

VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable Heath P. Taylor, Circuit Court Judge

JAMAR A. HUGGINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-002167

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2013-GS-26-1076, 1077 and 1078

The State,)
)
Plaintiff,) Transcript of Record
)
vs.) September 15-17, 2014
)
Jamar Antonio Huggins,)
)
Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Donna Elder, Esquire
Attorney for Plaintiff

John Reuben Long, III, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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Motions

4

1 (On the record, September 15, 2014. The following takes
2 place outside the presence of the jury panel.)

3 THE COURT: What we got?

4 MS. ELDER: Your Honor, it's -- Mr. Long had filed two
5 pretrial motions, and I believe we have resolved those. One
6 was to exclude the testimony of the victim in this case. It's
7 my understanding that Mr. Long is going to withdraw that
8 motion at this point.

9 MR. LONG: That's correct, Your Honor.

10 THE COURT: Okay. So that's withdrawn?

11 MR. LONG: Yes, sir.

12 MS. ELDER: And the second motion was for sequestration
13 of the witnesses. I've informed Mr. Long that the Co-
14 Defendant in this case is currently incarcerated at the
15 Department of Corrections, that she'll be in lockup for the
16 duration of the trial except for her testimony.

17 THE COURT: Okay.

18 MS. ELDER: So I don't plan to have her in the courtroom
19 at any point in time, and the -- he has agreed to a limited
20 sequestration of his family members. The State's in agreement
21 to that as well so that they will not be present -- they will
22 be present for the State's presentation, but they will be
23 sequestered for the Defense's presentation until their
24 testimony.

25 THE COURT: Okay.

Motions

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1 MR. LONG: That is correct.

2 THE COURT: Can we go, can you give me their names or --

3 MR. LONG: Yes, sir.

4 THE COURT: Okay.

5 MR. LONG: It will be -- it's going to be Willie Dean
6 Whaley.

7 THE COURT: Willie.

8 MR. LONG: Dean W-H-A-L-E-Y.

9 THE COURT: Okay.

10 MR. LONG: And Rontisha, R-O-N-T-I-S-H-A, Huggins.

11 THE COURT: So there's no sequestration except Willie
12 Dean Whaley and Rontisha Huggins will be sequestered if and
13 when the Defense presents a case?

14 MR. LONG: That's correct.

15 THE COURT: Is that correct?

16 MS. ELDER: That is correct, Your Honor.

17 THE COURT: Okay.

18 MS. ELDER: And that would take up all the pretrial
19 matters that I'm aware of.

20 MR. LONG: Yes, sir.

21 THE COURT: All right. So nothing else. We've got the
22 jury coming in at 2:15. So we've got a little while. Do you
23 all have a witness list or a proposed?

24 MS. ELDER: I put it up on the bench, Your Honor.

25 THE COURT: Probably something I stuck over -- yeah.

1 Okay. Jonathan Martin -- oh, gosh, Montgomery, how do you
2 pronounce that?

3 MS. ELDER: Deaungela.

4 MR. LONG: Deaungela.

5 THE COURT: Deaungela Montgomery, Angela Eckler, Mariah
6 Eckler, Frederick Rash and Tyjuan McKiethan; is that correct?

7 MS. ELDER: I call it -- pronounce it Tyjuan, but I don't
8 know if that's --

9 THE COURT: Tyjuan.

10 MR. LONG: I think it's Tyjuan.

11 MS. ELDER: Tyjuan.

12 THE COURT: Tyjuan McKiethan?

13 MS. ELDER: Yes, sir.

14 THE COURT: Okay. (Ms. Elder and Mr. Long confer.)

15 THE COURT: All right. Anything else?

16 MR. LONG: No, sir.

17 MS. ELDER: No, sir.

18 THE COURT: All right. When the jury gets back I guess
19 just go ahead and bring them up and we'll get started with
20 jury selection then.

21 Now, do we want to go through jury selection, get a jury
22 empanelled and then cut them loose and start first thing
23 tomorrow morning or do we want to do any opening charges or --
24 just start everything tomorrow?

25 MS. ELDER: I would prefer that because I have told my

Motions

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1 victim -- she's working.

2 THE COURT: That's fine.

3 MS. ELDER: So I told her not to come till tomorrow. I'm
4 trying not to get her to take too many days off, Your Honor.

5 THE COURT: Okay. That'll be fine. All right. Well,
6 we'll go ahead and we'll get the jury. Once we get the jury
7 empanelled, we'll swear them today or swear them tomorrow
8 morning?

9 MS. ELDER: I would ask to swear them tomorrow morning,
10 Your Honor.

11 THE COURT: Any objection?

12 MR. LONG: No, sir.

13 THE COURT: Okay. We'll do that.

14 All right. Sounds good. They've got about five more
15 minutes before they have to be here, and I don't know how long
16 it'll take them to get them up from the jury panel room, but
17 if you could go ahead and just let them know when we get the
18 whole panel here to go ahead and bring them up for this trial.
19 Okay. All right.

20 MR. LONG: Thank you.

21 THE COURT: Sounds good.

22 MS. ELDER: Thank you, Judge.

23 THE COURT: Thank you.

24 ***** OFF THE RECORD *****

25 (On the record. The following takes place in the presence of

Voir Dire

8

1 the jury panel.)

2 THE COURT: All right. Ladies and gentlemen, we are
3 getting ready to start the trial of the case of the State of
4 South Carolina versus Jamar Antonio Huggins, and Mr. Huggins
5 has been indicted by the Grand Jury for burglary in the first
6 degree, kidnapping and armed robbery. I'll explain in more
7 detail things about the allegations against him in a minute,
8 but right now before we begin the jury selection process, I
9 have a series of question to go over with you which is
10 commonly referred to as voir dire questioning. This is to
11 determine -- you've been qualified to serve as jurors for this
12 week of court, but these are to determine whether or not you
13 are qualified to serve as jurors on this particular case, and
14 it also gives the attorneys some additional information that
15 assists them in the jury selection process. So just like the
16 jury qualifications, jurors and witnesses, jurors are
17 constantly taking oaths. So if I could please get the panel
18 to stand and raise your right hand.

19 (Jury panel is sworn by Court.)

20 THE COURT: Thank you very much. Please be seated.

21 All right. Is there any member of the jury panel that
22 did not respond to the oath by saying I do? If so, please
23 stand.

24 (No response.)

25 THE COURT: All right. Can everybody hear me all right?

Voir Dire

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1 All right.

2 Please listen up as I go over these questions, and if any
3 of them are applicable to you, please respond when I direct
4 you to do so.

5 Now, the indictments in this case charge Mr. Huggins, as
6 I said, with armed robbery, kidnapping and burglary in the
7 first degree, the allegations being that on or about December
8 the 20th of 2012 that Mr. Huggins kidnapped, armed -- robbed,
9 while armed with a deadly weapon and burglarized a -- I'm
10 looking for the -- a Ms. Angela Eckler. Where did this
11 allegedly occur, what area of Horry County?

12 MS. ELDER: The Conway Section of Horry County, Your
13 Honor.

14 THE COURT: In the Conway Section of Horry County.

15 MS. ELDER: Correct.

16 THE COURT: Now, is there any member of the jury panel
17 that has heard anything, read anything, discussed anything or
18 knows anything about this case? If so, please stand.

19 (No response.)

20 THE COURT: All right. The Defendant in this case is
21 Jamar Antonio Huggins, and the victim or alleged victim in
22 this case is Angela Eckler, E-C-K-L-E-R. Is there any member
23 of the jury panel related by blood or marriage, have a close
24 personal relationship, business relationship, social
25 relationship or any other type of relationship with either the

Voir Dire

10

1 Defendant or the alleged victim in this case? If so, please
2 stand.

3 (No response.)

4 THE COURT: Yes, sir.

5 MR. LONG: Your Honor, if I may, at the time of the
6 incident Ms. Eckler's last name was Dillon.

7 THE COURT: Dillon, okay. So at the time this allegedly
8 occurred her name was Angela Dillon; is that correct?

9 MR. LONG: Yes, sir.

10 THE COURT: All right. Does that -- does anybody know
11 Ms. Dillon or have any type of relationship with Ms. Dillon?
12 If so, please stand.

13 (No response.)

14 THE COURT: All right. Please listen up as these are the
15 potential witnesses who may testify in this case: Detective
16 Jonathan Martin, Deaungelo Montgomery, Angela Eckler, Mariah
17 or Mariah Eckler, Officer Frederick Rash and Tyjuan McKiethan.
18 Is there any member of the jury panel related by blood or
19 marriage, have a close personal relationship, business
20 relationship, social relationship or any other type of
21 relationship with any of these potential witnesses? If so,
22 please stand.

23 (No response.)

24 THE COURT: All right. Ms. Donna Elder, with the 15th
25 Circuit Solicitor's Office, is prosecuting this case on behalf

Voir Dire

11

1 of the State. Attorney John R. Long is the attorney for the
2 Defendant. What office are you with, Mr. Long?

3 MR. LONG: Thompson and Henry, Your Honor.

4 THE COURT: Thompson and Henry Law Firm here in Conway,
5 South Carolina.

6 Is there any member of the jury panel related by blood or
7 marriage, have a close personal relationship, business
8 relationship, social relationship or any type of relationship
9 with either Ms. Elder or Mr. Long? If so, please stand.

10 (No response.)

11 THE COURT: Has any member of the jury panel ever been
12 represented by either of these attorneys? If so, please
13 stand.

14 (No response.)

15 THE COURT: Has any member of the jury panel ever been
16 involved in any legal action in which either of these
17 attorneys represented another party to that action? If so,
18 please stand.

19 (No response.)

20 THE COURT: Has any member of the jury panel either
21 personally, have a family member or close personal friend
22 employed with the 15th Circuit Solicitor's Office or the
23 Thompson and Henry Law Firm? If so, please stand.

24 Yes, ma'am, you name and number?

25 MS. HARDEE: Barbara Hardee, 194.

Voir Dire

12

1 THE COURT: All right. Ms. Hardee, is this personally or
2 a family member or close personal friend?

3 MS. HARDEE: Family member.

4 THE COURT: Okay. What is the relationship?

5 MS. HARDEE: She is my sister-in-law.

6 THE COURT: Okay. And she is employed where?

7 MS. HARDEE: The Solicitor's Office.

8 THE COURT: Okay. And what is her name?

9 MS. HARDEE: Wanda Collins.

10 THE COURT: Wanda Collins. Do you know what Ms. Collins
11 does for the Solicitor's Office?

12 MS. ELDER: Yes, sir, Your Honor. She is the person that
13 sits up at the front door, the front window and greets people
14 and answers the general line for our office.

15 THE COURT: Okay. Other than that, does she have any
16 involvement in this case?

17 MS. ELDER: Absolutely none, Your Honor.

18 THE COURT: Okay. All right. Ms. Hardee, would your
19 sister-in-law's employment affect your ability to give both
20 the Defendant and the State in this case a fair and impartial
21 trial?

22 MS. HARDEE: No.

23 THE COURT: Okay. Would you be able to disregard your
24 sister-in-law's employment in its entirety and base your
25 decision in this case exclusively on the testimony and

Voir Dire

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1 evidence in this case?

2 MS. HARDEE: Yes, sir.

3 THE COURT: All right. Thank you, Ms. Hardee, for
4 bringing that to our attention.

5 Anyone else who either personally, has a family member or
6 close personal friend employed with the 15th Circuit
7 Solicitor's Office or the law firm of Thompson and Henry? If
8 so, please stand.

9 (No response.)

10 THE COURT: I neglected to mention that two other
11 possible witnesses in this case are Willie Whaley and Rontisha
12 Huggins. Is there any member of the jury panel related by
13 blood or marriage, have a close personal relationship,
14 business relationship, social relationship or any other type
15 of relationship with either Willie Whaley or Rontisha Huggins?
16 If so, please stand.

17 (No response.)

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

21 (No response.)

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

25 (No response.)

Voir Dire

14

1 THE COURT: Is there any member of the jury panel that
2 was a member of the Grand Jury that issued any of the
3 indictments in this case? If so please stand.

4 (No response.)

5 THE COURT: Is there any member of the jury panel who is
6 a member of or a contributor to any group which has as its
7 primary concern the promotion of law enforcement or victims'
8 rights. Now, some of these organizations are Mothers Against
9 Drunk Drivers, commonly referred to as MADD; Students Against
10 Drunk Drivers, commonly referred to as SADD; CASA, also known
11 as Citizens Against Spousal Abuse; and CAVE, Citizens Against
12 Violent Crime or any similar type organization. Is there any
13 member of the jury panel that is a member of or contributor to
14 such organizations?

15 (No response.)

16 THE COURT: Does any member of the jury panel know of any
17 reason whatsoever why he or she should not serve as a juror in
18 this case, with particular emphasis being placed on your
19 ability to be fair and impartial to both the State of South
20 Carolina and the Defendant? If so, please stand.

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

22 MS. BRADLEY: Kanesha Bradley, Number 48.

23 THE COURT: All right. Hold for one second.

24 THE COURT: Kanesha S. Bradley?

25 MS. BRADLEY: Yeah.

Voir Dire

15

1 THE COURT: All right. Ms. Bradley, if you'd come
2 forward, please.

3 (Whereupon, an off-the-record bench conference is held
4 with Juror Number 48, attorney for the State and attorney for
5 the Defendant.)

6 THE COURT: All right. I'm going to excuse Ms. Bradley,
7 Juror Number 48, from this particular case, but stay with us
8 -- Ms. Bradley, just stay with us right now, but thank you.

9 Anyone else know of any reason whatsoever why he or she
10 should not serve as a juror in this case, with particular
11 emphasis being placed on your ability to be fair and impartial
12 to both the State and the Defendant? If so, please stand.

13 (No response.)

14 THE COURT: All right. Any additional questioning from
15 the State?

16 MS. ELDER: No, sir, Your Honor.

17 THE COURT: Any from the Defense?

18 MR. LONG: One, Your Honor. If we may approach?

19 THE COURT: All right. Come on up.

20 (Whereupon, a bench conference is held in the presence
21 but out of the hearing of the jury panel.)

22 THE COURT: Has any member of the jury panel either
23 personally, had a family member or close personal friend that
24 has been the victim of a violent crime? If so please stand.

25 Yes, ma'am. Your name and number?

1 MS. OWENS: 345, Glenda Owens.

2 THE COURT: All right. Ms. Owens, if I could get you to
3 come forward, please.

4 (Whereupon, an off-the-record bench conference is held
5 with Juror Number 345, attorney for the State and attorney for
6 the Defendant.)

7 THE COURT: All right. I'm going to excuse Juror 345.

8 Yes, ma'am, your name and number?

9 MS. ROBINSON: Annette Robinson, Number 391.

10 THE COURT: All right. Ms. Robinson, if you'd come
11 forward, please.

12 (Whereupon, an off-the-record bench conference is held
13 with Juror Number 391, attorney for the State and attorney for
14 the Defendant.)

15 THE COURT: All right. I'm going to excuse Juror 391.

16 All right. Anyone else who either personally, has a
17 family member or close personal friend who was the victim of a
18 violent crime? If so, please stand.

19 (No response.)

20 THE COURT: All right. Any additional questioning from
21 the Defense?

22 MR. LONG: No, Your Honor.

23 THE COURT: All right. Anything further from the
24 State?

25 MS. ELDER: No, sir.

Voir Dire

17

1 THE COURT: All right. Ladies and gentlemen, if you
2 would please listen carefully. The way the selection process
3 works in General Sessions Court is if your name is called you
4 will need to come forward between the two tables here, come
5 almost to the podium, stand and turn and face the attorneys,
6 and the State's attorney is going to look at you and then look
7 at her notes a while and then look back at you and look at her
8 notes a while and decide whether she wants you in this case,
9 and if she wants you then the Defendant's attorney is going to
10 look at you a little while and look at his notes and then look
11 back at you a while and decide if he wants you in this case,
12 and we go through this process until we select our 12 jurors.
13 Now, let's select 12 jurors and one alternate. Is that
14 sufficient?

15 MS. ELDER: Yes, sir.

16 THE COURT: Okay. And we'll do -- follow that process
17 until we get a jury of 12 and an alternate in this case. So
18 if your name is called, please come forward, bring with you
19 any coats, umbrellas, pocketbooks, whatever you might have,
20 face the attorneys, and you'll get further directions from the
21 bailiff.

22 This is a --

23 MS. ELDER: It's five and ten, Your Honor.

24 THE COURT: -- five and ten.

25 MS. ELDER: Yes, sir.

Jury Selection

18

1 THE COURT: That's what I was thinking.

2 THE CLERK: Okay. Juror 212, Karen Holland. What say
3 the State?

4 MS. ELDER: Please present this juror.

5 THE CLERK: Defense?

6 MR. LONG: Please swear the juror.

7 THE CLERK: Please have a seat in the jury box, ma'am.
8 Thank you.

9 Juror 306, Delbert McFadden. What say the State? Note
10 the part that the Judge was saying.

11 MS. ELDER: Please present this juror.

12 THE CLERK: Defense?

13 MR. LONG: Please seat the juror.

14 THE CLERK: Please have a seat in the jury box.

15 Juror 326, Michael Mount. What say the State?

16 MS. ELDER: Please excuse the juror from this case.

17 THE CLERK: Okay. Please have a seat back, sir. Thank
18 you. Juror 183, Brent Gray. What say the State?

19 MS. ELDER: Please present this juror.

20 THE CLERK: Defense?

21 MR. LONG: Please swear the juror.

22 THE CLERK: Please have a seat in the jury box.

23 Juror 14, Joanne Bailes. What say the State?

24 MS. ELDER: Please present this juror.

25 THE CLERK: Defense?

Jury Selection

19

1 MR. LONG: Please excuse the juror.

2 THE CLERK: Okay. You can just have a seat. Thank you.

3 Juror 442, Angela Talotta. Have I said that right?

4 MS. TALOTTA: Yes, ma'am.

5 THE CLERK: Well, good. What say the State?

6 MS. ELDER: Please present this juror.

7 THE CLERK: Defense?

8 MR. LONG: Please seat the juror.

9 THE CLERK: Please have a seat in the jury box.

10 Juror 419, Elishia Simmons. Or is that Elishia?

11 MS. SIMMONS: It's Elishia.

12 THE CLERK: Okay. I'm sorry. What say the State?

13 MS. ELDER: Please excuse the juror from this case.

14 THE CLERK: You can have a seat back, ma'am. Just go
15 ahead and have a seat. Juror 303, William McCann.

16 MR. MCCANN: There's no A in it like --

17 THE CLERK: Okay.

18 MR. MCCANN: I, I should say. It's not McCain. It's
19 McCann.

20 THE CLERK: Okay. I'm sorry. What say the State?

21 MR. MCCANN: McCann.

22 MS. ELDER: Please present this juror.

23 THE CLERK: Defense?

24 MR. LONG: Swear the juror.

25 THE CLERK: Please have a seat in the jury box, sir.

Jury Selection

20

1 Thank you. Juror 217, Bradley Hooks. What say the State?
2 MS. ELDER: Please present this juror.
3 THE CLERK: Defense?
4 MR. LONG: Please excuse the juror.
5 THE CLERK: Please have a seat, sir. Thank you.
6 Juror 294, Jeanne Martin. What say the State?
7 MS. ELDER: Please present this juror.
8 THE CLERK: Defense?
9 MR. LONG: Please excuse the juror.
10 THE CLERK: Okay. You can have a seat back. Thank you.
11 Juror 82, Gary Clark. What say the State?
12 MS. ELDER: Please present this juror.
13 THE CLERK: Defense?
14 MR. LONG: Swear the juror.
15 THE CLERK: Please have a seat in the jury box, sir.
16 Thank you. Juror 127, Gloria Doran.
17 MS. DORAN: Yes.
18 THE CLERK: What say the State?
19 MS. ELDER: Your Honor, may we inquire as to her
20 occupation prior to retirement?
21 THE COURT: Ms. Doran, where did you work before you
22 retired?
23 MS. DORAN: I was a beauty instructor.
24 THE COURT: All right.
25 MS. DORAN: At a beauty school.

Jury Selection

21

1 THE COURT: Thank you.

2 MS. ELDER: Thank you, Your Honor. Please present this
3 juror.

4 THE CLERK: Defense?

5 MR. LONG: Please excuse the juror.

6 THE CLERK: Okay. Please have a seat back. Thank you.

7 Juror 313, Sondra McNelis. What say the State?

8 MS. ELDER: Your Honor, please present this juror.

9 THE COURT: All right.

10 THE CLERK: Defense?

11 MR. LONG: If I may ask what she's retired, where you're
12 retired from?

13 MS. MCNELIS: Homemaker.

14 MR. LONG: Please seat the juror.

15 THE CLERK: Please have a seat in the jury box, ma'am.

16 Thank you. Juror 113, Albert Dennison. What say the State?

17 MS. ELDER: Your Honor, please excuse the juror from this
18 case.

19 THE CLERK: Please have a seat, sir. Thank you.

20 Juror 172, Janet Glover. What say the State?

21 MS. ELDER: Please present this juror.

22 THE CLERK: Defense?

23 MR. LONG: Swear the juror.

24 THE CLERK: Please have a seat in the jury box, ma'am.

25 Thank you. Juror 98, Robin Crosland. What say the State?

Jury Selection

22

1 MS. ELDER: Please present this juror.
2 THE CLERK: Defense?
3 MR. LONG: Please excuse the juror.
4 THE CLERK: Please have a seat back. Thank you.
5 Juror 220, Timothy Huber. What say the State?
6 MS. ELDER: Please present this juror.
7 THE CLERK: Defense?
8 MR. LONG: Please swear the juror.
9 THE CLERK: Please have a seat in the jury box. Thank
10 you. Juror 196, Lesta Hardee.
11 MS. ELDER: I'm sorry. What number?
12 THE CLERK: 196. What say the State?
13 MS. ELDER: Please present this juror.
14 THE CLERK: Defense?
15 MR. LONG: Please excuse the juror.
16 THE CLERK: Please have a seat back. Thank you so much.
17 Juror 151, Tracy Floyd. What say the State?
18 MS. ELDER: Please excuse the juror from this case.
19 THE CLERK: Please have a seat back. Thank you.
20 Juror 415, Linda Shiflett.
21 MS. SHIFLETT: Correct.
22 THE CLERK: Thank you. What say the State?
23 MS. ELDER: Please present this juror.
24 THE CLERK: Defense?
25 MR. LONG: Please swear the juror.

Jury Selection

23

1 THE CLERK: Please have a seat in the jury box. Thank
2 you. Juror 493, Andrew Wyeth.
3 MR. WYETH: Yes, ma'am.
4 THE CLERK: What say the State?
5 MS. ELDER: Please excuse the juror from this case.
6 THE CLERK: Please have a seat back. Thank you.
7 Juror 175, Donnie Goodall, Goodall. What say the State?
8 MS. ELDER: Please present this juror.
9 THE CLERK: Defense?
10 MR. LONG: Swear the juror.
11 THE CLERK: Please have a seat in the jury box. Thank
12 you.
13 Juror 452, Peggy Turnes.
14 MS. TURNES: Turnes.
15 THE CLERK: What say the State?
16 MS. ELDER: Please present this juror.
17 THE CLERK: Defense?
18 MR. LONG: Swear the juror.
19 THE CLERK: Please have a seat in the jury box.
20 THE COURT: All right. We'll select one alternate. The
21 State gets one strike. The Defense gets two.
22 THE CLERK: Juror 57, Mark Lee Brooks. What say the
23 State?
24 MS. ELDER: Please present this juror.
25 THE CLERK: Defense?

Jury Selection

24

1 MR. LONG: Please seat the juror.

2 THE CLERK: Please have a seat.

3 THE COURT: All right. Ladies and gentlemen, you'll be
4 the jury that will preside over this first case. I'm going to
5 excuse you back to the jury room for just a few minutes while
6 I take up some matters with the attorneys and I release the
7 jury panel in this case. So it'll give you an opportunity to
8 see the jury room, where you'll be when we take breaks. It'll
9 give you an opportunity to stretch your legs or whatever the
10 case may be. I don't think it'll be too long a break, but I'm
11 going to excuse you back to the jury room for just a few
12 minutes. Thank you very much.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. Any challenges to the selection
16 or composition of the jury by the State?

17 MS. ELDER: No, sir, Your Honor.

18 THE COURT: Any by the Defense?

19 MR. LONG: No, Your Honor.

20 THE COURT: All right.

21 (Remaining jury panel excused with call-back
22 instructions.)

23 THE COURT: All right. Anything further in this case
24 before I cut the jury loose until tomorrow?

25 MS. ELDER: No, sir.

Jury Selection

25

1 THE COURT: All right. Anything further from the
2 Defense?

3 MR. LONG: No, Your Honor.

4 THE COURT: All right. I guess -- what time do you all
5 want to get started tomorrow morning?

6 MS. ELDER: Nine is fine with me, Your Honor, nine or
7 9:30. Wait, you've got to drive. Excuse me. You may like
8 9:30 better than --

9 THE COURT: Well, no. Well, let's, let's do this. Let
10 me get the -- I'll have the jury back in at nine, and I'll try
11 to take the bench as soon after 9:15 as I can. They get them
12 in at nine, that'll give them an opportunity to get a cup of
13 coffee or a doughnut or something of that nature, and I'll try
14 to take the bench as soon after 9:15 as I can. Okay?

15 MR. LONG: Sounds good.

16 THE COURT: All right. Let's go ahead and bring the jury
17 back in.

18 (Whereupon, the following takes place in the presence of
19 the jury.)

20 THE COURT: All right. Ladies and gentlemen, welcome
21 back. You can be seated.

22 As I said earlier, we're getting ready to start the trial
23 of the case of the State of South Carolina versus Jamar
24 Antonio Huggins, but scheduling this with the attorneys, we
25 will not start the trial of the case until tomorrow morning.

Jury Selection

26

1 We won't be starting it this afternoon. So I'm going to
2 excuse you for the remainder of the day, but I'm going to ask
3 that you please be back in the jury panel room downstairs
4 tomorrow morning at 9:00 o'clock, and we'll try to get started
5 as soon after that as we can. They'll have some coffee for
6 you, maybe a biscuit or a doughnut or something of that nature
7 when you get back. So we'll try to get started as soon after
8 9:00 o'clock as we can.

9 Now, when you get back tomorrow morning, if you could do
10 me a favor, and that would be, number one, to select a
11 foreperson for this jury. I understand that you may not know
12 everyone, and if you cannot select a foreperson, don't worry
13 about it. I can appoint someone to serve as foreperson. Many
14 judges select their own foreperson. I like to give the jury
15 the opportunity to select one on their own if they're able to
16 do so.

17 Now, the foreperson has absolutely no more authority, no
18 more importance, no more influence than any other juror. The
19 function of the foreperson is to act as a liaison between the
20 Court and the jury. If the jury has a need, the foreperson
21 lets the Court know. If the jury has a question, the
22 foreperson lets the Court know. When it's time to deliberate
23 the foreperson will preside over the deliberations, but other
24 than that, the foreperson has no more influence, importance or
25 authority than any other juror. The only restriction would be

Jury Selection

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1 that Mr. Brooks, as the alternate, you would not be eligible
2 to serve as foreperson because you are an alternate at this
3 point in time. So any of the rest of you can serve as
4 foreperson, and if you can select a foreperson, just write his
5 or her name on a sheet of paper, put the jury number, give it
6 to the bailiff and we'll bring you back into the court at that
7 time.

8 Now, when you come back in the courtroom the foreperson
9 will always occupy the first seat on this front row closest to
10 the witness stand. Mr. Brooks, as alternate, you would always
11 occupy the seat where you now sit unless you become a member
12 of the regular jury. The remainder of you can sit in whatever
13 seat you like. If you want to sit in the same seat throughout
14 the trial of the case, you can do that. If you want to
15 alternate seats during the trial of the case, you can do that.
16 The only restrictions that we have is that the foreperson
17 occupies the first seat, and the alternate always occupies the
18 alternate seat.

19 I'm going to release you for the remainder of the day.
20 You don't have to -- you can think overnight who you want to
21 select as foreperson. So I hope everybody has a good evening.
22 I ask you please do not discuss this case even among
23 yourselves at this point in time. It's too early for
24 deliberations. Don't conduct any independent investigations.
25 Don't go looking in the newspaper. Don't go on the internet.

1 Don't try to find out anything about this case. Everything
2 you need to make a decision in this case will be presented to
3 you during the trial of this case, and you're not to be
4 influenced by any outside source. So don't conduct any
5 independent investigations into this matter.

6 I'm going to excuse you for the remainder of the day, and
7 I look forward to seeing you back tomorrow morning. Thank you
8 very much.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Anything from the State before we
12 recess?

13 MS. ELDER: Your Honor, the only thing I would have is
14 that the Defendant is out on bond. Since we picked a jury if
15 you want to go over --

16 THE COURT: Well ---

17 MS. ELDER: -- instructions regarding him staying out.
18 If he's going to stay out I assume Your Honor is going to --
19 I'm sure the Defense wants him to stay out.

20 THE COURT: I'm going to --

21 MS. ELDER: About not showing up and things like that,
22 it'll go forward.

23 THE COURT: Right. And I, I kind of take the position
24 since the jury has not been sworn I think he's still on bond,
25 and that it doesn't really, jeopardy or anything doesn't

State v. Huggins

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1 attach until we swear the jury. So he's still on bond. So I
2 will let him go this evening, but, Mr. Huggins, I need to let
3 you know that if you do not appear back tomorrow morning the
4 trial will go forward in your absence, and a bench warrant
5 will be issued for your arrest. Okay? Plus whoever went your
6 bond -- what kind of -- is he out on bond? What kind of bond?

7 MR. LONG: It's, it's a property bond, put up property.

8 THE COURT: Okay. All right. So you're still subject to
9 the terms of that bond, and that bond can be estreated if you
10 do not appear at 9:00 o'clock tomorrow morning, okay, or
11 whatever time do you want him back here tomorrow morning?

12 MS. ELDER: It's up to John.

13 MR. LONG: I'll have him -- he'll be here by nine.

14 THE COURT: Okay. All right. All right. Thank you very
15 much. Anything further from the State?

16 MS. ELDER: No, Your Honor.

17 THE COURT: All right. Anything from the Defense?

18 MR. LONG: No, Your Honor. Thank you.

19 THE COURT: All right. We'll stand in recess.

20 ***** OFF THE RECORD *****

21 (On the record, September 16, 2014. The following takes place
22 outside the presence of the jury.)

23 THE COURT: All right. The officer has given me a note.
24 It says Juror Number 82, Gary Clark, is the foreperson.
25 That's who they've selected as the foreperson.

1 All right. Anything from the State before we bring the
2 jury in?

3 MS. ELDER: Yes, sir, Your Honor. As we discussed back
4 in chambers, the State has made a motion to amend 2013-GS-26-
5 1076. That is a true-bill indictment for burglary first
6 degree. The State would ask to amend to include an additional
7 element into the already existing elements in burglary first
8 and that would be to include the nighttime. The Defense has
9 been on notice that this is a nighttime burglary, Your Honor.
10 The allegations and elements contained in the indictment right
11 now include the deadly weapon, the causing of physical injury
12 to a non-participant in the crime, and the State would ask to
13 include and/or the it occurred during the nighttime.

14 THE COURT: All right. Mr. Long, what's the Defendant's
15 position?

16 MR. LONG: Your Honor, the indictment was prepared over a
17 year and a half ago. The State's had plenty of time to, to
18 make those adjustments. Up until a few minutes before court
19 is a little too late.

20 THE COURT: All right. Well, I guess the question is is
21 the Defendant's defense, if it presented a defense, or is the
22 preparation of its case been that this occurred during the
23 daytime or is there a lack of notice as to any of the
24 allegations of this allegedly occurring at night?

25 MR. LONG: No, sir.

Motions

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1 THE COURT: Okay. Is the -- has the trial preparation
2 been geared exclusively on this being a burglary involving a
3 handgun or does it affect the trial preparation at all with it
4 being -- adding an allegation of this being at night?

5 MR. LONG: No, sir.

6 THE COURT: Okay. All right. Well, then I'm going to --
7 I'm going to allow the amendment then since it doesn't really
8 effect the trial preparation in any regard. Okay. All right.

9 MS. ELDER: Thank you, Your Honor.

10 THE COURT: Anything further?

11 MS. ELDER: No, sir, Your Honor.

12 MR. LONG: No.

13 THE COURT: Anything further from the Defense?

14 MR. LONG: No, Your Honor.

15 THE COURT: All right. Let's go ahead and bring the jury
16 in. When we bring the jury in, we'll place them under oath;
17 is that correct? (To Clerk) You'll place them under oath?
18 Okay. And then I'll do the opening charges, and then we'll
19 start opening statements; is that correct?

20 MS. ELDER: Yes, sir.

21 THE COURT: All right. How do you all want me to write
22 this -- the additional allegation on the indictment? Just put
23 burglary occurred during the nighttime?

24 MS. ELDER: Your Honor, I would ask the dwelling or
25 immediate, immediate flight. Yes, sir.

1 THE COURT: I'm not going to be able to squeeze it into
2 the body. It's going to have to be written after the
3 paragraph.

4 MS. ELDER: Or -- yes, yes, sir -- or occurring in the
5 nighttime.

6 THE COURT: Okay.

7 MS. ELDER: Entering or exit -- entering or immediate
8 flight as in the nighttime.

9 THE COURT: Well, let me see the attorneys for a second.
10 Come up here.

11 (Whereupon, a bench conference is held.)

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: All right. Ladies and gentlemen, welcome
15 back. I apologize for keeping you back there so long, and I
16 apologize for the delay, but we did have to take up some
17 matters before we brought you in to begin this trial. I hope
18 everybody had a good evening. We are getting ready to start
19 the trial of the case of Jamar Antonio Huggins.

20 Now, I understand -- I just had it -- here we go. Mr.
21 Clark, you have been selected as foreperson; correct?

22 FOREPERSON: Yes, sir, Your Honor.

23 THE COURT: All right. I appreciate you serving in that
24 capacity. If you'd always occupy your seat. Our alternate
25 will always occupy his seat, and as I said, the rest of you

Opening Instructions by Court

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1 are at liberty to sit in whatever seat you like, whether it be
2 in the same seat during the trial of the case, alternating
3 seats during the trial of the case, whatever makes you feel
4 more comfortable.

5 As with jury qualification and voir dire, jurors are
6 constantly taking oaths. So I'll please need you to stand
7 while the Clerk of Court administers the oath for you to serve
8 as jurors on this particular case.

9 (Jury is sworn by clerk.)

10 THE COURT: Any member of the jury that did not respond
11 to the oath by saying, "I do," or affirming?

12 (No response.)

13 THE COURT: Thank you very much.

14 All right, ladies and gentlemen, we're about to begin
15 the trial of the case of Jamar Antonio Huggins. Now, before
16 we begin the trial, I need to go over with you what is
17 expected of you and what you can expect during the trial of
18 this case. I know from watching movies, television shows,
19 reading books and things of that nature for entertainment,
20 trials are often full of a lot of suspense, a lot of action, a
21 lot of anxiety and things of that nature, and while that might
22 be the case in this trial, it probably won't be. The primary
23 function of this trial is a search for the truth to determine
24 what happened. That is often a slow, repetitive, laborious
25 task, the exact opposite of what you might be accustomed to

Opening Instructions by Court

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1 when you watch movies or read books or TV shows for
2 entertainment purposes, but I hope you do find the trial
3 entertaining. I hope you find it educational, and I want to
4 thank you from the outset for your service as jurors in this
5 case.

6 Now, the attorneys appearing before you are advocates for
7 the parties they represent, but first and foremost, they are
8 officers of the court. They're sworn to uphold the integrity
9 and the fairness of our judicial system and to help you in a
10 search for the truth in this case. You can expect them to be
11 professional, competent and ethical in the representation of
12 their clients' interests.

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

21 Now, the Defendant is charged by three indictments, these
22 indictments charging the Defendant with kidnapping, armed
23 robbery and burglary in the first degree. The elements of
24 those crimes I'll explain to you later, but for right now all
25 you need to know is that these indictments are simply the

Opening Instructions by Court

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1 charge by which the case is brought into this court. These
2 indictments are not in any sense evidence of the allegations
3 contained in them. The Defendant has pled not guilty to all
4 of these indictments, and the State, therefore, has the burden
5 of proving the elements of each crime alleged in the
6 indictment beyond a reasonable doubt. It'll be your duty,
7 ladies and gentlemen, to decide whether or not the State has
8 met that burden. Your purpose as jurors is to find and
9 determine the facts of this case. You are the sole judge of
10 the facts of this case. If at any time I make a comment
11 regarding the facts of this case, you must disregard my
12 comments. You are to determine the facts from the testimony
13 you hear and the other evidence introduced during the trial of
14 this case. It'll be up to you to determine the inferences
15 which you feel may properly be drawn from that evidence. It
16 is especially important that you perform your duty of
17 determining the facts in this case diligently and
18 conscientiously, because ordinarily there is no way to correct
19 an erroneous determination of the facts by a jury.

20 Now, on the other hand and with equal emphasis, the same
21 law that makes you the judge of the facts of this case makes
22 me the judge of the law. The law as given by the Court is the
23 only law that you can consider. You must accept and follow
24 the law as I give it to you, even though you may disagree with
25 it. Just as I cannot tell you what the facts of this case

Opening Instructions by Court

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1 are, you cannot disagree with me about the law to be applied
2 in this case. Your job is to take the law as I give it to you
3 and apply it to the facts as you find those facts to be.

4 After doing that, you will then be in a position to
5 render your verdict, a true and just verdict under the solemn
6 oath you just took as jurors. Now, until I advise you to
7 begin your deliberations, you must not discuss this case with
8 anyone, including your fellow jurors or friends or family
9 members or anyone involved in the case. After the case is
10 submitted to you, you can then discuss the case, but only in
11 the jury room with your fellow jurors. The attorneys and
12 parties in this case have been advised that they're not to
13 talk to you at all. So they're not being rude. They're just
14 following the instructions of the Court.

15 Now, during the trial, you are not to read or listen to
16 or watch any news reports about the case if there are any.
17 This includes anything that may be in the newspaper or on the
18 internet or the radio or the television. You must not
19 consider anything you may have read or heard about the case
20 outside of the courtroom, whether or not that is before the
21 trial or during the trial. It's important that you keep an
22 open mind during the trial of this case and not decide any
23 issue in this case until all of the evidence has been
24 presented to you. The parties will then make their closing
25 arguments, and I will instruct you on the law to be applied in

Opening Instructions by Court

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1 the case. It is your solemn responsibility to determine the
2 guilt or innocence of the Defendant, and your verdict must be
3 based solely on the evidence as it is presented to you in this
4 trial and on the law as I instruct you during and at the close
5 of the trial.

6 Now, in just a moment the Solicitor will make what's
7 called an opening statement in which the Solicitor will
8 explain to you the issues in this case or at least what the
9 Solicitor feels the issues in this case are. The attorney for
10 the Defendant may also make an opening statement, although he
11 is not required to do so. What the attorneys tell you during
12 their opening statements is not evidence in this case. It is
13 only their contention as to what the issues in this case are.
14 The evidence in this case will be presented to you by
15 testimony of sworn witnesses from the witness stand and any
16 other exhibits that may be introduced into evidence.

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

Opening Instructions by Court

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

14 All right. Now, is there any challenges or additional
15 charges from the State?

16 MS. ELDER: No, sir, Your Honor.

17 THE COURT: Any from the Defense?

18 MR. LONG: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, we'll now
20 begin the trial with the opening statements by the attorneys.
21 As I told you, these opening statements are not evidence. It
22 is simply the attorneys' contention as to what they think the
23 issues in this case are. Ms. Elder.

24 MS. ELDER: If it pleases the Court, Your Honor?

25 THE COURT: Yes, ma'am.

Opening Statement by State

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1 MS. ELDER: Good morning. I'm Donna Elder. I didn't
2 get a chance to introduce myself during jury qualifications.
3 I do work for the State of South Carolina, in particular the
4 15th Circuit. We cover Horry and Georgetown Counties, and we
5 bring criminal cases to prosecute for -- on behalf of the
6 State that occurs in one of those two counties.

7 I'm going to take you back to December 20th, 2012. Angela
8 Eckler became a victim that night, something nobody wants to
9 be, certainly not a victim of a violent crime, but she became
10 a victim that night to a burglary, to a kidnapping and to an
11 armed robbery, but what was even worse than becoming a victim
12 was living a mother's worst nightmare. She was at home alone
13 with her 12 year old daughter. They had been watching movies.
14 They were there together on a Wednesday night. Approximately
15 1:15 in the morning there's a knock on her door. She doesn't
16 think anything about it. She doesn't think bad things. She
17 doesn't think anything but, "Somebody's knocking on my door.
18 I need to go and open it. I need to go see who it is."

19 She goes to the front door and there's a woman, and the
20 woman's there and she's asking for somebody named Dre. Angela
21 doesn't know who Dre is. She doesn't know anybody by that
22 name, but she tells her to hold on because she had a chocolate
23 lab, "Hold on. Let me put my dog up." She's talking to --
24 talking through the storm door at that point, a glass storm
25 door.

1 She puts the dog up and goes or tries to put the dog up
2 and unlock the storm door for the woman. She doesn't see
3 anybody else except a female. When she goes and she turns to
4 grab her dog to take it back, let the female in, that female
5 doesn't come in. What comes in are two males. What comes in
6 is this Defendant, Jamar Huggins, with a hood over his face
7 and a gun. There's another individual, another male that
8 comes in with him. That male grabs Angela Eckler, puts her in
9 a choke hold, is holding her from behind. He's pulling her.
10 He's jerking on her, and while that guy's doing that, this
11 Defendant is holding the gun pointing it at her saying,
12 "Where's the money? Where's the money?" She says, "I don't
13 know anything about money. Please don't kill me. My baby is
14 in the other room," and they keep asking for the money. Then
15 when she tells them that her child is in the other room and
16 begging for her life, they say, "Take us to that room." "No,
17 no, no, please don't. My baby is in there."
18 They go to the other room. When they do, they push this
19 mother into the bathroom, separating her from her daughter,
20 and she's in the bathroom. She can't get to her daughter.
21 She's got one person that won't let her out, and she knows
22 that man with that gun is out there with her daughter, with
23 her 12 year old daughter, and she can hear through the door,
24 "Where's the money? Where's the money?"
25 They get \$15 of that little girl's birthday money because

Opening Statement by State

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1 that's all she had, and she gave it to them. That's all she
2 had left out of her birthday card. When they get that, they
3 put Mariah, the 12 year old girl, into the bathroom with her
4 mother. They finally let them together, and Angela's going to
5 tell you she's hysterical at this point because not only has
6 she had her life threatened, but again, more importantly to
7 her, her daughter was threatened, seen a gun, was, was
8 confronted by some masked person demanding money and she
9 couldn't do anything about it.

10 She and her daughter then stay in the bathroom, and her
11 response, as anybody would be, would be to, "Let's get out of
12 here," but she waited until they knew or they didn't hear them
13 anymore. They thought they heard a car drive off. So Angela
14 gets up. She gets her daughter. She gets in the car. She
15 goes to the police station. She's getting out of the house.
16 She doesn't know if they're coming back. She doesn't know
17 where they are.

18 This case is about one thing. It's just getting
19 something that you're not entitled to at any cost, and it
20 doesn't have to be a large amount for somebody like Jamar
21 Huggins. He doesn't care. Doesn't have to be televisions and
22 things like that. \$15, and you'll hear some testimony that
23 there was a couple of DVD Wii games that were taken. That's
24 what this about. They went into this woman's house armed with
25 a weapon at night, threatened her, had a gun, threatened her

1 daughter, all for what, for the fun of it? Who knows. Who
2 knows why people do stuff like that, and when you hear all the
3 evidence in this case from the witness stand, you're going to
4 ask yourself, "Who would do that? Who in the world would do
5 that kind of thing? Who behaves like that," and the answer is
6 going to be real clear. It's that man right there, Jamar
7 Huggins.

8 Thank you very much for your attention throughout today.
9 We look forward to working with you, and I appreciate your --
10 all your service here.

11 THE COURT: All right. Mr. Long, does the Defense wish
12 to make an opening statement?

13 MR. LONG: Yes, Your Honor.

14 THE COURT: All right.

15 MR. LONG: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. LONG: That -- Ms. Elder made the case sound very
18 simple. She made the case sound like there's a home invasion,
19 there's evidence to prove that Jamar Huggins was involved in
20 the home invasion and he should be found guilty. As
21 everything in life is, it's not that simple. So I want you to
22 keep an open mind and to listen to all the facts. Listen to
23 the witnesses, analyze what the witnesses are saying and give
24 Jamar a fair chance.

25 Now, my name is John Reuben Long. I'm an attorney in

Opening Statement by Defense

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1 Conway at Thompson and Henry Law Firm. I graduated from law
2 school in 2007. The reason why I went to law school, I had a
3 good job with the federal government. I quit it to go to law
4 school. I -- it seemed like a good idea, but the reason why I
5 went to law school is for cases just like this. In this case
6 you have a Defendant who's been wrongly accused for a crime
7 that he did not commit and he's looking to spend a significant
8 amount of time of his life in jail, and he's accused falsely
9 based on one person's testimony, and you'll hear her today,
10 Deaungela Shanta Montgomery, a convicted felon, a crack head,
11 somebody who has something to gain by testifying. You will
12 not hear testimony from the victim, Angela Eckler, that she
13 saw Jamar Huggins. She cannot identify the people who went
14 into her house. I am not here to convince you that a terrible
15 heinous crime was not committed. I believe without a shadow
16 of a doubt a terrible crime happened. Ms. Eckler's home was
17 invaded. Her daughter and she were traumatized, but don't
18 confuse your emotions and anger with that to point the finger
19 at Jamar Huggins.

20 Now, this case gets kind of technical because there are a
21 lot of names being -- that are going to be thrown around
22 during testimony; and so if you'll indulge me for one second.
23 I'm a very visual type person. You can tell me things all day
24 long and I will not retain it, but if I see it, I'll retain
25 it. So if you're like that, this might help, and if my hands

1 are shaking and if my handwriting is not very good, it's
2 because I'm nervous. I don't mind telling you. This is a big
3 deal. Okay?

4 All right. So I mentioned Deaungela. Her name is also
5 Shanta, and you'll hear Deaungela Shanta Montgomery. This is
6 all the same person. She's the only witness who can -- who is
7 going to testify against Jamar Huggins. Okay?

8 She's addicted to crack cocaine. She'll admit that. She
9 had, for lack of a better word, a sugar daddy, someone who
10 would supply her with crack cocaine and get high with her.
11 His name is Adrian Moore. His nickname is either Dre or
12 Drake. You're going to hear Dre or Drake a lot. So Adrian
13 Moore, the evidence will show, Adrian Moore had a lot of
14 money, comparatively speaking, and he bought crack cocaine so
15 that he and Deaungela Moore [sic] could smoke crack cocaine
16 together.

17 Adrian Moore or Drake was Angela Eckler's boyfriend,
18 live-in boyfriend. I'll put Angela down there. Angela,
19 there's no evidence to show Angela's involved in any type of
20 drugs, not trying to paint that picture at all. I think she's
21 just an innocent victim of this whole thing. Okay?

22 Now, evidence will show that Adrian Moore and Deaungela
23 or Shanta they got their crack cocaine from one guy named
24 Juice. Juice had the crack. As a matter of a fact, the
25 evidence will show that Juice introduced Shanta and Drake. So

Opening Statement by Defense

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1 the three of them knew each other well. They got together.
2 They knew each other's cell phone numbers. Drake, he started
3 getting on hard times and bad health issues. He got behind on
4 the money he owed Juice for some crack cocaine. He owed Juice
5 \$600 for crack cocaine at the time this incident occurred.
6 Then, excuse me, Drake, he goes into the hospital about a week
7 before this home invasion occurred. So he's out of the
8 picture.

9 Deaungela, she's still smoking crack. She doesn't know
10 where Drake is. She's still smoking crack. She's getting it
11 from Juice. Evidence will show that she was hurting for some
12 cocaine. She needed, she needed some money or she needed some
13 cocaine. She knew that Adrian was getting his money from
14 Angela, and so evidence will show that Shanta, Deaungela and
15 Juice went into Angela's house and did the home invasion.
16 You're going to hear that -- you're going to hear that from
17 Shanta. She's going to tell you that Juice had on the mask.
18 Juice got mad at the second guy.

19 Now, about three weeks after the home invasion, Shanta's
20 in jail for another crime. It's armed robbery, burglary.
21 She's involved in a lot of crimes. Evidence will show that.
22 So while she's at J. Reuben Long, the police come to talk to
23 her. Detective Martin talks to her and about this home
24 invasion, and Deaungela, you'll see, that she said, "Oh, it
25 was Junk." Junk is Jamar Huggins, my client. See, now,

Opening Statement by Defense

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1 aren't you glad I'm -- it's technical. Now, that's about
2 three weeks after the crime. Okay?

3 Now, as Shanta is telling this story to the police that,
4 "Junk was involved, Junk did this, Junk did that," she is
5 intermingling the name Juice with Junk. She said, "Junk went
6 into the house and Juice put on his, his mask and Juice got
7 mad," and so she can't keep her story straight. She changes
8 her story three or four times in the last year and a half.
9 Evidence is going to show that.

10 Then just yesterday, you'll see, just yesterday Deaungela
11 changes her story once again and brings in a guy named Tyjuan.
12 That's brand new stuff, never mentioned Tyjuan before. She's
13 mentioned him. Said he wasn't involved. So Shanta is -- she
14 doesn't -- the truth is not in this woman, and as I said,
15 she's the only one who can show, or not show, but the only one
16 who will testify that Jamar Huggins went in that house.

17 Now, the police once they heard about Jamar Huggins and
18 Shanta said, "It was Jamar," even though the police heard her
19 get Juice and Jamar confused, once they got the name Jamar
20 Huggins, they stopped their investigation. They quit. They
21 didn't do anything. They said, "We got our man. We're done."
22 Close this case with Jamar's name on it, never arrested the
23 second guy, never interviewed Juice, never searched Jamar
24 Huggins' house, never, never -- talked to Adrian Moore once.
25 That's it, one time. Never searched Juice's house, never

Opening Statement by Defense

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1 searched Juice's car. They did nothing, nothing.

2 So now we're here today, and I'm here to clear Jamar
3 Huggins' name. Jamar, he comes to this court with a cloak of
4 innocence wrapped around him. He is innocent until proven
5 guilty. It is the State's responsibility to take that robe
6 off of him, that heavy cloak off of him thread by thread to
7 prove that he is guilty beyond a reasonable doubt.

8 Now, what does that mean? That's kind of lawyer talk.
9 The best way I can describe it -- as I said, I'm kind of
10 visual. Beyond a reasonable doubt, if this banister here was
11 doubt, at this end you say there's no way, absolutely not, it
12 never could have happened, it's impossible. This end you say
13 absolutely it happened, "I have no doubt about it." Now,
14 where is reasonable doubt? Nobody knows for sure. It's
15 somewhere down here. It's not here in the middle. Here in
16 the middle is like 50, 50. You say it might have happened, it
17 might not have happened. "I can't tell." Jamar might have
18 been involved, it might have been Juice, "I don't know. I
19 can't tell." That's the middle. That's not reasonable doubt.
20 To get reasonable doubt, you've got to come down here and say
21 is there a nagging feeling in my head maybe Jamar didn't do
22 it? If it is, that's reasonable doubt. That's reasonable
23 doubt, and they have to prove it beyond a reasonable doubt
24 that Jamar Huggins was the person who went into that house.

25 Ladies and gentlemen, I'm sorry to take so long. I thank

1 you for your service. All I'm asking you to do is keep an
2 open mind, use your common sense, which is kind of a rare
3 commodity in the court system at sometimes. Weigh the
4 evidence. Look at the testimony of Shanta Montgomery, and at
5 the end of the day I think you'll find that my client, Jamar
6 Huggins, is not guilty of this home invasion. Thank you.

7 THE COURT: All right. Ladies and gentlemen, we will now
8 begin the evidentiary portion of the trial with the State's
9 case. Ms. Elder, the State can call their first witness.

10 MS. ELDER: We would call Deaungela Montgomery.

11 THE COURT: All right. All right. Ma'am, if you'd
12 please come around.

13 Whereupon, Deaungela Montgomery was called to the stand,
14 duly sworn by the clerk and testified as follows:

15 THE CLERK: Please be seated. State your full name,
16 spell your last name for the Court, please.

17 MS. MONTGOMERY: Deaungela Montgomery, M-O-N-T-G-O-M-E-R-
18 Y.

19 THE COURT: All right. Could you spell your first name
20 as well, please?

21 MS. MONTGOMERY: D-E-A-U-N-G-E-L-A.

22 THE COURT: All right. Thank you. All right. Ms.
23 Elder.

24 MS. ELDER: Thank you, Your Honor.

25 DIRECT EXAMINATION

Deaungela Montgomery - Direct by State

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1 BY MS. ELDER:

2 Q Ms. Montgomery, you obviously are incarcerated currently;
3 is that correct?

4 A Yes, ma'am.

5 Q Okay. And you pled guilty to some offenses a short time
6 ago?

7 A Uh-huh. Yes, ma'am.

8 Q What, what did you plead guilty to?

9 A Two counts of armed robbery.

10 Q Okay. And you are currently in the Department of
11 Corrections; is that correct?

12 A Yes, ma'am.

13 Q And you were brought here today by the State; is that
14 correct?

15 A Yes, ma'am.

16 Q All right. And just to go ahead, and for the jury, have
17 you talked to me before?

18 A No. I don't remember.

19 Q Okay. And have I offered anything to you for your
20 testimony here today?

21 A No, ma'am.

22 Q And without telling us your sentence, you have, in fact,
23 already been sentenced by the Court; is that correct?

24 A Yes, ma'am.

25 Q Okay. And did you get any assistance with that from the

1 State?

2 A No, ma'am.

3 Q One of the armed robberies that you have been convicted
4 for, I want to take you back to the one in December of 2012.

5 A Uh-huh.

6 Q Do you remember that?

7 A Not really.

8 Q Okay. Do you remember going to a house on Memory Lane?

9 A Yes, ma'am.

10 Q And tell me about what happened when you went to that
11 house.

12 A I can't really remember.

13 Q All right. Do you remember giving statements before?

14 A No. I'm on medication now. So I don't -- I can't
15 remember nothing really.

16 Q All right. Do you remember talking to somebody last
17 night, yesterday?

18 A Yes.

19 Q Okay. Well, tell us what you told him about this event.

20 A I told him about me and Tyjuan McKiethan going, planning
21 a robbery and went to, I guess, her name is Mariah Eckler.

22 Q Uh-huh.

23 A And he called somebody but that -- he don't look like the
24 same guy.

25 Q Do you remember telling him that it was Junk?

Deaungela Montgomery - Direct by State

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1 A Yeah. I remember the name by Tyjuan but he doesn't look
2 like the same person.

3 Q Do you remember talking to the detective?

4 A Which one?

5 Q This one right here.

6 A No. I don't remember him.

7 Q Do you deny picking out Jamar Huggins back in early
8 January of 2013?

9 MR. LONG: Objection, Your Honor. She says she doesn't
10 recall.

11 THE COURT: She said she didn't recall the incident.
12 This is a different question. I'll allow it. Overruled.

13 A What you said again?

14 Q Do you recall telling this detective that Junk was with
15 you and you picked him out and showed, showed the detective?

16 A After they say -- after they asked me was it Junk. So I
17 assumed that that was Junk. I, I don't remember him. I don't
18 know him.

19 Q I'll have you take a look at State's Exhibit One for
20 identification. Is that the picture they showed you?

21 A No. I don't know.

22 Q Do you recall giving a statement to police at all?

23 A To what police?

24 Q In January, this man right here in January of 2013?

25 A I don't remember him.

1 Q And you -- do you deny that you made a statement?

2 A I probably did because, I mean, I don't know. I don't
3 know. I can't really remember nothing.

4 Q Okay. Did you make a statement to police identifying
5 Junk as the one who went with you and Ty to do an armed
6 robbery?

7 A I remember the name. So, yes, I did make the statement,
8 but what I'm telling you is this is not the same person.

9 Q Okay. Do you recall when you say that Junk went with you
10 that the person you identified as Junk was Jamar Huggins?

11 A I guess because they asked me was it Junk and I assumed
12 that it was Junk by the name. So I said it was him.

13 Q And you described him at that time.

14 A I don't remember describing him.

15 Q Do you deny that you described him as a man between five
16 six and five eight?

17 A I don't remember.

18 Q Do you recall that you described him as long dreds?

19 A I never said if his dreds was long or not. I said he had
20 hair. I never recall any dreds. I just said he had hair.

21 Q You know your statement was recorded at the time?

22 A Uh-huh.

23 Q So are you saying that if we play the recorded statement
24 there would be nothing in there about long dreds?

25 A I don't know. I don't know. I can't remember.

Deaungela Montgomery - Direct by State

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1 Q You also recall saying that he had a grill in his mouth?

2 A Uh-huh.

3 Q Okay.

4 REPORTER: Is that a yes?

5 THE COURT: Is that a yes?

6 A Yes, ma'am.

7 Q And that he was approximately 30 years old?

8 A I don't remember what age I said.

9 Q Okay. Do you recall that you actually gave and described
10 where he lived on Ninth Avenue in Conway?

11 A Yes. Because we pulled over across the street from that
12 house. That's why I gave that house.

13 Q And you said that's where he lives?

14 A Yeah.

15 Q And do you recall telling the detective that the car that
16 drove you to Ms. Eckler's house was Jamar Huggins?

17 A Yes, ma'am.

18 Q And that Jamar Huggins was driving the car when you went
19 over to Angela Eckler's house?

20 A Yes, ma'am.

21 Q And that Jamar Huggins had a mask on when he went into
22 Ms. Eckler's house?

23 A Yes, ma'am.

24 Q And he also had a weapon.

25 A Uh-huh.

1 Q Is that a yes?

2 A Yes, ma'am.

3 THE COURT: Excuse me.

4 Q So you do say you --

5 THE COURT: Hold. We've got an objection.

6 MR. LONG: Objection. It's -- I don't understand the
7 forms of her answers. She's saying -- I'm not sure what she's
8 affirming or what the question is. If Ms. Elder could be a
9 little more specific as to what she's actually asking.

10 THE COURT: I think she's asking if in her prior
11 statement this is what she said in her prior statement, but
12 I'll let you address that on cross examination. All right.
13 Go ahead.

14 Q So you do recall telling the detective that he, Jamar
15 Huggins, had a mask and a gun on when he went to Ms. Eckler's
16 house?

17 A Yes, ma'am.

18 Q You also recall that you gave a statement saying that you
19 went to the house and knocked on the door?

20 A Uh-huh. Yes, ma'am.

21 Q And there was another male with you?

22 A Uh-huh. Yes, ma'am.

23 Q Tell me what happened after you knocked on the door.

24 A I turnt -- she -- when I first knocked on the door the
25 victim didn't open her screen door. She opened her first

Deaungela Montgomery - Direct by State

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1 door, and after I asked for Dre she say he wasn't there. So I
2 turned around and walked off. When I walked off she opened
3 her screen door and was hollering at me trying to make me stop
4 so she could tell me where he was at, but I kept on walking
5 and got back inside the vehicle.

6 Q What happens next?

7 A And the two guys went in.

8 Q The two guys being Jamar Huggins and another individual?

9 A I guess Jamar Huggins, and yes, another one.

10 Q You know you were in his car?

11 A Uh-huh.

12 Q You described his car as a Cadillac.

13 A Uh-huh.

14 Q You even described the color.

15 THE COURT: Is that a yes?

16 A Yes.

17 THE COURT: Ma'am, you need to answer yes or no.

18 A Yes, ma'am.

19 THE COURT: Okay.

20 Q You even described the color.

21 A Uh-huh. Yes, ma'am.

22 Q And how long was it before Jamar came out and got in the
23 car with the other male?

24 A I cannot state that. I don't know.

25 Q Okay. And do you recall telling the detectives what you

1 saw them come out with?

2 A I can't remember.

3 Q Do you recall why you told detectives that you went over
4 to Angela Eckler's house that night?

5 A No. I can't remember. Most of what I said to the
6 detective was not true because --

7 Q Okay. What about yesterday?

8 A I don't even -- to tell you the truth I don't -- I can
9 only say who went with me. That's all I can say. I really
10 can't even recall that night.

11 Q But you pled guilty to it?

12 A Yes. I pled guilty to it. I was convinced that that was
13 the only deal that I was going to get and if I brought it to
14 trial I can get up to 30 years. So I took the ten.

15 Q So you said that you know the two people you were with?

16 A I know one of them.

17 Q And you identified Jamar Huggins?

18 A I described him the best I could.

19 Q And his vehicle?

20 A And the vehicle. Yes, ma'am.

21 Q And where he lived?

22 A Yes, ma'am.

23 Q And that's the man that you told police had the mask and
24 went in with the gun?

25 A Yes, ma'am.

Deaungela Montgomery - Direct by State

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1 Q Do you recall telling investigators that you knew Jamar
2 from the neighborhood?

3 A No.

4 Q And that he threatened you?

5 A No.

6 Q About drug money?

7 A No. I never said that.

8 Q Are you denying that you ever said that?

9 A Yeah. I never said that.

10 Q You never said he came to your house and said, "You're
11 giving me the money?"

12 A Oh, yeah, that -- I did say that. I was trying to
13 clarify myself out of it. I didn't know what to say off top.
14 I was scared, but that wasn't true. I said it.

15 Q Well, how did you come to be in Jamar Huggins' vehicle
16 that night?

17 A I was called downstairs by the other Co-Defendant.

18 Q So they came to pick you up?

19 A Well, when he came to my house we both got in the car but
20 I got dropped off at -- back at my house, and I don't know
21 where they went and then I was called downstairs. I walked
22 downstairs and got in the car.

23 Q With the -- with Jamar and the other guy?

24 A Yes, ma'am.

25 Q And is that when you went to Ms. Eckler's house?

- 1 A Yes, ma'am.
- 2 Q And that's when you went up and knocked on the door?
- 3 A Uh-huh. Yes, ma'am.
- 4 Q Why did you go up to the door and ask for Drake?
- 5 A Because I know what I was -- I knew what was going to
- 6 happen. That's the only way I could have got her to open the
- 7 door.
- 8 Q What did you know when you knocked on the door was going
- 9 to happen?
- 10 A That she was going to be robbed.
- 11 Q By who?
- 12 A By Tyjuan McKiethan and his friend.
- 13 Q Who was driving the car?
- 14 A Uh-huh.
- 15 Q Who you've identified as Jamar Huggins?
- 16 A Yes, ma'am.
- 17 MS. ELDER: One moment, Your Honor.
- 18 THE COURT: All right.
- 19 BY MS. ELDER:
- 20 Q Do you recall telling the detectives how you knew Jamar
- 21 Huggins?
- 22 A No. I don't remember.
- 23 Q How you knew him as Junk?
- 24 A No. I don't.
- 25 Q Do you deny that you told him that you saw him every day?

Deaungela Montgomery - Direct by State

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1 A I'm not going to deny it. I just don't remember. It's
2 been a while.

3 Q Okay. So if I tell you that it's recorded and you, you
4 admitted that?

5 A I mean, if it's recorded it's recorded, but I don't
6 remember is what I'm saying.

7 Q Okay. So is it possible that you told the detectives
8 that you knew him and saw him every day and you knew him as
9 Junk?

10 A Maybe.

11 Q Is it possible that you told an investigator last night
12 that very same thing?

13 A No. I don't think so.

14 Q Do you recall talking to an investigator last night?

15 A I remember.

16 Q Okay.

17 A But I think he was asking about another person.

18 Q Named Junk?

19 A No. Tyjuan.

20 Q Who is Drake?

21 A The victim's boyfriend.

22 Q All right. And were you involved with him?

23 A Yes, ma'am.

24 Q And do you recall telling, telling the detectives who
25 Drake got his drugs from that you all used together?

1 A I don't think I stated the correct name when I said it,
2 but I remember talking about it.

3 Q Well, who did you tell them that you -- that he got the
4 drugs from?

5 A I told them Junk, but it was a lie. We -- I didn't want
6 to say the name that we got it from, and I still don't want to
7 say the name.

8 Q But you told them at the time right after this happened
9 that it was Junk?

10 A Yes. I did. Yeah. But it was a lie.

11 Q Do you recall telling the detectives why Junk or Jamar
12 Huggins was looking for Drake?

13 A It was a lie. He wasn't looking for Drake. He don't
14 know who Drake is. He never saw him before.

15 Q All right. Well, my question is this. What did you tell
16 the detectives in January --

17 A I told --

18 Q -- of 2013?

19 A I told them that he came to my house ordering for us to
20 pay money that we owe him, but it was a lie.

21 Q Okay. And yesterday, what did you tell the detectives
22 about Junk?

23 A I didn't tell them nothing. I just said he went with us.
24 That's all I said.

25 Q Okay. So was that made up, too?

Deaungela Montgomery - Direct by State

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1 A Was what made up?

2 Q What you said yesterday.

3 A No, ma'am.

4 Q Okay. So Junk, Jamar Huggins, did, in fact, go with you
5 to Ms. Eckler's house?

6 A Junk went with me, nut what I'm telling you is I don't
7 remember him. I don't know who he is.

8 Q Okay. So it's possible that he looks substantially
9 different?

10 A Yes. Maybe. It just don't look like the same person
11 that went with me.

12 Q Okay. Were his dreds that long?

13 A No.

14 Q So his hair was different?

15 A Yeah.

16 Q Do you remember telling the detectives that you were
17 scared?

18 A Uh-huh.

19 Q That you were scared of Junk?

20 A I remember telling them that. Yeah. Because I didn't
21 know who he was. I don't know anything about him. So, yeah,
22 I did say it.

23 MS. ELDER: I have no other questions, Your Honor.

24 THE COURT: All right. Mr. Long, cross examination.

25 CROSS EXAMINATION

1 BY MR. LONG:

2 Q Ms. Montgomery, this is not the person who went in that
3 home invasion with you; is it?

4 A No, ma'am. No, sir.

5 Q It is not the person who went in the home invasion with
6 you?

7 A No, sir.

8 Q That's all the questions I have.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MS. ELDER:

12 Q But that's the person you identified in 2013; is that
13 correct?

14 A I identified Junk.

15 Q As, as Jamar Huggins?

16 A I don't know -- I didn't know his real name until I read
17 my motion of discovery.

18 Q Okay. Well, you knew his name when they showed you a
19 picture?

20 A I just knew him by Junk. I never said his name.

21 Q But you said that is Junk?

22 A Yes. Yes, ma'am.

23 Q Okay. And the detective then told you who that picture
24 was of?

25 A No. They didn't.

Deaungela Montgomery - Redirect by State

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1 Q Okay. But the picture -- the person that you pointed out
2 to this detective in January is the person you know as Junk
3 that you're talking about today?

4 A I believe they already had it circled when they showed me
5 the pictures.

6 Q Is that the picture you -- I'm -- my question is, did you
7 identify the person you're referring to as Junk to this
8 detective?

9 A Yes, ma'am.

10 Q And is that the person that you're testifying went into
11 Ms. Eckler's house with a mask and a gun?

12 A I don't know. It's confusing.

13 Q Is that the person who drove you over there in his
14 Cadillac?

15 A That's not the person. That's what I'm saying.

16 MR. LONG: Your Honor, I object. It's been asked and
17 answered now several.

18 THE COURT: Sustained. Asked and answered.

19 Q The person you identified to detectives, is that Junk?

20 MR. LONG: Objection.

21 THE COURT: Sustained. Asked and answered.

22 A Yes, ma'am.

23 THE COURT: Strike the last.

24 MS. ELDER: I have no other questions, Your Honor.

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

1 The State can call their next witness.

2 MS. ELDER: The State would call Angela Eckler.

3 THE COURT: All right.

4 Whereupon, Angela Nichole Eckler Dillon was called to the
5 stand, duly sworn by the clerk and testified as follows:

6 THE CLERK: Please be seated. State your full name,
7 spell your last name for the Court.

8 MS. ECKLER: My name is Angela Nichole Dillon now. It
9 was Angela Nichole Eckler, E-C-K-L-E-R, last name now is
10 Dillon, D-I-L-L-O-N.

