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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Grace Gilchrist Knie, Circuit Court Judge

JOSEPH CHAPPELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000428

APPENDIX

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INDEX

TRANSCRIPT OF RECORD DATED APRIL 11, 2018.....	1
COURT’S EXHIBIT #1	175
INDICTMENT.....	176
APPLICATION FOR POST-CONVICTION RELIEF	178
RETURN AND MOTION FOR PARTIAL SUMMARY DISMISSAL	187
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	195
PCR HEARING TRANSCRIPT DATED SEPTEMBER 21, 2023.....	197
PCR HEARING APPLICANT’S EXHIBIT #1	248
ORDER OF DISMISSAL.....	249

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
)
JOSEPH CHAPPELL,)
)
DEFENDANT.)
_____)

2017-GS-23-04041

TRANSCRIPT OF RECORD

APRIL 11, 2018
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROGER L. COUCH

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

ATTORNEY FOR PLAINTIFF:

BRANN FOWLER
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

RODNEY RICHEY, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>		<u>PAGE NO.</u>
OPENING STATEMENTS		
MR. FOWLER	-----	52
MR. RICHEY	-----	54
CONEZE BARNER		
DIRECT BY MR. FOWLER	-----	56
CROSS BY MR. RICHEY	-----	75
REDIRECT BY MR. FOWLER	-----	86
RECROSS BY MR. RICHEY	-----	88
TIM FULLER		
DIRECT BY MR. FOWLER	-----	89
CROSS BY MR. RICHEY	-----	95
KEVIN FLOWERS		
DIRECT BY MR. FOWLER	-----	100
CROSS BY MR. RICHEY	-----	103
NICHOLAS DOWNING		
DIRECT BY MR. FOWLER	-----	104
CROSS BY MR. RICHEY	-----	108
REDIRECT BY MR. FOWLER	-----	110
CHARLES MOORE		
DIRECT BY MR. FOWLER	-----	121
CLOSING ARGUMENTS		
MR. FOWLER	-----	130
MR. RICHEY	-----	137

INDEX

<u>WITNESS</u>		<u>PAGE NO.</u>
CHARGE OF THE COURT	-----	145
VERDICT OF THE JURY	-----	164
SENTENCE OF THE COURT	-----	166
CERTIFICATE OF REPORTER	-----	174

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	CD OF PHONE RECORDING (NOT TRANSCRIBED)	----- 125	125
C-1	JURY QUESTION	----- 162	

1 **THE COURT:** All right. We're on the record in the case
2 of the State versus Joseph Chappell. Mr. Richey, my
3 understanding is your client has a matter he'd like to take
4 up with the Court.

5 **MR. RICHEY:** Yes, sir. He would like the Court to
6 entertain a motion to relieve me as his counsel.

7 **THE COURT:** Your status is -- were you appointed by the
8 court?

9 **MR. RICHEY:** Yes, sir. I was appointed ---

10 **THE COURT:** Okay.

11 **MR. RICHEY:** --- by the court, yes, sir.

12 **THE COURT:** All right. Now, the case is on the docket
13 this morning, Mr. Chappell, first up for trial, and the
14 jury's here.

15 **MR. CHAPPELL:** Yes, sir.

16 **THE COURT:** You hadn't made this motion before today?

17 **MR. CHAPPELL:** Well, I have been having doubts about
18 Mr. Richey for a while. And ---

19 **THE COURT:** Well, just a moment. I'm going to ask that
20 the clerk put you under oath if you're going to testify
21 about this situation.

22 **MR. CHAPPELL:** Yes, sir.

23 **THE COURT:** All right.

24 **MADAME CLERK:** Will you raise your right hand. Do you
25 swear or affirm to tell the truth, the whole truth and

1 nothing but the truth so help you God?

2 **MR. CHAPPELL:** Yes, ma'am.

3 **MADAME CLERK:** Thank you.

4 **THE COURT:** All right. Yes, sir.

5 **MR. CHAPPELL:** From the very beginning I've been having
6 doubts about Mr. Richey. And the very first meeting ---

7 **THE COURT:** Just one second. How long has the case
8 been pending, Mr. Richey?

9 **MR. RICHEY:** It's over -- it's a year old.

10 **THE COURT:** So about a year old. Okay. Yes, sir.

11 **MR. CHAPPELL:** Okay. The very first meeting I went to
12 see Mr. Richey, he came to the detention center. And he was
13 seeing another client at the time, and I was in the holding
14 cell. And him and the -- him and the client was arguing and
15 they was cussing, and he was cursing, and the client was
16 cursing, and it kind of bothered me -- that bothered me real
17 bad.

18 **THE COURT:** What did you know about that case?

19 **MR. CHAPPELL:** I didn't know anything about the case.

20 **THE COURT:** What do you know today about that case?

21 **MR. CHAPPELL:** I don't know anything about that case.

22 **THE COURT:** Okay. You may proceed.

23 **MR. CHAPPELL:** I think that was very unprofessional of
24 him.

25 **THE COURT:** I don't know the situation. So you may

1 proceed.

2 **MR. CHAPPELL:** But -- I'm sorry. Well, anyway, that
3 kind of, you know, gave me a funny feeling about how he
4 operates. So I gave him the benefit of the doubt and, you
5 know, see what he would do. And we talked. And he said the
6 case was -- was really nothing. He said, you know, he don't
7 see why we couldn't -- he couldn't get this dropped to a
8 lesser charge or whatnot.

9 **THE COURT:** Now you're -- does this gentleman have a
10 record?

11 **MR. FOWLER:** Yes, sir.

12 **THE COURT:** Okay. So you've been in criminal
13 situations represented by an attorney in the past?

14 **MR. CHAPPELL:** Yes, sir.

15 **THE COURT:** So you're familiar with the negotiation
16 process with the State on charges. Are you familiar with
17 how that works?

18 (Pause)

19 **THE COURT:** Have you ever pled guilty before when
20 you've come to court?

21 **MR. CHAPPELL:** Yes, sir, I have.

22 **THE COURT:** Okay. So you've negotiated pleas before.

23 **MR. CHAPPELL:** Yes, sir.

24 **THE COURT:** Okay. Go ahead.

25 **MR. CHAPPELL:** Yeah, you could say that. Yes, sir.

1 I just don't think Mr. Richey is going to represent me
2 in my best interest in this trial.

3 **THE COURT:** You're going to have to be specific.

4 **MR. CHAPPELL:** Be specific how? What do you -- what do
5 you mean being specific?

6 **THE COURT:** You've got to tell me specifically
7 something you've asked him to do that he hasn't done,
8 something that ---

9 **MR. CHAPPELL:** Well, for one thing, I wanted him to
10 investigate the place where I was at. And there was people
11 that was there that he never went there and investigated.
12 He told me he went to the scene of the accident -- of the
13 accident on, what, Christmas Day because he was down there
14 visiting his mom. It was nothing ---

15 **THE COURT:** Well, let me ask, Mr. Richey, have you been
16 to the scene and investigated?

17 **MR. RICHEY:** Your Honor, this happened probably a block
18 away from where I grew up.

19 **THE COURT:** Okay.

20 **MR. RICHEY:** So I'm familiar with the scene and ---

21 **THE COURT:** Oh, okay.

22 **MR. RICHEY:** --- the whole situation.

23 **THE COURT:** Yes, sir.

24 **MR. CHAPPELL:** I asked him to investigate on my part to
25 the -- he could go to the store where they said I was at at

1 the time that he said he picked me up, the victim said he
2 picked me up. That was never done.

3 **THE COURT:** Well, Mr. Richey, you said you're familiar
4 with the neighborhood. Are you familiar with the store and
5 have you ---

6 **MR. RICHEY:** Yes. Your Honor, you know, it's ---

7 **THE COURT:** Well, why don't you -- well, tell me if
8 you're prepared for trial today.

9 **MR. RICHEY:** Your Honor, I'm prepared to go forward. I
10 will tell the Court what the issue is here. The main issue
11 is I cannot guarantee this gentleman's outcome. I can't
12 guarantee him an outcome. And I can't say ---

13 **THE COURT:** The State has made an offer in the case.

14 **MR. RICHEY:** The State made an offer of a cap of
15 fifteen in this case, but it's been there a while.

16 **THE COURT:** And your client chose not to accept that.

17 **MR. RICHEY:** He chose not to ---

18 **THE COURT:** Okay.

19 **MR. RICHEY:** --- accept that. And, Your Honor, I will
20 say to the Court and to Mr. Chappell, there's, I believe,
21 considerable mitigation in this case, ---

22 **THE COURT:** Um-hum (affirmative).

23 **MR. RICHEY:** --- considerable mitigation. And we
24 talked about ---

25 **THE COURT:** Well, I believe the offense carries a max

1 of thirty. Is that right?

2 **MR. RICHEY:** Twenty.

3 **MR. FOWLER:** Twenty.

4 **THE COURT:** Twenty. So the offer was less than the
5 max.

6 **MR. RICHEY:** And that was the cap. But I ---

7 **THE COURT:** It was a cap of fifteen?

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

9 **MR. FOWLER:** Yes, sir.

10 **THE COURT:** Okay.

11 **MR. RICHEY:** And we have other cases that that pertains
12 to as well.

13 **THE COURT:** So there's other charges that would be
14 wrapped up in that same plea?

15 **MR. RICHEY:** Yes, sir.

16 **THE COURT:** I see. Okay. Yes, sir. He indicates to
17 me that he's ready to try your case today. He's prepared to
18 go forward. Mr. Richey has appeared in my court on many
19 occasions ---

20 **MR. CHAPPELL:** Mr. Richey ---

21 **THE COURT:** Let me finish. I'm talking now.

22 **MR. CHAPPELL:** I'm sorry. I'm sorry, Your Honor. I'm
23 very sorry.

24 **THE COURT:** He's appeared in my court on many
25 occasions. I've found him to be honest with the Court.

1 I've found him to be prepared when he appears. I am not
2 aware that he does not appear prepared.

3 Your specifics that you've given me, he indicates that
4 he's been to the scene, that he's familiar with the scene,
5 in fact, grew up nearby. So he's well aware of that.
6 Anything else you want me to consider?

7 **MR. CHAPPELL:** Your Honor, I just wish you would just
8 consider that you give me another counsel to try this case
9 with because I'm -- I'm really not ---

10 **THE COURT:** Well, sir, let me ask the State, terms of
11 the negotiation been correctly related to me?

12 **MR. FOWLER:** Yes, sir, Judge. And I'd also put further
13 that this is not the first trial docket this has been on.
14 He's been on almost every docket since about January, I
15 think. You know, Mr. Richey has communicated with me ---

16 **THE COURT:** First time this motion's been made.

17 **MR. FOWLER:** First time this motion's been heard, yes,
18 sir.

19 **THE COURT:** Okay.

20 **MR. FOWLER:** And, I mean, I don't think I even need to
21 speak to Mr. Richey's qualities or his preparation. But I
22 can tell you personally we've communicated extensively about
23 this case, probably more than average, well more than
24 average for most cases, even ones that I try.

25 I have no doubt that he's worked hard for his client.

1 I have no doubt that he's going to do a good job for him.

2 And ---

3 **THE COURT:** Okay.

4 **MR. FOWLER:** --- here we are.

5 **THE COURT:** Yes, sir.

6 **MR. CHAPPELL:** Like he said, this thing has been on the
7 trial -- on the trial docket for several and has been -- it
8 was continued because of a witness. I don't know -- me
9 personally, I don't know how to get another counsel. And I
10 would rather ---

11 **THE COURT:** Well, here's where we're -- let me tell you
12 where my -- I believe we are, Mr. Chappell.

13 **MR. CHAPPELL:** Um-hum (affirmative).

14 **THE COURT:** The State has an obligation to see that you
15 have the opportunity to have a lawyer. You've been
16 appointed an attorney in this case. He is present. He
17 tells me he's prepared to try your case today.

18 Again, my experience for Mr. Richey has been a positive
19 experience when he appears in front of me. The information
20 that you've given me in support of your motion to dismiss
21 him of counsel, I do not find that that is grounds to
22 dismiss him.

23 So where we are is if you -- you're not required to use
24 Mr. Richey. But the State is also not obligated to see that
25 you get an attorney of your choosing. The State has an

1 obligation to provide you with a competent attorney who can
2 handle your case. And I find that the State has met its
3 obligation.

4 Now, if you wish to dismiss Mr. Richey, I'll allow you
5 to do that, but the trial will go forward this morning and
6 you will have to proceed with whatever attorney you have if
7 you dismiss him.

8 **MR. CHAPPELL:** Well, I don't have an attorney.

9 **THE COURT:** Then you'll proceed without one, if you
10 wish to do that. Now, you can discuss the matter with Mr.
11 Richey further if you'd like to, however you'd like to
12 handle that, but the Court will not appoint another attorney
13 for you, and I will not grant a continuance for that
14 purpose. So I'll leave the choice to you at this point in
15 time. Again, if you want to consult with Mr. Richey about
16 that decision, you may do so.

17 **MR. CHAPPELL:** Okay. Well, Mr. Richey, he said if I
18 didn't plead he didn't think I had a chance of winning this
19 thing. So ---

20 **THE COURT:** No, sir. Again, I don't get involved in
21 the merits of ---

22 **MR. CHAPPELL:** I understand ---

23 **THE COURT:** --- the case ---

24 **MR. CHAPPELL:** --- that, sir.

25 **THE COURT:** --- unless I try the case ---

1 **MR. CHAPPELL:** It's like ---

2 **THE COURT:** --- or I -- or I take a plea.

3 **MR. CHAPPELL:** It's like my back is against the wall.
4 I'm between a hard rock and a hard place.

5 **THE COURT:** Well, again, sir, the case has been on the
6 docket for a year. It's been on several trial dockets.
7 This is the first time this motion's been raised. But you
8 are number one for trial, and the jury is here.

