it can be a
6 high stringency hit or a --

7 Q. But you're not a CODIS worker? Please --

8 A. I don't work --

9 Q. Please explain that.

10 A. I don't work in the CODIS the DNA database
11 department. I work in the DNA case work department. So I'm
12 the one who puts in the profiles per all the evidence.

13 Q. You submit it and then there's somebody else who
14 does all the CODIS matching --

15 A. That's correct.

16 Q. -- and all that work?

17 A. That's correct. We work closely with them.

18 Q. But you weren't there and that's not what you're
19 trained to do?

20 A. That's correct.

21 Q. Okay. So regarding whether somebody did a peer
22 review of that person's work, you wouldn't know because you
23 weren't there, correct?

24 A. I know that it has to be done.

25 Q. But you don't know if it was done in this case

1 because you weren't there and you're not the one who did
2 it?

3 A. That's correct.

4 Q. Okay. All right. And do you know as far as the
5 qualifications to search for a hit, do you know that? Like
6 what a person needs to be? Not your role, but that other
7 person, do you know? I mean, that person's qualifications,
8 that's something that you're not qualified for, correct?

9 A. No. If I worked in that department, yes, I would
10 have - I have the qualifications to work.

11 Q. But you just don't work in that department?

12 A. No.

13 Q. Okay. All right. And again, you wouldn't know if
14 whenever they submitted this sample like a AFIS, a
15 fingerprint, if it listed out a bunch of different people and
16 that SLED agent gets to choose which ones?

17 A. I can tell you that.

18 Q. Oh, great.

19 A. Like I was saying before that some instances there
20 will be a high stringency hit where it matches and there is
21 only one person. If there is a mixture or a partial DNA
22 profile that's entered into CODIS, it may be more of a
23 moderate hit where it could be several different people or
24 several different cases that could be connected with this
25 profile that I entered.

1 Q. And who gets to make that decision, the person who
2 is --

3 A. The computer does. The computer will list every --

4 Q. Right. But after that who gets to make the decision
5 as to what's considered a hit? Is it Theresa Hines?

6 A. Well, in this case there was only one.

7 Q. Are you sure? I mean, you didn't run the
8 information. You can't be positive of that.

9 A. I was sitting there when she ran it.

10 Q. Now before you said you didn't do all the comparison
11 stuff. I'm just trying to make sure.

12 A. I did not. I was sitting there when she searched it
13 and then it came up with a hit and then she took it from
14 there.

15 Q. All right. And there's all these things that she
16 was supposed to do after that. Please go through that again.

17 A. Where she confirms the --

18 Q. Yeah. Just the procedure. I mean, you weren't
19 there, but what's the procedure she was supposed to do?

20 A. Typically she will pull the CODIS sample that are
21 all on file at SLED.

22 Q. And this would be Nathaniel Hunter's alleged CODIS
23 sample we assume?

24 A. Right. Right. She would pull that file and rerun
25 it, basically reperform the DNA analysis on that sample to

1 confirm that the profile that was entered in CODIS for that
2 individual is correct. There is also latent prints
3 associated with that sample and that was also confirmed by a
4 latent print expert to determine that those fingerprints came
5 from the same person.

6 Q. And all of this of what you just described you
7 didn't do?

8 A. That's correct.

9 Q. Theresa Hines did it?

10 A. Yes.

11 Q. Okay.

12 A. Now, back to who decides about a CODIS hit, if there
13 is something with a moderate hit, then the CODIS person who
14 did the hit will talk to the DNA person.

15 Q. So there is some exchange back and forth --

16 A. Yes. Yes.

17 Q. -- regarding the process?

18 A. If there is any kind of questions.

19 Q. Do you know what the error rate is, whether there is
20 a fail rate scientifically, you know? Scientific method, you
21 know? You're going through this process, what the error rate
22 is of this process? I mean, it's not infallible so...

23 A. Of what process?

24 Q. The CODIS search.

25 A. The CODIS search. Not that I know.

1 Q. Okay. Now, the CODIS sample itself, that is
2 a testable sample, correct? Like I mean, that sample is a
3 sufficient DNA sample from which could be searched from,
4 right?

5 A. Right. DNA can be generated from that sample.

6 Q. Right. I mean, I'm just saying there's nothing
7 wrong with that CODIS sample, correct?

8 A. The only thing is that why we can't use it as a DNA
9 known sample is there's no chain of custody associated with
10 it.