11 DIRECT EXAMINATION

12 BY MS. ELDER:

13 Q Ms. Dillon, I want to take you back to December 20th,
14 2012. Where were you living at the time?

15 A We were living on Memory Lane in Conway.

16 Q And you have a daughter?

17 A I do.

18 Q And what's her name?

19 A Mariah Nichole Eckler.

20 Q And how old is she now?

21 A She is 13 now.

22 Q She was 12 at the time?

23 A Yes, ma'am.

24 Q Tell me what you recall about that night.

25 A It was a very busy night. It was right before Christmas.

Angela Eckler - Direct by State

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1 Of course, Adrian had been gone for almost a week, just about
2 a week. So the kids and I literally was just trying to get
3 our Christmas tree up and get in our -- they -- we -- my
4 husband and I -- ex-husband and I have shared parenting. So
5 it's one, one -- one week on, one week off. That particular
6 week was not my week for any of my children, but in return
7 because us three were upset with -- I had thought at the time
8 Adrian was just having an affair with someone else. He wasn't
9 answering his phone when I was calling. He literally went to
10 work and never returned back. He does have a child in
11 Michigan, and he had -- knew he had been talking to his baby's
12 mamma. So in return I thought that he had just went back to
13 her.

14 We had put the tree up. A good friend of mine actually
15 bought the Christmas tree for me and went to my ex-husband's
16 to bring the children to me to help me decorate the tree. My
17 son, Colton, and my daughter, Mariah, decided to come. My
18 oldest child went to a friend's.

19 We'd put up the Christmas tree. Jessica Hucks was my
20 good friend that had been there literally up until 11:30 that
21 night. We were watching Christmas movies, and I had made
22 dinner for all of us. Her oldest daughter was my daughter's
23 age. So she was actually supposed to spend the night with us
24 that night. Fortunately, she didn't.

25 They left. Mariah and I cleaned up the kitchen. In the

1 middle -- we have a -- had an apartment behind our house that
2 we were renting to another good friend of mine's grandmother.
3 I had spoke to her earlier that day due to the fact that Jenny
4 and her child were in the hospital and the baby had been very
5 sick and Grandma was going. I called her Grandma, but she
6 wasn't my Grandma. She was just a very good friend that I
7 called Grandma, too, also. She had come to house late,
8 probably about 9:30, 10:00 o'clock because we had had company.
9 Jessica was there with the children -- to let me know she was
10 going to go see Jenny and the baby, and I said, "No matter
11 what, when you get back, come and let me know how they're
12 doing."

13 Memory Lane is a dead-end road. We were the youngest
14 couple on the street. Unfortunately, there was many times
15 that we never even locked our doors at night. When Mariah and
16 I went to bed she slept with me, actually. All of Adrian's
17 things had been packed because he'd never returned, and I had
18 had them packed prior to the night of this home invasion and
19 it was in my bedroom. Mariah and I had crawled in bed, and we
20 were watching the movie Elf, and I have a big fat chocolate
21 lab. She's ten years old, but I have had her since she's been
22 about a year and a half old. She's never been one of a dog to
23 bark. She's very well-behaved dog. She always slept in my
24 bedroom. So I was kind of in a sleep and out of a sleep. I
25 thought that I could hear a door, somebody knocking at the

Angela Eckler - Direct by State

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1 door, but I could also hear Chocolate kind of growling
2 underneath her voice, and that's what kind of startled me, and
3 then I heard the knock, and I thought, well, for sure, it was
4 Grandma at the door.

5 I had walked into the living room. All of the house was
6 dark minus my TV on in the bedroom, and we had tea lights in
7 the window. I had opened the front, the big door, and in
8 front of me stood [sic] a very-well dressed, well-put-
9 together, attractive woman, and my first response was really
10 not even what time of the night it was because I was -- it was
11 just -- I was so just focused on it being Grandma and it not
12 being her, knowing that maybe this lady has -- my porch light
13 is on, knowing that Grandma's going to be coming, I thought
14 that she had broken down, and at the time Chocolate's barking,
15 which Chocolate was never a barker.

16 Chocolate starts barking, and she's talking, and I can't
17 hear because there's still the door between me and her, and
18 because Chocolate had never barked, I was trying to get her
19 quiet, and literally, as I went to -- because Chocolate never
20 even wore a collar -- to get her to go back to the room, I had
21 -- there was a -- my daddy's rocking chair was right by the
22 front door. I had just made that turn, and immediately two
23 men came in.

24 As I glanced through, that's when I seen the female
25 running off that quickly. From that point on, it was just a

1 lot of yelling. The one particular man I remember having a
2 really thick jacket on. I wasn't able to see his face because
3 he made sure in the headlock I wasn't able to see him at all,
4 but the first thing I hit was my daddy's rocking chair which
5 was sitting right by the door, being drugged and slung by the
6 hair of my head, by the nape of my neck, and when I was able
7 to look up due to another gentleman yelling and screaming,
8 "Where's the f'ing money?" That's all I kept hearing is,
9 "Where's he at, and where's the f'ing money?" And I just kept
10 saying, "I don't have any money. Please stop." My baby was
11 in the next room. "Please just leave me alone."

12 They kept dragging me. I was there by the couch, and
13 Chocolate was trying to get her nose in between me and this
14 one gentleman, and he was becoming agitated because the dog
15 was trying to come in between us, and I kept saying, "Please,
16 my baby is in the next room. I don't have any money."

17 Then the other gentleman squatted down and put a gun in
18 my face and said, "Where's the f'ing money?" He had gloves
19 on. I wasn't able to see his face. I just seen everything
20 was black. His gloves were black. The gun was black. His
21 face was black, and as soon as I said for the last time,
22 "Please leave me alone. My baby is in my room," he drug me by
23 the hair of my head into the room and made me put my dog in my
24 walk-in closet. I kept telling him because Chocolate wouldn't
25 go, and you couldn't see Mariah because Mariah was covered in

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1 a blanket in my bed, and I even told the man, "She's not going
2 to go unless you let me go and walk in the closet so she'll
3 follow." He did, but by the hair of my head just enough to
4 get her in there, and the gentleman with the gun stood at the
5 foot of the bed, still with the weapon, and in return he
6 pulled me by the hair of my head, the same one that had been
7 aggressive from the beginning, and shut me in the bathroom and
8 held the door shut as I was trying to pull it open because
9 that's when I heard Mariah, and I knew what they had put me
10 through, and I was so afraid they would touch her like they
11 did me, and I was scared. She had to have been. So I'm
12 pleading through the door, "Just leave her alone," because
13 they're asking her, "Where's the f'ing money," over and over
14 and over again, and all I can hear is Mariah saying, "We don't
15 have any money. The only money I have is in my purse on the
16 table for my birthday."

17 And I'm still yelling and screaming to let me have her,
18 "Just give her to me." The door opens very quickly, and they
19 push her in it. We had a garden tub, and I was sitting
20 because when she come in here and I just grabbed each other
21 and her and I sat down on the thing and I had had my cell
22 phone in my pocket, and how it stayed in there I don't know.
23 I went to grab it out, and I was the one hysterical, but my 12
24 year old was staying calm, and I went to dial 911, and she
25 said, "Mommy, please don't. Wait till they're gone."

1 I did. I waited until I hear them plundering through the
2 house. I can hear them rustling through stuff, and until we
3 heard nothing more, the only thing I could think of was I
4 didn't want us in there anymore. I wanted to protect her
5 because she was so scared and she just wanted out. So that's
6 when I went to the police department, and I really don't even
7 know how I had the strength to even get in the car to go. I
8 just knew I needed to get somewhere safe, and that's what
9 happened that night.

10 Q Take a deep breath. Now, I'm going to ask you about some
11 particulars of what you just described. Okay?

12 A Yes, ma'am.

13 Q You said one man had a gun?

14 A Yes, ma'am.

15 Q Tell me again what you remember about that man.

16 A He -- I was not able to see his face. He had a hood type
17 of thing on like it was black as well, and I wasn't able to
18 see anything besides literally everything on the top was
19 black. He did have shiny looking gloves on, and the gun was
20 black.

21 Q And tell me about the other guy.

22 A I never even got a chance to see his face because he
23 never gave me the option. He took me from the back
24 immediately, and so he never -- he had me in such a chokehold
25 that literally my neck was bruised for weeks; and so I wasn't

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1 able to see him at all.

2 Q Okay. And when detectives came to talk to you, did you
3 -- they showed you a couple of lineups?

4 A Yes, ma'am.

5 Q And as you've indicated you couldn't pick out the two
6 males?

7 A No, ma'am.

8 Q You did identify the female?

9 A Yes, ma'am. At first I was -- I couldn't because I had
10 -- she -- it -- she -- it kind of was. So I had asked if they
11 had a different picture, and he did, in return, bring me one
12 that -- of her done up, and I was able to that way.

13 Q Okay. And that was the woman who was just in here; is
14 that correct?

15 A Yes, ma'am.

16 Q Now, you indicated Adrian was someone that was living
17 with you at that time?

18 A We were actually engaged to be married.

19 Q Okay. And how long had he been gone from your house
20 prior to this?

21 A Adrian had went to work on a, on a Monday morning. He
22 hadn't returned at all. So it would have been a week prior
23 to, I believe.

24 Q Do you know if Adrian had a street name?

25 A No, ma'am. The only thing I've ever known about Adrian

1 is just the fact that him and I actually went to school
2 together back in elementary and middle school, and his family
3 was good friends with mine, my family. His daddy was a
4 preacher. We remained friends all through childhood and
5 somewhat of an adulthood, through our marriage, through my
6 marriage, just Adrian Maurice Moore.

7 Q And subsequent to this, all of this happening, have you
8 learned that he had another life?

9 A Unfortunately, yes.

10 Q And were you aware of it while he was living there with
11 you?

12 A No. I did not.

13 Q Have you talked with him since that night?

14 A Absolutely not.

15 Q When's the last time you spoke to him?

16 A I actually got a phone call. This is -- that's how I
17 knew where he was at. Prior to him going to work and not
18 coming home, I had gotten a phone call that he was at the
19 Conway Medical Center and had requested to talk to me.

20 Q And since that time, do you have any idea where he is
21 now?

22 A No, ma'am.

23 Q Have you asked anybody where he was --

24 A I --

25 Q -- family members or anything like that?

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- 1 A No, ma'am.
- 2 Q Do you know if he's still even in the area?
- 3 A I do not.
- 4 Q Now, when you identified Ms. Montgomery, did you -- were
- 5 you able to see outside? When she knocked on the door, did
- 6 you see --
- 7 A My, my porch light was on --
- 8 Q Uh-huh.
- 9 A -- and my light is right by the door. So, yes, ma'am. I
- 10 was able to see her.
- 11 Q Okay. Did you see a car?
- 12 A No, ma'am.
- 13 Q And did you see the males, the two males when she knocked
- 14 on the door?
- 15 A No, ma'am.
- 16 Q What time of day was this again?
- 17 A It was at middle of the night. I want to say it was like
- 18 2:20 in the morning.
- 19 Q Okay. And this happened here in Conway?
- 20 A Yes, ma'am.
- 21 Q And what did they take out of your house?
- 22 A At the time, of course, I left. So I didn't know what
- 23 they had taken, but when I had went back prior to being with
- 24 the investigators, there was games that my son had said were
- 25 missing, and of course, I really didn't keep track of the

1 games that they had just because there were so many. There
2 was some games missing. There was a camera missing, and
3 Mariah's money was missing.

4 Q Do you remember how much money that was?

5 A I really do not.

6 Q When they had you separated from your daughter, where
7 were you in the house?

8 A I was in the master bathroom, which is in my bedroom.

9 Q And what prevented you from getting out?

10 A I was trying to pull on the bathroom door, and one of the
11 gentlemen was holding it tight, and I was pulling and he was
12 pulling and I was screaming.

13 Q So you couldn't leave?

14 A No, ma'am.

15 Q And you couldn't get out?

16 A I begged.

17 Q Did your bathroom have a window?

18 A Yes, ma'am. By the shower.

19 Q All right. And why didn't go out the window?

20 A I just wanted Mariah.

21 Q Your daughter was still in another part of the house?

22 A Yes, ma'am.

23 MS. ELDER: I have no further questions, Your Honor.

24 THE COURT: All right. Cross examination.

25 MR. LONG: Yes, sir.

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1 CROSS EXAMINATION

2 BY MR. LONG:

3 Q Ms. Eckler, I'm sorry you had to go through such a tragic
4 event. Nothing we can do to stop that. You cannot identify
5 the two men who went into your house; can you?

6 A Unfortunately, no, sir.

7 Q You cannot identify that Jamar Huggins went into your
8 house; can you?

9 A No, sir.

10 MR. LONG: That's all the questions I have.

11 THE COURT: Redirect?

12 MS. ELDER: No further questions, Your Honor.

13 THE COURT: You may step down.

14 The State can call their next witness.

15 MS. ELDER: Your Honor, we have a matter we need to
16 address with the Court.

17 THE COURT: All right. Ladies and gentlemen, I'm going
18 to excuse you back to the jury room while we take up this
19 matter of law with the attorneys, and I tell you why we excuse
20 you back to the jury room. It's not that we're trying to hide
21 anything from you. As I told you at the outset, you and you
22 alone decide the facts of this case. I decide the law to be
23 applied in this case. Well, sometimes when these questions of
24 law come up that I need to discuss with the attorneys, it
25 requires me as the Judge and the attorneys to discuss factual

1 issues. Well, what we say is not evidence, and when we decide
2 the law, when we discuss the facts, we do not want you to be
3 influenced by our discussions in your determination as to what
4 the facts are in this case, and so that's why we excuse you
5 back to the jury room is so that you're not influenced by
6 anything that I might say or that the attorneys might say when
7 we discuss the law to be applied in this case. So I'm going
8 to excuse you back to the jury room for a few minutes, give
9 you an opportunity to stretch your legs, use the restrooms.
10 Do not discuss this case even among yourselves at this point
11 in time. It's too early for deliberations and we'll take a
12 short break. Okay. Thank you very much.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. Ms. Elder.

16 MS. ELDER: Your Honor, two issues that before I called
17 Detective Martin up to the stand I want to address with the
18 Court. One is I didn't foresee it, but after Ms. Montgomery's
19 performance today on the stand, I think it's necessary. Mr.
20 Huggins gave a statement to police at the time of questioning
21 after Miranda. My intent would be to publish that for the
22 jury. So I think we would need to have a, outside the
23 presence of the jury, a hearing regarding his statement and
24 introduction of that statement, Your Honor.

25 THE COURT: All right. Jackson v. Denno, can we do at

1 this point in time?

2 MR. LONG: I'm really not prepared for it to be honest
3 with you. I had no notice that there would be a Jackson v.
4 Denno hearing necessary.

5 MS. ELDER: Your Honor --

6 THE COURT: Was the statement ever provided to you?

7 MR. LONG: Yes, sir.

8 THE COURT: Okay.

9 MS. ELDER: And Your Honor, that hearing can be done at
10 any time. We typically try to do it at, at pretrial, but it
11 can be done at any time.

12 THE COURT: Okay. I don't know. It's always been
13 pretrial. So I don't know, but I mean, if you're going to
14 introduce a statement by the Defendant then, yes, we will need
15 a Jackson v. Denno hearing.

16 MS. ELDER: Yes, sir. The statement's not very long. I
17 know --

18 THE COURT: Okay. Well, let's go ahead and you'll -- are
19 you ready to do it?

20 MS. ELDER: Yes, sir.

21 THE COURT: Okay.

22 MS. ELDER: Well, I need something to play it. I would
23 -- I don't typically play it, Your Honor, but some Judges want
24 to hear it in its entirety. It's up -- you want to do that.

25 THE COURT: Yeah. I think I need to review this.

1 MS. ELDER: Okay.

2 THE COURT: Well, first you're going to have to put up
3 the proof that it was voluntarily made --

4 MS. ELDER: Yes, sir.

5 THE COURT: -- and things of that nature, and then I'll
6 need to review the statement whether it's written or recorded,
7 however.

8 MS. ELDER: It's recorded, Your Honor.

9 THE COURT: It's recorded.

10 MS. ELDER: Yes, sir.

11 THE COURT: Okay. Well, you're going to need to put up
12 your evidence that shows that it was a voluntary statement,
13 and then if I rule that it was voluntary, I'll review the
14 statement and then, and then we'll proceed; okay?

15 MS. ELDER: Okay.

16 THE COURT: All right. So let's take about a five-minute
17 break, get ready and we'll, we'll do that.

18 MS. ELDER: There was a second matter, Your Honor --

19 THE COURT: All right.

20 MS. ELDER: -- I wanted to address so we didn't have to
21 send the jury out and in.

22 THE COURT: All right.

23 MS. ELDER: The -- this detective, Your Honor, when I, I
24 call him to the stand, I believe it is proper based on my
25 questioning of, of Ms. Montgomery to impeach her by allowing

1 the publication of her statement that was taken by this
2 detective.

3 THE COURT: I don't know. She didn't deny making the
4 statement. She just said --

5 MS. ELDER: She denied that it was this Defendant.

6 THE COURT: Yeah. She denied that. So does the
7 statement identify -- she said it was Junk. She said she said
8 Junk. She just said Junk was not this Defendant. So --

9 MS. ELDER: And she also said she -- he didn't show her
10 this, that he showed her a circled picture. He also -- she
11 also said that she don't remember -- she didn't see that, and
12 that's --

13 THE COURT: Well, you never did show -- did you -- yeah,
14 you showed her that.

15 MS. ELDER: Yes, sir. I did. Yes, sir. I did, and it's
16 clear in the recorded statement that this detective showed
17 them, showed her the picture, and she said, "Yes, that is
18 Junk."

19 THE COURT: Well, I mean, I don't know -- you never did
20 play the statement to her. She just --

21 MS. ELDER: Your Honor, I asked her about the -- I asked
22 her about that, she denied it.

23 THE COURT: Yeah. But I mean, how do I know that the
24 statement you're going to play to the Court now is the one she
25 gave if you never played it to her to identify? She said she

1 did not recall.

2 MS. ELDER: Your Honor, I -- I think the rule requires us
3 to let her know the content of the statement, which I did, and
4 she denied saying that -- she denied this picture and said,
5 "No. I didn't, I didn't see that."

6 THE COURT: Yeah. But then at that point in time you
7 need to play the statement to her and say -- I mean, I -- the
8 question is is can you bring it in now, or when she denied it,
9 then you could have used it to impeach her testimony. I don't
10 know that you can get it in with another witness.

11 MS. ELDER: Your Honor, I think that it -- that I could
12 at the very least put the detective up and ask him if he
13 showed Ms. Montgomery this photograph and was she able to
14 identify that individual as Junk because she did specifically
15 --

16 THE COURT: You might be able to -- you might be able to
17 do that. Let me hear from Mr. Long on that.

18 MR. LONG: She -- this -- it's too late. She had the
19 opportunity to refresh her recollection at the time of cross
20 examination.

21 THE COURT: Well, she did show her the photograph when
22 she was on the stand and she denied.

23 MR. LONG: And, and it was asked and answered, and she
24 did -- could not identify this man as Junk, as Jamar Huggins.

25 THE COURT: Well, and I understand that. What she's

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1 talking about now is she showed her that photograph, and she
2 denied that that was the photograph where she identified Junk.
3 So the question is now can the officer say this is the
4 photograph I told -- showed her and she did identify him as
5 Junk. Now, that's different than the recorded statement.

6 MS. ELDER: Yes, sir.

7 THE COURT: Where she denied making statements in the
8 recorded statement, I think at that point in time is where you
9 can introduce the prior inconsistent statement.

10 MS. ELDER: Yes, sir.

11 THE COURT: But I don't know that you can get in the
12 prior inconsistent statement with this witness when she is no
13 longer available for cross examination on that issue.

14 MS. ELDER: Yes, sir. Then I'll, I'll focus then on the
15 question that I just presented to the Court.

16 THE COURT: Well, I don't know. Let me, let me take a
17 break.

18 MR. LONG: She -- the --

19 MS. ELDER: Your Honor, the only way to impeach her with
20 that is by the testimony of this individual.

21 THE COURT: On that one, I understand that.

22 MS. ELDER: Yes, sir.

23 THE COURT: Yes.

24 MS. ELDER: That's the only way I can impeach her --

25 THE COURT: On that.

1 MS. ELDER: -- is by putting him up and asking that
2 question specifically.

3 THE COURT: Because that was not written or recorded or
4 that was not referenced in the recorded statement or any
5 written statement where she identified him. That was all
6 unwritten, unrecorded or did she identify him in a recorded
7 statement?

8 MS. ELDER: He said, "I want to show you this picture."

9 THE COURT: That's on the recorded statement?

10 MS. ELDER: Yes. And she said, "Yes, that's Junk," but
11 now she specifically denied that, and that's what the rule
12 requires. he has to specifically deny it.

13 THE COURT: Well, so why didn't you play the recording at
14 that time?

15 MS. ELDER: Well, Your Honor, the photograph, I can't get
16 the photograph in if she's denying it until I put this witness
17 up because it's not a video statement. It's a recorded
18 statement. So I can't possibly say that this is the photo
19 that was shown to her unless I put this witness up because
20 it's not a visual statement. It could have been any
21 photograph.

22 THE COURT: All right. Let me take that under advisement
23 and do some, do some research on that.

24 All right. Mr. Long, anything further before we take a
25 break?

1 MR. LONG: No, Your Honor.

2 THE COURT: All right. Let me take a break, do a little
3 bit of research, go ahead and get your system set up so we can
4 do the Jackson v. Denno. We'll take about a 10-minute break.

5 MS. ELDER: Yes, sir.

6 THE COURT: And then come back.

7 MS. ELDER: Thank you.

8 ***** OFF THE RECORD *****

9 (On the record. The following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. We'll go forward. I am going to
12 allow the Jackson v. Denno hearing to determine the
13 voluntariness of the Defendant's statement, to determine
14 whether or not it's going to be admissible at trial. As to
15 the identification, the photo, the lineup photograph, we have
16 not had a Neil v. Biggers hearing. It's being challenged by
17 the Defendant. So it doesn't come in.

18 MS. ELDER: It wasn't a lineup, Your Honor.

19 THE COURT: It was a photo lineup or --

20 MS. ELDER: Yeah. Well, it was a -- no, it was the DMV
21 photo because she said she knew him. She knew him, and that
22 didn't require a photo lineup.

23 THE COURT: But still, any identification of the
24 Defendant we're still going to need a Neil v., I mean a, yeah,
25 a Neil v. Biggers hearing --

1 MS. ELDER: Then we're prepared to.

2 THE COURT: -- to determine whether it was overly
3 suggestive and things of that nature, and I just, I mean, and,
4 and what -- and she's saying that this is not the Defendant.

5 MS. ELDER: Today.

6 THE COURT: Yes.

7 MS. ELDER: That's not what she said in, in January of
8 2013.

9 THE COURT: But you're still offering a photograph to
10 identify the Defendant without a witness saying that's the
11 Defendant.

12 MS. ELDER: But I can use that to -- Your Honor, I have
13 --

14 THE COURT: See, there's a question. Even if you use it
15 to impeach her testimony, you're still offering the photograph
16 for the truth of the matter asserted, to identify the
17 Defendant.

18 MS. ELDER: Yes.

19 THE COURT: Okay.

20 MS. ELDER: Well, well, I'm using it to impeach her
21 initially.

22 THE COURT: But if it's just for impeachment purposes you
23 still don't have an identification. If you're offering it for
24 the truth of the matter asserted, the fact that she identified
25 that photograph as the Defendant, that's an out-of-court

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1 statement, if you're offering it for the truth of the matter
2 asserted it's inadmissible by hearsay.

3 MS. ELDER: It is admissible though. It makes it
4 admissible under the rules if it's for the purpose of
5 impeachment.

6 THE COURT: Okay. If it's solely for the purpose of
7 impeachment and you're not offering it for the truth of the
8 matter asserted, then you don't have an identification.

9 MS. ELDER: But a prior inconsistent statement is a
10 exception to hearsay.

11 THE COURT: Well, I'm, I'm, I'm not going to allow the
12 photograph. We'll go forward with the Jackson v. Denno
13 hearing since it is a statement by the Defendant and we
14 haven't reached that posture at this point in time, but I'm
15 not going to allow the photo because she's, she's saying she
16 never saw that. Well, let me, let me reserve ruling. I'm
17 going to do some more research on that. Let's go ahead and do
18 the Jackson v. Denno hearing.

19 MS. ELDER: Well, Your Honor, that then brings us to the,
20 to the next thing I was going to tell Your Honor. I have
21 decided not to put that --

22 THE COURT: Okay.

23 MS. ELDER: -- into evidence --

24 THE COURT: All right.

25 MS. ELDER: -- his statement, but I would -- I am

1 pursuing the identification.

2 THE COURT: All right. Well, let's go ahead and bring
3 the jury in. I'm going to let them go ahead and break for
4 lunch because I'm going to need to do some more research on
5 this. Okay?

6 MS. ELDER: Yes, sir. And that would not give us an
7 opportunity to present case law after lunch, is that --

8 THE COURT: No. I'm going to do my own research and make
9 a decision --

10 MS. ELDER: Okay.

11 THE COURT: -- because I don't want to -- I, I ought to
12 be able to find something out. I mean, I think we're pretty
13 well -- you were pretty much expecting Ms. Montgomery to
14 identify the Defendant. She didn't do it on the stand. So
15 now you're wanting to use a prior photograph that she
16 identified.

17 MS. ELDER: Well, she did on the stand. She did say,
18 "Yes, I did say he was Junk was Jamar Huggins," and blah,
19 blah, blah, blah, blah, blah.

20 THE COURT: And this is not Junk. That's what -- her
21 testimony, as I recall it, is, "I identified Junk. I
22 identified a photograph. This Defendant is not Junk, and is
23 not the person I identified."

24 MS. ELDER: She says, "This doesn't look like the person
25 that was with me that night." I mean, we've got it on tape.

1 We can hear it.

2 THE COURT: Cross examine, yeah, cross examination he
3 said, "Is this the person," and she said no.

4 MS. ELDER: But I also asked her on direct, "Did you
5 identify Jamar Huggins on Ninth Avenue, drives a Cadillac,"
6 describes his long dreds, "as Junk," and she said yes.

7 MR. LONG: Then --

8 THE COURT: But that this is not him.

9 MS. ELDER: And when I showed --

10 MR. LONG: And she also said --

11 THE COURT: I understand what you're saying. She said
12 Jamal [sic], yes.

13 MS. ELDER: Yes.

14 THE COURT: She said that address yes. She said, "I
15 picked out a photograph, yes." She said, "But all of that
16 that I gave is not this Defendant."

17 MS. ELDER: But it is that Defendant. I mean, that is,
18 that is the Defendant. That's the -- that is where he lives.
19 That is his address. That is his description. That is -- and
20 that goes to the photograph she said she never saw.

21 THE COURT: Well, but, but still, I'll do the research on
22 it. We'll decide. I'll do the research, but I still, I still
23 don't think -- my initial inclination is that it doesn't come
24 in.

25 MS. ELDER: Well, Your Honor, and I'm not, I'm not

1 taking to berate the point, but she denies -- the rule
2 requires me to present her --

3 THE COURT: What rule are you going by?

4 MS. ELDER: Rule -- I just had it. I'm sorry, (as
5 read), "Extrinsic evidence is permissible," it says State
6 versus Blalock, it's a 2003 case.

7 THE COURT: That dealt with a prior --

8 MS. ELDER: Inconsistent statement. (As read),
9 "Extrinsic evidence is a -- of a prior inconsistent statement
10 is admissible if the witness is advised of the substance, time
11 and place of the statement, and either denies making the
12 statement, states he does not fully recall or does not
13 unequivocally admit he made it."

14 THE COURT: And what case is that?

15 MS. ELDER: State versus Blalock. It's 357, South
16 Carolina 74. It's also -- there's another case where
17 apparently they put up an inconsistent statement prior to the
18 witness actually taking the stand. They did reverse that
19 indicating that a prior inconsistent statement without first
20 having take the stand and denying making it is, is error, that
21 the declarant has to actually take the stand, deny making it
22 before we can introduce extrinsic evidence to the contrary.

23 THE COURT: Well, and the thing is is here she does not
24 deny making these statements.

25 MS. ELDER: She denied seeing that picture.

1 THE COURT: Well, she did deny seeing that picture. I'll
2 grant you that.

3 MS. ELDER: And that's what I'm focusing on right there,
4 Your Honor. That is the only thing that I'm talking about.
5 She denied, I showed it to her, she said, "No, he didn't show
6 me that," and --

7 THE COURT: He showed her one with a circle around it.

8 MS. ELDER: Some circle around it.

9 THE COURT: All right. Let me do the research on it.

10 MS. ELDER: Yes, sir.

11 THE COURT: But you are offering it as an identification
12 of the Defendant.

13 MS. ELDER: Well, I'm offering it to clear up her initial
14 identification, yes.

15 THE COURT: Okay. All right. Let me bring the jury in
16 and we'll cut them loose for lunch and that'll give me a while
17 to do some research. Okay?

18 MS. ELDER: Yes, sir.

19 THE COURT: All right. Let's bring the jury in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. These issues that we're dealing with now are going to
24 take a little bit longer, and given the time of day, it's
25 12:30, I'm going to go ahead and let you go to lunch on your

1 own today. So we're going to take a break. Please be back in
2 the jury room at 2:15. That'll give you about an hour and 45
3 minutes to eat lunch and come back. Do not discuss the case
4 even among yourselves at this point in time. Don't conduct
5 any independent investigations into the case. Hope everybody
6 has a good lunch, and we'll see you back at 2:15.

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. Anything from the State before we
10 adjourn for lunch?

11 MS. ELDER: Your Honor, are we going to allow the
12 Defendant to remain out at this point?

13 MR. LONG: He's been out on bond for a year and a half,
14 has got \$45,000 surety bond -- his -- based on his
15 grandmother's property. He's not going anywhere. I need him
16 to prepare for this afternoon.

17 THE COURT: Okay. I'm going to allow him to stay out.

18 MS. ELDER: Yes, sir.

19 THE COURT: Okay. All right. Anything from the Defense
20 before we --

21 MR. LONG: No, Your Honor.

22 THE COURT: All right. We'll go ahead and break for
23 lunch. Be back at -- I'll probably take -- I have them coming
24 back at 2:15. So I'll probably take the bench at about 2:20,
25 2:25, something like that. Okay?

1 MR. LONG: Thank you, Your Honor.

2 MS. ELDER: Yes, sir.

3 THE COURT: All right. Thank you.

4 MS. ELDER: Thank you.

5 ***** OFF THE RECORD *****

6 (On the record. The following takes place outside the
7 presence of the jury.)

8 THE COURT: Thank you very much. Please be seated.

9 All right. Ms. Elder, we've done some pretty exhaustive
10 research, and what you're proposing, as I understand, is to
11 call who to testify?

12 MS. ELDER: Detective Martin, Your Honor.

13 THE COURT: To testify that the witness identified that
14 photograph as the person who perpetrated the crime?

15 MS. ELDER: Yes, sir.

16 THE COURT: Okay. And that's being offered as a prior
17 inconsistent statement of Ms. Montgomery's testimony?

18 MS. ELDER: Correct.

19 THE COURT: All right. Rule 613(B), (as read),
20 "Extrinsic evidence of a prior inconsistent statement by a
21 witness is not admissible unless the witness is advised of the
22 substance of the statement," which I think she was, "the time
23 and place it was allegedly made, and the person to whom it was
24 made, and given the opportunity to explain or deny the
25 statement." I don't recall any testimony as to the time and

1 place of the statement.

2 MS. ELDER: Your Honor, I know that I consistently asked
3 her about January in 2013 and pointed out this detective.

4 THE COURT: You said January, yeah, and place, where is
5 the place?

6 MS. ELDER: I don't recall.

7 THE COURT: The only thing I can find is there was, there
8 is a case law and it dealt with prior inconsistent statement
9 and the State proffered testimony, they wanted to call a
10 police officer that said he was present when the witness made
11 a statement on the second floor of the police building in
12 November or December, and the Court held that was not specific
13 as to time, place, person to whom the statement was made, nor
14 was the Defendant given an opportunity. So it made it sound
15 like that you pretty much have to say, cross examine the
16 witness, and even under the rule, you cross examine the
17 witness and say or you examine the witness and say on this
18 date, this place, did you not make this statement to this
19 officer, and if they admit making the statement then it
20 doesn't come in. So I don't think it comes in under, under
21 two scenarios. Number one, we didn't identify a specific
22 place. I think you have to give a more exact time, and as I
23 recall her testimony she said, yeah, she could have, but she
24 was lying. Now, that deals with the other statements. As far
25 as this photograph, she did say, "No, he never showed me this

1 photograph," but unless you can point me to testimony where
2 you said date, time and place, I don't know that it comes in
3 under Rule 613.

4 MS. ELDER: Your Honor, I don't remember -- I listened to
5 her testimony. I don't remember if I said while -- "when you
6 were at the jail." I don't remember -- I don't, I don't know
7 if I asked her that or not.

8 THE COURT: Okay. All right. I don't know what you want
9 to do. I don't recall it coming in, and quite honestly, I
10 don't recall you ever identifying the officer. You may have.
11 I just recall you saying didn't you, did you, have you ever
12 seen this photograph and she said no, and you said didn't you
13 identify -- I know when you asked didn't you identify the
14 Defendant at this address, the color of the vehicle, that she
15 admitted to doing that, but said she lied. So because she
16 admitted to making that statement it doesn't come in.

17 MS. ELDER: Right. Yes, sir. I understand that. Your
18 Honor, I don't think I said the jail. I mean, I don't have it
19 in my notes that I said the jail. I know I pointed to this
20 officer. So I think, I think that was met during my direct of
21 her, but I don't recall --

22 THE COURT: Okay.

23 MS. ELDER: -- hearing that it was at the jail.

24 THE COURT: All right. And that, and I don't recall it.
25 I don't recall place, and quite frankly, I don't recall

1 testimony as to time either. So I'm going to, I'm going to
2 deny your motion to admit the identification or the prior
3 inconsistent statement on the identification of the
4 photograph.

5 MS. ELDER: Yes, sir.

6 THE COURT: All right. Anything further from the State
7 before we bring the jury in?

8 MS. ELDER: Just a -- no, sir, Your Honor. We're ready.

9 THE COURT: Anything from the Defense before we bring the
10 jury in?

11 MR. LONG: No, Your Honor.

12 THE COURT: All right. Let's bring the jury in.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right. Ladies and gentlemen, welcome
16 back. I hope everyone had a good lunch. We're now ready to
17 resume the trial of this case. Ms. Elder, the State can call
18 their next witness.

19 MS. ELDER: I'm sorry, Your Honor. Just a moment,
20 please.

21 THE COURT: All right.

22 MS. ELDER: Your Honor, the State would call Detective
23 Martin at this time.

24 THE COURT: All right.

25 Whereupon, Jonathan Martin was called to the stand, duly

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1 sworn by the clerk and testified as follows:

2 THE CLERK: Please be seated. State your full name,
3 spell your last name for the Court, please.

4 MR. MARTIN: Jonathan Martin, M-A-R-T-I-N.

5 THE COURT: All right. Ms. Elder.

6 DIRECT EXAMINATION

7 BY MS. ELDER:

8 Q Detective Martin, you're with what department?

9 A I work for the Horry County Police Department.

10 Q In what capacity?

11 A I'm a major crimes detective. It's in the violent crime
12 section.

13 Q How long have you been there?

14 A I've been there a little over three years.

15 Q And have you always been in the detective division?

16 A Before that I was in patrol for approximately five years.
17 I've also served for about six months in crime scene
18 investigation.

19 Q And in December of 2012, January of 2013, did you have an
20 opportunity to be assigned to a case involving the victim,
21 Angela Eckler?

22 A Yes.

23 Q And tell me in general what do you do in the course of an
24 investigation, or in that investigation what did you do?

25 A On this investigation the first thing I did was collect

1 all the incident reports, any background information on Ms.
2 Eckler and then I met her at her residence. I believe that
3 day she hadn't even been back to the house since the incident
4 occurred. She, she met me there like and we went in together.
5 She walked me through the house, showed me kind of what had
6 happened, how that the front door all the way through till
7 where she was in the house. She gave detailed statements
8 about what she remembers about the people, and then we went
9 into some background about her ex-fiancé.

10 Q And how long was this after the incident happened?

11 A I believe it was maybe two days, two, three days.

12 Q And did you do anything else at the scene?

13 A At the scene I took an exterior photo of the house.
14 There wasn't really any damage or anything to photograph since
15 the door had been opened. I did -- she identified -- she
16 hadn't touched anything. She hadn't even gone back to the
17 house since it happened. So I did take two swabs at the house
18 for touch DNA. It'd be at a location where someone maybe just
19 touched, their DNA might still be on the scene, and it was
20 kind of guess, just guessing because she wasn't very certain
21 about where people had touched. She knew she had been held in
22 the bathroom and then also that someone had gone out the front
23 door, you know, after they had come in on her. So she wasn't
24 -- that was about the only two places she could be a hundred
25 percent sure. Everywhere else would have just been swabbing

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1 for, you know, you don't know what you got.

2 Q And when you say touch DNA, that's a relatively new term
3 of art in the legal world. What exactly does that mean?

4 A It's, it's -- used to be where DNA would be with blood or
5 semen or spit, very strong DNA. Touch is a lot less quantity
6 and strength. There's new methods of DNA identification where
7 they can actually take a little bit and make it a lot, and
8 from that then they can compare it to a suspect or a victim or
9 anybody else. So when there was touch DNA you may not have a
10 lot. Me touching this table right here doesn't look -- is not
11 going to look like me if I bled all over the counter here. So
12 this little amount right here I can take a swipe of it. They
13 put it in what's called a PCR. It's called polymerase chain
14 reaction. They put -- the scientific -- it's all -- they put
15 a bunch of stuff together, throw it in a machine, heats up,
16 cools down, heats up, cools down and makes lots of copies.
17 With all those copies then they came compare it. It'd be just
18 the same as looking at blood DNA.

19 Q Now, just because I touch something here does that mean
20 I'm going to leave DNA?

21 A You're going off a lot of if it's your hands are oily.
22 If you're wearing gloves there's not going to be DNA there.
23 In this instance she was pretty sure one person was wearing
24 gloves. So she wasn't sure on the other one. That was why I
25 took only two. I wasn't certain where to look or even if

1 there would be a possibility of DNA.

2 Q So if you had gloves on you're not going to leave
3 anything behind --

4 A You're not going to leave DNA.

5 Q -- to collect off of touch DNA?

6 A No.

7 Q And is for that matter fingerprints, would you leave
8 fingerprints through gloves?

9 A No.

10 Q Now, Detective Martin, you showed -- I believe you also
11 -- what else did you do in this, in your investigation?

12 A The next thing I did was I followed up on some
13 information on her ex-fiancé, Adrian.

14 Q Do you know what his street name is?

15 A He, he goes by Dre. Is -- Dre is what he told me. I, I
16 met him at the hospital. He had actually self-admitted
17 himself over at Conway Hospital where he was receiving some
18 medical treatment. He had been there for over a week. I, I
19 went to him with kind of what we had gotten from information
20 from the -- Ms. Eckler, and he was able to identify a couple
21 of people in his life that he had run in circles with that
22 might be able to -- might commit a crime like that.

23 Q And based on that information, did you, subsequent to
24 that interview, did you have occasion to interview anybody
25 else?

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1 A Yes. He identified Deaungela -- I can't think right off
2 -- I can't think of her last name right now, Deaungela.

3 Q The lady that was here earlier?

4 A The lady that was up here a little while ago. He had --
5 she had -- he identified her as pretty much the only female
6 that matched the description of the female that had come to
7 the door on the night of the robbery. He said that they hung
8 out.

9 MR. LONG: Objection.

10 THE COURT: Sustained.

11 Q So she was identified at that point in time?

12 A Yes.

13 Q And subsequent to your discussions and interview with
14 Adrian, did you have occasion to interview anybody else after
15 that?

16 A I interviewed Ms. --

17 Q Ms. Montgomery?

18 A Yes. Ms. Montgomery, thank you, or she had several
19 names, Shandre [sic] or yeah.

20 Q And where did you -- when did you interview her?

21 A I interviewed at the J. Reuben Long Detention Center in
22 one of the booking interview rooms. She had actually been
23 arrested on a separate armed robbery subsequent to the one
24 that occurred here.

25 Q And based on that interview, did you do, as a result of

1 her -- of interview with her, did you identify any other
2 individuals to conduct interviews with?

3 A With information she had provided, I had developed Mr.
4 Huggins here as a person that she had identified as an
5 individual named Junk.

6 Q And did she give any type of address or anything like
7 that?

8 A She didn't give the address. She gave -- she said he
9 lived at the intersection of Ninth and there was a church
10 right across the street. It was a brick house. She described
11 the vehicle that he drove and described him in detail and the
12 fact he wore a grill in his teeth. He had long hair. He was
13 in his early 30s and a black male. She was very descriptive
14 about the location because I wasn't exactly sure. I don't
15 know Conway that well, but she kept describing caddy-corner to
16 the church, and with that, I was able to locate the house and
17 do some follow-up information that back-tracked me to Mr.
18 Huggins who lived at that residence.

19 Q And did you run vehicles through the Department of Motor
20 Vehicles that he owned at the time?

21 A I did. There was one that came back, and it was a
22 Cadillac. It was also observed on scene.

23 Q I'll have you take a look at what's been marked for
24 State's Identification Number Two. Is that the document that
25 you retrieved from the Department of Motor Vehicles?

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1 A It is. I have access to the DMV. So I printed it off of
2 their, their server. It's a DMV form for a customer vehicle,
3 indicates one page, page one of one. So only one vehicle
4 registered, and --

5 Q And who is -- I'm sorry -- who is the owner of that
6 vehicle?

7 A Jamar Antonio Huggins, [REDACTED] Ninth Ave., Conway.

8 MS. ELDER: Your Honor, I'd like to introduce this into
9 evidence.

10 MR. LONG: No objection.

11 THE COURT: State's Exhibit Number Two admitted into
12 evidence without objection.

13 (State's Exhibit Number Two [DMV Form] admitted into
14 evidence and appropriately marked.)

15 BY MS. ELDER:

16 Q And that was a -- I'm sorry -- what kind of car?

17 A It was a Cadillac Deville.

18 Q And I don't think they have colors listed on the DMV?

19 A They do not identify it on the DMV. That's why when I
20 went to the residence to try to figure out where she was
21 talking about, I observed it was, it was a darkish blue
22 Cadillac.

23 Q And the residence that was describe to you during the
24 course of your investigation, was that, in fact, where Jamar
25 Huggins lives?

1 A Yes. It's the address listed on that DMV form and his
2 driver's license form.

3 Q Okay. And so that we're clear, is that Jamar Huggins
4 that you identified through your investigation the same Jamar
5 Huggins that's sitting here today?

6 A It is.

7 Q All right. Does he look a little different?

8 A I think he lost a little weight, but hair's still pretty
9 long. Other than that, yes.

10 Q Now, during the course of your investigation, you also
11 interviewed another individual; is that correct?

12 A Yes. Oh --

13 Q Did you --

14 A Yes. It was a Tyjuan -- I don't -- his last name, I'm
15 sorry.

16 Q Do you have your case report here with you?

17 A I do have it right there.

18 Q Would it help you to refresh your memory if I ---

19 A It would just mainly for some names and dates if that's
20 okay.

21 MS. ELDER: Your Honor, if I could provide that to him?

22 THE COURT: Any objection?

23 MR. LONG: It's his --

24 A It's my report of investigation.

25 MR. LONG: Just to refresh his memory?

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1 MS. ELDER: Yes.

2 MR. LONG: No objection.

3 THE COURT: All right.

4 A Yes. On January 19th, 2013, I interviewed Tyjuan
5 McKiethan at J. Reuben Long. He'd also been arrested on an
6 armed robbery charge with the, the Ms. Montgomery.

7 Q On an unrelated charge?

8 A Unrelated case, yes.

9 Q Subsequent to your initial interview with Adrian or Drake
10 --

11 A Yes.

12 Q -- have you been able to get in touch with him or locate
13 him since that time?

14 A I, I have not. He removed himself from the area, and I
15 think it -- part of it was medical, and we weren't able to
16 locate where he was transferred to because of the medical
17 background.

18 MS. ELDER: I don't have any other questions, Your Honor.

19 THE COURT: All right. Cross examination.

20 CROSS EXAMINATION

21 BY MR. LONG:

22 Q Detective Martin, your interview with Deaungela Shanta
23 Montgomery is what led you to arrest Jamar Huggins; correct?

24 A Yes, sir.

25 Q Solely based on that, on her interviews, after you

1 interviewed Montgomery, you arrested Jamar Huggins?

2 A Yes, sir.

3 Q And you were in the courtroom earlier when you heard
4 that, that Shanta Deaungela Montgomery said Jamar Huggins was
5 not involved? You were in the courtroom; right?

6 A She identified that that man was not involved.

7 Q That's correct.

8 A To me she identified Jamar Huggins was involved.

9 Q And you realize -- you understand that Deaungela
10 Montgomery is a crack addict?

11 A She probably uses drugs. She -- I --

12 Q She told you she was a crack --

13 A She told me she uses drug.

14 Q Are you trying to cover up for her?

15 A No. I just don't know her background as a crack addict.

16 I, I wouldn't --

17 Q You don't know her background as crack addict? You
18 interviewed her and she told you she used crack.

19 A She told me she does use drugs, yes.

20 Q Crack cocaine?

21 A Crack cocaine.

22 Q She told you that.

23 A Yes.

24 Q Okay.

25 A I'm not judging her addiction. I -- or trying to cover

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1 for her. I'm just saying.

2 Q I'm not asking you, I'm not asking you that.

3 A Okay. I'm just saying would she --

4 Q I'm just saying ---

5 REPORTER: Judge, they're talking over.

6 THE COURT: Yeah. You --

7 A I'm sorry.

8 THE COURT: -- one talk at a time. Let him ask the
9 question.

10 A Okay.

11 THE COURT: Then you answer it.

12 A I'm sorry.

13 THE COURT: And then you can ask your question. Ask your
14 question.

15 Q And you know that she is a convicted felon?

16 A Yes, sir.

17 Q And you told her when you were interviewing her, you told
18 her that she can help herself by identifying Jamar Huggins;
19 didn't you?

20 A No. I told her she could help herself by identifying the
21 other parties involved.

22 MR. LONG: The Court's indulgence.

23 THE COURT: All right.

24 BY MR. LONG:

25 Q You told Deaungela Montgomery during that interview that

1 the only way she was going to get out of this is if she
2 identifies Jamar Huggins? Do you remember that?

3 A To identify him as the person that committed the crime or
4 to ID him.

5 Q That's correct.

6 A No.

7 Q You don't remember that?

8 A I do not remember ever pointing out anybody for her to
9 identify. She identified Jamar Huggins as a suspect.

10 Q And you interviewed her on January -- what was the date?
11 January 11th, 2013?

12 A You mind if I look? It was January 11th, 2013. Yes. I
13 interviewed her twice that day.

14 Q About what time of day was that?

15 A The first one is about 9:40 in the morning, and the
16 second time was about 1 p.m. when I returned with DMV
17 information based on the information she had provided me.

18 Q And you later told her -- she said -- you said, "I'm
19 going to close this case with your name on it." Do you
20 remember that?

21 A I don't remember saying that exactly, but it is possible.

22 Q Okay. And you showed -- when you talked to Deaungela
23 Montgomery you showed her a photographic lineup of herself;
24 correct?

25 A I did.

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1 MR. LONG: If I may approach?

2 THE COURT: All right.

3 A Yes, sir.

4 Q Is that what you showed her?

5 A That's a copy of it, yes.

6 Q I don't have the original? And on this picture is that
7 Deaungela's picture that's circled?

8 A Number three, yes.

9 Q And by that it says, "This is lady who robbed me. She
10 knocked on my door and asked for Dre," and it's got some
11 initials by it.

12 A Uh-huh.

13 THE COURT: Is a that a yes?

14 A Oh, I'm sorry. That's a yes.

15 THE COURT: All right.

16 A I'm sorry.

17 Q And you told Deaungela that the, that the victim, Angela
18 Eckler wrote that; didn't you?

19 A I told her she was identified, yes.

20 Q And you, you told her that --

21 A I showed her that photo, yes.

22 Q But you wrote that?

23 A I did.

24 Q You wrote that?

25 A I did.

1 Q You said, "This is the lady who robbed me." Did
2 Deaungela Montgomery rob you?

3 A No. I used what's called police deception.

4 Q "She knocked, she knocked on my door." Did she knock on
5 your door?

6 A No. She did not.

7 Q "And asked for Dre." Did she ask you for Dre?

8 A No.

9 Q So this is a lie?

10 A It's deception.

11 Q It's deception. You operate in deception a lot?

12 A Sometimes when we're doing interviews with individuals
13 everyone's not always forthcoming with the truth. Sometimes
14 they have to believe there's more information on our side than
15 we actually have at that time.

16 Q And so you interviewed a grand total of five people for
17 this investigation, Deaungela Montgomery, Angela Eckler, Jamar
18 Huggins, Tyjuan McKiethan, and Adrian Moore?

19 A Yes, sir.

20 Q Let's talk about what you did not do. You did not get
21 DNA analysis from the house; correct?

22 A Those items were sent off.

23 Q But you never got anything back?

24 A We did not have anything to compare them to.

25 Q You did not conduct a search warrant on one single

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1 vehicle; did you?

2 A No, sir.

3 Q You did not conduct a search warrant on one house; did
4 you?

5 A No, sir.

6 Q The victim testified that there was a gun involved.
7 You never looked for that gun.

8 A I never located the gun, no.

9 Q The victim said there was a mask involved. Never found
10 the mask?

11 A No, sir.

12 Q Once you arrested Jamar Huggins you stopped your
13 investigation?

14 A Actually after him I believe I interviewed Ty McKiethan
15 also.

16 Q But you never made another arrest.

17 A No.

18 Q There were two people -- two men went in that house?

19 A Yes, sir.

20 MR. LONG: The Court's indulgence.

21 THE COURT: All right.

22 BY MR. LONG:

23 Q And the victim told you that she could not identify the
24 perpetrators of this crime; correct?

25 A Yes, sir.

1 Q That's all the questions I have. Thank you.

2 THE COURT: Redirect?

3 MS. ELDER: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. ELDER:

6 Q When you interviewed Ms. Montgomery she had not yet been
7 convicted of a felony; is that correct?

8 A I'm unaware of her -- at that time if I knew her criminal
9 history or not. I knew she had been arrested on a felony
10 charge.

11 Q She was being held?

12 A She was being held at J. Reuben Long Detention. Yes.

13 Q But had not been convicted of that yet?

14 A Of this crime or others?

15 Q Of the armed robbery.

16 A Of that -- this armed robbery. No. No She was still in
17 detention.

18 Q Or the other one?

19 A NO.

20 Q And when you identified or you identified -- you
21 testified you've identified two people that you could have
22 identification of, Jamar Huggins and Deaungela Montgomery.

23 A Yes.

24 Q And you got warrants for both of those individuals?

25 A Yes.

1 Q Did anybody ever prior to that day or that day or shortly
2 thereafter, anybody ever give you a statement or has anyone
3 ever given you a statement that identifies the third Co-
4 Defendant?

5 A Yes. There was information provided about Tyjuan
6 McKiethan.

7 Q Did they tell you that he did the robbery?

8 A No.

9 Q Did they tell you who was in this house?

10 A No.

11 Q Did they tell you they went -- that he went to Ms.
12 Eckler's house?

13 A No.

14 Q So you didn't have anybody saying that this third person,
15 whoever that may have been, went into Ms. Eckler's house?

16 A No. It was more information that put him up to that
17 point but not going in.

18 Q Okay. So you didn't have enough to get warrants for him?

19 A No. There was not enough probable cause on the third
20 person.

21 Q So you got warrants for the two people that you had
22 developed leads on?

23 A Yes.

24 Q And when Mr. Long was asking you, you go to the police
25 academy; is that correct?

1 A Yes.

2 Q And you go there's certain training about interviewing
3 and things like that?

4 A Yes.

5 Q And is it permissible or do they train law enforcement
6 officers to use deceptive tactics when trying to gain
7 admissions --

8 A Yes.

9 Q -- on parties and witnesses?

10 A Through training and the academy we're told the Supreme
11 Court's ruled that we're allowed to use certain deceptive
12 practices most times because people who commit crimes aren't
13 going to just come out and say, "I did it." They need to
14 believe that we have some information on them that helps them
15 along to tell the truth.

16 Q And when Mr. Long was asking you if you told Ms.
17 Montgomery, "You've got to say that Jamar Huggins did this
18 crime," did you say that? Did you tell her to pick Jamar
19 Huggins by name?

20 A I, I, I hadn't heard the name Jamar Huggins before she
21 provided me the information to develop Jamar Huggins. I never
22 heard his name before in my life before that investigation
23 started. What I did was I told her that she needed to provide
24 the other parties who were involved in the crime or she
25 probably was going to be the one that stood to try for, to

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1 stand for it all. Without her information we weren't going
2 to develop any, anybody else.

3 Q So you weren't asking her for this particular person, you
4 were just asking her for the other two individuals?

5 A Yes.

6 MS. ELDER: I have no further questions, Your Honor.

7 THE COURT: All right. You may step down.

8 A Thank you.

9 THE COURT: All right. The State can call their next
10 witness.

11 MS. ELDER: Your Honor, at this time the State of South
12 Carolina would rest.

13 THE COURT: All right. All right. Ladies and gentlemen,
14 the State has rested their case. So now is the time of the
15 trial where I need take up some matters of law with the
16 attorneys. So as I did before, I'm going to excuse you back
17 to the jury room for just a few minutes and we'll bring you
18 back out shortly. Do not discuss the case even among
19 yourselves at this point in time. Thank you very much.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: All right. Motions.

23 MR. LONG: I have a motion for a directed verdict, Your
24 Honor.

25 THE COURT: All right. What have we got in evidence as

1 far as identification?

2 MS. ELDER: Your Honor, I went back and listened to the
3 testimony of Ms. Montgomery, and she consistently said, "He
4 doesn't look like the same person." She described him. She
5 even described him today on the stand as the guy who lives on
6 Ninth Avenue who drives the Cadillac who -- she's -- I don't
7 think she said anything about the size, but she did describe
8 and connect him to what I have put in evidence through
9 Detective Martin, that being his vehicle and the location of
10 his residence.

11 She also indicated in her testimony when I listened to
12 it, she described his car and color. She described him --
13 this is her statement, describe, "I described him to
14 Detective," the best she could, where he lived and the car,
15 which was confirmed by the detective's testimony just then.
16 She said that she did -- she indicated that it was Junk that
17 was with them that robbed, that was driving, that had the
18 mask, that he was driving his car that had the gun --

19 THE COURT: I mean, what evidence do we have that the
20 Defendant is Junk?

21 MS. ELDER: Your Honor, in opening statement they said
22 he's referred to as Junk.

23 THE COURT: Opening statements aren't evidence.

24 MS. ELDER: Well, she also said Junk.

25 THE COURT: No. She said this is not Junk.

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1 MR. LONG: That's right.

2 MS. ELDER: Well, she did today, but that goes to, that
3 goes to credibility, Your Honor. The fact that she changed
4 her statement goes to her credibility.

5 MR. LONG: The prior --

6 MS. ELDER: The jury --

7 MR. LONG: Sorry.

8 THE COURT: Go ahead.

9 MS. ELDER: The jury can believe her prior statement
10 where she admits vividly that she said Junk and that when I
11 asked her, because Mr. Long objected and said or wanted
12 clarification of what she was admitting, it was to my question
13 of, "You described the car that was Jamar's, Jamar was
14 driving, Jamar had the mask, Jamar had the gun," and she
15 answered yes, yes, yes to each of those questions. So she
16 admitted that she told the detectives that Jamar Huggins was
17 the one doing all those things. Now, the fact that she
18 changed today goes to her credibility. A jury can believe her
19 former statement that she admitted making and has now changed.
20 They can believe the statement in court and disregard and say,
21 "Yes, she was lying before," but that's for them to determine.
22 That goes to the weight and credibility of this witness.

23 THE COURT: All right.

24 MS. ELDER: She also says when I ask -- I did ask her --
25 she said, "Yes, Junk went with us," and I asked, I believe, is

1 it possible, and she says, "It's possible, but these don't
2 look like the same person." That is not -- I know she
3 answered him, Mr. Long, as that's not the same guy, but then
4 she went back again and said, "Well, it's possible, but he
5 doesn't look like the same person," because I started asking
6 about, "Maybe he looks a little different. Maybe his hair's a
7 little different." "Yeah. Yeah." "Is it possible?" "Yes."
8 Again, that goes to the credibility of this witness, and they
9 can believe, Your Honor, based on that that she's not
10 credible. They can believe that she's lying today or that she
11 was hesitant today. They can believe that she didn't pick him
12 out, but it goes to her credibility, which has clearly been
13 held in the province of the jury.

14 THE COURT: All right. Anything in reply?

15 MR. LONG: Yes, Your Honor. There -- I would submit
16 that the prior statements of Ms. Montgomery, they're not into
17 evidence. There's no evidence showing that.

18 THE COURT: Well, I mean, you've got her testimony where
19 she said, "Yeah, I did say that."

20 MR. LONG: But --

21 THE COURT: "I did say he lived here. I did say he drove
22 a blue car. I did say this, but that's not him."

23 MR. LONG: And she said she was lying when she said those
24 things.

25 THE COURT: Well, but I mean --

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1 MR. LONG: But even if, even if --

2 THE COURT: Right.

3 MR. LONG: -- as you know, the -- we are entitled to a
4 directed verdict when the evidence merely raises a suspicion
5 of guilt. At best, I mean, not that I concede, but at best
6 Ms. Montgomery's testimony raises a suspicion of guilt. She
7 said she was lying, "Possibly it was the same guy, doesn't
8 look like him, confused, I was lying, I was on crack." So at
9 best there's a mere suspicion, but when I asked her point
10 blank the one question I asked her, "Is Jamar Huggins involved
11 in this home invasion," she said no. The -- to me that
12 cancels out all other mere suspicions. So even if it is a
13 mere suspicion, that's not enough for the State to overcome
14 the directed verdict, and that is the only shred of evidence
15 they have. Angela Eckler, the victim, she can't identify the
16 perpetrators. She specifically said she cannot identify Jamar
17 Huggins as the person who went into her house. So all we're
18 left with is Deaungela Montgomery's testimony, and it's so all
19 over the board, and I would say it's not even just goes to her
20 weight because she -- her evidence is not even credit worthy.
21 So I would say that we're entitled to a directed verdict. We
22 just ask that you give us a directed verdict based on the fact
23 they don't have enough evidence to prove their case.

24 THE COURT: All right. I'm going to take a short recess.
25 Let me go look at one something. So I'm going to take that

1 under advisement. Anything else?

2 MR. LONG: No, Your Honor.

3 THE COURT: All right.

4 MS. ELDER: No, sir.

5 THE COURT: Let me go ahead and question your client on
6 his right to testify at this time in the event I deny your
7 motion. I don't -- I need to -- I want to go check one thing
8 before I make a decision, but let me go ahead and question him
9 and then I'll ask him as -- when we come back, if I deny your
10 motion, I'll ask him whether or not he wishes to testify in
11 this case. Let's place him under oath, please.

12 (Defendant sworn by clerk.)

13 THE COURT: All right. Sir, your name is Jamar Antonio
14 Huggins?

15 MR. HUGGINS: Yes, sir.

16 THE COURT: All right. Mr. Huggins, we have now reached
17 the stage of the trial where you may present a defense, if you
18 choose to do so. So at this time I'm going to explain to you
19 certain rights that you have. If you do not understand
20 anything I say please let me know; okay? If you want me to
21 explain anything in more detail, let me know. Do you
22 understand that?

23 MR. HUGGINS: Yes, sir.

24 THE COURT: All right. We've reached the stage of the
25 trial where you may present your defense. You have the right

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1 to claim protections given to you by the Fifth Amendment to
2 the United States Constitution, which states in part that no
3 person shall be compelled in any criminal case to be a witness
4 against himself. This means that you cannot be required to
5 testify in this case. You have the right to testify on your
6 own behalf. However, no one can make you testify. This is a
7 personal right, and no one can waive this right except for
8 you. If you decide to testify, you will be subject to the
9 same rules that govern other witnesses, and you may be
10 examined and cross examined on any relevant issue in this
11 case. In addition, if you have any convictions involving
12 dishonesty or false statement or for crimes punishable by
13 imprisonment for more than one year and this Court determines
14 that the probative value of admitting the evidence outweighs
15 its prejudicial effect to you, the Solicitor will be able to
16 introduce your record to attack your credibility.

17 Does the State know of any prior criminal convictions or
18 bad acts that they would be using to attack his credibility?

19 MS. ELDER: No, Your Honor. We've talked to -- Mr. Long
20 and I have talked about this. He has a prior -- it's a
21 juvenile conviction, but it places him on the adult registry,
22 and we've talked back and forth about that, but I'm not
23 seeking to try to introduce that because I think it's -- I
24 can't find anything that really says yes or no that it would
25 be admissible, and we'd just rather not risk that.

1 THE COURT: All right. All right. So at this time
2 they're saying that there is no prior criminal convictions
3 that they would introduce to attack your credibility.
4 However, you can be examined and cross examined on any
5 relevant issue in this case just like any other witness. Do
6 you understand that?

7 MR. HUGGINS: Yes, sir.

8 THE COURT: All right. If you decide to testify, this
9 decision on your part must be freely, voluntarily and
10 intelligently made, with knowledge of the protections given to
11 you by the Fifth Amendment of the United States Constitution
12 and the consequences of your decision to testify. If you
13 decide not to testify, I will instruct the jurors that they
14 cannot give the fact that you did not testify any
15 consideration whatsoever and that there is to be absolutely no
16 prejudice to you because you did not testify. It's left
17 entirely up to you whether or not you testify. You may talk
18 with your attorney, your family and friends or anyone else,
19 but the final decision will be left entirely up to you. So do
20 you understand what I've explained to you or do you have any
21 questions about what I've explained to you?

22 MR. HUGGINS: No, Your Honor.

23 THE COURT: All right. I'm going to take a short recess.
24 I've going to give you an opportunity to talk to your attorney
25 some more. As I said, the final decision is left up to you,

Questioning Defendant Re: Rights

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1 and when I come back, if I deny this motion for a directed
2 verdict, I'll then ask you whether or not you wish to testify
3 in this case; okay?

4 MR. HUGGINS: Yes, sir.

5 THE COURT: All right. Let's take a short recess. I'll
6 be right back.

7 MS. ELDER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 ***** OFF THE RECORD *****

10 (On the record. The following takes place outside the
11 presence of the jury.)

12 THE COURT: Thank you very much. Please be seated.

13 All right. Mr. Long, I've looked over some case law, and
14 as I understand, a motion for directed verdict, it's kind of
15 hard to understand in a criminal case. It says that I just
16 look for the existence of evidence and not the weight or that
17 the evidence must raise more than the suspicion. So there is
18 testimony from Ms. Montgomery where she admitted to making
19 these prior statements. She said she lied, but I think that
20 creates a jury issue as to whether or not to believe her
21 former statement or to believe her testimony here at trial.
22 So I'm going to deny your motion for a directed verdict. All
23 right.

24 MR. LONG: Thank you, Your Honor.

25 THE COURT: Anything further?

1 MR. LONG: No, Your Honor. Thank you.

2 THE COURT: All right. Let's get your client to please
3 stand.

4 (Complies with request.)

5 THE COURT: All right. Mr. Huggins, you recall the
6 information I provided you regarding your protections and
7 rights under the Fifth Amendment to the United States
8 Constitution and your right to testify?

9 MR. HUGGINS: Yes, sir.

10 THE COURT: All right. Have you had an ample opportunity
11 to discuss your right to testify with your attorney, your
12 family, your friends and whoever else you want to discuss it
13 with?

14 MR. HUGGINS: Yes, sir.

15 THE COURT: All right. And do you wish to testify in
16 this case?

17 MR. HUGGINS: No, sir.

18 THE COURT: Okay. Anything further you want placed on
19 the record?

20 MR. LONG: No, Your Honor.

21 THE COURT: Anything further the State wants placed on
22 the record in that regard?

23 MS. ELDER: No, sir, Your Honor.

24 THE COURT: All right. Will the Defendant be presenting
25 any witnesses or any testimony?

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1 MR. LONG: No, Your Honor.

2 THE COURT: Okay. All right. So we'll just go into
3 closing arguments and jury charges?

4 MR. LONG: Yes, sir.

5 THE COURT: Okay. I, I got to work on some charges. Do
6 we want to do that first thing in the morning?

7 MS. ELDER: Your Honor, that's fine with me. Of course,
8 I would rather not split it up. I don't think that's ever a
9 good idea --

10 THE COURT: Yeah.

11 MS. ELDER: -- to split closing and charging up.

12 THE COURT: What I'm going to do is come on -- bring them
13 back in and say we're ready to proceed. Ask you if the
14 Defendant wishes to present a defense. You can say no, and
15 then I'll just recess them for the day and we will bring them
16 back tomorrow morning for closing arguments and jury charges.
17 How does that sound?

18 MR. LONG: Sounds good.

19 THE COURT: That sound agreeable?

20 MS. ELDER: Yes, sir.

21 THE COURT: All right. All right. Anything from the
22 State before we bring the jury in?

23 MS. ELDER: No, sir, Your Honor. I assume once we
24 release the jury we'll again have the discussion about
25 releasing the Defendant tonight?

1 THE COURT: Yeah. I'm inclined since there is no more
2 evidence to be presented in this case, bond no longer
3 attaches. So he'll need to stay with us tonight.

4 MR. LONG: Is there, is there any way we could go ahead.
5 I guess there's no way we -- I hate to see him spend a night
6 in jail based on this.

7 THE COURT: And I understand what you're saying.

8 MR. LONG: I mean, this, this.

9 THE COURT: I really do. Well, let me ask this. Does
10 the State want him held tonight? I generally do when there's
11 no more evidence to be presented and the only thing left is
12 closing arguments and deliberations, but I'll leave -- I mean,
13 and so that's unless the State agrees for him.

14 MS. ELDER: Your Honor, I can't, I can't agree to that.
15 My -- I understand Mr. Long. I certainly sympathize with
16 that, but the bond isn't attached anymore, clearly by law it's
17 not attached, and although, you know, I will, for the Court's,
18 he has shown up when we've required him to show up. However,
19 this is an extremely serious case, and he knows that the Court
20 has ruled on his directed verdict motion, and it is going to
21 the jury, which gives him more --

22 THE COURT: Right.

23 MS. ELDER: -- incentive not to appear.

24 MR. LONG: This, but this scintilla of evidence that we
25 have before us is he is --

Questioning Defendant Re: Rights

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1 THE COURT: And I agree with you. I agree with you on
2 that, but the fact remains is that there's no more evidence.
3 It simply goes to the weight to be considered by the jury.
4 There's nothing else to be presented. So I'm going to have to
5 have him held tonight. I wish there was some other way, but
6 the law -- if the law said that he was still on bond, I would
7 agree with you, and I would let him go, but there's nothing
8 that compels his return tomorrow.

9 MR. LONG: Does it make any difference at all that he has
10 realty bond, that he has property put up?

11 THE COURT: As I understand, once the trial, that the
12 sole purpose of bond is to compel his appearance at trial.

13 MR. LONG: Thank you.

14 THE COURT: Once he appears, once the trial starts, then
15 the bond is released, and I think the general consensus is the
16 bond is released because the Court generally does order them
17 held pending the final decision, the, the final jury verdict.