9 **MR. CHAPPELL:** Okay. Now I have to -- this case has
10 not been on the docket for a year. He went on the ---

11 **THE COURT:** Sir, it's ---

12 **MR. CHAPPELL:** --- September of ---

13 **THE COURT:** --- been pending for a year. I've made a
14 ruling. You can talk to your lawyer if you'd like to. The
15 Court will stay on the bench. About fifteen minutes, Mr.
16 Richey, ---

17 **MR. RICHEY:** Yes, sir.

18 **THE COURT:** --- max.

19 **MR. FOWLER:** Thank you, Judge.

20 **THE COURT:** Thank you.

21 (Whereupon court was in recess at 10:00 am)

22 (Whereupon court reconvened at 10:19 am)

23 **THE COURT:** All right. We're back on the record in the
24 case of the State of South Carolina versus Joseph Chappell.
25 Mr. Chappell, when I last saw you I had indicated that you

1 should go back and consult with Mr. Richey. Do you wish to
2 proceed with Mr. Richey being your attorney?

3 **MR. CHAPPELL:** Yes, sir.

4 **THE COURT:** All right. State ready to go forward with
5 the jury selection?

6 **MR. FOWLER:** Yes, sir, Judge. We have one brief motion
7 in limine ---

8 **THE COURT:** Yes, sir.

9 **MR. FOWLER:** --- if you want to go ahead and do that.
10 First of all, me and Mr. Richey talked about a Biggers
11 hearing. And I don't think we -- I don't -- I think we
12 agreed we didn't need that for this case. I just wanted to
13 put that on the record.

14 But the victim in this case, Coneze Barner, he does
15 have a prior record, Judge. And I intend to have him
16 testify at trial. However, my belief under Rule 609 is that
17 none of his prior convictions are going to be admissible.

18 And the last -- the only things that meet the time
19 limit is he's got a conviction for prostitution back in
20 2011. But that charge doesn't carry a sentence of a year or
21 more.

22 And the only thing he has that meets both the time
23 limit and the sentencing requirements of Rule 609 is a
24 possession of crack cocaine from a couple of years ago.
25 However, you'll see under that case that I just handed up to

1 you and gave to Mr. Richey, on page 10 of that case, and
2 this is the South Carolina Supreme Court where they say
3 narcotics offenses are generally not considered probative of
4 truthfulness, misconduct involving violations of narcotics
5 law is not an act involving dishonesty or untruthfulness
6 and, therefore, may not be inquired into under Federal Rule
7 of Evidence 608 (b).

8 So I would contend ---

9 **THE COURT:** Well, you're saying that it -- if it met
10 the requirements of the sentencing and the time-frame. The
11 Court still has to make the determination that its probative
12 value exceeds its prejudicial effect.

13 **MR. FOWLER:** Yes, sir.

14 **THE COURT:** And that's where the question of
15 truthfulness comes in.

16 **MR. FOWLER:** Right. Yes, sir.

17 **THE COURT:** You wish to contest his motion?

18 **MR. RICHEY:** Your Honor, yes, because I think in this
19 case that that charge is going to be relevant to the facts.
20 We believe that this case centered around the use of illegal
21 drugs. And because of that being the underlying theme, it's
22 our position that the charge is eligible because it's
23 probative to the case.

24 **THE COURT:** Well, if you want to use it as a Lyle
25 evidence, prior bad act, then you have to be able to show

1 that it's like intent, or a modus operandi, or a scheme, or
2 a plan or ---

3 **MR. CHAPPELL:** Yes, sir.

4 **THE COURT:** --- a way of operating. And so that's a
5 different issue than what he's talking about. So there's
6 ---

7 **MR. RICHEY:** Yes, sir.

8 **THE COURT:** --- two different issues.

9 **MR. RICHEY:** Yes, sir.

10 **THE COURT:** So you're intending to use that as Lyle
11 evidence to indicate some type of M.O., or intent or things
12 -- something of that nature. Is that where we are?

13 **MR. RICHEY:** Yeah, and that -- yes, sir. I think it's
14 probative -- this case would be probative in terms of the
15 drug uses in the case. And we believe that it's going to be
16 probative to all of that.

17 **THE COURT:** Yes, sir.

18 **MR. FOWLER:** Yes, sir, Judge. I would -- I would
19 counter with -- they recovered the vehicle subject to this
20 case. They didn't find any drugs in that vehicle. They --
21 I don't intend to introduce any evidence of any drug use or
22 anything like that because I don't think there is any. And
23 I think that introducing a -- I believe it's a three-year-
24 old conviction that the victim has for a possession of crack
25 is not relevant to whether or not his car was stolen from

1 him that night.

2 **MR. RICHEY:** Your Honor, that's going to be precisely
3 the issue in this car, whether the car was stolen or whether
4 it was given for drugs. That's the issue. The issue in the
5 case is they -- the State contends that we carjacked the
6 guy, stole the guy [sic].

7 We contend that we gave the guy dope ---

8 **THE COURT:** Well, here's what I'm going to do. I'm not
9 going to make a ruling on that issue at this point in time.

10 **MR. RICHEY:** Yes, sir.

11 **THE COURT:** I don't know how the victim intends to
12 testify.

13 **MR. RICHEY:** Yes, sir.

14 **THE COURT:** Of course, if he were to get on the stand
15 and take the position that he's never been involved in drug
16 transactions, never had any type of drug involvement, and he
17 has a conviction for drug possession or use, then it becomes
18 a credibility issue ---

19 **MR. RICHEY:** Right.

20 **THE COURT:** --- as to his testimony. The probative
21 value goes up as far as you're concerned.

22 **MR. RICHEY:** Yes, sir.

23 **THE COURT:** So at this point in time I'm going to
24 reserve any ruling on that until after the victim has
25 testified at least on direct ---

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

2 **THE COURT:** --- and responded to any questions you have
3 along those lines, that I allow. And we'll see whether or
4 not it gets to the point that its probative value exceeds
5 the prejudicial effect.

6 **MR. RICHEY:** Yes, sir.

7 **MR. FOWLER:** Thank you, Judge.

8 **THE COURT:** So I'll make that ruling contemporaneously
9 ---

10 **MR. RICHEY:** Yes, Your Honor.

11 **THE COURT:** --- whenever that evidence is offered. All
12 right. Any other motions from the State before we start
13 with the jury?

14 **MR. FOWLER:** Nothing from the State, Judge.

15 **THE COURT:** And any from the Defense?

16 **MR. RICHEY:** Yeah. Judge, I don't have any motions,
17 but I would ask the Court to add Jeffrey Locke, L-o-c-k-e,
18 to the witness list, Jeffrey Locke.

19 **THE COURT:** All right. My next question was going to
20 be -- I have received a witness list from the State.

21 **MR. RICHEY:** Yeah. We have one potential witness,
22 Jeffrey Locke.

23 **THE COURT:** All right. Just one ---

24 **MR. RICHEY:** L-o-c-k-e.

25 **THE COURT:** Jeffrey Locke?

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

2 **THE COURT:** Any objection to my putting him ---

3 **MR. FOWLER:** No, Judge.

4 **THE COURT:** --- on the list?

5 **MR. FOWLER:** I knew about this witness.

6 **THE COURT:** All right. Is the State requesting any
7 specific voir dire of the jury?

8 **MR. FOWLER:** None from us, Judge.

9 **THE COURT:** Defense requesting any specific voir dire?

10 **MR. RICHEY:** None, Your Honor.

11 **THE COURT:** All right. Sounds like to me we're ready
12 to bring the potential jury panel in. State ready?

13 **MR. FOWLER:** Yes, sir, Judge.

14 **THE COURT:** Defense ready?

15 **MR. RICHEY:** Yes, sir.

16 **THE COURT:** All right. We'll bring the jury panel in.
17 Thank you. We'll need some room in the gallery. Thank you.

18 (Pause)

19 **THE COURT:** The strikes will be five and five, I think.

20 **MR. FOWLER:** Yes, sir, Judge.

21 **MR. RICHEY:** Yes, sir.

22 **THE COURT:** Everybody agree?

23 **MR. RICHEY:** Yes, sir.

24 **THE COURT:** All right.

25 (Whereupon the jury panel entered the courtroom at

1 10:32 am)

2 **THE COURT:** Good morning, ladies and gentlemen. My
3 name is Roger Couch. I've met some of you, but I've not met
4 all of you. I am a Circuit Court judge. I'm normally
5 located in Spartanburg, South Carolina, but Circuit Court
6 judges do ride circuits. We move around the State.

7 And I've been assigned to assist Judge Miller this week
8 here in Greenville County in a week of General Sessions
9 Court. General Sessions Court, as I'm sure you're now
10 aware, is the criminal law side of the court. So the
11 matters coming before this Court this week involves
12 situations where a citizen has been charged with the
13 commission of a crime.

14 We're here today in the case of the State of South
15 Carolina versus Joseph Chappell. I have been presented with
16 an indictment in this case. The indictment is in case
17 number 17-GS-23-4041.

18 Now that indictment is for the offense of carjacking.
19 I'm going to go over the indictment with you at this point
20 in time so that you will know a little more about the charge
21 that has been brought and perhaps it'll put you in a
22 position to more fully answer the questions I'm going to ask
23 you shortly about this.

24 The indictment reads in part that Joseph Chappell did
25 in Greenville County on or about the 5th day of March, 2017

1 take or attempt to take a motor vehicle, to wit, a 2000
2 Chrysler PT Cruiser from Coneze Barner, B-a-r-n-e-r, by
3 force and violence or by intimidation while the victim was
4 operating and/or in said vehicle. This was in violation of
5 code section 16 3 1075 of the Code of Laws of South
6 Carolina, 1976 as amended against the peace and dignity of
7 the State in contrary to the statute in such case made and
8 provided.

9 Now, ladies and gentlemen, that is an indictment. It's
10 an informational document. It informs this Court of the
11 charge that has been lodged in this case and the case to be
12 tried. It informs the Defendant of the charge lodged
13 against him. It is not evidence in the case and it cannot
14 be used by a jury in any fashion in determining the guilt or
15 innocence of a defendant.

16 Again, it is simply the informational document that
17 brings this case to court. I give it to you as information
18 in this case.

19 Now I'm going to be asking you a series of questions
20 shortly about this case. The information you provide will
21 determine your eligibility to serve on this jury as well as
22 can be used by the attorneys in making decisions in
23 exercising the strikes that they're entitled to by law to
24 exercise in the selection of a jury.

25 So it's important the information that you give during

1 this process is truthful, honest and complete information.
2 For that reason, I realize you have been placed under oath
3 in the past, especially during qualification processes, but
4 it's important that you be now sworn to tell the truth to
5 the Court in this case. So I'm going to ask that the clerk
6 place you under oath for this trial. Madame Clerk.

7 **MADAME CLERK:** Yes, sir. Will you please stand and
8 raise your right hand. Do you swear or affirm to tell the
9 truth, the whole truth and nothing but the truth so help you
10 God?

11 **JURY PANEL:** I will.

12 **MADAME CLERK:** Thank you. You may be seated.

13 **THE COURT:** Now, if there was any member of the
14 potential jury panel who either failed or refused to take
15 the oath that the clerk just administered, please stand now.

16 (No response)

17 **THE COURT:** It appears that all jurors have been sworn
18 concerning their responses in this case.

19 Now, I'm going to give you some additional information.
20 I'm going to ask that the attorneys in the trial introduce
21 themselves to you. In the case of the State, if you would
22 introduce the alleged victim. And in the case of the
23 Defense, if you would introduce the Defendant. Yes, sir.

24 **MR. FOWLER:** Yes, sir, Judge. My name is Brann Fowler.
25 I'm an assistant solicitor here in Greenville. And this is

1 the victim, Mr. Coneze Barner.

2 **THE COURT:** Mr. Barner, if you would stand and face the
3 jury so that they can put a face with that name.

4 (Pause)

5 **THE COURT:** Thank you very much, sir. You can be
6 seated. And for the Defense.

7 **MR. RICHEY:** Thank you, Your Honor. I'm Rodney Richey
8 and I'm an attorney at Richey & Richey in Greenville. I
9 represent Mr. Joseph Chappell. Thank you.

10 (Pause)

11 **THE COURT:** All right. Thank you very much. You can
12 be seated.

13 Now, we'll follow the procedure very similar to what
14 was done during qualification. I'll ask questions. I'll
15 ask you if you have a response to the questions to please
16 stand. I'll call on you individually. If you do have a
17 response, I'll need your name and juror number prior to our
18 discussing whatever your response might be to the questions
19 that I have.

20 Now, first question. Is there any member of this jury
21 panel who has ever been related by marriage or are you
22 related by blood to either the Defendant, Joseph Chappell,
23 or the alleged victim, Coneze Barner? If you are or have
24 been related by marriage or blood, please stand.

25 (No response)

1 **THE COURT:** Now, is there any member of the jury panel
2 who has ever had a close personal, social or a business
3 relationship with either the alleged victim or the Defendant
4 in this case? If you've had such a relationship, please
5 stand.

6 (No response)

7 **THE COURT:** Now, as to the attorneys involved in this
8 case, has any member of this jury panel ever been
9 represented by the attorneys involved in this case or have
10 they ever appeared on the other side of some legal matter
11 from you? If that's true, please stand.

12 (No response)

13 **THE COURT:** Now, is there any member of this jury panel
14 who has ever been related by marriage, or are you related by
15 blood, or have you ever had a close social, personal or a
16 business relationship with the attorneys that are involved
17 in this case? If that is true, please stand.

18 (No response)

19 **THE COURT:** Now, I have been provided with a list of
20 people who have been identified to me as potential witnesses
21 in this case. And as I go through this list, if I've been
22 given their place of employment, I'll provide that
23 information as well to you. Listen carefully to the names
24 that I'm about to call because I'll ask you about these
25 people as a group. And there's going to be about seven or

1 eight of them that I'm going to identify to you at this
2 time.

3 First of all, Mr. Coneze Barner, who is the victim.
4 And we've talked about him. Mr. Tim Fuller, he's with the
5 Greenville County Sheriff's Office. Kevin Flowers, also
6 with the Greenville County Sheriff's Office. Nick Downing,
7 he's with the Simpsonville Police Department. Charles
8 Moore, who is with the Greenville County -- and can you help
9 me?