11 Q. All right. Other than that that sample you're
12 saying is a - should be a true and accurate DNA?

13 A. That's correct.

14 Q. Other than you said a chain of custody issue?

15 A. That's correct.

16 MR. PHILLIPS: Okay. No further questions, Your
17 Honor.

18 MS. MAYES: Just one, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. MAYES:

21 Q. Agent Boehm, you were present when a hit was
22 generated?

23 A. Yes, ma'am.

24 Q. Okay. And you mentioned that there was one hit?

25 A. Yes, ma'am.

1 Q. Was that the hit of Nathaniel Hunter?

2 A. Yes, ma'am.

3 MS. MAYES: Thank you. Nothing further.

4 THE COURT: Thank you very much, ma'am. You may
5 step down.

6 MS. MAYES: The state calls investigator Thomas
7 Griffin. Can Agent Boehm be released?

8 THE COURT: Any objection?

9 MR. PHILLIPS: No objection.

10 THE CLERK: Do you swear any testimony you give this
11 Court will be the truth, the whole truth, and nothing
12 but the truth?

13 MR. GRIFFIN: I do.

14 THE CLERK: Please, have a seat and state your full
15 name and, please, spell your last name.

16 THE WITNESS: My name is Thomas Griffin with the
17 West Columbia Police Department.

18 DIRECT EXAMINATION

19 BY MS. MAYES:

20 Q. All right. And how long have you been with the West
21 Columbia Police Department?

22 A. Approximately six and a half years.

23 Q. All right. What is your current job description
24 there?

25 A. Detective or investigator.

1 Q. Can you tell us whether or not you have been
2 involved in the investigation of a crime that occurred on
3 April 13th, 2014 at 1035 Comanche Trail Apartments?

4 A. I have been.

5 Q. Specifically I'm referring to the crime of attempted
6 murder, burglary in the first degree, kidnapping, criminal
7 sexual conduct with a minor third degree, armed robbery and
8 possession of a weapon during a violent crime?

9 A. Yes, I have.

10 Q. Who is the victim in that case?

11 A. The victim is a Lerenda Simon and a Brianna Simon,
12 her daughter.

13 Q. All right. And what was the approximate time frame
14 that this crime occurred?

15 A. Between 3:00 a.m. to 3:11 a.m. that morning.

16 Q. All right. And that particular address at Comanche
17 Trail Apartments, that was a residence belonging to whom?

18 A. Park Place Apartments and it belonged to Lerenda
19 Simon.

20 Q. In other words she was residing there?

21 A. Correct.

22 Q. And you mentioned a minor child?

23 A. Yes, ma'am, Brianna.

24 Q. She was residing there as well?

25 A. Yes, ma'am.

1 Q. And in general can you tell us whether or not when
2 this crime first occurred whether a suspect was immediately
3 known there at the crime scene?

4 A. On the date of the crime that it was committed, no,
5 ma'am, there was no known suspect at that time.

6 Q. All right. And in particular can you tell us
7 whether or not this involved a home invasion?

8 A. It did.

9 Q. Was the mother of the child shot at the scene?

10 A. She was multiple times.

11 Q. Physically injured?

12 A. Yes, ma'am.

13 Q. What is your understanding of how the perpetrator
14 was dressed during the commission of the crime?

15 A. I know it was in dark clothing, a hoodie to cover
16 his head as well as something to cover his face as well.

17 Q. All right. And can you tell us whether or not you
18 are familiar with the processing of the crime scene after the
19 victim was shot and transported to the hospital?

20 A. I'm familiar with it. I was not present for the
21 crime scene processing. I was with the victim at the
22 hospital.

23 Q. All right. And specifically are you familiar with
24 whether or not any clothing was retrieved from the crime
25 scene?

1 A. There was clothing retrieved, yes, ma'am.

2 Q. And can you tell us whether or not any of this
3 clothing was attributed to the suspect?

4 A. Given the victim's statement she had stated that
5 during the tussle between her and the suspect that his
6 clothing did come off and she stated that that clothing
7 belonged to the suspect.

8 Q. All right. Can you tell us whether or not that
9 included the black cap item that was submitted to the State
10 Law Enforcement Division to best of your knowledge?

11 A. To the best of my knowledge the black cap was
12 located inside the hood itself of the hooded sweatshirt.

13 Q. And left behind at the crime scene?

14 A. Yes, ma'am.

15 Q. Have you prepared or submitted an affidavit in this
16 case setting forth the facts as you know them in relation to
17 the request for suspect standards from Nathaniel Hunter?