18 MR. LONG: Yes, sir.

19 THE COURT: You know, and, and I apologize, Mr. Huggins,
20 but the law is what the law is, and we're just going to have
21 to do that tonight. You're just going to have to stay
22 tonight. I wish there was some other way, but I don't know of
23 any other way to do it. So we're going to have him held
24 tonight. All right. Let's bring the jury back in, please.

25 (Whereupon, the following takes place in the presence of

1 the jury.)

2 THE COURT: Ladies and gentlemen, welcome back. I
3 apologize for keeping you so long in the jury room. As I
4 stated before you left, the State has completed their case in
5 chief. Now is the time where the Defense can present a
6 defense if the Defendant chooses to do so. Mr. Long, does the
7 Defendant wish to present a defense in this case?

8 MR. LONG: No, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, the Defense
10 has rested and chooses not to present any defense in this
11 case, which they're not required to do because the State bears
12 the burden in this case.

13 So the only thing left is for the attorneys to make their
14 closing arguments and for me to charge you with the law to be
15 applied in this case. Now, ordinarily, we'd go straight into
16 that, but that might take some time, and with it being almost
17 a quarter till four, I don't like to send a jury out for
18 deliberations after 4:00 o'clock, and it would be well after
19 four before you would begin your deliberations. So I think
20 we're going to go ahead and break for today. I'm going to ask
21 that you please be back in the jury room tomorrow morning at
22 9:15, and we'll resume the trial of the case at that point in
23 time with the closing arguments and a charge on the law.
24 Until you receive those closing arguments and until you
25 receive a charge on the law, it is still too early for you to

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1 begin your deliberations. So do not discuss the case with
2 anyone, even among yourselves. Don't conduct any independent
3 investigations. We'll see you back tomorrow morning at 9:15
4 and we'll wrap this up at that time. Thank you very much.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Anything from the State before we
8 recess?

9 MS. ELDER: No, Your Honor. We going to talk about
10 charges or you want to --

11 THE COURT: I'm going to -- if you've got any proposed
12 charges, you can go ahead and hand them up. I'll prepare
13 charges tonight and let you take a look at them tomorrow
14 morning before we -- before you do your closing arguments, and
15 you can raise any objections then if you want to. Do you have
16 anything specifically?

17 MS. ELDER: No, Your Honor. The burg first, the
18 kidnapping, the armed robbery, I was going to request a, a
19 strong arm robbery as a lesser included.

20 THE COURT: Any objection?

21 MR. LONG: No objection.

22 THE COURT: All right. I'll do that.

23 MS. ELDER: The other one is the, the hand of one charge,
24 but I would assume Your Honor would give that in a Co-
25 Defendant case?

1 THE COURT: Yeah. All right. Anything further?

2 MR. LONG: Credibility and weight of the evidence.

3 THE COURT: I was going to do prior and I was going to
4 charge on prior inconsistent statement, where they can believe
5 the prior statement or the witness's testimony here at trial,
6 prior criminal record of the Defendant as to credibility,
7 things of that nature. I can't recall off the top of my head.
8 I'll have to take a look, but I'm sure there's something else
9 in there we're going to put in. All right.

10 MR. LONG: Very good.

11 MS. ELDER: Do you want us to be here at nine?

12 THE COURT: Well, I'll have -- the jury'll get back in at
13 9:15. It'll take them probably about 10, 15 minutes to drink
14 a cup of coffee, eat a doughnut or a biscuit or something and
15 then we'll bring them in. So I'll have the jury charges ready
16 for you at 9:00 o'clock tomorrow morning for you to look over.
17 So you can get here whenever you want, but please be here by
18 9:15. If you want to get here about 15 minutes early I'll
19 have it ready for you to review at that time.

20 MS. ELDER: Yes, sir, Your Honor.

21 THE COURT: All right.

22 MR. LONG: Thank you.

23 THE COURT: Thank you.

24 ***** OFF THE RECORD *****

25 (On the record, September 17, 2014. The following takes

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1 place outside the presence of the jury.)

2 THE COURT: All right. We've met in chambers and gone
3 over some of the challenges and changes to the jury charge and
4 the verdict form. I made the changes that we discussed in
5 chambers. Any further challenges from the State at this time?

6 MS. ELDER: No, sir, Your Honor.

7 THE COURT: Any from the Defense?

8 MR. LONG: No, Your Honor.

9 THE COURT: All right. And as I told you, I'll give you
10 another opportunity to raise any objections or challenges
11 after I charge the jury because sometimes the charges do sound
12 different when you hear them read versus when you read them on
13 the paper. So I'll give you another opportunity at that time.

14 MS. ELDER: Yes, sir.

15 THE COURT: All right. So I understand now that we're
16 ready to go forward with the closing arguments and then
17 charges and then deliberations; correct?

18 MS. ELDER: Yes, sir.

19 MR. LONG: Yes, sir.

20 THE COURT: All right. Anything from the State before we
21 bring the jury in?

22 MS. ELDER: No, sir.

23 THE COURT: Anything from the Defense?

24 MR. LONG: No, Your Honor.

25 THE COURT: All right. Let's bring the jury in.

1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: All right. Ladies and gentlemen, welcome
4 back. Hope everyone had a good evening. I appreciate your
5 being on time this morning, and I apologize for keeping you
6 back in the jury room for so long, but we are now ready to
7 proceed in the trial of this case.

8 We've reached the stage of the case where the attorneys
9 will make their closing arguments to you. Now, just like
10 their opening statements, these closing arguments are not
11 evidence in this case. It is simply the attorney's contention
12 as to what they think the evidence in this case has shown and
13 what they think the facts are and what they think the law to
14 be applied in this case is. If at any time an attorney makes
15 reference to a factual matter that is different from the facts
16 as you find them to be or references the law that is different
17 from the law as I will charge you at the end of their
18 arguments, then you're to disregard that portion of their
19 closing arguments because these closing arguments are not
20 evidence. It's just their contention as to what the evidence
21 has shown in this case.

22 All right. With no defense the State wish to close?

23 MS. ELDER: May it please the Court, Your Honor?

24 THE COURT: Yes, ma'am.

25 MS. ELDER: Good morning. We've reached the stage as the

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1 Judge has indicated, that he's about to give you the law in
2 this case, what South Carolina says and the elements of the
3 law that I have to prove to find the Defendant or get you to
4 find the Defendant guilty, and he's going to give you several
5 charges. One of them is burglary first degree. One of them
6 is armed robbery and a lesser included offense of robbery, and
7 the third one is kidnapping.

8 Now, typically this is the time in closing that I would
9 go over the evidence, and I would go over the elements of the
10 crime or the crimes in this case, but I'm going -- not going
11 to spend a lot of time on the elements because they're un-
12 contradicted. There's no doubt that a burglary happened.
13 There's no one that's given any evidence to the contrary. We
14 know a burglary happened. We know a burglary happened at
15 night. We know a burglary happened while one of the three
16 individuals had a weapon, and we know that weapon was
17 presented to the victim.

18 Armed robbery, again, there's not a lot of time --
19 there's not a lot of reason for me to spend on that. Again,
20 the only testimony that you have to consider is that of the
21 victims, nothing contradicts that, in fact, three people came
22 to her house that night, two went in. They had a weapon and
23 they took some of her belongings, un-contradicted.

24 Kidnapping, again, the only person that told you about
25 what happened in the house is the victim. Nobody said

1 anything to the contrary. Those two men came into her house.
2 One of them had a gun. One of them grabbed her from behind,
3 pulled her around the house and then put her in the bathroom
4 and prevented her from getting out to get to her daughter.
5 That is, in fact, kidnapping. Even in his opening Mr. Long
6 indicated, they have no doubt that these crimes happened.

7 The Judge is also going to give you a charge that we call
8 hand of one, hand of all, and basically that means that when
9 you go and you participate in a crime you are as guilty as the
10 next person beside you. For example, Deaungela Montgomery,
11 you heard her part even from the victim that she played in
12 this offense. She didn't have the weapon. She didn't even go
13 into the house, but because she was an active participant, she
14 went up on that door, knocked on it, got Angela to come to the
15 door so that the other two Co-Defendants could go in, that she
16 knew what they were going there for, she was as guilty under
17 hand of one, hand of all as the one who went into the house
18 and pointed the gun at Angela. That's the theory of hand of
19 one, hand of all.

20 Now, the only question left really that is at issue is
21 was that Defendant one of the three people that went to Angela
22 Eckler's house that night, and the evidence clearly shows that
23 he was. Deaungela Montgomery gave a statement in January of
24 2013. This was about a month, the month proceeding this,
25 subsequent to this home invasion. At the time, as you heard,

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1 she had been arrested on an unrelated charge. She had not
2 been convicted. She was not a felon. She was in jail. She
3 described what happened at that house. She decided -- which
4 was consistent, by the way, with the victim. She described
5 how she got to the house, the type of car she was riding in,
6 who that car belonged to, that it belonged to a man that she
7 knew as Junk, that that was his street name. She described
8 who was driving the car, and she gave a physical description
9 of the man she knew as Junk. She said it was a Cadillac, that
10 it was Junk's Cadillac, and that she didn't know this guy's
11 real name, she only knew him by his street name, but what does
12 she do? She gives this detective not the house address, but
13 description of how to get to his house. You go down this
14 road. You go down that road. It's across from the church.
15 Detective Martin told you how he found Junk's house, and when
16 he went to the house based on the directions that Ms.
17 Montgomery gave him, he found the Cadillac that she also
18 described.

19 Now, the detective, Detective Martin got on the stand and
20 there was some questions about who -- whether he told her to
21 pick out Jamar. He told you he didn't know who Jamar was when
22 he first talked to Deaungela. He had no idea who the other
23 two individuals were that went into this house. She tells him
24 somebody with a street name Junk. He has to go out, use her
25 directions, find the house on Ninth Avenue, find the Cadillac,

1 which he does. He runs the DMV registration for that
2 Cadillac, that it's registered to Jamar Antonio Huggins at
3 [REDACTED] Ninth Avenue in Conway. He then goes back to the jail
4 and talks to Deaungela again to make sure this is the same guy
5 she was talking about.

6 Now, she came in here yesterday and testified, and on one
7 question that Mr. Long asked her on cross examination she
8 says, I wrote it down, that the Defendant, this person right
9 here sitting in the courtroom, was not the same person that
10 she identified as Junk, Jamar Huggins, in January of 2013.
11 Now, that was over two years ago when she did that, but upon
12 my questioning and pushing her a little bit more about her
13 prior statement, she says, "Well, it's possible. He just
14 doesn't look the same," and I tell you that because that's,
15 that's what I heard her say, and I know she told me that, but
16 if you have any question about it while you're back there
17 deliberating and one person remembers it one way and one
18 person remembers it another, you can ask the Judge to rehear
19 her testimony. The lady right there took down and recorded
20 every testimony, every word that was said during the course of
21 this trial, and that is available for you should you have any
22 questions.

23 Now, when Detective Martin was on the stand, Mr. Long
24 kind of got into him a little bit about police techniques, and
25 that Detective Martin, almost to the point that it was a bad

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1 thing, for Mr. Martin to go to the jail, question Ms.
2 Montgomery about her two Co-Defendants. Wouldn't you expect
3 the police to go out and try to identify the two men who went
4 into this woman's house at night with a gun and jerked her
5 around her house, terrorized her daughter? Wouldn't you
6 expect him to go to the jail and question her about that?
7 Absolutely. It is not some sinister plot to arrest Jamar
8 Huggins because remember he didn't even know who Jamar Huggins
9 was. He had no idea until he talked to her. Yes. He told
10 her, "Don't take these charges by yourself," because guess
11 what, she wasn't by herself. There's no doubt that she wasn't
12 by herself. "Don't go down for something that two other
13 people were involved in," and think about her part in this.
14 Yes. She is as guilty as they are, but when you look, when we
15 look at cases and we look at Defendants and we say who's more
16 culpable, who's the bad one in this threesome? She's the
17 least culpable. She knocked on the door. She got them in,
18 but she turned around and left. So, of course, he's going to
19 tell her, "Don't go down for this by yourself," absolutely.

20 Mr. Long indicated in his opening that once they got
21 Jamar Huggins that was it, this officer was done, this
22 detective was done, that's all he cared about, making the
23 arrest, that's it. He never interviewed anybody else. Who
24 else is there to interview? How many people were there that
25 night? He interviewed Ms. Eckler. He interviewed Deaungela,

1 told you he interviewed Jamar, and he told you after Jamar he
2 went and interviewed somebody named Tyjuan. How many people
3 is that? The victim, and one, two, three, four people. Now,
4 again, if he was the kind of officer that just wanted to close
5 a case by arrest, why didn't he rush out and get warrants
6 against all of them? He didn't. He got warrants against two
7 people, two of the three because although he may have had
8 suspicions about that third individual and who that may have
9 been, that it may have been Ty, he didn't feel that he had
10 enough evidence against that person because nobody described
11 him, nobody pointed him out, wasn't his car. So he did the
12 right thing. He didn't rush to arrest anybody. He arrested
13 the two people that he -- his investigation led to. That is
14 responsible police work.

15 There was, when Deaungela was up there and she was being
16 cross examined, there was some question about maybe she just
17 gave them a name to make the police happy. Well, let's think
18 about that. If she was just giving them a name to make police
19 happy, to get them off her back and she was pulling it out of
20 the air, why not pull two people out of the air because we all
21 know we're looking for two other guys. So if one would make
22 the police happy, two would certainly make them even happier
23 with her. She didn't do that. The reason she didn't do that
24 is because she could describe and she knew one person and that
25 was the one she described as Junk and that is Jamar Huggins,

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1 and a lot of times in cases like this when we have Co-
2 Defendants like we do in this case, that's what we call them,
3 Co-Defendants, one oftentimes will come and try to, to get
4 themselves some help, who wouldn't, and Ms. Montgomery talked
5 to Detective Martin in January of 2013, and I'm sure she
6 wanted to cooperate, and I'm sure she was hoping that that
7 would help her.

8 Now, you're looking at a very serious charge. Don't you
9 think she has all the incentive and motivation in January of
10 2013 when she identified Jamar Huggins to tell the truth, when
11 it was fresh in her mind to tell the truth, because lying was
12 certainly not going to help her and lying to a police officer
13 about a felony would have resulted in even more charges. She
14 would have gotten in even more trouble had she made it all up.
15 She told the truth to this detective about who was involved.

16 MR. LONG: Objection, Your Honor.

17 THE COURT: What ground?

18 MR. LONG: She's misstating the evidence. The witness
19 admitted lying to the police.

20 THE COURT: Sustained.

21 MS. ELDER: In January of 2013, she told the detective
22 what happened that night. Mr. Long wants you to believe that
23 you can't believe anything she says because as he called her,
24 an addicted crack head. There is absolutely no evidence,
25 nothing, that she was an addict or that she was a crack head.

1 He asked Mr. Martin if she admitted that she had done crack in
2 the past, and he said, yes, she did admit that, but he had no
3 idea, and yes, crack is bad. People shouldn't do it, but to
4 label her as an addicted crack head without any evidence to
5 support that is just not, it's just not the case. It's just
6 not appropriate, and remember, when she gave her statement in
7 January of 2013 she was not out on the street. She was in
8 jail.

9 Now, Deaungela only became hesitant when she walked into
10 this courtroom, and think about her testimony, and you can re-
11 listen to it, the parts that she was hesitant about. The only
12 thing that she was hesitant about was identifying the man that
13 sat in front of her. She talked to detectives in January of
14 2013. She provided descriptions, cars, directions,
15 everything. We know that's not a lie because the detective
16 said, "That's the only way I found him was what she told me in
17 January of 2013," and again, when she took that stand, she did
18 say some of things that she said in January 2013 was not
19 truthful and that some of them obviously leads you to believe
20 that her testimony was some of them were, some of them
21 weren't, but what the victim told you and what she told on the
22 stand about what happened that night it matched. You know
23 that wasn't a lie. It's the same thing she told them in
24 January of 2013. The only problem she had was coming in here
25 and telling you what she told the detectives.

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1 MR. LONG: I object, Your Honor. Speculation.

2 THE COURT: Sustained.

3 MS. ELDER: She had a problem on the stand with
4 identifying the Defendant, and think about why that would be
5 the case, why it might be difficult for someone to come in and
6 take the stand and sit across from a man and point the finger
7 and say that's the man who would go into somebody's house at
8 night with a gun and point it at a 12 year old child, take \$15
9 in cash and go on like nothing ever happened. Why would that
10 be difficult?

11 Mr. Long told you a few things in his opening that some
12 of them came in through trial and some of them we never heard
13 about. One of them was that you did hear a street name, Junk,
14 and he said that his client goes, that's -- client goes by or
15 is referred to as Junk. He said that you hear about some guy
16 named Juice, that somebody was going to stand up there and say
17 that it was actually Juice that went into the house. There is
18 nobody that got on that stand and said that some guy named
19 Juice went into the house with a mask and a gun. Junk, Junk,
20 Junk, Junk, that's the only name you heard.

21 You -- told you that you weren't going to be able to
22 believe the person we were putting on the stand because she
23 was an addicted crack head, except for now the part, just the
24 small part, the one question he wants you to believe, no,
25 that ain't the man right there. Now, you disregard everything

1 else because she's an addicted crack head, but he wants you to
2 hold on to that.

3 You're going to have to determine if you believe what
4 Deaungela told the detective outside the presence of the
5 Defendant in January. You're going to have to -- the Judge is
6 going to give you a charge about why -- what you may consider
7 as to why she may have testified differently, she had a motive
8 to testify differently, she had a bias, coercion, those types
9 of things. He's also going to tell you that you can fully
10 believe her prior statement and disregard some, all or part of
11 what she said on the stand because of those biases or motives.

12 You were placed on this jury and are asked to use your
13 common sense and your life experiences to figure out and to
14 see through what is really going on here, and to see why and
15 why, what motive Deaungela had and her hesitation in court in
16 specifically identifying Jamar Huggins.

17 On December 19th, 2012, a mother and her children enjoyed
18 the spirit of Christmas, the season. They put a tree up.
19 They watched a movie, never realizing the terror that was
20 literally right outside their door, that the peace and joy and
21 their security would be completely shattered and that the
22 innocence of that season, the innocence of her child would be
23 taken away in a couple of hours. She never saw that coming,
24 and all, that was all taken by three people who got \$15, a
25 camera and some video games. That's what it's for. There's

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1 nothing you can do today that is going to restore that
2 security or that innocence, nothing.

3 I wanted to leave you with this. Mr. Long told you in
4 his opening that why he became a lawyer. He became a lawyer
5 to protect the rights of people like Jamar Huggins, and I've
6 been doing this for a very long time, and I started thinking
7 about why 20 some years ago I chose this path, and I thought
8 it was interesting when I saw the date today, September 17th.
9 225 years ago today the United States Constitution was
10 created, and by its subsequent ratification and amendments, we
11 or every citizen of the United States was given inalienable
12 rights, and one of those rights is to feel secure in their
13 homes, that every citizen, that Angela Eckler, that the
14 victims who come, came before Angela, and unfortunately, the
15 victims that will come after, that they all have a right to be
16 secure in their homes from people like Jamar Huggins, and
17 that's why I became a lawyer.

18 MR. LONG: Ms. Elder just spent about 15 minutes trying
19 to mold and shape and explain to you what her star witness
20 said and why she said it, what she may have meant and this and
21 that. I'm just going to stick to the facts as they have been
22 presented to you because you are the finder of fact; okay?

23 Deaungela Montgomery, the State's witness, the first
24 witness that was called, she said, I asked her one question,
25 as you may recall, was Jamar Huggins involved in the home

1 invasion that night? Her answer, no. One question, one
2 answer. He was not involved. She said she -- when she was
3 initially interviewed by the police a year and a half ago she
4 said, yeah, she implicated Junk. She told the police that
5 Junk was involved, but then she later said she lied to the
6 police during those interviews, none of that stuff was true.
7 She said they were twisting her words around. She was
8 confused. She's on medication. She was smoking crack at the
9 time. She doesn't remember. She said, "But that guy right
10 there is not Junk." So she does not implicate Jamar Huggins.
11 Jamar Huggins, she said, she looked at that man right there
12 and said, "He was not involved in this crime." That's
13 testimony under oath. All her previous statements to the
14 police were not under oath. This was a sworn statement she
15 gave yesterday and you heard it.

16 Now, as I said, the police were satisfied when they
17 arrested Jamar Huggins. I want you to make sure you
18 understand that an arrest, the Judge is going to tell you, an
19 arrest does not equal guilty. You can arrest somebody and
20 them not be guilty. You can indict somebody, and they were
21 not guilty just because they're indicted, and they are -- he
22 admitted, that Detective Martin admitted that he arrested
23 Jamar Huggins for this crime solely based on the testimony of
24 -- I'm sorry, not the testimony, but the statements of
25 Deaungela Montgomery. He got that arrest warrant the next day

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1 after he talked to Deaungela Montgomery because the only
2 evidence he had to arrest Jamar Huggins was her statement. So
3 he did rush out and arrest. They -- he knew at the time that
4 she was on crack cocaine. He knew that she had other pending
5 felony charges at that time, but solely based -- with all that
6 knowledge he still took that only bit of information and
7 arrested Jamar Huggins, and no other information has been
8 obtained since.

9 I asked Detective Martin, I said, "Let's talk about what
10 you did not do." He did not get a search warrant for anyone's
11 house. He did not get a search warrant for anyone's car. He
12 knew that there was a gun involved, a mask involved, gloves
13 involved. He didn't look for any of that stuff. They got DNA
14 swabs but he never followed up. He said he never got results
15 from the SLED lab. This is a CSI world just like you see on
16 TV. There is technology out there that if somebody is guilty
17 of a crime they can catch that guy. We got no hard evidence.
18 There's no exhibits. Oftentimes in a trial you've got
19 exhibits stacked up here, one after another. In this case
20 you've got words. You've got words of a woman who admitted
21 she lied, but, but then she under testimony she says, "That
22 man right there, Jamar Huggins, didn't do it. He wasn't
23 involved in this crime." They never arrested a second person.
24 They say two men went in there, but they only arrested one
25 person, and they arrested the wrong guy. They stopped their

1 investigation. They closed that case.

2 Ms. Elder mentioned Juice, and I talked about Juice
3 during my openings statements. If you remember, Deaungela
4 Montgomery said that there was a person that she was involved
5 with in this, but she would prefer not to give his name. I'll
6 leave that to you. Jamar Huggins, as what the witness said,
7 Deaungela Montgomery, was not involved in this crime. He
8 comes into this courtroom, as I said, wearing a cloak of
9 innocence, just like this coat, innocent. For him to be
10 proven guilty, the State has to take off that robe of
11 innocence, prove him guilty beyond a reasonable doubt of each
12 and every element of each and every crime. That's a very high
13 standard. As I said yesterday, if you look at this banister
14 here, and if this is absolutely no doubt, not guilty, and you
15 come down here, this is absolutely no doubt guilty, you've got
16 to start down here, okay, because you've got this cloak of
17 innocence. Then you walk down this way to get to guilty
18 beyond a reasonable doubt, a reasonable doubt, that thing in
19 your head that makes you hesitate and go, wait a minute, maybe
20 that's not right, that hesitation, that moment of hesitation.
21 That's doubt. So to get beyond any hesitation to decide,
22 you've got to be down here.

23 So let's look at the evidence. Let's start down here
24 because he's innocent till proven guilty beyond a reasonable
25 doubt. All right. The first witness, you've got Deaungela

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1 Montgomery. Under oath she looked at you, and she said, "That
2 man, Jamar Huggins, was not involved in this crime." So based
3 on her testimony, can we take a step forward? No.

4 The next witness was the victim, Angela Eckler. I hate
5 what happened to her. It's not right. People should not be
6 subjected to that. I agree with Ms. Elder, you have the right
7 to be protected in your home, but does that mean we're going
8 to send an innocent man to jail based on what terrible thing
9 happened to Ms. Eckler? I hope we don't do that.

10 Now, based on Ms. Eckler's testimony, I asked her, "Can
11 you identify Jamar Huggins as the man who went into your house
12 during that home invasion?" She said, "No." We can't take a
13 step forward. We cannot get there. Now, then we had
14 Detective Martin, he wasn't in the home. He wasn't an
15 eyewitness. He didn't see it. He didn't collect any hard
16 evidence. Can we state -- can you take a step forward based
17 on his statements? No. So how are we going to get from here
18 to here? How you going to get there? What evidence are you
19 going to base this long walk on? What if you got in the
20 middle? That's loud. That'll wake you up. What if you got
21 in the middle? What if you said, "Man, I don't know.
22 Deaungela, she lied. She said she's telling the truth, but
23 she's lying. I don't know what to believe." I mean, you
24 know, what if you said, "Well, she did give the police a
25 nickname. She did give the police an address, and she did

1 give the police a description of a car. Maybe, maybe that's
2 enough." Look, I know about a hundred people in Conway right
3 now if based on that information I could arrest them. I could
4 make up anything. I know John Smith lives at [REDACTED] Elm Street
5 driving a blue Cadillac. Go to the police and make up a story
6 on him. You got to have more than that. That's not enough.
7 So we're looking right here, "Well, maybe he did. Maybe he
8 didn't." Kind of look at the scales of justice 50-50, "Maybe,
9 maybe not. I don't know. I don't know." That's not enough.
10 You've got to take three or four more steps to get past that,
11 and I submit to you you can't get there. If you've got a
12 doubt whether or not Jamar Huggins was involved in this crime,
13 you cannot find him guilty. You're going to -- as Ms. Elder
14 said, we're kind of on the same wavelength in this, normally
15 we talk about the elements of each crime, and go, you've got
16 to make sure they're guilty beyond a reasonable doubt, each
17 and every element, go over each and every element of the
18 crime, but in this case it, it is the important thing, and
19 you're going to hear the Judge instructions, the important
20 thing in this case is the identity of the Defendant. You have
21 to be proven, proven beyond a reasonable doubt down here that
22 Jamar Huggins was involved in this home invasion. You've got
23 to get down here, start down there, end up down here. The
24 testimony you heard you can't get there from here, and also,
25 you're going to hear a charge from the Judge about credibility

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1 of the witnesses. I don't have to explain that to you when it
2 comes to Deaungela Montgomery. That's common sense. You can
3 look at her credibility. Ask yourself, did these witnesses
4 prove beyond a reasonable doubt Jamar Huggins invaded that
5 home?

6 I made some notes here as Ms. Elder was talking, so. Ms.
7 Elder talked about me getting on Detective Martin about using
8 deceptive tactics. It is true. I don't like people to lie.
9 I'm not -- I make no bones about it. I don't think it's
10 necessary in law enforcement. I don't have a problem with him
11 going and interviewing people. You've got to interview
12 people, but when you start writing statements and putting
13 initials, circling the suspect's picture and writing a
14 statement by it and putting the initials of the victim, that's
15 a problem. I got a problem with that. He's not -- Detective
16 Martin is not on trial here today, don't intend to be, but I
17 just want to show you this whole investigation is messed up,
18 very non-typical, honestly. This is non-typical
19 investigation, and so you've got, you've got people using
20 deceit. Deaungela Montgomery, she admitted she lied to the
21 police. The police officer, Detective Martin, he admitted he
22 lied to her.

23 Now, I looked this up. I found a proverb. Proverbs
24 20:17 says, "What you get by dishonesty you may enjoy like the
25 finest food, but sooner or later it will be like a mouthful of

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1 sand." Now, when Deaungela Montgomery and Detective Martin,
2 when they used that dishonesty, they enjoyed it, like a
3 mouthful of the finest food. They said, "Man, this
4 dishonesty, this is going to get me what I want, and it's
5 good," but today they got a mouthful of sand. So I just ask
6 you use your common sense, remember what Deaungela Montgomery
7 said, Jamar Huggins did not do it. Remember what the victim
8 said, Angela Eckler, she could not identify the person went
9 into her house. Thank you for your, your cooperation and your
10 time and I thank you.

11 THE COURT: All right. Ladies and gentlemen, all of the
12 evidence in this case has been presented to you. The
13 attorneys have made their closing arguments, and now is the
14 time of the trial where I will charge you with the law to be
15 applied in this case.

16 The indictments in this case allege several different
17 offenses against the Defendant. The charges against the
18 Defendant in this case are burglary in the first degree,
19 kidnapping, and armed robbery. Each indictment charges a
20 separate and distinct offense. You must decide each indictment
21 separately on the evidence and the law applicable to it,
22 uninfluenced by your decision as to any other indictment. The
23 Defendant may be convicted or acquitted on any or all of the
24 offenses charged. You will be asked to write a separate
25 verdict of guilty or not guilty for each indictment.

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1 I remind you that the fact the Defendant was arrested,
2 charged and indicted in this case is not evidence in this case
3 and cannot be considered by you as evidence of guilt in this
4 case, nor does the Defendant's arrest, charge or indictment
5 create any presumption or inference of guilt. These
6 indictments are simply the formal written instruments which
7 contain the charges made against the Defendant. They are the
8 formal documents by which this case is brought into this court.

9 The Defendant pleads not guilty to these indictments.
10 That plea puts the burden on the State to prove the Defendant
11 guilty. A person charged with committing a criminal offense in
12 South Carolina is never required to prove his innocence. I
13 charge you that an important rule of the law is that the
14 Defendant in a criminal trial, no matter what the seriousness
15 of the charge may be, will always be presumed to be innocent of
16 the crime for which the indictment was issued unless guilt has
17 been proven by evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 This presumption of innocence does not end when you begin
20 your deliberations, but it accompanies the Defendant
21 throughout the trial until you reach a verdict of guilt based
22 on evidence satisfying you of that guilt beyond a reasonable
23 doubt. The presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the Defendant
25 which remains with the Defendant until it has been stripped

1 from the Defendant by evidence satisfying you of the
2 Defendant's guilt beyond a reasonable doubt. The presumption
3 of innocence is not a mere legal theory. It is not just a
4 legal phrase. It is a substantial right to which every
5 Defendant is entitled unless you, the jury, are satisfied from
6 the evidence of the Defendant's guilt beyond a reasonable
7 doubt.

8 Now, what is a reasonable doubt in the law? A reasonable
9 doubt is the kind of doubt that would cause a reasonable
10 person to hesitate to act. Proof beyond a doubt is proof that
11 leaves you firmly convinced of the Defendant's guilt. We know
12 very few things in this world with absolute certainty, and in
13 criminal cases the law does not require proof that overcomes
14 every possible doubt. If, based on your consideration of the
15 evidence, you are firmly convinced that the Defendant is
16 guilty of the crime charged, you must find the Defendant
17 guilty. If on the other hand you think a real possibility
18 exists that the Defendant is not guilty, you must give the
19 Defendant the benefit of that doubt and find him not guilty.

20 I remind you that, during this trial, you and I have
21 certain duties to perform. As the trial judge, my
22 responsibility is to preside over the trial of this case. I
23 also have the duty to rule on the admissibility of evidence
24 offered during the trial of this trial. You are to consider
25 only the competent evidence before you. If any testimony was

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1 ordered stricken from the record in this case during the
2 trial, you must disregard that testimony. You are to consider
3 only the testimony which has been presented from the witness
4 stand, any exhibits which have been made a part of the record
5 in this case and any stipulations of counsel.

6 I have the additional duty to charge you the law
7 applicable to this case. As the presiding judge, I am the
8 sole judge of the law in this case. Your duty as jurors is to
9 accept and apply the law as I now state it to you. If you
10 have any idea as to what the law is or what the law ought to
11 be and your idea is different from what I now tell you the law
12 is, you must disregard your idea of what the law is or ought
13 to be because you are sworn to accept the law and apply the
14 law exactly as I state it to you.

15 In every case tried in this court before a jury, the jury
16 is the sole and exclusive judge of the facts in a case. A
17 trial judge cannot intimate, state, comment on or make any
18 statement to a trial jury about the facts in a case. Since
19 you, the jury, are the sole judge of the facts in this case,
20 you are not to infer from what I have said during the progress
21 of this trial in ruling upon the admissibility of evidence, or
22 otherwise, or anything that I say now during the course of
23 this instruction to you, that I have any opinion about the
24 facts in this case. The law does not allow me to have an
25 opinion about the facts in this case. This is a matter solely

1 for you, the jury, to determine. As jurors, your duty is to
2 determine the effect, value, weight and truth of the evidence
3 presented during this trial.

4 Now, two types of evidence are generally presented during
5 a trial, direct evidence and circumstantial evidence. Direct
6 evidence is the testimony of a person who claims to have
7 actual knowledge of a fact, such as an eyewitness.
8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact. The State
10 has the burden of proving the Defendant guilty beyond a
11 reasonable doubt. This burden rests solely with the State
12 regardless of whether the State relies on direct evidence,
13 circumstantial evidence or some combination of the two.
14 However, the law makes absolutely no distinction between the
15 weight or value to be given to either direct or circumstantial
16 evidence, nor is a greater degree of certainty required of
17 circumstantial evidence than of direct evidence. You should
18 weigh all of the evidence in this case. After weighing all of
19 the evidence, if you are not convinced of the guilt of the
20 Defendant beyond a reasonable doubt, you must find the
21 Defendant not guilty.

22 Necessarily, you must determine the credibility of
23 witnesses who have testified in this case. Credibility simply
24 means believability. Your duty as jurors is to analyze and
25 evaluate the evidence and determine which evidence convinces

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1 you of its truth. In determining the believability of
2 witnesses who have testified in this case, you may believe one
3 witness over several witnesses or several witnesses over one
4 witness. You may believe a part of the testimony of a witness
5 and reject the remaining part of the testimony of that same
6 witness. You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its entirety.
8 You may consider whether any witness has exhibited to you any
9 interest, bias, prejudice or other motive in this case. You
10 may also consider the appearance and manner of the witness
11 while on the witness stand.

12 Evidence has been presented that a witness made prior
13 statements which are not consistent with the witness' present
14 testimony. You may use this evidence to decide whether to
15 believe the witness. You may also use evidence of the earlier
16 contradictory statements to determine the truth of those
17 statements. You are to decide whether to believe the earlier
18 statements or the testimony given at trial. If a witness is
19 shown to have knowingly testified untruthfully concerning any
20 material matter, you may consider this in determining whether
21 to trust the witness' testimony as to other matters. You may
22 reject all of the testimony of that witness or give all or a
23 part of the testimony the weight you think it deserves.

24 One of the witnesses in this case has a criminal record.
25 A person who has a past criminal record is competent to

1 testify during a trial. A past record does not affect the
2 ability of that witness to testify. The past record may only
3 be considered by you, if at all, in determining the witness'
4 believability. Remember, you are the sole judges of the facts
5 in this case and the believability of any or all of the
6 witnesses.

7 I instruct you and emphasize that the fact that the
8 Defendant did not testify in this case is not a factor to be
9 considered by you in any way in your deliberations and in your
10 consideration on the question of the guilt or the innocence of
11 the Defendant. The Defendant's failure to testify must not be
12 considered by you in any manner whatsoever. A Defendant has
13 the constitutional right to remain silent, and the assertion
14 of this right must not be considered by you in your
15 deliberations. I repeat, under your oath, you are to draw no
16 conclusion whatsoever from the fact that the Defendant in this
17 case did not testify. The fact that this Defendant did not
18 testify should not even be discussed in the jury room.
19 The burden of proof, as I have stated to you, is on the State
20 to prove the Defendant's guilt beyond a reasonable doubt. The
21 Defendant is not required to prove his innocence. The burden
22 of proof remains on the State to prove the Defendant's guilt
23 beyond a reasonable doubt.

24 Now, if a crime is committed by two or more people who
25 are acting together in committing a crime, the act of one is

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1 the act of all. A person who joins with another person to
2 commit an unlawful act is criminally responsible for
3 everything done by the other person which happens as a
4 probable or natural consequence of the acts done in carrying
5 out the common plan and purpose. For example, two people can
6 be guilty of killing another person when only one of the two
7 had a gun, only one bullet was used and only one of the two
8 people fired the shot that caused the death. If two or more
9 people are together, acting together, assisting each other in
10 committing the offense, the act of one is the act of all or as
11 is sometimes said, "The hand of one is the hand of all."
12 Prior knowledge that a crime is going to be committed, without
13 more, is not sufficient to make a person guilty of that crime.
14 Mere knowledge that another person is going to commit a crime,
15 even if the Defendant is present when the crime is committed,
16 is not sufficient to convict the Defendant as a principal.
17 Guilt as a principal is shown by actual or constructive
18 presence at the scene as a result of a prior arrangement.
19 Therefore, a finding of a prior arranged plan or common scheme
20 is necessary for a finding of guilt as a principal.
21 The State must prove beyond a reasonable doubt by competent
22 evidence the theory of the hand of one is the hand of all.

23 A principal in a crime is one who either actually commits
24 the crime or who is present aiding, abetting or assisting in
25 committing the crime. When a person does an act in the

1 presence of and with the assistance of another, the act is
2 done by both. Where two or more, acting with a common plan or
3 intent, are present at the commission of a crime, it does not
4 matter who actually commits the crime. All are guilty. The
5 hand of one is the hand of all. Present at the commission of
6 a crime means to be sufficiently near to aid and abet and
7 assist in the commission of the crime. However, mere presence
8 at the scene of a crime is not sufficient to convict one as a
9 principal on the theory of aiding and abetting. Intent is
10 also a necessary element, for there must have been a common
11 design or intent to commit the crime and the crime must have
12 been committed pursuant to the common design or intent with
13 the person aiding and abetting by some overt act.

14 Intent means intending the result which actually occurs,
15 not accidentally or involuntary. Intent may be shown by acts
16 and conduct of the Defendant and other circumstances from
17 which you may naturally and reasonably infer intent. The
18 State must prove these elements beyond a reasonable doubt.

19 Now, in order to establish criminal liability, criminal
20 intent is required. For example, the mental state required to
21 be proven by the State for a particular crime might be
22 purpose, intent, knowledge, recklessness or criminal
23 negligence. Criminal intent must be proven by the State
24 beyond a reasonable doubt. Criminal intent is always a matter
25 that must be determined by the jury from the circumstances

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1 surrounding the situation. No way exists to prove intent to a
2 mathematical certainty. Medical science cannot dissect a
3 person's brain and determine what the person had in mind, so
4 the law says that criminal intent may be inferred from the
5 circumstances shown to have existed. This is how you make a
6 determination of whether or not the element requiring intent
7 is present. Intent does not have to be established by direct
8 and positive evidence. Intent may be established by inference
9 in the same way as any other fact, by taking into
10 consideration the acts of the parties and all the facts and
11 circumstances of the case. Criminal intent is a mental state,
12 a conscious wrongdoing. You must determine what the Defendant
13 intended to do based on the circumstances shown to have
14 existed. Criminal intent can arise from action or a failure
15 to act. It may arise from negligence, recklessness or an
16 indifference to duty or to consequences that is considered by
17 the law to be the equivalent of criminal intent.

18 Now, an issue in this case is the identification of the
19 Defendant as the person who committed the crime charged. The
20 State has the burden of proving identity beyond a reasonable
21 doubt. You must be satisfied beyond a reasonable doubt of the
22 accuracy of the identification of the Defendant before you may
23 convict the Defendant. Identification testimony is an
24 expression of belief or impression by a witness. You must
25 determine the accuracy of the identification of the Defendant.

1 You must consider the believability of each identification
2 witness in the same way as any other witness. Once again, I
3 instruct you the burden of proof is on the State and extends
4 to every element of the crime charged, and is specifically
5 this includes the burden of proving beyond a reasonable doubt
6 the identity of the Defendant as the person who committed the
7 crime. If, after examining the testimony, you have a
8 reasonable doubt as to the accuracy of the identification, you
9 must find the Defendant not guilty.

10 As I have previously advised you, the Defendant is
11 charged with first degree burglary, kidnapping and armed
12 robbery. To prove the Defendant guilty of first degree
13 burglary, the State must first prove beyond a reasonable doubt
14 that the Defendant entered a dwelling without consent. A
15 dwelling is any building or portion of a building in which a
16 person ordinarily sleeps. A building constructed as a
17 dwelling that has never been occupied cannot be considered a
18 dwelling for purposes of burglary, but a building is a
19 dwelling even if the residents are temporarily absent from the
20 building.

21 In order to prove that the Defendant entered the
22 dwelling, the State does not have to show that the Defendant's
23 entire body entered the dwelling. The smallest entry is
24 sufficient. It may be any part of the body, such as a hand or
25 foot or even an instrument, such as a hook or other

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1 instrument. Excuse me, in addition, the State does not have
2 to prove that force was used to gain entry. If a person
3 enters a building by using deception, artifice, trick or
4 misrepresentation to get consent to enter, this is an entry
5 without consent.

6 Next, the State must prove beyond a reasonable doubt that
7 the Defendant intended to commit a crime, either a felony or a
8 misdemeanor, at the time of the entry. The mere entry into a
9 dwelling without consent is not burglary. If the intent to
10 commit a crime is formed after the entry, it is not burglary.
11 On the other hand, if the Defendant intended to commit a crime
12 at the time of the entry, it is a burglary even if the intent
13 was abandoned after the entry. It does not matter that the
14 intended crime was not completed. Intent may be shown by acts
15 and conduct of the Defendant and other circumstances from
16 which you may naturally and reasonably infer intent.

17 Finally, the State must prove beyond a reasonable doubt
18 at least one of the following, but need not prove all of the
19 following: one, when entering, while in the dwelling or when
20 fleeing, the Defendant or an accomplice was armed with a
21 deadly weapon or explosive. A deadly weapon is any article,
22 instrument or substance which is likely to cause death or
23 great bodily harm. Whether an instrument has been used as a
24 deadly weapon depends on the facts and circumstances of each
25 case.

1 The following are examples of instruments which may be
2 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
3 dagger, a knife, a sling shot, metal knuckles, a razor,
4 gasoline, a fire bomb or Molotov cocktail and lighter fluid.
5 A gun may be a deadly weapon even if it is not operating.

6 Two, when entering, while in the dwelling, or when
7 fleeing, the Defendant or an accomplice displayed what was or
8 appeared to be a knife, a pistol, a revolver, a rifle, a
9 shotgun, a machine gun or other firearm, or three, that the
10 Defendant entered or remained in the dwelling in the
11 nighttime. Nighttime is the period between sunset and sunrise
12 during which there is not enough daylight to recognize a
13 person's face except by artificial light or moonlight.

14 The Defendant is also charged with kidnapping. To
15 convict the Defendant of kidnapping, the State must prove
16 beyond a reasonable doubt that the Defendant knowingly and
17 unlawfully seized, confined, inveigled, decoyed, kidnapped,
18 abducted or carried away another person without authority of
19 law. To do a thing unlawfully is to do it willfully against
20 the law. Knowingly means with knowledge, consciously, not
21 accidentally. Seize means to take hold of suddenly or
22 forcibly. Confine means to limit, restrict or enforce [sic]
23 within bounds, imprison or shut or keep in. Inveigle means to
24 lure, entice or lead astray by false representations, promises
25 or other deceitful means. Decoy means to lure by, or as if

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1 by, a decoy. A decoy is something to entice a person into a
2 trap. Kidnap is to remove a person against his will by
3 unlawful force or by fraud. Abduct means to carry off
4 secretly or by force or by an illegal purpose. Carry away
5 means to remove.

6 The State does not have to prove that the Defendant did
7 all of these things. Instead, if you find beyond a reasonable
8 doubt that the Defendant did any of these things, you may find
9 the Defendant guilty of kidnapping. Something done without
10 authority of law is something which the law does not sanction,
11 permit, allow, condone or provide justification for. The
12 kidnapping does not have to be for any personal or monetary
13 gain or for any illegal purpose, but it may be for any reason
14 whatsoever.

15 The Defendant is also charged with armed robbery. In
16 order to prove this offense, the State must first prove beyond
17 a reasonable doubt that the Defendant took personal property
18 from the person or presence of another person. Property is in
19 the presence of a person if it is within the person's reach,
20 inspection, observation or control so that the person could,
21 if not overcome with violence or prevented by fear, keep
22 possession of the property. The State must also prove beyond
23 a reasonable doubt that the Defendant carried the property
24 away intending to permanently deprive the owner of the
25 property and to keep the property for the Defendant's own use.

1 The slightest removal of the property or the complete
2 possession of the property, even for an instant, by the
3 Defendant is sufficient to show a taking and carrying away of
4 the property. The taking and carrying away of the property
5 must have been done with violence or by putting the owner of
6 the property in fear of violence.

7 Finally, the State must prove beyond a reasonable doubt
8 that the Defendant was armed with a deadly weapon during the
9 robbery. A deadly weapon is any article, instrument or
10 substance which is likely to cause death or great bodily harm.
11 Whether an instrument has been used as a deadly weapon depends
12 on the facts and circumstances of each case. The following
13 are examples of instruments which may be deadly weapons: a
14 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a sling
15 shot, metal knuckles, a razor, gasoline, a fire bomb or
16 Molotov cocktail and lighter fluid. A gun may be a deadly
17 weapon even if it is not operating.

18 Also included within the offense of armed robbery is the
19 lesser offense of robbery. Therefore, if you find that the
20 State has failed to prove that the Defendant was armed with a
21 deadly weapon, you may then consider whether the State has
22 proved beyond a reasonable doubt that the Defendant committed
23 robbery. In order to prove robbery, the State must prove
24 beyond a reasonable doubt all of the elements that I have just
25 explained for armed robbery, except the required element that

Charge

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1 the Defendant was armed with a deadly weapon. In other words,
2 the State must prove beyond a reasonable doubt that the
3 Defendant took the personal property from the person or
4 presence of another person, without that person's consent, and
5 carried it away. Like armed robbery, property is in the
6 presence of a person if it is within the person's reach,
7 inspection, observation or control so that the person, if not
8 overcome with violence or prevented by fear, retain possession
9 of the property. The State must also show that the Defendant
10 carried the property away with the intent to permanently
11 deprive the owner of the property and to convert the property
12 to the Defendant's own use, and the taking and the carrying
13 away of the property must have been done with violence or by
14 putting the owner of the property in fear of violence.

15 Now, as to the charges for first degree burglary and
16 kidnapping, there are two possible verdicts for each
17 indictment. As to the charge of armed robbery, you may find
18 one of three possible verdicts. No significance whatsoever is
19 to be given to the order in which I state these possible
20 verdicts to you. I simply must state one first, one second
21 and so forth. On the charge of first degree burglary, your
22 possible verdicts are "guilty" or "not guilty." On the charge
23 of kidnapping, your possible verdicts are "guilty" or "not
24 guilty." On the charge of armed robbery, your possible
25 verdicts are "guilty of armed robbery," "guilty of robbery,"

1 or "not guilty."

2 Ladies and gentlemen, your verdicts must be unanimous.
3 Now, you will be given these verdicts forms. When the jury
4 agrees on a verdict, Mr. Clark, you will check the appropriate
5 verdict for each indictment, sign your name and then knock on
6 the door and tell the bailiff that the jury has reached a
7 verdict.

8 I'm going to excuse you back to the jury room for just a
9 few minutes, but please do not begin your deliberations at
10 this point in time. I need to check with the attorneys to see
11 if they have any challenges to my charges. If they have some
12 challenges and I deem them appropriate I'll bring you back in
13 and make whatever additional charges or corrections I need to
14 make. If there are none or if I deem there are none, I'll
15 send these verdict forms with the indictments and the evidence
16 back to the jury and the bailiff or officer will tell you you
17 can begin your deliberations, but please do not begin your
18 deliberations until you're told to do so.

19 All right. I'll excuse you back to the jury room at this
20 time.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right. Any exceptions or challenges to
24 the charges by the State?

25 MS. ELDER: No, sir.

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1 THE COURT: Any by the Defense?

2 MR. LONG: No, Your Honor.

3 THE COURT: All right. Let's make sure --

4 (Exhibits reviewed and approved by attorney for the State
5 and the attorney for the Defense.)

6 THE COURT: Let's go ahead and bring Mr. Brooks out.

7 (Alternate dismissed by Court with call-instructions.)

8 THE COURT: All right. Here are the indictments. These
9 are the verdict forms, and I've got the indictments, the
10 verdict forms. We got that exhibit. Let's go ahead and take
11 them back to the jury room and tell the jury they can begin
12 their deliberations. Okay?

13 (Deliberations begin at 11:05 a.m.)

14 THE COURT: All right. Anything from the State before we
15 recess?

16 MS. ELDER: No, sir.

17 THE COURT: Anything from the Defense?

18 MR. LONG: No, Your Honor.

19 THE COURT: All right. We'll all stand at ease until we
20 get a verdict; okay?

21 MR. LONG: Your Honor?

22 THE COURT: Yes, sir.

23 MR. LONG: Mr. Huggins, can he come back in the
24 conference room with me and talk with his family briefly?
25 He's got an ankle monitor on.

Question from Jury

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1 THE COURT: Okay. For security he's got an ankle monitor
2 on and you're going to be back there?

3 MR. LONG: Yes, sir. I'll make sure he's --

4 THE COURT: All right.

5 MR. LONG: Thank you.

6 MR. HUGGINS: Thanks.

7 THE COURT: How long do you think you'll be?

8 MR. LONG: Ten minutes.

9 THE COURT: Okay. All right. For ten minutes, then
10 he'll need to come back out.

11 MR. LONG: Okay.

12 THE COURT: We'll do it that way.

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

14 (Jury has lunch at 1:05 p.m. On the record. Whereupon,
15 the following takes place outside the presence of the jury.
16 Question from jury at 1:25 p.m.)

17 THE COURT: Thank you very much. Please be seated. I
18 apologize for keeping you so long. The jury has come out with
19 a question. "Judge Culbertson, we want to know the first date
20 the Investigator Martin interviewed Ms. Montgomery, Gary
21 Clark." If we can stipulate, we can stipulate, or I can just
22 say that's a question of fact that the jury has to decide.
23 And I don't recall whether it'd be -- quite honestly, I don't
24 recall if that is even in evidence.

25 MR. LONG: I asked, I asked Detective Martin. He

Question from Jury

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1 answered January 11th of 2013.

2 THE COURT: Well, how do you all want me to answer it? I
3 can, I can do one of two things. As I said, I can -- I could
4 say it's a question of fact that they have to decide. We can
5 replay testimony for them or something that that's -- that may
6 not be in dispute. If you all want to stipulate to it I don't
7 have a problem stipulating to it.

8 MR. LONG: I, I don't mind stipulating to it.

9 MS. ELDER: Your Honor, he's -- the detective's testified
10 it was the first one was it January 11th, 2013, at 9:41, and
11 the second was at 1, one p.m., the same day.

12 THE COURT: They just said for the first date, so.

13 MS. ELDER: It was, okay, it was the same day. Yeah.

14 THE COURT: Well, what do you want me to do? If you all
15 can agree, fine. If you can't agree, I'll just say it's a
16 question of fact that you have to decide, that the jury has to
17 decide.

18 MS. ELDER: Can -- I, I don't have any objection. The
19 question is the first -- is -- what was the question the first
20 day?

21 THE COURT: It says we want to know the first date. It
22 says the, I'm assuming that, the first date the Investigator
23 Martin interviewed Ms. Montgomery.

24 MS. ELDER: I don't have any objection for January 11th,
25 2013, at 9:41 a.m.

Question from Jury

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1 MR. LONG: That's fine.

2 THE COURT: All right. All right. January -- what is
3 it?

4 MS. ELDER: 11th.

5 THE COURT: 2000?

6 MS. ELDER: 13, at 9:41 a.m.

7 THE COURT: Is that agreeable for me to just write on
8 here January 11th of 2013 at 9:41 a.m.?

9 MR. LONG: Yes, sir.

10 THE COURT: All right. All right. Let's mark this
11 Court's Exhibit One. You all come up and take a look at it
12 and see if this is agreeable to you.

13 (Court's Exhibit Number One [Question from Jury]
14 appropriately marked and counsel for State and Defense
15 review.)

16 THE COURT: Is that agreeable?

17 MS. ELDER: Yes, sir.

18 THE COURT: All right. You can take that back into them.
19 Thank you, sir. All right. Anything further from the State?

20 MS. ELDER: No, sir, Your Honor.

21 THE COURT: Anything further from the Defense?

22 MR. LONG: No, sir.

23 THE COURT: All right. We'll stand in recess till we
24 hear something back from the jury.

25 MS. ELDER: Yes, sir.

Verdict

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1 ***** OFF THE RECORD *****

2 (On the record. Whereupon, the following takes place
3 outside the presence of the jury. Verdict reached at 3:14
4 p.m.)

5 THE COURT: Thank you very much. Please be seated.
6 All right. I understand the jury has reached a verdict.
7 Anything from the State before we bring the jury in?

8 MS. ELDER: No, sir.

9 THE COURT: Anything from the Defense?

10 MR. LONG: No, Your Honor.

11 THE COURT: All right. Let's go ahead and bring the jury
12 in. All right. Ladies and gentlemen, I just want to let you
13 know whatever the verdict is make sure there's no outbursts or
14 from anybody that's here in the courtroom. I don't want to
15 threaten you, but you'll need to excuse yourself if you're not
16 going to be able to control your emotions.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right. Ladies and gentlemen, welcome
20 back. Mr. Clark, I understand the jury has reached a verdict.
21 Is that correct?

22 FOREPERSON: Yes, sir.

23 THE COURT: Have you completed the verdict forms?

24 FOREPERSON: Yes, sir.

25 THE COURT: All right. If you'd please hand those to the

Verdict

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1 bailiff.

2 (Complies with request and Court reviews.)

3 THE COURT: Thank you, sir. All right. I'll ask the
4 clerk if she'd please publish the verdicts.

5 THE CLERK: Court of General Sessions, 15th Judicial
6 Circuit, Indictment 2013-GS-26-1076, the State of South
7 Carolina, County of Horry, State of South Carolina versus
8 Jamar Antonio Huggins, first degree burglary, we, the jury,
9 find the Defendant, Jamar Antonio Huggins, guilty of first
10 degree burglary, signed by foreperson, Gary Clark, September
11 17th, 2014.

12 The Court of General Sessions, 15th Judicial Circuit,
13 Indictment 2013-GS-26-1077, the State of South Carolina,
14 County of Horry, State of South Carolina versus Jamar Antonio
15 Huggins, kidnapping, we, the jury, find the Defendant, Jamar
16 Antonio Huggins, guilty of kidnapping, signed by foreperson,
17 Gary Clark, September 17th, 2014.

18 The Court of General Sessions, 15th Judicial Circuit,
19 Indictment 2013-GS-26-1078, the State of South Carolina,
20 County of Horry, State of South Carolina versus Jamar Antonio
21 Huggins, armed robbery, we, the jury, find the Defendant,
22 Jamar Antonio Huggins, guilty of armed robbery, signed by
23 foreperson, Gary Clark, September 17th, 2014.

24 Ladies and gentlemen of the jury, if this is your verdict
25 so signify by raising your right hand.

Polling of Jury

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1 (All jurors raise right hand.)

2 THE COURT: All right. Let the record reflect that all
3 jurors raised their right hand. Any polling of the jury by
4 the Defense?

5 MR. LONG: Yes, Your Honor.

6 THE COURT: All right. All right. Ladies and gentlemen,
7 we are going to poll the jury at this time. What will happen
8 is when the clerk calls your jury number if you would please
9 stand and she's going to ask you two questions. She's going
10 to ask if these are your verdicts and then she's going to ask
11 you if these are still your verdicts, and you'll need to
12 respond to those questions.

13 THE CLERK: Okay. Juror Number 82, is this your verdict?

14 MR. CLARK: It is.

15 THE CLERK: Is it still your verdict?

16 MR. CLARK: Yes.

17 THE CLERK: Okay. You can be seated.

18 Juror 212, is this your verdict?

19 MS. HOLLAND: Yes.

20 THE CLERK: Is it still your verdict?

21 MS. HOLLAND: Yes.

22 THE CLERK: Juror 306, is this your verdict?

23 MR. MCFADDEN: Yes.

24 THE CLERK: Is it still your verdict?

25 MR. MCFADDEN: Yes.

Polling of Jury

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1 THE CLERK: Juror 183, is this your verdict?
2 MR. GRAY: Yes.
3 THE CLERK: Is it still your verdict?
4 MR. GRAY: Yes.
5 THE CLERK: Juror 442, is this your verdict?
6 MS. TALOTTA: Yes.
7 THE CLERK: Is it still your verdict?
8 MS. TALOTTA: Yes.
9 THE CLERK: Juror 303, is this your verdict?
10 MR. MCCANN: Yes.
11 THE CLERK: Is it still your verdict?
12 MR. MCCANN: Yes.
13 THE CLERK: Juror 172, is this your verdict?
14 MS. GLOVER: Yes.
15 THE CLERK: Is it still your verdict?
16 MS. GLOVER: Yes.
17 THE CLERK: Juror 220, is this your verdict?
18 MR. HUBER: Yes.
19 THE CLERK: Is it still your verdict?
20 MR. HUBER: Yes.
21 THE CLERK: Juror 415, is this your verdict?
22 MS. SHIFLETT: Yes.
23 THE CLERK: Is it still your verdict?
24 MS. SHIFLETT: Yes.
25 THE CLERK: Juror 175, is this still your verdict?

Polling of Jury

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1 MS. GOODALL: Yes.

2 THE CLERK: Is this your verdict?

3 MS. GOODALL: Yes.

4 THE CLERK: Juror 452, is this your verdict?

5 MS. TURNES: Yes.

6 THE CLERK: Is it still your verdict?

7 MS. TURNES: Yes.

8 THE CLERK: Juror 313, is this your verdict?

9 MS. MCNELIS: Yes.

10 THE CLERK: Is it still your verdict?

11 MS. MCNELIS: Yes.

12 THE CLERK: Thank you.

13 THE COURT: All right. Ladies and gentlemen, I want to
14 thank you for your service in this case. That will conclude
15 your services in this case. I don't know if we have any other
16 trials this week. So I will excuse you for the remainder of
17 the day. You should have been given a number for the Clerk of
18 Court's Office. You'll need to call that number after six
19 p.m. -- well, we already have our jury panel for the next one;
20 don't we?

21 MS. ELDER: Yes, sir.

22 THE COURT: Okay. All right. So that would conclude
23 your service as jurors for the remainder of the week because
24 while you were deliberating we had a panel pulled for the next
25 case we have. So I want to thank you for your services not

1 only in this case but for your services this week as jurors.

2 You're free to go at this time and thank you very much.

3 (Jury exits courtroom.)

4 THE COURT: All right. Any post-trial motions at this
5 time?

6 MR. LONG: Yes, Your Honor. As -- make a motion for you
7 to exercise your discretion as the 13th juror based upon the
8 facts that I alluded to as the -- during the motion for
9 directed verdict. I know you were very close to, to awarding
10 the directed verdict. The, they sole witness that could
11 possibly identify my client admitted that she lied to the
12 police originally. Under sworn testimony she said that she
13 lied to the police. Then under sworn testimony she identified
14 my client was not involved in the crime.

15 The only other witness who could have possibly identified
16 was the victim, and she testified she could not identify the
17 Defendant as being involved in the crime. So there is
18 absolutely no evidence for the jury to base their conviction
19 upon.

20 THE COURT: All right. What's the State's position?

21 MS. ELDER: Your Honor, my, my position would be that
22 which I argued at directed verdict stage. After the State
23 closed their case, there was a -- obviously, as Your Honor
24 knows, there was a question about inconsistent statements, and
25 I believe the charge was correct. It is the jury's province

Motions

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1 to determine whether or not or how much of her statement from
2 the stand they're going to believe and they've got to take
3 into consideration why she may be testifying today differently
4 than what she gave a statement to before. That's the whole
5 reason that we have the rule on prior inconsistent statements
6 to allow the jury to weigh those out. Also in your charge,
7 Your Honor, it's very clear that the, that the courts have
8 indicated that the jury has the right to consider a prior
9 inconsistent statement in deliberating and granting, finding
10 guilt, Your Honor. That's in the charge that was given to the
11 jury. That's what they did. They stayed out for over four
12 hours. They had all that information. They had those
13 charges, and I think that they determined the credibility of
14 that witness in what they chose to believe and what they chose
15 not to believe.

16 THE COURT: All right. I'm pretty sure I know how I'm
17 going to rule, but I do want to check one case before I do so.
18 I'm going to take it under advisement. I'm going to -- Mr.
19 Long, we're going to have to hold your client for tonight, and
20 I'll come back tomorrow morning and let you know my decision
21 or let's wait. Let me go take a look. It's only 3:30. I was
22 thinking a little bit later. So, let's, let's, let's stand
23 down for just a minute while I take this under advisement.
24 Okay?

25 MR. LONG: Thank you.

1 THE COURT: Any other motions?

2 MR. LONG: No, sir.

3 THE COURT: Okay. All right. I'm going to take it under
4 advisement. I'll be back out. Don't go anywhere. I'll be
5 back out in just a minute. Okay?

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

7 (On the record.)

8 THE COURT: Thank you very much. Please be seated.

9 All right. Mr. Long, I'm going to deny your motion.
10 Just like directed verdict, I go with whether or not the
11 existence of evidence to justify the jury's verdict, and they,
12 they just believed Ms. Montgomery's prior statement and didn't
13 believe her testimony at trial. So I think there is evidence
14 to justify the jury's verdict. So I'm going to deny your
15 motion. Anything else?

16 MR. LONG: Nothing. I would submit formal notice of
17 appeal, but I would like to state for the record we will be
18 appealing the motion for direct verdict that was denied.

19 THE COURT: And I understand, and that is a close call,
20 and you may very well prevail on that. I just have to make a
21 ruling the way I, the way I read it.

22 MR. LONG: Yes, sir.

23 THE COURT: And it's -- as I see, it's existence.

24 MR. LONG: No disrespect to you.

25 THE COURT: Yeah. And I understand that and it's --

Sentencing

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1 whether evidence -- all I do is look to see if there is any
2 evidence in the record, and then it's up to the jury to draw
3 the conclusions they want to draw. So I'll agree with you one
4 hundred percent, it is a very close call, and, and I don't
5 know what an Appellate Court will do with it. So they may
6 very well say I committed legal error and should have granted
7 a directed verdict or I should have granted a new trial on the
8 13th juror doctrine because it was tenuous. I agree, but I'm
9 going to deny your motion. Any reason we can't go ahead and
10 impose sentence at this time?

11 MS. ELDER: No, sir, Your Honor. We're prepared to go
12 forward.

13 THE COURT: Anything from the Defense?

14 MR. LONG: No, sir.

15 THE COURT: All right. Have you got the sentencing
16 sheets?

17 MS. ELDER: Yes, sir.

18 THE COURT: Your Honor, I never know if they require the
19 State and everybody to sign. You want me to have them sign?

20 THE COURT: You can do whatever you want. I can tell you
21 generally when it's a jury trial --

22 MS. ELDER: I don't --

23 THE COURT: -- a lot of times they don't do it. On a
24 plea they do.

25 All right. Mr. Long, anything in mitigation?

1 MR. LONG: Yes, Your Honor. Just ask that you take into
2 consideration that, that a lack of record of my client, Jamar
3 Huggins, and also I think most importantly I'd like for his
4 grandmother, Ms. Whaley, Willie Dean Whaley, to address the
5 Court.

6 THE COURT: All right. I'll hear from your client and/or
7 anybody that wants to speak on his behalf. If you would just
8 hold that back there for her, please. Ma'am, your name?

9 MS. WHALEY: Willie Dean Whaley.

10 THE COURT: All right. Ms. Whaley, what would you like
11 to say?

12 MS. WHALEY: I would like to say that Jamar is not, did
13 not do those things. Now he takes care of me, and that when
14 they had him lock up first time I put everything that I work
15 all my life for, \$145,000, get him on the ground because I
16 didn't have any higher. He did those things, and I, I, I just
17 don't think that he did anything wrong. I think they have
18 made the wrong implication and I'm now 91. I've had heart
19 surgery. I've had cancer surgery, and I've had three
20 different surgeries on my eyes, and Jamar stays home with me.
21 He's not a street boy. He stays home with me. He takes care
22 of me and I need him. He takes care of me. He's there for
23 me. His room is right across the hall from me, and every time
24 I had a -- I passes out, I may pass out standing here now, and
25 every time I pass out he was there for me to call, to call to

Sentencing

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1 get help. I can feel those things coming. I get hot. My
2 heart starts beating, and I get shortness of breath, and I
3 just sweat all over, and then when it's over I just get cold,
4 and they take me to the hospital, but they have to wrap me up
5 in warm blankets. I need Jamar, and Jamar is not a street
6 boy. He never runs out in the street or go no place. If he
7 went anyplace it's right to the store and his house, my house
8 is right, if you -- it don't take five minutes to go to the
9 store. He would go there and he come right back. He'll say,
10 "Granny, I'll be right back," and he comes right back. That's
11 Jamar. Jamar, Jamar, Jamar.

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

13 MR. LONG: And Your Honor, this is, this is a very
14 difficult situation obviously for everybody involved. I, I
15 believe the jury made a mistake. I think the evidence shows
16 that, that they were not -- they should not have found him
17 guilty beyond a reasonable doubt. His lack of a record, the
18 testimony that you heard indicates he's not culpable of this
19 crime, and so I'd just ask and he would like to speak on his
20 behalf you're welcome to.

21 THE COURT: All right. As I said, I'll hear from Mr.
22 Huggins and anyone that wants to speak on his behalf. Yes,
23 sir.

24 MR. HUGGINS: Your Honor, I did not commit this crime. I
25 gave up my life after me and my wife got divorced in 2008 when

1 my grandma got sick and couldn't stay by herself. I made
2 sure my grandma did not have to go in no home. This is not my
3 mamma blood, but she took my mamma in when she was little
4 because she was getting molested. This woman raised me since
5 I been a little child. I sit at the house with her almost all
6 the time. I barely go anywhere else. I got to the store, get
7 me a beer, something like that and I come right back. If I go
8 outside I'm sitting right there in the truck and I tell her,
9 "Grandma, I'm right outside if you need me." You know how
10 many times I came in the room just to ask my grandma, "Is you
11 okay," because I want to make sure she's breathing. Oh God, I
12 did not do this, man, and I don't understand how they can find
13 me guilty of something I did not do. That girl lied in the
14 beginning, but she came in and she told the truth. That girl
15 told them that I was not the one to go in that house. She
16 came in here and said that, and she pointed -- I haven't
17 talked to this girl, heard nothing from her since this whole
18 thing happened, and then she said I intimidated her. How can
19 I intimidate somebody I have not even talked to, speak no
20 words with, nothing. I did nothing wrong, Your Honor. All I
21 ask, please, if it's anything you can do, something where -- I
22 know you're going to give me something, but I'm saying if it's
23 something, if I can be on house arrest at my grandma's house
24 doing time like that, staying at the house with her, I, I will
25 be fine, no problem. If I can't even leave out the door I

Sentencing

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1 wouldn't care long as I'm there to take care of that woman.

2 That's it.

3 THE COURT: All right, sir. Thank you. Anyone else?

4 MR. LONG: No, Your Honor.

5 THE COURT: All right. Does the victim wish to say
6 anything?

7 MS. ELDER: Your Honor, I do have a letter. She doesn't
8 want to address the Court. If I can read that, it's from the,
9 the minor child in this case.