10 **MR. FOWLER:** Detention Center.

11 **THE COURT:** Detention Center. Thank you. Next is
12 Lieutenant Mandy Mathis, also with the Detention Center.
13 Sergeant Bobby Duncan. You have a place of employment?

14 **MR. FOWLER:** He's with the sheriff's office, Judge.

15 **THE COURT:** All right. Thank you. And Jeffrey Locke.

16 Now, as to those people that I have gone over with you
17 as potential witnesses, has any member of this jury panel
18 ever been related by marriage, are you related by blood or
19 have you ever had a close social, personal or business
20 relationship with any of those potential witnesses? If
21 that's true, please stand.

22 (No response)

23 **THE COURT:** Now, has any member of the jury panel
24 received or gathered any information such that it would have
25 caused you to have formed or expressed an opinion about any

1 issue that might be involved in this matter? So if you've
2 gathered any such information, please stand.

3 (No response)

4 **THE COURT:** Is there any member of this jury panel who
5 is aware of a bias or a prejudice that you might have either
6 for or against either the State or the Defense in the case?
7 So if you're aware of any such bias or prejudice, please
8 stand.

9 (No response)

10 **THE COURT:** Now this case -- the indictment in this
11 case was issued by the grand jury. So was there any member
12 of this jury panel who may have been a member of the grand
13 jury during the year 2017? If that's true, please stand.

14 (No response)

15 **THE COURT:** Is there any member of this jury panel who
16 is a member of or a contributor to such groups which may
17 have as their primary concern the promotion of law
18 enforcement and/or victim's rights? These groups would
19 include, but would not be limited to such groups as Mothers
20 Against Drunk Driving, Students Against Drunk Driving,
21 Citizens Against Violent Crime, the South Carolina Sheriff's
22 Association, the South Carolina Trooper's Association, the
23 Children Advocacy Centers, any such organization, if you
24 have been a member of or a contributor to such a group,
25 please stand.

1 (No response)

2 **THE COURT:** Now, does any member of this jury panel
3 know of any reason whatsoever why he or she should not serve
4 as a juror in this case with particular emphasis being
5 placed upon your ability to be both fair and impartial to
6 both the State and the Defense? So if you're aware of any
7 such reason, please stand.

8 (No response)

9 **THE COURT:** Does the State request any additional
10 questions of the jury?

11 **MR. FOWLER:** No, Judge.

12 **THE COURT:** Defense request any additional?

13 **MR. RICHEY:** No, sir.

14 **THE COURT:** All right. I'll declare that the jury
15 members are qualified to serve in this case at this time.

16 Now, ladies and gentlemen, what we're going to do --
17 your names have been selected by a computer at random from
18 your group. The clerk is going to call the names in the
19 order in which they've been placed on the paper. When your
20 name is called, I'm going to ask that you come forward.

21 There's a podium right down here. If you'll come down
22 to that podium, turn, face the back door of the courtroom.
23 At that time the attorneys will be in a position to exercise
24 the strikes that they're allowed by law.

25 Now, if you have personal belongings with you, a purse,

1 or a book, or something of that nature, bring that with you
2 because if you're selected you're going to go over here to
3 the jury box and the bailiff will have you seated over
4 there. You won't return to your seat. So bring your
5 personal belongings with you when your name is called.

6 In this case the State has five strikes, the Defense
7 has five strikes. We'll select one alternate with the State
8 having one strike, the Defense having two strikes. So,
9 Madame Clerk, you can begin the process.

10 **MADAME CLERK:** Juror number 15, Randall Black.

11 (Whereupon juror 15, Randall Black, a white male, came
12 forward)

13 **THE COURT:** Yes, Mr. Black. Come down to the podium
14 there and then face the back door of the courtroom. Thank
15 you, sir.

16 **MADAME CLERK:** What says the State?

17 **MR. FOWLER:** Please seat Mr. Black.

18 **MADAME CLERK:** What says the Defendant?

19 **MR. RICHEY:** Please present the juror, please.

20 **MADAME CLERK:** You may have a seat in the jury box.

21 Juror number 59, Martha Godfrey.

22 (Whereupon juror 59, Martha Godfrey, a white female,
23 came forward)

24 **MADAME CLERK:** What says the State?

25 **MR. FOWLER:** Please seat this juror.

1 **MADAME CLERK:** What says the Defendant?

2 **MR. RICHEY:** Please excuse this juror from the trial of
3 this case.

4 **MADAME CLERK:** You may take your seat.

5 Juror number 139, William Rodriguez.

6 (Whereupon juror 139, William Rodriguez, an Hispanic
7 male, came forward)

8 **MADAME CLERK:** What says the State?

9 **MR. RICHEY:** What number?

10 **MADAME CLERK:** 139. What says the State?

11 **MR. FOWLER:** Please excuse Mr. Rodriguez.

12 **MADAME CLERK:** You may take your seat.

13 Juror number 78, Louise Julian. Juror number 78.

14 **THE COURT:** She's coming.

15 (Whereupon juror 78, Mary Louise Julian, a white
16 female, came forward)

17 **MADAME CLERK:** What says the State?

18 **MR. FOWLER:** Please seat Ms. Julian.

19 **MADAME CLERK:** What says the Defendant?

20 **MR. RICHEY:** Please excuse the juror from the trial of
21 this case.

22 **MADAME CLERK:** You may take your seat.

23 Juror number 17, Ivette Bowens.

24 (Whereupon juror 17, Ivette Bowens, a black female,
25 came forward)

1 **MADAME CLERK:** What says the State?

2 **MR. FOWLER:** Please seat Ms. Bowens.

3 **MADAME CLERK:** What says the Defendant?

4 **MR. RICHEY:** Please present the juror.

5 **MADAME CLERK:** You may take a seat in the jury box.

6 Juror number 210, Matthew Yaggie.

7 (Whereupon juror 210, Matthew Yaggie, a white male,
8 came forward)

9 **MADAME CLERK:** What says the State?

10 **MR. FOWLER:** Please seat Mr. Yaggie.

11 **MADAME CLERK:** What says the Defendant?

12 **MR. RICHEY:** Please present the juror.

13 **MADAME CLERK:** You may have a seat in the jury box.

14 Juror number 76, Kendalyn Dawkins.

15 (Whereupon juror 76, Kendalyn Dawkins, a black female,
16 came forward)

17 **MADAME CLERK:** What says the State?

18 **MR. FOWLER:** Please seat Ms. Dawkins.

19 **MADAME CLERK:** What says the Defendant?

20 **MR. RICHEY:** Please present the juror.

21 **MADAME CLERK:** You may have a seat in the jury box.

22 Juror number 135, Timothy Rankin.

23 (Whereupon juror 135, Timothy Rankin, a white male,
24 came forward)

25 **MADAME CLERK:** What says the State?

1 **MR. FOWLER:** Please seat Mr. Rankin.

2 **MADAME CLERK:** What says the Defendant?

3 **MR. RICHEY:** Please excuse the juror.

4 **MADAME CLERK:** You may take your seat.

5 Juror number 53, Jaclyn Flanagan.

6 (Whereupon juror 53, Jaclyn Flanagan, a white female,
7 came forward)

8 **MADAME CLERK:** What says the State?

9 **MR. FOWLER:** Please seat Ms. Flanagan.

10 **MADAME CLERK:** What says the Defendant?

11 **MR. RICHEY:** Please present the juror.

12 **MADAME CLERK:** You may have a seat in the jury box.

13 Juror number 113, Scott McPherson.

14 (Whereupon juror 113, Scott McPherson, a white male,
15 came forward)

16 **MADAME CLERK:** What says the State?

17 **MR. FOWLER:** Please seat Mr. McPherson.

18 **MADAME CLERK:** What says the Defendant?

19 **MR. RICHEY:** Please present the juror.

20 **MADAME CLERK:** You may have a seat in the jury box.

21 Juror number 84, Gerald Kemp.

22 (Whereupon juror 84, Gerald Kemp, a black male, came
23 forward)

24 **MADAME CLERK:** What says the State?

25 **MR. FOWLER:** Please excuse this juror.

1 **MADAME CLERK:** You may take your seat.

2 Juror number 131, Crystal Pressley.

3 (Whereupon juror 131, Crystal Pressley, a white female,
4 came forward)

5 **MADAME CLERK:** What says the State?

6 **MR. FOWLER:** Please seat Ms. Pressley.

7 **MADAME CLERK:** What says the Defendant?

8 **MR. RICHEY:** Please present the juror.

9 **MADAME CLERK:** You may have a seat in the jury box.
10 Juror number 14, Lori Black.

11 (Whereupon juror 14, Lori Black, a white female, came
12 forward)

13 **MADAME CLERK:** What says the State?

14 **MR. FOWLER:** Please seat Ms. Black.

15 **MADAME CLERK:** What says the Defendant?

16 **MR. RICHEY:** Please present the juror.

17 **MADAME CLERK:** You may have a seat in the jury box.
18 Juror number 157, Dwight Sims.

19 (Whereupon juror 157, Dwight Sims, a black male, came
20 forward)

21 **MADAME CLERK:** What says the State?

22 **MR. FOWLER:** Please seat this juror.

23 **MADAME CLERK:** What says the Defendant?

24 **MR. RICHEY:** Please present the juror.

25 **MADAME CLERK:** You may have a seat in the jury box.

1 Juror number 181, Lidia Turner.

2 (Whereupon juror 181, Lidia Turner, an Hispanic female,
3 came forward)

4 **MADAME CLERK:** What says the State?

5 **MR. FOWLER:** Please seat Ms. Turner.

6 **MADAME CLERK:** What says the Defendant?

7 **MR. RICHEY:** Please present the juror.

8 **MADAME CLERK:** You may have a seat in the jury box.

9 Juror number 196, Daniel Welch.

10 (Whereupon juror 196, Daniel Welch, a white male, came
11 forward)

12 **MADAME CLERK:** What says the State?

13 **MR. FOWLER:** Please seat Mr. Welch.

14 **MADAME CLERK:** What says the Defendant?

15 **MR. RICHEY:** Please present the juror.

16 **MADAME CLERK:** You may have a seat in the jury box.

17 Juror number 74, Kheirallah Jafari.

18 (Whereupon juror 74, Kheirallah Jafari, a white male,
19 came forward)

20 **MADAME CLERK:** What says the State?

21 **MR. FOWLER:** Please seat Mr. Jafari.

22 **MADAME CLERK:** What says the Defendant?

23 **MR. RICHEY:** Please present the juror.

24 **MADAME CLERK:** You may have a seat in the jury box.

25 **THE COURT:** All right. We will now be selecting the

1 alternate. The State has one strike, Defense has two.

2 **MADAME CLERK:** Juror number 52, Beth Faulk.

3 (Whereupon juror 52, Beth Faulk, a white female, came
4 forward)

5 **MADAME CLERK:** What says the State?

6 **MR. FOWLER:** Please seat Ms. Faulk.

7 **MADAME CLERK:** What says the Defendant?

8 **MR. RICHEY:** Please excuse the juror.

9 **MADAME CLERK:** You may take your seat.
10 Juror number 107, Tyrone McDonald.

11 (Whereupon juror 107, Tyrone McDonald, a black male,
12 came forward)

13 **MADAME CLERK:** What says the State?

14 **MR. FOWLER:** Please seat Mr. McDonald.

15 **MADAME CLERK:** What says the Defendant?

16 **MR. RICHEY:** Please present the juror.

17 **MADAME CLERK:** You may take your seat.

18 **THE COURT:** Thank you, Madame Clerk. Are there any
19 objections to the jury selection process from the State?

20 **MR. FOWLER:** None from the State, Judge.

21 **THE COURT:** Any from the Defense?

22 **MR. RICHEY:** None, Your Honor.

23 **THE COURT:** All right. Ladies and gentlemen of the
24 jury who were not selected in this case, I want to thank you
25 very much for your cooperation with us this morning and your

1 assistance and patience in us getting started. I'm told by
2 the clerk that we won't be needing you any further today,
3 but you should call in after five pm and get additional
4 instructions this afternoon.

5 So you're free to go for the remainder of the day.
6 Call in. So at this time you're free to go. Please leave
7 quietly. And again, thank you for your help.

8 (Whereupon the remaining jurors exited the courtroom at
9 10:54 am)

10 **THE COURT:** All right. Ladies and gentlemen of the
11 jury, you have been selected to serve in this case. And at
12 this time I'm going to ask the clerk to administer another
13 oath to you. This oath is a little different than the ones
14 you've taken in the past.

15 In the past you've been swearing to respond truthfully.
16 This oath has to do with your responsibilities and duties as
17 jurors in this case. So please listen to what she has to
18 say. I'll be talking to you about this in a little more
19 detail once this is completed. So, Madame Clerk, please
20 swear the jury panel for me.

21 **MADAME CLERK:** Thank you. Will you please stand and
22 raise your right hand. The correct response to the oath is
23 I will. You shall well and truly try the case 2017-GS-23-
24 4041, State versus Joseph Chappell, indicted for carjacking,
25 and a true verdict rendered according to the law and the

1 evidence so help you God? I will.

2 **THE JURY:** I will.

3 **MADAME CLERK:** Thank you. You may have a seat.

4 **THE COURT:** Once again, if there were any jurors who
5 failed or refused to take the oath the clerk just
6 administered, please stand.

7 (No response)

8 **THE COURT:** The record will reflect then that all
9 jurors have been sworn in this case.

10 Now, before we begin the actual trial of the case
11 there's some matters that I would like to go over with you.
12 While I see at least one familiar face in the jury, I'm sure
13 for some of you this is your first experience in being
14 selected as a juror in a criminal case. And so there's some
15 things that I probably need to discuss with you so that
16 you'll better understand the roles and responsibilities that
17 we have in the trial of a case, each of us has in this
18 particular matter.