18 A. I have.

19 Q. And do you have with you the original of that?

20 A. I do.

21 Q. Let me show you a copy and just ask you whether or
22 not it appears to be the same?

23 A. It is.

24 MS. MAYES: Okay. And for purposes of this hearing,
25 Your Honor, we are at this time going to offer the

1 previously submitted to defense counseling.

2 (Whereupon, Court's Exhibit #3 marked for Evidence.)

3 MS. MAYES: Your Honor, may it please the Court.

4 Under the Baccus decision it appears that the approach
5 is to have an actual record of the oath or affirmation.

6 At this time I'm going to ask the witness to read into
7 the record the specific facts or assertions as set forth
8 in his affidavit.

9 BY MS. MAYES:

10 Q. I'll need to you read very slowly in order for the
11 court reporter to obtain all of the information. If you
12 could please start at the beginning.

13 A. Would you care for me to start here at furthermore
14 or number 1?

15 Q. With your name.

16 A. Okay. "Personally appeared before me Investigator
17 Thomas Griffin who being duly sworn states that he is an
18 investigator for the West Columbia Police Department and that
19 he has been involved in the ongoing investigation of the
20 State versus Nathaniel Hunter. Nathaniel A. Hunter, arrest
21 warrant number 2014A3221101285.

22 "Furthermore as a result of the investigation by the
23 West Columbia Police Department, Investigator Thomas Griffin
24 asserts the following facts in reference to the
25 aforementioned case.

1 West Columbia Police Department, Investigator Thomas Griffin
2 asserts the following facts in reference to the
3 aforementioned case.

4 "Number 1. That Nathaniel Hunter was arrested on
5 April 17th, 2014 for the crimes of attempted murder, burglary
6 first degree, criminal sexual conduct with a minor third
7 degree, armed robbery, kidnapping and possession of a weapon
8 during the commission of a violent crime. These crimes are
9 alleged to have occurred at approximately 3:00 a.m. through
10 3:11 a.m. on April 13th, 2014.

11 "Number 2. That West Columbia Police Department
12 investigated these crimes including attempted murder and
13 burglary in the first degree which occurred at apartment D19
14 of the Comanche Trail Apartments in the West Columbia area of
15 Lexington County. The investigation determined that the
16 suspect later identified as Nathaniel A. Hunter unlawfully
17 entered into the residence during the nighttime and presented
18 a firearm in the presence of Lerenda Simon and her minor
19 child Brianna Simon wherein Lerenda Simon was shot multiple
20 times by the suspect.

21 "Number 3. The investigation further determined
22 that during the commission of these crimes an article of
23 clothing worn by the suspect being a black nylon cap was left
24 behind at the crime scene as the suspect fled the location.
25 The clothing item worn by the suspect was collected as

1 evidence by the West Columbia Police Department. The
2 aforementioned clothing item was submitted to the South
3 Carolina Law Enforcement Division otherwise known as SLED for
4 analysis.

5 "Number 4. On April 17th, 2014 SLED issued a DNA
6 analysis report number L14-04723 which documented that a DNA
7 profile had been developed from a swab that was collected
8 from the suspect's black nylon cap labeled in the SLED report
9 as item 3.1. The DNA profile was subsequently entered into
10 the combined DNA index system otherwise known as CODIS.

11 "Number 5. On April 17th, on or about April 17th,
12 2014 SLED notified the West Columbia Police Department that
13 the DNA profile developed from the swab from the suspect's
14 black nylon cap item 3.1 matched the DNA profile in the
15 combined DNA index system otherwise known as CODIS.
16 Specifically the profile matched the DNA profile of DNA
17 database offender Nat Hunter aka Nathaniel Hunter, South
18 Carolina SID number SC01435049.

19 "Number 6. After Nathaniel Hunter was identified as
20 a suspect through CODIS, follow up investigative work was
21 conducted by the West Columbia Police Department. It was
22 determined that on April 16th, 2014 Nathaniel Hunter had
23 contacted Crystal Owens of the South Carolina Department of
24 Probation, Parole and Pardons Services and requested that his
25 DNA profile be removed from the DNA database. Furthermore,

1 Nathaniel Hunter contacted Crystal Owens again on April 17th,
2 2014 regarding his request for removal of his DNA profile
3 from the DNA database.