10 THE COURT: All right.

11 MS. ELDER: Your Honor, she indicates that she's writing
12 this letter to explain how the incident on December 20th
13 affected her life. (As read) "That night I was awoken by my
14 mom getting up to answer the door. I thought she was going to
15 turn off the air conditioning because it was cold. Then all
16 of a sudden I heard my mom scream and I saw a guy tackle her,
17 and after that I just pulled a blanket over my head and
18 started whispering, 'Oh, my God, this isn't happening right
19 now. Everything will be okay.' Then I plugged my ears because
20 I still -- but I still heard them tell my mom to put
21 Chocolate, my dog away. I could just hear by her voice that
22 she was scared. Then they told her to get in the bathroom.
23 They threw her in there. Then I came out of the covers, and I
24 saw a man with a gun, Jamar Huggins, then the other guy that
25 was with him ask me, 'Where's the money?' I replied, 'We

1 don't have any money. The only money we have is the \$15 I
2 have left from my birthday.' He asked, 'Where is it?' I
3 said. 'It's in my purse on the kitchen table.' I was so
4 scared. I was about to start crying, but then I thought to
5 myself, no, you've got to be strong for mommy. Then they told
6 me to get up and go in the bathroom, and all I kept hearing
7 was, 'Stop, my baby is in there,' from my mom's voice. Then
8 when I was in the bathroom my mom had her phone and she was
9 about to call 911, and I told her to just wait until they
10 left. They were plundering through Adrian's stuff that my mom
11 packed. After they left I tried so hard not to cry because my
12 mom was crying. I thought for sure Jamar was going in to
13 shoot my mom. I'm so glad that he didn't. I love my mommy,
14 and I was trying so hard to protect her. After they left, we
15 came out of the bathroom and we grabbed everything. I went
16 into my purse to see if they really did take my money, but
17 they, they took some of it. I and my mom got out of the house
18 as quick as we could get and got my dog and left the house and
19 headed for the police station. I was shaking so bad that when
20 I had to fill out the police report my handwriting looked that
21 way. I just wish that he will get as most years as possible
22 in jail for what he did to not only me and my mom but for
23 affecting my entire life. I also hope that he will run --
24 that he will give up the other guy who did this to us as well.
25 I hope he learns a lesson from this. I hope that he feels bad

Sentencing

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1 about what he did. I hope he gets as many years as possible.
2 I have confidence that you will do just that. From Mariah
3 Eckler."

4 THE COURT: All right.

5 MS. ELDER: Your Honor, insofar as the State's
6 presentation on the sentencing, Your Honor, I understand the
7 arguments that have been made for directed verdict, and I
8 understand the arguments that Mr. Long's making at this point
9 after the verdict. However the verdict is what it is. He has
10 been determined to be guilty, and as such, we have to look at
11 the facts that the jury found him guilty of, and Your Honor, a
12 home invasion, a true home invasion, in the middle of the
13 night, with a weapon, and holding somebody at bay while they
14 then took their child around the house to collect money is one
15 of the most heinous things a parent or any other individual
16 could experience. I know the mandatory minimums in this case
17 are ten years on the armed robbery and 15 on the burglary, but
18 I would ask the Court to consider something more than the
19 minimum because of the facts upon which he was convicted of.
20 The sentence is not based on the weight. It's based on what
21 he has been convicted of, and he has, in fact, been convicted
22 on this set of facts.

23 Your Honor, what the jury didn't hear during the course
24 of this investigation, Mr. Huggins did give a post-miranda
25 interview. He did readily admit that he knew Deaungela

1 Montgomery. So we know, in fact, that she was lying when she
2 said, "I don't know this man." He readily admitted that he
3 knew her. He also knew Ty. He indicated that his story at
4 the time was that sometime in December they came and got his
5 car and that that must have been when all this happened.

6 Your Honor, we also in attempts to do this, I know that
7 the jury can't consider this, but I do think it's appropriate
8 for sentencing, we did allow Mr. Huggins to undergo a
9 polygraph.

10 MR. LONG: Your Honor, I, I object to that.

11 THE COURT: Okay. I'm not going to consider that. Go
12 ahead.

13 MS. ELDER: Your Honor, this --

14 THE COURT: So you're telling me -- well, let me back up.
15 You're telling me if he had passed a polygraph you would have
16 dismissed all charges against him?

17 MS. ELDER: No, Your Honor. I would have considered it.
18 Yes, sir.

19 THE COURT: Okay. Well, then I'm not going to consider
20 it then. If it's an all or nothing, you either believe the
21 polygraph or you don't' believe it.

22 MS. ELDER: Yes, sir.

23 THE COURT: So if he'd passed it and you would have
24 dismissed it, then I might have considered it, but go ahead.
25 I'm not going to consider that then.

Sentencing

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1 MS. ELDER: Your Honor, in addition to that, when the
2 detective interviewed Adrian Moore, the person that's called
3 Drake --

4 MR. LONG: I'm going to object to hearsay.

5 MS. ELDER: Your Honor, this is not a trial. This is
6 sentencing.

7 THE COURT: Okay. I'll give you an opportunity to
8 respond then, but I -- I'll take it that it is hearsay,
9 unchallenged, not subject to cross examination, but with it
10 not being in front of the jury, I can give it the weight that
11 I think it probably deserves. Go ahead.

12 MS. ELDER: Thank you, Your Honor. Your Honor, the way
13 this case came about is this, this detective talked to Adrian
14 Moore, who was in the hospital, and he testified to that, that
15 he, that's where he interviewed this guy named Drake. At the
16 time he identified two individuals that he had been involved
17 with as far as selling and in debt to for drugs. That's how
18 he got to Deaungela. That's how he got to Jamar. Deaungela
19 in her first statement at the jail said that this Defendant
20 came to her house, threatened her with a gun, and said,
21 "Either you're giving me the money or Drake's giving me the
22 money for the drugs I fronted," and she said that's why she
23 took them over to Ms. Eckler's house because she was scared
24 and she took them to where she knew Drake to have lived in the
25 past. So this is not as simple as we're just going to pull

1 something out of the air.

2 This Defendant has a prior conviction in 2003, an
3 unlawful carrying of a pistol. He has a 2009 controlled
4 substance violation, and he has a 1996 conviction as a
5 juvenile that requires him to register on the sex offender
6 registry. So he has not led a -- completely the life that Mr.
7 Long has indicated free from being involved with the police.

8 Again, Your Honor, we would ask that he be sentenced in
9 excess of the mandatory minimum on burglary, armed robbery and
10 the kidnapping, Your Honor.

11 MR. LONG: Your Honor --

12 THE COURT: Well, now, since we're getting into this
13 extraneous information, was he offered probation for a guilty
14 plea?

15 MS. ELDER: Your Honor, he was offered a period, a small
16 period of incarceration locally, probation if he would proffer
17 against the Co-Defendant.

18 THE COURT: Okay.

19 MR. LONG: Your Honor, that's, that's no accurate.

20 THE COURT: All right.

21 MR. LONG: He was offered burglary third with time
22 served of 40 days and probation.

23 THE COURT: Okay. All right.

24 MS. ELDER: That --

25 MR. LONG: That's -- I have an e-mail if we need to pull

Sentencing

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1 it out.

2 THE COURT: That's fine.

3 MR. LONG: And also, Your Honor, I'd like to go back to
4 the -- what Ms. Elder talked about with the interview with
5 Adrian Moore, she said that Adrian Moore implicated Jamar
6 Huggins. That's not in this report. If she wants to -- if
7 she'll identify where she sees his name, that Adrian Moore
8 identified Jamar Huggins, I'd like to hear it.

9 THE COURT: Well, I mean, if it's inculpatory or
10 exculpatory then that might and it wasn't just turned over.

11 MR. LONG: It's not in here. His name --

12 MS. ELDER: Your Honor, I didn't say that.

13 THE COURT: Well, that -- I'm not going to make a
14 decision on that at this point in time.

15 MS. ELDER: That's how we got her.

16 THE COURT: If it's -- if, if --

17 MR. LONG: I just don't want you to be misled.

18 THE COURT: -- if that was evidence that they felt --
19 okay. And I understand that. All right. Go ahead. Anything
20 else?

21 MR. LONG: No, Your Honor.

22 THE COURT: All right. All right. Mr. Huggins, the jury
23 has found you guilty of these three charges. On the charge of
24 burglary in the first degree, the sentence of the Court is
25 that you be confined to the State Department of Corrections

1 for 15 years. On the charge of armed robbery the sentence of
2 the Court is that you be confined to the State Department of
3 Corrections for ten years. On the charge of kidnapping the
4 sentence of the Court is that you be confined to the State
5 Department of Corrections for 15 years. The finding of the
6 Court is that the kidnapping did not include a sexual offense.
7 The sentences will run concurrently. You'll be given credit
8 for any time served.

9 MS. ELDER: Thank you, Your Honor.

10 THE COURT: All right. Thank you.

11 (Adjourned.)

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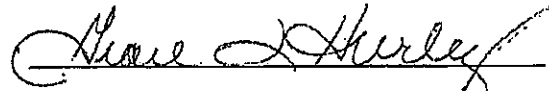
Certificate

189

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Jamar Antonio Huggins, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 15-17, 2014.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

December 15, 2014.

WITNESSES

Jonathan Martin Horry County Police Department

DOCKET NO. 2013-GS-26-1076

The State of South Carolina**County of Horry**Heather von Hermann
13H00429**COURT OF GENERAL SESSIONS****MARCH, 2013 TERM****ARREST WARRANT NUMBER**

M976487

CDR: 0079 16-11-0311

DOA: 1/19/2013

THE STATE

vs.

Jamar Antonio Huggins
B/ M
2408 9Th Ave
Conway, SC 29527-5428
DOB: 1988
SSN: [REDACTED]**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: [REDACTED]

VERDICT**ATTORNEY: Taylor, R. Paul****Indictment for****BURGLARY 1ST DEGREE****Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury

Date:

CLERK OF COURT
2013 SEP 17 PM 4:44
COURT DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on MARCH 28, 2013, the Grand Jurors of Horry County present upon their oath:

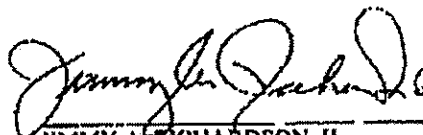
BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That Jamar Antonio Huggins did in Horry County, on or about December 20, 2012 enter the dwelling of Angela Eckler without consent and with the intent to commit a crime therein and when in effecting entry or while in the dwelling or in immediate flight, was armed with a deadly weapon, he or another participant in the crime, caused physical injury to non-participant in the crime, in violation of Section 16-11-0311(A), S. C. Code of Laws, 1976, as amended.

*and/or occurred during nighttime.
(MHC)*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

192
STATE OF SOUTH CAROLINACOUNTY OF
STATE

Horry

VS.

Jamir Antonio Huggins

AKA:

Race: BLACK Sex: M Age: 34

DOB: 1980 S: [REDACTED]

Address: 9Th Ave

City, State, Zip: Conway, SC 29527-5428

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS2601076

A/W#: M976497

Date of Offense: 12/20/2012

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 9/17/2014☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-25 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 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(b) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 390
TOTAL	\$	\$ 13390

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Melanie Huggins-Ward
Grace Hurley

Presiding Judge

Judge Code:

Sentence Date:

2148
Sept. 17, 2014☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk during probation.

WITNESSES

Jonathan Martin Horry County Police Department

DOCKET NO. 2013-GS-26-1077

The State of South Carolina

County of Horry

Heather von Hermann
13H00429

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

ARREST WARRANT NUMBER

M976498

CDR: 0095 16-03-0910

DOA: 1/19/2013

THE STATE

VS.

Jamar Antonio Huggins
B/ M
9Th Ave
Conway, SC 29527-5428
DOB: 1980-
SSN:

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: MAR 28 2013

VERDICT

ATTORNEY: Taylor, R. Paul

Indictment for

KIDNAPPING

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury
Date:

FILED
Horry County
2014 SEP 17 PM 4:47
COURT DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

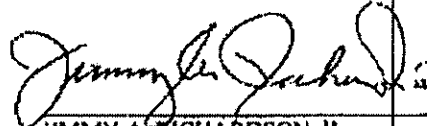
At a Court of General Sessions, convened on MARCH 28, 2013, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Jamar Antonio Huggins did in Horry County on or about December 20, 2012, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Angela Eckler, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

195

COUNTY OF
STATE

Horry

VS.

Jamar Antonio Huggins

AKA:

Race: BLACK Sex: M Age: 34

DOB: 1980 SS#:

Address: 9Th Ave

City, State, Zip: Conway SC 29527-5428

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnapping / Kidnapping

INDICTMENT/CASE#: 2013GS2601077

A/W#: M976498

Date of Offense: 12/20/2012

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed X years

and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

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: 9/17/2014☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-25-13

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-53 (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: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 30-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL:

\$	
\$	
\$100	\$100.00
\$100	\$
\$12	\$
\$25	\$
\$500	\$
\$25	\$25.00
\$150	\$
\$50	\$
\$40/ea	\$
\$5	\$5.00
\$	\$39.00
\$	\$135.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Melanie Huggins Ward
Grace Hurley

Presiding Judge

Judge Code:

Sentence Date:

Mariamun Pullara
2148
Sept. 17, 2014

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 2000 beginning 10/17/2014

\$ paid to Public Defender Fund

Other:

- Did not include sexual offense

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

DOCKET NO. 2013-GS-26-1278

The State of South Carolina

County of Horry

Heather von Hermann
13H00429

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

THE STATE

vs.

Jamar Antonio Huggins
B/M
9Th Ave
Conway, SC 29527-5428
DOB: 1988-
SSN:

ATTORNEY: Taylor, R. Paul

Indictment for
ARMED ROBBERY

Jimmy A. Richardson, II, Solicitor

WITNESSES

Jonathan Martin Horry County Police Department

ARREST WARRANT NUMBER

M976500
CDR: 0139 16-11-0330(A)
DOA: 1/19/2013

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

2014 SEP 17 PM 4:47
COURT DATE
PLED GUILTY/TRIAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

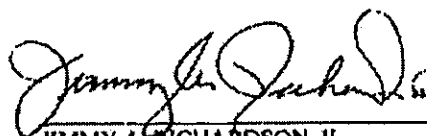
At a Court of General Sessions, convened on MARCH 28, 2013, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Jamar Antonio Huggins did in Horry County on or about December 20, 2012, while armed with a deadly weapon, to wit: HANDGUN, take and carry away personal property of Angela Eckler from or in the immediate presence of Angela Eckler with intent to deprive Angela Eckler of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

198

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Horry

VS.

Jamar Antonio Huggins

AKA:

Race: BLACK

Sex: M

Age: 34

DOB: [REDACTED]

SS#: [REDACTED]

Address:

9Th Ave

City, State, Zip:

Conway, SC 29527-5428

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: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A)

of the S.C. Code of Laws, bearing CDR Code #

0139

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☒ Recommendation by the State.

ATTEST:

SCB64230

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

10

days/months/years or

☐ under the Youthful Offender Act not to exceed

X years

and/or to pay a fine of \$

X

; provided that upon the service of

X

days/months/years and/or payment

of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-132

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-61 (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 SQDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-226 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (DUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Melanie Huggins-Ward

Grace Hurley

Presiding Judge

Judge Code:

Sentence Date:

Morgan C. Calkins

2145

Sept. 17, 2014

RECEIVED
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CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Indictment: 2013GS2601076-78
The State of South Carolina,	)	
	)	1976497, 498, 500
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND MOTION
	)	FOR A NEW TRIAL BASED ON
Jamar Antonio Huggins,	)	AFTER DISCOVERED EVIDENCE
	)	
Defendant.	)	

COMES NOW THE DEFENDANT, by and through the undersigned counsel, moving this Court for an Order granting the Defendant a new trial in the above-caption matter. The Defendant moves for a new trial pursuant to South Carolina Rule of Criminal Procedure 29(b). The grounds for this motion are that Defendant has discovered the following evidence that was not discovered and could not have been discovered through the exercise of due diligence at the time of trial: the co-defendant has now identified a newly disclosed suspect and has denied Mr. Huggins involvement in the crime. See Attached Affidavit from Co-Defendant Deaungela Shanta Huggins.

Therefore, Mr. Huggins respectfully requests that this Court convene a hearing regarding this evidence and grant Mr. Huggins a new trial.

Respectfully Submitted,



Natasha M. Hanna, Esq., Attorney for the Defendant
 Law Office of Natasha M. Hanna, P.C.
 4712 Jenn Drive, Ste. A
 Myrtle Beach, SC 29577
 Phone: [843] 839-8002
 Fax: [843] 839-8011

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2013-GS-26-1076 through 1078

State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	June 13, 2017
	)	
Jamar Huggins,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

Jimmy A. Richardson, II, Esquire
Attorney for Plaintiff

Natasha M. Hanna, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

State v. Huggins (6-13-17)

1 (There were no exhibits marked during the hearing.)

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1 (On the record, June 13, 2017.)

2 MR. RICHARDSON: And Your Honor, while he's getting
3 seated there, we have been in constant contact with the
4 victim. She isn't here today. We talked with her yesterday,
5 said that she didn't know if she'd be able to come or not. So
6 she is not present.

7 THE COURT: All right. All right. This is case 2013-GS-
8 26-1076 through 1078. The matter is before the Court on the
9 Defendant's motion for a new trial. What was he convicted of?

10 MR. RICHARDSON: Your Honor, kidnapping, burglary first
11 and armed robbery.

12 THE COURT: All right. All right. Ms. Hanna, you
13 represent the Defendant, Jamar Antonio Huggins?

14 MS. HANNA: Yes, sir, I do, Your Honor.

15 THE COURT: All right. Let me hear from you.

16 MS. HANNA: Thank you, Your Honor, and I do have a
17 presentation that I would like to have the screen pulled down.
18 I can certainly say my argument, but a picture is worth far
19 more.

20 THE COURT: All right.

21 MS. HANNA: So if I may submit that.

22 THE COURT: All right. Do the lights automatically go
23 off?

24 MR. RICHARDSON: Yes.

25 MS. HANNA: Okay. Well, and are you able to see this,

State v. Huggins (6-13-17)

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1 Your Honor, from your standpoint?

2 THE COURT: Yes. I can see it.

3 MS. HANNA: Okay. Okay. Your Honor, thank you. If it
4 can please the Court, I do represent Jamar Huggins, who on
5 September 17th, 2014, Jamar Huggins was convicted of armed
6 robbery, kidnapping and burglary first, and Your Honor may
7 remember the specific trial as you were the presiding judge.

8 THE COURT: Unfortunately I do not. I apologize. It
9 happened this was back in 2014?

10 MS. HANNA: Yes, sir, September.

11 THE COURT: I don't remember anything about it.

12 MS. HANNA: Thank you, Your Honor.

13 THE COURT: You're going to need --

14 MS. HANNA: This was a very short trial where the State
15 only presented two witnesses, where the only evidence
16 connecting Jamar Huggins to the crime was the testimony of
17 Deaungela Montgomery, and in that trial I want to go over
18 briefly what she testified to. When she was asked, and of
19 course, you cannot -- wait a minute -- let me try to focus
20 this a little bit better. At the trial she testified after
21 whether it was Jamar Huggins that was with her at this
22 robbery, and by way of background, Your Honor, let me tell you
23 a little bit about, about what he was actually accused of.
24 There was a man by the name of Adrian Moore who lived with a
25 woman by the name of Angela Eckler. They lived here in

1 Conway. On an evening in December 2013, the -- Jamar Huggins
2 was accused of being one of two people, along with a lady by
3 the name of Deaungela Montgomery, of going up to Angela
4 Eckler's house. They first sent Deaungela Montgomery up to
5 the door. She knocked on the door where Angela Eckler
6 answered the door. She, Deaungela Montgomery did not have a
7 mask on, and shortly thereafter, two men got out of a car,
8 approached the house with masks on, broke into the home,
9 robbed Ms. Eckler and her 12-year old daughter. That's what
10 he has been accused of being one of those two people. After
11 this crime occurred, Ms. Montgomery was arrested. She was
12 detained at first, and during the course of her interview with
13 Detective Martin, she eventually revealed that, that a man by
14 the name of Junk, at no time did she ever say Jamar Huggins
15 was with her. She said two things, "Tyjuan McKeithan was with
16 me and Junk was with me." Then when she got to trial, and
17 Junk being this gentleman right here, Jamar Huggins, when she
18 got to trial she recanted her testimony, and this is what she
19 said, when she asked, "Do you recall telling the detective
20 that Junk was with you and you picked him out and showed,
21 showed the detective?" Answer, "Well, after they say, after
22 they said it was Junk I assumed that that was Junk. I, I
23 don't remember him. I don't know him." Deaungela Montgomery
24 got in that, in that chair right there, pointed to him, and
25 she said, "I don't know this guy. This ain't Junk." Then

1 she goes on when she's asked again, "Okay. Did you make a
2 statement to police identifying Junk as the one who was with
3 you," and she said, "Yeah. I remember the name. I remember
4 that, but what I'm telling you is this is not the man that was
5 with me." They asked her again, "Okay. So Junk, Jamar
6 Huggins did, in fact, go with you to Ms. Eckler's house," and
7 she said, "Junk went with me, but what I'm telling you I don't
8 remember him. I don't remember this man." She positively
9 states on the witness stand that this man wasn't with her that
10 night, and the reason that's so important, Your Honor, is
11 because that is the only evidence that connected Jamar Huggins
12 to that crime. There was no other evidence presented by the
13 State. In fact, there were only two witnesses, Deaungela
14 Montgomery, who told the detective when she was arrested that
15 Junk was with her, and then at trial she says he wasn't and
16 that it was not him. She didn't tell us who was with her.
17 She simply said it's not him. The jury convicted Mr. Huggins,
18 and he is now serving a sentence of 15 years for armed robbery
19 and kidnapping and burglary first.

20 The second testimony that the jury heard was from Ms.
21 Eckler, the victim. When asked, Ms. Eckler, "I'm sorry you
22 had to go through such a tragic event, nothing we can do to
23 stop that. You cannot identify the two men who went into your
24 house. Can you?" Answer, "Unfortunately not. No, sir."
25 "You cannot identify that Jamar Huggins went into your home;

1 can you?" Answer, "No, sir." So, again, I point back that
2 the only testimony at trial was Deaungela Mongtomery. So now
3 we're here on a motion for a new trial based on after-
4 discovered evidence. I have submitted a motion to the Court
5 along with an affidavit of Deaungela Montgomery. Her new
6 testimony is this, and this is not recantation testimony.
7 That's every important for the Court to distinguish. This
8 absolutely is not recantation. She is not changing her story.
9 In fact, her testimony today, this new evidence confirms and
10 corroborates exactly what she said on that witness stand when
11 she said, "This man, it's not him." Now the new evidence, and
12 we have an affidavit that we've submitted to the Court, Tyjuan
13 McKeithan and Jasamine Mitchell were the two guys who were
14 with her on December 20th, 2012. Jasamine Mitchell was wearing
15 the mask during the robbery. Jasamine Mitchell threatened her
16 if she told anyone he was involved. She's afraid of him.
17 He's known to commit violent crimes. He would come after her
18 or harm her family. So two years later after she's sober,
19 after she's no longer under police deception, which the
20 detective willingly admitted at trial, after she's sober,
21 after she no longer feels threats, she has now come forward
22 and said who was with her.

23 Your Honor, under the case of State v. Harris the Court
24 has to look at five things, and this is completely up to you,
25 your trial discretion, the discretion of the Court, but there

1 is this, she tells the detective, "If you can find some
2 pictures now I know how Junk looks, if you can find some
3 pictures." So the detective says to her, Detective Martin
4 says this, "I'm going to bring you back pictures. It's the
5 only way you're going to get kept out of this." So an hour
6 and a half goes by. Deaungela leaves the room. She comes
7 back for interview number two, and this is what happens.
8 Detective Martin slides a picture across the table to
9 Deaungela Montgomery, a picture from a driving record that is
10 five years before the time of the crime. This is the picture,
11 slides it across the table, and Detective Martin says, "Do you
12 know who this is?" And she says, "Yeah. That's him," never
13 says Jamar Huggins, only says Junk. That may not seem like
14 that big of a deal, but here is the connection, Your Honor.
15 This is Junk, and this is the person that she has now
16 identified. They almost look identical. So that's one bit of
17 evidence. Add to it, Your Honor, at the time of the crime at
18 the night in question and several years before and all the way
19 up to the day of trial this is what Jamar Huggins looked like.
20 Jamar Huggins had dreads all the way down his back. So
21 there's some confusion in who she is actually identifying.
22 She points to somebody, says, "Yeah. That's him," but
23 ironically he looks exactly like the picture of the man that
24 she is now identifying. That's one thing, but don't take that
25 by itself standing alone.

1 Now, this is going to look like a mess, but just hang
2 with me because at the end I want to show you. We've got five
3 players, Adrian Moore, Angela Eckler. Angela Eckler was a
4 victim where she resided in the home where this crime
5 occurred. Her boyfriend is Adrian Moore. Adrian Moore was
6 living a double life. Adrian Moore had several acquaintances.
7 He admittedly in his statement said that he does drugs and
8 he's -- he was actually in the hospital at the time of this
9 crime. So what happens is Deaungela Montgomery goes to the
10 house, knocks on the door, two masked men come in. Now, I
11 want to point this out as an aside, Your Honor. Two masked
12 men come in. One thing that the record is silent on is long
13 dreads. Angela Eckler, the victim, didn't mention anything
14 about anybody having long dreads down their back. Even if Mr.
15 Huggins or anybody else with long dreads had a mask on, those
16 dreads would be hanging low. More importantly, if he would
17 have wrapped those dreads up in a mask, then his head would
18 have been the size of two basketballs, which leads you to
19 believe that the record is silent. Therefore, it couldn't
20 have been Jamar Huggins.

21 Going on, so Adrian Moore is in the hospital at the time
22 of this crime. He's the boyfriend of the victim, Angela
23 Eckler. So Detective Martin says, you know, "What's going
24 on?" Angela Eckler says, "They came here asking for Dre. I
25 assume that's Adrian Moore, my boyfriend." Detective Martin

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1 goes to the hospital and interviews Adrian Moore. When he is
2 asked who could have possibly been knocking on your door
3 demanding that you pay the money, who could that have been, he
4 names two people, one, Tyjuan McKeithan, he owes him money,
5 and two, Jasmine Mitchell. Based on the new evidence that
6 Deaungela Montgomery is now telling you she has identified
7 Tyjuan McKeithan and Juice, Jasmine Mitchell as being with
8 her that night. That is corroborated by the initial interview
9 that took place within a few days or maybe even the next day,
10 I don't remember the date, of the crime when he goes to the
11 hospital says, "Who do you owe money to?" "Tyjuan McKeithan,
12 Jasmine Mitchell." In addition to that, he said, "Who else
13 you been hanging out with?" Boom, "Deaungela Montgomery."
14 But don't just take that. Nowhere does he mention Jamar
15 Huggins or anybody named Juice, but don't just take that, his
16 statement, couple it with the phone records that the
17 detectives found. The detectives went and got everybody's
18 phone records, everybody that was mentioned or named, went and
19 got the phone records, and this is what the phone records
20 show, Adrian's calling Deaungela Montgomery. Adrian's calling
21 Jasmine Mitchell. Tyjuan is calling Adrian. Deaungela is
22 calling Jasmine. Jasmine's calling Deaungela Montgomery.
23 Nobody is calling Jamar Huggins. It's all of these people who
24 are connected that she has now named as being a part of that
25 crime.

1 It keeps going. Angela Eckler, the victim, told the
2 detective, "You know, somebody came to my house that day
3 knocking on my door looking for Dre, didn't really understand
4 who Dre was at the time, but they rolled up in a gold, silver
5 car." Well, when Detective Martin went to the hospital and
6 asked Dre, "Who do you owe money to and what kind of car do
7 they drive," boom, he ends up saying Jasmine Mitchell. The
8 new evidence points to him. He owns the car that was found at
9 the crime or that was at the scene of the crime that day.

10 Again, going back to her trial testimony, Your Honor, she
11 says, "That's not him. That's not the person. That's what
12 I'm saying," when asked, "This is not the person who went in
13 that home invasion with you; is it?" "No, ma'am. No, sir,"
14 and Your Honor, I know you indicated that you don't remember
15 this trial, I have the trial transcript that I'd like to
16 provide to you at the end of this hearing, but your own words
17 were this is a close call when there was a motion for a
18 directed verdict, this is a close call. So what I say to you
19 is that this new evidence takes that close call away. Going
20 back to the elements of the crime, we have to prove that it
21 would change the outcome of the trial. Based on the fact that
22 it was a close call because one person, one person, no DNA, no
23 evidence, no video, no crime, no victim ID, one person by the
24 name of Deaungela Montgomery said, "This man did it," before
25 the trial. At the trial she said it wasn't him. So if the

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1 jury would hear today that she is now identifying somebody who
2 was with her, who was also identified by the victim's
3 boyfriend that owed money to two guys, if they also hear that
4 there is -- there was a car that rolled up that matched the
5 description of the person that she is now identifying, if the
6 jury hears all of this information, Your Honor, it would
7 result in a different outcome.

8 THE COURT: So at the trial she said it was not Mr.
9 Huggins.

10 MS. HANNA: Yes, sir.

11 THE COURT: But you're saying there was a pretrial
12 statement she gave police that said it was.

13 MS. HANNA: On her initial interview while she's under
14 the influence of crack cocaine and under the influence of
15 police deception while he tells her, "If you don't name
16 somebody you're going down and it's the only way you're going
17 to get out of this is if you name somebody," so she names
18 somebody. She names a nickname. She points at a picture.
19 She never says Jamar Huggins in that initial interview.

20 THE COURT: And then that came in at trial?

21 MS. HANNA: Well, it really didn't come in, Your Honor.
22 There was a question about it, and, and I, I personally think
23 there were some issues on the way it was objected to, but her
24 testimony, the only evidence presented was, "It's not him."
25 Now, what Donna Elder, the Prosecutor, attempted to do was

1 impeach her own witness. She called Ms. Montgomery as her own
2 witness, as a State's witness.

3 THE COURT: All right.

4 MS. HANNA: She attempted to impeach her with her prior
5 inconsistent statement. That's the only thing that came in,
6 Your Honor.

7 THE COURT: Okay. So that's still going to be the case.

8 MS. HANNA: I'm sorry?

9 THE COURT: That's still going to be the case --

10 MS. HANNA: Yes, sir.

11 THE COURT: -- if there's a new trial, you're still going
12 to impeach her with her prior inconsistent statement.

13 MS. HANNA: The State may do that, Your Honor. Yes.

14 THE COURT: Okay.

15 MS. HANNA: But what is so evident now is that, you know,
16 this, this pretty much sums it up, "It's not him. It's him."

17 THE COURT: Okay.

18 MS. HANNA: She's not saying he had on blue tennis shoes
19 and now he has on white tennis shoes. She's not saying,
20 "Well, we stopped here first and then we went there first."
21 She is absolutely providing information that exculpates him,
22 that, that says it's not him because it's this man over here,
23 and Your Honor, I understand that motions for a new trial are
24 challenging, I understand that, but we're not asking you to
25 find this man innocent. We're not asking that at all. We're

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1 asking for him to have a second chance based on this new
2 evidence that absolutely could not have been obtained prior to
3 the time that Deaungela Montgomery agreed to release it or
4 voluntarily released it and she has confirmed this with
5 Solicitor Richardson. He talked with her on the phone, and
6 she confirmed that it was, indeed, Tyjuan McKeithan, and
7 Jasmine Mitchell.

8 THE COURT: But I mean, the only difference between now
9 and then is going to be she's going to name somebody, whereas
10 then she just said, "I didn't know who it was," and then --

11 MS. HANNA: And I'm not telling you.

12 THE COURT: -- and then the -- oh, she said, "I'm not
13 telling you"?

14 MS. HANNA: She would not release that information.

15 THE COURT: So did -- I mean, there's a difference
16 between her testifying, "I don't know who it was," and, "I
17 know who it was, but I'm not going to tell you who it was."

18 MS. HANNA: Oh, she knew who it was. She refused to tell
19 because she even says it in her affidavit, Your Honor, and
20 I'll go back to that.

21 THE COURT: Find just her -- what does the trial
22 transcript say she said at trial? What did she say at trial?

23 MR. RICHARDSON: That's the trial transcript.

24 MS. HANNA: Yeah. She said, "I, I don't want to say his
25 name."

1 THE COURT: All right. And the Court didn't make her?

2 MS. HANNA: No, sir.

3 THE COURT: So at trial she said she knew who it was but
4 wouldn't give the name so she could still do that in a new --
5 so it's -- I mean, is it actually new discovered evidence if
6 at that time --

7 MS. HANNA: Absolutely.

8 THE COURT: How? Because she knew at that time who it
9 was and she just wouldn't give the information.

10 MS. HANNA: Your Honor, under the elements it can't be
11 obtained at the time of trial. We couldn't obtain it --

12 THE COURT: Why couldn't it?

13 MS. HANNA: -- because she refused to provide it, and
14 this is what she says during the trial on page 60, "I told him
15 that Junk, but it was a lie. We -- I didn't want to say the
16 name that we got it from and I still don't want to say the
17 name," so her continued refusal, continued refusal to finally
18 identify who was with her that night. Now she has, it's new
19 evidence, and Your Honor, it won't cost the State hardly
20 anything to try this case again. It can be tried in a day.
21 All they have is two witnesses. That's it, and so my plea to
22 you, Your Honor, is isn't it better to have a one-day trial
23 than to have this man sit in prison for 13 and a half years
24 when the State could have got it wrong. Again, we're not
25 asking you to release him and set him free. We're simply

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1 asking for a new trial based on newly discovered evidence, and
2 the elements of State v. Harris have been met. Thank you, and
3 I'll be happy to answer any questions.

4 THE COURT: All right. All right. All right. What's
5 the State's position?

6 MR. RICHARDSON: Your Honor, we don't believe that it's
7 newly discovered evidence. We believe that everything that
8 Ms. Hanna has brought up has already been tried. The photo
9 lineup that was presented to the jury, the stuff about Dre,
10 that was presented to the jury or was available way
11 beforehand, and the phone records were available way
12 beforehand, wasn't presented. Now, of course, there for Mr.
13 Huggins or anyone else to get a new trial there's three ways
14 to do it; Appellate Court, which has upheld the jury's
15 verdict; then there's PCR, which is still pending; and then
16 this Hail Mary way of doing it is to come in and ask for a new
17 trial based on newly discovered evidence. Your Honor, of
18 course you know it's every disfavored, and I passed up some
19 cases on that. This is really is the Hail Mary to try to, to
20 get a new trial, and some of those cases that I passed up
21 saying that if the evidence that was submitted that Ms. Hanna
22 just gave you was submitted today that there was a probability
23 that it would change the result. Your Honor has already hit
24 on this. Ms. Deaungela Montgomery took the stand and said
25 over and over and over again, "That isn't the guy. That isn't

1 the guy." The jury got to hear that, for her to say, "That
2 isn't him," and, and we've passed up the transcript so you'll
3 see. Now what you won't see in the transcripts is up until
4 that point she was a cooperating witness with the State. When
5 she took the stand that day she tried to recant and say, you
6 know, "The statements that I gave against Junk in the past,
7 that just wasn't true." She started off saying, "You know,
8 I'm a drug user. I don't -- you can't believe me. Don't
9 believe all of these other statements," but the jury heard all
10 of that and they still believed her, and some of the -- the
11 only thing that has changed today because you'll see in the
12 transcript she did mention Tyjuan -- I can't think of his last
13 name right now. She did say, "Me, Junk and Tyjuan." She said
14 that throughout. She picked Junk or Jamar Huggins out of a
15 six-pack lineup, said, "That's the guy." Now, all of that
16 other stuff about ten-year driving record, that was available
17 and could have been brought up at trial and may be brought up
18 at a PCR hearing in the future, failure to do that, but really
19 the only thing that we've got new today is this name Jasmine
20 Mitchell which I don't have, I've still yet to find Jasmine
21 Mitchell. The County Police have looked. They can't find
22 him. The Defense can't find him. So we've got a name, and I
23 believe that the person exists and I believe that he is a
24 black male, but what you'll see in looking at that transcript
25 as you go over it she said that, "I know Junk. I've known

State v. Huggins (6-13-17)

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1 Junk for several years. I interact with him every day." She
2 says, "I know him to be between five foot six and five foot
3 eight." When I say she I'm talking about Montgomery. She
4 says, "Junk wears a grill in his mouth. I can tell you where
5 Junk lives. I can tell you where we went and got the car that
6 was used in this robbery. It was at Junk's house. It is a
7 Cadillac car. The three of us went and, and did this, did
8 this robbery." Now, four years later she's given us a name,
9 and I would submit that it may be, it may be something to this
10 Court if this new person, Jasamine Mitchell happened to wear a
11 grill or live at the address that she took them to or was
12 picked out of a lineup. Ms. Hanna said that Mitchell looks a
13 lot like Huggins. I don't know what Mitchell looks like, but
14 all of these things were put in front of a jury and they, of
15 course, and Your Honor was the judge at the time, found that,
16 that, that Jamar Huggins is, in fact, guilty of these charges.
17 In addition to that, what we've got is recantation. It's her
18 changing her testimony at this point. She is supplementing
19 her testimony or taking out Junk's name and putting in Juice's
20 name is, is basically what's happening. So if we filled in
21 that whole thing with her -- the cross exam -- not cross exam
22 but direct exam of her prior statements, she filled in and
23 pointed directly at Jamar Huggins, told where he lived, told
24 what he drove, told what vehicle was used in the robbery. She
25 did all of that.

1 In addition to it being recanted testimony at this point,
2 you also have the issue of third-party guilt and under Hayden
3 versus State, which I passed up, you also have to consider if
4 the evidence made available today if that is new evidence, a
5 name, if that would even be allowed to be put in at trial, and
6 simply saying, "Not me, somebody else," or, "Not him, somebody
7 else," without anything else isn't enough. She can't just say
8 -- she could have said John Doe. We still haven't -- we don't
9 have an affidavit from this other guy. I did talk with
10 Deaungela Montgomery. She's still in jail, and I think she
11 submitted an affidavit which I have seen, and that's basically
12 what she told me, but I also called this Tyjuan Mitchell -- is
13 that his last name --

14 MS. HANNA: McKeithan.

15 MR. RICHARDSON: McKeithan, and he said, "Look, I wasn't
16 there. I know nothing from nothing. I don't know Junk. I
17 don't know Juice. I don't know any of that." Now, if they've
18 got a separate statement from him, but simply a statement from
19 Ms. -- excuse me, Ms. Montgomery restating the same thing she
20 stated at trial I don't believe is a new trial, reason for a
21 new trial. I think it is everything that they brought up has
22 been prior evidence, and it has gone through. A lot of this
23 stuff, you know, I wasn't there as Your Honor was and the
24 jury, but there's something to be said for this system that
25 we've got where a jury makes the call. Your Honor and the

State v. Huggins (6-13-17)

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1 jury were able to sit here through the trial itself and watch
2 the Defendant and watch the witnesses, especially Deaungela as
3 she testified and gauge her credibility from that time, and
4 that's why there's such a high precedent on the trial court
5 decision. After that, you know, if there were DNA and, and
6 there is none. So I'm, I'm not -- the Defense couldn't have
7 come up with that, but that's the sort of new evidence. It's
8 not just recanting because she recanted on the stand. She
9 recanted the whole time she was up there. So the only thing
10 that we have heard new this time has been Jasmine Mitchell,
11 and I would submit to the Court that that is not enough for a
12 new trial. There is a ton of case law on this issue. I've
13 passed up parts of it. The other part of it is during her
14 testimony, which you'll read over, she gives you the, the name
15 Junk as being the dealer for Dre. Dre is Angela, the victim's
16 boyfriend. She says Junk was his dealer and that he owed him
17 money. So all of that is in the paperwork that has been
18 passed up to you, her testimony. You can see the whole thing
19 and see it, refresh your memory from the trial itself.
20 That's, that's all of it. I would ask you to look over that,
21 the case law that disfavors a new trial, and Your Honor, I
22 just -- there is a new name out there, but it's always been
23 Deaungela Montgomery and two black males. She said, "Me, Junk
24 and Tyjuan." Now she's saying, "Me, Tyjuan and this Jasmine
25 Mitchell", so.

1 THE COURT: All right. Thank you. Anything in reply?

2 MS. HANNA: Yes, Your Honor. Solicitor Richardson's
3 comments are exactly why there should be a new trial. He
4 indicated that Deaungela Montgomery was a cooperating witness
5 until she got on that witness stand, the first time she had
6 seen Jamar Huggins. When she got on that witness stand she,
7 in her mind, is thinking it's these -- one of these guys and
8 not this guy with long dreads that's sitting at this table.
9 It's clearly a case, Your Honor, where she has indicated that
10 it was Junk, never Jamar Huggins, and Your Honor, I cannot say
11 this enough, and I've provided -- I've got a memo along with
12 supporting case law, this is not a recantation case. She is
13 not recanting her testimony at all. In fact, she is further
14 corroborating her testimony at trial. The only evidence that
15 was admitted, and Your Honor, this might be a different case
16 if the State had DNA, if they had videos of the car. They
17 don't have that. They've got one testimony.

18 THE COURT: Yeah. But the question I've got or the
19 problem I've got is that information was available at the time
20 of trial.

21 MS. HANNA: And I would say, Your Honor, how is it
22 available when we have somebody that says, "I'm not telling
23 you because I'm afraid for my life."

24 THE COURT: Well, then they ask the Court --

25 MS. HANNA: "I'm afraid somebody's going to kill me."

State v. Huggins (6-13-17)

24

1 THE COURT: -- they ask the Court, "Direct the witness to
2 say who it is."

3 MS. HANNA: Your Honor, she refused to disclose it, and
4 it's in --

5 THE COURT: She could have been held in contempt until
6 she testified.

7 MS. HANNA: And, and Your Honor, you were the trial
8 judge.

9 THE COURT: I'll have to -- I'm going to have to read --

10 MS. HANNA: Yes, sir.

11 THE COURT: -- I'm going to have to read the transcript,
12 but if was a case of she said, "Look. It wasn't him. It was
13 somebody else." "Well, who was it?" "Well, I'm not going to
14 tell you," then it's not newly discovered evidence, if that's
15 the extent of her testimony and it ended right there because
16 that's pointing to third-party guilt without even giving a
17 name. So it has to be more than she said, "It's not him. It
18 was somebody else." "Well, do you know who else it was?"
19 "Yeah. I do, and I'm not going to tell you," that's not and
20 it's dropped at that, then the fact that it comes out now is
21 not newly discovered evidence.

22 MS. HANNA: It was repeatedly asked, Your Honor, and I've
23 got a copy of the entire transcript, and I would also say that
24 I don't recall her ever naming Junk as her dealer. I don't
25 ever recall her saying that or that Adrian naming Junk as his

1 dealer.

2 THE COURT: Well, you all are going to make me read the
3 entire transcript then to find out.

4 MR. RICHARDSON: It's a quick --

5 MS. HANNA: Yes, sir.

6 MR. RICHARDSON: -- it's a quick read.

7 THE COURT: Okay.

8 MS. HANNA: And it was a very quick trial, but this is
9 what I'm asking, Your Honor, when is there ever a reason for a
10 new trial if when somebody finally names the real person that
11 was with them? I mean, we might as well just throw the whole,
12 the whole thing in the trash, the whole rule in the trash
13 because there could never be anything better and greater than
14 when somebody finally says, "I'm telling you it's not him,
15 it's him."

16 THE COURT: Well, the difference is whether or not
17 it's newly discovered evidence. That's the critical -- what
18 this turns on is was that something that could have been
19 discovered at the time of trial. What you're telling me is
20 that that witness is the only person that knew that
21 information and that there was no way the defense could have
22 gotten that information but through her testimony, and
23 therefore, it's newly discovered evidence. If it was
24 discoverable, it's not newly discovered evidence. If it was
25 available or could have been made available then it's not

State v. Huggins (6-13-17)

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1 newly discovered evidence. It's only when something
2 subsequent to the trial has occurred that was not available at
3 the time of trial.

4 MS. HANNA: And Your Honor, there's only three people
5 that know who were there that night, Deaungela Montgomery,
6 she's already told us, and if she's correct then it's Jasamine
7 Mitchell and Tyjuan McKeithan. Tyjuan McKeithan is sitting in
8 prison right now for another armed robbery. So you take all
9 the facts that have been presented to support Deaungela
10 Montgomery's statement, you look at State v. Harris, which
11 sets forth the elements, and I think all the cases on
12 recantation don't even apply here because it's not
13 recantation. You look at that. You look at the credibility
14 of her testimony, Your Honor, and it is newly discovered
15 evidence because there's absolutely no way that that
16 information could have been obtained until Deaungela
17 Montgomery decided to release it. Thank you.

18 THE COURT: So it's because of her, she dictates what
19 evidence is discoverable and not discoverable.

20 MS. HANNA: Well --

21 THE COURT: The fact that she says, "I'm not going to
22 tell you," that makes it newly discovered evidence?

23 MS. HANNA: It does, Your Honor, because she's the only
24 one with the information.

25 THE COURT: No. You got two other -- you said you got

1 two other people out there that had the information, and the
2 problem I've got is that this information has already been
3 presented to a jury.

4 MS. HANNA: But it hasn't, Your Honor. That absolutely
5 is not true. They have never heard anything about Jasamine
6 Mitchell. They've never heard anything about Juice, those
7 names never came in.

8 THE COURT: But you're not going to be able to just throw
9 out Jasamine Mitchell's name. You're going to have to have
10 some other corroboration.

11 MS. HANNA: And I've presented that, Your Honor, in
12 showing the phone records that connect to these five people
13 that don't connect to Jamar, showing the statement of Adrian
14 Moore, when he says, "Hey, who do you owe money to?" "Well,
15 these two guys over here, not Jamar Huggins." That's why I
16 provided this additional evidence so that you could weigh the
17 credibility of the new evidence.

18 THE COURT: Okay.

19 MS. HANNA: But I would just ask Your Honor to take it
20 under advisement. I have a memorandum with supporting case
21 law and a copy of the entire transcript.

22 THE COURT: Well, the fact of the matter is is if it is a
23 new trial she's going to take the testimony, and the only -- I
24 mean, she's going to take the stand and the only difference is
25 she's going to -- in addition to saying it's not Mr. Huggins,

State v. Huggins (6-13-17)

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1 it's this other person, whereas the last time she said it's
2 not Mr. Huggins it's somebody else and, "I'm not going to tell
3 you who it is," and under both situations the State's going to
4 impeach her with her prior statement.

5 MS. HANNA: It's not that simple, Your Honor. With all
6 due respect to the attorney that tried this case, a lot of the
7 facts that we've presented to you the jury never heard.

8 THE COURT: But what is the newly discovered evidence?

9 MS. HANNA: The newly discovered evidence is just Tyjuan
10 McKeithan and Jasamine Mitchell, but if you combine all of
11 these supporting facts then it could easily change a jury's
12 mind and say, "Wait a minute," and, and Your Honor, going back
13 to credibility, he indicated a jury believed her, that's all
14 they had to do is they either -- she either lied when she gave
15 the detective his -- her statement and said it was Junk or
16 she's lying on the stand. So how does a jury even get to the
17 point of believing what she's saying, but you don't just
18 believe her testimony. You don't do that. You look at the
19 underlying facts that support her testimony, which is why we
20 presented this.

21 THE COURT: Well, to me it, it's sounding more like it is
22 a PCR issue, ineffective assistance of counsel is what you're
23 saying is that the Defense didn't present evidence that they
24 should have presented.

25 MS. HANNA: That's a completely different issue, Your

1 Honor, and I think -- I won't comment on that, but I think
2 that there is absolutely enough evidence for a motion for a
3 new trial based on newly discovered evidence, and I ask you
4 this, Your Honor, one day, that's all we ask for, one day to
5 make sure that this man doesn't sit in prison.

6 THE COURT: Well, I've still got to follow the law.

7 MS. HANNA: And the law supports it.

8 THE COURT: I mean, I can't just grant --

9 MS. HANNA: Yes, sir.

10 THE COURT: Regardless of what I thought, I even said
11 it's a close call.

12 MS. HANNA: Yes, sir.

13 THE COURT: But that's why we have a jury that's of your
14 peers that makes the decision. I don't make the call, the
15 State doesn't make the call, the jury, 12 people unanimously
16 decide.

17 MS. HANNA: Yes, sir.

18 THE COURT: And that's why we have the system, but I'll
19 take a look at the transcript and the testimony and I'll let
20 you know my decision.

21 MS. HANNA: Thank you, Your Honor.

22 MR. RICHARDSON: Thank you, Your Honor.

23 THE COURT: All right. Thank you.

24 (Adjourned.)

25

State v. Huggins (6-13-17)

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C E R T I F I C A T E

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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of State versus Jamar Antonio Huggins, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on June 13, 2017.

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

Grace L. Hurley, CVR-CM-M

Grace L. Hurley, CVR-CM-M
Official Reporter

June 29, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF GENERAL SESSIONS

ORDER IN A CRIMINAL CASE

WARRANT(S):

INDICTMENT(S): 2013-GS-26-1076

2013-GS-26-1077

2013-GS-26-1078

State of South Carolina

Jamar Antonio Huggins

DEFENDANT(S)

This form order submitted by: Benjamin H. Culbertson
Presiding Judge

Attorney for : ☐ State ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE

- ☐ DECISION BY THE COURT AFTER HEARING. This action came to a hearing before the court. The issues have been heard and a decision rendered. ☐ See below for additional information.
- ☐ DECISION BY THE COURT AFTER STATUS CONFERENCE. This case came for a status conference before the court. The status of this case and pending issues in this case were discussed and a decision rendered. ☐ See below for additional information.

☒ MOTION: Defendant's Motion for New Trial

☐ GRANTED ☒ DENIED ☐ CONTINUED ☐ WITHDRAWN

☐ WITHDRAWN BY MOVING PARTY:

Signature of Moving Party

☐ OTHER:

IT IS ORDERED AND ADJUDGED: ☒ See Order of the Court below ☐ See attached order
☐ Formal Order to follow; to be prepared by: ☐ State ☐ Defendant ☐ Other:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

Defendant's Motion for New Trial due to newly discovered evidence is DENIED.

At trial, Deaungela Montgomery testified that the defendant was not the person who committed the crimes with her and that she did not want to identify the true co-perpetrator. Her testimony was impeached with her inconsistent prior statements given to law enforcement where she identified the defendant as a co-perpetrator of the crimes.

The Defendant's Motion for a New Trial is based upon Deaungela Montgomery's identification of another person as the co-perpetrator after the defendant's conviction at trial. She states in an affidavit that she is no longer scared of the co-perpetrator and, therefore, identifies him by name (which she refused to do at trial).

Such evidence is merely cumulative since, at trial, Deaungela Montgomery testified that the defendant was not the true co-perpetrator and that someone else committed the crimes with her. Also, the evidence could have been discovered prior to trial with due diligence. When Deaungela Montgomery refused to identify the true perpetrator at trial, the defendant did not press her on that issue or ask that she be required to identify who committed the crime with her. (At the time of Deaungela Montgomery's testimony at the defendant's trial, she had already pled guilty and been sentenced to one of the crimes in this case).

See Hayden v. State, 278 S.C. 610, 278 S.E.2d 610 (1983) and Rule 29(b), SCRCrIMP.

Morgan T. Culbertson

Circuit Court Judge

2148

Judge Code

June 14, 2017

Date

FILED
2017 JUN 14 AM 7:59
CLERK OF COURT
JUL 17 2017

For Clerk of Court Office Use Only

This judgment was entered on the 15th day of June, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 15th day of June, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Jimmy Richardson

Natasha Hanna

ATTORNEY(S) FOR THE STATE

ATTORNEY(S) FOR THE DEFENDANT(S)

Renee Elvin

CLERK OF COURT

Court Reporter: Grace Hurley

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Jamar Antonio Huggins, #361445

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

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1766

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 Broad River Correctional Institution, 4410 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Horry County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Darungeta Montgomery
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-26-1076: Burglary, 1st Degree: 15 years
 - (b) 2013-GS-26-1077: Kidnapping: 15 years
 - (c) 2013-GS-26-1078: Armed Robbery: 10 years
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 17, 2014. 15 years
 - (b) September 17, 2014. 15 years

- (c) September 17, 2014: 10 years
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
- 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. March 30, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Op. No. 2016-UP-146
- 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:

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- (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 prepare and investigate.
- (b) Failure to call witnesses and utilize evidence at trial.
- (c) Failure to utilize all available arguments in support of the issue presented and raise all meritorious issues on appeal.

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? Rule 29(b), SC Crim P Motion.

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. New trial due to newly discovered evidence.
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Horry County Court of General Sessions
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Pending.
 - 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) PCR is the proper forum.

(b) _____

(c) _____

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

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- (a) your arraignment and plea? _____
- (b) your trial, if any? X
- (c) your sentencing? X
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? X
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- John Reuben Long, III, 201 Beahy St., Ste. 107, Conway, SC 29526
 - Robert M. Pachak, 1330 Lady Street, Ste. 400, Columbia, SC 29201
 - Natasha Hannah, 4717 Jenn Dr., Myrtle Beach, SC 29577
- (b) the proceedings at which each such attorney represented you:
- Trial: Sentencing
 - Direct Appeal
 - Rule 29(b) SCRCrimP, Motion
19. State clearly the relief you seek in filing this application:
A new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Tamara Higgins, 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.

Tamara Higgins

SWORN to and subscribed before me this 9th
day of March, 2017.

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/23/26

2017 MAR 16 AM 9:08
[Stamp]

17P

1766

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

Jamar Huggins

I, _____, 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.

Jamar Huggins
Applicant

SWORN or affirmed to and subscribed before me this

8th day of March, 2017.

[Signature]
Notary Public

My Commission Expires: 5/23/26

2017 MAR 16 AM 9:08
NOTARY PUBLIC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	FIFTEENTH JUDICIAL CIRCUIT
Jamar Huggins, 361445,)	
Applicant,)	2017-CP-26-1766
v.)	
State of South Carolina,)	AMENDMENT TO APPLICATION
Respondent.)	FOR POST CONVICTION RELIEF

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on March 16, 2017. Respondent filed a Return on July 6, 2017. Undersigned counsel was substituted in as counsel on November 9, 2017.

On April 4, 2018, Applicant, through counsel, filed a Motion for Abeyance due to a pending direct appeal. On May 21, 2018, the Honorable Larry B. Hyman issued an Order granting the request for an abeyance. On July 3, 2019, the South Carolina Court of Appeals affirmed the lower court.

On September 9, 2019, Applicant, through counsel, filed a Motion for Abeyance to be Lifted and for Discovery. On October 10, 2019, a motion hearing was conducted in front of the Honorable William H. Seals, Jr. at the Horry County Courthouse. Applicant was not present due to transportation issues, but he was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Johnny E. James, Jr., Assistant Attorney General.

After reviewing the written motion and hearing from both parties, the Honorable William H. Seals Jr. granted Applicants Motion. On November 9, 2019, an Order Lifting Abeyance and Authorizing Discovery was issued that allowed Applicant, through counsel, the opportunity to issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-

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HORRY COUNTY
2023 APR 24 PM 3:31
RENEE L. EDWARDS
CLERK OF COURT
HORRY COUNTY, S.C.

27-150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. A complete copy of Applicant's file maintained by trial counsel and post trial counsel of record.
2. A complete copy of the Horry County Clerk's file.
3. If not contained in counsel's file, a copy of the State Law Enforcement Agency (SLED) file.
4. If not contained in counsel's file, a complete copy of Applicant's discoverable file maintained by the Horry County Solicitor's Office, and if not contained therein a copy of the Horry County Sheriff's Department file.
5. The opportunity for Applicant's counsel and potential experts to review the evidence maintained at the Horry County Sheriff's Department and SLED (if needed).

On August 15, 2022, Applicant, through counsel, submitted a Supplemental

Motion for Discovery. By way of this Motion, Applicant submitted the following information and request:

As a result of the review of discovery received and several interviews conducted by Applicant's private investigator, it has become apparent that Applicant may have a claim that trial counsel failed to properly investigate prior to trial. To further investigate or substantiate this claim, Applicant would request the opportunity to obtain a copy of the following items and will provide a brief explanation for each request:

1. The criminal history and/or NCIC report for Adrian Maurice Moore. Despite not testifying at trial, Mr. Moore was a central figure in the events that took place that resulted in Applicant's charges and convictions. Adrian Moore was the intended victim of the home invasion and was the person with a connection, through drug activity, with the other assailants. Mr. Moore is currently serving a sentence in South Dakota for a drug crime.
2. Any incident reports, police activity logs, or records for calls to law enforcement for [REDACTED] Memory Lane in Conway, South Carolina for up to one year prior to the incident date of December 20, 2012. Through discovery and interviews, it has become known that there was regular drug activity at this address, which was in conflict with what was presented at trial.

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 HORRY COUNTY
 2023 APR 24 PM 3:31
 CLERK OF COURT
 RENEE NEWBY
 HORRY COUNTY

3. The opportunity for the personnel file, to include internal affairs file, for Investigator Jonathan Martin be screened for impeachment material that would have been possible for trial counsel to seek prior to trial pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). *See also Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 763 (1972), *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555(1995). Mr. Martin served as the lead investigator and testified at trial. Mr. Martin is no longer employed with the Horry County Police Department. As a result of his employment ending, Applicant would also seek the screening of the files for impeachable material following the date of Applicant's trial and up until the date Mr. Martin's employment ceased with Horry County Police Department (or any other law enforcement agency in Horry County).
4. A copy of the Horry County Police Department's Standard Operating Procedure (SOP) for criminal investigations effective on December 20, 2012. As a result of the review of discovery materials and the private investigation conducted, it is necessary to obtain a copy of the SOP to determine if the investigation was in compliance with the SOP in effect on December 20, 2012 and/or if counsel was ineffective for failing to obtain the same.

On August 23, 2022, the Honorable William H. Seals, Jr. issued an Order Granting Motion for Supplemental Discovery and Continuance. The Order was filed on September 6, 2022.

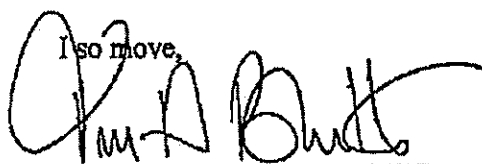
As a result of discovery received and the investigation conducted, Applicant would move to amend his original Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of trial and post-trial counsel:

1. Trial counsel rendered ineffective assistance of counsel that was prejudicial to Applicant, due to the following:
 - a. Counsel failed to conduct an independent investigation and properly address the investigation conducted by the State and/or law enforcement.

- b. Counsel failed to utilize evidence and witnesses to attack the State's case and put up a proper defense. Specifically, counsel failed to effectively develop and properly present a defense of alibi, third party guilt and/or actual innocence.
 - c. Counsel failed to object to improper burden shifting statements to the jury by the court. Transcript pp. 33, 36, 38. *See State v. Daniels*, 737 S.C. 251, 737 S.E.2d 473 (2012).
 - d. Counsel made an opening argument that was prejudicial to Applicant's defense and bolstered the State's case.
 - e. Counsel failed to effectively handle the testimony of Ms. Montgomery. Specifically, but not limited to the following: Counsel failed to make objections prior to and during the testimony of Ms. Montgomery, did not properly handle the admission of the prior inconsistent statement of Ms. Montgomery, failed to properly cross-examine Ms. Montgomery, and failed to properly cross-examine Detective Martin regarding Ms. Montgomery and her statement.
 - f. Counsel failed to effectively handle the testimony and matters related to the victim.
 - g. Counsel failed to effectively handle the testimony and matters related to Detective Jonathan Martin.
 - h. Counsel failed to effectively handle matters related to Adrian Moore.
 - i. Counsel failed to provide a complete argument during the proffered verdict motion. Transcript pp. 121-125, 174.
 - j. Counsel failed to make an effective and complete post trial motion.
2. Ineffective assistance of counsel for the handling of the Rule 29, SCRCrimP, Motion. Specifically, but not limited to, failure to properly prepare, present a full argument, present the witness(es) and evidence and make a complete record.
 3. Alternatively, if not found to be ineffective assistance of counsel and/or in addition to being grounds for ineffective assistance of counsel, Applicant alleges that the newly offered information from Ms. Montgomery amounts to newly discovered evidence.
 4. Pursuant to Rule 15(b), SCRCrP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

FILED
 HORRY COUNTY
 2023 APR 24 P 3:31
 RENEE N. EAVIS
 CLERK OF COURT
 HORRY COUNTY, SC

I so move,



Tricia A. Blanchette
Attorney for Applicant
PO Box 2147
Leesville, SC 29070

April 9, 2023

FILED
Horry County
2023 APR 24 P 3:32
RENEE N. ELVIS
CLERK OF COURT
Horry County, SC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Jamar Huggins, 361445,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

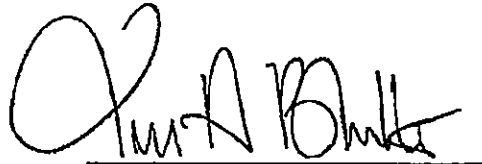
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2017-CP-26-1766

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that Pursuant to the Order issued by the South Carolina Supreme Court "RE: Service by E-Mail in the Trial Courts," issued on May 6, 2022, that a true copy of an Amendment to Application for Post Conviction Relief has been served on opposing counsel this 19th day of April 2023 by sending an email to her following registered email address:

Suzanne J. Shaw, Assistant Attorney General
SuzanneShaw@scag.gov



Tricia A. Blanchette
PO Box 2147
Leesville, SC 29070
(803) 908-3266

April 19, 2023

FILED
HORRY COUNTY
2023 APR 24 P 3:32
RENEE N. ELMIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Jamar Antonio Huggins,	)	
S.C.D.C. No. 361445,	)	Case No.: 2017-CP-26-01766
Applicant,	)	
v.	)	RETURN AND MOTION FOR
State of South Carolina,	)	MORE DEFINITE STATEMENT
Respondent.	)	

FILED
2017 JUN 30 PM 4:44
CLERK OF COURT
HORRY COUNTY, SC

In response to the application for post-conviction relief filed by Jamar Antonio Huggins (Applicant) on March 16, 2017, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the March 2013 term of the Horry County Grand Jury for burglary, first degree (2013-GS-26-01076); kidnapping (2013-GS-26-01077); and armed robbery (2013-GS-26-01078). John Reuben Long, III, Esquire represented Applicant, and Donna Elder, of the Fifteenth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty as indicted on September 17, 2014. Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of 15 years for burglary, 15 years for kidnapping, and 10 years for armed robbery.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Pachak, Esquire. By unpublished opinion filed March 30, 2016, the South Carolina Court of

Appeals affirmed Applicant's convictions. State v. Huggins, Op. No. 2016-UP-146 (S.C. Ct. App. filed March 30, 2016). The Remittitur was issued on April 15, 2016.

Applicant filed a "Notice of Motion and Motion for a New Trial Based on After Discovered Evidence" on September 27, 2016; to wit: "the co-defendant has now identified a newly disclosed suspect and has denied [Applicant's] involvement in the crime." A hearing on the motion was convened on June 13, 2017, again before the Honorable Benjamin H. Culbertson. Natasha M. Hanna, Esquire represented Applicant, and Jimmy A. Richardson, II, Solicitor for the Fifteenth Judicial Circuit, represented the State. Judge Culbertson denied the motion by order dated June 14, 2017, and filed June 15, 2017, finding the alleged newly discovered evidence was merely cumulative and could have been discovered prior to trial with due diligence.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective assistance of trial counsel."
 - a. "Failure to prepare and investigate."
 - b. "Failure to call witnesses and utilize evidence at trial."
2. "Ineffective assistance of appellate counsel."
 - a. "Failure to utilize all available arguments in support of the issue presented and raise all meritorious issues on appeal."

Applicant requests relief as follows:

- "A new trial."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required 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 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth sufficient facts to "support each ground" or to explain with sufficient specificity the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. To be precise, Applicant does not indicate with any specificity the evidence, witnesses, or arguments that trial and appellate counsel allegedly failed to make. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not

be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

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

VII.

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Signature and conclusion on following page]

VIII.

WHEREFORE, Respondent respectfully requests that this Court grant its motion for a more definite statement and convene an evidentiary hearing on the allegations of ineffective assistance of trial and appellate counsel.

Respectfully submitted,

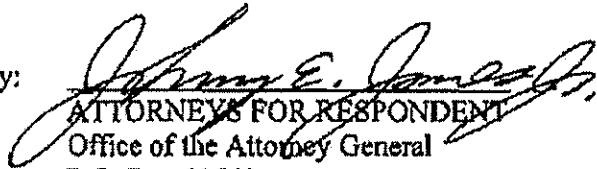
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

29 June 2017

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

JAMAR A. HUGGINS, #361445,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2017-CP-26-1766

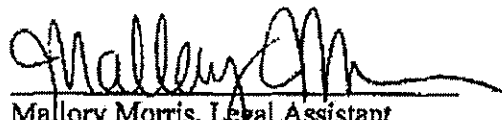
AFFIDAVIT OF SERVICE BY MAIL

FILED
2017 JUN 30 PM 4:44
RECEIVED
CLERK OF COURT
HORRY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this 29th day of June, 2017.


Mallory Morris, Legal Assistant
For Respondent

1 State of South Carolina) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO. : 2017-CP-26-01766
3 -----
4 November 13, 2023
5 BEFORE: The Honorable Heath P. Taylor
6 -----
7 Jamar Huggins,)
8 Applicant,)
9 vs.)
10 State of South Carolina,)
11 -----
12 APPEARANCES:
13 Suzanne Shaw, Esquire
14 Assistant Attorney General for the Respondent.
15 Tricia A. Blanchette, Esquire
16 Attorney for the Applicant.
17
18 Julie A. Kevish
19 Official Court Reporter
20
21
22
23
24
25

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1 November 13, 2023

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: Is the State ready to proceed?

4 MS. SHAW: Yes, Your Honor.

5 THE COURT: Is the Petitioner ready?

6 MS. BLANCHETTE: Yes, Your Honor.

7 THE COURT: This is Jamar Huggins versus the State;
8 is that correct?

9 MS. SHAW: That is correct, Your Honor. Would you
10 like me to call the case?

11 THE COURT: Yes, ma'am.

12 MS. SHAW: Thank you, Your Honor. May it please the
13 Court? Suzanne Shaw on behalf of the State of South Carolina
14 in the matter of Jamar Huggins versus the State of South
15 Carolina, docket number 2017-CP-26-01776. This is a PCR matter
16 where Mr. Huggins has alleged an ineffective assistance of
17 trial counsel with two underlying claims: Failure to
18 investigate, as well as failure to use witnesses and available
19 evidence. Ms. Blanchette and I have been working closely to
20 resolve a variety of different evidentiary issues, and I
21 believe we'll be able to streamline this matter relatively
22 smoothly, but if it's alright with the Court I would like to go
23 through a brief procedural history and then request that the
24 Court voir dire Mr. Huggins about the potential sentences he
25 faces if he is, in fact, successful in his applications, so if

1 I may proceed?

2 THE COURT: Yes, ma'am.

3 MS. SHAW: Thank you, Your Honor. Mr. Huggins is
4 convicted of committing a crime on December 20, 2013 following
5 a trial in September of 2014. Initially, he was charged by the
6 Horry County Grand Jury in March of 2013 with the following
7 crimes: Burglary first, which carries a sentence of 15 years
8 to life, under 2013-GS-26-1076, he was also charged with armed
9 robbery which carries a mandatory minimum of ten years, up to
10 30 years, and that was under 2013-GS-26-1077, and he was
11 charged with kidnapping which carries a sentencing range of
12 zero to 30 years under 2013-GS-26-1078. As I mentioned, he was
13 convicted on all three counts. Judge Culbertson was the trial
14 judge and he was sentenced to 15 years on the Burg. first, ten
15 years on the armed robbery, and 15 years on the kidnapping,
16 however, if he is successful in his PCR application he is
17 potentially facing a sentence of life as well as plus 60 years
18 if reconvicted and sentenced consecutively, so he is facing a
19 substantial amount of time, including the remainder of his
20 natural life if he were to proceed. So following his
21 convictions, Mr. Huggins did file an appeal. There were two
22 separate docket numbers: 2017-001488 and 2014-002022. The
23 appeal was affirmed on July 3rd of 2019. The Remittitur was
24 issued on July 19, 2019, and during the pendency of that matter
25 Mr. Huggins had retained Ms. Natasha Hanna who is present in

1 court with us as a witness today to file a 29(b) Motion for a
2 new trial based on newly discovered evidence. That was filed
3 September 27, 2016 and denied by Judge Culbertson. I'm sorry,
4 that was denied by Judge Culbertson, I believe, September 27,
5 2016, and Judge Culbertson had made a finding that there was no
6 newly discovered evidence because of the witness who had
7 changed her testimony multiple times. He ruled that the
8 evidence, in fact, was discoverable prior to trial and that
9 this may be a PCR issue, so with that, the PCR in this matter
10 was filed on March 16, 2017. The return was filed June 30,
11 2017, and that because those appeals were pending there was a
12 motion to hold the PCR in abeyance pending appeal as well as a
13 discovery order for Ms. Blanchette to obtain additional
14 information from the Solicitor's office. That motion was
15 granted on May 22, 2018. This matter has had multiple prior
16 listings with my predecessor who was handling it, as I
17 understand, Ms. Marto and Ms. Blanchette were working closely
18 together on it, as well, but we are here today for an
19 evidentiary hearing as to the ineffective assistance of counsel
20 claim. I believe that the ineffective assistance of appellate
21 counsel is being withdrawn as to Ms. Hackett, who is available
22 virtually to testify from Columbia, if the Court so desires, we
23 can get her on the computer. Other than that, I will turn it
24 over to Ms. Blanchette, but I would request that the Court
25 advise Mr. Huggins and ask him if he truly does wish to go

1 forward seeing as he maxes out in, I believe, 2027, March, so
2 he really does not have much time left on his sentence and
3 since he's facing a substantial amount of additional time in
4 prison, we just need to clarify that for the record. Thank
5 you.