19 Now, what you're involved in today is, I hope you
20 realize, is a fundamental part of our democracy. Probably
21 most of what you might know about what juries do and how
22 they function, I suspect that unless you've been on a jury
23 before you would have gathered from such places as
24 television, or movies, or books, things of that nature.
25 They teach a little bit about juries, I guess, in civics

1 classes, but not nearly enough.

2 So I do want to talk to you about it because, for
3 example, I hope you realize that in the case of the
4 television you can have a case arise, it can be tried and
5 completed in the space of one hour. And they even have time
6 to stop about five times for commercials during that period
7 of time.

8 I hope you realize then that that's what you're using
9 as your source of information, that it's not really accurate
10 as far as the real world is concerned because, again, what
11 you're engaged in is a trial of one of your fellow citizens.

12 The right to a trial by a jury is guaranteed in our
13 Constitution both in this State and the United States of
14 America in our Bill of Rights. And if it weren't for
15 citizens such as yourselves who are willing to come forward
16 and serve on juries, we couldn't function as those trials
17 have been designed by our forefathers. So thank you very
18 much for your willingness to come forward.

19 And let me go over some things that pertain to the real
20 world and the way juries operate because you -- I hope you
21 understand, this courtroom is a place of honor. It's
22 dedicated to the preservation of citizen's rights through
23 both the Constitution of this State and the United States.
24 And your participation is appreciated.

25 I tell jurors all the time that the right to a trial by

1 jury goes back to a document that was signed in Runnymede,
2 England in the year 1215 that's called the Magna Carta. And
3 that was the first legal document that guaranteed citizens
4 the right to be tried by their fellow citizens. We've
5 continued that tradition in our government once it was
6 established.

7 The right to a trial by jury therefore is a human
8 institution that has lasted over eight hundred years. It
9 had its eight hundredth birthday in 12 -- 2015. So it's a
10 human institution that's probably lasted longer than any
11 other human institution on this earth. So I hope you
12 appreciate that.

13 I also have told juries in the past I guess citizens
14 have been trying to dodge jury service for about eight
15 hundred years since that's how long that's gone on. But I
16 thank you for your presence here today.

17 Now, what I'm telling you now is not intended to be an
18 instruction on the law. Later on when all of the evidence
19 has been presented, you've heard all the arguments from the
20 lawyers, I'll charge you concerning the law that's to be
21 applied in this case, but I do want to go over the
22 procedures and the duties we have.

23 I went over earlier with you the indictment in this
24 case. That indictment was issued for the offense of
25 carjacking. I'm not going to read it to you again right

1 now. We'll talk about it when I charge you on the law. And
2 I told you then that document is simply the informational
3 document that brings the case into court.

4 To that indictment this Defendant has pled not guilty.
5 And that plea places the burden of proof in this trial
6 solely upon the State. It's the State's obligation to prove
7 the guilt of the Defendant to you by proof beyond a
8 reasonable doubt.

9 Your job as jurors at the close of this trial will be
10 to make a determination as to whether or not the State has
11 met its burden of proof in this case.

12 Again, the indictment is simply the document that
13 informs us of the charge. It is not evidence in the case
14 and can't be used as evidence in this case.

15 Your purpose as jurors here is to find and determine
16 the facts of the case. I hope you understand that I'll be
17 the presiding officer in the case. I'll be making rulings,
18 perhaps, on objections made by attorneys or evidence that's
19 been offered into the record. And as we go along I'll be
20 making those rulings and having those discussions with the
21 lawyers.

22 I want to point out to you now that you shouldn't take
23 from anything that I say or do in my job as the presiding
24 officer to somehow indicate to you that I have an opinion
25 one way as to how you determine the facts one way or the

1 other. I have no opinion as to how you determine the facts.
2 The law doesn't allow me an opinion on that. You're the
3 sole judges of the facts in this case. So don't take from
4 anything that I say or do during this trial to indicate that
5 I have such an opinion.

6 You are to determine the facts in this case from the
7 evidence presented during the trial as your oath stated.
8 You'll decide this case based upon the law and the evidence.

9 Now, the only evidence in a criminal trial is the
10 testimony of witnesses who are sworn to tell the truth.
11 They'll testify from this witness stand in front of you.
12 And whatever evidence in the form of -- tangible evidence
13 will come into the record either through that testimony of
14 those witnesses or by agreement of the attorneys for matters
15 to be put into the record.

16 And you are to consider only the information and
17 matters that are placed into the record during the trial in
18 reaching a decision in this case. And again, testimony from
19 witnesses sworn in this court, that does constitute evidence
20 in the case.

21 Now the same law that makes you the sole judges of the
22 facts makes me the sole judge of the law. So at the close
23 of the trial I will charge you concerning the law that you
24 are to apply to the facts as you determine the facts to be.

25 Just as I can't disagree with you concerning your

1 determination of the facts, you're not allowed to disagree
2 with me concerning the law to be applied to this case. So
3 the law that I give to you at the close of the trial is the
4 only law that you should use in making a decision in this
5 case.

6 And I will tell you that if you came into the courtroom
7 today with an opinion or a notion as to what the law is or
8 what it ought to be and it differs from what I tell you,
9 it's your obligation under your oath to take the law as I
10 give it to you and apply it to the facts as you find them to
11 be. You should leave your own notions and opinions outside
12 of the -- outside of the jury room.

13 Take the law as I give it to you and then apply it to
14 the facts as you determine the facts to be. That should put
15 you in a position to render a just verdict in the case.

16 Now I want to point out to you that the only place
17 you're going to hear or see evidence about this case is in
18 this courtroom during this trial. I'm not so naive and I'm
19 not so old that I don't know you can't get an iPhone or an
20 iPad or a computer and do a search to get information about
21 any subject you want to get in the world.

22 We also know that a lot of that information is not
23 accurate. But I will tell you that it would be a violation
24 of your oath for you to try to gather any information on
25 your own about this case. Again, the only place you'll

1 receive evidence is in this courtroom during this trial.

2 So don't attempt to gather any information on your own.

3 If during one of our breaks you happen to see or hear any
4 kind of media report about the case, or happen to see a
5 newspaper that might have a report, and I don't know -- I
6 don't control what they put in those things. So I don't
7 know if it's out there or not.

8 But I will tell you if you see, hear, or read something
9 like that, stop, don't listen to it, don't read it, don't
10 watch it, get away from that because I can assure you news
11 reports often contain information that's either not accurate
12 or, again, should not be relied upon by a jury in reaching a
13 decision. So, again, don't try to gather any information
14 during the trial on your own.

15 And I'm going to point out one other thing to you. We
16 went through a whole process here this morning to select
17 twelve of you and an alternate who has an open mind
18 concerning this case. I want you to keep that open mind
19 until you've heard all the arguments by the lawyers and all
20 the evidence and my charge on the law. And then I'll tell
21 you to begin your deliberations.

22 You should not discuss anything about this case with
23 anyone, including your fellow jurors until such time as
24 you've gathered all of that information because only then do
25 you have all the information that you need to begin to make

1 up your mind.

2 And I hope you understand that if you were to go out
3 for lunch here today and meet a family member and you talked
4 about the nature of this charge, or the lawyers involved in
5 this case, or even talked about the judge, they may have
6 some opinion or tell you something that might affect your
7 ultimate decision or color your decision in the case, and
8 you haven't heard right now the first word of testimony or
9 the first argument. So don't discuss the case until I ask
10 you to begin that process. And that will only be when you
11 have all the information you need to begin to make up your
12 mind.

13 So keep that open mind. Don't talk the case over with
14 anyone. It's okay to tell a family member you've been
15 selected as a juror, you're in a trial at the courthouse,
16 and that's as far as that discussion should go. Then you
17 could talk about the weather, sports, other family members,
18 whatever you want to talk about, but don't talk about this
19 case because, again, it could affect your decision. We
20 don't want that to happen.

21 So if you become aware of any other juror who is not
22 following those instructions, please let me know about that,
23 and I will take the appropriate action should that occur.
24 And I hope you understand, it's your solemn responsibility
25 at the close of this trial to determine the guilt or the

1 innocence of the Defendant. And your verdict should be
2 based solely upon the evidence as presented during the trial
3 and the law given to you by this Court.

4 In just a few minutes I'm going to give the attorneys
5 the opportunity to begin the case with an opening statement.
6 Attorneys are allowed to talk directly to you as jurors
7 twice during the trial. Once at the beginning of the trial,
8 they make an opening statement. They'll tell you what their
9 case is about, what the issues might be at that time.

10 And then at the close after you've heard all the
11 evidence they'll again get up and make a summation or a
12 closing argument. And at that time they'll ask you to draw
13 certain conclusions and inferences from the evidence that
14 you've heard during the trial.

15 But I want to point out to you that statements made by
16 lawyers in court are not evidence in and of themselves.
17 They cannot be evidence and can't be used directly by you to
18 determine the guilt or the innocence of a defendant. That
19 should only be the testimony of the witnesses that comes
20 from the witness stand and what comes into the record
21 through that testimony.

22 Now if sometime during the trial there's an objection
23 lodged that I believe will, perhaps, involve the discussion
24 of some matter that may not be admissible into evidence in a
25 trial under the Rules that govern that -- and we have Rules

1 that specifically govern what comes in and what doesn't come
2 in. And as the Judge, I'm considered to be the gatekeeper.
3 I decide what is allowed into the record and what is not
4 allowed into the record.

5 So if we're having one of those discussions about a
6 piece of controversial evidence or a question that's been
7 asked, and I believe the discussion between me and the
8 lawyers might involve some matters that would not be
9 admissible and shouldn't be considered by you in reaching a
10 verdict, I may ask you to leave the courtroom while I
11 discuss those matters with the lawyers. Don't think I'm
12 trying to influence your decision in the case by doing that.

13 I'm just doing my job as the gatekeeper. I'm deciding
14 whether it meets the Rules and comes in or whether it
15 doesn't meet the Rule and doesn't come in. But I'll ask you
16 to step out while I have those discussions. I'll ask you to
17 come back when they're finished. I'll announce whatever
18 ruling I make at that time. Then we'll proceed with the
19 trial.

20 But again, it's not an effort by me to try to influence
21 your decision. Again, it's me doing my job as the presiding
22 officer in the case. So don't be surprised if I have to ask
23 you to step out from time to time concerning certain matters
24 that might come up.

25 Now, I've told you that you're the fact-finders in the

1 case. As a fact-finder in a trial, necessarily that
2 involves you making a decision as to what evidence you
3 choose to believe and what evidence you find not to be
4 credible and choose not to believe.

5 You as a finder of fact have the right to believe all
6 of, part of or none of what any witness tells you. I'm
7 going to ask you to use your good common sense in making
8 decisions about the truthfulness of the testimony that you
9 hear in the case.

10 Every single day of your life you make decisions about
11 what you choose to believe and what you choose not to
12 believe. Quite often you do it without even thinking about
13 that process. In other words, you hear something and you
14 think to yourself, I don't believe that, I don't believe
15 that's the truth or you do accept it.

16 So I'm asking you to, again, use your good common sense
17 in this process, but pay close attention to what the
18 witnesses are saying. Try not to let your thoughts wander
19 as the case goes on. Listen to them, watch them.

20 You have the right to, again, believe all of, part of
21 or none of what a witness may tell you. You have the right
22 to consider whether a witness may have an interest in the
23 outcome of the trial, whether or not a witness might exhibit
24 a bias or a prejudice either for or against one side or the
25 other. You can determine whether you think the witness had

1 the ability to actually know the facts about which they're
2 testifying.

3 And I've never been in a courtroom -- I've been coming
4 into courtrooms now for about forty years. And I can tell
5 you that I've never been in one where the witness stand
6 wasn't right in front of the jury box.

7 The reason for that is it gives you direct line of
8 sight. You can observe the witnesses as they testify, the
9 way they speak. You have the right to consider anything
10 that's in the record that will assist you in making a
11 determination as to the credibility or the believability of
12 the testimony you hear.

13 So, again, pay close attention. Try not to let your
14 thoughts wander. Be in a position at the close of the trial
15 to talk over with your fellow jurors the credibility and the
16 believability of the testimony that you hear. It'll assist
17 you in making the decisions that you have to make.

18 Now I do one thing a little different than most judges
19 and different than the TV judges do. I don't appoint a
20 foreperson of the jury until I charge you concerning the
21 law. And I do that for a reason.

22 At the close of the trial, and I'll tell you now, you
23 cannot reach a verdict in this case unless all twelve jurors
24 agree. So for that reason there's no one juror out there
25 that's more important than any other of your number. You

1 all have a say in the outcome of the case. And I want you
2 to all approach it as if you may be the person that I
3 appoint as the foreperson of the jury.

4 So sometimes I think if I appoint a foreperson, some
5 people on the jury may say, well, that must be the smartest
6 person on the jury. I'll just let them listen and whatever
7 they tell me, I'll go along with.

8 Well, you may be appointed as the foreperson. You may
9 have to lead the discussions of the jury during
10 deliberations. So listen like that's the case because one
11 of you will be appointed as the foreperson. And I'll make
12 that appointment at the close of the trial. I haven't
13 forgotten that. I do that for a reason.

14 Now, I don't want any of my opening statements to
15 affect the case. So is there any objection to my opening
16 statements from the State?

17 **MR. FOWLER:** None from the State, Judge.

18 **THE COURT:** Any from the Defense?

19 **MR. RICHEY:** None, Your Honor. Thank you.

20 **THE COURT:** All right. Now, the process that we're
21 going to follow, the procedure, we're going to start with
22 the opening statements by both sides. And in this case the
23 State will go first because the State has the burden of
24 proof in the case. They're allowed to go first. Then in
25 the presentation of evidence the State will call its

1 witnesses first. And then the Defense will call any
2 witnesses the Defense chooses to call.

3 Once we've completed the presentation of testimony and
4 evidence in the case, then the attorneys will be given that
5 opportunity to sum up the case and argue -- make a final
6 argument to you. Once they've completed that argument,
7 it'll be my job to charge you concerning the law to be
8 applied in the case. Once you've been charged with the law,
9 the case will be turned over to you for your deliberations
10 and ultimately a verdict in the case. So that's the process
11 that we're going to go through as we proceed.