4 "Number 7. During the commission of these crimes on
5 April 13, 2014 the victim Lerenda Simon physically resisted
6 the suspect and a struggle ensued. When Nathaniel Hunter was
7 interviewed by law enforcement on April 17th, 2014, he had a
8 cut on his forehead. Subsequently law enforcement
9 interviewed an acquaintance and a roommate of the suspect
10 Tanisha Taylor. She stated that on the date that these
11 offenses Nathaniel Hunter came home around 4:00 a.m. and that
12 she observed cuts on his head area.

13 "Number 8. On April 17th, 2014 Nathaniel A. Hunter
14 was arrested in this case and charged with the aforementioned
15 offenses.

16 "Number 9. In a letter from SLED dated April 17th,
17 2014, SLED notified the West Columbia Police Department that
18 an additional biological specimen from the defendant must be
19 submitted for court purposes. A buccal swab collected from
20 defendant should be sufficient for SLED to conduct additional
21 DNA testing and comparison analysis.

22 "I hereby affirm the aforementioned assertions of
23 fact are true and correct to the best of my knowledge."

24 Q. And does it contain your signature?

25 A. It does.

1 Q. All right. So after you were and the police
2 department was notified of the CODIS hit, was further
3 investigation done?

4 A. It was.

5 Q. And specifically was further investigation done to
6 include the suspect Nathaniel Hunter?

7 A. It was.

8 Q. Was he ultimately interviewed by law enforcement?

9 A. He was after his apprehension, yes, ma'am.

10 Q. And on April 17th of 2014 can you tell us whether or
11 not he had any physical injuries?

12 A. He did have cuts to his forehead area.

13 Q. Can you tell us whether or not based on the
14 information you know of the case, he had been, or the
15 perpetrator of the crime was involved in a struggle at the
16 scene with the adult victim?

17 A. That is correct.

18 Q. Did he provide an explanation for the cuts?

19 A. He stated that it was during a horseplay incident
20 between him and his, I believe, cousin slash girlfriend. I'm
21 unsure of their relationship.

22 Q. Roommate?

23 A. Roommate. During a play fight that they were
24 having.

25 Q. And what is her name?

1 A. Tanisha Taylor.

2 Q. Now was Tanisha Taylor questioned?

3 A. She was.

4 Q. Was she questioned specifically about the injury to
5 Mr. Hunter's forehead?

6 A. She was.

7 Q. What were her statements to law enforcement in that
8 regard?

9 A. Her explanation was that that morning she had seen
10 the cuts on his forehead. I believe her daughter had asked,
11 inquired about the cuts on his forehead. To prevent from
12 arousing any suspicion, I believe that's when Mr. Hunter told
13 the daughter it was from Tanisha and them fighting or playing
14 around and Tanisha said that she went along with that story
15 at that point to the daughter.

16 Q. In terms of her interview with law enforcement did
17 she state whether or not there had been a horseplay
18 incident?

19 A. She stated there never was one. That it was made
20 up.

21 Q. All right. And what time did she estimate he
22 returned back to their residence?

23 A. 4:00 a.m.

24 Q. On the night of the crime?

25 A. On the 13th, yes, ma'am.

1 Q. And what is the general area in which they
2 resided?

3 A. I believe they are in Richland County. I know the
4 Columbia area.

5 Q. Okay. And did she provide anymore information about
6 his activities upon arriving back to their residence at
7 approximately 4:00 a.m. on the night of the crime?

8 A. In her statement, I believe it was a recorded
9 statement, she states that he was in the bathroom. She knew
10 he was washing. Whether or not he was washing his hands or
11 clothes she didn't know, but he was up and about cleaning
12 something.

13 Q. Now, what type of ammunition was recovered from the
14 scene as well as recovered from the victim during surgery for
15 her gunshot wounds?

16 A. .40 caliber rounds.

17 Q. Can you tell us whether or not Tanisha Taylor, the
18 roommate was questioned as to whether Mr. Hunter possessed
19 any type of .40 caliber weapon or ammunition?

20 A. She was.

21 Q. What information did she give in that regard?

22 A. She stated to her knowledge that he at one time
23 possessed a Glock .40 caliber handgun.

24 Q. Now, in your affidavit it also mentions that
25 Mr. Hunter was in the process of contacting SLED on his own

1 prior to the CODIS hit. What was the purpose that he was
2 contacting the State Law Enforcement Division?

3 A. I believe he was contacting the Department of
4 Probation and Parol, a Crystal Owens in reference to remove
5 his DNA from the database system from CODIS.