6 THE COURT: Okay. Ms. Blanchette, do you have
7 anything to add?

8 MS. BLANCHETTE: Yes, Your Honor, just to make sure
9 we have a clear record, I have some of those dates differently.
10 I know that the Court has the complete record, but just so it
11 didn't become an issue on appeal, such as the Form 4 denying
12 the 29 was actually issued on June 15, 2017, I think there may
13 have been a September date given, and then --

14 MS. SHAW: September 27th was the date I have, but I
15 will doublecheck that.

16 MS. BLANCHETTE: And then, also --

17 MS. SHAW: Ms. Blanchette is correct. It is June 15,
18 2017, I stand corrected.

19 MS. BLANCHETTE: And Your Honor, not to make it
20 further complicated, I'm reading the stamp as July 5th now that
21 I'm looking directly at the stamp on the front of the Form 4.
22 And then, Your Honor, as well, based upon the record that I
23 have, I have listed that Mr. Pachak was actually the appellate
24 defender in this case that handled the direct appeal. The
25 direct appeal was handled first, then the 29 was filed and I

1 actually was the counsel of record on the 29 appeal, and so
2 what I will be referencing today throughout the course of the
3 transcript is the record on appeal that I filed on his behalf
4 filing the 29 because that will take us all the way through the
5 29 proceeding. So when I give transcript citations it will be
6 to the record on appeal that was received by the Court of
7 Appeals on June 1, 2018.

8 MS. SHAW: Your Honor, I do have that, and that is
9 part of the State's packet.

10 THE COURT: I have that right here.

11 MS. BLANCHETTE: I just wanted to make sure I was
12 clear on which one I was referring to since there has been
13 multiple appeals.

14 THE COURT: Okay.

15 MS. BLANCHETTE: Your Honor, also, it's my
16 understanding, should be in your packet, we did file a detailed
17 amendment on April 24, 2023. Does Your Honor have a copy of
18 that?

19 THE COURT: Amended April 24th, I believe so.
20 Amendment to Application April 24th, got it.

21 MS. BLANCHETTE: And Your Honor, I go through the
22 procedural history to include all of the discovery orders that
23 were issued in this case and what was received as a result of
24 those so that Your Honor would have that procedural history or
25 whomever presided over this hearing. Then, Your Honor, we do

1 go into detail the claims, and there are two matters that I
2 have discussed with the Attorney General that I need to
3 verbally strike in here, specifically, under Claim 1(b), we are
4 not presenting an alibi today, so therefore, we can't meet the
5 grounds that he should have presented a defense of alibi. And
6 then Your Honor, under 1(e) that discusses Ms. Montgomery, it
7 states on the fourth line down, did not properly handle the
8 admission of the prior inconsistent statement. It wasn't
9 actually admitted, it was just discussed and utilized, so that
10 should read, the utilization of the prior inconsistent
11 statement. I didn't want to mislead the Court, it wasn't
12 actually admitted.

13 THE COURT: Okay.

14 MS. BLANCHETTE: And Your Honor, as you can see, and
15 I don't know what kind of road map you want from me, we've
16 already had the opportunity, thankfully, to discuss this matter
17 with you in chambers. I set this amendment out differently
18 than I typically do. I like to take it in chronological order
19 and make the issues really make sense. Here there's just so
20 many issues that interplay throughout this case, that I use
21 this more as a notice document to put Your Honor and the State
22 on notice of every part of this case we plan to discuss as a
23 matter of ineffective assistance, but in drafting an order, I
24 would have to submit that I don't think it can be broken out
25 the way it is broken out on this amendment. These issues have

1 a lot of interplay, and so this amendment would not be so much
2 as a guide for an order unless your Honor sees so fit, but
3 usually I try to write my amendments in a way but then you have
4 all those headings for an order, and this is just one that does
5 not fit that cleanly.

6 THE COURT: Okay.

7 MS. BLANCHETTE: So we are using this more of a
8 notice document just to make sure everyone's on notice of what
9 we intended to go into today.

10 THE COURT: Anything else?

11 MS. BLANCHETTE: I do not, Your Honor, but I do join
12 in the State's request to have you speak with my client about
13 the rights.

14 THE COURT: I'm definitely going to do that. Madam
15 Clerk, can you please swear in Mr. Huggins?

16 JAMAR HUGGINS WAS DULY SWORN AT THIS TIME AND
17 TESTIFIED AS FOLLOWS:

18 THE COURT: Mr. Huggins, when you asked for a
19 post-conviction relief, there are really two things can happen:
20 first, if you're not entitled, or if I were to find that you're
21 not entitled to post-conviction relief, you would serve the
22 remainder of your sentence, that's pretty simple. However, if
23 I were to grant your Application, say I agree with everything
24 or some parts of what Ms. Blanchette presents on your behalf
25 and granted the Application, I would vacate your sentence and

1 vacate your conviction, both of them, and you would start over
2 from square one, act like your other trial had never happened,
3 and you would be subject to all those same penalties, which I'm
4 going to go through them with you. If you're convicted of
5 burglary first again, you're subject to 15 years up to life in
6 prison. Armed robbery, you'd be subject to ten years up to 30
7 years, and for the kidnapping, up to 30 years, as well. So if
8 you were to come back, if I agree with everything you present
9 here and you start over and you're convicted again, you can
10 receive up to life, plus 60 years in jail. Do you understand
11 that?

12 THE APPLICANT: Yes, sir.

13 THE COURT: And that also means that if you were
14 granted any kind of bargains or anything like that from a plea
15 bargain standpoint or made any offers, all those offers are off
16 the table, you're starting over all again. Do you understand
17 that?

18 THE APPLICANT: Yes, sir.

19 THE COURT: And you want to move forward with your
20 Application?

21 THE APPLICANT: Yes, sir.

22 THE COURT: Okay. Very good. Anything else?

23 MS. BLANCHETTE: No, Your Honor. I was going to call
24 some witnesses somewhat out of order just to get our quicker
25 witnesses moving on with their day. If there are some

1 objections or issues we can switch that around at any point,
2 but I was just kind of going from shortest to longest, if that
3 was okay with Your Honor.

4 THE COURT: That's quite alright, however you want to
5 do it.

6 MS. BLANCHETTE: So I'll be jumping around a little
7 bit, but I know you have the complete record that you will
8 review, but if there's any confusion at any time, please let me
9 know.

10 THE COURT: Not a problem.

11 MS. BLANCHETTE: Your Honor, with that said, I would
12 call Randy Phillips to the stand.

13 MS. SHAW: Before Mr. Phillips is sworn, the State
14 would object to his testimony as irrelevant. There's no
15 question that the three crimes here occurred, it is a question
16 of identification. There is no information in this record or
17 which I have discussed with Ms. Blanchette which would indicate
18 that Mr. Phillips saw what was going on, and there's no
19 indication that he could provide any additional evidence as to
20 who the individual was who committed these crimes, and that's
21 really what we're dealing with here is an identification
22 question, and I understand Ms. Blanchette wants to present him
23 for purposes of investigative question ability from the
24 police's standpoint, and perhaps something related to Mr.
25 Long, but the State would object to his testimony as not

1 relevant to the question we have to answer here today.

2 THE COURT: Would you like to be heard on that, Ms.
3 Blanchette?

4 MS. BLANCHETTE: Your Honor, one, I would say it's a
5 little premature, in that she hasn't heard his testimony yet.
6 Two, our primary claim, our first claim is failure to
7 investigate. I can give the Court a preview, he is a neighbor
8 that lived adjacent to where this home was located, and I'm
9 going to ask him what, if any, investigation was done in
10 regards to the neighborhood if he was spoken to, and what if
11 any information he could have provided. So I do think it's
12 relevant to our very first claim in this case.

13 THE COURT: Alright, well, since this is Mr. Huggins'
14 one bite at the apple, so to speak, I'm going to respectfully
15 deny your motion and under Brown versus Allstate, we're granted
16 a lot of latitude. I'll hear the evidence and take it for what
17 it's worth. I'll certainly note your objection. If you have
18 any others you can make them as we go through it, but I
19 typically just receive all the evidence and take it for what
20 it's worth.

21 MS. SHAW: Understood, Your Honor. I'm just trying
22 to create as clean a record as possible, because whatever the
23 outcome is there likely be an appeal. Thank you.

24 THE COURT: I understand.

25

1 MITCHELL RANDY PHILLIPS WAS DULY SWORN AT THIS TIME
2 AND TESTIFIED AS FOLLOWS:

3 THE CLERK: Have a seat, speak clearly into the
4 microphone, state your name for the Court and spell your last
5 name, please.

6 THE WITNESS: Mitchell Randy Phillips,
7 P-h-i-l-l-i-p-s.

8 DIRECT EXAMINATION

9 BY MS. BLANCHETTE:

10 Q. Mr. Phillips, do you reside here in Conway, South
11 Carolina?

12 A. Yes, ma'am.

13 Q. Do you reside on Memory Lane?

14 A. Yes.

15 Q. And how long have you resided on Memory Lane?

16 A. Thirty-nine years.

17 Q. And just to be clear, that means you would have resided
18 there in December of 2012 and the time leading up to that?

19 A. Yes.

20 Q. Are you familiar with the house located at [REDACTED] Memory
21 Lane?

22 A. Yes.

23 Q. And at the time leading up to this incident that
24 occurred on December 20, 2012, were you familiar with the
25 occupants of that home?

1 A. Yes.

2 Q. Now, after this incident occurred on December 20, 2012
3 did anybody from law enforcement come and speak with you about
4 what had occurred?

5 A. No.

6 Q. Did they seek any information that you may have had
7 regarding the neighborhood or what was going on in the
8 neighborhood?

9 A. No.

10 Q. Did anybody from the defense or private investigator
11 come and speak with you or any of the neighbors? Did anybody
12 come and speak with you?

13 A. Yes.

14 Q. And who came and spoke with you?

15 A. The private investigator.

16 Q. And was that in conjunction with this PCR action?

17 A. Yes.

18 Q. So you just spoke with him most recently?

19 A. Yes.

20 Q. And what if any information were you able to give him
21 regarding your observations and knowledge of what was going on
22 in the neighborhood there on Memory Lane?

23 A. Just that there was a lot of suspicious activity going
24 on at the house, because I live right there. I mow my grass
25 probably once a week, walk my dog up and down that road, and my

1 neighbor and I, you know, had discussed it that we knew it
2 looked very suspicious of what was going on from our neighbor's
3 house.

4 Q. And if law enforcement or a private investigator had
5 come to you in 2012 what would you have explained those
6 suspicions to be?

7 A. That they probably need to monitor that house because a
8 lot of people are coming in the nighttime, coming and going,
9 walking up on the porch. Sometimes the gentleman would walk to
10 the car, lean over into the car and there would be discussions,
11 and I didn't completely see what, any transactions or anything,
12 but I knew it was very suspicious.

13 Q. And were there also events going on during the day that
14 caused you concern?

15 A. At some occasions. There was a nursery being run out of
16 the house, too, a baby.

17 Q. Go ahead, I'm sorry.

18 A. A children's nursery, and all the neighbors around there
19 was very concerned about that.

20 Q. And at trial Ms. Eckler testified, the victim of the
21 home invasion, that it was a very quiet cul-de-sac, people
22 didn't lock their doors. Would that be an accurate description
23 of that neighborhood?

24 A. Probably not, at that time.

25 Q. And was that because of the activity at the home at

1 7420?

2 A. Yes, at that time.

3 MS. SHAW: Your Honor, I would just request that
4 there be a little less leading. I mean, I understand there's
5 certain information Ms. Blanchette needs to get out, but we're
6 going fairly far afield with that particular aspect.

7 THE COURT: Okay. I'll note your objection. It's
8 overruled. Go ahead.

9 MS. SHAW: Thank you.

10 BY MS. BLANCHETTE:

11 Q. Mr. Phillips, again, if a private investigator and/or
12 law enforcement had come to you in 2012 would you have been
13 willing to give them this information?

14 A. Yes, I would.

15 Q. And if you had been subpoenaed for trial would you have
16 been willing to come and testify regarding this information?

17 A. Yes, I would have.

18 Q. And again, no one ever contacted you at the time of this
19 incident in 2012 or in trial in 2014?

20 A. No.

21 MS. BLANCHETTE: If I could beg the Court's
22 indulgence one moment?

23 THE COURT: Yes, ma'am.

24 Q. Mr. Phillips, were you also aware that any neighbors had
25 filed any complaints or had tried to reach out to law

1 enforcement regarding the home at [REDACTED] Memory Lane?

2 A. As I recall, I think a couple individuals had called the
3 DSS about the nursery being run there and then the other
4 activity that was going on there didn't look right.

5 Q. And did you provide that information to the investigator
6 that just most recently came out and spoke to you?

7 A. Yes, I did.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions.

10 THE COURT: Mr. Phillips, please answer any questions
11 the State may have.

12 MS. SHAW: Thank you, Mr. Phillips.

13 THE WITNESS: Yes.

14 CROSS-EXAMINATION

15 BY MS. SHAW:

16 Q. Did you personally ever observe any drug activity at the
17 home?

18 A. No.

19 Q. Did you personally ever contact law enforcement?

20 A. No.

21 Q. After this crime occurred on December 20, 2013, did you
22 reach out to law enforcement to provide them with any
23 information directly?

24 A. Not at that time.

25 Q. Did you observe police vehicles at the home?

1 A. Yes.

2 Q. So if you had information you wanted to give you would
3 have been able to go and speak to them?

4 A. Well, I didn't want to really go over there, it didn't
5 look too good.

6 Q. But you could have spoken to officers because they were
7 there, right?

8 A. Yes.

9 Q. But you chose not to?

10 A. Well, they didn't approach me and ask me any questions.

11 MS. SHAW: Thank you, I have nothing further.

12 THE COURT: Anything on Redirect?

13 MS. BLANCHETTE: No, Your Honor. Mr. Phillips is
14 here under my subpoena. I'd ask that he be allowed to be
15 released.

16 THE COURT: Any objection from the State?

17 MS. SHAW: No, Your Honor.

18 THE COURT: Mr. Phillips, thank you for being here.
19 Ms. Blanchette, what do you have next?

20 MS. BLANCHETTE: Your Honor, my next witness would be
21 Attorney Natasha Hanna. As we discussed in chambers I am
22 preparing to be able to present a PowerPoint as part of her
23 testimony that she utilized at the 29. I have a little bit of
24 her testimony, then we'll launch it to that, but I just wanted
25 to let you know that there would be that break so that I can

1 make sure my computer was up there. I have provided and have
2 printed a USB form to the AG prior to today and today, I have a
3 USB with it on it for Your Honor, as well as printed form, but
4 because it's a PowerPoint the printed form isn't completely
5 accurate because it doesn't have the moving slides, so that's
6 why I have it in both formats, as well as to make it part of
7 the record at that point, so Your Honor, I would call Natasha
8 Hanna to the stand.

9 THE COURT: Alright.

10 NATASHA HANNA WAS DULY SWORN AT THIS TIME AND
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: State your name for the Court.

13 THE WITNESS: Good morning. Natasha Hanna.

14 THE COURT: Good morning, Ms. Hanna.

15 MS. BLANCHETTE: And Your Honor, I apologize, I
16 didn't mention this before. I have a printed out copy of the
17 2018 record on appeal for the witnesses to have on their stand,
18 if that's okay for me to approach and provide that.

19 MS. SHAW: No objection.

20 THE COURT: No objection. Okay.

21 DIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q. Good morning, Ms. Hanna. Thank you for being here.

24 A. Good morning.

25 Q. And you are here under the State's subpoena; is that

1 correct?

2 A. Yes, ma'am, that is correct.

3 Q. We have already referenced to the judge that you are the
4 attorney that handled the 29 motion that was subsequent to the
5 trial and direct appeal in this case. Could you just briefly
6 explain for us, though, about you became involved?

7 A. Yes, ma'am, I'm happy to. Jamar's sisters were referred
8 to me by another client and I believe it's Rontisha and Tonisha
9 that came into my office, sat down with me and basically told
10 me Jamar's story. I was very interested in it and sat down, I
11 think he has six sisters, though, if I misspoke which ones came
12 in, I apologize, but they came in and sat down with me, told me
13 Jamar's story and hired me, and then I went and met with Jamar
14 and he confirmed that he wanted to hire me and for me to
15 proceed on a motion for a new trial based on newly discovered
16 evidence.

17 Q. And knowing that that's what you were pursuing, did you
18 hire a private investigator to assist with that?

19 A. I did.

20 Q. And what were the tasks that you had that private
21 investigator do, if you can remember?

22 A. I don't remember specifically, but the biggest task was
23 for them to locate DeAngula Montgomery who was incarcerated
24 somewhere in the upstate, to locate her to confirm what Jamar
25 and his sisters had shared with me and to lock down her

1 testimony in an affidavit.

2 Q. And I'll direct your attention to Page 232 of the record
3 on appeal filed in 2018. In there you'll see reflected a
4 notice of motion and motion for a new trial that was filed in
5 September of 2016, and then on the subsequent page is a
6 three-page affidavit that was attached to that motion, and just
7 let me know when you've had a chance to locate those.

8 A. Yes, ma'am, I've located those pages.

9 Q. And is that the affidavit that your private investigator
10 was able to obtain from Ms. Montgomery?

11 A. Yes, ma'am, that is correct.

12 Q. And once he was able to obtain that, so that appears to
13 have been signed in August of 2016, then what did you do as far
14 as beginning to prepare to file this motion?

15 A. So there was a lot of evidence in this file, so what I
16 did was I took Ms. Montgomery's testimony when she identified
17 that it was Jasamine Mitchell. I took that testimony and then
18 just matched it up with all the facts in the file and then
19 prepared my memo and the PowerPoint that I used when we
20 presented the case to Judge Culbertson.

21 Q. So you had access to the original Rule Five Discovery in
22 this case?

23 A. Yes, ma'am.

24 Q. And were phone records something that you looked
25 through?

1 A. Yes, ma'am.

2 Q. And you looked through the statements, through the audio
3 statements, everything that was able to be provided to you; is
4 that correct?

5 A. Yes, ma'am, I did.

6 Q. And then you filed the motion in September of 2016 with
7 the affidavit attached?

8 A. I don't remember, but if that's the date on the motion,
9 yes, ma'am.

10 Q. Now, when you were reviewing and analyzing the phone
11 records and text messages, and if it's easier to discuss when
12 we actually get into what you did at the hearing, please just
13 let me know, but what if any information were you able to
14 ascertain, like, what was your landing point with those?

15 A. Well, what I was trying to determine or rule out was
16 whether there was any connection on those phone records to
17 Jamar Huggins, and the conclusion I came to was that there was
18 not a connection during the time of the crime.

19 Q. Were you able to connect the other two individuals she
20 names as being the other two participants, Mr. Jasmine
21 Mitchell and Tyjuan McKeithan?

22 A. Yes.

23 Q. Okay. And you already indicated you reviewed the trial
24 transcript in your preparation for the hearing?

25 A. Yes.

1 Q. And in the record it also appears that there was a
2 memorandum that you prepared and it is dated June 13th of 2017,
3 which is the same day as the hearing. That memorandum begins
4 on Page 236. Is that something you also prepared in
5 anticipation of the hearing?

6 A. Yes, ma'am, that is correct.

7 Q. And that would properly reflect the arguments you were
8 attempting to make on Mr. Huggins behalf?

9 A. Yes.

10 Q. Now, did you also prepare a PowerPoint presentation to
11 help with your argument at the hearing that was scheduled for
12 June 13, 2017 in front of Judge Culbertson?

13 A. Yes, I did. I felt it was more explanatory to be able
14 to show the pictures and not just put it into words.

15 Q. And have you provided at my request a copy of that
16 PowerPoint to my office in preparation for today?

17 A. Yes, I did.

18 Q. And you've had an opportunity to review that and know
19 that it is accurate representation of the PowerPoint you went
20 through at the 29 hearing?

21 A. It is the same one, yes.

22 MS. BLANCHETTE: Your Honor, at this time I would ask
23 to be able to go through the PowerPoint with her and then I
24 would move to admit it thereafter, I think it would be
25 premature to move to admit it now so I would just mark it for

1 ID at this point.

2 THE COURT: Okay.

3 MS. SHAW: Your Honor, there's no objection to
4 marking it for ID, but there would be a strong objection to
5 admitting it. This is a demonstrative exhibit that was used by
6 Ms. Hanna. This is not evidentiary, this is not factual
7 material, this is her interpretation of the facts as she found
8 them, which, obviously, Judge Culbertson did not agree with, so
9 I would object to it being admitted, but certainly for purposes
10 of identification if she needs to go through it.

11 THE COURT: Well, if and when she moves to formally
12 enter it, we'll address it.

13 MS. BLANCHETTE: Your Honor, if I could just beg the
14 Court's indulgence in one moment. What I can do is, I have it
15 here on my computer. I haven't tied into any technology in the
16 courtroom, nor do I see any. I don't know what is the easiest
17 way to view this, I also have a copy here for Your Honor, if
18 you had a computer you wanted to put it into?

19 THE COURT: Why don't you just, you can give it to my
20 Clerk and she can pull it up here.

21 MS. BLANCHETTE: Okay. Your Honor, may I approach?

22 THE COURT: Yes, ma'am. Thank you.

23 MS. BLANCHETTE: And just beg the Court's indulgence
24 one moment while I get this started. Your Honor, may I
25 approach the witness? Ms. Hanna, are you ready to proceed?

1 MS. HANNA: Yes, ma'am.

2 Q. Now, Ms. Hanna, if you could turn to Page 245 of the
3 record in front of you there, and actually, on Page 244, it
4 appears that you're asking the judge if he can see this. Would
5 you be referring to the PowerPoint presentation at that point?

6 A. Yes.

7 Q. And then for pages, as I see the record reflects, 245 to
8 253, and the Court will have this to review. You essentially
9 make your argument to the judge; is that correct? I'll give
10 you a chance to look through that.

11 A. Yes, that is correct.

12 Q. And when you were making that argument, are you
13 essentially going through the slides in your PowerPoint
14 presentation and referencing those?

15 A. Yes. I believe we may have even been in this particular
16 courtroom and we had a PowerPoint presentation, a projector and
17 the screen was there and the judge and everyone in the
18 courtroom could see it at the time, so I made my argument as I
19 went through the PowerPoint.

20 Q. And the PowerPoint was being used to essentially
21 demonstrate, it was demonstrative evidence in your argument,
22 but it also had content that you were asking the judge to
23 consider as part of the 29 ruling?

24 A. That is absolutely correct. I felt like if Judge
25 Culbertson could actually see the evidence that was in my file

1 and could see it and match it up with our memo in our argument
2 that it would make it more understandable for the trier of fact
3 to make a decision.

4 Q. And obviously, the judge has the record and can review
5 what you said about it, but if you could just briefly take us
6 through that, and if there is anything that you would
7 particularly like to comment on and explain as to your
8 reasoning for putting that information together and presenting
9 it to Judge Culbertson?

10 A. Yes, ma'am, I'll do my best. It's been a number of
11 years, I think it's been six years.

12 Q. It has been.

13 A. So essentially, in the first slide, on September 17th,
14 2014, Jamar Huggins was convicted of armed robbery, kidnapping
15 and burglary first. In a short trial with two witnesses where
16 the only evidence connecting him to the crime was the testimony
17 of DeAngula Montgomery. I pulled out portions of the
18 transcript on the next slide where it showed what DeAngula
19 Montgomery testified to at trial, and I went through each of
20 the statements. I don't recall how much detail I went into
21 with Judge Culbertson, so would you like me to just explain? I
22 mean, I can read the transcript or I can go through now.

23 MS. SHAW: Your Honor, I would object to her
24 reiterating her prior argument from 29(b), the transcript
25 speaks for itself. There's no need to rehash that, and that

1 particularly is not relevant to whether Mr. Long was effective
2 or not, so it's not a question that we need to go into, it's
3 not a questions that's before the Court. There are no
4 allegations against Ms. Hanna in terms of the quality of her
5 representation, and frankly, it's going to belabor the Court's
6 time and it's not going to get us any closer to a resolution.

7 MS. BLANCHETTE: Your Honor, in response by way of
8 the amendment and has been discussed with the Attorney
9 General's Office, because this has been filed since April, we
10 are alleging in effective assistance for the handling of the
11 Rule 29 Motion, and so that's why I'm addressing those matters
12 with Ms. Hanna because the strange procedural position that
13 we're in and with Judge Culbertson's ruling, there could be a
14 matter of her being ineffective in the 29, so I do believe that
15 in order to properly litigate this we need to go through how
16 she prepared what she presented and how we got to the ruling
17 that he issued, and in this transcript they get into what I was
18 going to get into next, is a lengthy discussion about whether
19 or not the information that she's arguing and is set forth in
20 her presentation are issues that should be raised on PCR and
21 newly discovered evidence, so I think to properly ask her those
22 questions I do have go through oral argument.

23 THE COURT: I'll note the State's objection. I'll
24 allow it.

25 MS. HANNA: Your Honor, may I have clarification, so

1 the PCR is now against me, as well?

2 MS. BLANCHETTE: The amendment states forth the
3 allegation of ineffective assistance of both trial and 29
4 counsel in the amendment that has been provided, and what we
5 are trying to discuss as your representation there so the judge
6 can make an assessment of all the representation that he
7 received.

8 MS. HANNA: Thank you.

9 THE COURT: Yes, ma'am.

10 MS. BLANCHETTE: And so I think to be fair to her she
11 needs to have the opportunity to explain what she prepared and
12 presented in total.

13 THE COURT: Okay.

14 Q. It appears that you were on your slides regarding the
15 trial testimony that you took for the trial testimony of Ms.
16 Montgomery, whereby she did not make an identification of Mr.
17 Huggins at trial; is that correct?

18 A. That was my understanding, correct.

19 Q. And then it looks like in your argument as it flows
20 through in the motion hearing and your slide, that you next
21 address Ms. Eckler's testimony who testified at trial?

22 A. Yes, that is correct.

23 Q. And what was it that you were trying to convey to court?

24 A. That Angela Eckler could not identify either of the two
25 people who came in with a mask and robbed her and her daughter.

1 Q. Are then it appears your next slide, you go into the
2 affidavit that you obtained from Montgomery, and what was
3 really the sticking point? What were you trying argue and
4 convey to the judge regarding her affidavit?

5 A. Well, the point was that when DeAngula was arrested, she
6 identified "Junk," as the perpetrator. She said it was "Junk"
7 that was with her. The officer then showed her a lineup of six
8 people. She pointed out the person in the lineup, who it was,
9 and then later when she got to trial she gets up there and she
10 said, yeah, "Junk" was with me, but it wasn't that guy, and
11 that was it, that was her entire testimony. So later when the
12 family came to me they told me the story that DeAngula gets up,
13 she says "Junk" was with me but it wasn't that guy, so when we
14 looked into it and got the affidavit Ms. Montgomery finally
15 disclosed who it was. She had refused to tell anybody at trial
16 who the masked man was, she just said: It wasn't that guy,
17 meaning, it wasn't Jamar Huggins. So the point I was trying to
18 make with the affidavit was that now DeAngula Montgomery is no
19 longer under the influence of police deception, she's no longer
20 under the influence of drugs and alcohol, she's in prison,
21 she's sober, and while she's in prison and sober she finally
22 reveals who the second masked man was, it's Tyjuan McKeithan
23 and Jasamine Mitchell.

24 Q. And throughout your PowerPoint presentation and your
25 argument as it's reflected in the transcript, were you trying

1 to help support that as new evidence by going through other
2 factors that corroborated or gave credibility to that
3 assertion?

4 A. Yeah, absolutely. I felt like her affidavit standing
5 alone could have and should have supported granting a new
6 trial, however, you know, as an attorney whenever I go into
7 court I always believe more is better, and so I felt like
8 DeAngula Montgomery was a drug addict, she had a criminal
9 record, I felt like I needed to offer more to the Court to
10 support that what DeAngula Montgomery was saying was credible.
11 So for those reasons I took the new evidence, the new evidence
12 being: It's not "Junk," it was Jasmine Mitchell, and then I
13 used the other evidence that I found in the file to support and
14 bolster her affidavit.

15 Q. And this evidence was evidence in the discovery file,
16 not all evidence that was brought out at trial; is that
17 correct?

18 A. I can't answer a yes or no to that, but what I can tell
19 you is the evidence that I presented to Judge Culbertson I had
20 in my file that I believe was a mirror image, I believe is what
21 I had was the same thing that the Solicitor's Office had.

22 Q. And so in making your argument in doing your PowerPoint
23 you went through her prior statements; is that correct, and
24 that's reflected on one of your slides?

25 A. Yes, ma'am.

1 Q. Okay. Then you also got into pictures of Mr. Huggins,
2 and what was your purpose of doing that? In your PowerPoint
3 you have two slides that have different pictures of Mr.
4 Huggins?

5 A. Well, when the sisters came to see me one of their big
6 points was that Jamar had dreads, and while it may not matter,
7 you know, every day, in this particular instance it was a very
8 big point because the six-person lineup that DeAngula
9 Montgomery reviewed to identify "Junk" as being Jamar Huggins,
10 in that particular picture Jamar Huggins did not have dreads.
11 The picture that was shown to DeAngula Montgomery to identify
12 "Junk" was a five-year-old picture of Jamar Huggins taken from
13 his driver's license, so the big point was that at the time of
14 the crime Jamar Huggins had long dreads to his shoulders, so
15 if -- and when you look back through the record there's
16 absolutely no mention of dreadlocks. For example, Angela
17 Eckler, one of the things I pointed out, is she doesn't mention
18 anything about dreads. Well, if somebody had on a mask over
19 their head and had dreadlocks as long as Jamar did, I think the
20 comment I made to Judge Culbertson was that, you know, they
21 have a head as big as a basketball with the dreads all locked
22 up in the mask, and dreads were never mentioned. So the
23 picture that DeAngula Montgomery identified did not match up
24 with the picture of Jamar Huggins at the time of the crime.

25 Q. And do you recall if that picture identification was

1 also done under admitted police deception where they told her
2 that she had already been identified?

3 A. I recall there was police deception, but at this moment
4 I honestly don't recall what it was, but that was an argument
5 that we made.

6 Q. So as the transcript reflects and as your slide show
7 presents, you were trying to, and I'm sorry, that was leading,
8 let me start again so she doesn't have to object. Through the
9 transcript and through your PowerPoint, you were trying to make
10 arguments regarding the description and misidentification?

11 A. Yes, that is correct.

12 Q. And what was your purpose in doing that?

13 A. To show that DeAngula Montgomery believed she had told
14 at the time of her arrest the proper person, but the proper
15 person she identified actually matched up with Jasmine
16 Mitchell's picture at the time of the crime.

17 Q. And so that was the argument that you were making in
18 support of the affidavit; is that correct?

19 A. That is correct.

20 Q. Now, if you could go to the slide that has arrows and
21 pictures, and I know that moves, and if you could possibly talk
22 us through that? It comes immediately after the slide that has
23 DeAngula Montgomery's statement as the heading.

24 A. Yeah, and may I go back through? I didn't even look at
25 my PowerPoint, as I was just testifying?

1 Q. Yes, please, if there's anything else you want to add, I
2 don't want to cut you short.

3 A. Yes, Your Honor, I actually had included a picture of
4 Jamar's 10-year driving record, which showed he had short hair
5 and not the long dreads at the time of the crime, and then in
6 my PowerPoint I had the pictures that showed the lineup and
7 then the ten-year driving record, and then the picture in the
8 center was actually a picture of Jamar that was close in time
9 to the crime. And then the last picture on the PowerPoint is a
10 picture of Jasmine Mitchell in number four and a picture of
11 Jamar Huggins from, like, five years before, if that makes
12 sense.

13 Q. And so you were demonstrating the two pictures that were
14 available at the time and were you trying to make an argument
15 regarding the similarities in those two pictures?

16 A. Yeah. I was trying to say that, look, the driving
17 record of picture of Jamar Huggins looks like Jasmine
18 Mitchell, but if you take Jamar Huggins the way he looked at
19 the time of the crime with his long dreads, it doesn't match up
20 to who DeAngula identified.

21 Q. And would you agree, in the 29, I know there's the five
22 prongs and you have a slide on them, but it essentially comes
23 down to whether Judge Culbertson believes this evidence is
24 credible and whether he thinks it's new, is that fair?

25 A. Correct.

1 Q. And so what was your purpose in doing this, trying to
2 show it was new or it was credible?

3 A. Well, I was trying to show that -- let me back up. I
4 was trying to show that the new evidence was one thing,
5 DeAngula Montgomery identified Jasmine Mitchell as being the
6 person that was with her, that was the new evidence. Through
7 the record, that was the new evidence, and then the other four
8 things that I offered were simply to support the new evidence
9 and argue that the new evidence was credible and reliable
10 because of these other facts.

11 Q. So would you agree that those weren't new, those were
12 things that you found in the file that you were just merely
13 trying to use to support the new evidence?

14 A. That is correct.

15 Q. Now, if you could take us through the next slide, and I
16 know that has -- I have it printed so I'm referring to it as a
17 slide, but I know it has moving parts, so if you would just
18 like to explain that?

19 A. Yes. And hopefully the Court's PowerPoint, when you put
20 it in presenter mode the arrows actually work, so it makes a
21 little more sense. So I pointed out that Dray Moore, these
22 were the facts in the file about Dray Moore. When asked about
23 who he owed money to, he identified "T" or Tyjuan Mckeithan.
24 He admits he owes "T" money for drugs. He admits he knows
25 "Shante." He admits that he knows Juice Bae Bae (phonetic)

1 picked him up and knows where he lives. He admits Juice has a
2 gold car like the one Eckler described as coming to her house
3 that day and that he does not know Jamar Huggins. So that's
4 the evidence that we got from Dray Moore. Then you connect
5 Dray Moore to Angela Eckler who was the victim. Dray Moore
6 lived with Angela Eckler, the victim. Her testimony revealed
7 that a black -- that State said a black male and silver white
8 and gold sedan came to her house the day of the robbery looking
9 for Dray, had to get in the car by the passenger side. And so
10 I was trying to point out that the car -- that the person that
11 Dray owed money to had a car that was similar to the one that
12 Angela Eckler identified. The next arrow shows that Tyjuan
13 Mckeithan, that Dray owed money to Tyjuan Mckeithan, that
14 Juice, which is Jasmine Mitchell's nickname, knows where Dray
15 lives because he's picked him up there before and that DeAngula
16 Montgomery, that he's connected to her. I don't recall if her
17 nickname was -- yeah, sorry, it's right here on my PowerPoint,
18 Shante. So Dray's testimony to the police are that Tyjuan owes
19 him money, Juice knows where he lives and has a gold car, and
20 then Shante, he knows her, too, and then my next point was that
21 he didn't mention Jamar Huggins at all during that interview.
22 And then the next thing we did is you can see the phone call
23 records where we pulled the time, or pulled the records from
24 around the time of the incident and the phone records were
25 between Andre and DeAngula, Tyjuan -- I'm sorry, Adrian and

1 DeAngula, Tyjuan and Adrian, DeAngula and Jasamine, but we did
2 not see any phone calls between any of those people and Jamar.

3 Q. And then after that slide you have additional slides; is
4 that correct?

5 A. Yes, ma'am.

6 Q. And you went through and argued to the Court regarding
7 the trial testimony again of Ms. Montgomery?

8 A. Yes, that is correct.

9 Q. And then you highlighted something that Judge Culbertson
10 said. What was that that you highlighted to him?

11 A. One of the things again that the sisters pointed out to
12 me that made me interested in this case is what Judge
13 Culbertson said at the close of it, and the sisters told me
14 this, and sure enough it was in the transcript, he said it was
15 a close call, and when he denied the motion for directed
16 verdict. I believe that's when he said it, was when he denied
17 the motion for directed verdict.

18 Q. And you had the opportunity to do this 29 in front of
19 Judge Culbertson, he was still on the bench, he was the one
20 that heard this; is that correct?

21 A. Yes.

22 Q. And then is it fair to say you landed with readdressing
23 what the new evidence was in a summary argument for the Court?

24 A. Yes.

25 Q. Is there anything further regarding your PowerPoint

1 presentation that you think is necessary for the Court to
2 understand?

3 A. No, ma'am.

4 Q. Now, if you look at Page 256 of the transcript, or
5 sorry, the record on appeal, and if you need a chance to
6 further review it, please let me know, but there's been some
7 back and forth up to that point as to whether or not this was
8 new evidence, and the State had made their argument. Did this
9 really boil down to or did you find yourself in a place where
10 you're having to argue whether this was new or whether it
11 should have come at trial?

12 A. I don't recall at that point. I think there was just a
13 respectful disagreement between Judge Culbertson and I as to
14 whether it was new evidence or not new evidence. From our
15 position we felt like it was new evidence because DeAngula
16 Montgomery finally was sober and no longer fearful and
17 disclosed who the true person was with her, and then all of the
18 rest of it was just corroborating and supporting evidence that
19 we offered for the Court.

20 Q. If you could turn to Page 267 as respectful discussions
21 going back and forth between you and Judge Culbertson, I want
22 to direct your attention to one comment he made, Page 267, Line
23 21.

24 A. Yes.

25 Q. And there he says: Well, to me, it's sounding more like

1 it's a PCR issue, ineffective assistance of counsel is what
2 you're saying, is that the defense didn't present evidence that
3 they should have presented?

4 A. Yes, that's what Judge Culbertson stated.

5 Q. And that was right before, if you turn the next page,
6 then the hearing concludes; is that correct?

7 A. I say a few more things, but, yes, that is correct.

8 Q. Okay. And then are you familiar with his order that
9 follows on Page 270?

10 A. Yes, ma'am.

11 Q. And what is it that he ultimately ruled on the 29 Motion
12 that you presented?

13 A. If I may have just one moment to refresh my memory.

14 Q. Yes, please take the opportunity to review it.

15 A. Thank you.

16 MS. SHAW: Your Honor, while Ms. Hanna is reviewing
17 her record, I just want to make for our record a continuing
18 objection to all of the hearsay that's being discussed here. I
19 haven't been objecting so far, so I don't want to interrupt
20 counsel and inconvenience the Court, but there's a lot of
21 hearsay being discussed at this point, and I would object to
22 all of it, especially the third-party hearsay which is coming
23 in through counsel, but which would not otherwise be admissible
24 under any circumstances.

25 THE COURT: I'll note your objection.

1 MS. SHAW: Thank you.

2 A. The ultimate conclusion, as the record states, Judge
3 Culbertson found that the evidence that we presented could have
4 been discovered prior to trial with due diligence and when Ms.
5 Montgomery refused to identify the perpetrator at trial the
6 defendant put a presser on that issue or asked that she be
7 required to identify who committed the crime.

8 Q. And were you had his attorney at trial?

9 A. I was not.

10 Q. So did you have the opportunity to press her on that at
11 trial?

12 A. I did not.

13 Q. But you were given this information and you presented it
14 in a Rule 29 Motion; is that correct?

15 A. That is correct.

16 Q. And in so doing you went through all of the discovery to
17 find any further information that would corroborate or help
18 lend credibility to the new evidence that you were trying to
19 present?

20 A. That is correct.

21 MS. BLANCHETTE: Your Honor, at this time I would
22 first move to admit the PowerPoint as Applicant's Number 1. I
23 can respond in argument. I believe the State has already
24 stated their argument. I don't know if I respond at this point
25 or if she needs to --

1 THE COURT: Do you have anything to add, Ms. Shaw?

2 MS. SHAW: Well, Your Honor, again, this is merely
3 demonstrative evidence. It is not factual. The Court did not
4 make findings of fact based on the specific evidence, as well,
5 based on the underlying records, so I would submit that it's
6 inappropriate to admit a Rule 29 (b) demonstrative exhibit
7 which was solely for the purpose of educating the Court as
8 evidence in a PCR matter, especially when the ineffective
9 assistance claim on Page 4 of the amended PCR specifically just
10 states that, you know, it's not the -- the ineffective
11 assistance of counsel for handling Rule 29 Motion, specifically
12 but not limited to failure to properly prepare and present a
13 full argument and present the witnesses and evidence to make a
14 complete record, I would suggest that that PowerPoint, in fact,
15 does demonstrate that she attempted to make a complete record,
16 but the transcript is far more relevant and it is a verbatim
17 record of what actually happened in that hearing as opposed to
18 this PowerPoint, which requires interpretation and which any
19 reviewing Court would not necessarily be able to understand, as
20 well, number three on page four of the amended PCR,
21 alternatively, if not found to be ineffective assistance and to
22 allege as newly offered information amounts to newly discovered
23 evidence, that I would submit as just res judicata. Judge
24 Culbertson made findings regarding the issue, he denied the
25 Application, and he specifically found that there was no newly

1 discovered evidence, so that I would submit, that can be dealt
2 with by the record in and of itself and that this PowerPoint
3 would be needlessly cumulative in addition to inadmissible
4 hearsy and demonstrative evidence, so that it would be the full
5 objection. Thank you.

6 THE COURT: Ms. Blanchette?

7 MS. BLANCHETTE: Your Honor, I feel that the State
8 somewhat made my point for me, for you to be able to properly
9 analyze this issue I think you should be able to review and
10 have everything that she did present in her preparation, which
11 she prepared and put this together and her presentation at the
12 29, I think this is highly relevant to the quality of the
13 representation that she offered, and I disagree with the State,
14 I don't believe that the argument as set forth when she's
15 referring to things at the 29 hearing, and then Your Honor
16 doesn't have that to review, I don't think that would be fair
17 for Your Honor to make a full and proper ruling in this case,
18 so I submit it's highly relevant and necessary to be part of
19 the record in this case.

20 THE COURT: I'm going to find that it is relevant and
21 I'll admit it. I think it goes to the issue, which is one of
22 the central issues of prior counsel's due diligence, so I'll
23 allow it.

24 MS. BLANCHETTE: Thank you, Your Honor.

25 MS. SHAW: Thank you, Your Honor.

1 BY MS. BLANCHETTE:

2 Q. Ms. Hanna, you said you were talking about how you
3 prepared and went through the discovery, did you review the
4 audio interviews that were provided in this case?

5 A. I do not recall, but if I had them in my file I more
6 than likely did.

7 MS. BLANCHETTE: Your Honor, if I could just beg the
8 Court's indulgence, one moment?

9 THE COURT: Yes, ma'am.

10 MS. BLANCHETTE: Your Honor, I have no further
11 questions of Ms. Hanna.

12 THE COURT: Does the State have any questions?

13 MS. SHAW: Just a couple, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. SHAW:

16 Q. Ms. Hanna, in being retained by the family of Mr.
17 Huggins, you did conduct your own independent investigation,
18 right?

19 A. Yes, ma'am.

20 Q. And you said you had a P.I. go out and speak to Ms.
21 Montgomery, correct?

22 A. Yes, ma'am, that is correct.

23 Q. And she prepared an affidavit?

24 A. Yes.

25 Q. And as part of that affidavit, Ms. Montgomery, in fact,

1 indicated she had been at a hotel with Mr. Moore, also known as
2 Drake, for the week prior to the home invasion, correct?

3 A. Yes.

4 Q. But you knew that to be factually incorrect based upon
5 your review of the record, right?

6 A. I do not recall that point.

7 Q. You don't recall reading that Mr. Adrian Moore had been
8 in the hospital following a suicide attempt the week prior to
9 the home invasion?

10 A. No. I knew that he was in the hospital, because that's
11 where the police actually went and talked to him, but I'm
12 sorry, I just don't remember the difference in time as to when
13 she was in the hotel. My memory is that, perhaps, Ms.
14 Montgomery had often went to the hotel with Mr. Moore, but I
15 don't recall at the time if it was directly before or not.

16 Q. So you're not sure about that part of the affidavit?

17 A. I am not.

18 MS. SHAW: Your Honor, beg the Court's indulgence?

19 THE COURT: Yes, ma'am.

20 BY MS. SHAW:

21 Q. And were you aware of whether Mr. Huggins had more than
22 one cell phone?

23 A. I was not aware of that.

24 Q. Now, if he did and if he was not using that particular
25 cell phone to contact these people, would you have been able to

1 discover?

2 MS. BLANCHETTE: Your Honor, objection. That calls
3 for speculation. She said, if --

4 MS. SHAW: Well, it's questionable of whether if she
5 didn't have phone records which would connect Mr. Huggins to
6 Ms. Montgomery, would that have mattered to her investigation.

7 THE COURT: I'll allow it.

8 MS. HANNA: Could you repeat the question?

9 BY MS. SHAW:

10 Q. If Mr. Huggins had another cell phone, would that have
11 mattered to you as part of your investigation, because would
12 you have wanted to see those phone records to see who he was
13 calling?

14 A. Well, I was provided with one phone number that Mr.
15 Huggins had and I used that particular phone number to
16 cross-reference any phone calls with the other three people.

17 Q. Okay. Are you aware in some of the other discussions,
18 both in prior to trial and the interviews that there was a
19 second phone referenced?

20 A. I do not recall that.

21 Q. Okay. Now, and you've reviewed the trial transcript,
22 correct?

23 A. Yes.

24 Q. And you're aware that on the stand Ms. Montgomery said,
25 no, I was with Junk, but it's not that guy, and I don't want to

1 tell you who we were getting our drugs from?

2 A. Yes, ma'am, that's correct.

3 Q. So she actively refused on the record to provide the
4 information that you're saying is newly discovered evidence?

5 A. Yes, ma'am. But the newly discovered evidence is who
6 she eventually did identify. When she was here sitting in
7 trial all she would say is, it's not that guy.

8 Q. And you're aware that up to the night before the trial
9 she had indicated that, in fact, it was Jamar Huggins, are you
10 aware of that?

11 A. I am not aware of that.

12 Q. So you're not aware of the interview the night before
13 the trial with the investigator?

14 A. I knew there was some tension between the State and Ms.
15 Montgomery, but I wasn't present, I believe Donna Elder was the
16 prosecutor. I know there was some tension and maybe she even
17 called her as a -- you know, maybe it ended up being a hostile
18 witness. There was some issue there, but I don't remember the
19 specifics.

20 Q. But are you aware there was conversation up until the
21 night before the trial that Ms. Montgomery intended to testify
22 against Mr. Huggins and identify him as such?

23 MS. BLANCHETTE: Your Honor, I object, asked and
24 answered.

25

1 A. I just don't remember, and I apologize. I mean, if
2 there's somewhere in the transcript or somewhere in the record
3 on appeal, I can certainly refresh my memory, I just don't
4 remember at this point.

5 Q. Well, this Jasmine Mitchell person, did you ever find
6 him?

7 A. I did.

8 Q. Where did you locate him?

9 A. Conway.

10 Q. Is he on the loose, or is he in prison?

11 A. I don't know at this time. I know back then I was a bit
12 frustrated because the family knew where he was and I could not
13 understand why the prosecutor could not locate Mr. Mitchell
14 because he was right in our backyard.

15 Q. Well, are you aware that the prosecutor was either not
16 provided with that information or was unable to locate him at
17 the time of the investigation?

18 A. I can't speak for Mr. Richardson, I do not know. I just
19 know what he said at trial.

20 Q. But you didn't investigate that part, did you?

21 A. I'm sorry, investigate what part?

22 Q. Whether he was available to testify or whether he was
23 even available at the time?

24 A. No, ma'am, I did not feel comfortable reaching out to
25 Mr. Mitchell. I just did a background check, located him, and

1 the family had also indicated to me that he was there in
2 Conway. If I remember correctly, maybe we found an
3 announcement in the newspaper. I was thinking maybe there was
4 an announcement in the newspaper where he had a baby or
5 something, I mean, and was still local.

6 Q. You didn't do any direct in discovery regarding that
7 individual?

8 A. Just the background check and finding his evidence, yes,
9 ma'am.

10 Q. Now, you also said that once you had Ms. Montgomery in a
11 women's prison where she was no longer under the influence of
12 drugs and no longer afraid of Mr. Huggins, right, do you recall
13 your testimony?

14 A. Yes, ma'am.

15 Q. Now, at the time of her interview, isn't it true that
16 Ms. Montgomery had been in police custody for several days on a
17 separate armed robbery charge?

18 A. You're talking about at the time of her initial arrest?

19 Q. At the time of her initial interview with the police,
20 isn't it true that she was actually already incarcerated on a
21 different armed robbery charge?

22 A. I don't remember. Yeah, I mean, that could be true, I
23 just don't remember.

24 Q. Do you remember that Ms. Eckler identified Ms.
25 Montgomery as the woman who came to her door during the trial

1 and that's how the police got to interviewing her?

2 A. Yes, ma'am, yes, ma'am.

3 Q. So is it your statement here that she was actually under
4 the influence of illegal substances when the police initially
5 interviewed her?

6 A. I'm not making -- I have no idea, I wasn't there, but my
7 point is is, you know, when she has been sitting in jail, had a
8 lot of time to reflect and think about it, and presumably, was
9 no longer under the influence while she was in jail, that she
10 was thinking clearer than the moment in time of when she was
11 presumably under the stress of drugs, alcohol, pressure from
12 this other person.

13 Q. Okay. But you have no information that would suggest
14 that Ms. Montgomery was, in fact, under the influence when she
15 gave that initial statement to the police in the jail?

16 A. No, ma'am, not at that time.

17 Q. Okay. Thank you. And are you aware that Ms. Montgomery
18 had said previously in her interviews that she, in fact, knew
19 Mr. Huggins and saw him every day and so she was familiar with
20 his appearance at the time of the crime?

21 A. I am having to go completely on memory on that because
22 that wasn't part of my presentation then. If it's in the
23 record, I read it and knew about it, let me just say that, yes,
24 ma'am.

25 Q. But you didn't present that at the 29(b) hearing --

1 A. Correct.

2 Q. -- that she in fact knew?

3 A. Correct.

4 Q. And you didn't present at the 29(b) hearing that she, in
5 fact, identified the vehicle she road over to Ms. Eckler's
6 house in, which was a blue Cadillac Deville, do you recall
7 that?

8 A. Yes.

9 Q. And do you recall that she said that Junk owned that
10 car?

11 A. Was that the blue one or the gold one?

12 Q. The blue one.

13 A. The blue one. I don't recall, but that could be true.

14 Q. Okay. And do you recall that that car was traced back
15 to Mr. Huggins through DMV records?

16 A. Yes, I believe so.

17 Q. And do you recall that the address that she gave, which
18 was very specific, if you recall her testimony in the
19 interview, the house where he lived was right across the
20 street, and that is where Junk lived, and Junk was the guy who
21 was there with her?

22 A. Yes.

23 Q. So Ms. Montgomery in her initial statement identified
24 both Mr. Huggins' car, the exact location of his residence, and
25 all of that was confirmed through the investigation, do you

1 recall that?

2 A. I do, but I wasn't trying to present to Judge Culbertson
3 that DeAngula Montgomery and Jamar Huggins were strangers, I
4 was just trying to simply point out that when she identified
5 him and when she came to trial she said, that wasn't the guy
6 with me.

7 Q. But I mean, there's no disagreement that that's Mr.
8 Huggins, right?

9 A. Correct.

10 Q. And that his street name is, in fact, Junk?

11 A. That's my understanding, correct.

12 MS. SHAW: Thank you. I have nothing further.

13 Q. Actually, I do have one last question. You were hired
14 as an advocate in this matter, right?

15 A. The family hired me and Mr. Huggins hired me to produce
16 this newly discovered evidence to make sure that justice was
17 done and this man got a new trial.

18 Q. So your mission was essentially to provide whatever you
19 could based on whatever you could find to the Court to try and
20 convince Judge Culbertson that, in fact, it was someone other
21 than Mr. Huggins?

22 A. Well, that's a bit of a mischaracterization. This
23 family hired me for one sole purpose, and that's to give this
24 man a good trial, and you know, when I heard the story, I was
25 hired, I don't even think -- I think they paid me for 20 hours

1 hours worth of work and I probably did 200 hours worth of work,
2 so my mission wasn't just to get him free, my mission was to
3 get this man a fair day in court and for justice to be
4 revealed, and all of the evidence led to somebody other than
5 Jamar Huggins, so yes, ma'am.

6 Q. All the evidence you presented?

7 A. If you call that an advocate, then, yes, ma'am, I was
8 certainly advocating for a new trial based on the evidence that
9 I had before me, yes, ma'am.

10 Q. And you've handled 29(b) motions before, right?

11 A. I actually have not. That was my first unique one.

12 Q. Okay. Did you feel that you were able to get all of the
13 evidence that you needed in order to present what you needed to
14 present?

15 A. At that time, I believe that our motion for a new trial
16 was very compelling, and I was extremely disappointed when
17 Judge Culbertson ruled or denied the motion.

18 Q. Thank you.

19 THE COURT: Ms. Blanchette, anything on Redirect?

20 MS. BLANCHETTE: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q. Ms. Hanna, if you could turn to Page 233 of the 2018
24 record on appeal. In there it reflects the affidavit that was
25 attached to your motion and addressed at the 29 hearing.

1 A. Yes, ma'am.

2 Q. The State asked you some specific questions about the
3 information that you presented to the Court, so I just wanted
4 to go through some of this with you. There in the second
5 paragraph, does Ms. Montgomery go into detail about her drug
6 addiction at the time, and then further through, and I'll give
7 you a chance to review it, she talks about how she had just
8 been in detox before she was picked up by law enforcement, and
9 I'll give you a minute to review all of that on the first page.

10 MS. SHAW: Sorry, what paragraph are you referencing?

11 A. Yes, ma'am, I've reviewed it. Could you repeat your
12 question?

13 Q. Yes. And I don't even know that I asked you a question.

14 A. Okay.

15 Q. The State had asked you on cross, you know, about
16 whether or not you had information, whether she was under the
17 influence of drugs when she gave her statement. The
18 information that you had came directly from her affidavit, is
19 that correct?

20 A. That is correct, and I did not type this affidavit, so
21 you know, I'm going on what she said and what the private
22 investigator obtained from her.

23 Q. And this affidavit was attached to your motion and
24 properly admitted at the 29 hearing and was in front of Judge
25 Culbertson for his review before he made his findings; is that

1 correct?

2 A. Yes, ma'am, that is correct.

3 Q. I just want to ask you a couple more questions about the
4 contents of the affidavit since the State was getting into the
5 information that you had. If you continue reading at the
6 bottom of Page 233 and to Page 234, and I'll ask the question
7 and then see if you have an opportunity to review it. Does she
8 also go into the deception that was used in the intimidation
9 that she felt from law enforcement?

10 A. Yes, that is correct. I guess that's where the police
11 deception came in, because she said that she felt threatened.

12 Q. And so the information that you were responding with on
13 cross and that you presented to the Court, that was coming
14 directly from this affidavit that was duly signed and notarized
15 by Ms. Montgomery?

16 A. Yes, that is correct.

17 MS. BLANCHETTE: Your Honor, I have no further
18 questions.

19 THE COURT: Anything on Recross?

20 MS. SHAW: No, Your Honor.

21 THE COURT: Ms. Hanna, you can step down.

22 MS. HANNA: Thank you.

23 THE COURT: Is she released from her subpoena?

24 MS. BLANCHETTE: Yes, Your Honor.

25 THE COURT: You are free to go, Ms. Hanna.

1 MS. HANNA: Thank you.

2 MS. BLANCHETTE: Your Honor, my next witness would be
3 Matthew Thornton.

4 MATTHEW THORNTON WAS DULY SWORN AT THIS TIME AND
5 TESTIFIED AS FOLLOWS:

6 THE CLERK: Have a seat and state your name and spell
7 your last name and speak clearly in the mike, thank you.

8 THE WITNESS: My name is Matthew Thornton,
9 T-h-o-r-n-t-o-n.

10 DIRECT EXAMINATION

11 BY MS. BLANCHETTE:

12 Q. Mr. Thornton, are you a licensed private investigator in
13 the State of South Carolina?

14 A. Yes.

15 Q. How long have you been licensed?

16 A. Six years.

17 Q. Mr. Thornton, could you explain to the Court how you
18 became involved in this matter leading up to the PCR hearing
19 today?

20 A. Yes. Through you asking our company to look at the
21 Jamar Huggins case.

22 Q. And once your services were obtained did you have an
23 opportunity to review all the discovery that has been provided
24 and over the course of three years and through the discovery
25 process in this case?

1 A. Yes.

2 Q. And would you agree that some of that came directly from
3 the Solicitor's office here in Horry and some we obtained
4 directly from the Attorney General's office?

5 A. Correct.

6 Q. And those were all pursuant to discovery orders issued
7 by different judges in this case?

8 A. Yes.

9 Q. Okay. Mr. Thornton, I'm going to hand you a document.

10 MS. BLANCHETTE: Your Honor, may I approach the
11 witness?

12 THE COURT: Yes, ma'am.

13 MS. BLANCHETTE: And do I need to continue to ask?

14 THE COURT: No, ma'am.

15 BY MS. BLANCHETTE:

16 Q. Mr. Thornton, if you could identify what this appears to
17 be for the record?

18 A. Yes. This is the Horry County Police crime report for
19 an incident that occurred on 12/20/2012.

20 Q. And is this the document that you have reviewed in the
21 course of your investigation work in this case?

22 A. Yes.

23 Q. And was this purported to be received as part of the
24 discovery in this case?

25 A. Yes.

1 MS. BLANCHETTE: Your Honor, at this time I would
2 move the Horry County Police Crime Report with five pages in
3 total as Applicant's Number 2.

4 MS. SHAW: Your Honor, the only objection the State
5 would have would be the embedded hearsay or third-party hearsay
6 that's contained in it. I mean, if this is being offered as
7 part of his investigation and that he reviewed it and he relied
8 on facts contained within it and not for the truth of the
9 matter, that is fine, but as far as anything that's contained
10 in it, I mean, we would need to have direct testimony if he
11 intended to present those things as fact. Otherwise, I have no
12 objection.

13 MS. BLANCHETTE: Your Honor, in response for the next
14 couple documents and some interviews, these are being admitted
15 to show what he relied upon in his investigation, but these
16 will also be utilized with Mr. Long to address what he had and
17 what he did with the information. Now, we're not offering it
18 for the truth of the matter asserted, we're offering it for the
19 fact that it was in discovery, it has now been provided in
20 discovery in this case, it was relied upon by the attorneys as
21 the discovery in this case. So the questions will be what was
22 the information contained therein and what was done with it.
23 We are not saying whether it's truthful or not, but it's what
24 was in the discovery and it would have been opened to being
25 discussed by defense counsel at trial and used in preparation

1 leading up to trial.

2 THE COURT: Alright. It would be admitted as
3 Applicant's 2.

4 (Applicant's Exhibit No. 2 was admitted into evidence.)

5 MS. BLANCHETTE: Your Honor, I have a courtesy copy
6 of these, if you would like one as well?

7 THE COURT: That would be nice.

8 MS. BLANCHETTE: And Your Honor, if I may, we did not
9 mark the USB after it was admitted as Applicant's Number 1, if
10 I can make sure that we clearly do that for the record.

11 (Applicant's Exhibit No. 1 was marked for identification.)

12 Q. Mr. Thornton, I'm going to hand you a second document.
13 Can you identify what this appears to be for the record?

14 A. Yes. This is a report of investigation in Horry County
15 Police Department investigating Officer Jonathan Martin.

16 MS. BLANCHETTE: Your Honor, we would move to admit
17 the Horry County Police Department report of Investigator
18 Martin in as Applicant's Number 3.

19 MS. SHAW: Your Honor, subject to the same objection,
20 and Your Honor's prior ruling regarding the hearsay contained
21 within it, there is no further objection other than what's
22 previously been stated.

23 THE COURT: Very good. That will be admitted as
24 Applicant's 3.

25 (Applicant's Exhibit No. 3 was admitted into evidence.)

1 MS. BLANCHETTE: Beg the Court's indulgence, just one
2 moment?

3 THE COURT: Yes, ma'am.

4 BY MS. BLANCHETTE:

5 Q. Now, Mr. Thornton, you've heard discussion in the
6 courtroom today regarding the affidavit contained in the record
7 on appeal of Page 233. Did you have the opportunity to review
8 that affidavit of Ms. Montgomery?

9 A. Yes.

10 Q. And as a result of that review did you make attempts to
11 contact Ms. Montgomery and/or interview her as part of your
12 investigation?

13 A. Yes.

14 Q. And were you able to conduct a virtual interview of her
15 in July of 2022?

16 A. Yes.

17 Q. And at that time did she affirm the contents that were
18 set forth in that affidavit?

19 A. Yes.

20 Q. And as a result of that were you handling the subpoena
21 of her, which I hate that record, issuing a subpoena for her in
22 April of this year when this matter was previously scheduled?

23 A. Yes.

24 Q. And did she accept service of that subpoena?

25 A. Yes.

1 Q. And was it your understanding that she had planned to
2 come and testify to affirm the contents in her affidavit that
3 was part of the 29 ruling?

4 A. Yes.

5 Q. Now, there was another subpoena that was issued, and did
6 you take possession of that for the hearing here today?

7 A. Yes.

8 Q. And did you work with a private investigator who is here
9 in the courtroom and works here locally to get that served on
10 Ms. Montgomery again?

11 A. Yes.

12 Q. And when that subpoena was went to be served what was
13 the information that was obtained?

14 A. Yes, that she was deceased.

15 Q. And as a result that subpoena was not served for today's
16 hearing; is that correct?

17 A. That's correct.

18 Q. Now, during her interview in July and up until your last
19 communication with her, was it your understanding that she had
20 planned to come to court today to testify?

21 A. Yes.

22 Q. And was that to affirm the contents of her affidavit?

23 A. Yes.

24 Q. And you had thoroughly reviewed that with her and
25 discussed all of these matters with her?

1 A. Yes.

2 Q. Now, I want to talk with you about the matter of phone
3 records. Did you have the opportunity to review the search
4 warrants that were issued in this case for phone records?

5 A. Yes.

6 Q. I'm going to hand you this document, if you could
7 identify it for the record?

8 A. Yes. This is a search warrant of Horry County, South
9 Carolina, issued December 22, 2012, Detective Jonathan Martin,
10 case number -- do you want the phone number?

11 Q. Well, is this a packet of all of the search warrants
12 that you found in the discovery that was made available to us?
13 And you can take a moment to review that.

14 A. Yes. Okay. This includes four search warrants.

15 MS. BLANCHETTE: Your Honor, at this time I would
16 move the search warrant packet in as Applicant's Number 4.

17 MS. SHAW: No objection other than what I had
18 previously put on the record, Your Honor.

19 THE COURT: It will be admitted as Applicant's 4.

20 (Applicant's Exhibit No. 4 was admitted into evidence.)

21 BY MS. BLANCHETTE:

22 Q. Now, in reviewing these search warrants, did you also
23 review all of the cell phone records that were returned as a
24 part of these search warrants?

25 A. Yes.

1 Q. And who were the three individuals that those records
2 were purported to be for?

3 A. The search warrants were issued for four people, one of
4 them was, they are identified by the phone numbers, if I could
5 consult my notes on --

6 MS. BLANCHETTE: I have no objection.

7 A. -- on who the numbers belong to?

8 MS. SHAW: Your Honor, I would just like to see
9 whatever notes Mr. Thornton intends to consult. Understandably
10 those might not have been provided, as they are not been
11 seeking to be admitted, but defense does have a right to see
12 them in order to cross-examine him.

13 MS. BLANCHETTE: Your Honor, we had provided quite a
14 volume of prior reports. I can confirm if this was something
15 previously provided, but I can also move on if Mr. Thornton
16 doesn't have something readily producible.

17 A. Yeah. There are four cell phone numbers in these
18 warrants and through my investigation the four people were
19 DeAngula Montgomery, Jasamine Mitchell, Adrian Moore and Tyjuan
20 Mckeithan.

21 Q. And then did you have the opportunity to review the
22 interview that Mr. Huggins gave with law enforcement?

23 A. Yes.

24 Q. And did he give a phone number during that interview?

25 A. Yes, he did.

1 Q. And was that reported as [REDACTED]-5769?

2 A. Yes.

3 Q. And did you have an opportunity to confirm that phone
4 number with Mr. Huggins as part of your investigation?

5 A. Yes.

6 Q. Were any of the search warrants issued in the totality
7 of the discovery that you received for the phone number that he
8 offered to law enforcement?

9 A. No.

10 Q. Did you see any efforts that were made to locate any
11 records or do anything regarding that phone number?

12 A. No.

13 Q. Did you make efforts to obtain any records or
14 information regarding that phone number?

15 A. Yes.

16 Q. And what did you do in that regard?

17 A. In that regard we contacted the family, Helen Huggins,
18 Jamar Huggins' mother, and received the carrier at the time,
19 which was Boost Mobile. Boost Mobile only carries records for
20 six months so we were unable to obtain any cell records for
21 that number, and the actual phone was not found by the family,
22 so I was not able to do any kind of digital forensics on the
23 phone itself.

24 Q. If you had been working on this case at the time prior
25 to trial are those actions you would have undertaken?

1 MS. SHAW: Objection. Calls for speculation. We
2 don't know what he would have done.

3 THE COURT: I'll overrule. He can answer.

4 A. I'm sorry, the question again?

5 Q. If you were working on this matter at the time leading
6 up to trial would have you taken those steps to try to locate
7 the records of Mr. Huggins?

8 A. Yes.

9 Q. And again, did you see anywhere in the discovery where
10 that was done?

11 A. No.

12 Q. Now, going back to the search warrants, you did have an
13 opportunity to review all of the records that were made as part
14 of the return for those?

15 A. Correct.

16 Q. Okay. And specifically, you've also had the opportunity
17 to review text messages; is that correct?

18 A. Correct.

19 Q. Now, if I could direct your attention back to the
20 investigative report of Investigator Martin, do you have a copy
21 of that there in front of you?

22 A. Yes.

23 Q. In his report has listed as an entry for December 28,
24 2012. I'll give you a chance to flip to that date.

25 A. Yes.

1 Q. He references text messages between Adrian Moore's phone
2 and a "T" for 12/19/22.

3 A. Yes.

4 Q. And as a result did you look through the records for
5 those text messages?

6 A. Yes.

7 Q. And did you identify those text messages?

8 A. Yes.

9 Q. I'm going to hand you a document, if you can identify
10 what that appears to be for the record, please?

11 A. Yes. This is a Verizon record of a text message, which
12 basically says the message that was received by the cell phone
13 number and who sent the text message and then what the actual
14 message said.

15 Q. And what is the date on this?

16 A. The date on this is 12/19/2022.

17 Q. And in the course of your investigation did you find
18 that the information contained there matched up with the
19 information in the report of Investigator Martin?

20 A. Yes.

21 MS. BLANCHETTE: Your Honor, at this time I would
22 move to admit this one page of the text message, text messages
23 that were received as part of the return for the search warrant
24 as Applicant's Number 5.

25 MS. SHAW: Your Honor, no objection.

1 THE COURT: That will be admitted as Applicant's 5.

2 (Applicant's Exhibit No. 5 was admitted into evidence.)

3 Q. Now, Mr. Thornton, as you were going through the records
4 both the text and the phone records that were part of the
5 returns for these search warrants and with that reference of
6 the 12/19 text were you able to locate another text, as well?