12 Now, we've been going now for about an hour and a half.
13 And so before we start those opening statements I'm going to
14 give you a chance to step back to the jury room, stretch
15 your legs, clear your head.

16 But every time you leave this courtroom I'm going to
17 caution you, don't discuss anything about the case while
18 you're outside the courtroom. You'll only start that when
19 you begin your deliberations. The bailiff will take you
20 back and make you familiar with the jury room. Thank you
21 very much.

22 (Whereupon the jury exited the courtroom at 11:14 am)

23 **THE COURT:** All right. We'll be in recess for about
24 five to ten minutes.

25 **MR. FOWLER:** Thank you, Judge.

1 (Whereupon court was in recess at 11:14 am)

2 (Whereupon court reconvened at 11:27 am)

3 **THE COURT:** All right. Is the State ready to move
4 forward?

5 **MR. FOWLER:** Yes, sir, Judge.

6 **THE COURT:** Defense ready?

7 **MR. RICHEY:** Yes, sir.

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

9 (Whereupon the jury entered the courtroom at 11:28 am)

10 **THE COURT:** All right. The record will reflect the
11 jury has returned to the courtroom. The bailiff indicated
12 that perhaps somebody on the jury inquired about taking
13 notes. This is not going to be a long case. I don't
14 anticipate that.

15 And let me point out to you, if you begin to take
16 notes, quite often you'll be -- do one of two things.
17 You'll be paying so close attention to your notes you won't
18 be watching what's going on in the courtroom, you'll be
19 taking care of your notes.

20 My experience with jurors taking notes that it works
21 good for about the first hour or two, but after two or three
22 hours maybe you stop taking the notes and you don't follow
23 it quite as closely. And then when you get ready to
24 deliberate your notes, I'll have to instruct you, can't be
25 used to try to influence other jurors. They can only be

OPENING STATEMENTS - MR. FOWLER

52

1 used to reflect -- refresh your memory.

2 And so I generally, if a case is not going to be very
3 long, would prefer that jurors simply pay attention to
4 what's going on, listen to what's being said and not get
5 wrapped up in trying to write down everything that goes on
6 in the courtroom.

7 So, generally, I don't allow taking notes in a very
8 short trial. And I expect this case will be over either
9 this afternoon or maybe first thing in the morning. I don't
10 expect it to be a long trial. If this were a week-long or a
11 two-week-long trial, I'd reconsider that decision, but
12 that's the way we'll handle this, all right?

13 Now, at this time we'll have opening statements from
14 counsel. The State can go first. Yes, sir.

15 **MR. FOWLER:** Yes, sir, Judge. May it please the Court?

16 **THE COURT:** Yes, sir.

17 **MR. FOWLER:** Ladies and gentlemen of the jury, my name
18 is Brann Fowler. And I'm an assistant solicitor for the
19 Thirteenth Circuit Solicitor's Office here in Greenville,
20 South Carolina. And that means that today my job is to
21 prove to you all beyond a reasonable doubt that the
22 Defendant, Mr. Joseph Chappell, carjacked the victim, Mr.
23 Coneze Barner.

24 So in my opening statements I like to give a very brief
25 preview of how I think this trial is going to go. First,

OPENING STATEMENTS - MR. FOWLER

53

1 you're going to hear from the victim, Mr. Coneze. And then
2 you're going to hear from those three law enforcement
3 officers right there who investigated this case.

4 Through their testimony and the evidence that we'll
5 introduce in trial we will show you that on the night of
6 March 5th, 2017 Mr. Barner saw Mr. Chappell, who he is
7 acquainted with, and gave him a ride. When they got to
8 where Mr. Chappell directed him to go, Mr. Chappell hit Mr.
9 Barner on the side of the head and forced him out of his
10 vehicle. Mr. Barner had to leave his vehicle so hastily
11 that he left behind his crutches and his knee brace that he
12 needed to walk.

13 Mr. Barner was then left essentially on the side of the
14 road. When a deputy came by, Mr. Barner flagged down that
15 deputy. While Mr. Barner was talking to that deputy, Mr.
16 Chappell drove by in Mr. Barner's car. That deputy began to
17 pursue Mr. Chappell, Mr. Chappell got away. However, they
18 did find the car basically right around the corner more or
19 less driven into a ditch with the driver's door left open.
20 Shortly afterwards they found Mr. Chappell and they arrested
21 him.

22 Those are the facts as we'll present them here at
23 trial, ladies and gentlemen. And I am certain that at the
24 end of this presentation of evidence you will all be
25 convinced beyond a reasonable doubt that the Defendant, Mr.

OPENING STATEMENTS - MR. RICHEY

54

1 Joseph Chappell, is guilty of the crime of carjacking.

2 Thank you. And I look forward to working with you.

3 **THE COURT:** Mr. Richey, you may proceed for the
4 Defense.

5 **MR. RICHEY:** Thank you, Your Honor. May ---

6 **THE COURT:** Yes, sir.

7 **MR. RICHEY:** --- it please the Court?

8 This case is -- it's about addiction. And what
9 addiction does, it creates this other value other than
10 money.

11 See, and this case is going to be about the value of
12 drugs versus the value of money. And for most of us who
13 don't have these additions, we don't understand that. For
14 most of us we believe that money is more valuable than
15 drugs.

16 And that's what this case is going to be about. That
17 most our society -- would you take twenty dollars or would
18 you take a crack rock? Most of us see that twenty dollars
19 more valuable than that crack rock because we don't have the
20 addiction.

21 And what the evidence is going to be in this case, we
22 believe, there's no doubt all these folks knew each other.
23 There's no doubt all these folks have been in and out of
24 each others car. There's no doubt all of these folks,
25 unfortunately, have these addictions. That's unfortunate.

OPENING STATEMENTS - MR. RICHEY

55

1 But we believe the evidence will show that my client
2 had authorization to use that car, but he didn't pay in
3 currency. He did not pay in currency, that he paid drugs
4 for the usage of this car. And we believe that that's what
5 the evidence will show.

6 Because we believe that the evidence will show that, as
7 the solicitor said, everybody lived right there together.
8 And we believe the evidence will show that this is not a
9 stranger case. This is not where some stranger gets pulled
10 out of their car and carjacked. This is a case where these
11 people have longstanding relationships, longstanding,
12 longstanding.

13 And we believe when the evidence is presented to you,
14 and the testimony, we believe that you'll determine that my
15 client is not guilty. We believe that's where the evidence
16 will take us.

17 And one of the things that -- when I first started
18 practicing, when all the judges struck the jury, that you
19 only need a sixth grade education to be a juror. And the
20 one thing that struck me is that's like I done went and got
21 all this high priced education and they telling me that a
22 sixth grader is supposed to be -- understand what I'm
23 saying. And after being up there twenty-three years the
24 judge is actually right because all this is going to be
25 common sense.

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

56

1 I'm not going to come up here and say a bunch of fancy
2 words to you. It's all going to be about common sense,
3 period. And we believe that when you hear the evidence and
4 testimony -- the testimony that you'll find my client not
5 guilty.

6 And it's critical that you keep an open mind about the
7 case because like I say, this type of case is different
8 because it asks you to put -- a lot of people to put
9 themselves in a position of addiction and most of us, a lot
10 of us have not been in that position. Thank you.

11 **THE COURT:** Mr. Fowler, the State may call its first
12 witness.

13 **MR. FOWLER:** Yes, sir, Judge. The State calls Mr.
14 Coneze Barner.

15 **THE COURT:** Sir, come forward and be sworn, please.

16 **Coneze Barner**, being duly
17 sworn testified as follows;

18 **MADAME CLERK:** Please have a seat. And will you state
19 your full name for the record.

20 **MR. BARNER:** Coneze James Barner.

21 **THE COURT:** Counsel, it's your witness.

22 **MR. FOWLER:** Thank you, Judge.

23 **THE COURT:** Yes, sir.

24 **Direct Examination by Mr. Fowler:**

25 Q. Mr. Barner, make sure you speak up. You're a little

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

57

1 soft spoken. Where are you from, Mr. Barner?

2 A. In Greenville, South Carolina.

3 Q. How long have you lived in Greenville?

4 A. Basically all my life til I went in the service.

5 Q. Okay. How far did you go in school?

6 A. I went to -- thirteen. I mean, graduated high school
7 and went one year of college.

8 Q. Okay. What high school did you graduate from?

9 A. Carolina High.

10 Q. Okay. And then what did you do after you graduated
11 high school?

12 A. I went and played junior college ball, busted out my
13 knee and then went in the service.

14 Q. Okay. And so that period you were in junior college
15 and in the service, that's the only time you've not lived in
16 Greenville?

17 A. Yes.

18 Q. Okay. How long were you in the service for?

19 A. Ten years.

20 Q. And then you mentioned blowing out your knee playing
21 football. Do you have any other health issues?

22 A. I'm with dialysis. And at the time my leg was broke in
23 three places. I got metal -- from my knee down is all
24 metal.

25 Q. Okay. So now at the time, you mean at the time of the

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

58

- 1 incident on ---
- 2 A. March the 5th.
- 3 Q. --- March 5th, 2017, right?
- 4 A. Right. I was just coming out of rehab.
- 5 Q. Okay. We'll get to that. Mr. Barner, now have you
- 6 ever been arrested before?
- 7 A. Yes.
- 8 Q. Have you ever been convicted of a crime before?
- 9 A. Yes.
- 10 Q. Have you ever been convicted of a drug crime before?
- 11 A. Yes.
- 12 Q. Okay. Now, do you use drugs?
- 13 A. No, not at this time.
- 14 Q. And ---
- 15 A. I'm on dialysis. And I got -- I just had a heart
- 16 attack.
- 17 Q. Okay. And would the dialysis affect or would drug use
- 18 affect dialysis?
- 19 A. Right. They would kick me out. I wouldn't be able to
- 20 go.
- 21 Q. Okay.
- 22 A. They test you every day you go to dialysis.
- 23 Q. Okay. And how long have you been going to dialysis
- 24 for?
- 25 A. Two years.

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

59

1 Q. Okay. So back to 2016, correct?

2 A. Right.

3 Q. Okay. All right. So do you remember the night of this
4 incident, March 5th, 2017?

5 A. Yes, I do.

6 Q. Okay. What did you do for dinner that night?

7 A. I went to the Spinx to get me some chicken.

8 Q. Okay. At the Spinx did you encounter somebody there?

9 A. Yes.

10 Q. Who did you run into?

11 A. Joe Chappell.

12 Q. Is he in the courtroom today?

13 A. Right there.

14 (Whereupon the witness pointed to the Defendant)

15 Q. Could you point -- you pointed out -- what color shirt
16 is he wearing?

17 A. White shirt.

18 Q. Okay. How do you know him?

19 A. Well, I don't know him. I mean, we didn't grow up
20 together or nothing like that, but everybody from Staunton
21 Bridge Road. And I grew up in Staunton Bridge Road, on
22 Sunnyview Drive. So a lot of people know me because I
23 played football at Carolina. And I ---

24 Q. Pretty good?

25 A. Pretty good. Well, I was great.

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

60

1 Q. Yes, sir. So you sort of knew him from around the
2 neighborhood, right?

3 A. Right.

4 Q. Okay. Did he ask you for a ride that night?

5 A. Yes, he did.

6 Q. And you were -- you were driving a car, correct?

7 A. Yes.

8 Q. Okay. Whose car were you driving?

9 A. My aunt's.

10 Q. What kind of car was it?

11 A. Gold PT Cruiser, 2003.

12 Q. Okay. So Mr. Chappell asked you for a ride. Did you
13 give him a ride?

14 A. I did.

15 Q. Okay. Did he ask you to take him anywhere?

16 A. To his aunt's house.

17 Q. Okay. And where is his aunt's house at?

18 A. Supposed to been on Carolina Drive, but as we
19 approached the house, he said nobody was there, to take him
20 to the store.

21 Q. Okay. And what store did he mean?

22 A. The store that's on Staunton Bridge Road.

23 Q. Okay. And so all of this is in Greenville County?

24 A. Yes.

25 Q. As far as you know y'all never left Greenville County

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

61

1 that night, ---

2 A. No.

3 Q. --- correct? All right. Thank you. So now you're
4 giving him a ride. And I think you had mentioned -- did you
5 -- had you had some kind of operation around that time?

6 A. Yeah, my leg.

7 Q. Okay. What did they operate on?

8 A. They -- below my knee. They operated -- I shattered --
9 trying to fix the shingles on my house and I shattered my
10 ankle and my fibia in three places. So everything below my
11 knee is metal.

12 Q. Okay. Were you able to walk on your own back then?

13 A. No. I had to have a boot and crutches.

14 Q. Okay. So you had to have a boot and crutches. Now
15 what would you do with the boot and crutches while you were
16 driving?

17 A. I would take it off because the boot would constrict me
18 from being able to go from the pedal -- from the gas to the
19 brake.

20 Q. Okay. And what would you -- do you take them off -- is
21 there anywhere in particular in the car you put them?

22 A. It was in the backseat.

23 Q. Okay. And you put them all in the backseat. All
24 right. So back the night of the incident, Mr. Chappell
25 asked you to take him to his aunt's house, but he said

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

62

1 nobody's there, right?

2 A. Right.

3 Q. Okay. Then he asked you to take him to the store,
4 right?

5 A. Right.

6 Q. Did y'all go to that store?

7 A. Right.

8 Q. Okay. What happened when you got there?

9 A. Was nobody there. But he said somebody was there, told
10 me to pull on the side of the building.

11 Q. Okay. So this building he had you pull to the back of,
12 were there lights there?

13 A. One light was on in the back.

14 Q. In the building?

15 A. In -- in the window.

16 Q. All right. Were there any street lights or anything
17 like that?

18 A. None but on the front.

19 Q. Okay. So y'all pulled over. Did you see anybody
20 walking around?

21 A. No.

22 Q. And what time of night is this?

23 A. It's about eleven, something like that.

24 Q. Okay. So it's getting on fairly late?

25 A. Yeah.

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

63

1 Q. Okay. What happened when you got there?

2 A. Then he was like -- I said, there ain't nobody there.

3 And then he looked at me and he said, you going to give me

4 this car. I'm a beast, exactly what he said. So he

5 fumbling in his pocket ---

6 Q. Okay.

7 A. Fumbling in his pocket. And then he said, you think

8 I'm joking. I'm a mother fucking beast. And he pulled out

9 something which I thought was a gun and hit me upside my
10 head. That's why I have this here.