6 Q. All right. And according to law enforcement's
7 investigation and the statement obtained from Ms. Owens of
8 probation and parole on what date did he originally contact
9 her?

10 A. The 16th.

11 Q. So that was the day before law enforcement became
12 aware of the CODIS hit?

13 A. Correct.

14 Q. Now, did the general physical description of the
15 alleged perpetrator, can you tell us what, if anything, was
16 significant about that and do you have any notes in that
17 regard?

18 A. I do have notes in that regard. At the hospital I
19 was speaking with Lerenda Simon asking the height and weight
20 of the suspect. She gave me the approximate height and
21 weight of five foot five, 150 pounds.

22 Q. All right. And you have had the opportunity to
23 observe Mr. Hunter yourself?

24 A. Yes, ma'am.

25 Q. Can you tell us what, if any, observations you have

1 made concerning her description and Mr. Hunter's general
2 physical appearance?

3 A. I would say as far as her assumption to the height
4 and weight of the suspect it matches his. It's consistent
5 with his height and weight.

6 Q. And can you tell us whether or not it was - whether
7 or not a race of the suspect was also provided initially?

8 A. She stated that it was a black male.

9 Q. Was Mr. Hunter interviewed?

10 A. He was.

11 Q. Did you take part in that interview?

12 A. I did.

13 Q. What, if any, statements did he make regarding this
14 offense in general, if you could summarize?

15 A. In general he denied having any knowledge of the
16 events themselves.

17 Q. Did he ever at any point during the interview
18 request a deal?

19 A. He made reference to a Gabbie Swainson case in
20 reference to deals that were made prior to that case being
21 solved. He was wanting to have a deal made something in
22 writing before he would tell us anything. That's what he
23 continued to harp on. He wouldn't say anything or go
24 anywhere with it until a deal was promised to him.

25 Q. Now, Gabbie Swainson, you're referring to a

1 completely unrelated homicide investigation that took place
2 in Richland County?

3 A. Correct.

4 MS. MAYES: That's all for this witness at this
5 time, Your Honor.

6 THE COURT: Cross examination.

7 CROSS EXAMINATION

8 BY MR. PHILLIPS:

9 Q. Hello, Mr. Griffin. How are you?

10 A. Well.

11 Q. All right. And who found this cap?

12 A. I believe Investigator Bramlett who is also present
13 in the courtroom is the one who collected it.

14 Q. All right. And do you know where he found it?

15 A. I'm uncertain. I believe it was either in the house
16 -- I think it was inside the hooded sweatshirt, I believe.

17 Q. Okay. And do you know where the hooded sweatshirt
18 was found?

19 A. I'm unsure.

20 Q. All right. Now, as far as who took the sample from
21 the hood, from the cap?

22 A. My understanding as far as the DNA sample itself?

23 Q. Mm-hmm.

24 A. Was taken by SLED.

25 Q. Okay. That the cap was sent to SLED?

1 A. Correct.

2 Q. Okay. As far as the injuries at this point you
3 don't know what caliber bullet was used based on the injuries
4 to the victim, do you?

5 A. On the shell casings we do, but the injuries
6 themselves no.

7 Q. Okay. And the shell casings were which caliber?

8 A. .40 caliber.

9 Q. Okay. Now, in one of her statements or at least
10 based on the investigator's notes she indicated that the
11 suspect was a light skinned black male?

12 A. I would have to look back through my notes on that.
13 If that's what she says in her statement or the notes, then
14 that would be correct.

15 Q. And as far as the statement given by Nathaniel
16 Hunter, that wasn't a written or audio statement, was it?

17 A. I don't believe so.

18 Q. Now, with the victim we had audio statement that she
19 had given, correct?

20 A. We had an audio statement while she was on the
21 stretcher in the hospital back in the emergency room. I
22 recorded that.

23 Q. Okay. Now, there is no other audio statement given
24 from her from a different time?

25 A. There may have been days from her being released

1 from the hospital.