7 A. There was one other text, correct.

8 Q. Okay. I'm going to hand you this document, if you could
9 identify what it appears to be for the record.

10 A. Yes. This is a single text message, date 12/17/2012.

11 Q. And is that between the same two phone numbers?

12 A. Yes.

13 MS. BLANCHETTE: Your Honor, at this time I would
14 move the text message report from 12/17/2012 as Applicant's
15 Number 6.

16 MS. SHAW: No objection.

17 THE COURT: It will be Applicant's No. 6.

18 (Applicant's Exhibit No. 6 was admitted into evidence.)

19 MS. BLANCHETTE: I apologize, Your Honor, did I give
20 you the prior one?

21 THE COURT: The prior one?

22 MS. BLANCHETTE: Yes.

23 THE COURT: Yes, I've got it.

24 MS. BLANCHETTE: I appreciate that.

25 Q. And Mr. Thornton, by simply going through the records

1 that were provided from the Solicitor's Office you were able to
2 locate these two text messages?

3 A. That's correct.

4 Q. And were you able to confirm the two parties they were
5 between?

6 A. Yes.

7 Q. And who was that?

8 A. So this would have been between Tyjuan Mckeithan and
9 Adrian Moore.

10 Q. And you've also had the opportunity and you've heard
11 discussion here in court today the PowerPoint presentation and
12 argument put together by Ms. Hanna; is that correct?

13 A. That's correct.

14 Q. And these text messages are contained in the chart that
15 she made and presented to Judge Culbertson?

16 A. That's correct.

17 Q. Now, you've also had an opportunity to review that
18 report and you've seen the phone records and those are all
19 contained in the discovery that was received part of this PCR
20 case and was provided by the Solicitor's Office; is that
21 correct?

22 A. That's correct.

23 Q. Now, as part of your investigation did you have an
24 opportunity to go canvas the neighborhood that surrounded the
25 area of this home at Memory Lane?

1 A. Yes.

2 Q. And take us through what you did regarding that.

3 A. Part of our investigative procedures are going to the
4 scene of the crime, standing in front of the scene of the crime
5 and doing a 360, better known as first vantage point.

6 Q. And did you do that in this case?

7 A. Yes.

8 Q. And when you did that then what was your next step?

9 A. My next step when I did the 360 was I noticed the next
10 door neighbor looking at the house to the right, the next door
11 neighbor was in his yard, and so I walked over and spoke with
12 him.

13 Q. And who was that neighbor?

14 A. That was Randy Phillips.

15 Q. And as a result of information you obtained from that
16 you provided that information to myself to prepare this PCR
17 action; is that correct?

18 A. That's correct.

19 Q. And based upon the information that he gave you did you
20 request the opportunity to take further steps?

21 A. Yes.

22 Q. And what was that step or steps?

23 A. (No audible response.)

24 Q. I'm sorry, did you hear my question?

25 A. No, I didn't.

1 Q. Okay. After you spoke to Mr. Randy Phillips did you
2 request the opportunity of myself to give further information?

3 A. Yes.

4 Q. And what was the information you were seeking?

5 A. The information I was seeking was were there any other
6 incidents that occurred at that particular residence, which was
7 the scene of the crime on Memory Lane.

8 Q. And due to the fact that we're operating under the PCR
9 statute you're familiar with the fact we had to get a discovery
10 order in order to be able to subpoena from Horry County any
11 incident reports from around that time?

12 A. Correct.

13 Q. And was that step taken?

14 A. Yes.

15 Q. And did anything result from taking that step and being
16 able to issue the subpoena pursuant the Court's order?

17 A. Yes.

18 Q. Can you identify this for the record?

19 A. Yes. This is an incident report Horry County Police
20 Department.

21 Q. Is this the incident report that came in response to the
22 discovery order and subpoena issued in this case?

23 A. Yes.

24 Q. And what was the relevant information you were able to
25 obtain from this incident report?

1 A. The incident report was dated 7/12 of 2012 and it was
2 a -- the reporting officer reported that he met with the
3 residents on Memory Lane. It's been redacted, the actual
4 address, and where there was a claim of harassment from
5 neighbors of the residents of that home and that they had, in
6 fact, had visits from DSS and the Horry County Code Enforcement
7 on several different occasions, and so the resident of this
8 address was claiming harassment from neighbors.

9 Q. And this incident report was provided in response to a
10 subpoena issued for any incidents for the [REDACTED] Memory Lane?

11 A. Correct.

12 MS. SHAW: And Your Honor, we are getting a little
13 far afield here so I'm just going to object to the relevance of
14 this document. It doesn't matter if Adrian Moore thought his
15 neighbors were harassing him, it matters if there were prior
16 police reports, maybe, but related to actual drug activity, but
17 this does not go to the question of effective assistance of
18 counsel at all. Just because this report exists would not
19 suggest that Mr. Long or Ms. Hanna in any way were ineffective,
20 so I would submit that this is not relevant to the question at
21 hand at this time.

22 THE COURT: Ms. Blanchette?

23 MS. BLANCHETTE: In response, Your Honor, this report
24 was obtained through the discovery process and PCR after the
25 information he got from his point of first impression interview

1 of the neighbor. This report does confirm information that Mr.
2 Phillips testified to today. This information would have been
3 available to counsel and/or any investigators whether law
4 enforcement or private that would have conducted a complete and
5 thorough investigation at the time of this incident, so
6 therefore we submit it is relevant.

7 MS. SHAW: And Your Honor, again, just, there's been
8 no proffer as to how it would have been referenced.

9 THE COURT: My question is, Ms. Blanchette, I
10 understand what you're saying, that that would be -- that step
11 could be taken during investigation of the case pretrial, but
12 how is this actual report relevant? I mean, if the report said
13 somebody came and shot the house up think it might be a little
14 different, so how is --

15 MS. BLANCHETTE: Yes, Your Honor, on this report, and
16 I'll just be candid, what it merely does is it confirms the
17 information that there were situations going on with the
18 neighbors making reports against this house, it discusses that,
19 so therefore, for us it verifies information given by our first
20 witness today. There would have been steps that we submit the
21 attorney could have taken in his investigation, and ultimately
22 becomes relevant because Ms. Eckler gets up and testifies about
23 the neighborhood, about what was going on in the neighborhood,
24 and furthermore, that she had no idea that Mr. Adrian Moore was
25 leading a double life until this incident occurred, so I

1 believe it is very relevant in that regard to show there were
2 ongoing issues with the neighbors leading up to this point in
3 time.

4 THE COURT: Okay.

5 MS. SHAW: And most respectfully, Judge, I mean, it
6 doesn't matter what Ms. Eckler knew or didn't know. She's the
7 victim here. We're not here to put her on trial for something
8 Mr. Huggins has been convicted of doing. We're not here to
9 impute her testimony, we're not even here to question it, it's
10 undisputed. So what she said at the trial should control, not
11 whether Adrian Moore felt that other people were harassing him
12 in the neighborhood, and it's, again, even though it could have
13 been discoverable how would it possibly affected the defense of
14 Mr. Huggins at the time, and I just don't see any sort of
15 connection, so I would submit that it's not relevant and this
16 avenue of inquiry does not need to go further for this
17 particular one.

18 MS. BLANCHETTE: Your Honor, if I may?

19 THE COURT: Yes, ma'am.

20 MS. BLANCHETTE: I submit it's relevant to
21 impeachment. One of our issues is the handling of the
22 testimony in preparation for Ms. Eckler, and by not gathering
23 this information we submit counsel wasn't properly prepared to
24 cross-examine her. With all due respect I understand she's a
25 victim and none of us ever want to attack a victim, but we need

1 to make sure, as Your Honor said at the beginning of this, when
2 a man is facing life, plus, that all the facts are presented,
3 and that includes cross-examination even of victims, Your
4 Honor, and so with the assertions that she made, what I will
5 get into more with Mr. Long, the question is whether or not he
6 properly cross-examined her on those assertions and what
7 information he had to do that, and I think this is relevant to
8 that point.

9 THE COURT: Alright, I'll allow it for what it's
10 worth. Is that Applicant's 7?

11 MS. BLANCHETTE: Yes, Your Honor.

12 MS. SHAW: Thank you, Your Honor.

13 (Applicant's Exhibit No. 7 was admitted into evidence.)

14 Q. Now, in that same vein, Mr. Thornton, if you could look
15 back at the five-page Horry County Police report that has been
16 previously admitted, and you stated you reviewed this as part
17 of your investigation; is that correct?

18 A. Correct.

19 Q. And contained here in these first two paragraphs on the
20 first page, does it give information regarding a possible
21 criminal history of Adrian Moore?

22 A. Yes.

23 Q. Okay. And if you could just explain briefly, and in the
24 course of your investigation, how does Adrian Moore play into
25 this?

- 1 A. Could you be more specific?
- 2 Q. Yes. Was Adrian Moore the boyfriend of Ms. Eckler?
- 3 A. Yes.
- 4 Q. And was he home at the time that this incident occurred?
- 5 A. No.
- 6 Q. And did you review subsequent interviews of him when he
- 7 was at Conway Medical Center?
- 8 A. Yes.
- 9 Q. And then you reviewed all of the reports that reference
- 10 him?
- 11 A. Correct.
- 12 Q. And you've reviewed the trial transcript, as well; is
- 13 that correct?
- 14 A. Yes.
- 15 Q. And did Mr. Adrian Moore testify at trial?
- 16 A. No.
- 17 Q. Now, if you could look back at this report does it give
- 18 specific information regarding a possible criminal history?
- 19 A. Yes.
- 20 Q. And based upon that what was the next step that you
- 21 wanted to take as an investigator?
- 22 A. Well, to verify that information.
- 23 Q. And because we're in the status of a PCR did you seek
- 24 for me to obtain an order to get permission to obtain his NCIC
- 25 report?

1 A. Yes, I did.

2 Q. And was that provided to the Attorney General's Office
3 and then provided to both of us with redaction to review?

4 A. Yes.

5 Q. And were you able to ascertain information, general
6 information, regarding his criminal history upon review of that
7 report?

8 A. Yes.

9 MS. BLANCHETTE: And Your Honor, I would just like to
10 note, I'm trying to be very careful here with the sensitive
11 nature of the NCIC, it's my understanding the State does not
12 object to us discussing it in general, but I'm not going to
13 move to admit it or anything of that nature.

14 THE COURT: Okay.

15 MS. SHAW: Counsel is correct, Your Honor.

16 THE COURT: Very good.

17 Q. Mr. Thornton, upon review of that were you able to
18 determine how many prior arrests he had leading up to this
19 incident?

20 A. Yes.

21 Q. And how many were those?

22 A. There were in two different states, states of Ohio and
23 Michigan, and there were eight arrests prior.

24 Q. And based upon your review could you see any
25 convictions?

1 A. Yes.

2 Q. And how many convictions were reported?

3 A. Four.

4 Q. Now, you requested that we obtained his criminal based
5 upon the information you saw on all of the discovery,
6 specifically this report; is that correct?

7 A. Yes.

8 Q. Did you also try to locate Mr. Adrian Moore yourself?

9 A. Yes, I did.

10 Q. What efforts were made to do that?

11 A. Through my investigation I was able to locate and
12 contact Adrian Moore's mother who lives in Michigan.

13 Q. As a result of contacting her did you obtain information
14 as to where he may be located?

15 A. Yes. She stated that he was located in prison in North
16 Dakota.

17 Q. And then did you take steps as an investigator to try to
18 locate him in North Dakota?

19 A. Yes.

20 Q. And what was the result of that investigation?

21 A. I did an inmate lookup in the state of North Dakota and
22 it was negative findings. There was no record of him in North
23 Dakota.

24 Q. So what was the next step you took?

25 A. So I checked South Dakota and did find a record of him

1 being incarcerated at the Department of Corrections of South
2 Dakota.

3 Q. And as a result of that were efforts made to communicate
4 with Mr. Adrian Moore?

5 A. Yes. I suggested that letters be sent to him. I
6 contacted the prison, actually, as to how the best method to
7 reach him, and they suggested letters, and so you sent two
8 letters to him.

9 Q. And was he responsive to those letters?

10 A. No.

11 Q. As you're investigating this case what was the relevance
12 or the reason why you wanted to speak with Adrian Moore?

13 A. Adrian Moore was never interviewed. He was interviewed
14 while he was in the hospital, which he could have been under
15 any kind of duress.

16 MS. SHAW: Objection. Speculation.

17 THE COURT: Sustained. I don't think he can tell us
18 what Mr. Moore may have or may not have been thinking.

19 MS. BLANCHETTE: I'll re-ask the question.

20 THE COURT: Okay.

21 Q. What was the reason that you wanted to interview him,
22 and if you could just stay away from any speculation and give
23 us your exact reasons, please.

24 A. Adrian Moore was a part of the case and was needed --
25 was part of our list to interview, and so that was our attempt,

1 was to locate him and do a strategic debriefing of Mr. Moore.

2 Q. You were not able to accomplish that; is that correct?

3 A. That's correct.

4 Q. But you made every effort that you would think of to do
5 that?

6 A. That's correct.

7 Q. And did you review the audio interview of Mr. Moore?

8 A. Yes.

9 Q. Okay. Did you also review the audio interviews, and I
10 just want to kind of lay a foundation here for later, admission
11 of these, of Ms. Eckler, as well?

12 A. Yes.

13 Q. And Mr. Tyjuan Mckeithan?

14 A. Yes.

15 Q. Now, regarding the Tyjuan Mckeithan audio, was there
16 much to listen to there?

17 A. No, there was not.

18 Q. And why is that?

19 A. Because he invoked immediately.

20 Q. So you weren't able to ascertain any further information
21 from that audio?

22 A. That's correct.

23 Q. Now, I'm going talk to with you about one other step
24 that you took. We've discussed the fact that you canvassed the
25 neighborhood, you requested the records of Mr. Adrian Moore.

1 Did you also make a request regarding the standard operating
2 procedures for the Horry County Police Department?

3 A. Yes.

4 Q. And what was that?

5 A. So we requested through you to obtain the standard
6 operating procedures for the Horry County Police Department
7 Criminal Investigative Division.

8 Q. And through a discovery order and a subpoena is it your
9 understanding those records were provided?

10 A. Correct.

11 Q. Did you have an opportunity to review those records?

12 A. Yes.

13 Q. And I can hand you a document. Can you please identify
14 what that appears to be for the record?

15 A. Yes, this says, the header is: Horry County Police
16 Department Investigative Division Standard Operating
17 Procedures.

18 Q. And does this contain both the index and two sections of
19 the standard operating procedures?

20 A. Yes, it does.

21 Q. Would you agree that we were provided these kind of
22 piece-mail because they didn't have the complete standard
23 operating procedures dating back to the date and time of the
24 subpoena?

25 A. This is correct.

1 MS. BLANCHETTE: Your Honor, I would move to admit
2 the both index and these particular sections of the standard
3 operating procedures in as Applicant's Number 8.

4 THE COURT: Any objection?

5 MS. SHAW: If only for purposes of furthering his
6 investigation, yes, Your Honor, but ordinarily we would need
7 these to be authenticated as business records since they are
8 SOP's and used by the Horry County PD, so in as far as he used
9 them to further his factual investigation, there is no
10 objection, but anything further, the State would object.

11 THE COURT: Okay. They will be admitted as
12 Applicant's 8.

13 MS. BLANCHETTE: Okay. And Your Honor, I do intend
14 to ask Mr. Long about whether or not he obtained these, as
15 well. I have provided to the State prior to today because she
16 was not the attorney of record at the time, the email that was
17 sent to then Assistant Attorney Chelsea Marto by the FOA
18 manager for Horry County where he was responsive to the
19 subpoena and provided these records to both of our offices. It
20 was my understanding he was not needed as a chain witness today
21 to authenticate these.

22 MS. SHAW: No, Your Honor. As I said, I mean, I have
23 no problem with using these records in terms of what Mr.
24 Thornton did to further investigation and how he further -- how
25 he took the information contained within them to further his

1 factual investigation, but in terms of what the Horry County
2 Police Department did or didn't do or whether they did things
3 right or did things wrong, I think we would need someone here
4 to testify to both the standard operating procedures, as well
5 as standard practices, so that's the kind of crux of it. It's
6 a little convoluted, but basically, if it goes to what Mr.
7 Thornton did and that's what he used, no objection, because we
8 do have them and they were provided in discovery and my
9 predecessor indicated, as I understand, that she would not be
10 objecting, so I'm not going to countermand her on that, but
11 again, it's just for purposes of his investigation, not as to
12 whether the Horry County Police Department was deficient.

13 **(Applicant's Exhibit No. 8 was admitted into evidence.)**

14 THE COURT: Okay. Here's what we're going to do.
15 They are already admitted as Applicant's 8. I don't know what
16 the testimony is going to be, so if you have a contemporaneous
17 objection as he's testifying, you can make it and then we'll
18 just address it then.

19 MS. SHAW: Well, Your Honor, I can just put it on the
20 record that any opinions Mr. Thornton would offer as to whether
21 the Horry County PD did or did not follow its own procedures,
22 he has not been qualified as an expert, there's been no proffer
23 as to his expertise in that matter, so I would submit that that
24 would be in appropriate testimony, but as far as his actions
25 taken in response to receiving these and reviewing these

1 documents, there is no objection.

2 THE COURT: Okay. Very good.

3 MS. SHAW: Thank you, Your Honor.

4 MS. BLANCHETTE: Your Honor, and I will just ask the
5 questions and see if there's an objection. I'll pause.

6 THE COURT: Very good. That will work.

7 MS. BLANCHETTE: Okay.

8 Q. Mr. Thornton, once these were received from Horry County
9 and provided to both my office and to the Attorney General's
10 Office, did you have the opportunity to review those?

11 A. Yes.

12 Q. And as an investigator working on this case and looking
13 through the investigation, were there any particular sections
14 that you paid notice to?

15 A. Yes.

16 Q. And could you please explain?

17 A. Yes. So CID SOP 04, which is CID function, under
18 Section C, which is follow-up investigations, looking at Number
19 one. The purpose is to determine what a detective is supposed
20 to do when they are -- especially when there is a handoff of a
21 case, and so number one I think is something that I looked at
22 and advised you as something that needed to be looked into.

23 Q. And what was the reason for that based upon your review
24 of the discovery in this case? Why was that a red flag?

25 A. That was a red flag because it says that detectives

1 shall review and analyze all previous reports prepared in the
2 preliminary phases in checking records, and based on the
3 interviews that I listened to from Detective Martin, I did not
4 see that that was the case.

5 Q. And what was the basis for reaching that conclusion in
6 your investigation?

7 A. Do you want specifics?

8 Q. Yes, please.

9 A. The specifics are the interview with Adrian Moore.
10 Detective Martin asked Adrian Moore, he basically states to
11 Adrian Moore: You do not have a criminal record, why did you
12 do this? And in the very first incident report the reporting
13 officer states that he had a lengthy record of crime and drugs.

14 Q. And in the discovery that was provided to us and was
15 purported to be the original discovery in this case, did you
16 see any information regarding his record beyond the entry in
17 this one report?

18 A. Would you rephrase that?

19 Q. I'll rephrase that. Was the NCIC that we obtained
20 subsequently as part of PCR discovery contained in the original
21 discovery?

22 A. No, it was not.

23 Q. And then is there another section of these SOP's that
24 you red flagged?

25 A. Yes. So under CID SOP 05, interviews and

1 interrogations, under number one, Custodial Advice of Rights,
2 Miranda, under "B" it states that: If a subject in custody
3 waives his or her rights and invokes his or her right to remain
4 silent, all right to counsel, questioning must stop
5 immediately.

6 Q. And you had reviewed the interview of Mr. Mckeithan,
7 correct?

8 A. Correct.

9 Q. And that was filed; is that correct?

10 A. That's correct.

11 Q. And you also reviewed the interview of Ms. Montgomery?

12 A. Yes.

13 Q. Was that followed in her interview?

14 A. No, it was not.

15 Q. And in your review of the trial transcript did you see
16 where that came out?

17 A. No.

18 Q. And that also is reported that she had attempted to
19 invoke or invoked in the police reports as you reviewed it?

20 A. That's correct.

21 MS. BLANCHETTE: Your Honor, at this time, originally
22 we had planned to introduce all of the interviews that we have
23 been referencing, but I would like to move to introduce the
24 interview of Ms. Eckler, Adrian Moore and Tyjuan Mckeithan that
25 this investigator has been discussing. I also plan to discuss

1 them with Mr. Long, so if that's the more appropriate time I
2 understand, but I wanted to make this offer at this time.

3 THE COURT: What's the State's position?

4 MS. SHAW: Your Honor, Ms. Blanchette and I have
5 discussed this previously. The State would prefer for this
6 information to be introduced through Mr. Long. He was the
7 direct attorney on the ground. He's the one who listened to
8 these. He's the one who made the decisions. You know, I
9 understand that Mr. Thornton reviewed them in the context of
10 his investigation, but he was not the original person who would
11 have been making decisions based upon them and since we're
12 going for ineffective assistance here it's the question of what
13 did Mr. Long do with this information, so it would be more
14 appropriate to discuss them in the context of his testimony.

15 THE COURT: Okay. I agree. Why don't we wait until
16 Mr. Long before we introduce those.

17 MS. BLANCHETTE: Perfectly fine, Your Honor, I just
18 wanted to, since they were received through discovery in PCR
19 make sure I established that, but Mr. Thornton.

20 MS. SHAW: Thank you, Your Honor.

21 MS. BLANCHETTE: Your Honor, if I could just beg the
22 Court's indulgence, one moment?

23 THE COURT: Okay.

24 MS. BLANCHETTE: Your Honor, I have no further
25 questions.

1 THE COURT: Ms. Shaw, how long do you think you're
2 going to need on cross-examination? We've been going about two
3 hours and I don't like to keep the staff too long?

4 MS. SHAW: Your Honor, since Mr. Thornton has only
5 identified a few things in terms of the SOP's as well the audio
6 and the phone and text messages, I think I can keep it very,
7 very short.

8 THE COURT: I'll let you finish up and then we'll
9 break for lunch.

10 MS. SHAW: Okay. Thank you.

11 CROSS-EXAMINATION

12 BY MS. SHAW:

13 Q. Mr. Thornton, in the context of your factual
14 investigation --

15 MS. SHAW: Your Honor, may I move up to the podium?

16 THE COURT: Yes, ma'am.

17 MS. SHAW: Thank you.

18 Q. Can you hear me better, Mr. Thornton?

19 A. Yes.

20 Q. Okay. Sorry. I'm very soft-spoken naturally. You
21 identified certain facts that you thought were of concern and
22 brought them to Ms. Blanchette's attention, right?

23 A. Yes.

24 Q. And you identified several interviews that you felt
25 should have been done?

1 A. Correct?

2 Q. Now, I'm just going to ask you individually whether you
3 did them, whether you did not do them. Okay? Now, you
4 interviewed, or you recommended interview of Helen Huggins.
5 Who is that?

6 A. Jamar Huggins mother.

7 Q. And did that actually occur?

8 A. Yes.

9 Q. And was she directly involved in this incident at all?
10 And just for clarity, the December 20th home invasion is what
11 I'm referencing when I say "this incident."

12 A. Was she directly involved?

13 Q. Did she have any involvement whatsoever?

14 A. Yes.

15 MS. BLANCHETTE: Your Honor, I was going to object to
16 the context of the question. I mean, I don't think he can
17 ascertain. I think it would be more appropriate to ask what
18 information he gathered from that interview, if we're talking
19 about in the context of him conducting an investigation. She's
20 already objected on him reaching conclusions and opinions, so I
21 think the question would be much better suited as to what
22 information he was able to ascertain as a result of that
23 interview.

24 MS. SHAW: I'll rephrase it, Your Honor.

25 THE COURT: Okay. Very good.

1 Q. From Ms. Huggins, you were only able to locate Mr.
2 Moore, right?

3 A. No.

4 Q. She provided information that he was in North Dakota,
5 you ultimately located him in South Dakota?

6 A. No. I achieved that information through Adrian Moore's
7 mother.

8 Q. That's Ms. Helen -- oh, I'm sorry, I apologize. So
9 Helen Huggins, you did interview her?

10 A. Yes.

11 Q. Mi Mi McCallister, who is that?

12 A. A family friend.

13 Q. And did you interview her?

14 A. Yes.

15 Q. Willie Dean Whaley?

16 A. That's Jamar Huggins grandmother.

17 Q. And she has since passed away, correct?

18 A. That's correct, as has Helen Huggins.

19 Q. And you did interview her?

20 A. Yes.

21 Q. Janet Scott?

22 A. No, she had deceased by the time we received the case.

23 Q. Jasmine Mitchell?

24 A. No.

25 Q. You did not interview him?

1 A. No.

2 Q. Were you able to locate him?

3 A. No.

4 Q. Tyjuan Mckeithan?

5 A. Did not.

6 Q. Were you able to locate him?

7 A. No.

8 Q. Angela Eckler's mother?

9 A. No.

10 Q. Douglas Eckler?

11 A. No.

12 Q. Randy Phillips?

13 A. Yes.

14 Q. You recommended canvassing local pawn shops, did you do

15 that?

16 A. No. That is an activity that needed to be done soon

17 after the incident.

18 Q. But you didn't do it?

19 A. That's correct.

20 Q. So other than failure to comply with the standards of

21 procedure which you identified with regard to Ms. Montgomery --

22 A. Uh-huh.

23 Q. -- with respect to Mr. Moore, was there ever an

24 indication or a request not to speak to law enforcement in the

25 interviews that you listened to?

1 A. On behalf of Mr. Moore?

2 Q. Yeah. Did Mr. Moore ever ask the police to stop
3 speaking to him during that interview?

4 A. No, not that I know.

5 Q. So he voluntarily gave all the information?

6 A. That's correct.

7 Q. Which included DeAngelo Moore?

8 A. DeAngula Montgomery?

9 Q. I apologize. DeAngula Montgomery. There's too many
10 Moore's and Montgomery's.

11 A. I understand. Would you rephrase the question, please?

12 Q. He did provide the information which led to DeAngula
13 Montgomery?

14 A. Adrian Moore?

15 Q. Yes, during his police interview at the hospital.

16 A. Let me make sure I understand that Adrian Moore's
17 interview with law enforcement led to the arrest of DeAngula
18 Montgomery?

19 Q. No. I'm asking whether Mr. Moore provided information
20 which led to the police speaking to DeAngula Montgomery, and he
21 referred to her as "Shante" in the interview, do you recall
22 that?

23 A. Yes.

24 Q. So Mr. Moore actually provided the information that to
25 the witness who identified Mr. Huggins, right?

1 A. I don't recall that that was how she became involved as
2 far as the police were concerned. It was a part of it, but I
3 don't know that it was a --

4 Q. But Mr. Moore initially provided her name, right?

5 A. Yes, but I don't know that the law enforcement knew who
6 Shante was.

7 Q. But he, in fact, in the interview didn't name her,
8 DeAngula, do you recall that?

9 A. I don't recall that.

10 Q. And McKeithan immediately invoked, he didn't want to
11 speak to the police without his lawyer?

12 A. Correct.

13 Q. And you would agree that at that point according to the
14 SOP all questioning was stopped?

15 A. Correct.

16 Q. But you said that there was no second interview after
17 invoking, so that would be a direct violation of the SOP, would
18 it not?

19 A. I don't recall. I don't know if that's a direct
20 violation of the SOP, not doing a second interview. I don't
21 know that.

22 Q. Well, I mean, you testified that the SOP requires that
23 once an individual has invoked, all questioning must cease
24 immediately?

25 A. Correct.

1 Q. So if they questioned him again without a lawyer, that
2 would have been a violation?

3 A. Absolutely, yes.

4 Q. Okay. Thank you.

5 MS. SHAW: I have nothing further, Your Honor.

6 THE COURT: Anything on Redirect?

7 MS. BLANCHETTE: I do, Your Honor. I don't know if
8 you want me to go into it, it will be brief.

9 THE COURT: Briefly.

10 REDIRECT EXAMINATION

11 BY MS. BLANCHETTE:

12 Q. Mr. Thornton, you have in front of you there
13 Investigator Martin's report that's already been previously
14 admitted?

15 A. Yes.

16 Q. Could you turn to December 23, 2012 where he gives his
17 summary of his interview with Mr. Adrian Moore?

18 A. Uh-huh.

19 Q. And there does he give in this summary that a female's
20 name, Sandra or Shandra was given, as well as a "Juice"?

21 A. Uh-huh.

22 Q. And then he details his efforts to identify this female,
23 which were originally the wrong female; is that correct?

24 A. Yes.

25 Q. And then ultimately, by going back and re-interviewing

1 Mr. Moore, he is able to then identify that the female he is
2 talking about is Ms. DeAngula Montgomery?

3 A. That's correct.

4 Q. As a result of running phone records and taking other
5 steps, and so in those interviews the two individuals that he
6 gives information for are Ms. Montgomery and Jasamine Mitchell?
7 In his interview of Adrian Moore does Adrian Moore ever
8 reference Jamar Huggins?

9 A. No.

10 Q. And in his interview in the audio only, it's not
11 reported here, does he also reference a "Ty," which ultimately
12 comes to be known as Tyjuan Mckeithan?

13 A. Yes.

14 Q. So in his interviews that the State asked you about he
15 gives information regarding Tyjuan Mckeithan, Jasamine
16 Mitchell, and they were led to Ms. Montgomery as a result of
17 those interviews?

18 A. Yes.

19 Q. But he never gives any information regarding Jamar
20 Huggins?

21 A. That's correct.

22 Q. And you've reviewed all of that and can confirm that
23 based upon the discovery that we received?

24 A. That's correct.

25 MS. BLANCHETTE: Your Honor, again, I would just

1 renew my request to introduce the audio of Adrian Moore based
2 upon this testimony. I know I will do it at a later time, but
3 I think this further establishes the relevance.

4 THE COURT: We'll do it with Mr. Long.

5 MS. BLANCHETTE: I appreciate that, Your Honor.

6 THE COURT: Anything on Recross?

7 MS. SHAW: No, Your Honor.

8 THE COURT: Okay. I think this would be a good time
9 to break for lunch. It is 12:45, so let's be ready to go back
10 at 2:15.

11 MS. BLANCHETTE: Thank you, Your Honor.

12 MS. SHAW: Thank you, Your Honor.

13 (Recess taken.)

14 THE COURT: I'm ready.

15 MS. BLANCHETTE: Your Honor, my next witness will be
16 John Long.

17 THE COURT: Okay.

18 JOHN REUBEN LONG WAS DULY SWORN AT THIS TIME AND

19 TESTIFIED AS FOLLOWS:

20 THE CLERK: State your name and speak clearly. Thank
21 you.

22 THE WITNESS: John Reuben Long.

23 DIRECT EXAMINATION

24 BY MS. BLANCHETTE:

25 Q. Mr. Long, what is your current occupation?

1 A. I'm an attorney.

2 Q. How long have you been an attorney in the State of South
3 Carolina?

4 A. Since 2007.

5 Q. What is your current primary area of practice?

6 A. Currently, it's real estate, probate, and estate
7 planning.

8 Q. Have you continuously practiced in this state since
9 2007?

10 A. No.

11 Q. Was there a time period where you did not?

12 A. Yes.

13 Q. Where were you during that time period?

14 A. Tanzania, Africa.

15 Q. And then upon returning from Africa has your primary
16 area of practice been what it is now?

17 A. Yes.

18 Q. Okay. Now, do you recall how you became involved in the
19 case of Jamar Huggins?

20 A. I do.

21 Q. How was it that you came to be his attorney?

22 A. I was approached originally just to help the family
23 establish a bond with the, through real estate, and through
24 that process found out that Mr. Huggins' grandmother was Ms.
25 Whaley, she was actually my seventh grade teacher, and so we

1 just kind of re-established, I'd say a relationship, but she
2 asked me if I would represent Mr. Huggins.

3 Q. And then you were retained to represent him?

4 A. I was.

5 Q. And at that time what was your practice made up of?
6 Were you primarily a criminal attorney?

7 A. Primarily criminal defense and family law.

8 Q. And prior to the trial in his case how many general
9 sessions trials do you know, approximately, had you completed?

10 A. On my own? I was an associate with Hearn, Brittain and
11 Martin for a number of years and had several trials there.
12 With Mr. Huggins, as a practice on my own, I can't remember,
13 second or third.

14 Q. Okay. Now, I'm just going to run through some of the
15 discovery we've already been discussing today to confirm you
16 received it, but you did receive rule five discovery in this
17 case from the Solicitor's Office; is that correct?

18 A. Yes.

19 Q. And you had the opportunity to review that prior to
20 going to trial in this case?

21 A. Yes.

22 Q. And specifically, do you recall reviewing the five-page
23 police report that has been introduced already today?

24 A. Yes.

25 MS. BLANCHETTE: Madam Court Reporter, may I approach

1 and use these? Thank you. And I'll just show you those,
2 Number 2 which has been marked as the police report, you're
3 familiar with that?

4 A. Yes.

5 Q. Applicant's Number 3, which is Investigator Martin's
6 report, you're familiar with that?

7 A. Yes.

8 Q. Okay. You also had the opportunity to review the search
9 warrants that have been marked as Applicant's Number 4?

10 A. Yes.

11 Q. And then did you have the opportunity to go over the
12 cell phone records and text messages that were the returns for
13 those search warrants?

14 A. Yes.

15 Q. And then there are a number of recorded interviews in
16 this case, would you agree?

17 A. Yes.

18 Q. Do you recall reviewing the interview of Angela Eckler,
19 the victim?

20 A. Yes.

21 Q. Adrian Moore, the interviews that were done at the
22 hospital?

23 A. Yes.

24 Q. Okay. Tyjuan Mckeithan, where he invoked shortly into
25 the interview?

1 A. Yes.

2 Q. DeAngula Montgomery, and she had two different recorded
3 interviews?

4 A. Yes.

5 Q. Okay. And then finally, Jamar Huggins, your client?

6 A. Yes.

7 Q. Okay. Now, you said you did obtain the discovery from
8 the Solicitor's Office. Did you retain a private investigator
9 in this case?

10 A. No.

11 MS. BLANCHETTE: Your Honor, if I could beg the
12 Court's indulgence just to pull over the podium real quick?

13 THE COURT: Sure.

14 Q. And I'm sorry, did you obtain a private investigator in
15 this case?

16 A. No, I did not.

17 Q. Did you conduct your own independent investigation then?

18 A. Yes.

19 Q. Okay. So I'm going to go through with you, then, since
20 you were the one who investigated some of the specific things
21 that I just referenced and the information contained therein
22 and then ask what you did with those things. Specifically, the
23 interview of Jamar Huggins, you said you reviewed that,
24 correct?

25 A. The audio, yes.

1 Q. And would you agree that during that interview he
2 adamantly denied any involvement in this case?

3 A. Yes.

4 Q. Now, did you look into the matter of his cell phone
5 records, because in that interview would you agree that he
6 gives his cell phone number to Investigator Martin?

7 A. I did not.

8 Q. And why did you not look into getting any cell phone
9 records for Mr. Huggins?

10 A. I can't recall specifically. The only reason I would
11 not was because there would be no exculpatory value to them.

12 Q. But do you have a specific recollection of reaching that
13 conclusion based upon any type of investigation?

14 A. No. It's been so long ago.

15 Q. Okay. I'm going to take you through just regarding the
16 cell phone records, some references in Investigator Martin's
17 report that has already been admitted as Applicant's Number 3,
18 and I'm just going to reference some dates in there. If you
19 could turn to his entry for December 22nd. In there he
20 discusses getting a search warrant for Adrian Moore's cell
21 phone records, and you said you do recall going through those
22 cell phone records?

23 A. Yes.

24 Q. And then on 12/23 he recounts meeting with Adrian Moore
25 and arriving at numbers for Ms. Montgomery and for Jasamine

1 Mitchell?

2 A. Yes.

3 Q. And obtaining those records, do you recall going through
4 those records?

5 A. Yes.

6 Q. And if the return on the search warrant for Ms.
7 Montgomery shows that there were no records would you agree
8 with that? It may be easier if I could reference you to his
9 report on January 4, 2013. He goes through what the results
10 were.

11 A. Okay.

12 Q. And he states that he received a search warrant result
13 for "T's" cell phone, received cell phone results for "Juice"
14 cell phone, and I'm just summarizing this, for Shante, it was
15 registered back, actually, to a hotel room, so there was no
16 results?

17 A. Okay. Yeah. Excuse me. I have a frog in my throat.
18 Yeah, I have those three cell phone records that you mentioned,
19 but nothing for the fourth.

20 Q. And in his report he also references, and this was
21 before he got the additional search warrants just before he had
22 had Mr. Moore's, that there were text messages found between a
23 "T" and Mr. Adrian Moore, and he used that as a basis as part
24 of his search warrant. Did you review those text messages?

25 A. Yes.

1 Q. Okay. Now, you were in the courtroom today when Ms.
2 Natasha Hanna testified regarding her representation on the 29
3 and specifically went through a PowerPoint presentation?

4 A. Yes.

5 Q. And as part of that she submitted to Judge Culbertson a
6 chart that showed the interplay between the cell phones of Ms.
7 Montgomery, Mr. Mitchell, Mr. McKeathan, and then these text
8 messages, as well. Is there any reason that you didn't put
9 that information together as you were doing your own
10 independent investigation prior to trial?

11 A. I did put that information together.

12 Q. Okay. And it doesn't appear anywhere in the transcript
13 where you presented that.

14 A. Correct.

15 Q. Is there a reason why you didn't utilize that?

16 A. Yes.

17 Q. And what is that?

18 A. This was a case of identification as it came out at
19 trial and I felt like the introduction to any information
20 regarding cell phones or texts would just cloud the main idea
21 that this -- that there was no witness who could possibly
22 identify Mr. Huggins at the scene of the crime.

23 Q. So you would disagree with Ms. Hanna that it doesn't --
24 let me restate that. In Ms. Hanna's 29 motion, she was using
25 the phone records to support that it was a misidentification

1 and the only connections go back to Mr. Mitchell, not to Mr.
2 Huggins, and these phone records are between all the parties
3 but for Mr. Huggins, so you didn't feel that that was
4 appropriate to show to the Court or to the jury?

5 A. Not with the -- no, not with the -- I think you're --
6 you're assuming that, not to put words in your mouth, but I
7 think you're assuming that the three parties were conspiring
8 for some type of crime, but they had -- the three of them had
9 an established relationship over a long period of time, so I
10 didn't feel like that that -- that particular interaction would
11 be exculpatory to Mr. Huggins simply because he was not a
12 participant in their common conversation.

13 Q. Now, in your opening, and I apologize, I am going to
14 jump around, and we have had the opportunity to speak before
15 today and this case just causes us to jump around, so --

16 A. No problem.

17 Q. -- so I'm going to in discovery and jump into your
18 opening argument.

19 A. No problem.

20 Q. And this is reflected on Page 44 through 45 of the
21 record on appeal. Essentially, you say they are -- and let me
22 get it just so I don't misstate. And 44 through 45,
23 specifically on Line 12, you're in the middle of talking about
24 this incident and who's involved, and you say: You're going to
25 hear about Dray or Drake a lot. And then you continue to talk

1 and you go through, essentially, how you're going to hear about
2 Dray or Drake, and then you go into the relationship between
3 Juice, Dray, also -- I mean, Juice, Dray, and Ms. Montgomery.
4 On Page 45 you go as far as to say that Dray got behind and he
5 owed Juice \$600.00 for crack cocaine at the time this incident
6 occurred. So would you agree that your opening was focusing on
7 the relationship between those parties and that Mr. Huggins
8 wasn't part of that?

9 A. That's possible. I'm not trying to avoid the question.
10 I honestly can't remember my state of mind.

11 Q. Okay. That's fair. I'll move on. I just wanted to ask
12 that.

13 A. Okay.

14 Q. Going back to the discovery, you had mentioned you had
15 the opportunity to review the audio interview of Ms. Angela
16 Eckler, and that took place on 12/21/12, the day after the
17 incident. Also, in the report of Investigator Martin that you
18 have there in front of you, he summarizes -- well, there's two,
19 there's the summary of the interaction with her on 12/20 by the
20 first officer, and that would be in the first report and marked
21 as Applicant's Number 7. There the responding officer
22 addresses the conversation or the information he got from Ms.
23 Eckler, you're familiar with that report?

24 A. With the report or the conversation?

25 Q. With the report. You reviewed that --

1 A. Yes.

2 Q. -- in your preparation?

3 A. Yes.

4 Q. Okay. And do you need a moment to look over that before
5 I ask you some questions regarding that?

6 A. Sure. Okay.

7 Q. And in that report would you agree the information
8 available to you is she said there was a black male with
9 dreadlocks in a silver mid-size car that had come by earlier in
10 the day?

11 A. Yes.

12 Q. Looking for Dray?

13 A. Yes.

14 Q. Then she recounts how a black female came to the door
15 around 1:15 a.m. looking for him, and she was curious because
16 her boyfriend had recently been hospitalized for drug issues.

17 A. Yes.

18 Q. She also confirmed that her boyfriend had recent drug
19 problems and probably owed drug dealers money?

20 A. Yes.

21 Q. And then she actually describes the two people that
22 grabbed her as being masked men in this report?

23 A. Correct.

24 Q. Now, in her audio interview you said you've reviewed
25 that and I provided it to you to review more recently; is that

1 correct?

2 A. That's correct.

3 Q. Okay. And it's a very long interview, it's about an
4 hour and 16 minutes and in your recent review and your review
5 then do you recall that she spent a very long time talking
6 about her relationship with Adrian Moore and some issues they'd
7 experienced and how it was that he ended up in Conway Medical
8 Center?

9 A. Yes.

10 Q. And so for a majority of the interview it's actually
11 discussed their relationship, the interplay, what she did and
12 didn't know about him. During that interview would you agree
13 that she tells the officer that Mr. Moore had drained her bank
14 account?

15 A. Yes.

16 Q. She tells the officer that he had been missing, but
17 somehow her mother was at the Horry County Police Department,
18 heard over a dispatch that there was a report of a bizarre
19 individual and that's how they located him on Church Street.
20 Do you recall that information?

21 A. I don't recall that, but I have no reason to doubt it.

22 Q. And she confirmed that he had been in Conway Medical for
23 two weeks since that incident had happened?

24 A. Yes.

25 Q. That he had called her and apologized and she actually

1 went to see him at the hospital?

2 A. Yes.

3 Q. And she references the fact that she's running a daycare
4 in the home?

5 A. Yes.

6 Q. So that's all information you were familiar with based
7 upon the discovery?

8 A. Yes.

9 Q. Okay. And if you could turn to Investigator Martin's
10 report he gives a summary of that audio. He has it under his
11 entry of December 21, 2012. In there he also references that
12 prior incident that had happened earlier in the day?

13 A. What day was that?

14 Q. December 21, 2012. It's the first page of Investigator
15 Martin's report.

16 A. Okay.

17 Q. She recounts the incident that happened earlier in the
18 day with the vehicle coming by looking for Dray?

19 A. Yes.

20 Q. Okay. And she also indicates in there that it was two
21 black males, but this time she says one, the one with the gun
22 had a mask. Did you note that difference from her audio to
23 this report now that there was only one masked man?

24 A. Yes.

25 MS. BLANCHETTE: If I could beg the Court's

1 indulgence, just one moment?

2 Q. So those are kind of the questions I wanted to ask you
3 about what you knew about Angela Eckler from the interview and
4 from the reports going into trial. I want to talk with you a
5 little bit more about Adrian Moore. You had the opportunity to
6 review the crime scene report again of the first one dated
7 12/20/12 where they give the initial information, the one that
8 is not Investigator Martin's?

9 A. I'm sorry?

10 Q. I apologize. Yeah, the number seven there with the
11 12/20 of 2012 entry. Would you agree that that report
12 indicates that they made checks and it revealed a lengthy
13 record of violence and narcotics for Mr. Moore?

14 THE COURT: Counsel?

15 MS. BLANCHETTE: Yes, Your Honor.

16 THE COURT: I want to make sure we have the exhibits
17 right. My 7 is the incident report from July.

18 MS. BLANCHETTE: I think I'm reading this number
19 wrong. I apologize, I'm just having trouble reading that
20 number, so I'll check with the court reporter real quick.

21 THE COURT: That's 7.

22 MS. BLANCHETTE: And I apologize, that's why I'm
23 confusing him, too.

24 MS. SHAW: I have Applicant's 7 listed as the
25 incident report dated March 1, 2012.

1 MS. BLANCHETTE: It is, and I should have been
2 referring to 2. I apologize. Thank you, Your Honor, and I am
3 sorry, Mr. Long, I wasn't trying to confuse you. There was no
4 strategy in that, that was just my looking at the wrong report.

5 THE WITNESS: No sweat.

6 BY MS. BLANCHETTE:

7 Q. So Applicant's Number 2 that has the entry that begins
8 on December 20, 2012.

9 A. And what were you referring to?

10 Q. If you could look at the start of, it's kind of like a
11 second paragraph, just a little bit of indention while speaking
12 to victim one, she confirmed that her boyfriend had a recent
13 drug problem --

14 A. Uh-huh.

15 Q. -- and then at the very last sentence it says: Further
16 checks on the boyfriend revealed a lengthy record of violence
17 and narcotic incidents?

18 A. Yes.

19 Q. And then the last sentence says: I was unable to
20 interview the boyfriend at Conway Hospital where he's a patient
21 and may be able to advise who his drug dealers are that needed
22 money. You're familiar with that information?

23 A. Yes.

24 Q. Did you ever have anything in the discovery regarding
25 Adrian Moore's criminal record?

1 A. In the discovery?

2 Q. Yes.

3 A. Not in the discovery, no.

4 Q. Is that something that you looked into?

5 A. Yes.

6 Q. And what did you do to look into that?

7 A. I pulled up a history of Mr. Moore.

8 Q. Okay. And what were you able to ascertain from that, or
9 how did you use that in the preparation of your case?

10 THE WITNESS: Court's indulgence?

11 THE COURT: Yes, sir.

12 A. I ran a Checkmate background report on Adrian Moore to
13 find out names and alias', birth information, criminal history,
14 marriage, things of that nature.

15 Q. And you said you reviewed, also, the audio interview
16 that was conducted, he actually went out there two different
17 times, Investigator Martin, to speak to him at Conway Medical,
18 correct?

19 A. Yes.

20 Q. And would you agree in that as also reflected in the
21 report that he gives information that leads them to both
22 Jasmine Mitchell and DeAngula Montgomery?

23 A. I don't remember that specifically. I heard earlier
24 testimony. I have no reason not to believe that.

25 Q. If you want to look at the report it's the entry, just

1 one moment here. And this would be Investigator Martin's
2 report, which may be an easier way to keep these straight, he
3 recounts his meetings from December 23rd of 2012.

4 A. Yes. Okay.

5 Q. And would you agree that the information as recounted
6 there is that Mr. Moore in the conversation identified an
7 individual, Jasmine Mitchell, and then ultimately the
8 information he gave led them to identify Ms. Montgomery?

9 A. Yes.

10 Q. And you've also reviewed the audio. Do you recall in
11 there he also gives the name of a "T" --

12 A. Yes.

13 Q. -- that ultimately becomes Tyjuan Mckeithan?

14 A. Yes.

15 Q. Okay. And you reviewed the audio of Tyjuan Mckeithan?

16 A. Yes.

17 Q. And if you could turn to the entry for December 28th of
18 2012. That, again, addresses the two text messages that the
19 investigator found between Tyjuan Mckeithan and Adrian Moore?

20 A. Correct.

21 Q. And just to make sure I'm clear, did you identify and
22 look at those along with the additional texts we've introduced
23 today, or what did you do regarding the text?

24 A. I just have the same record -- I had the same record as
25 Applicant's Exhibit 5 and 6 in my file.

1 Q. And had you claimed to do anything with those at trial?

2 A. Let's see. Sorry. I had this organized up until about
3 ten minutes ago. Yes.

4 Q. And what was it you planned to do with them at trial?

5 A. My initial plan, my strategy I must say changed
6 completely once Ms. Montgomery testified. The strategy that I
7 had planned coming into trial, that included asking Detective
8 Martin, I was going to cross-examine him on the phone records
9 and -- the phone records. I can list the questions I was going
10 to ask him about the phone records if you like.

11 Q. I think it's fair to say you prepared a
12 cross-examination regarding the phone records?

13 A. That's correct.

14 Q. And did you plan to go into all the information that Ms.
15 Hanna went into on the 29?

16 A. Yes, up until Ms. Montgomery testified.

17 Q. And once again, I'm jumping around, and I apologize --

18 A. That's fine.

19 Q. -- but we've been doing this for years and it just
20 jumps, doesn't it? Your opening, you talk about the three of
21 them?

22 A. Yes.

23 Q. Then Ms. Montgomery testifies, and you're saying you
24 abandoned the cross-examination you had planned, but why didn't
25 you keep going with the strategy that not only does she not

1 identify him, it's clear from the discovery that I have that
2 these are the people that did it?

3 A. Once Ms. Montgomery -- Once Ms. Montgomery testified,
4 this became a question of identification of Mr. Huggins at the
5 crime scene. Prior to that the strategy was having to
6 discredit Ms. Montgomery and having Ms. Montgomery's testimony
7 contradicted through other evidence, and I had planned to
8 introduce the third party defense of Juice, but then Ms.
9 Montgomery, as you can see in my opening statement, I
10 identified -- I had started my strategy pre-Montgomery
11 testimony strategy in my opening, but then Ms. Montgomery, when
12 she contradicted her prior statements testimony at trial also
13 made me, if I continued -- she calls me to have to contradict
14 my opening statement due to her changing her testimony, so
15 that's what happened.

16 Q. So are you saying that she can't -- once she couldn't
17 identify Mr. Huggins there wasn't room for you to say and the
18 evidence shows these were the parties? She can't identify him,
19 and the evidence, the discovery, the things I can ask Mr.
20 Martin about --

21 A. Well, you could --

22 Q. -- show that there were other parties involved?

23 A. You could. I mean, I think that's discretionary. It
24 would not be advisable to me, because at that point in time
25 you're confusing the jury as to the parties at play. Ms.

1 Montgomery, in my one redirect -- excuse me, in my one
2 cross-examination question to her was, this man, Jamar Huggins,
3 was he involved with the crime? And she said, no. Then at
4 that point there are were only two witnesses left, Ms. Eckler
5 and Detective Martin. Ms. Eckler, I knew that she could not
6 positively identify whoever was in the mask because they were
7 wearing the full mask, so my limited question to her was could
8 she positively identify Jamar Huggins as the culprit, she could
9 not. So therefore, in order to keep it very simple for the
10 jury and not cloud them with my original strategy, I didn't
11 think it was necessary to go into who it could have been when
12 there was no testimony to say who -- that Jamar Huggins was not
13 involved.

14 MS. BLANCHETTE: Beg the Court's indulgence one
15 moment?

16 Q. You'd agree that the transcript reflects that the jury
17 went out at 11:05 a.m. in this case? It's reflected on page
18 165?

19 A. Sure, yes.

20 Q. Then 166 lets us know they took a lunch at 1:05 p.m.?

21 A. Okay.

22 Q. 166 also reflects that they had a question at 1:25 and
23 then the verdict comes in at 3:14 p.m. So in the course of
24 11:00 to 3:00 p.m. they were able to ask a question, eat lunch
25 and reach a verdict. Would you say that's a rather quick

1 verdict?

2 A. That's quick, yeah, but unfortunately, I cannot travel
3 back in time.

4 Q. And I'm going to do exactly that. I'm going to travel
5 back to discovery right now and ask you just a couple more
6 questions about discovery and then we'll jump into the
7 witnesses. I just wanted to ask you a little bit more about
8 Tyjuan Mckeithan. We were talking about what the information
9 you had about him going into trial.

10 A. Yes.

11 Q. And then we diverted. You said you had reviewed his
12 audio, correct?

13 A. Correct.

14 Q. And shortly after in that audio about three minutes in
15 after he's been told that his name has come up in a home
16 invasion, and he's asked if he knows Ms. Montgomery and Mr.
17 Huggins. He then says he'll only speak with a lawyer and the
18 interview ceases, are you familiar with that?

19 A. Yes.

20 Q. Did you ever do any follow up in attempt to interview
21 Mr. Mckeithan?

22 A. Yes.

23 Q. And tell us what came of that.

24 A. I interviewed him at J. Reuben Long Detention Center.

25 Q. What had you planned to utilize as far as that interview

1 at trial?

2 A. I had come up with a series of questions I was prepared
3 to ask him.

4 Q. And to be fair, the State, actually, when they're
5 putting everyone on notice of who they intend to call, he's
6 listed as one of the State's witnesses; is that correct?

7 A. That's correct.

8 Q. So you had prepared a cross-examination for him?

9 A. Correct.

10 Q. Do you have any knowledge as to why he wasn't called?

11 A. No.

12 Q. When he wasn't called were you prepared to call him?

13 A. I could have, but I did not think that he would give any
14 testimony that would bolster the prior -- or the State's --
15 their own witnesses could not put Mr. Huggins at the scene of
16 the crime and I did not think that Mr. McKeithan could add
17 anything to did that. The trial strategy was that if I had put
18 up a witness, as you know, you know, I would have to give my
19 closing argument first and I did not think that Mr. McKeithan's
20 testimony would outweigh the benefit of being able to give my
21 closing argument last.

22 Q. And I may or may not have asked you this, and I
23 apologize, when we were talking about Adrian Moore, were you
24 able to conduct an interview of him?

25 A. No.

1 Q. Did you try to locate him?

2 A. I did, to the best of my recollection -- as I say, I
3 cannot -- it has been so many years ago, I cannot say
4 specifically what efforts I took to locate him, but I can, but
5 my practice and my method and practice for criminal defense is
6 to locate witness -- key witnesses who I believe to interview.

7 Q. But you don't have a specific note or recollection of
8 speaking to him?

9 A. No.

10 Q. Or locating where he was at the time of trial?

11 A. Correct.

12 Q. Once again, you didn't have a private investigator so
13 you conducted this investigation yourself. Did you go out to
14 the neighborhood and talk to anyone?

15 A. No. I didn't think it had, again, value to it.

16 Q. And did you see where law enforcement had done any type
17 of canvas of the neighborhood?

18 A. No.

19 Q. Now, I'm going to, if you don't mind, kind of march
20 through the transcript a little bit with you.

21 A. Okay.

22 Q. And this issue appears in the amendment. Applicant has
23 alleged that you failed to object to burden-shifting statements
24 to the jury by the Court, the case is State versus Daniels. It
25 came out shortly before this trial, and in there it addresses

1 that there are certain statements the Court shouldn't make
2 because those are burden-shifting. Were you familiar with that
3 case?

4 A. I was not.

5 Q. Okay. And I'm going to ask you about some specific
6 things that the judge said and then just why you didn't object
7 to them.

8 A. Okay.

9 Q. If you don't mind looking at Page 33, Line 22. And the
10 judge tells the jury there: The primary function of this trial
11 is a search for the truth to determine what happened. And it
12 reflects that you did not object to that language. Do you find
13 that objectionable?

14 A. Based on conversations that I had with you earlier, I
15 understand it's your belief it is objectionable.

16 Q. Is it yours?

17 A. I haven't done the legal research, but I take your word
18 for it, I don't doubt you. I have no reason why I did not
19 object.

20 Q. I appreciate that. If you could look at Page 36, Line
21 four. There the judge says: After doing that you will then be
22 in a position to render your verdict, a true and just verdict
23 under the solemn oath you just took as jurors. Is there any
24 reason you didn't object to that as shifting the burden away
25 from the State?

1 A. No.

2 Q. And then if you could turn to Page 38, beginning on line
3 nine. The judge is giving them instructions and says: After
4 the arguments of counsel and a charge on the law by the Court
5 you will then be in a position to determine what the true facts
6 are and apply the law to those facts and thus render a true and
7 just verdict. Did you make an objection to that true and just
8 verdict language there?

9 A. No.

10 Q. Is there any reason why you did not? Was that part of
11 trial strategy or anything of that nature?

12 A. No.

13 Q. Now, we've already talked about your opening, and I have
14 referenced you to Pages 44 through 45 where it appears you're
15 developing an argument about the interplay between Dray or
16 Drake, who is Adrian Moore, and Ms. Montgomery and Jasamine
17 Mitchell and Tyjuan Mckeithan, is that fair to say?

18 A. Yes.

19 Q. Okay. Then from there in your opening, if you could
20 look at Page 45, Line 19. You talk about how Detective Martin
21 talks to Ms. Montgomery about this home invasion and she says,
22 oh, it was Junk. And your next line is: Junk is Jamar
23 Huggins, my client.

24 A. Correct.

25 Q. What was your reasoning there for identifying Mr.

1 Huggins as Junk?

2 A. Because it seemed to be common knowledge based on the
3 interviews that had been conducted that Jamar Huggins' nickname
4 was Junk, and Ms. Montgomery, during her interviews, she was,
5 sometimes she would refer to her co-defendant, the mask,
6 culprit, as Juice, and sometimes she would refer to him as
7 Junk, and so my trial strategy prior to Ms. Montgomery changing
8 her testimony was that I was going to identify Jamar Huggins as
9 Junk and then Juice was this third party defendant who was the
10 actual culprit, and not Mr. Huggins, but it was Juice.

11 Q. And so if you could flip to Page 139, this is the
12 State's closing argument. And if you could look at Lines 11
13 through 20?

14 A. Yes.

15 Q. And they start by saying: Mr. Long told you a few
16 things in his opening.

17 A. Yes.

18 Q. Some of them came out, some of them we never heard
19 about.

20 A. Correct.

21 Q. And there they use the fact that you identified Jamar as
22 Junk?

23 A. Yes.

24 Q. And they also say that you told them you were going to
25 be hearing about some guy named Juice and Juice and Junk but

1 they never heard about Juice?

2 A. Right.

3 Q. And with that said you stand by your decision to never
4 address Juice after opening?

5 A. I don't believe I could have. Once Ms. Montgomery,
6 because immediately after my opening, then the State's first
7 witness was Ms. Montgomery and Ms. Montgomery's testimony that
8 she changed from her -- prior testimony just the night before
9 she had referred to Jamar Huggins as Junk and Junk and Jamar
10 Huggins were involved in the crime and so I had confidence in
11 her testimony that her testimony was to be consistent with her
12 prior statements, and so I based my trial strategy on the
13 assumption that her testimony would not change at trial, and so
14 my opening statement reflects that. My intention was to
15 explain to the jury that Ms. Montgomery was actually involved
16 with the crime with Juice, not Junk, that Jamar Huggins is
17 Junk, but then when Ms. Montgomery testified with her
18 testimony, completely blindsided me, and I had to change
19 strategy mid-trial, which is the trial attorney's worst
20 nightmare.

21 Q. Did you feel -- and I'm going to talk about Ms.
22 Montgomery in a bit, but I'm going to ask this question now.
23 Did you feel at that point, though, because you keep saying,
24 like, that's when everything changed, did you tell the Court,
25 hey, I need a minute, we need a break, I may need -- this is

1 not the information we had up until this point, or even ask for
2 a continuance in the form of a couple hours until the next day?
3 Did you bring anything to the Court's attention that this has
4 totally changed be my trial strategy, I've even said things in
5 my opening I shouldn't have said, you know, was there anything
6 brought to the Court's attention that this was a complete
7 surprise to you, this information, and that you needed time to
8 prepare?

9 A. To the judge?

10 Q. Yes, to the Court?

11 A. In the middle of trial?

12 Q. Yes.

13 A. No.

14 Q. Because this was not the same information you had been
15 provided up to this point; is that correct?

16 A. Correct.

17 Q. Okay. So you at no time said, this is not what I was
18 provided in discovery, this is not what the Solicitor told me
19 as of, I don't know if it was the night before or that morning,
20 therefore, the defense needs more time to properly prepare?

21 A. The fact that Ms. Montgomery changed her prior
22 statements and said that Jamar Huggins was not involved -- or
23 she said, this man, because I believe it was confusing to
24 everybody in the courtroom, I believe, to Ms. Montgomery's
25 testimony, even reading the transcript it's confusing, so the

1 easiest way for me to determine who exactly Ms. Montgomery was
2 talking about is, if I'm not mistaken, was to point to my
3 client, Jamar Huggins, and say was this man involved in the
4 crime, and she said, no. I don't know what better testimony
5 there could be than that statement.

6 Q. Well, as Judge Culbertson pointed out in this 29 ruling,
7 why didn't you ask her then who was involved?

8 A. That's, again, I think that goes to trial strategy. I,
9 mean, I think that's a little bit of Monday morning
10 quarterback. Again, can't go back in time, but my trial
11 strategy at the time, keep it simple and if there was not a
12 witness who could put Jamar Huggins at the scene of the crime
13 then there would not be enough testimony to go forward and I
14 thought a directed verdict was expected, highly -- highly
15 likely.

16 Q. But even in the State's directed verdict argument they
17 threw out the fact that you had said Jamar was Junk, do you
18 recall that?

19 A. Yes, because of Ms. Montgomery's contradictory
20 statements.

21 Q. Now, going back to opening on Page 43, Line 10, and
22 you've talked a good bit about your opening strategy, you say
23 there that DeAngula Shante Montgomery is a convicted felon, a
24 crackhead, and then if you look at Page 46, Line 14, referring
25 to Ms. Montgomery, you say: The truth is not in this woman.

1 Would you agree that's what your opening argument was?

2 A. Absolutely.

3 Q. And then would you agree that by the end of the trial,
4 as the State essentially mocked in their closing argument,
5 you're telling them to believe Ms. Montgomery when she points
6 to him and says he wasn't involved?

7 A. I had no choice. I mean --

8 Q. And specifically on Page 137 and 139 of the State's
9 closing argument they point out that you labeled her as an
10 addicted crackhead and now you want the jury to believe her and
11 that she's telling the truth?

12 A. Correct.

13 Q. So was the strategy of just having her say, no, that's
14 not him enough? Was it reasonable you think?

15 A. Yes, but the strategy of her saying that's not him, are
16 you saying that I should have introduced more evidence?

17 Q. Well, you're saying, I just asked her, and your cross of
18 her was very brief. You just asked her if she could identify
19 him, you also asked Ms. Eckler that, but based upon the State's
20 closing argument and the statements you had already made in the
21 opening and the promises you had made to the jury, do you think
22 that was enough?

23 A. The third-party guilt that I was alluding to in my
24 strategy in my opening statement, I was going to point the
25 finger at Juice, but then -- and so I already painted, I was

1 painted into a corner based on the contradictory testimony of
2 Ms. Montgomery, I had already given my opening statement, and
3 so when -- I just felt -- I felt like the strategy, it would be
4 more inculpatory than exculpatory if I continued with that
5 defense of pointing the finger at Juice.

6 Q. Would you agree, though, and the Applicant has alleged,
7 that your opening statement was prejudicial to him? Isn't less
8 is more? You don't know at that point what the State's going
9 to say, that's what closing is for is to address what the
10 State's witness has shown?

11 MS. SHAW: Objection. This is getting to the point
12 of argumentative. Is there a question?

13 THE COURT: Please phrase it in the form of a
14 question.

15 MS. BLANCHETTE: I'll be happy to do that, Your
16 Honor.

17 THE COURT: Thank you.

18 MS. BLANCHETTE: I'll move on from the opening.

19 Q. Let's just talk a little bit more. I know we've been
20 talking about Ms. Montgomery, but kind of keep going with her.
21 You had her interview the two audio interviews by Investigator
22 Martin, correct?

23 A. Yes.

24 Q. Okay. And then there was this interview the night
25 before?

1 A. Yes.

2 Q. And was that in any way recorded or provided to you or
3 information the Solicitor gave you about what they expected to
4 come from that?

5 A. It was recorded and provided to me.

6 Q. And do you have a copy of that still?

7 A. No.

8 Q. Okay.

9 A. If I recall correctly, well, I know it was Investigator
10 Livingston with the Solicitor's Office was the one that
11 conducted the interview, and if I'm not mistaken I think it was
12 on the audiotape and Solicitor Elder, she said she wasn't able
13 to provide me with a copy, but she did play it for me and I
14 heard it. After I listened to it I had a conversation with
15 Huggins.

16 Q. But that wasn't something you're able to provide as part
17 of this PCR process; is that correct, that's not something in
18 your file?

19 A. Correct.

20 Q. That's just from your recollection of it and then what
21 you discussed with him?

22 A. Correct.

23 Q. So going back to the one that we do have a recording
24 from on January 11, 2013, it's also reflected in Investigator
25 Martin's report. Are you familiar with the fact that Ms.

1 Montgomery actually invoked during her interview?

2 A. Yes.

3 Q. Investigator Martin.

4 A. Yes.

5 Q. But he then continued to question her and did a second
6 interview?

7 A. Yes.

8 Q. Is that something that you are considered raising and
9 asking Investigator Martin about?

10 A. Yes.

11 Q. And is there a reason why you didn't do that, especially
12 once this issue came up of her changing what she had said?

13 A. Detective Martin was the third witness called during
14 trial, the third and final witness. I had already -- my
15 strategy, as I said, it shifted after Ms. Montgomery's change
16 in her testimony, this became a question -- a case of
17 identification, and so any evidence that was above and beyond
18 the identification of Jamar Huggins at the scene of the crime,
19 I thought it would be confusing or unnecessary for the jury to
20 hear.

21 MS. BLANCHETTE: I want to go through a little bit of
22 her testimony, and Your Honor, the brief from the 29 is a
23 recitation of her testimony, as well. I don't plan to march
24 through every line, but I just ask the Court to take judicial
25 notice of that brief as well.

1 Q. Would you agree, and this is reflected on Pages 49
2 through 59. It begins with her having recall issues. She
3 doesn't recall talking to the Solicitor. She doesn't recall
4 the incident. She can't remember making identification, there
5 was a series of recall issues, is that fair to say?

6 A. Yes.

7 Q. Okay. And then specifically, on Page 50, as she's going
8 through all that, Line 13, the Solicitor just continues to ask
9 her, do you remember making statements, do you remember doing
10 this, and her response on Line 14 is, I'm on medication now, so
11 I can't remember nothing, really. Did you ever consider
12 raising competency issues under Rule 601 regarding Ms.
13 Montgomery?

14 A. Ms. Montgomery gave very good testimony to -- for Mr.
15 Huggins. It was a benefit for her. She said that he was not
16 involved with the crime.

17 Q. But if the jury convicted Mr. Huggins wouldn't they have
18 had to believe where the Solicitor gets in the information
19 about her prior statement and Investigator Martin's testimony
20 that Mr. Huggins was involved, she had previously identified
21 him and she had previously given statements against him.

22 A. So what's your question?

23 Q. My question is, didn't the jury ultimately have to
24 believe that she had made some type of identification and
25 implemented him in the crime to find him guilty?

1 MS. SHAW: Objection, Your Honor. That's calling for
2 speculation into the jury's minds about what they had to
3 believe or what they didn't have to believe. I mean, I think
4 the transcript is pretty clear that whatever she said, they
5 didn't believe her, so at that point Mr. Moore -- I'm sorry,
6 Mr. Long can't possibly know exactly what's going on in their
7 heads so that's not even a question he could answer.

8 MS. BLANCHETTE: I can rephrase my question.

9 THE COURT: Okay. Thank you.

10 Q. In closing were you asking the jury to believe Ms.
11 Montgomery?

12 A. I have to review the closing. Do you know what page and
13 line the closing starts?

14 Q. Just one moment and I can get that for you.

15 MS. SHAW: 142.

16 MS. BLANCHETTE: I'm sorry, I thought he heard you,
17 142.

18 A. I can sit here and read it.

19 Q. Well, just going through all this explanation you have
20 been given about your trial strategy, once she didn't identify
21 him, as you're stating happened, you wanted the jury to believe
22 her?

23 A. What do you mean, as I'm stating? She said she did not
24 -- do you not think --

25 Q. Well, the transcript reflects that for about ten pages

1 she says she can't remember, she can't remember. They ask her
2 all about her prior statements, her prior identification of
3 him, then on Cross you do ask her if she did can identify him
4 and she can't.