11 Q. Okay. So now hold on. So now you're pointing at your
12 head. And it's a little hard to see from back here, but he
13 hit you where on your head?

14 A. Right here.

15 Q. Okay. And is there -- is there a knot there?

16 A. It's a knot and a gash.

17 Q. Okay. All right. So were you ever able to see what
18 exactly it was that he pulled out ---

19 A. Not necessarily, ---

20 Q. --- of his pocket?

21 A. --- no. I thought it was a gun because that's what it
22 looked like.

23 Q. Now were you scared that night?

24 A. Yes.

25 Q. Okay. You know, were you shocked and asking him a

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

64

- 1 whole lot of questions?
- 2 A. Him?
- 3 Q. Yeah.
- 4 A. I asked him why he was doing that. I was like, come
- 5 on, man. What is you doing?
- 6 Q. Okay.
- 7 A. He was like, I'm a beast and this is what I do, ---
- 8 Q. Okay.
- 9 A. --- just like that. I'm making the expression because
- 10 I remember it just like it was yesterday.
- 11 Q. Um-hum (affirmative). Okay.
- 12 A. This is what I do.
- 13 Q. And so ---
- 14 A. I'm a mother fucking beast.
- 15 Q. And so then he hit you, right?
- 16 A. And he hit me.
- 17 Q. Okay.
- 18 A. He was like, get out. So I tried to grab for the keys,
- 19 ---
- 20 Q. Yeah.
- 21 A. --- and he hit me again.
- 22 Q. Yeah.
- 23 A. So as I'm getting out, he get against the door of the
- 24 car and start kicking me out the car.
- 25 Q. Yeah.

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

65

1 A. I fall on the ground. He jumps in the driver's seat
2 and takes off with the door wide open.

3 Q. Okay.

4 A. Almost hit the ditch. He takes off and goes up
5 Staunton Bridge Road ---

6 Q. Yeah.

7 A. --- towards White Horse.

8 Q. All right. Now, Mr. Barner, I can tell you're getting
9 upset, but try and stay calm, okay? And, you know, try and
10 focus on me and the jury, okay? All right. So he kicks you
11 out of the car. Did you know anybody around there?

12 A. I mean, I lived there almost all my life, but over the
13 years people have changed. I went to two or three doors,
14 and that's when I seen the light on. When I went to the
15 door, I asked some people did -- before they opened the
16 door, they was like, who is it? I said, I know you don't
17 know me, but I been -- somebody just stole my car.

18 Q. Um-hum (affirmative).

19 A. Well, instead of them asking could they call the
20 sheriff, instead of calling the sheriff, about a few minutes
21 later they turned the lights out.

22 Q. Okay.

23 A. And told me to get away from their door.

24 Q. Yeah. And ---

25 A. Which is normal considering everything that goes on in

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

66

1 this world ---

2 Q. That's what I was going to ask. Now, that part of the
3 world, I mean, are you aware of crimes that happen over
4 there?

5 A. Excuse me?

6 Q. Are you aware of any crimes that have happened over in
7 that part ---

8 A. Well, I mean, that's all over Greenville.

9 Q. Yeah.

10 A. I'm sure it does.

11 Q. And it was late at night, correct?

12 A. Right.

13 Q. And as you said, you didn't really know these people,
14 right?

15 A. No. I was just -- people that used to live in them
16 houses don't live there no more ---

17 Q. Right.

18 A. --- when I was growing up.

19 Q. Right. And you didn't have your cell phone on you ---

20 A. No.

21 Q. Okay.

22 A. I was barefoot, too.

23 Q. Okay. And did you have your crutches with you?

24 A. No. They was in the car. My boot was in the car.

25 Q. Okay. So were you able to easily walk around that

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

67

1 night?

2 A. No. I was hopping.

3 Q. Okay. So you're hopping?

4 A. Right.

5 Q. Okay.

6 A. Basically just standing, you know what I mean? Every
7 time I tried to wave down a car or something, they would go
8 around me. I stood in the middle of the street and cars
9 went around me and told me I was crazy, get out the street.

10 Q. Okay. So you're there. Eventually did a deputy come
11 by?

12 A. Yeah. But before then a churchgoing lady, she live in
13 the culvert right beside there, she worked at BMW. She said
14 she don't know what made her leave to go get some gas that
15 morning, but something did.

16 Q. All right.

17 A. And I was trying to get across the street, and I fell,
18 and she grabbed me. The first thing she did was grab me and
19 prayed. I was bleeding. And then she took me to her SUV.
20 And then about five minutes later I asked or I told her to
21 call the sheriff, that I'd been trying to call. And about
22 five minutes a officer -- a K-9 unit pulled up.

23 Q. Okay. So a deputy kind of happens upon y'all,
24 basically?

25 A. Yes.

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

68

1 Q. Okay. And so did you tell the deputy what happened?

2 A. Right.

3 Q. What did you tell him?

4 A. I told him that I'd been carjacked, guy stole my car

5 ---

6 Q. Okay.

7 A. --- and left me out here for dead.

8 Q. Now while you were talking to the deputy did the
9 vehicle go drive by?

10 A. Yeah. As we was talking -- he was going to call the
11 EMS, and I told him I was fine. And as we was talking, he
12 getting ready to take my statement, the car goes down the
13 road.

14 Q. Okay.

15 A. And I was telling him, I said, that's my car. He said,
16 you sure? I said, yeah, because the back light's busted
17 out.

18 Q. Yeah. Okay. Did the deputy leave to go check the car
19 out?

20 A. Yes, he did.

21 Q. Okay. But did another deputy show up?

22 A. Another deputy showed up -- about ten deputies showed
23 up.

24 Q. Okay. And did you tell them who you thought did it?

25 A. I told them I didn't -- I knew his name by Joe. I

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

69

1 didn't know his last name. And then one of the other
2 officers came and they pulled it up and they knew exactly
3 who it was.

4 Q. Okay. And did you have an idea of where he lived at?

5 A. Yeah. I told them exactly where he had took me.

6 Q. Okay. So you told them his first name was Joe and you
7 had an idea of where he lived, right?

8 A. Yeah. But they knew exactly ---

9 **MR. RICHEY:** Judge, I'm going to object. Can we
10 approach one moment, Your Honor?

11 **THE COURT:** Are you objecting to hearsay?

12 **MR. RICHEY:** I've got another objection as to where
13 this is going.

14 **THE COURT:** Well, why don't we do this. I'll ask the
15 jury to step out while we talk about that. Ladies and
16 gentlemen, this is one of those occasions I'll ask you to
17 step out. Don't discuss the case til I ask you to do so.
18 Thank you very much.

19 (Whereupon the jury exited the courtroom at 11:46 am)

20 **THE COURT:** All right. Mr. Richey, what's your
21 objection?

22 **MR. RICHEY:** Judge, this line of questioning where this
23 witness is going in terms of the police looking him up, I
24 believe if we keep going down this road my client's prior
25 record -- he's on the edge of putting his prior record in

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

70

1 because when he says the cop looked him up, they knew
2 exactly -- and then he started talking about the police knew
3 -- then I'm objecting to this line of questioning because I
4 think it's putting my client's prior criminal history in the
5 record.

6 A. But that's what he do.

7 **THE COURT:** Sir, I'm dealing with this. Don't -- don't
8 ---

9 A. I'm sorry.

10 **THE COURT:** --- get involved in this. Thank you, sir.
11 Mr. Fowler.

12 **MR. FOWLER:** Judge, I mean, I -- all I'm trying to get
13 at is that he identified him for the police, that he gave
14 them a half a name and an address and that they were able to
15 confirm ---

16 **THE COURT:** That's the questions you've asked. I'm
17 going to caution the witness. Sir, it wouldn't be proper
18 for you to, as part of your testimony, mention the fact that
19 this Defendant has prior convictions and things of that
20 nature. That possibly can come into the trial at a later
21 time, but it can't come in through your testimony.

22 A. Okay.

23 **THE COURT:** You understand that?

24 A. Yes.

25 **THE COURT:** Because that would be hearsay. That's what

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

71

1 the police might have told you. And you can't testify about
2 what people told you. You can testify about what happened.

3 A. All right. That's ---

4 **THE COURT:** So you can ---

5 A. --- all I did.

6 **THE COURT:** Let me finish. You can testify about the
7 fact that you gave them the information you had and they
8 knew who you were talking about.

9 A. That's what I was ---

10 **THE COURT:** You can say that.

11 A. --- saying, Your Honor.

12 **THE COURT:** But don't get into they looked up on a
13 computer and got a record or he had prior convictions.

14 A. But then what about when he looked -- he looked it up
15 and then he showed me the picture? He ---

16 **THE COURT:** Again, ---

17 A. --- said, is this the guy?

18 **THE COURT:** --- you can say that they -- you gave them
19 what you had and they were able to identify him.

20 A. Okay.

21 **THE COURT:** They knew who he was. That's as far as you
22 need to go because that's what they did. They were able to
23 identify him.

24 A. Okay.

25 **THE COURT:** But how they went about it, whether he has

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

72

1 a record, whether he is in their computer, that's something
2 that you can't get into because that would be something they
3 told you or be hearsay. You don't have direct knowledge of
4 what's in their computer and what's not in their computer.
5 So we're going to leave it at that. That's my ruling. Mr.
6 Fowler, you ready to go forward?

7 **MR. FOWLER:** Yes, sir.

8 **THE COURT:** Mr. Richey, ---

9 **MR. RICHEY:** Yes, sir.

10 **THE COURT:** --- does that take care of your objection?

11 **MR. RICHEY:** Yes, sir.

12 **THE COURT:** Bring the jury in.

13 (Whereupon the jury entered the courtroom at 11:49 am)

14 **THE COURT:** All right. The record will reflect the
15 jury has returned to the courtroom. I have sustained an
16 objection and I've given the witness some instructions on
17 his testimony. And so the State now at this time can resume
18 its direct testimony.

19 And as you come and go, let me point out, there are no
20 assigned seats in the jury box. Just fill in as you come
21 and go. Except you, sir, you have to sit over there in the
22 corner, okay?

23 (Laughter)

24 **THE COURT:** All right. Thank you, Mr. Fowler. You may
25 proceed.

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

73

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

2 **Direct Examination by Mr. Fowler Continued:**

3 Q. All right. Mr. Barner, through some information you
4 gave the police were they able to identify the Defendant?

5 A. Yes, they were.

6 Q. Were they able to figure out where he lived?

7 A. Yes, they were.

8 Q. Okay. So they went off chasing his car, correct? Or
9 chasing your car that he was in, right?

10 A. (Affirmative nod).

11 **THE COURT:** You have to answer verbally. You ---

12 A. Yes.

13 **THE COURT:** --- can't shake your head.

14 A. Yes.

15 **THE COURT:** Thank you, sir.

16 Q. And you're still basically where they found you?

17 A. Yes.

18 Q. Okay. Now while you were talking to that policeman did
19 word come they had found him?

20 A. They had lost him.

21 Q. They'd lost him, but then did they find him later on?

22 A. They found him later on. They found the car.

23 Q. Right.

24 A. They went on to chase -- and they was chasing him. He
25 jumped out the -- well ...

CONEZE BARNER - DIRECT EXAMINATION BY MR. FOWLER

74

- 1 Q. Yeah. Okay. So ---
- 2 A. They found the car with the door open ---
- 3 Q. Right.
- 4 A. --- after the chase.
- 5 Q. All right. Did later, while you were talking to the
- 6 police that night, did a call come over the radio that they
- 7 had found Mr. Chappell?
- 8 A. Yeah.
- 9 Q. Did they take you to where he was at?
- 10 A. Yes.
- 11 Q. Okay. Did they ask you to identify him?
- 12 A. Yes.
- 13 Q. Okay. Were you able to identify him?
- 14 A. Yes.
- 15 Q. Okay. Do you remember what he was wearing?
- 16 A. No.
- 17 Q. Okay. Back then in March of 2017 did you smoke
- 18 cigarettes?
- 19 A. Yes.
- 20 Q. What brand did you smoke?
- 21 A. Newports.
- 22 Q. Okay.
- 23 A. Marlboro -- well, I'm a Marlboro man.
- 24 Q. So it's Marlboros?
- 25 A. Yeah, Marlboro Red, 72.

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

75

1 Q. Okay. So you smoked Marlboros then?

2 A. Yeah.

3 Q. Yeah. Now did you buy the brand of cigarettes?

4 A. No.

5 Q. Okay. Did you have any doubt when the deputy showed
6 you the man that they arrested that it was the man who took
7 the car from you?

8 A. No doubt.

9 Q. Okay. Thank you. If you'd answer any questions Mr.
10 Richey might have.

11 **THE COURT:** Mr. Richey, he's your witness.

12 **MR. RICHEY:** Thank you, Your Honor.

13 **THE COURT:** Yes, sir.