2 Q. Okay. All right. So there is more than one audio
3 statement given by her?

4 A. I believe so.

5 Q. All right. So there is one given while she is at
6 the hospital. I have one that's much later.

7 A. Correct.

8 Q. Like several days later.

9 A. Correct. There is one from the actual her at the
10 hospital receiving treatment.

11 Q. All right. And you have the technology to record
12 statements?

13 A. Correct.

14 Q. So when you met with Nathaniel Hunter, why didn't
15 you record that conversation? Just didn't do it, right?

16 A. Sometimes we do. Sometimes we don't. It depends on
17 the, I guess, the ability --

18 Q. The severity of the case?

19 A. Not the severity of the case. But I'm trying to
20 think. The mind set of the victim or suspect, whether or not
21 they would -- Because, for instance --

22 Q. Say if a person is charged with attempted murder.

23 THE COURT: Well, hold on. Let him finish his
24 response.

25 MR. PHILLIPS: I'm sorry.

1 BY THE WITNESS:

2 A. For instance, someone who couldn't read we may
3 record that one because they may be better off us going over
4 their rights that way versus just them reading it and filling
5 out the forms themselves.

6 BY MR. PHILLIPS:

7 Q. Did the victim tell you she couldn't read?

8 A. No.

9 Q. All right. Did you ask Mr. Hunter whether he could
10 read?

11 A. We did. On the form it's asked if he could read.

12 Q. Could he read?

13 A. He could.

14 Q. And did you ask him if he could write?

15 A. I don't believe I asked him if he could write.

16 Q. So I guess going back, the bottom line is you just
17 didn't record it, right?

18 A. Correct.

19 Q. There's no rhyme or reason. You just didn't do it.

20 A. There's no rhyme or reason, no, sir.

21 Q. All right. Thank you. But you had the ability?

22 A. Correct.

23 Q. Okay. Now, the sole evidence in this case with your
24 affidavit, the sole evidence placing Nathaniel Hunter at the
25 scene of the crime is this alleged DNA profile taken from

1 that cap?

2 A. That is correct.

3 Q. I mean, that's it?

4 A. That's it, yes, sir.

5 Q. Okay. Because there's nothing else?

6 A. As far as putting --

7 Q. There's circumstantial evidence like you said --

8 A. Right.

9 Q. -- but the only evidence placing him at the scene of
10 the crime is this DNA evidence?

11 A. That's correct.

12 MR. PHILLIPS: Thank you.

13 THE COURT: Anything further of this witness?

14 MS. MAYES: Nothing from the state, Your Honor.

15 THE COURT: Okay. You may step down.

16 MR. PHILLIPS: I have no objection to excusing him.

17 THE COURT: You're free to go, if you need to.

18 MS. MAYES: Briefly, Your Honor, the state will call
19 Investigator Chuck Bramlett.

20 THE CLERK: Do you swear any testimony you may give
21 this Court is the truth, the whole truth, and nothing
22 but the truth?

23 MR. BRAMLETT: I do.

24 THE CLERK: Have a seat and state your name, please,
25 and spell your last name for the record.

1 THE WITNESS: My name is Charles D. Bramlett,
2 B-r-a-m-l-e-t-t, Junior.

3 DIRECT EXAMINATION

4 BY MS. MAYES:

5 Q. And Investigator Bramlett, what is your job
6 description at West Columbia Police Department.

7 A. I'm a crime scene investigator.

8 Q. And do you also work in connection with evidence?

9 A. I am. I do. I'm one of the two evidence
10 custodians.

11 Q. All right. And can you tell us whether or not you
12 were involved at the crime scene of this particular case
13 involving suspect Nathaniel Hunter?

14 A. I was.

15 Q. Okay. And can you tell us whether or not any
16 evidence was retrieved from the crime scene that were
17 clothing items?

18 A. Yes, there were.

19 Q. All right. And for what purpose were they retrieved
20 from the crime scene?

21 A. It was evidence that was left behind by the
22 suspect.

23 Q. All right. And what did those items include?

24 A. One of the items was a dark colored hoodie that was
25 found in the bathroom at the entrance door. Inside the

1 hoodie was a nylon cap. There was another piece of clothing
2 or cloth that was found outside the residence.

3 Q. All right. And were those items packaged there at
4 the scene in order to be submitted to the State Law
5 Enforcement Division?

6 A. Yes, they were.

7 Q. The cap that you described, can you tell us in
8 general what is your understanding of how that was left at
9 the scene?

10 A. When I found it, it was inside the hood section of
11 the hoodie. Being that it was inside the hoodie, it was
12 packaged together with the hoodie itself. It was not
13 separated. I felt that had I removed that, there is evidence
14 that can be destroyed, body cells, hair particles so since it
15 was together at the scene, it stayed together as a package.

16 Q. All right. And why were those items significant to
17 law enforcement? What information did you have at that point
18 about why they may be significant?

19 A. That's what the suspect was wearing, and it came off
20 of his person. We had no leads. That's just part of the
21 crime scene investigation is collecting the evidence. It was
22 evidence that was left behind.