5 A. What did she say?

6 Q. I'm sorry, I don't think you can ask me questions. By
7 the end, it appears, I was taking your strategy was that they
8 should believe her that he wasn't involved; is that correct?

9 A. Yes, ma'am, of course. Am I going to tell them not to
10 believe my client, a witness that told my client was not
11 guilty?

12 Q. Now, if you look at Page 56 of her testimony, the
13 Solicitor has been asking her questions, and if you need to
14 take some time to review it, really beginning on Page 54, tell
15 us what happened after you knocked on the door, and it's taking
16 her through step by step of what happened, and the Solicitor in
17 asking those questions as they continue through Page 56,
18 interchangeably uses the name Jamar. Did Jamar not do this,
19 did Jamar not do that, so despite her not specifically giving
20 his name, is there any reason you didn't object when the
21 Solicitor was interjecting him into the series of events and
22 leading her through that, specifically Line 22 on 55: And how
23 long was it before Jamar came out and got in the car with the
24 other male?

25 A. It was my opinion that based on the give and take of the

1 Solicitor and also the witness, Ms. Montgomery, it was in our
2 favor.

3 Q. And then on Page 56, she says: And you identified Jamar
4 Huggins. She says: I described him the best I could. So
5 throughout this she has some recall issues, but the Solicitor
6 does try to bring in this identification, description, and all
7 of the information she gave regarding Jamar Huggins, is that
8 fair to say?

9 A. Yes.

10 Q. And you never saw reason to object for leading?

11 A. If you'll notice in my --

12 MS. SHAW: Objection, Your Honor, this has been asked
13 and answered, and this is also getting into argument. I mean,
14 I think we should save that for closing. The question is did
15 he object, no, he didn't, why didn't he, and he already said
16 why, that he did not feel it would be beneficial to his client
17 based on the interaction between the witness and the Solicitor,
18 so in addition to the argumentative issue, it's asked and
19 answered.

20 THE COURT: Counselor?

21 MS. BLANCHETTE: Your Honor, I don't think I
22 specifically asked him about the leading. I know that he gave
23 an answer before, but I just gave him two specific references
24 that I then asked why he was not objecting.

25 THE COURT: Okay. I'll overrule the objection, but

1 keep moving.

2 Q. If you could look back, and I apologize if this is not
3 keep moving, please tell me, on Page 54, Line six, you do make
4 an objection, and I want to be fair to you that you did object
5 at one point.

6 A. What line is that?

7 Q. Line six. And you make an objection and then the Court
8 clarifies that she's asking her about what's in her prior
9 statements, and I'll give you a chance to look through that,
10 54, Line 6 through 13.

11 A. I can't tell based on the transcript. Sometimes the
12 transcript doesn't really reflect accurately what's happening
13 in the courtroom. There may have been something that, the
14 speed, I'm not sure, but --

15 Q. And I just wanted to be fair to you to say there was an
16 objection and see if there was anything you wanted to explain
17 regarding that?

18 A. No.

19 Q. But you would agree that the Solicitor attempts to get
20 all the information about her prior statement in through
21 questioning her even though she's having these recall issues?

22 A. I don't recall.

23 Q. I know you've talked a lot about your purpose and what
24 you did with Cross and we did talk about Juice. I just wanted
25 to ask, was there any reason why you didn't ask her about

1 Adrian Moore and her involvement with him in your
2 cross-examination of Ms. Montgomery?

3 A. Again, I think I've already explained this, but I just
4 felt like when she said that this person, then pointed to Mr.
5 Huggins: This person was not involved with the crime. I do
6 not know of any other information that I could extract from her
7 that would be more beneficial. If anything else, it only could
8 lead to further Redirect because that was another consideration
9 that I typically have during cross-examination. I want to
10 limit Redirect of the Solicitor, and there was just, I think
11 the benefit outweighed any -- excuse me -- I think that
12 strategy outweighed any benefit I might have with further
13 questioning.

14 Q. Okay. Then beginning on Page 75, this is after Ms.
15 Eckler. I'm going to jump back to Ms. Eckler in a minute.
16 There becomes a discussion of doing a Jackson versus Denno
17 hearing at this point and introducing Mr. Huggins interviews
18 and then also the State trying introduce Ms. Montgomery's, and
19 the judge is talking about doing the Jackson versus Denno
20 hearing, as the transcript reflects. It sounds like he's going
21 to take a five-minute break because you said you weren't
22 prepared, on Page 77, to do a Jackson versus Denno, and then
23 there's really no further mention of it. So I was hoping you
24 could help us understand that and just to be fair to the
25 analysis of what was going on.

1 A. I read that in preparation for this hearing, and
2 honestly, I can't remember what was going on that. I
3 apologize.

4 Q. And ultimately, though, the State isn't allowed to
5 introduce, they were allowed to ask her questions but not
6 introduce her prior interviews, and then they also did
7 introduce Mr. Huggins; is that correct?

8 A. Correct.

9 Q. Now, let's talk a little more about Angela Eckler. So
10 after everything happened with Ms. Montgomery she was the next
11 witness, would you agree?

12 A. Yes.

13 Q. And prior to trial you had everything that we discussed,
14 you had the interview, you had the police reports regarding Ms.
15 Eckler?

16 A. Correct.

17 Q. Now, in her testimony on Page 65, Line 1, I'm just going
18 to point out some things and then ask why you didn't
19 cross-examine her on these. Page 65, Line 1. In contradiction
20 to the information that she gave in the reports and interview
21 that we talked about, she says at that point that Adrian had
22 just been gone for about a week, and she goes on to explain
23 that she thought maybe he was involved in an affair. Would you
24 agree that that contradicts all of the information that she
25 gave law enforcement about the fact that he had this drug

1 problem, he had been in Conway Medical for two weeks, she went
2 to visit him there, that's not the same story that was
3 reflected here at trial?

4 A. Correct.'

5 Q. She does say on Page 72 that she knew he was in Conway
6 Medical because he had called her but she never went into going
7 to visit him and just all of the details regarding Adrian? Is
8 there any reason on cross-examination why you didn't ask her
9 about those things?

10 A. Yes.

11 MS. SHAW: Your Honor, before we go into all of this
12 about Adrian Moore and Ms. Eckler again, we're not here to
13 impugn the victim's story and we're not here to impugn Mr.
14 Moore who was already incarcerated in another state. We're
15 here to establish whether Mr. Long's representation was legally
16 sufficient and met the Strickland standard in this matter and
17 Moore was not involved in this crime, Eckler was a victim.
18 Impeaching them or trying to impeach the victim, I mean, how is
19 that relevant to the question of whether Mr. Long effectively
20 represented Mr. Huggins? It's frankly not. I mean, whether
21 the victim --

22 THE COURT: Well, that's ultimately my decision,
23 isn't it?

24 MS. SHAW: Well, Your Honor, what my point is is
25 that, you know, this is not an issue about his investigation,

1 this is an issue about whether she changed her story at any
2 given time, but her story about Mr. Huggins has been
3 consistent, she could never identify him, so what does it
4 matter if Mr. Moore was having an affair, or if he was in the
5 hospital or if he was somewhere else? That's my question.
6 What is the relevance of this testimony? I feel like we're
7 belaboring the Court at this point.

8 THE COURT: Ms. Blanchette? I mean, I think I
9 understand what you're doing. You're effectively, I want to
10 use the correct word, you're effectively examining everything
11 he did with respect to each witness, I believe, is where you're
12 headed?

13 MS. BLANCHETTE: Yes, Your Honor, I tried to start --

14 THE COURT: And if there was a potential to impeach
15 that witness, you're indicating that he should have?

16 MS. BLANCHETTE: Right. And I tried to start with
17 discovery and I know I jumped around, but I was trying to go
18 through each person and what he had in discovery. Now I'm
19 connecting it forward to what happened at trial and asking if
20 he did this independent investigation himself and was familiar
21 with these things, why he did not utilizing them at the trial.
22 And yes, I am asking him about impeaching the victim, but this
23 is a credibility case. I mean, that's what we've been
24 discussing all day long, and in our amendment it clearly says
25 that we're alleging he was ineffective in his handling of

1 matters related to Ms. Eckler and related to Adrian Moore. So
2 that's what I said, this amendment isn't how I usually write
3 them, but I was trying to put everybody on notice that we
4 intended to go into these things. One, regarding his pretrial
5 preparation regarding these people, and then, two, what he did
6 at trial regarding these people, and I think his opening
7 argument is what makes all of this relevant. He puts Adrian in
8 it himself. He says: You're gonna hear about Dray, you're
9 gonna hear about Drake, you're gonna hear a lot about it, so I
10 am trying to get to whether or not that was a reasonable
11 opening and trial strategy and then how he played that out
12 through the course, and so I do think it's relevant to the
13 Court's consideration.

14 THE COURT: Ms. Shaw, anything else?

15 MS. SHAW: Your Honor, just, I mean, the fact that
16 counsel is suggesting that Mr. Long should have impeached a
17 witness who was testifying favorably for his client, I think
18 speaks for itself. There was adequate trial preparation, that
19 is obviously Your Honor's call, but, you know, I don't want to
20 waste the Court's time in going through all of this testimony
21 needlessly when materially it doesn't -- any effect of it at
22 all would not have harmed Mr. Huggins, if anything it would
23 have helped him.

24 THE COURT: Okay. Well, I'll overrule your
25 objection. I'll allow her to go forward a little bit longer.

1 MS. SHAW: Thank you, Your Honor.

2 Q. She testifies on Page 66 that it was a quiet
3 neighborhood, they didn't lock their doors. Again, had you
4 come up with any information that would refute that or any
5 concerns regarding the neighbors?

6 A. I did not feel that that's relevant.

7 Q. She also makes no mention of, she says in her own
8 statement she was running a daycare out of the house. Did you
9 ask her any questions about that?

10 A. Yeah, I did not feel it was relevant. I didn't feel a
11 need to impeach the witness. As a general trial strategy,
12 defense attorneys try not to beat up victims unnecessarily and
13 I did not feel contradicting these details was to Mr. Huggins'
14 best interest.

15 Q. Just one more detail I need to ask you about. In her
16 reports one says: One male with a mask. Another says: Two
17 with masks. In her testimony on Page 70, she said she didn't
18 see either ones face but she doesn't mention anything about
19 masks. Any reason why you didn't bring up the mask detail?

20 A. In my pretrial preparation, I had prepared a series of
21 questions for Ms. Eckler and that point I had prepared to ask
22 her those questions, I had prepared to ask her a question about
23 a man coming into her driveway earlier that afternoon. He
24 asked for Dray or Drake, a man asked about the wrong house, I
25 was going to go into all the questions. A lot of the questions

1 I thought were relevant from her statement, however, once Ms.
2 Montgomery changed her testimony, again, I sound like a broken
3 record, but I believe the case became one of identification and
4 I knew that Ms. Eckler was not able to identify her assailant
5 because he was wearing a mask, and so Ms. Montgomery had just
6 previously testified that this man, the defendant, was not
7 involved with the crime. I knew Ms. Eckler was not able to
8 positively identify anyone, so again, keep it simple, I did not
9 need to beat the victim up in front of the jury. I did not
10 feel like I needed to impeach her, and even though I did not
11 enjoy breaking away from my pretrial preparation and strategy,
12 I thought that it was the right decision based on the
13 circumstances. I thought the jury would appreciate the
14 exculpatory evidence that Ms. Eckler could not identify the
15 defendant at the scene of the crime.

16 Q. That just made me think of a question. I asked you
17 before about a continuance, and I know that in your response it
18 didn't appear that that was something, you know, you thought
19 was feasible or something you had asked for, but you would
20 agree you were having to do this on the fly, you were having to
21 adapt and change on the fly?

22 A. Correct.

23 Q. Okay. Because I just don't see anywhere in the
24 transcript where there was a break taken or anything of that
25 nature, so you're just flowing through these witnesses one

1 after another; is that correct?

2 A. It's kind of the nature of the business.

3 Q. Okay. The last one I want to talk with you about is
4 Investigator Jonathan Martin. The first one asked you about
5 where Tyjuan Mckeithan comes up in his direct testimony because
6 we've already discussed Tyjuan Mckeithan and the work that you
7 did pretrial. If you could turn to Page 102. And he's asked:
8 There now during the course of your investigation you also
9 interviewed another individual; is that correct? And he brings
10 up Mr. Tyjuan Mckeithan. And then he's allowed to refresh his
11 memory with his report and he talks about his interview. Then
12 on Page 103, this is kind of the end of his testimony, about
13 Tyjuan Mckeithan, do you recall that?

14 A. Yes.

15 Q. And he indicates there on Page 103 that Tyjuan had
16 actually been arrested on another armed robbery with Ms.
17 Montgomery?

18 A. Yes.

19 Q. Now, in your cross-examination of him, which is on Page
20 108, you asked him, beginning on Line 12, that after he
21 interviewed, let me make sure I'm giving you the right -- you
22 go through on Line 16, everyone that he interviewed. Do you
23 see that there on Line 16?

24 A. Yes.

25 Q. And you essentially asked him about stopping his

1 investigation, but he says he did one more interview, this is
2 on Page 109, that he interviewed Tyjuan Mckeithan, and then he
3 never made another arrest. Would you agree that that makes the
4 jury believe that there was no basis on which he could arrest
5 Tyjuan Mckeithan by eliciting that information from him?

6 MS. SHAW: I'm sorry, Ms. Blanchette, would you ask
7 that question again? I couldn't quite hear you.

8 MS. BLANCHETTE: Okay.

9 BY MS. BLANCHETTE:

10 Q. Would you agree --

11 MS. BLANCHETTE: And I'm sorry, I've had my back
12 turned to you the whole time, I know that you may have
13 difficulty hearing me, let me turn a little bit.

14 MS. SHAW: I appreciate it. Thank you.

15 Q. Would you agree that your cross-examination there where
16 you're asking about who he spoke and then he never made another
17 arrest after talking Ty could leave the jury to believe that
18 there was no basis on which to arrest Tyjuan Mckeithan in this
19 case?

20 A. I'm not sure.

21 Q. And then after you asked those questions, the State does
22 a much lengthier cross -- or a redirect regarding Tyjuan
23 Mckeithan. Beginning on Page 110, Line 20, he's asked: You've
24 had two people identified, Jamar Huggins and DeAngula
25 Montgomery, yes, and you've got warrants for both of those

1 individuals. And then they spring into talking about Tyjuan
2 Mckeithan, and he asks him, essentially, a series of questions
3 of what did Tyjuan Mckeithan tell you. At any point did you
4 think to object as this to being investigative hearsay? He's
5 essentially getting to say what Tyjuan Mckeithan told him
6 without the State having to call Tyjuan Mckeithan.

7 A. I can't recall.

8 Q. But do you have any basis for not entering an objection
9 here?

10 A. I can't recall, I'm sorry.

11 Q. In your cross-examination of him where you guys are
12 discussing Tyjuan, so I'm flipping back a little bit, and you
13 may have already answered this, but I just want to make sure we
14 have addressed it, is there any reason why you didn't bring up
15 the fact that Tyjuan Mckeithan had invoked? Because that does
16 not get addressed anywhere here where they're talking about
17 Tyjuan Mckeithan and that the interview ceased, that's why he
18 didn't say anything?

19 A. No.

20 Q. Now, as to Investigator Martin regarding DeAngula
21 Montgomery, if you could flip to Page 91 through 94. There it
22 appears, and if you need a chance to review it I'll kind of ask
23 the question and allow you to explain, that there's discussion
24 being had about what Detective Martin can go into regarding Ms.
25 Montgomery's prior statements. Upon review it doesn't appear

1 the Court ever makes a ruling. Could you just kind of explain
2 to us what your understanding of that was?

3 A. I can't remember.

4 Q. Do you want to take a minute to review it?

5 A. Well, it's been ten years.

6 Q. Okay.

7 A. I can review it, but that doesn't ring a bell.

8 Q. Well, then on Page 99, if you look at Line 25.

9 Investigator Martin has asked a series of questions of what Ms.
10 Montgomery told him and about her identifications of Mr.

11 Huggins and all of the information she gave him regarding Mr.
12 Huggins. Is there any reason you didn't object to the series
13 of questions on Pages 99 through 100?

14 A. I can't recall why I did not other than the fact that
15 Ms. Montgomery had already testified that that person there was
16 not involved with the crime.

17 Q. But wouldn't you agree, or would you agree, I should ask
18 that differently, would you agree that by them here asking
19 these questions of Mr. Martin they are trying to rectify what
20 happened, they're trying to show that she did, in fact,
21 identify Mr. Huggins?

22 A. She had talked about Jamar Huggins in her testimony and
23 she had talked about Junk in her testimony, but she said: That
24 man there was not involved with the crime.

25 Q. And on Page 102, Line 3, though, they began asking him,

1 so that we're clear, is that Jamar Huggins that you identified
2 through your investigation the same Jamar Huggins that's
3 sitting here today, and he does an in-court identification of
4 Jamar Huggins. So even though Ms. Montgomery didn't do it,
5 here Detective Martin is used to make an in-court
6 identification as Jamar Huggins as the person that he
7 identified through the course of his investigation as being
8 involved in this and as a result of what Ms. Montgomery had
9 said. If you could just answer audibly for the Court? I
10 apologize.

11 A. What was the question?

12 Q. Would you agree that they're essentially using
13 Investigator Martin here to make the identification that she
14 failed to make?

15 A. It appeared, yeah, they were trying bolster, change, you
16 know, as you say, contradict her testimony, yes.

17 Q. And you said you didn't really want to push it, but on
18 Cross, on Page 104, you asked and you were in the courtroom
19 earlier when you heard that Shante DeAngula Montgomery said
20 Jamar Huggins was not involved, you were in the courtroom
21 right, and he responds: She identified that that man was not
22 involved. Question: That's correct. Answer: To me she
23 identified Jamar Huggins was involved. So through your
24 cross-examination he identified that Ms. Montgomery said Jamar
25 Huggins was involved?

1 A. I'm sorry, you got me a little confused. Walk me
2 through that again, please.

3 Q. If you can look at Page 104.

4 A. What line?

5 Q. Lines three through eight, and then I'll ask you a
6 question.

7 A. Okay.

8 Q. Would you agree here that your question here is
9 favorable to the State and that he is able to make the
10 identification of Jamar Huggins that Ms. Montgomery didn't
11 make?

12 A. No.

13 Q. So you don't think he's identifying --

14 A. I would not purposefully injure Mr. Huggins, my client.

15 Q. Well, even if it wasn't purposefully, isn't that what
16 you elicited on cross-examination, was an identification of him
17 based upon the information Investigator Martin had from Ms.
18 Montgomery?

19 A. Where do you see that?

20 Q. Beginning on Line 3 where you ask if he was in the
21 courtroom and he agrees: She identified that that man was not
22 involved, that's correct. And then he says: To me she
23 identified Jamar Huggins was involved.

24 MS. SHAW: Your Honor, I have to object. That is not
25 what this transcript says on Page 104, Lines 3 through 8. I'm

1 sorry, Lines 3 through 7.

2 MS. BLANCHETTE: I'm sorry, I'm reading Line 8 as the
3 last line.

4 MS. SHAW: Okay. And the testimony from Ms.
5 Montgomery was that Jamar was involved, but that man is not
6 Jamar, or that man is not Junk. That was her testimony, so I
7 would just suggest that that would be a mischaracterization of
8 Ms. Montgomery's testimony from earlier in that trial.

9 THE COURT: Well, I mean, the transcript says what
10 the transcript says. I think he did his best to answer your
11 question.

12 MS. BLANCHETTE: I was going to say, I'm happy to
13 move on, Your Honor.

14 Q. Just a series of questions regarding investigation
15 regarding your Cross, we've already gone over a little bit of
16 what you did Cross him on, but is there any reason why you
17 didn't ask him about looking for the games or the camera that
18 Eckler testified were missing? Because you did ask him, you
19 asked him a series of questions, you know, did you do searches,
20 did you do these things? But is there any reason you didn't
21 ask him about looking for the evidence that had gone missing?

22 A. I had prepared prior to trial, I had prepared to ask him
23 a series of questions: Let's talk about what you did not do.
24 And one of those was, you did not go to pawn shop to see if the
25 Wii games were pawned.

1 Q. But if the transcript so reflects you'd agree you didn't
2 ask him that question?

3 A. Correct. And so I can't tell you, evidently, in the
4 presence of the trial of strategically did not have value that
5 it did before the trial.

6 Q. You asked didn't ask him, as I reviewed the transcript,
7 any questions about talking to neighbors or trying to gather
8 information from any other sources besides what we have. Is
9 there any reason you didn't go into that with Investigator
10 Martin?

11 A. We already talked about that.

12 Q. Okay. In earlier today we introduced standard operating
13 procedures that were received as a part of discovery in this
14 PCR action. Did you look into getting any standard operating
15 procedures in evaluating the investigation and any questions
16 you could ask Detective Martin?

17 A. No, I did not, but again, I did have a series of
18 questions about things that he did not do in through his
19 investigation, but I did not request SOP.

20 Q. And we've talked about this hit or miss, but I just want
21 to make sure you had the opportunity to give a clear answer.
22 We've talked about how Tyjuan Mckeithan invoked, interview
23 stopped, and then DeAngula Martin -- or DeAngula Montgomery
24 invokes -- it continued -- was there any reason you didn't
25 address that difference, because you talked with him about his

1 interview, Tyjuan Mckeithan?

2 A. He was the third witness. By that time Ms. Montgomery
3 had already said that that man, Jamar Huggins, that that man
4 was not involved with the crime, so I did not feel like any
5 extra information was necessary. If she said he was not
6 involved with the crime I didn't feel like there was any better
7 testimony that she could give other than that.

8 MS. BLANCHETTE: Your Honor, based upon the testimony
9 offered to this point, at this time I would move to admit the
10 interviews that we've been talking about at length today that
11 were provided and acknowledged provided to Mr. Long discovery,
12 were provided in discovery in this action. Those would be the
13 interviews of Ms. Eckler, Mr. Moore, Tyjuan Mckeithan, Jamar
14 Huggins and DeAngula Montgomery.

15 THE COURT: Any objection?

16 MS. SHAW: No, Your Honor. As long as they are
17 properly authenticated and complete interviews, I don't have a
18 problem with them.

19 THE COURT: Are you doing it as one?

20 MS. BLANCHETTE: I put them all on one USB device, I
21 thought that might be easier for everyone, Your Honor.

22 THE COURT: Okay.

23 MS. BLANCHETTE: And they have been provided to the
24 State electronically before, but I thought she may also want a
25 USB.

1 THE COURT: That's going to be Applicant's --

2 MS. BLANCHETTE: Nine, Your Honor.

3 THE COURT: That will be admitted without objection.

4 **(Applicant's Exhibit No. 9 was admitted into evidence.)**

5 MS. BLANCHETTE: Your Honor, for any reason any of
6 these devices don't work, please let me know and I'll make
7 sure.

8 THE COURT: Okay.

9 Q. We briefly touched on it and I know that you made a
10 motion for directed verdict and you've mentioned so far in your
11 testimony, I'm not trying to mischaracterize it in any way but
12 you thought it was close, so I just wanted to give you an
13 opportunity to -- you know, we've marched through the
14 transcript in order. As far as the directed verdict, kind of
15 what was your approach in that and where did you think it was
16 going?

17 A. Again, just my motion for directed verdict was based
18 upon the fact that there was no witness, there was no direct
19 evidence putting Jamar Huggins at the scene of the crime, and
20 so I did not feel like there was enough evidence to present it
21 to the jury. I believe it, my personal opinion, that it should
22 have resulted in a directed verdict because there was no direct
23 evidence incriminating him.

24 Q. Page 117, it kind of has the meat of your argument, and
25 if it's not, I apologize, but I mean, that seems like the

1 lengthiest part of your argument, and essentially, you argued
2 to the Court -- it's 116, 117, I apologize -- that Ms.
3 Montgomery is not credible, her prior statement is not in
4 evidence, and Ms. Eckler has not made an identification. Did
5 you have any concern, though, that the information had come in
6 through Investigator Martin about her prior statement and that
7 she had made the identifications?

8 A. That is always a concern.

9 Q. And to be fair, the judge didn't really give a basis, he
10 just said it comes down to a jury question?

11 A. Correct.

12 Q. We've already talked about the jury deliberations. Your
13 post-trial motion, you asked the judge to exercise his
14 discretion as a 13th juror and you note that you thought he was
15 close the awarding the directed verdict, so I assume it's fair
16 to say you were pushing him to try to set aside the trial; is
17 that correct?

18 A. Correct.

19 Q. Did you feel that you needed to make a lengthy record
20 for that to be considered for direct appeal, or did you feel
21 like you had the opportunity to give him everything you needed
22 to there?

23 A. I thought what I did was sufficient.

24 Q. And then the judge actually takes a break to consider it
25 overnight, do you recall that?

1 A. Yes.

2 Q. On Page 175. I'm going to flip there real quick. And
3 then when he comes back the next day, he makes his ruling, and
4 let me give you a cite for that, 176, Line 9, and he says,
5 regarding the jury: They just believed Ms. Montgomery's prior
6 statement and didn't believe her testimony at trial, is what he
7 states?

8 A. Uh-huh.

9 Q. And so to him there had been evidence put in about her
10 prior statement. Is that how you read that and how you
11 understood his ruling at that time?

12 A. That's what the transcript says. I'm not going to read
13 into it more than what the transcript says.

14 Q. But that's the ruling that he gave you --

15 A. That's what's in the transcript.

16 Q. -- is the jury must have believed her prior statement?

17 A. That's what's in the transcript.

18 Q. Now, we talked a little bit about the 29. You and I had
19 the opportunity, correct, to sit down in your office and go
20 over it and discuss it previously?

21 A. Correct.

22 Q. And you're aware of Judge Culbertson's ruling?

23 A. Yes.

24 Q. And you have also had the opportunity to familiarize
25 yourself with the affidavit and the filings and arguments of

1 Ms. Hanna?

2 A. Yes.

3 Q. Okay. And I know that we have addressed this, but I
4 just want to make sure we're really clear and address this
5 issue separately. Is there any specific reason that you
6 haven't already given as to why you didn't ask her additional
7 questions as Judge Culbertson rules could have done at the time
8 of trial?

9 A. Who are you referring to?

10 Q. I'm sorry, Ms. Montgomery. His ultimate ruling, Judge
11 Culbertson via the Form 4 order that's reflected on Page 270 of
12 the transcript, it states: When DeAngula Montgomery refused to
13 identify the true perpetrator at trial the defendant did not
14 press her on that issue or ask that she be required to identify
15 who committed the crime. He also notes at the time of DeAngula
16 Montgomery's testimony at the defendant's trial she had already
17 pled guilty and been sentenced to one of the crimes in this
18 case. And whose job was it to ask her those questions that
19 he's referring to there, when he says: The defendant did not
20 press her?

21 A. That would be me.

22 MS. BLANCHETTE: If I could beg the Court's
23 indulgence one moment? Your Honor, I have no further
24 questions.

25 THE COURT: We've been going about an hour and a

1 half, so let's take a ten-minute break. We'll be back at 3:55.

2 (Recess taken.)

3 CROSS-EXAMINATION

4 BY MS. SHAW:

5 Q. Good afternoon, Mr. Long.

6 A. Good afternoon.

7 Q. We talked earlier today?

8 A. Yes.

9 Q. Mr. Long, when you were initially retained, you were
10 only retained to obtain a real estate property bond for Mr.
11 Huggins so he could be out pending his trial, right?

12 A. That's correct.

13 Q. Okay. And this morphed into a full representation just
14 based on the relationship you had with his grandmother?

15 A. Yes.

16 Q. And you were an experienced criminal attorney at the
17 time that you tried this trial, right?

18 A. Yes.

19 Q. And just remind me, how many jury trials and bench
20 trials had you done in criminal court?

21 A. In general sessions?

22 Q. Yes, and magistrates?

23 A. And magistrates? Up to about 10 or 12, maybe 15.

24 Q. So you were fairly experienced at being able to identify
25 major issues in cases as they were presented to you?

1 A. Yes.

2 Q. And in this case when you initially met with the family
3 and when you met with Mr. Huggins, what was your impression of
4 the legal issues in this case that you were going to come up
5 against if, in fact, it needed to go to trial?

6 A. Well, I think, primarily, knowing that Ms. Montgomery
7 was the key witness, it was going -- we would have to
8 contradict her testimony in some way, call it into question,
9 because all the witnesses seemed to have her as common
10 denominator.

11 Q. So Ms. Montgomery and her presence at the scene of the
12 crime, her affiliation with Mr. Huggins and with Mr. Moore and
13 with Mr. McKeithan, I'm sorry, there's a lot of M's in this
14 case, with all of those individuals, that was kind of the one
15 common piece? She was involved with each of them?

16 A. Correct.

17 Q. And so as part of your trial preparation, you placed, I
18 would say, a fair amount of emphasis on what she was going to
19 say, and that was a fairly important thing to your preparation,
20 right?

21 A. Yes.

22 Q. So in your preparation, specifically with regard to Ms.
23 Montgomery, can you just remind us all what, in fact, you did
24 do?

25 A. Of course, reviewed all of the evidence in the

1 discovery, took into great detail all of the audio interviews
2 that were provided, and just studied those, took notes, I
3 probably listened to them five or six times a piece, and I just
4 used them to -- as I would develop questions I would have for
5 them on cross-examination and also comparing, contrasting the
6 audio interviews with each other.

7 Q. And the various statements that different people had
8 made in this matter regarding her involvement and other
9 individuals involvement?

10 A. That's right. And the detective work that was done with
11 Ms. Montgomery, I paid close attention to that. They used
12 deceptive measures with her that I thought went above and
13 beyond what police should be doing.

14 Q. And you're aware that police are allowed to use certain
15 amounts of deception, correct?

16 A. Certain amount.

17 Q. Okay. And in your opinion, Investigator Martin's
18 interviews of her went beyond that?

19 A. In my opinion.

20 Q. What specifically did you think he went beyond?

21 A. The photo identification lineup that he used. When he
22 was interviewing Ms. Montgomery he showed her a photographic
23 lineup that she was in, her picture was circled, and it said --
24 if I could refer to it?

25 Q. Yes, please. If you need to refer to your notes, by all

1 means, please do so.

2 A. It was written by Ms. Montgomery's picture that was
3 circled: This is the lady who robbed me. She knocked on my
4 door and asked for Dray. And as it turned out, that was, her
5 picture was circled and written by the investigator.

6 Q. So that was not actually an identification by Ms.
7 Eckler, that was the police using deceptive tactics to try and
8 get more information out of Ms. Montgomery?

9 A. Correct.

10 Q. And what other concerns did you have with the
11 investigation and how it went with regard to her and certain
12 other witnesses, if any?

13 A. Of course, I had the concern of just not being able to
14 have as much contact with him as I typically, as witnesses and
15 as I like to have.

16 Q. And was that because they all had their own separate
17 pending criminal charges and were represented?

18 A. There were various reasons. There were pending charges
19 that there -- if I remember correctly, and I know that Ms.
20 Montgomery had pending charges and I know that she was
21 represented by a public defender, Eric Fox, and so getting --
22 being able to ask her questions about another pending case, I
23 didn't think was possible, and then being able to track down
24 witnesses was very difficult.

25 Q. And Tyjuan Mckeithan, he also was represented by counsel

1 at that point, correct?

2 A. Yes, but I was able to identify -- excuse me --
3 interview Tyjuan -- oh, I'm sorry, you said --

4 Q. Tyjuan Mckeithan.

5 A. Tyjuan Mckeithan?

6 Q. Yes.

7 A. Yeah, I was able to interview him prior to trial.

8 Q. And were you able to locate and interview Jasamine
9 Mitchell?

10 A. I identified him, found out where he lived, I drove by
11 his house, I was hoping they would catch up with him. There
12 were several people sitting on the front porch. I didn't think
13 it would be a good idea for me to stop. He was also
14 represented by a defense attorney, Scott Bellamy, who I know.
15 I contacted Scott Bellamy and talked to him about these pending
16 cases. I couldn't talk to him directly, to Jasamine directly,
17 but you know, one of my regrets, I think in this case is, Scott
18 Bellamy gave me a valid reason why Jasamine was not involved
19 and --

20 MS. BLANCHETTE: Your Honor, I would object based
21 upon hearsay if he's going to say what Mr. Bellamy said.

22 MS. SHAW: Your Honor, it's not for purposes of the
23 truth of the matter, it's actually just for purposes of what
24 did Mr. Long do upon receiving that information from Mr.
25 Bellamy and how did that affect his representation of Mr.

1 Huggins, if at all?

2 THE COURT: Objection is overruled. I'll allow it.

3 MS. SHAW: Thank you, Your Honor.

4 A. And then Jasmine, referred to him as Jasmine, I did
5 not write down the reason for his, that he was not involved in
6 this crime, and I wish I had, but for whatever his alibi or his
7 reason was, it was enough for me to know that that was a dead
8 end, that he was actually not involved in the crime.

9 Q. Okay. So you did not believe based on the information
10 you had that the alibi, it was Jasmine Mitchell rather than
11 Jamar Huggins as the third man, you did not believe that that
12 would be a valid alibi defense?

13 A. That's correct. I didn't feel ethically that I could
14 point the finger at a third party knowing that they had an
15 alibi. Now, the term "Juice," I felt like I could still use
16 the term "Juice," but not associate it with Jasmine.

17 Q. And was that because in Ms. Montgomery's interviews she
18 had kind of gone back and forth and she said it was Junk or it
19 was Juice, was it because of that or some other reason?

20 A. That's it, and so I was planning, and my trial strategy
21 prior to Ms. Montgomery changing her testimony was that she was
22 substituting Juice with Junk, Junk with Juice, and I believe
23 that was evident in her recorded statements that she gave with
24 the police, she just kept interchanging Juice and Junk, and
25 that's why in my opening statements, you know, I was alluding

1 to that up until -- and that was what I was going to use as a
2 third-party guilt strategy substituting Juice for Junk, but
3 then her testimony changed that. '

4 Q. And just the reasons for using that particular strategy,
5 you had success using that defense before, right?

6 A. Yes. I've worked with Morgan Martin prior, while I was
7 still in law school as an intern and one of the cases that we
8 were working, it was a murder case that involved third-party
9 guilt, so I had early success by developing third-party guilt.
10 I knew that strategy, I knew how to do it. I think that's one
11 of the reasons why I was hired by Morgan after I graduated, was
12 that case, so I was very with familiar with third-party guilt
13 and how to use it.

14 Q. And Mr. Huggins, you know, it was his story and he stuck
15 to it, basically, it wasn't me, they can't prove it, would you
16 say that would be correct?

17 A. That's correct.

18 Q. And so that was his whole defense was that somebody else
19 did it, third-party guilt, and you knew what to do and flesh
20 out your case, right?

21 A. That's right.

22 Q. And in your opinion, or actually not in your opinion, in
23 to your experience was the evidence that you were able to
24 collect and review and fully flesh out through your own
25 investigation, as well as the police investigation, was that

1 sufficient to establish a third-party guilt situation, assuming
2 Ms. Montgomery had testified consistent with her prior
3 statements, which by all accounts you expected her to identify
4 Mr. Huggins?

5 A. Yes.

6 Q. Okay. So as part of your investigation you spoke to Ms.
7 Whaley, and in addition to this third-party guilt you had
8 attempted to establish an alibi, right?

9 A. That's correct.

10 Q. And one of the allegations against you is that failed to
11 call all of the witnesses or use the evidence that would have
12 assisted with that defense. Now, when you interviewed Ms.
13 Whaley --

14 MS. BLANCHETTE: Your Honor, if I may object? I
15 believe at the beginning of the hearing we indicated we weren't
16 going forward on the alibi.

17 MS. SHAW: So is that allegation officially withdrawn
18 that he failed to present appropriate witnesses?

19 MS. BLANCHETTE: Well, the allegation of it reads,
20 counsel failed to utilize evidence and witnesses to attack the
21 State's case and put up a proper defense, specifically, counsel
22 failed to effectively develop and properly present a defense of
23 alibi third-party guilt or actual innocence. Since we didn't
24 present any alibi witnesses today we were just going forward on
25 the first sentence there and then the specifics that listed

1 but-for alibi, and if it's appropriate for her to ask because I
2 know that could be encompassed in that first sentence there,
3 that's fine, but I just wanted to make sure I was clear on
4 that.

5 THE COURT: Okay, yes, I had a note that you were
6 withdrawing the alibi.

7 MS. SHAW: Okay. Well, the other point is, Your
8 Honor, this goes to Mr. Long's trial preparation and his
9 efforts on his behalf of his client because as Your Honor knows
10 the Strickland Standard just requires reasonableness and basic
11 competence.

12 THE COURT: I understand.

13 MS. SHAW: Thank you.

14 Q. So as part of your preparation of your case and working
15 your file, you did speak to Ms. Whaley as a potential alibi
16 witness, correct?

17 A. Correct.

18 Q. And what was your impressions after speaking with her?
19 How would she hold up on the stand or how would she present?

20 A. This was during -- as the trial was going Ms. Whaley was
21 present at trial and I talked with her and told her that -- ran
22 the questions that I would ask her at trial and I just felt
23 like she did not have enough specific information about that
24 particular night. To the best of my recollection, her
25 testimony would have been talking about general practices of

1 what time they went to bed and what she did, what Mr. Huggins
2 would do, and I did not feel like it was -- her testimony would
3 be substantial enough to carry that weight of an alibi, plus,
4 if I present -- as you know, if I present a witness then I lose
5 the ability to make final arguments.

6 Q. Well, you lose your ability to go first.

7 A. Go first, I'm sorry, excuse me, I'm sorry.

8 Q. You would have to go first.

9 A. I would probably have to go first, that's right.

10 Q. And that you did not feel would be in your client's best
11 interest, if you had to give up that right to go second and
12 rebut?

13 A. That's right. I weighed the pros and cons and that was
14 my feeling.

15 Q. So the two witnesses, Ms. Whaley and the other witness
16 that we had discussed earlier on direct, that would have
17 required you to give up your right to go second, correct?

18 A. Ms. Helen Huggins, Mr. Huggins's mother, and there was
19 also potential alibi of a friend, I just have in my notes, Ms.
20 Jeannette. With my typical -- typically what I do with the
21 alibi witnesses, I'll tell -- if my client has a potential
22 alibi witness, I would tell them, have them contact me and set
23 up an --

24 Q. And did you do that in this case with Mr. Huggins?

25 A. Yes.

1 Q. Please continue.

2 A. And so the reason why I do that is it's kind of a
3 witness test, in my opinion. If a person will go through the
4 trouble of setting up an appointment with me, coming to my
5 office, tell me what they will testify to, there's a good
6 indication that they may testify in court as to that. I do not
7 make a habit of seeking out alibi witnesses and going to their
8 house and that type of thing because it has been my experience
9 that they won't testify at court.

10 Q. So you specifically instructed Mr. Huggins, get me any
11 witnesses you possibly can?

12 A. Correct.

13 Q. And he only gave -- well, and how many did he give you?

14 A. Well, his grandmother was prepared to testify at trial.

15 Q. But you felt that she would not do him any material
16 benefit?

17 A. Correct.

18 Q. Who else did he give you, if anyone?

19 A. That was all.

20 Q. Okay. So moving forward into your investigation, you
21 had serious concerns about Investigator Martin?

22 A. Yes.

23 Q. And you prepared a full cross-examination of him, did
24 you not?

25 A. I did.

1 Q. But given Ms. Montgomery's change in testimony, that
2 pretty much had to get thrown out the window, would that be
3 fair to say?

4 A. That's fair, yes.

5 Q. And at that point, specifically with respect to Ms.
6 Montgomery, she had changed her testimony to be favorable to
7 your client, so did you feel it was in your client's best
8 interest to cross-examine Investigator Martin as to her
9 credibility in her initial statement?

10 A. No.

11 Q. In fact, you thought that would hurt him, correct?

12 A. Yes, that's right.

13 Q. Now, with respect to the phone records and the text
14 messages that have been referenced throughout this hearing, did
15 you find any exculpatory evidence in those text messages or
16 phone records that would suggest to you that the information
17 should have been presented or used for cross-examination?

18 A. I did not find any exculpatory evidence of value in
19 those. It was established that those three individuals had an
20 ongoing relationship, and the texts that were provided did not
21 pertain to this crime. I just didn't see where there was any
22 exculpatory value.

23 Q. And the fact they didn't even reference Mr. Huggins?

24 A. Correct.

25 Q. Okay. And so you did not feel that it would be to his

1 benefit to pursue that avenue?

2 A. That's correct.

3 Q. Were you satisfied with your investigation? Did you
4 feel you had enough information at your fingertips when you
5 made that decision?

6 A. Yes. And going back to the phone records. I had in my
7 original notes to question Detective Martin about those in a
8 certain way, so it wasn't that I was going to completely ignore
9 them, but again, the trial strategy went out the window with
10 Ms. Montgomery's statement, but I do feel -- so what was your
11 last question?

12 Q. My last question was, did you feel based on your
13 investigation that you had enough information about the phone
14 records if you were going to use them to cross-examine Mr.
15 Martin that you would have been able to make a record or
16 impeach his testimony if need be?

17 A. Yes.

18 Q. Now, you heard testimony about a neighbor. Were you
19 aware of that information at any time, that there was a
20 neighbor who had made phone calls and complaints to DSS and the
21 police?

22 A. No.

23 Q. Did you feel that that was relevant?

24 A. I don't see the relevance in that.

25 Q. Why is that?

1 A. None of that information -- I felt like it was obvious
2 in the facts of the case that we were talking about a drug
3 house, and that there was a drug dealer living in that house
4 and I don't see the relevance in what the neighborhood thought
5 of the house.

6 Q. And would that have been relevant to any of the elements
7 that the State had to prove in that case?

8 A. No.

9 Q. And it was a well known fact that there were issues
10 going on with drugs at this house, there really wasn't any
11 question about it, was there?

12 A. Correct.

13 Q. So there would have been no reason for you to canvas the
14 neighborhood and ask the neighbors what they thought?

15 A. Right. There were no eyewitnesses. It wasn't a
16 matter -- it just, there was no relevance in doing that.

17 Q. Okay. Now, the interview you did with Mr. McKeithan,
18 tell us about that.

19 A. This was at J. Reuben Long Detention Center, because he
20 was in custody at the time. I can picture him in the jail
21 cell, and I have some -- from that interview I developed
22 cross-examination questions that I was prepared to ask him at
23 trial. He was not --

24 Q. So you anticipated having to cross-examine him, correct?

25 A. Yes, and I was prepared for that. And if I may --

1 Q. Of course.

2 A. I'll just review some of the questions.

3 Q. And while you're reviewing that, for the record, you're
4 pulling several file folders out of your main file, is it your
5 habit to create separate folders for each witness so you know
6 exactly what you need to ask them and prepare questions in
7 advance?

8 A. Yes. So what I do is when I have a file, when there is
9 a witness I'll prepare a type out, any questions I may have. I
10 leave room for notes as the witness may be testifying or during
11 trial, I staple them to the right side of the folder, and then
12 any exhibits that I may refer to, I staple that to the left
13 side so I can have everything in front of me to be prepared.

14 Q. And that is your general practice in any criminal case
15 that you have to try?

16 A. That is correct. I learned that in law school and
17 continued that ever since.

18 Q. And that's what you did in this case for each of the
19 witnesses on the State's witness list?

20 A. That's correct.

21 Q. Okay. Go ahead. Please continue about Mr. McKeithan.

22 A. I was just going to ask him a series of questions about
23 DeAngelo's involvement in the crime. He maintained, "he,"
24 being Mr. McKeithan maintained that he was not involved with
25 the crime. He did not ever borrow Jamar Huggins' car. My

1 final question: Do you have any reason to believe Jamar
2 Huggins was involved in this home invasion? So I was prepared
3 to cross-examine him.

4 Q. And in fact, those statements that he made were in
5 direct contradiction to Ms. Montgomery, because she said, if
6 I'm recalling correctly, that initially she had called Mr.
7 Huggins to try and borrow his car, he said, no, and then Mr.
8 Mckeithan called and he said, yes; is that correct?

9 A. That is correct. All of these questions were going to
10 be a way of contradicting Ms. Montgomery's anticipated
11 testimony.

12 Q. Basically discrediting her?

13 A. Correct.

14 Q. And that was part of your trial strategy, was assuming
15 that Ms. Montgomery had testified as anticipated that you
16 needed to discredit that testimony and paint your client as
17 having not been there?

18 A. That's right.

19 Q. Okay. Now, did you explain this trial strategy to Mr.
20 Huggins?

21 A. Yes.

22 Q. How many times did you meet with him?

23 A. It was a lot.

24 Q. More than five?

25 A. More than five.

1 Q. More than ten?

2 A. I want to say, had to be.

3 Q. So approximately five to ten?

4 A. We were very comfortable talking, so there was never --
5 there was never a moment where we had a doubt we weren't
6 adequately prepared, we talked a good bit.

7 Q. And you explained the strategy and he was in agreement
8 with it, correct?

9 A. Yes.

10 Q. Now, with respect to other witnesses who may have been
11 able to either corroborate Mr. Huggins' version of events that
12 he wasn't there, it wasn't him, or to present third-party
13 guilt, who did he present you with, if anyone, other than his
14 grandma?

15 A. We had talked about potentially other, well, as I said,
16 you know, other people, but when it came down to it nobody came
17 forward.

18 Q. So it was, essentially, you and Mr. Huggins versus the
19 police and Ms. Montgomery --

20 A. That's correct.

21 Q. -- and Ms. Eckler?

22 A. That's right.

23 Q. Okay. So in terms of financial concerns, were there
24 issues with respect to being able to retain a private
25 investigator to assist you with the investigation?

1 A. Yes. The family didn't have any money for that.

2 Q. And basically, private investigators do cost money,
3 right?

4 A. Right. And I didn't charge them very -- I charged them
5 \$2,500.00 as a full retainer. As a general practice, if
6 somebody qualifies for a public defender, in this case the
7 public defender was Paul Taylor, as a general practice I will
8 advise a potential client to use the money that they would pay
9 a private attorney for their defense and keep the Public
10 Defender. I can't remember whether or not I had that
11 conversation with Mr. Huggins, I cannot specifically remember,
12 but that's the general practice I have.

13 Q. So do you believe that you would have done that had you
14 been discussing that issue and had it come up?

15 A. Yes.

16 Q. Now, did the lack of a private investigator -- well,
17 I'll back up. So instead of hiring a P.I. to prepare a defense
18 with you, you chose to undertake certain investigations on your
19 own?

20 A. Yes.

21 Q. And in your opinion, did this, or would this be standard
22 if a family cannot afford a private investigator, that you
23 would do the investigation yourself?

24 A. That's correct.

25 Q. And you've done this before?

1 A. Yes.

2 Q. You did this before this trial?

3 A. Yes.

4 Q. And you've done this after this trial?

5 A. Yes.

6 Q. And in any way did this necessity negatively affect your
7 ability to gain information or access to witnesses or
8 negatively affect your representation in any way related to
9 this matter?

10 A. No.

11 Q. And in fact, you were able to leverage your
12 relationships with other attorneys to have better access to
13 witnesses, correct?

14 A. I believe so.

15 Q. Okay. Specifically Mr. Mitchell and Mr. McKeithan?

16 A. Correct -- not Mr. -- I don't know if the relationship
17 with another attorney gave me access to Mr. McKeithan, I can't
18 remember that.

19 Q. But either way, you were able to access these
20 individuals without the need for a private investigator?

21 A. That's correct.

22 Q. Okay. Now, let's just go to your opening real quick.
23 And I know you've already explained what your strategy was and
24 why you made the references to Junk versus Juice. At that
25 point did you have any idea that Ms. Montgomery was going to

1 basically do a 180 and change her testimony?

2 A. No.

3 Q. And had you known that would you have presented your
4 opening a little bit differently?

5 A. Absolutely.

6 Q. And at that point you were -- as of the day of trial,
7 and you testified about the audio recording that Ms. Elder
8 allowed you to listen to from the night before where Ms.
9 Montgomery had stated she would be, in fact, testifying against
10 Mr. Huggins, right?

11 A. Correct.

12 Q. So was there anything in your mind that would have given
13 you any inkling that she was going to do what she did?

14 A. No.

15 Q. And once Ms. Montgomery changed her story, basically,
16 you had to revamp your entire defense on the fly?

17 A. Correct.

18 Q. And so how did your defense change at that point? What
19 did your strategy become?

20 A. As I said before, in my mind, it immediately became a
21 case of proper identification, knowing that Ms. Montgomery was
22 the key witness, that she was the only person who could put Mr.
23 Huggins at the scene of the crime. As soon as she testified
24 that that man there was not involved in the crime,
25 immediately -- it immediately struck me, there was not going to

1 be any testimony putting Jamar Huggins at the scene of the
2 crime, so again, my strategy shifted to keep it simple for the
3 jury, knowing, I think I understand the jury poll, maybe, keep
4 it simple, don't cloud their minds with a lot of extraneous
5 information that -- anything that I should not shift away from
6 the point that there is no witness who can testify that Jamar
7 Huggins was involved in this crime, and I felt like that was
8 enough of a reasonable doubt in the minds of the jury for us to
9 have him be found not guilty.

10 Q. And there was testimony earlier Ms. Blanchette asked you
11 about the testimony about the prior statement even though it
12 wasn't admitted that came in through Detective Martin, do you
13 recall that?

14 A. Yes.

15 Q. Now, would that not be relevant and essential into
16 figuring out for the jury's sake exactly how Mr. Huggins
17 originally came to be arrested and involved in this matter?

18 A. Yes.

19 Q. Okay. And in your opinion, and based on your
20 experience, was that testimony, in fact, harmful to Mr.
21 Huggins, or was it more explanatory as to how we got here in
22 the first place?

23 A. I thought it was explanatory.

24 Q. Okay. And obviously you know about the Rule 29(b) and
25 that Judge Culbertson had said this may be a PCR issue and he

1 refused to grant the 29(b) on newly discovered evidence because
2 he said that it's possible that the information about Mr. --

3 MS. SHAW: I'm sorry, Your Honor, just a moment, the
4 Court's indulgence?

5 Q. -- the testimony regarding the true perpetrator as Ms.
6 Montgomery had alleged being Mr. Mitchell, at that point when
7 you had her on the stand and you could have asked her -- or you
8 could have asked the judge to order her to answer, you didn't
9 do that, do you recall that?

10 A. As to Juice?

11 Q. Yes, as to --

12 A. That third party?

13 Q. As to the third-party guilt when she said, I'm not going
14 to tell you who it was, I know who the drug dealer was who
15 actually got it, but I'm afraid and I'm still not going to tell
16 you. You did not ask the Court to order her to disclose, why
17 was that?

18 A. I can't remember specifically my reasoning, but I do
19 know my over-arching mindset was that she had said that this
20 man was not involved, and I thought that that outweighed any --
21 by that time I was scared to death of Ms. Montgomery's
22 testimony. I had gotten the information I wanted to out of her
23 and I wanted to leave it alone.

24 Q. And you were trying not to allow Ms. Elder, the
25 Solicitor, more leeway with her Redirect, right?

1 A. That's right. Always during cross-examination, I want
2 to limit Redirect, and so, again, I had elicited the
3 information I needed from Ms. Montgomery, she was determined to
4 be very unpredictable and I did not want to give much
5 leeway for -- Ms. Elder is a very good attorney, and I knew
6 that I had to be careful of giving her a lot of room for
7 Redirect.

8 Q. You didn't want to open anymore doors than had already
9 been opened?

10 A. That's correct.

11 Q. And you didn't want to risk some additional information
12 coming out that might be with harmful to your client?

13 A. That's right, unknown.

14 Q. Now, the other thing I was going to ask, if she had
15 actually identified the drug dealer, Juice, or said, Jasmine
16 Mitchell, if she had said that would you have had concerns as
17 an Officer of the Court, based on your knowledge of Juice or
18 Mr. Mitchell's whereabouts and the possibility of him
19 participating in this crime?

20 A. Yes. As I said before, Jasmine -- I had a very good
21 understanding that Jasmine Mitchell was not involved in this
22 crime and I did not take a note of that, and I regret that, but
23 as an Officer of the Court I would have felt I could not in
24 good conscience or professional rules of ethics say that
25 Jasmine Mitchell was involved in the crime.

1 Q. And if she would have said that you would have actually
2 have had to call for a mistrial or you would have had to make
3 some sort of objection or representation on the record,
4 correct?

5 A. Most likely. I hadn't thought of that before, but most
6 likely.

7 Q. And in your opinion, would that have been harmful to
8 your client's interest?

9 A. Absolutely.

10 MS. SHAW: Thank you. I have nothing further, Your
11 Honor.

12 THE COURT: Anything on Redirect?

13 MS. BLANCHETTE: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. BLANCHETTE:

16 Q. From your prior testimony in your cross-examination, you
17 would agree that both Adrian Moore and law enforcement
18 identified Jasamine Mitchell as Juice?

19 A. Yes.

20 Q. And you said that Jasamine was represented by Mr.
21 Bellamy and he provided you a valid alibi for Jasamine?

22 A. Yes.

23 Q. I'm a little confused, though, because you elicited
24 testimony from Investigator Martin that only two were arrested,
25 Jamar Huggins and DeAngula Montgomery, so why was Mr. Bellamy

1 representing Jasmine Mitchell on this if he had not been
2 arrested?

3 A. It was an unrelated crime.

4 Q. Now, you also said it would unethical to raise
5 third-party guilt regarding Jasmine Mitchell, but would you
6 agree that your opening argument is regarding third-party guilt
7 of Juice?

8 A. Juice, correct. I did not refer to Jasmine Mitchell, I
9 referred to, quote, unquote, Juice.

10 Q. But both the law enforcement investigation and other
11 witnesses identified Juice as Jasmine Mitchell, so isn't that
12 a pretty slippery slope there when we're talking ethics?

13 A. The jury was not privy the police information.

14 Q. You also said, speaking about what the jury was privy
15 to, that it was a well-known fact that there was drug activity
16 going on in this house and it was a drug house so there was no
17 reason to further investigate or address that issue, but Ms.
18 Eckler got up and said it was a quiet cul-de-sac where they
19 never locked their doors and she was worried he was having an
20 affair. Would you agree the jury never heard anything about it
21 being a drug house or this well-known fact that you discussed
22 on Cross?

23 A. I'm pausing to think about what Ms. Montgomery would
24 have testified to. Again, Ms. Montgomery's testimony did not
25 go as anticipated and had she testified consistently, I believe

1 that the jury would have discovered that they were going to
2 that house because there were drugs in that house.

3 Q. But the jury didn't hear that, you would agree?

4 A. Correct, correct.

5 Q. So even though it was a well-known fact to you and you
6 didn't think you needed to do anything further with it, that
7 was not a fact presented to the jury?

8 A. Well, that's not an accurate statement.

9 Q. Please feel free to respond.

10 A. After Ms. Montgomery changed her testimony, then that
11 information would not have gotten to the jury, but I didn't
12 plan that ahead of time.

13 Q. And you didn't change your strategy once her testimony
14 changed?

15 A. I told you, I completely changed my strategy. I had to
16 change my strategy completely from what was prepared because
17 she changed her testimony.

18 Q. And I took it in Cross and Direct that you were saying
19 your strategy changed to a case of not a proper identification,
20 but wasn't that also your argument in opening, that this was a
21 misidentification, Juice was Junk, Junk was Juice? So did the
22 strategy really change? Wasn't it always misidentification?

23 A. No. The identification was Jamar Huggins. You're
24 talking about identification of two different circumstances.
25 You're comparing apples to oranges and trying to get me -- or

1 the Court confused about the two. The opening statement was
2 that the confusion between that Montgomery was identifying
3 Jamar Huggins as Junk, but then through her testimony and prior
4 statements to the police, as she was trying to incriminate Mr.
5 Huggins by calling him Junk, she also referred to Juice, and,
6 you know, she was confusing herself, and so that was the point
7 I was going to make to the jury, that Ms. Montgomery was
8 misidentifying Juice with Junk, but then once she changed her
9 testimony at trial, then apples and oranges, I decided in my
10 mind, this was a case about witnesses being able to identify
11 Jamar Huggins at the scene of the crime, no witness could
12 identify him at the scene of the crime.

13 Q. And you said that on your Cross, as well, this was a
14 case where no witness identified, but if the transcript so
15 reflects, the Solicitor led her through her prior statements
16 and her prior identification and Investigator Martin testified
17 specifically on your Cross that she had identified him, so that
18 isn't true that no witnesses identified him, are you standing
19 by that, that no witnesses identified him?

20 A. We've already talked about that. I won't change my
21 testimony.

22 Q. And then when you were discussing your meetings that you
23 had had on cross-examination with Mr. Huggins and that you
24 discussed your strategy with him, are you aware of Mr. Huggins
25 having any training in the law?

1 A. No.

2 Q. And who was he relying on as his advocate and lawyer to
3 make the legal strategy decisions in this case?

4 A. Me, but I always -- I'm not talking lawyer to lawyer,
5 I'm talking lawyer to client. In every case I have I always
6 talk -- explain to my clients what our strategy is, because
7 every client needs to know what the attorney plans to do at
8 trial, and that was what I conveyed to my client.

9 MS. BLANCHETTE: Your Honor, I have no further
10 questions.

11 THE COURT: Anything on Recross?

12 MS. SHAW: No, Your Honor. Thank you.

13 THE COURT: Mr. Long, you can step down.

14 MS. BLANCHETTE: Your Honor, but for some cases I
15 have to provide to the Court, that concludes the Applicant's
16 case.

17 THE COURT: Okay. Ms. Shaw?

18 MS. SHAW: Your Honor, the State would release Mr.
19 Long from his subpoena at this point in time.

20 THE COURT: Okay.

21 MS. SHAW: Does Your Honor wish to hear closing
22 arguments, or would Your Honor care to take it under advisement
23 and Ms. Blanchette and I will submit orders?

24 THE COURT: I'm happy to do it however you all want
25 it. If you want to be heard, I'm happy to hear from you.

1 MS. BLANCHETTE: Your Honor, just to make a complete
2 record, I did have a couple of cases that aren't cited in the
3 amendment that I would like to reference to the Court. I have
4 no need to make a closing argument where I rehash everything, I
5 see you and your law clerk are taking notes and listening to
6 everything very clearly today, I have been redundant at times
7 so I don't think you need me to go back over it, but if there
8 are any questions you have or clarifications you need, I'm
9 always happy to provide that information.

10 THE COURT: Okay.

11 MS. BLANCHETTE: Also, however Your Honor chooses to
12 proceed, I typically ask for the opportunity to order the
13 transcript, I just don't ever want to misstate anything that
14 comes from the stand, so if the next step would be any type of
15 memorandum or proposed order, I would just ask for time to get
16 the transcript so I can make sure whatever I present to the
17 Court is relying upon the transcript.

18 THE COURT: Okay.

19 MS. SHAW: And Your Honor, I would second that from
20 Ms. Blanchette. This is a very fact-heavy record. There's
21 been a lot of testimony, far more so than in most PCR hearings,
22 so I think it would be beneficial to the writers, typically the
23 30-day rule applies, we have to submit the proposed orders
24 within 30 days if the Court takes it under advisement, but I
25 would submit that probably 60 days would be more appropriate

1 just so we have time to get and review the transcripts.

2 MS. BLANCHETTE: And in the interest of Madam Court
3 Reporter, I think she has 60 days, initially, to provide it to
4 us. I can notify the Court once I get it, and then if you
5 wanted to set time limits at that point, not to overtalk you, I
6 just wanted to make sure we were fair to her.

7 MS. SHAW: I have no objection, Ms. Blanchette is
8 correct.

9 THE COURT: Okay. Do you have anything you need to
10 tell me?

11 MS. SHAW: Your Honor, I would make the standard
12 Strickland arguments that not only does the Applicant need to
13 prove that there was deficiency in counsel's performance, but
14 also that that deficiency prejudiced the Applicant himself.
15 You have heard from all the witnesses in this matter. I'm not
16 going to belabor the point, we've been here all day. I know,
17 obviously, as Ms. Blanchette noted, that you and your clerk has
18 been taking copious notes and paying attention, so I will not
19 belabor that, but if you want to hear more in terms of the
20 argument, I certainly can do that if you would like.

21 THE COURT: I think I understand it. I just want you
22 all to make whatever record you want.

23 MS. BLANCHETTE: And Your Honor, as I stated, I just
24 have a couple cases to hand up. One is Lounds versus State
25 that goes into investigation, and that is not cited to in our

1 amendment, so I just wanted to bring that specifically to the
2 Court's attention, and I have a copy, and I have a copy for the
3 State, as well; Holmes versus South Carolina, which went all
4 the way up to the U.S. Supreme Court addressing third-party
5 guilt here in South Carolina, and then filing Holmes we had the
6 Billy Wayne Cope case that I believe is kind of the leading
7 case on third-party guilt in South Carolina. I also pulled the
8 case of Bobby Joe Reeves. That case was a PCR case where they
9 dealt with the issue of a retained attorney not asking for
10 indigent funds but an expert was needed, which I would say is
11 very similar to here where we had no investigator used and
12 counsel's testimony was that, one of the reasons was there were
13 not funds for that, even though his client had previously
14 qualified as indigent, and then I have a copy of State versus
15 King. That goes into investigative hearsay and would be
16 relevant to the questions I asked him about the objections he
17 didn't make during Detective Martin's testimony. I also would
18 like to direct the Court's attention to Page 14 of the brief
19 that I prepared on the 29 appeal. That goes into cases of
20 Arizona versus Fulminante, Johnson versus Cato, and Newsom
21 versus U.S. and that talks about recantation testimony. So
22 instead of regurgitating all of that, I just wanted to direct
23 the Court's attention to that, and then, finally, we have a
24 line of cases, Gilcrest; McKnight; Vandulen (phonetic) are a
25 couple that talk about it, and I know Your Honor is familiar

1 with this, if an attorney's going to say that it was part of
2 his trial strategy, it's for the Court to assess that that was
3 reasonable, and part of that analysis is looking at the
4 investigation that was done in reaching that strategy. Again,
5 if Your Honor would like memorandums or briefs or proposed
6 orders after we get the transcript in, I'm happy to flush all
7 those cases out in much more detail, but I just wanted to make
8 that part of the Applicant's case at this juncture.

9 THE COURT: Alright.

10 MS. SHAW: Your Honor, my only objection regarding
11 the private investigator case would be that you heard the
12 testimony, it's factual, Mr. Long did not believe that there
13 was any negative effect on the preparation and presentation of
14 his case from that, so I would just object to the consideration
15 of that, but clearly, if it's purported case law and it's from
16 South Carolina then it would be relevant, so I'm just making
17 you aware of that.

18 THE COURT: Okay. You can pass those cases up.

19 MS. BLANCHETTE: Yes, Your Honor, and if you need
20 citations for the other ones that I spouted out, I'm happy to
21 send those via e-mail.

22 THE COURT: Okay. Alright, well, I will take it
23 under advisement and let you all know something shortly.

24 MS. SHAW: Thank you, Your Honor.

25 MS. BLANCHETTE: Thank you, Your Honor.

1 THE COURT: Thank you all.
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1 CERTIFICATE

2 STATE OF SOUTH CAROLINA

3 COUNTY OF HORRY

4 I, Julie A. Kevish, Official Court Reporter for the
5 State of South Carolina, do hereby certify that the foregoing
6 is a true, accurate and complete Transcript of Record of the
7 proceedings had and evidence introduced in the Court of General
8 Sessions for Horry County, South Carolina, on the 13th day of
9 November, 2023.

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

12 November 13, 2023

13

14



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JULIE A. KEVISH
OFFICIAL COURT REPORTER

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Jamar A. Huggins, #361445,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2017-CP-26-01766

**ORDER OF DISMISSAL
WITH PREJUDICE**

FILED
HORRY COUNTY
2024 OCT - 8 A 8:10
RENEE H. ELMIS
CLERK OF COURT
HORRY COUNTY, SC

Presiding Judge:	Hon. Heath P. Taylor
Applicant's Attorney:	Tricia A. Blanchette, Esq.
Respondent's Attorney:	Suzanne J. Shaw, Esq.
Trial Counsel:	John Reuben Long, II, Esq.
Post-Trial Counsel:	Natasha M. Hanna, Esq.
Date of Hearing:	November 13, 2023
Court Reporter:	Julie A. Kevish

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Applicant Jamar A. Huggins on March 16, 2017. Respondent made its Return and Motion for a More Definite Statement on July 6, 2017. Applicant filed his Amendment to Application for Post-Conviction Relief on April 24, 2023. An evidentiary hearing was held on November 13, 2023, at the Horry County Courthouse before the Honorable Heath P. Taylor. Applicant was present and represented by Tricia A. Blanchette, Esquire (PCR Counsel). Assistant Attorney General Suzanne J. Shaw represented Respondent. Applicant did not testify at the evidentiary hearing. Applicant did present the testimony of Mitchell R. Phillips (Phillips), Natasha M. Hanna, Esquire (Post-Trial Counsel), Matthew Thornton (PI Thornton), and John R. Long, II, Esquire (Trial Counsel). Following a thorough review of the trial transcript, the record on appeal, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant

has failed to meet his requisite burden of proof, denies relief, and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2013, the Horry County Grand Jury indicted Applicant for Burglary—1st Degree (2013-GS-26-1076), Armed Robbery (2013-GS-26-1077;), and Kidnapping (2013-GS-26-1078). Applicant was represented by Trial Counsel. Assistant Solicitor Donna E. Elder of the Fifteenth Circuit Solicitor's Office prosecuted the case.

On September 15-17, 2014, Applicant proceeded to a jury trial before the Honorable Benjamin H. Culbertson. The jury convicted Applicant as indicted. Judge Culbertson sentenced Applicant to concurrent sentences of fifteen (15) years incarceration for Burglary—1st Degree, ten (10) years incarceration for Armed Robbery, and fifteen (15) years incarceration for Kidnapping.

On September 27, 2016, Post-Trial Counsel filed a Rule 29(b), SCRCrimP, motion for a new trial based on after-discovered evidence. On June 13, 2017, a hearing convened before Judge Culbertson on Applicant's motion for a new trial. On June 14, 2017, Judge Culbertson denied Applicant's motion for a new trial.

Applicant filed a timely notice of appeal on his convictions and sentences. Appellate Defender Robert M. Pachak perfected Applicant's appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Huggins, Unpub. Op. No. 2016-UP-146 (Ct. App. filed March 30, 2016). The Remittitur was returned to the lower court on April 15, 2016.

Applicant filed a timely notice of appeal on Judge Culbertson's denial of his motion for a new trial. PCR Counsel perfected Applicant's appeal of the denial of the motion for a new trial. Following briefing, the South Carolina Court of Appeal affirmed Applicant's convictions and sentences by unpublished opinion. State v. Huggins, Unpub. Op. No. 2019-UP-247 (Ct. App. filed July 3, 2019).

FACTS GIVING RISE TO THE CONVICTION

On December 20, 2012, Angela Eckler (Victim) heard a knock at her door in the middle of the night. (R. p. 28, ll. 13-14; R. p. 30, ll. 5-12; R. p. 30, l. 25 – p. 31, l. 1). Thinking it was a friend she called Grandma, she opened the door to find a well-dressed woman. (R. p. 31, ll. 5-15). As she turned to quiet her dog, two men entered the house as the woman ran off. (R. p. 31, ll. 16-25). The two men demanded money and held her captive in her bathroom. (R. p. 32, l. 8 – p. 33, l. 16). From the bathroom, she could hear her daughter telling the men the only money she had was her birthday money in her purse on the table, and then the men pushed her daughter into the bathroom. (R. p. 33, ll. 11-19).

After the men left, Victim drove herself and her twelve-year-old daughter to the police department. (R. p. 34, ll. 1-9). She could not identify the men but could identify the woman. (R. p. 35, ll. 2-12). The police also talked to Victim's fiancé, who identified the woman who came to the door based on the description given. (R. p. 60, l. 12 – p. 61, l. 8). That woman, Deaungela Montgomery, then led the police to Huggins, and he was arrested and charged with first-degree burglary, armed robbery, and kidnapping. (R. p. 61, l. 16 – p. 62, l. 22; R. pp. 109-114).