14 **Cross Examination by Mr. Richey:**

15 Q. Mr. Barner, ---

16 A. Yes.

17 Q. --- you pretty good at football?

18 A. Yeah. You know.

19 Q. Let me ask ---

20 A. You pretty good in baseball.

21 Q. Yeah, I was pretty good ---

22 A. Okay.

23 Q. Go back to the reunion. Okay. Question, this store
24 where this happened, that's Shaq's store?

25 A. Yeah.

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

76

1 Q. We refer to it as Shaq's store, right?

2 A. Right.

3 Q. Because that's the guy who operates it?

4 A. Operates the store.

5 Q. Yeah. And at that store -- and we've been there a long

6 time. At that store they put in those apartments right

7 there, Cypress Cove. You know ---

8 A. Right.

9 Q. And at that store -- we were told not to go to that
10 store because it's a lot of bad stuff, right?

11 A. Well, that was before. It used to be Howell's store

12 ---

13 Q. Right.

14 A. --- when I grew up.

15 Q. Right.

16 A. When I left and went in the service, I didn't know
17 nothing about Shaq's store.

18 Q. Well, right now that store, a lot of stuff go on at
19 that store, right?

20 A. Right. True.

21 Q. A lot of bad stuff.

22 A. I don't live there anymore, but my aunt and them tell
23 me.

24 Q. And right there at Cypress Cove has a lot of bad stuff
25 going on in those apartments, right?

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

77

1 A. Okay.

2 Q. And in that community, it's a little bit older now,
3 correct? It's a little bit older people other -- correct?

4 A. Right.

5 Q. And that Cypress Cove with all the stuff going over
6 there, it's kind of upheavaled [sic] that neighborhood a
7 little bit, correct?

8 A. I believe so.

9 Q. Okay. And so that night that you're out at that store,
10 that is not the place that you would want to stop, correct?

11 A. No.

12 Q. Okay. And that's the kind of place that there's a lot
13 of illegal activity goes on, correct?

14 A. I guess.

15 Q. And behind that store -- going behind that store is a
16 pretty dangerous proposition, correct? At night, would you
17 -- correct? Would you ---

18 A. Yeah, but we pulled beside the store.

19 Q. But that's -- that's still a dangerous ---

20 A. Yeah.

21 Q. --- proposition in that neighborhood, correct?

22 A. I would say, but I grew up in that neighborhood. So
23 why would I fear it if I grew up and knew everybody?

24 Q. Yeah. And how long have you known Mr. Chappell?

25 A. I couldn't even say.

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

78

1 Q. Huh?

2 A. I couldn't say. I mean, what, a year? Or two? Or
3 seen him and not knowing him like that.

4 Q. You didn't -- so you didn't tell the police that you
5 had known him since high school ---

6 A. His brother. His people.

7 Q. So you knew his people, but not him?

8 A. Right.

9 Q. Since high school?

10 A. Right.

11 Q. Okay. And you have made -- unfortunately, you have
12 used drugs, unfortunately, correct?

13 A. It's true. After I come back from the war, ---

14 Q. Right.

15 A. --- yeah, because I was screwed up.

16 Q. And that -- those drugs are pretty addictive, correct?

17 A. Well, ---

18 Q. Wouldn't you say that?

19 A. --- I mean, they can be.

20 Q. Okay. And you -- you understand that those drugs to
21 some people are really valuable, correct?

22 A. To some people.

23 Q. Right.

24 A. Understand who you talking to, though.

25 Q. Oh, I understand.

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

79

- 1 A. Okay.
- 2 Q. I understand who I'm talking to.
- 3 A. Yeah, because I grew up with you.
- 4 Q. Yeah.
- 5 A. All right?
- 6 Q. Right. And those drugs -- those drugs are pretty
- 7 valuable to some people?
- 8 A. Right.
- 9 Q. Okay. And it's not unbelievable that someone would
- 10 exchange their car for crack? That's not -- that's not
- 11 unbelievable, correct?
- 12 A. That's not unbelievable. I agree with you one hundred
- 13 percent.
- 14 Q. And we -- and you have known instances where that
- 15 happened, correct?
- 16 A. But not with me, ---
- 17 Q. Right. But ---
- 18 A. --- if that's where you're trying to go.
- 19 Q. No, no ---
- 20 A. I'm answering your question. Not with me.
- 21 Q. Okay. But you know that that occurs ---
- 22 A. Right.
- 23 Q. --- down there?
- 24 A. Okay.
- 25 Q. And you know Jeffrey Locke, too, don't you?

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

80

- 1 A. I know of him.
- 2 Q. Has he ever been in your car?
- 3 A. No. That's what I'm saying, when they said they found
- 4 fingerprints, yeah, they had to be in my car after he took
- 5 that car.
- 6 Q. Okay.
- 7 A. Okay.
- 8 Q. But you don't know Jeffrey Locke?
- 9 A. I said I do -- I know of him.
- 10 Q. Okay. When ---
- 11 A. He stays at Mr. Raymond's house.
- 12 Q. When's the last time you seen him?
- 13 A. Down at Mr. Raymond's house.
- 14 Q. When was that? A week ago? A month ago? Two years
- 15 ago?
- 16 A. I don't know. That was last year.
- 17 Q. Last year? You have not seen him since last year?
- 18 A. No.
- 19 Q. Okay.
- 20 A. Nothing but when he called me. You want to know what
- 21 that conversation was about?
- 22 Q. No. I'm just saying when's the last time you
- 23 physically saw him?
- 24 A. He called me.
- 25 Q. Okay. So you haven't seen him in a year?

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

81

- 1 A. (Negative nod).
- 2 Q. You've got to answer yes or no.
- 3 A. No.
- 4 Q. Do you know -- now, was Stacy in the car with you?
- 5 A. I don't know Stacy.
- 6 Q. You don't know Stacy?
- 7 A. (Negative nod).
- 8 Q. And you -- Mr. Chappell lived on Carolina Street?
- 9 A. He said his aunt did.
- 10 Q. On Carolina ---
- 11 A. His aunt.
- 12 Q. --- Street?
- 13 A. Yeah.
- 14 Q. Okay. And when we're standing looking at that store,
- 15 like we're going down Staunton Bridge Road, Shaq's store is
- 16 like right here, there's a road -- Lockman Drive, right?
- 17 A. Across the street.
- 18 Q. Yeah, across the street is Lockman Drive. The
- 19 apartments are here. And we go down maybe -- what did you
- 20 say, a block?
- 21 A. To Carolina ---
- 22 Q. Yeah, Carolina ---
- 23 A. On both sides.
- 24 Q. --- on the left -- on both sides ---
- 25 A. Yeah.

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

82

1 Q. --- on the right. Always say the McDavids lived on the
2 right.

3 A. Right. Yeah.

4 Q. And ---

5 A. And then y'all stayed down at the side street in the
6 back.

7 Q. Yeah. So that's Carolina Street, right?

8 A. Yeah.

9 Q. And that's not that far from that store, is it?

10 A. No, it's not.

11 Q. So Mr. Chappell would have taken -- and I'm making this
12 assumption. He would have taken the car from that store a
13 block away, essentially, and stayed there?

14 A. He didn't go that way, though.

15 Q. Okay. But he was coming back the other way ---

16 A. He went ---

17 Q. --- when you saw him?

18 A. --- towards White Horse Road.

19 Q. Okay. So you're saying he went the Satterfield side?

20 A. He went toward -- you know where the store is?

21 Q. Yeah.

22 A. Okay. When he jumped -- when he took the car he pulled
23 out of the driveway and went towards White Horse Road up
24 Staunton Bridge Road. When the police officers seen him, he
25 was coming down Staunton Bridge Road about an hour or two

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

83

1 hours later.

2 Q. And you decided that he pulled out what you called --
3 appeared to be a gun, correct?

4 A. Right.

5 Q. And he said all the -- this is what I do and all this
6 stuff, right?

7 A. Right.

8 Q. And just to -- I'm just trying to figure out, he struck
9 you with that item?

10 A. Here the proof.

11 Q. Okay. He struck you with that item, correct?

12 A. Yes.

13 Q. And when he struck you, I'm just trying to see --
14 figure out the intensity of it. And would it be like this?
15 Would it be harder than that?

16 A. He said you -- he said the exact words, you think I'm
17 playing with you? I'm a mother fucking beast. I would kill
18 you. And that's when he -- he said, get out. I'm looking
19 at him like this, I'm in my seat, and I'm looking at him
20 like that. He said, you think I'm playing with you. I'm a
21 mother fucking beast. This what I do. Get ---

22 Q. Okay.

23 A. --- out. And I didn't want to move. I said, what you
24 -- you playing, man. Come on with that. And that's when he
25 hit me. You think I'm playing? And he hit me.

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

84

1 Q. Well, my question is the intensity of the strike. Was
2 it like this? Did he rare back? Did he ---

3 A. Come out of his pocket.

4 Q. And did he take a full arm ---

5 A. Full arm.

6 Q. Full arm swing and he hit you in the head?

7 A. Right.

8 Q. With what appeared to be a gun?

9 A. What appeared to be a gun.

10 Q. Okay.

11 A. It was silver.

12 Q. Okay. And when he hit you with a full arm motion with
13 this -- and it was metal, right?

14 A. Looked like it was metal.

15 Q. It was metal. And he hit you with a full arm. So he
16 comes out a full arm swing and hits you, right? And it
17 hurt, right?

18 A. Yeah.

19 Q. Pretty bad?

20 A. It dazed me.

21 Q. Dazed you. And -- and you -- after this happened you
22 went directly to the hospital, correct?

23 A. No, man. He put me out my car.

24 Q. Okay.

25 A. Are you listening?

CONEZE BARNER - CROSS EXAMINATION BY MR. RICHEY

85

1 Q. When the lady came to assist you ---

2 A. I didn't need no EMS. I wanted to get my car because
3 he had just rode by.

4 Q. No, no. My question is did you go to the hospital?

5 A. No, I didn't.

6 Q. And you got struck with a metal rod with a full -- we
7 talking, you know, this is what I do and this -- now, I got
8 a good arm, but that's right?

9 A. Yeah, but I'm a soldier.

10 Q. Right.

11 A. Okay.

12 Q. Right. And so ---

13 A. I done got blowed up and everything else. So that --
14 that's nothing. I'm sitting out there -- I've been out
15 there for almost two hours waiting for somebody. And then
16 when the officer come, he tried to get me to go to call.
17 They did call -- to call the EMS. I didn't need nothing. I
18 was so concerned. Y'all, he just come back down. You left
19 me out there to die.

20 Q. Okay. Did you lose consciousness?

21 A. No, I don't -- yeah, a couple times I did before she
22 came. That's when the lady seen me falling.

23 Q. And since -- since that time have you had any medical
24 treatment for this strike to your head?

25 A. On my head?

CONEZE BARNER - REDIRECT EXAMINATION BY MR. FOWLER

86

1 Q. Yeah. Did you have any medical treatment for the
2 strike that you had to ---

3 A. Not but ---

4 Q. --- your skull ---

5 A. --- one stitch. They put a little, whatever they call
6 it, little stitch or Band-aid thing on it, and that's it.

7 Q. Okay. Thank you, sir.

8 **THE COURT:** Redirect, Mr. Fowler.

9 **Redirect Examination by Mr. Fowler:**

10 Q. Just real briefly, Mr. Barner. Okay. Now, we've
11 talked about that area, I guess, that store was a little
12 rough, right?

13 A. Yeah.

14 Q. Right? Did you decide to go to that store or did Mr.
15 Chappell decide to go to that ---

16 A. He decided. He told me to take him down -- I said,
17 ain't nobody there.

18 Q. Okay.

19 A. He said, well, somebody in the back.

20 Q. Okay. Now, back in March of 2017 when this happened
21 were you on dialysis?

22 A. Yes. I had just got on dialysis.

23 Q. Okay. And if you don't get dialysis will you die?

24 A. Yes.

25 Q. And did you say that they drug test you at dialysis?

CONEZE BARNER - REDIRECT EXAMINATION BY MR. FOWLER

87

- 1 A. Yes, every day -- every Tuesday and Thursday.
- 2 Q. Every Tuesday and Thursday ---
- 3 A. Yeah, they pull my blood, yeah.
- 4 Q. --- at dialysis? Okay. So it is fair to say that had
- 5 you used drugs back then you would not have been able to get
- 6 dialysis?
- 7 A. Yeah, but ---
- 8 Q. And if you would not been able to get dialysis you
- 9 would have died?
- 10 A. Yes, but let's ---
- 11 Q. And -- and let me finish.
- 12 A. Let me -- let me ---
- 13 Q. And you are still here living today, right?
- 14 A. Yeah, but let me correct you. Dialysis had just
- 15 started. My leg was broke. I had came out of Brushy Creek
- 16 rehabilitation, okay?
- 17 Q. Okay.
- 18 A. So I was already on drugs, all right, medicine.
- 19 Q. Okay. All right.
- 20 A. Wasn't on no crap.
- 21 Q. Okay. Now, when he drove away from you -- now we've
- 22 put it together that this house was right near this, right?
- 23 A. The opposite direction.
- 24 Q. But he drove in the opposite direction, right?
- 25 A. Well he went towards White Horse Road.

CONEZE BARNER - RECROSS EXAMINATION BY MR. RICHEY

88

1 Q. Okay. And his house was not towards White Horse Road?

2 A. No.

3 Q. Okay. All right.

4 **MR. FOWLER:** That's all I've got, Judge.

5 **THE COURT:** Recross?

6 **MR. RICHEY:** Just one quick ...

7 **Recross Examination by Mr. Richey:**

8 Q. You get drug tested, a urinalysis, right?

9 A. Yeah, they do -- they -- yeah, yes, sir, we do.

10 Q. Yeah, urinalysis. And you had just got it -- on
11 dialysis and you started getting tested, correct?

12 A. I had just started dialysis ---

13 Q. Okay. Thank you.

14 **THE COURT:** You can finish your answer.

15 A. I was coming out of rehabilitation for my leg being
16 broke. My leg got broke December 31st of 2016. I was at
17 Memorial Hospital for thirty days, thirty-five days and then
18 went to Brushy Creek in Greer for rehabilitation when I came
19 out of there. I had just started back walking. Couldn't
20 even walk.

21 **THE COURT:** Okay. Thank you, sir.

22 **MR. RICHEY:** Thank you.

23 **THE COURT:** You may step down. The State may call its
24 next witness.

25 **MR. FOWLER:** Yes, sir, Judge. The State calls Deputy

TIM FULLER - DIRECT EXAMINATION BY MR. FOWLER

89

1 Tim Fuller.

2 **THE COURT:** Come forward, sir, and be sworn, please.