23 Q. All right. And your understanding is that it came
24 off of the suspect's person in what manner?

25 A. It was pulled off during a struggle between the

1 victim and the suspect inside the residence that lead into
2 the bathroom and out of the bathroom and further on
3 outside.

4 MS. MAYES: Nothing further, Your Honor.

5 THE COURT: Cross.

6 CROSS EXAMINATION

7 BY MR. PHILLIPS:

8 Q. As far as the location of the hoodie where you found
9 it, where exactly was that?

10 A. It was in the bathroom on the floor at the entrance
11 of the door.

12 Q. All right. And you wrote a report in this case?

13 A. Yes, sir.

14 Q. Okay. And in that report, I'm just going to kind of
15 read out and you tell me what's true and what's not true.
16 All right. Let me get to a good starting point. It says
17 you're at the concrete flooring level of the second level.
18 You're explaining how the blood is as you describe it as you
19 walk through. You say originally at the breezeway entrance
20 to apartment D19 I observed a black nylon cloth, marker 2,
21 lying on the ground, however, the cloth was moved by the SLED
22 bloodhound tracking dog, and then that's before you get in.
23 Is that nylon cloth a different cloth?

24 A. Yes, sir.

25 Q. Okay. That cloth when you say the black nylon

1 cloth, because I know throughout discovery they describe the
2 skull cap as a black nylon cloth. There's more than one?

3 A. There was a piece -- There was a -- When I got
4 there, the apartment, at the end of the apartment is a
5 sliding glass door and then the breezeway to the left of the
6 end is the entrance. There was a cloth laying on the ground.
7 The tracking team from SLED showed up, was called to the
8 scene and when they brought the dog out and as typically they
9 would exercise the dog a little bit and when they started on
10 the scene, the dog grabbed that cloth that was in the yard
11 and when they realized that they were at the entrance of the
12 door and that's when they got that piece of cloth out of him.
13 He never went inside the house. So inside the house was
14 where the hoodie and the cap was.

15 Q. And that piece of cloth on the outside was
16 photographed outside of the house?

17 A. Yes, sir.

18 Q. And then this cloth that's inside the hoodie is
19 photographed and marked separately as well?

20 A. It's marked inside the house, yes, sir.

21 Q. All right. And photographed?

22 A. Yes, sir.

23 Q. Okay. So we are able to distinguish between the
24 two?

25 A. Yes, sir.

XXX

1 Q. They have a number marker for each one?

2 A. Yes, sir.

3 Q. Okay. Now, as far as establishing that the hoodie
4 was worn by the alleged perpetrator, did you show the hoodie
5 to the victim?

6 A. No, sir, I never did.

7 Q. Okay. And as far as you know you don't know if
8 anybody ever showed the hoodie to the victim?

9 A. Not to my knowledge. I don't know.

10 MR. PHILLIPS: No further questions, Your Honor.

11 THE COURT: Anything further of this witness?

12 MS. MAYES: No, sir, Your Honor.

13 THE COURT: Thank you, sir. Step down.

14 MS. MAYES: There are no additional witnesses, Your
15 Honor. I would add that the method that the state
16 intends to use for collection of the suspect's standards
17 will be a swab in the cheek area of Mr. Hunter. That is
18 known to be a safe and reliable method for obtaining DNA
19 samples and is not overly invasive and would not result
20 in any type of injury to Mr. Hunter.

21 THE COURT: All right. Mr. Phillips?

22 MR. PHILLIPS: Thank you, Your Honor. Reiterating
23 our previous objections before the Court, we still
24 believe that the first prong of the Baccus element, that
25 the probable cause to believe the suspect has committed

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1 a crime, has not been established.

2 Not only incorporating the previous objections that
3 were ruled on by Your Honor, in this case we had the
4 SLED person who testified regarding the CODIS hit,
5 however, that person was not the one who actually did
6 all the reliability steps to determine whether the CODIS
7 hit was actually proper. With that we believe the state
8 should have provided Theresa Hines as an essential
9 witness in this case and had we had the discovery that
10 was argued to in a prior motion we would have been able
11 to address that with that witness.

12 So one, probable cause couldn't have been
13 established because they didn't have the critical
14 witness from SLED. Two, we didn't have the proper, the
15 full discovery to attack that witness' credibility and
16 the veracity of the DNA evidence as well, Your Honor.