At trial, the State called Deaungela Montgomery. (R. p. 12, ll. 13-21). At the time of her testimony, she was incarcerated for two counts of armed robbery. (R. p. 13, ll. 2-9). She testified she was not offered anything from the State to testify at Huggins' trial, nor did she receive

assistance from the State when sentenced for the crime in this case. (R. p. 13, l. 19 – p. 14, l. 5). When asked whether she recalled telling a detective that a man named Junk was with her during the crime and picking him out in a photograph, she stated that she assumed it was Junk but did not know him. (R. p. 15, ll. 14-18). When asked about giving a statement to police, she testified she probably did but did not know because she "can't really remember nothing." (R. p. 15, l. 22 – p. 16, l. 3). Then she testified, "I remember the name [Junk]. So, yes, I did make the statement, but what I'm telling you is this is not the same person." (R. p. 16, ll. 4-8).

Montgomery testified she did not remember describing Junk to police as far as his height and the fact that he had long dreads, but she did recall saying he had hair and a grill in his mouth. (R. p. 16, l. 13 – p. 17, l. 2). She testified she recalled describing where Junk lived and telling police the car they drove to Victim's house belonged to Huggins and that Huggins drove it there and then went into Victim's house wearing a mask and carrying a weapon. (R. p. 17, ll. 9-25). She recalled giving a statement that she went to Victim's house and knocked on the door. (R. p. 18, ll. 18-20). Montgomery testified that when Victim opened the door, she asked if Dre was there, and Victim answered that he was not. (R. p. 18, l. 24 – p. 19, l. 1). Montgomery stated she walked back to the car, and the two men, Huggins and another man, entered the house. (R. p. 19, ll. 1-9).

Montgomery stated that Junk went with her to Victim's house, but that Huggins did not look like the same person because his hair was different. (R. p. 25, ll. 4-15). On cross-examination, defense counsel asked Montgomery if Huggins was not the person who invaded the home with her, and she said no. (R. p. 26, ll. 2-7). On redirect, she clarified that she identified Junk as the person but did not know Junk's real name. (R. p. 26, ll. 12-20). When asked whether she identified the person in a picture a detective showed her as Junk, she testified she believed the picture was already circled when it was shown to her. (R. p. 27, ll. 1-5). However, she did agree

she had identified that person as Junk. (R. p. 27, ll. 6-9). On the other hand, she then stated she did not know whether that was the person who went into Victim's house, and when asked whether he was the person who drove the car to Victim's house, she said he was not. (R. p. 27, ll. 10-15). Nevertheless, she then once again testified the person she identified to the detectives was Junk, and the trial court struck the answer as asked and answered in response to an objection by Huggins. (R. p. 27, ll. 19-23).

Outside the presence of the jury, the State asked to impeach Montgomery by allowing the publication of her statement taken by a detective who was about to testify. (R. p. 40, l. 23 – p. 41, l. 2). The trial judge expressed doubt that the State could now bring in the statement with another witness, indicating it should have done so while Montgomery was on the stand. (R. p. 42, ll. 6-10). The State then asked if it could at least ask the detective if he showed Montgomery the photograph and whether she identified the person as Junk. (R. p. 42, ll. 11-14). After much discussion, the trial court did not allow the statement to come in because Montgomery admitted to making the statement. (R. p. 55, ll. 8-16).

Detective Jonathan Martin with the Horry County Police Department testified he met with Victim at her home a few days after the incident. (R. p. 58, ll. 1-11). He spoke to Victim's fiancé, Adrian (also known as Dre and Drake), who identified Montgomery. (R. p. 60, l. 10 – p. 61, l. 2). He interviewed Montgomery and developed Huggins as a suspect. (R. p. 61, l. 13 – p. 62, l. 5). Montgomery identified Huggins as Junk and described him in detail—long hair, early 30s, black male, grill in his teeth—and also where he lived and the vehicle he drove. (R. p. 62, ll. 3-14). By the description of the house, Detective Martin was able to locate it and connect both the house and the vehicle to Huggins. (R. p. 62, ll. 15-18).

On cross-examination, Detective Martin testified Montgomery told him she uses crack cocaine, but he did not know she was a crack addict. (R. p. 66, ll. 9-23). He stated that he told Montgomery she could help herself by identifying the other parties involved but did not mention Huggins. (R. p. 67, ll. 17-21). He testified he had not heard Huggins's name until Montgomery provided the information. (R. p. 74, ll. 20-23). He further stated he never pointed out anybody for her to identify and that she was the one who identified Huggins as a suspect. (R. p. 67, l. 25 – p. 68, l. 9).

After the State rested, Huggins moved for a directed verdict, arguing the evidence merely raised a suspicion of guilt. (R. p. 75, ll. 23-24; R. p. 79, ll. 3-6). He argued Montgomery stated she was lying and testified Huggins was not involved in the crime. (R. p. 79, ll. 7-11). The State argued she described Huggins to detectives even though she now testified he did not look like the same person. (R. p. 76, ll. 2-18). Further, the State emphasized that Montgomery's credibility would be up to the jury to determine when weighing her testimony. (R. p. 77, l. 9 – p. 78, l. 13). After a brief recess, the trial court denied the directed verdict, basing it on his duty to look for the existence of evidence rather than weight. (R. p. 80, ll. 13-23). He noted that Montgomery admitted to making the prior statements and determined that the fact that she testified she lied was a jury issue. (R. p. 80, ll. 17-23).

Ultimately, the jury found Huggins guilty of all charges, and the trial court sentenced him to fifteen years' imprisonment for first-degree burglary, fifteen years' imprisonment for kidnapping, and ten years' imprisonment for armed robbery, to be served concurrently. (R. pp. 103, 107).

CURRENT ACTION BEFORE THIS COURT

Applicant *timely* commenced this PCR action on March 16, 2017, alleging he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel:
 - a. Failure to prepare and investigate.
 - b. Failure to call witnesses and utilize evidence at trial.
2. Ineffective Assistance of Appellate Counsel
 - a. Failure to utilize all available arguments in support of the issue presented and raise all meritorious issues on appeal.

On April 24, 2023, Applicant, through retained Counsel, amended his PCR application with the following allegations:

1. Ineffective Assistance of Trial Counsel
 - a. Counsel failed to conduct an independent investigation and properly address the investigation conducted by the State and/or law enforcement.
 - b. Counsel failed to utilize evidence and witnesses to attack the State's case and put up a proper defense. Specifically, counsel failed to effectively develop and properly present a defense of alibi, third party guilt and/or actual innocence.¹
 - c. Counsel failed to object to improper burden shifting statements to the jury by the court. Transcript pp. 33, 36, 38. See State v. Daniels, 737 S.C. 251, 737 S.E.2d 473 (2012).
 - d. Counsel made an opening argument that was prejudicial to Applicant's defense and bolstered the State's case.
 - e. Counsel failed to effectively handle the testimony of Ms. Montgomery. Specifically, but not limited to the following: Counsel failed to make objections prior to and during the testimony of Ms. Montgomery, did not properly handle the admission of the prior inconsistent statement of Ms. Montgomery, failed to properly cross-examine Ms. Montgomery, and failed to properly cross-examine Detective Martin regarding Ms. Montgomery and her statement.
 - f. Counsel failed to effectively handle the testimony and matters related to the victim.
 - g. Counsel failed to effectively handle the testimony and matters related to Detective Jonathan Martin.
 - h. Counsel failed to effectively handle matters related to Adrian Moore.

¹ At the outset, PCR Counsel withdrew the alibi allegation.

- i. Counsel failed to provide a complete argument during the directed verdict motion. Transcript pp. 121-125, 174.
- j. Counsel failed to make an effective and complete post trial motion.
- 2. Ineffective Assistance of Post-Trial Counsel
 - a. Ineffective assistance of counsel for the handling of the Rule 29, SCRCrimP, Motion. Specifically, but not limited to, failure to properly prepare, present a full argument, present the witness(es) and evidence and make a complete record.
- 3. Alternatively, if not found to be ineffective assistance of counsel and/or in addition to being grounds for ineffective assistance of counsel, Applicant alleges that the newly offered information from Ms. Montgomery amounts to newly discovered evidence.

Regarding relief, Applicant requests a "new trial."

Before this Court is the Horry County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the South Carolina Department of Corrections, the complete trial transcript, the complete motion for a new trial transcript, Applicant's complete appellate records, the records of the current PCR action, and Applicant's amended PCR application.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

- 1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2. That the court was without jurisdiction to impose sentence;
- 3. That the sentence exceeds the maximum authorized by law;
- 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

² S.C. Code Ann. §§ 17-27-10 to -160.

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington 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; accord, 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)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best

practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n 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." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, 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 689–90. 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. Id. 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"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of Trial Counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Trial Counsel's testimony at the evidentiary hearing credible and persuasive, where he presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the trial. This Court further finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS ON THE MERITS

Allegation (1a): Counsel failed to conduct an independent investigation and properly address the investigation conducted by the State and/or law enforcement.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to conduct an independent investigation and properly address the investigation conducted by the State and/or law enforcement. This Court finds this allegation is without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to

investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

Trial Counsel testified that he conducted an investigation in the case. (PCR Tr. p. 98). Trial Counsel could not recall why he did not get Applicant's cell records but his thought was because there would be no exculpatory value. (PCR Tr. p. 99). Trial Counsel testified that he

reviewed cell records for Moore, Montgomery, and Mitchell to include text messages. (PCR Tr. pp. 99-101).

On cross-examination, Trial Counsel testified that he was able to interview Mckeithan. Trial Counsel testified he was able to locate Mitchell but decided he was foreclosed from interviewing him because his attorney provided his alibi. (PCR Tr. pp. 155-156).

Trial Counsel testified that he spoke with the alibi witness—went through the questions he would ask her at trial—and he did not feel like she would carry the weight of an alibi. Also, Trial Counsel testified that you lose the right to the last argument. (PCR Tr. pp. 160-161). Trial Counsel testified that if a client has an alibi witness, he tells them to have the witness contact him as a witness test to see if they will go through the steps of setting up an appointment. (PCR Tr. p. 162). Trial Counsel testified that Applicant's grandmother was the only one prepared to testify. (PCR Tr. p. 162).

Trial Counsel testified that he did not feel the information the neighbor provided at the evidentiary hearing was relevant. (PCR Tr. p. 164). Trial Counsel testified that he did not see the relevance to what the neighborhood thought of the house because he thought the evidence was clear that the house was a drug house. (PCR Tr. p. 164). Trial Counsel testified that there was no reason for him to canvas the neighborhood. (PCR Tr. p. 164).

Trial Counsel testified that he prepared type-outs of questions for each potential witness. (PCR Tr. p. 166). Trial Counsel testified that he was prepared to contradict Montgomery with Mckeithan's testimony. (PCR Tr. p. 167).

Trial Counsel testified that Applicant's family could not afford for him to hire an investigator. (PCR Tr. p. 169). Trial Counsel testified that it was standard for him to do the investigation if the family could not afford a private investigator. (PCR Tr. p. 169). Trial Counsel

testified that it did not negatively affect his ability to gain information or access witnesses. (PCR Tr. p. 170).

Findings

This Court finds the combination of the record and Trial Counsel's credible testimony that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Trial Counsel credibly testified that he undertook a reasonable investigation into the facts and circumstances of Applicant's case—this Court agrees. This Court finds Trial Counsel's reasoning in his investigations sound and reasonable. While Applicant was able to provide this Court with additional information that could have been discovered by Trial Counsel had he canvased the neighborhood, that information was not such that this Court will find the outcome of trial would have been different had Trial Counsel been more prepared.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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Allegation (1b): Counsel failed to utilize evidence and witnesses to attack the State's case and present a proper defense. Specifically, counsel failed to effectively develop and properly present a defense of alibi, third-party guilt, and/or actual innocence.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to utilize evidence and witnesses to attack the State's case and present a proper defense. Specifically, counsel failed to effectively develop and properly present a defense of alibi, third-party guilt, and/or actual innocence. This Court finds this allegation is without merit.

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See, e.g., Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d

60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call alibi witnesses when two witnesses who testified at PCR hearing did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See, e.g., Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated or bolstered defendant's credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

PCR Evidentiary Hearing

On direct examination, the following colloquy occurred:

- Q. Okay. Now, you were in the courtroom today when Ms. Natasha Hanna testified regarding her representation on the 29 and specifically went through a PowerPoint presentation?
- A. Yes.
- Q. And as part of that she submitted to Judge Culbertson a chart that showed the interplay between the cell phones of Ms. Montgomery, Mr. Mitchell, Mr. McKeathan, and then these text messages, as well. Is there any reason that you didn't put that information together as you were doing your own independent investigation prior to trial?
- A. I did put that information together.
- Q. Okay. And it doesn't appear anywhere in the transcript where you presented that.
- A. Correct.

- Q. Is there a reason why you didn't utilize that?
- A. Yes.
- Q. And what is that?
- A. This was a case of identification as it came out at trial and I felt like the introduction to any information regarding cell phones or texts would just cloud the main idea that this -- that there was no witness who could possibly identify Mr. Huggins at the scene of the crime.
- Q. So you would disagree with Ms. Hanna that it doesn't -- let me restate that. In Ms. Hanna's 29 motion, she was using the phone records to support that it was a misidentification and the only connections go back to Mr. Mitchell, not to Mr. Huggins, and these phone records are between all the parties but for Mr. Huggins, so you didn't feel that that was appropriate to show to the Court or to the jury?
- A. Not with the -- no, not with the -- I think you're -- you're assuming that, not to put words in your mouth, but I think you're assuming that the three parties were conspiring for some type of crime, but they had -- the three of them had an established relationship over a long period of time, so I didn't feel like that that -- that particular interaction would be exculpatory to Mr. Huggins simply because he was not a participant in their common conversation.

(PCR Tr. pp. 101-102).

On cross-examination, Trial Counsel testified that after he found out Mitchell had an alibi, he could not ethically point the finger for third-party guilt at Mitchell. (PCR Tr. p. 157).

Trial Counsel testified that he did not find anything exculpatory in the phone records or text messages. (PCR Tr. p. 163).

Trial Counsel testified that while Applicant and he discussed third-party guilt, no one ever presented except for Applicant's grandmother. (PCR Tr. p. 168).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. This Court finds Trial Counsel's testimony credible and agrees that Trial Counsel could not ethically go down the third-

party guilt path with Mitchell. Further, and again, this Court finds Trial Counsel's performance on this matter sound and reasonable. See State v. Gregory, 198 S.C. 98, 105, 16 S.E.2d 532, 534 (1941) (holding evidence of third-party guilt that only tends to raise a conjectural inference that the third party, rather than the defendant, committed the crime should be excluded.). Additionally, this Court finds a combination of the record and Trial Counsel's credible testimony refutes the allegation.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1c): Counsel failed to object to improper burden-shifting statements to the jury by the court. Transcript pp. 33, 36, 38. See State v. Daniels, 737 S.C. 251, 737 S.E.2d 473 (2012).

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to improper burden-shifting statements to the jury by the court. Specifically on transcript pages 33, 36, and 38. See State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012).

In Daniels, the South Carolina Supreme Court held the following:

"[T]rial judges [should] remove any suggestion from [the] general sessions charges that a criminal jury's duty is to return a verdict that is 'just' or 'fair' to all parties. Such a charge could effectively alter

the jury's perception of the burden of proof, substituting justice and fairness for the presumption of innocence and the State's burden to prove the defendant's guilt beyond a reasonable doubt. Moreover, to a lay person, the "all parties involved" in a criminal case may well extend beyond the defendant and the State, and include the victim. These inaccurate and misleading charges risk depriving a criminal defendant of his right to a fair trial."

Daniels, 401 S.C. at 256, 737 S.E.2d at 475.

Trial

Prior to Applicant's trial, the trial court made the following comments to the jury during opening instructions:

The primary function of this trial is a search for the truth to determine what happened.

(Trial Tr. p. 33).

After doing that, you will then be in a position to render your verdict, a true and just verdict under the solemn oath you just took as jurors.

(Trial Tr. p. 36).

Don't let your thoughts wander, but give strict attention to the testimony in this case so at the end of all the testimony, after the arguments of counsel and a charge on the law by the Court, you will then be in a position to determine what the true facts are and apply the law to those facts and thus render a true and just verdict.

(Trial Tr. p. 38).

At the conclusion of trial, the trial court gave the following reasonable doubt charge:

Now, what is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a doubt is proof that leaves you firmly convinced of the Defendant's guilt. We know very few things in this world with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty. If on the other hand you think a real possibility

exists that the Defendant is not guilty, you must give the Defendant the benefit of that doubt and find him not guilty.

(Trial Tr. p. 150). The trial court gave the following in instructing the jurors on their job:

In every case tried in this court before a jury, the jury is the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in a case. Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors, your duty is to determine the effect, value, weight and truth of the evidence presented during this trial.

(Trial Tr. pp. 151-152). The trial court gave the following in instructing the jurors on credibility:

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. Your duty as jurors is to analyze and evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of the witness while on the witness stand.

(Trial Tr. pp. 152-153).

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified to the following:

- Q. And this issue appears in the amendment. Applicant has alleged that you failed to object to burden-shifting statements to the jury by the Court, the case is State versus Daniels. It came out shortly before this trial, and in there it addresses that there are certain statements the Court

shouldn't make because those are burden-shifting. Were you familiar with that case?

A. I was not.

Q. Okay. And I'm going to ask you about some specific things that the judge said and then just why you didn't object to them.

A. Okay.

Q. If you don't mind looking at Page 33, Line 22. And the judge tells the jury there: The primary function of this trial is a search for the truth to determine what happened. And it reflects that you did not object to that language. Do you find that objectionable?

A. Based on conversations that I had with you earlier, I understand it's your belief it is objectionable.

Q. Is it yours?

A. I haven't done the legal research, but I take your word for it, I don't doubt you. I have no reason why I did not object.

Q. I appreciate that. If you could look at Page 36, Line four. There the judge says: After doing that you will then be in a position to render your verdict, a true and just verdict under the solemn oath you just took as jurors. Is there any reason you didn't object to that as shifting the burden away from the State?

A. No.

Q. And then if you could turn to Page 38, beginning on line nine. The judge is giving them instructions and says: After the arguments of counsel and a charge on the law by the Court you will then be in a position to determine what the true facts are and apply the law to those facts and thus render a true and just verdict. Did you make an objection to that true and just verdict language there?

A. No.

Q. Is there any reason why you did not? Was that part of trial strategy or anything of that nature?

A. No.

(PCR Tr. pp. 116-118).

Findings

This Court finds the foregoing did not unconstitutionally shift the burden of proof, and it is not reasonably likely the outcome would have been different without the foregoing "search for the truth" language. The opening remarks did not, under our appellate jurisprudence,

unconstitutionally shift the burden of proof or constitute reversible error. See State v. Beaty, 423 S.C. 26, 34, 813 S.E.2d 502, 506 (2018) (finding no reversible error in court's preliminary comments because "they were a mere statement to the jury and not a charge on the law," and they "were not linked to either the reasonable doubt or the circumstantial evidence charges").

This Court further finds the brief references to "truth" during opening remarks did not shift the burden of proof or prejudice Applicant. In addition to the forgoing reasonable doubt charge, the court charged the jury:

- "The State has the burden of proving the Defendant guilty beyond a reasonable doubt." (Trial Tr. p. 152, ll. 9-11);
- "This presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt. The presumption of innocence is not a mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt." (Trial Tr. pp. 149, l. 19 – 150, l. 7);
- "After weighing all of the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty." (Trial Tr. p. 152, ll. 18-21);
- "The burden of proof, as I have stated to you, is on the State to prove the Defendant's guilt beyond a reasonable doubt. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove the Defendant's guilt beyond a reasonable doubt." (Trial Tr. p. 154, ll. 19-23);
- "The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all." (Trial Tr. p. 155, ll. 21-22);
- "Intent means intending the result which actually occurs, not

accidentally or involuntary. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt." (Trial Tr. p. 156, ll. 14-18);

- "Criminal intent must be proven by the State beyond a reasonable doubt." (Trial Tr. p. 156, ll. 23-24);
- "The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant." (Trial Tr. p. 157, ll. 19-23);
- "Once again, I instruct you the burden of proof is on the State and extends to every element of the crime charged, and is specifically this includes the burden of proving beyond a reasonable doubt the identity of the Defendant as the person who committed the crime. If, after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty." (Trial Tr. p. 158, ll. 2-9);
- "To prove the Defendant guilty of first degree burglary, the State must first prove beyond a reasonable doubt that the Defendant entered a dwelling without consent." (Trial Tr. p. 158, ll. 12-14);
- "Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor, at the time of the entry." (Trial Tr. p. 159, ll. 6-8);
- "Finally, the State must prove beyond a reasonable doubt at least one of the following, but need not prove all of the following: one, when entering, while in the dwelling or when fleeing, the Defendant or an accomplice was armed with a deadly weapon or explosive." (Trial Tr. p. 159, ll. 17-21);
- "To convict the Defendant of kidnapping, the State must prove beyond a reasonable doubt that the Defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away another person without authority of law." (Trial Tr. p. 160, ll. 14-19);

- "Instead, if you find beyond a reasonable doubt that the Defendant did any of these things, you may find the Defendant guilty of kidnapping." (Trial Tr. p. 161, ll. 7-9);
- "In order to prove this offense, the State must first prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person." (Trial Tr. p. 161, ll. 15-18);
- "The State must also prove beyond a reasonable doubt that the Defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use." (Trial Tr. p. 161, ll. 22-25);
- "Finally, the State must prove beyond a reasonable doubt that the Defendant was armed with a deadly weapon during the robbery." (Trial Tr. p. 162, ll. 7-9);
- "Therefore, if you find that the State has failed to prove that the Defendant was armed with a deadly weapon, you may then consider whether the State has proved beyond a reasonable doubt that the Defendant committed robbery. In order to prove robbery, the State must prove beyond a reasonable doubt all of the elements that I have just explained for armed robbery, except the required element that the Defendant was armed with a deadly weapon. In other words, the State must prove beyond a reasonable doubt that the Defendant took the personal property from the person or presence of another person, without that person's consent, and carried it away." (Trial Tr. pp. 162, l. 19 – 163, l. 5).

Viewed as a whole and in context, this Court finds the trial court's opening remarks did not shift the burden of proof or otherwise prejudice Applicant. See State v. Aleksey, 343 S.C. 20, 27 S.E.2d 248, 251 (2000) ("[J]ury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error."); id. ("The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution.").

Accordingly, this Court finds Applicant has failed to prove prejudice. Thus, this allegation must be **DENIED** and **DISMISSED**

Allegation (1d): Counsel made an opening argument that was prejudicial to Applicant's defense and bolstered the State's case.

Applicant alleges Trial Counsel was constitutionally ineffective for making an opening argument that was prejudicial to Applicant's defense and bolstered the State's case. This Court disagrees and finds this allegation without merit.

"The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). 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. 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. Id. at 688–89; cf. 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."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn v. Reeves, 594 U.S. 731, 738 (quoting Harrington, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108).

Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689; see Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial"). The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied Strickland's deferential standard.

PCR Evidentiary Hearing

On direct examination, Trial Counsel was questioned as to why he identified Applicant as "Junk" in his opening statement to which he replied:

Because it seemed to be common knowledge based on the interviews that had been conducted that Jamar Huggins' nickname was Junk, and Ms. Montgomery, during her interviews, she was, sometimes she would refer to her co-defendant, the mask, culprit, as Juice, and sometimes she would refer to him as Junk, and so my trial strategy prior to Ms. Montgomery changing her testimony was that I was going to identify Jamar Huggins as Junk and then Juice was this third party defendant who was the actual culprit, and not Mr. Huggins, but it was Juice.

(PCR Tr. p. 119). Trial Counsel testified to the following:

- Q. And so if you could flip to Page 139, this is the State's closing argument. And if you could look at Lines 11 through 20?
- A. Yes.
- Q. And they start by saying: Mr. Long told you a few things in his opening.
- A. Yes.
- Q. Some of them came out, some of them we never heard about.
- A. Correct.
- Q. And there they use the fact that you identified Jamar as Junk?

- A. Yes.
- Q. And they also say that you told them you were going to be hearing about some guy named Juice and Juice and Junk but they never heard about Juice?
- A. Right.
- Q. And with that said you stand by your decision to never address Juice after opening?
- A. I don't believe I could have. Once Ms. Montgomery, because immediately after my opening, then the State's first witness was Ms. Montgomery and Ms. Montgomery's testimony that she changed from her -- prior testimony just the night before she had referred to Jamar Huggins as Junk and Junk and Jamar Huggins were involved in the crime and so I had confidence in her testimony that her testimony was to be consistent with her prior statements, and so I based my trial strategy on the assumption that her testimony would not change at trial, and so my opening statement reflects that. My intention was to explain to the jury that Ms. Montgomery was actually involved with the crime with Juice, not Junk, that Jamar Huggins is Junk, but then when Ms. Montgomery testified with her testimony, completely blindsided me, and I had to change strategy mid-trial, which is the trial attorney's worst nightmare.

(PCR Tr. pp. 119-120).

Trial Counsel testified that he did not think to ask for a break in the middle of trial. (PCR Tr. pp. 120-121). Trial Counsel was then questioned as to why he did not ask for a break in the proceedings and he replied:

The fact that Ms. Montgomery changed her prior statements and said that Jamar Huggins was not involved -- or she said, this man, because I believe it was confusing to everybody in the courtroom, I believe, to Ms. Montgomery's testimony, even reading the transcript it's confusing, so the easiest way for me to determine who exactly Ms. Montgomery was talking about is, if I'm not mistaken, was to point to my client, Jamar Huggins, and say was this man involved in the crime, and she said, no. I don't know what better testimony there could be than that statement.

(PCR Tr. p. 121-122). Then, the following colloquy occurred:

- Q. Well, as Judge Culbertson pointed out in this 29 ruling, why didn't you ask her then who was involved?
- A. That's, again, I think that goes to trial strategy. I, mean, I think that's a little bit of Monday morning quarterback. Again, can't go back in time, but my trial strategy at the time, keep it simple and if there was not a witness who could put Jamar Huggins at the scene of the crime then there would not be enough testimony to go forward and I thought a directed verdict was expected, highly -- highly likely.
- Q. But even in the State's directed verdict argument they threw out the fact that you had said Jamar was Junk, do you recall that?
- A. Yes, because of Ms. Montgomery's contradictory statements.
- Q. Now, going back to opening on Page 43, Line 10, and you've talked a good bit about your opening strategy, you say there that DeAngula Shante Montgomery is a convicted felon, a crackhead, and then if you look at Page 46, Line 14, referring to Ms. Montgomery, you say: The truth is not in this woman. Would you agree that's what your opening argument was?
- A. Absolutely.
- Q. And then would you agree that by the end of the trial, as the State essentially mocked in their closing argument, you're telling them to believe Ms. Montgomery when she points to him and says he wasn't involved?
- A. I had no choice, I mean --
- Q. And specifically on Page 137 and 139 of the State's closing argument they point out that you labeled her as an addicted crackhead and now you want the jury to believe her and that she's telling the truth?
- A. Correct.
- Q. So was the strategy of just having her say, no, that's not him enough? Was it reasonable you think?
- A. Yes, but the strategy of her saying that's not him, are you saying that I should have introduced more evidence?
- Q. Well, you're saying, I just asked her, and your cross of her was very brief. You just asked her if she could identify him, you also asked Ms. Eckler that, but based upon the State's closing argument and the statements you had already made in the opening and the promises you had made to the jury, do you think that was enough?
- A. The third-party guilt that I was alluding to in my strategy in my opening statement, I was going to point the finger at Juice, but then -- and so I already painted, I was painted into a corner based on the contradictory testimony of Ms. Montgomery, I had already given my opening statement, and

so when – I just felt -- I felt like the strategy, it would be more inculpatory than exculpatory if I continued with that defense of pointing the finger at Juice.

(PCR Tr. pp. 118-124).

On cross-examination, Trial Counsel testified that had he known Montgomery would change her testimony, he would have proceeded differently. Trial Counsel testified that he had to revamp his defense strategy on the fly. (PCR Tr. p. 171). Trial Counsel testified that once Montgomery flipped, it became an identification case, and Montgomery's testimony helped Applicant. (PCR Tr. p. 171). Trial Counsel testified that his strategy shifted to keep it simple and not cloud the minds of the jurors with extraneous information. (PCR Tr. p. 172).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. Trial Counsel credibly testified that he opened the case with one defense strategy based on the information he had regarding Montgomery's statements, and when she changed those statements on the stand, he had to shift course. Trial Counsel does not have a crystal ball and cannot be deficient for not knowing that a witness may change their story on the stand. Even so, Trial Counsel articulated a reasonable strategy as to his shift in course and why he did some things and did not do others. Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689; see Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients

under the manifold pressures of a state trial"). This Court finds Trial Counsel has reasonably satisfied Strickland's deferential standard.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1e): Counsel failed to effectively handle the testimony of Ms. Montgomery. Specifically, but not limited to the following: Counsel failed to make objections prior to and during the testimony of Ms. Montgomery, did not properly handle the admission of the prior inconsistent statement of Ms. Montgomery, failed to properly cross-examine Ms. Montgomery.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively handle the testimony of Ms. Montgomery. Specifically, but not limited to the following: Counsel failed to make objections prior to and during the testimony of Ms. Montgomery, did not properly handle the admission of the prior inconsistent statement of Ms. Montgomery, and failed to properly cross-examine Ms. Montgomery.

PCR Evidentiary Hearing

Trial Counsel was asked whether or not he ever considered raising competency issues under Rule 601 regarding Montgomery's inability to recall certain things. Trial Counsel testified

that Montgomery provided very good testimony for Applicant because she testified that Applicant was not involved with the crime. (PCR Tr. p. 127). Trial Counsel testified that his strategy changed course when Montgomery gave favorable testimony that his client was not involved and that it had to shift to him having the jury believe Montgomery's testimony. (PCR Tr. p. 129).

During the testimony of Montgomery with the solicitor on pages 54 through 56, Trial Counsel was then questioned as to why he did not object, to which he testified in his opinion the testimony provided there was in Applicant's favor. Trial Counsel was specifically asked why he did not object to page 54, line 6, to which Trial Counsel testified that he was not sure why, but sometimes the transcript doesn't accurately reflect what's happening in the courtroom. (PCR Tr. pp. 129-131).

Trial Counsel was questioned as to why he did not ask about Adrian Moore in Montgomery's cross-examination, and Trial Counsel testified to the following:

Again, I think I've already explained this, but I just felt like when she said that this person, then pointed to Mr. Huggins: This person was not involved with the crime. I do not know of any other information that I could extract from her that would be more beneficial. If anything else, it only could lead to further Redirect because that was another consideration that I typically have during cross-examination, I want to limit Redirect of the Solicitor, and there was just, I think the benefit outweighed any -- excuse me -- I think that strategy outweighed any benefit I might have with further questioning.

(PCR Tr. p. 132).

On cross-examination, the following colloquy occurred:

- Q. So Ms. Montgomery and her presence at the scene of the crime, her affiliation with Mr. Huggins and with Mr. Moore and with Mr. McKeithan, I'm sorry, there's a lot of M's in this case, with all of those individuals, that was kind of the one common piece? She was involved with each of them?
- A. Correct.

- Q. And so as part of your trial preparation, you placed, I would say, a fair amount of emphasis on what she was going to say, and that was a fairly important thing to your preparation, right?
- A. Yes.
- Q. So in your preparation, specifically with regard to Ms. Montgomery, can you just remind us all what, in fact, you did do?
- A. Of course, reviewed all of the evidence in the discovery, took into great detail all of the audio interviews that were provided, and just studied those, took notes, I probably listened to them five or six times a piece, and I just used them to -- as I would develop questions I would have for them on cross-examination and also comparing, contrasting the audio interviews with each other.
- Q. And the various statements that different people had made in this matter regarding her involvement and other individuals involvement?
- A. That's right. And the detective work that was done with Ms. Montgomery, I paid close attention to that. They used deceptive measures with her that I thought went above and beyond what police should be doing.

(PCR Tr. pp. 153-154).

Trial Counsel testified that while he could have pressed Montgomery to identify the perpetrator, his mindset was that she already stated it was not Applicant, and he wanted to leave it at that. (PCR Tr. p. 173). Further, Trial Counsel testified that he did not want to permit the solicitor more leverage on redirect. (PCR Tr. p. 173). Also, Trial Counsel testified that as an officer of the court, had he asked her questions that elicited testimony that it was Mitchell, whom he had confirmed had an alibi with his attorney, it would have been unethical.

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. Trial Counsel credibly testified to his trial strategy and this Court finds that trial strategy reasonable under the prevailing professional norms. While there are instances where Trial Counsel did not object—and instances

where Trial Counsel could not articulate a reason for not objecting—the right to effective representation does not mean perfect representation. Further, this Court finds cross-examination is a matter of trial strategy, and Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690); see Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 7 (Ct. App. 2014) ("[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*") (emphasis added).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

[SPACE LEFT BLANK INTENTIONALLY]

Allegation (1f): Counsel failed to effectively handle the testimony and matters related to the Victim.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively handle the testimony and matters related to the Victim. This Court finds this allegation is without merit.

PCR Evidentiary Hearing

At the evidentiary hearing on direct examination, the following colloquy occurred:

Q. Now, in her testimony on Page 65, Line 1, I'm just going to point out some things and then ask why you didn't cross-examine her on these. Page 65, Line 1. In contradiction to the information that she gave in the reports and interview that we talked about, she says at that point that Adrian had just been gone for about a week, and she goes on to explain that she thought maybe he was involved in an affair. Would you agree that that contradicts all of the information that she gave law enforcement about the fact that he had this drug problem, he had been in Conway Medical for two weeks, she went to visit him there, that's not the same story that was reflected here at trial?

A. Correct.

Q. She does say on Page 72 that she knew he was in Conway Medical because he had called her but she never went into going to visit him and just all of the details regarding Adrian? Is there any reason on cross-examination why you didn't ask her about those things?

A. Yes.

....

Q. She testifies on Page 66 that it was a quiet neighborhood, they didn't lock their doors. Again, had you come up with any information that would refute that or any concerns regarding the neighbors?

A. I did not feel that that's relevant.

Q. She also makes no mention of, she says in her own statement she was running a daycare out of the house. Did you ask her any questions about that?

A. Yeah, I did not feel it was relevant. I didn't feel a need to impeach the witness. As a general trial strategy, defense attorneys try not to beat up victims unnecessarily and I did

not feel contradicting these details was to Mr. Huggins' best interest.

- Q. Just one more detail I need to ask you about. In her reports one says: One male with a mask. Another says: Two with masks. In her testimony on Page 70, she said she didn't see either ones face but she doesn't mention anything about masks. Any reason why you didn't bring up the mask detail?
- A. In my pretrial preparation, I had prepared a series of questions for Ms. Eckler and that point I had prepared to ask her those questions, I had prepared to ask her a question about a man coming into her driveway earlier that afternoon. He asked for Dray or Drake, a man asked about the wrong house, I was going to go into all the questions. A lot of the questions I thought were relevant from her statement, however, once Ms. Montgomery changed her testimony, again, I sound like a broken record, but I believe the case became one of identification and I knew that Ms. Eckler was not able to identify her assailant because he was wearing a mask, and so Ms. Montgomery had just previously testified that this man, the defendant, was not involved with the crime. I knew Ms. Eckler was not able to positively identify anyone, so again, keep it simple, I did not need to beat the victim up in front of the jury. I did not feel like I needed to impeach her, and even though I did not enjoy breaking away from my pretrial preparation and strategy, I thought that it was the right decision based on the circumstances. I thought the jury would appreciate the exculpatory evidence that Ms. Eckler could not identify the defendant at the scene of the crime.

(PCR Tr. pp. 133, l. 17 – 134, l. 10; pp. 137, l. 2 – 138, l. 15).

Trial Counsel testified that he did not feel that it was relevant to focus on the Victim's testimony regarding the neighborhood being quiet and that they didn't lock their doors. (PCR Tr. p. 137). Trial Counsel testified that he did not ask the Victim about running a daycare out of her home because he did not feel it was relevant. (PCR Tr. p. 137). Trial Counsel testified that typically, you try not to beat up on a victim unnecessarily, and he "did not feel contradicting these details was to [Applicant's] best interest." (PCR Tr. p. 137). Then the following colloquy occurred:

- Q. Just one more detail I need to ask you about. In her reports one says: One male with a mask. Another says: Two with masks. In her testimony on Page 70, she said she didn't see either ones face but she doesn't mention anything about masks. Any reason why you didn't bring up the mask detail?
- A. In my pretrial preparation, I had prepared a series of questions for Ms. Eckler and that point I had prepared to ask her those questions, I had prepared to ask her a question about a man coming into her driveway earlier that afternoon. He asked for Dray or Drake, a man asked about the wrong house, I was going to go into all the questions. A lot of the questions I thought were relevant from her statement, however, once Ms. Montgomery changed her testimony, again, I sound like a broken record, but I believe the case became one of identification and I knew that Ms. Eckler was not able to identify her assailant because he was wearing a mask, and so Ms. Montgomery had just previously testified that this man, the defendant, was not involved with the crime. I knew Ms. Eckler was not able to positively identify anyone, so again, keep it simple, I did not need to beat the victim up in front of the jury. I did not feel like I needed to impeach her, and even though I did not enjoy breaking away from my pretrial preparation and strategy, I thought that it was the right decision based on the circumstances. I thought the jury would appreciate the exculpatory evidence that Ms. Eckler could not identify the defendant at the scene of the crime.
- Q. That just made me think of a question. I asked you before about a continuance, and I know that in your response it didn't appear that that was something, you know, you thought was feasible or something you had asked for, but you would agree you were having to do this on the fly, you were having to adapt and change on the fly?
- A. Correct.
- Q. Okay. Because I just don't see anywhere in the transcript where there was a break taken or anything of that nature, so you're just flowing through these witnesses one after another; is that correct?
- A. It's kind of the nature of the business.

(PCR Tr. pp. 137-139).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. Trial Counsel credibly testified that he opened the case with one defense strategy based on the information he had regarding Montgomery's statements, and when she changed those statements on the stand, he had to shift course. Trial Counsel does not have a crystal ball and cannot be deficient for not knowing that a witness may change their story on the stand. Even so, Trial Counsel articulated a reasonable strategy as to his shift in course and why he did some things and did not do others. Thus, a fair assessment of attorney performance requires every effort to be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689; see Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996) (declining "to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial"). This Court finds Trial Counsel has reasonably satisfied Strickland's deferential standard.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1e): Counsel failed to properly cross-examine Detective Martin regarding Ms. Montgomery and her statement.

Allegation (1g). Counsel failed to effectively handle the testimony and matters related to Detective Jonathan Martin.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively cross-examine and handle the testimony and matters related to Detective Jonathan Martin.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified he had planned questions about phone records to ask Martin. (PCR Tr. p. 111). Trial Counsel testified that he planned to go into everything Counsel Hanna did until Montgomery testified. (PCR Tr. p. 111). Next, the following colloquy occurred:

- Q. Then Ms. Montgomery testifies, and you're saying you abandoned the cross-examination you had planned, but why didn't you keep going with the strategy that not only does she not identify him, it's clear from the discovery that I have that these are the people that did it?
- A. Once Ms. Montgomery -- Once Ms. Montgomery testified, this became a question of identification of Mr. Huggins at the crime scene. Prior to that the strategy was having to discredit Ms. Montgomery and having Ms. Montgomery's testimony contradicted through other evidence, and I had planned to introduce the third party defense of Juice, but then Ms. Montgomery, as you can see in my opening statement, I identified -- I had started my strategy pre-Montgomery testimony strategy in my opening, but then Ms. Montgomery, when she contradicted her prior statements testimony at trial also made me, if I continued -- she calls me to have to contradict my opening statement due to her changing her testimony, so that's what happened.
- Q. So are you saying that she can't -- once she couldn't identify Mr. Huggins there wasn't room for you to say and the

evidence shows these were the parties? She can't identify him, and the evidence, the discovery, the things I can ask Mr. Martin about --

A. Well, you could --

Q. -- show that there were other parties involved?

A. You could. I mean, I think that's discretionary. It would not be advisable to me, because at that point in time you're confusing the jury as to the parties at play. Ms. Montgomery, in my one redirect -- excuse me, in my one cross-examination question to her was, this man, Jamar Huggins, was he involved with the crime? And she said, no. Then at that point there were only two witnesses left, Ms. Eckler and Detective Martin. Ms. Eckler, I knew that she could not positively identify whoever was in the mask because they were wearing the full mask, so my limited question to her was could she positively identify Jamar Huggins as the culprit, she could not. So therefore, in order to keep it very simple for the jury and not cloud them with my original strategy, I didn't think it was necessary to go into who it could have been when there was no testimony to say who -- that Jamar Huggins was not involved.

(PCR Tr. pp. 112-113).

Trial Counsel testified that he wanted to address Montgomery's continued questioning after she invoked, but that changed when Montgomery changed her testimony. (PCR Tr. pp. 125-126). Trial Counsel testified that after Montgomery changed her testimony, the case became one of identification and so any evidence that was above and beyond the identification of Applicant at the scene of the crime would be confusing or unnecessary for the jury to hear. (PCR Tr. p. 126).

Trial Counsel testified that he could not recall if he had any basis for not objecting to the investigative hearsay regarding Tyjuan Mckeithan. (PCR Tr. pp. 140-141). Trial Counsel testified that he did not have a reason for not eliciting that Mcketihan's interview ceased because he invoked. (PCR Tr. p. 141).

Trial Counsel testified that he did not object to the line of questioning in pages 99-100 because Montgomery had already testified that Applicant was not involved in the crime. (PCR Tr.

p. 142). Trial Counsel testified that Montgomery had testified about Applicant; however, her testimony was that Applicant was not involved in the crime. (PCR Tr. p. 142).

Trial Counsel testified that he planned to ask Martin about the evidence that went missing as he had prepared questions ahead of trial, but, in the presence of trial, it did not have the value it had before the trial. (PCR Tr. pp. 145-146). Trial Counsel testified that he did not request standard operating procedures, but he had questions outlined to ask Martin about things he did not do throughout his investigation. (PCR Tr. p. 146).

Trial Counsel testified that McKeithan was the third witness and testified after Montgomery testified that Applicant was not involved in the crime and there was no better testimony he could elicit from McKeithan. (PCR Tr. pp. 146-147).

On cross-examination, Trial Counsel testified that he prepared a full cross-examination for Martin. (PCR Tr. p. 162). Trial Counsel testified that since Montgomery changed her testimony at trial, he did not think it would be beneficial to cross-examine Martin on Montgomery's credibility. (PCR Tr. p. 163). Trial Counsel testified that he thought it would hurt Applicant's interests. (PCR Tr. p. 163).

Trial Counsel testified that the testimony of the prior statements was more explanatory. (PCR Tr. p. 172).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. Trial Counsel credibly testified to his reasonable and sound strategy behind the handling and cross-examination of Martin. Further, this Court finds cross-examination is a matter of trial strategy, and Applicant has failed to overcome the presumption that Trial Counsel "rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690); see Abney v. State, 408 S.C. 41, 48, 757 S.E.2d 544, 7 (Ct. App. 2014) ("[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. Examples of such decisions include which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*") (emphasis added).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1h): Counsel failed to effectively handle matters related to Adrian Moore.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to effectively handle matters related to Adrian Moore.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that they attempted to locate Moore, but they were unable to locate and interview. (PCR Tr. p. 77). Trial Counsel testified that he did not have

Moore's criminal record in discovery; however, he ran a checkmate background check to find aliases', birth information, criminal history, and marriage. (PCR Tr. pp. 108-109).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. *See Butler, supra*. Trial Counsel credibly testified to his reasonable and sound strategy behind the handling of Moore. Further, this Court is unable to determine what further Trial Counsel could have ascertained from further investigation of Moore. Trial Counsel credibly testified that further investigation of Moore did not have "value to it." (PCR Tr. p. 116). Trial Counsel is only required to conduct a reasonable investigation—and—this Court must apply a heavy deference to Trial Counsel's determinations. *See Strickland, supra*.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

[SPACE LEFT BLANK INTENTIONALLY]

Allegation (1i): Counsel failed to provide a complete argument during the directed verdict motion. Transcript pp. 121-125, 174.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to provide a complete argument during the directed verdict motion.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

PCR Evidentiary Hearing

On direct examination, the following colloquy occurred:

- Q. We briefly touched on it and I know that you made a motion for directed verdict and you've mentioned so far in your testimony, I'm not trying to mischaracterize it in any way but you thought it was close, so I just wanted to give you an opportunity to -- you know, we've marched through the transcript in order. As far as the directed verdict, kind of what was your approach in that and where did you think it was going?
- A. Again, just my motion for directed verdict was based upon the fact that there was no witness, there was no direct evidence putting Jamar Huggins at the scene of the crime, and so I did not feel like there was enough evidence to

present it to the jury. I believe it, my personal opinion, that it should have resulted in a directed verdict because there was no direct evidence incriminating him.

Q. Page 117, it kind of has the meat of your argument, and if it's not, I apologize, but I mean, that seems like the lengthiest part of your argument, and essentially, you argued to the Court -- it's 116, 117, I apologize -- that Ms. Montgomery is not credible, her prior statement is not in evidence, and Ms. Eckler has not made an identification. Did you have any concern, though, that the information had come in through Investigator Martin about her prior statement and that she had made the identifications?

A. That is always a concern.

Q. And to be fair, the judge didn't really give a basis, he just said it comes down to a jury question?

A. Correct.

Q. We've already talked about the jury deliberations. Your post-trial motion, you asked the judge to exercise his discretion as a 13th juror and you note that you thought he was close the awarding the directed verdict, so I assume it's fair to say you were pushing him to try to set aside the trial; is that correct?

A. Correct.

Q. Did you feel that you needed to make a lengthy record for that to be considered for direct appeal, or did you feel like you had the opportunity to give him everything you needed to there?

A. I thought what I did was sufficient.

Q. And then the judge actually takes a break to consider it overnight, do you recall that?

A. Yes.

Q. On Page 175. I'm going to flip there real quick. And then when he comes back the next day, he makes his ruling, and let me give you a cite for that, 176, Line 9, and he says, regarding the jury: They just believed Ms. Montgomery's prior statement and didn't believe her testimony at trial, is what he states?

A. Uh-huh.

Q. And so to him there had been evidence put in about her prior statement. Is that how you read that and how you understood his ruling at that time?

A. That's what the transcript says. I'm not going to read into it more than what the transcript says.

Q. But that's the ruling that he gave you --

A. That's what's in the transcript.

Q. -- is the jury must have believed her prior statement?

A. That's what's in the transcript.

(PCR Tr. pp. 148-150).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. Trial Counsel credibly testified that he believed his handling of the directed verdict was reasonable. This Court agrees and finds that Trial Counsel's performance in this matter was reasonable under the prevailing professional norms. While Trial Counsel could have done something different, great deference is given to Trial Counsel in the decisions he made at trial. Trial Counsel cannot be deficient when a well-reasoned argument is presented to the trial court, and the trial court rejects the argument. See Mazzell, supra.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (1j): Counsel failed to make an effective and complete post-trial motion.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to make an effective and complete post-trial motion.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that it was his job to press Montgomery on who committed the crime that Judge Culbertson pointed out in the Form 4 order denying the motion for a new trial. (PCR Tr. p. 151).

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. This Court also finds that Trial Counsel provided a valid and reasonable reason for not hammering Montgomery on naming who the assailant was—rather—he considered the testimony of Montgomery that Applicant was not the assailant was sufficient. Notably, while Trial Counsel admitted that it was his job to press Montgomery—and Judge Culbertson pointed it out—this Court will not find Trial Counsel's decision not to press Montgomery deficient. Trial Counsel reasonably relied on his experience and perceptions at the time of trial, and great deference is afforded Trial Counsel in his decisions at trial. Lastly, whether or not his pressing Montgomery would have changed the outcome of trial is pure conjecture. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (2a): Ineffective assistance of counsel for the handling of the Rule 29, SCRCrimP, Motion. Specifically, but not limited to, failure to properly prepare, present a full argument, present the witness(es) and evidence, and make a complete record.

Applicant alleges Post-Trial Counsel was constitutionally ineffective in handling the Rule 29, SCRCrimP, Motion. Specifically, but not limited to, failure to properly prepare, present a full argument, present the witness(es) and evidence, and make a complete record. This Court finds this allegation is without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. Ard. v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing, or their testimony must otherwise be presented, consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." Buckson v. State, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. See, e.g., Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); Edwards v. State, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was not deficient by failing to call alibi witnesses when two witnesses who testified at PCR hearing did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. See, e.g., Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated, or bolstered defendant's credibility so that the findings at trial could have been favorable to the defendant); Thomas v. State, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

The South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony per the rules of evidence at the PCR hearing to establish prejudice from the witness' failure to testify at trial. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have

provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice).

PCR Evidentiary Hearing

On direct examination, Counsel Hanna testified that she hired a private investigator to help her in the preparation of a motion for a new trial. (PCR Tr. p. 21). Counsel Hanna testified that she went through discovery and phone records and tried to determine if there was any connection to Applicant at the time of the crime. (PCR Tr. pp. 22-23). Counsel Hanna testified that she did not find a connection. (PCR Tr. p. 23). Counsel Hanna testified that she prepared a memorandum and power point presentation in preparation for the hearing. (PCR Tr. pp. 22-24). Counsel Hanna testified that she felt the power point was demonstrative in explaining the evidence she had in her file. (PCR Tr. p. 27).

Counsel Hanna testified that she felt the affidavit of DeAngula Montgomery was enough evidence for a new trial. (PCR Tr. p. 31). Counsel Hanna testified that she made the argument that the pictures of Applicant did not match the description of the assailants. (PCR Tr. pp. 32-33). In support of the affidavit, Counsel Hanna testified that the correct person she identified was Jasamine Mitchell. (PCR Tr. p. 33). Counsel Hanna testified that the new evidence was Montgomery's affidavit and everything else was not new and just supported the new evidence. (PCR Tr. p. 35). Counsel Hanna testified that it was a respectful disagreement between her and Judge Culbertson as to whether the evidence was new or not. (PCR Tr. p. 38).

On cross-examination, Counsel Hanna testified that she was not aware that there were discussions prior to trial and in the interviews that Applicant had more than one cell phone. (PCR Tr. p. 45). The following colloquy then occurred:

- Q. And you're aware that on the stand Ms. Montgomery said, no, I was with Junk, but it's not that guy, and I don't want to tell you who we were getting our drugs from?
- A. Yes, ma'am, that's correct.
- Q. So she actively refused on the record to provide the information that you're saying is newly discovered evidence?
- A. Yes, ma'am. But the newly discovered evidence is who she eventually did identify. When she was here sitting in trial all she would say is, it's not that guy.
- Q. And you're aware that up to the night before the trial she had indicated that, in fact, it was Jamar Huggins, are you aware of that?
- A. I am not aware of that.
- Q. So you're not aware of the interview the night before the trial with the investigator?
- A. I knew there was some tension between the State and Ms. Montgomery, but I wasn't present, I believe Donna Elder was the prosecutor. I know there was some tension and maybe she even called her as a -- you know, maybe it ended up being a hostile witness. There was some issue there, but I don't remember the specifics.
- Q. But are you aware there was conversation up until the night before the trial that Ms. Montgomery intended to testify against Mr. Huggins and identify him as such?
- A. I just don't remember, and I apologize. I mean, if there's somewhere in the transcript or somewhere in the record on appeal, I can certainly refresh my memory, I just don't remember at this point.

(PCR Tr. pp. 45-47).

Counsel Hanna testified that she did not reach out to Mr. Mitchell because she did not feel comfortable doing so. (PCR Tr. p. 47). While Counsel Hanna testified on direct that Montgomery was finally away from Applicant and felt safe to talk, on cross-examination, Counsel Hanna testified that she did not recall that Montgomery was actually in jail on other charges before her

interview regarding Applicant. (PCR Tr. p. 48). Counsel Hanna testified that she had no information to suggest Montgomery was under the influence when she gave her first interview to police while in jail. (PCR Tr. p. 49). Counsel Hanna testified that she recalled Montgomery told police what car they went in to do the robbery, and that car traced back to Applicant. Counsel Hanna testified that she did not present this information in her motion for a new trial. (PCR Tr. pp. 49-50).

Findings

Initially, this Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. See Butler, supra. This Court finds Counsel Hanna conducted an adequate investigation and reasonably prepared for the motion for a new trial. Further, this Court finds Applicant also failed to meet his burden because no witnesses were called other than Counsel Hanna for this allegation. Thus, any witness Applicant believes Counsel Hanna should have called and how they would have changed the outcome of the motion for a new trial is purely speculative. See Clark, 315 S.C. at 388, 434 S.E.2d at 267 (concluding pure conjecture fails to establish prejudice).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation (3): Alternatively, if not found to be ineffective assistance of counsel and/or in addition to being grounds for ineffective assistance of counsel, Applicant alleges that the newly offered information from Ms. Montgomery amounts to newly discovered evidence.

Applicant contends if Trial Counsel and Counsel Hanna are not found to be constitutionally ineffective, then Applicant alleges that the newly offered information from Ms. Montgomery amounts to newly discovered evidence.

A person may institute a PCR action if "there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice[.]" S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C).

To prevail, Applicant must show the newly-discovered evidence:

1. is such as would probably change the result if a new trial was had;
2. has been discovered since the trial;
3. could not by the exercise of due diligence have been discovered before the trial;
4. is material to the issue of guilt or innocence; and
5. is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing State v. Caskey, 273 S.C. 325, 256 S.E.2d 737 (1979)).

The determination of whether new evidence is credible for the purposes of a new trial rests with the trial court. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In particular, "our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citing Porter, 269 S.C. at 621, 239 S.E.2d at 643). "When testimony is in direct conflict and depends largely on the credibility of the new evidence, the trial judge is charged with the duty of assessing the evidence." State v. Deese, 266 S.C. 534, 538 225 S.E.2d 175, 176 (1976) (citing State v. Fowler, 264 S.C. 149, 155, 213 S.E.2d 447, 450 (1975)). The granting of a new trial based on after-discovered evidence is disfavored. State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011).

As an initial matter, Applicant is asking this Court to rule that the evidence presented is newly discovered evidence after another circuit court judge has ruled that it fails the Hayden factors. This Court cannot overrule another circuit court judge.

Rule 29(b), SCRCrimP, Hearing

At the Rule 29(b), SCRCrimP, hearing, Counsel Hanna presented her motion for a new hearing. The Honorable Benjamin H. Culbertson presided and took the matter under advisement. On June 14, 2017, Judge Culbertson issued a Form 4 Order denying the motion for a new trial stating the following:

Defendant's Motion for New Trial due to newly discovered evidence is DENIED,

At trial, Deaungela Montgomery testified that the defendant was not the person who committed the crimes with her and that she did not want to identify the true co-perpetrator. Her testimony was impeached with her inconsistent prior statements given to law enforcement where she Identified the defendant as a co-perpetrator of the crimes.

The Defendant's Motion for a New Trial is based upon Deaungela Montgomery's identification of another person as the co-perpetrator

after the defendant's conviction at trial. She states in an affidavit that she is no longer scared of the co-perpetrator and, therefore, identifies him by name (which she refused to do at trial).

Such evidence is merely cumulative since, at trial, Deaungela Montgomery testified that the defendant was not the true co-perpetrator and that someone else committed the crimes with her. Also, the evidence could have been discovered prior to trial with due diligence. When Deaungela Montgomery refused to identify the true perpetrator at trial, the defendant did not press her on that issue or ask that she be required to identify who committed the crime with her. (At the time of Deaungela Montgomery's testimony at the defendant's trial, she had already pled guilty and been sentenced to one of the crimes in this case).

See Hayden v. State, 278 S.C. 610, 278 S.E.2d 610 (1983) and Rule 29(b), SCRCrimP.

(ROA pp. 270-271).

Findings

Because Judge Culbertson has already ruled on this matter, this Court cannot overrule his finding. Furthermore, this Court agrees with Judge Culbertson's findings, that it fails Hayden factor number five. See, e.g., United States v. Connolly, 504 F.3d 206, 212 (1st Cir. 2007) ("Every element of this test . . . is essential, and a failure to establish any one element will defeat the motion.").

Accordingly, this allegation is **DENIED** and **DISMISSED**.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

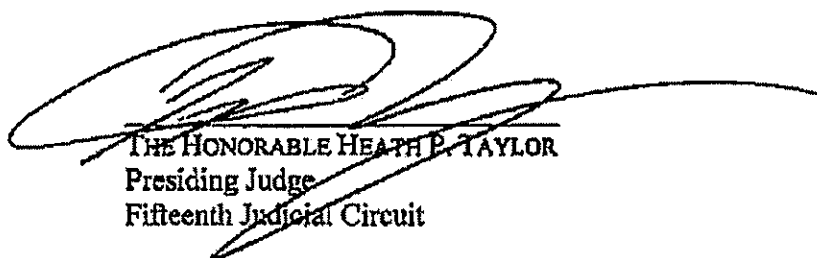
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. This Court finds Plea Counsel provided effective representation. Therefore, this application for post-conviction relief must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Pursuant to Rule 71.1(g), SCRPC, if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Post-conviction relief is denied and the application for post-conviction relief be dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 30th day of September, 2024.


THE HONORABLE HEATH P. TAYLOR
Presiding Judge
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Jamar Huggins, 361445,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2017-CP-26-1766

MOTION PURSUANT TO
RULE 59 (a) & (e), SCRPC

REJEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

2024 OCT 28 P 1:05

FILED
HORRY COUNTY

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on March 16, 2017. Pursuant to Rule 59 (a) and (e) of the South Carolina Rules of Civil Procedure, Applicant would move before this Court for relief as follows.

PROCEDURAL HISTORY

During the March 2013 term of the Horry County Grand Jury, Applicant was indicted for burglary, kidnapping and armed robbery (2013-GS-26-1076, 1077, 1078). On September 15, 2014, Applicant was called to trial in Horry County in front of the Honorable Benjamin H. Culbertson. Applicant was represented by J. Reuben Long, III, Esquire. Donna Elder, Assistant Solicitor, represented the State. On September 17, 2014, Applicant was found guilty as indicted. The Honorable Benjamin H. Culbertson sentenced Applicant to concurrent terms of fifteen years, fifteen years and ten years for each charge.

A timely direct appeal was filed and perfected by Robert M. Pachak, Esquire, of the Office of Appellate Defense. On March 30, 2016, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. *State v. Huggins*, Op. No. 2016-UP-146 (S.C. Ct. App. filed March 30, 2016). The remittitur was issued on April 15, 2016.

A Motion for a New Trial Based on After Discovered Evidence, with Affidavit of Deaungela Montgomery, was filed on September 27, 2016. A hearing was conducted on June 13, 2017 at the Horry County Courthouse in front of the Honorable Benjamin H. Culbertson. Applicant was present and represented by Natasha M. Hanna, Esquire. The State was represented by Jimmy A. Richardson, II, Fifteenth Circuit Solicitor. Following the hearing, Applicant, through counsel, filed a Memorandum in Support of Defendant's Motion for a New Trial. On June 14, 2017, the Honorable Benjamin H. Culbertson issued a written Order denying the motion, which was filed on June 15, 2017.

While the Motion for a New Trial was pending, Applicant filed a timely Application for Post Conviction Relief on March 16, 2017. Applicant was appointed James K. Falk, Esquire. On June 29, 2017, the State filed a Return and Motion for More Definite Statement.

On July 5, 2017, Mr. Falk filed a Notice of Appeal stemming from the denial of the Motion for a New Trial. Following substitution as counsel, the appeal was perfected by Tricia A. Blanchette, Esquire. The State was represented by David Spencer, Senior Assistant Attorney General.

On November 9, 2017, Tricia A. Blanchette, Esquire, was also substituted in as counsel on the pending PCR Application. On April 4, 2018, Applicant, through counsel, filed a Motion for Abeyance due to the pending direct appeal. On May 21, 2018, the Honorable Larry B. Hyman issued an Order granting the request for an abeyance. On July 3, 2019, the South Carolina Court of Appeals affirmed the lower court via unpublished Opinion. *State v. Huggins*, Op. No. 2019-UP-247 (S.C. Ct. App. filed July 3, 2019). The Remittitur was issued on July 19, 2019.

On September 9, 2019, Applicant, through counsel, filed a Motion for Abeyance to be Lifted and for Discovery. On October 10, 2019, a motion hearing was conducted in front of the Honorable William H. Seals, Jr. at the Horry County Courthouse. Applicant was not present due to transportation issues, but he was represented by Tricia A. Blanchette, Esquire. Respondent was represented by Johnny E. James, Jr., Assistant Attorney General.

After reviewing the written motion and hearing from both parties, the Honorable William H. Seals Jr. granted Applicant's Motion. On November 9, 2019, an order Lifting Abeyance and Authorizing Discovery was issued that allowed Applicant, through counsel, the opportunity to issue subpoenas to the appropriate people, offices or agencies for the production of the following case files/materials pursuant to S.C. Code Ann. §17-27-150(a) (2008) limited to those files/materials that were subject to discovery during the underlying criminal proceeding:

1. A complete copy of Applicant's file maintained by trial counsel and post trial counsel of record.
2. A complete copy of the Horry County Clerk's file.
3. If not contained in counsel's file, a copy of the State Law Enforcement Agency (SLED) file.
4. If not contained in counsel's file, a complete copy of Applicant's discoverable file maintained by the Horry County Solicitor's Office, and if not contained therein a copy of the Horry County Sheriff's Department file.
5. The opportunity for Applicant's counsel and potential experts to review the evidence maintained at the Horry County Sheriff's Department and SLED (if needed).

On August 15, 2022, Applicant, through counsel, submitted a Supplemental Motion for Discovery. By way of this Motion, Applicant submitted the following information and request:

As a result of the review of discovery received and several interviews conducted by Applicant's private investigator, it has become apparent that Applicant may have a claim that trial counsel failed to properly investigate prior to trial. To further investigate or substantiate this claim, Applicant would request the opportunity to obtain a copy of the following items and will provide a brief explanation for each request:

1. The criminal history and/or NCIC report for Adrian Maurice Moore. Despite not testifying at trial, Mr. Moore was a central figure in the events that took place that resulted in Applicant's charges and convictions. Adrian Moore was the intended victim of the home invasion and was the person with a connection, through drug activity, with the other assailants. Mr. Moore is currently serving a sentence in South Dakota for a drug crime.
2. Any incident reports, police activity logs, or records for calls to law enforcement for [REDACTED] Memory Lane in Conway, South Carolina for up to one year prior to the incident date of December 20, 2012. Through discovery and interviews, it has become known that there was regular drug activity at this address, which was in conflict with what was presented at trial.
3. The opportunity for the personnel file, to include internal affairs file, for Investigator Jonathan Martin be screened for impeachment material that would have been possible for trial counsel to seek prior to trial pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963). *See also Giglio v. U.S.*, 405 U.S. 150, 92 S.Ct. 763 (1972), *Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555 (1995). Mr. Martin served as the lead investigator and testified at trial. Mr. Martin is no longer employed with the Horry County Police Department. As a result of his employment ending, Applicant would also seek the screening of the files for impeachable material following the date of Applicant's trial and up until the date Mr. Martin's employment ceased with Horry County Police Department (or any other law enforcement agency in Horry County).
4. A copy of the Horry County Police Department's Standard Operating Procedure (SOP) for criminal investigations effective on December 20, 2012. As a result of the review of discovery materials and the private investigation conducted, it is necessary to obtain a copy of the SOP to determine if the investigation was in compliance with the SOP in effect on December 20, 2012 and/or if counsel was ineffective for failing to obtain the same.

On August 23, 2022, the Honorable William H. Seals, Jr. issued an Order Granting Motion for Supplemental Discovery and Continuance. The Order was filed on September 6, 2022.

On April 24, 2023, Applicant, through counsel, filed an Amendment to Application for Post Conviction Relief. By way of the Amendment, Applicant alleged the following:

As a result of discovery received and the investigation conducted, Applicant would move to amend his original Application for Post Conviction Relief. In general, Applicant would allege that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as pursuant to Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his trial. Applicant would further amend his Application for Post Conviction Relief to contain the following specific allegations of ineffective assistance of trial and post-trial counsel:

1. Trial counsel rendered ineffective assistance of counsel that was prejudicial to Applicant, due to the following:
 - a. Counsel failed to conduct an independent investigation and properly address the investigation conducted by the State and/or law enforcement.
 - b. Counsel failed to utilize evidence and witnesses to attack the State's case and put up a proper defense. Specifically, counsel failed to effectively develop and properly present a defense of alibi, third party guilt and/or actual innocence.
 - c. Counsel failed to object to improper burden shifting statements to the jury by the court. Transcript pp. 33, 36, 38. See *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012).¹
 - d. Counsel made an opening argument that was prejudicial to Applicant's defense and bolstered the State's case.
 - e. Counsel failed to effectively handle the testimony of Ms. Montgomery. Specifically, but not limited to the following: Counsel failed to make objections prior to and during the testimony of Ms. Montgomery, did not properly handle the admission of the prior inconsistent statement of Ms. Montgomery, failed to properly cross-examine Ms. Montgomery, and failed to properly cross-examine Detective Martin regarding Ms. Montgomery and her statement.

¹ In the Amendment, the citation contained a typo.

- f. Counsel failed to effectively handle the testimony and matters related to the victim.
 - g. Counsel failed to effectively handle the testimony and matters related to Detective Jonathan Martin.
 - h. Counsel failed to effectively handle matters related to Adrian Moore.
 - i. Counsel failed to provide a complete argument during the directed verdict motion. Transcript pp. 121-125, 174.
 - j. Counsel failed to make an effective and complete post trial motion.
2. Ineffective assistance of counsel for the handling of the Rule 29, SCRCrimP, Motion. Specifically, but not limited to, failure to properly prepare, present a full argument, present the witness(es) and evidence and make a complete record.
 3. Alternatively, if not found to be ineffective assistance of counsel and/or in addition to being grounds for ineffective assistance of counsel, Applicant alleges that the newly offered information from Ms. Montgomery amounts to newly discovered evidence.
 4. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

On November 13, 2023, an evidentiary hearing was convened at the Horry County Courthouse in front of the Honorable Heath P. Taylor. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Suzanne Shaw, Esquire. Applicant introduced nine exhibits and called the following witnesses: Mitchell Randy Phillips, Natasha Hanna, Esquire, Matthew Thornton, and John Long, Esquire. Respondent did not call any witnesses or introduce any exhibits. This Court also had before him the records from the underlying conviction, motion and appeals. At the close of the hearing, the Court allowed time for the evidentiary hearing transcript to be obtained and requested proposed Orders from each party.

On September 30, 2024, an Order of Dismissal with Prejudice was issued and filed on October 8, 2024. Applicant, via counsel, received notice of the entry of the Order on October 17, 2024 via mailed copy sent by the Office of the Attorney General. Applicant's counsel mailed Applicant notice of entry of the Order on October 18, 2024. This Motion timely follows.

ARGUMENT

In *Marlar v. State*, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. *See also* S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that the Court ensure that specific findings of fact and conclusions of law are entered on each issue raised and that the record before the Court and testimony of each witness is properly addressed in the standing Order of Dismissal ("Order").² Additionally, Applicant would respectfully ask that the Court reconsider the Order and find that a new trial should be granted.

As a threshold matter, Applicant would ask the Court to review the record, to include the evidentiary hearing transcript, and ensure the accuracy and completeness of the standing Order and/or reconsider the denial of relief. Applicant would also ask the Court to reconsider the facts, reasonings and findings set forth in the Applicant's proposed Order, which is attached herein and incorporated by reference, and grant relief.³

² Applicant submits the analysis of the record and law in the standing Order is presented in the light most favorable to the State.

³ Applicant does not concede any issues on which the incorporated proposed Order does not grant relief as this Order was drafted in line with persuading the lower court towards granting Applicant relief.