17 THE COURT: All right. Do you want to respond, Ms.
18 Mayes?

19 MS. MAYES: Your Honor, we do believe that the
20 criteria set forth in the case of State versus Baccus
21 has been met of probable cause to believe that Nathaniel
22 Hunter has committed the crime and a clear indication
23 that relevant material evidence will be found and the
24 method used to secure it is safe and reliable. The
25 testimony has been that the suspect was wearing a

1 hoodie. It was left behind at the crime scene during a
2 struggle. That hoodie contained a cap within it and was
3 submitted to the State Law Enforcement Division and is a
4 CODIS hit to Nathaniel Hunter.

5 THE COURT: All right. I think that based on
6 everything that has been testified to and shared with
7 the Court I think the state has met their burden and I
8 am going to order the buccal swab to be taken. Anything
9 further?

10 MS. MAYES: Your Honor, I do have a copy of the
11 order or the proposed order that I would go ahead and
12 submit to Your Honor at this time. Also as to
13 Mr. Phillips' discovery request, we're going to be in
14 contact with Lieutenant Taylor about exactly what items
15 they do have and will be able to provide and we expect
16 those items to be available within the next 30 days.

17 After they are provided, if there are any
18 additional items that Mr. Phillips determines he may
19 need, we can revisit that matter with the court. We'll
20 certainly be glad to revisit it at a later date. But I
21 do want to state on the record that based on what SLED
22 is telling me they are not going to be able to provide
23 everything except for in that discovery request. I'm
24 not sure if the Court actually got a copy of the
25 discovery request, but it included 31 items that covered

1 a period of up to one or two years for purposes of
2 quality assurance data that relates to all types of
3 information that they may have in the lab that's
4 unrelated to this case.

5 THE COURT: Mr. Phillips.

6 MR. PHILLIPS: Thank you, Your Honor. Just I guess
7 a matter of housekeeping while we are here so we don't
8 have to deal with it later. We also currently have
9 asked for the affidavit of the search warrants on page
10 115, a report showing the reason that Michael Thomas,
11 Detavian Smith, were compared as latent prints from the
12 crime scene of AFIS, all of the Lexington County
13 Sheriff's Department, Richland County Sheriff's
14 Department investigators' notes, Richland County
15 Sheriff's Department K-9 report from the traffic stop,
16 in addition to the DNA evidence, the cell tower
17 information regarding GPS. I believe looking through
18 the discovery I noticed that there is possibly a video
19 from the Kangaroo store that one of the investigators
20 have found, and then one obviously -- I have one audio
21 statement provided from the victim. There is testimony
22 that was given today that there's two audio statements
23 that was provided to law enforcement. I only have one
24 of them, Your Honor. Thank you.

25 MS. MAYES: What I'm going to ask Investigator

1 Griffin to do is follow up on these matters within the
2 next 14 days and we'll go ahead and provide supplemental
3 discovery and if there are some items that we need to
4 revisit at a later date, we can do that, come back and
5 have this matter heard further for purposes of
6 discovery. I feel like the majority of that they're
7 going to have with the exception possibly of the
8 Richland County investigators' notes. I'm not sure what
9 involvement they had in this case, but Investigator
10 Griffin is going to look into it and we'll know.

11 THE COURT: All right. Okay. Wonderful.

12 MS. MAYES: Thank you, Your Honor.

13 MR. PHILLIPS: Thank you, Your Honor.

14 (Whereupon, the hearing was concluded.)
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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

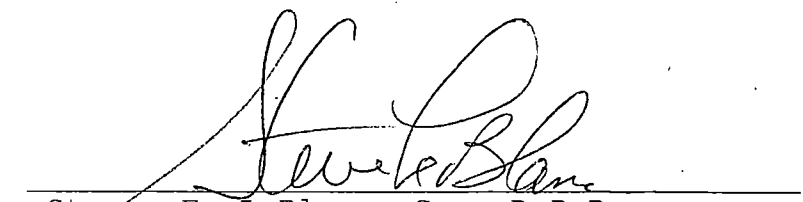
(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of General Sessions in and for the State of South Carolina on the 2nd day of December, 2014.

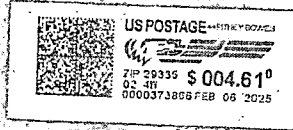
I FURTHER CERTIFY that the forgoing 59 pages constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 29th day of December, 2014.


Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

Nathaniel A. Hester #372378
Tiger River Correctional Institution - U2-120
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Enoree, SC 29335



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The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