3 **Tim Fuller,** being duly
4 sworn testified as follows;

5 **MADAME CLERK:** Have a seat.

6 **Direct Examination by Mr. Fowler:**

7 Q. All right. Deputy Fuller, ...

8 **THE COURT:** Let him state his name on the record, and
9 then you can get started. Go ahead, sir. State your name
10 on the record.

11 **MR. FULLER:** Tim Fuller.

12 **THE COURT:** Thank you. Counselor, now he's your
13 witness.

14 **MR. FOWLER:** Yes, sir.

15 Q. All right. Deputy Fuller, where do you work?

16 A. I work for the Greenville County Sheriff's Office.

17 Q. How long have you worked there?

18 A. It's going on fifteen years.

19 Q. Okay. So you were working there back in March of 2017,
20 is that correct?

21 A. That's correct.

22 Q. And what do you do for the sheriff's office?

23 A. I'm a K-9 handler.

24 Q. Okay. Did you do that back -- were you doing that back
25 in March of 2017?

TIM FULLER - DIRECT EXAMINATION BY MR. FOWLER

90

1 A. Yes.

2 Q. Okay. So now in March of 2017 were you patrolling
3 around Staunton Bridge Road, that area?

4 A. That's correct.

5 Q. Okay. And did you come upon Mr. Barner that night?

6 A. Yes, I did.

7 Q. Okay. And was he talking to somebody?

8 A. Yes.

9 Q. Okay. And had you gotten a 911 call or anything at
10 that point?

11 A. No, sir.

12 Q. Okay. So you -- did you approach him?

13 A. Yes.

14 Q. Did you ask him what was going on?

15 A. Yes.

16 Q. Okay. Did they alert you to a crime?

17 A. Yes.

18 Q. Okay. So while you were talking to him was he
19 describing what had happened to him?

20 A. He was starting -- I was concerned with what he was
21 saying. He was assaulted. He had an injury to his head.

22 Q. Um-hum (affirmative).

23 A. So I was getting EMS en route, you know. And he's kind
24 of giving me -- telling me somebody had stole his car. As
25 I'm doing that I'm also relaying the information to

TIM FULLER - DIRECT EXAMINATION BY MR. FOWLER

91

1 dispatch.

2 Q. Okay.

3 A. And -- but we didn't get into tremendous detail ---

4 Q. Okay.

5 A. --- at that point.

6 Q. So you called an ambulance for him, right?

7 A. Yes.

8 Q. And was he able to stand on his own or was he -- how
9 was ---

10 A. He was ---

11 Q. --- he doing?

12 A. He was having trouble ---

13 Q. Okay.

14 A. --- standing.

15 Q. So while you were talking to him did a car go driving
16 by?

17 A. Yes.

18 Q. What kind of car was it?

19 A. It was a PT Cruiser.

20 Q. What color was it?

21 A. It was gold.

22 Q. Did he say anything about that car?

23 A. Yes. He alerted me quickly, that's the car, that's the
24 car. Like I said, we hadn't got into tremendous detail of
25 what had happened yet.

TIM FULLER - DIRECT EXAMINATION BY MR. FOWLER

92

1 Q. All right.

2 A. But he told me, that's the car. He hit me, stole my
3 car.

4 Q. So from the time of you getting there, the time the car
5 driving by, about how much time do you think had gone by?

6 A. I'd say a short amount of time. Maybe a minute,
7 something like that.

8 Q. Okay. So it was pretty (snapped fingers)?

9 A. A couple of minutes tops.

10 Q. Okay. But you -- did you go after that car?

11 A. Yes. I knew we had deputies coming. The ambulance was
12 already en route to him. So I pulled out -- the vehicle was
13 going in the opposite direction that I was parked. So I had
14 to whip around. And by that time I got around the curve,
15 the car was gone. I made it all the way to the end of
16 Staunton Bridge to Lakeside and didn't see it.

17 So other deputies were coming and we just started
18 looking because oftentimes, you know, somebody will abandon
19 a car after fleeing from law enforcement. So ...

20 Q. Now, when he drove by you how, I mean, did he drive by
21 the street that y'all were on?

22 A. We were actually on Staunton Bridge ---

23 Q. Yeah.

24 A. --- at the top of Cypress Cove Court.

25 Q. Yeah.

TIM FULLER - DIRECT EXAMINATION BY MR. FOWLER

93

1 A. So, yeah, he drove right past us.

2 Q. Okay. So is there any doubt in your mind that he saw
3 you?

4 A. No, there's no doubt.

5 Q. Okay. Do you have any doubt that he saw Mr. Barner
6 there?

7 A. I don't know, but he definitely saw my patrol car
8 parked on the side of the road.

9 Q. Okay. So you go after him. Were you able to find the
10 vehicle?

11 A. Not immediately, no.

12 Q. Okay. But after a little while did y'all find the
13 vehicle?

14 A. We got a call for service that a vehicle matching that
15 description was abandoned in a yard on Satterfield.

16 Q. Okay. And how ---

17 A. I think it was Satterfield.

18 Q. And how far away is that from -- from where you met Mr.
19 Barner?

20 A. It's very close. It's all in the same vicinity.

21 Q. Okay. Did you respond to that location?

22 A. Yes.

23 Q. Was the car there?

24 A. Yes.

25 Q. Did it look like somebody had parked it or where was

TIM FULLER - DIRECT EXAMINATION BY MR. FOWLER

94

1 it?

2 A. It was in the -- I believe it was in somebody's front
3 yard kind of diagonal. So not a typical parking place.

4 Q. Okay. So it's whipped into a yard, correct?

5 A. Correct.

6 Q. Were all the doors shut?

7 A. I don't think so. I think the driver's door was open.

8 Q. Okay. Do you remember if the lights were on or
9 anything like that?

10 A. I don't recall.

11 Q. Okay. Now you were a K-9 officer. What do y'all
12 typically use K-9s for?

13 A. A lot of things. But in this instance we would attempt
14 to locate a suspect with the K-9.

15 Q. Okay. So did you deploy the K-9?

16 A. I did.

17 Q. Okay. Were you able to find him using the K-9?

18 A. Not quickly, no.

19 Q. Okay. Let's see. Was he eventually found?

20 A. He was. While we were looking, deputies were doing
21 investigating.

22 Q. Um-hum (affirmative).

23 A. And we were still on the ground when they let us know
24 that they had figured out where he likely was. And they
25 went to check ---

TIM FULLER - CROSS EXAMINATION BY MR. RICHEY

95

1 Q. Okay.

2 A. --- and located him there.

3 Q. And where was it at? And you can refer back to your
4 notes ---

5 A. If I can refer ---

6 Q. --- if it helps you refresh your recollection.

7 A. That's correct. [REDACTED].

8 Q. And is that far away from where you first encountered
9 Mr. Barner?

10 A. No.

11 Q. Is that far away from where they found the car?

12 A. It's not far.

13 Q. About how far is it?

14 A. Walking, ---

15 Q. I mean, ---

16 A. --- definitely less -- less than a mile, like maybe a
17 half mile, tops.

18 Q. Okay. That's all I've got. Please answer any
19 questions Mr. Richey might have.

20 **THE COURT:** Mr. Richey, your witness.

21 **MR. RICHEY:** Thank you.

22 **Cross Examination by Mr. Richey:**

23 Q. When you encountered -- well, let me say this. All
24 this stuff -- this case, I like to use the store as the
25 anchor. That's the anchor spot. All this stuff happened

TIM FULLER - CROSS EXAMINATION BY MR. RICHEY

96

1 within, what, a half a mile east side? Like the car being
2 seen and found and all that? It's not a great distance on
3 this case, right?

4 A. There's not a great distance, no.

5 Q. And it's not like a guy carjacked a guy and went out to
6 Simpsonville, correct?

7 A. I have no idea where he went.

8 Q. Well, the time you got there he was not -- the car was
9 there, came by the street, right?

10 A. It came by, ---

11 Q. Right.

12 A. --- correct.

13 Q. And -- and you found no evidence that the car was in
14 Simpsonville, right?

15 A. I personally did not find ---

16 Q. Okay.

17 A. --- any evidence of that.

18 Q. And it's kind of odd for that car to come by you in
19 that situation, correct?

20 A. The whole situation is kind of odd.

21 Q. And -- and you've also been a deputy. You're familiar
22 with this drug usage out there, correct?

23 A. Correct.

24 Q. And it would not at all surprise you that someone gave
25 the use of their car ---

TIM FULLER - CROSS EXAMINATION BY MR. RICHEY

97

1 **MR. FOWLER:** Objection, Judge. I mean, we've -- I'd
2 say this is asked and answered. We've been down this road
3 that it's a high crime area. We've been down the road that
4 people at times will exchange drugs and various other items,
5 their cars and all kinds of sundry goods. And I think we've
6 beat this horse to death.

7 **MR. RICHEY:** That's the first time I've asked him that.

8 **MR. FOWLER:** That's the first time he's asked this
9 witness that, but ---

10 **THE COURT:** Well, it -- I'll allow him to question the
11 witness about that to see if he has any knowledge of those
12 things. Overruled.

13 Q. You -- that doesn't surprise you, correct?

14 A. I am aware of people trading drugs for cars, the use of
15 cars.

16 Q. And are you familiar with this store?

17 A. The store? Somewhat.

18 Q. Okay. Are you familiar with this area of town?

19 A. Somewhat.

20 Q. And this -- beside that store there are some houses
21 called Cypress Cove, correct?

22 A. They're very close, yes.

23 Q. Yeah. I mean, you stand at the store and they kind of,
24 and I use the phrase, jammed those houses on that little
25 street right there beside the store, correct?

TIM FULLER - CROSS EXAMINATION BY MR. RICHEY

98

1 A. Yeah.

2 Q. And there's a ton of -- I say ton. There's about
3 fifteen to twenty of those houses, correct? An estimate.

4 A. Probably.

5 Q. And across the street from that store -- if we're
6 looking at the store across the street, there's a house
7 directly across the street, correct?

8 A. I can't picture it in my mind. So -- I'm sure there
9 is. There's houses lining ---

10 Q. Lining ---

11 A. --- lining the road.

12 Q. And when we look at the store, that road -- if I'm
13 standing at the store, there's a road -- there's a house
14 across the street and then there's a road right there that
15 runs through there called Lockman Drive, correct?

16 A. I'll just take your word for it. I can't picture that
17 in my head exactly, but ...

18 Q. So this is not an area that you've patrolled?

19 A. Well, sure I have.

20 Q. Okay.

21 A. I've patrolled the whole County.

22 Q. Huh?

23 A. I've patrolled the whole County.

24 Q. Okay. And when you -- when you came across Mr. Barner,
25 you came across him, did you feel like that he immediately

TIM FULLER - CROSS EXAMINATION BY MR. RICHEY

99

1 needed to go to the hospital, immediately? Did you feel
2 like that he was in desperate need for medical care?

3 A. I was trying to ascertain that. So I had not made that
4 conclusion yet, no.

5 Q. Well, if you believe that he was in absolute need of
6 urgent medical care, you would have sought that he got it,
7 correct? You wouldn't have left him out there, right?

8 A. Well, that's what I did. I called -- called for an
9 ambulance already.

10 Q. And you would have made sure -- well, you would have
11 made every attempt for him to seek that treatment, correct?

12 A. Yes.

13 Q. And was that treatment declined?

14 A. It wasn't declined to me, no.

15 Q. But based on your investigation -- but -- no other
16 questions. Thank you, sir.

17 **THE COURT:** Redirect?

18 **MR. FOWLER:** I don't have any for this witness, Judge.

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

20 A. Thank you.

21 **THE COURT:** Thank you very much. Do you wish to excuse
22 the witness?

23 **MR. FOWLER:** Yes, sir, Judge.

24 **THE COURT:** Any objection?

25 **MR. RICHEY:** Without objection.

KEVIN FLOWERS - DIRECT EXAMINATION BY MR. FOWLER

100

1 **THE COURT:** You're free to leave if you'd like. Of
2 course, you can stay if you'd like. The State may call its
3 next witness.

4 **MR. FOWLER:** The State calls Deputy Flowers.

5 **THE COURT:** Come forward and be sworn, please, sir.

6 **Kevin Flowers,** being duly
7 sworn testified as follows;

8 **MADAME CLERK:** Please have a seat. And will you state
9 your full name for the record.

10 **MR. FLOWERS:** My name is Kevin Flowers.

11 **THE COURT:** Mr. Fowler, your witness.

12 **Direct Examination by Mr. Fowler:**

13 Q. All right. Mr. Flowers, where do you work?

14 A. I work for Greenville County Sheriff's Office.

15 Q. And how long have you worked there?

16 A. August will be four years.

17 Q. Okay. So you were working there in March of 2017?

18 A. That's correct.

19 Q. Did you respond to a call about a carjacking on March
20 5th, 2017?

21 A. That's correct.

22 Q. And did you -- was -- did you go to a location off of
23 Staunton Bridge Road?

24 A. Yes, I did.

25 Q. Was Mr. Barner there?

KEVIN FLOWERS - DIRECT EXAMINATION BY MR. FOWLER

101

1 A. Yes, he was.

2 Q. Okay. Through your investigation were you able to
3 ascertain a name of who Mr. Barner thought had ---

4 A. Yes.

5 Q. And did you get a description of the Defendant or what
6 he was wearing?

7 A. Yes, I did.

8 Q. Okay. Based upon your investigation what was the
9 Defendant wearing that night?

10 A. According to the victim he was wearing -- the suspect
11 was wearing a camo jacket, blue jeans, and he was a bald,
12 black male.

13 Q. Okay. And through that investigation y'all were able
14 to find a location where y'all thought the Defendant lived,
15 correct?

16 A. Correct. Not my investigation. My supervisor there,
17 they did find ---

18 Q. And just to be clear, you know, there are three of
19 y'all here today, but how many officers do you think were
20 there that night?

21 A. I'd probably -- altogether, probably about eight, ---

22 Q. Okay.

23 A. --- altogether.

24 Q. So there were more than twice as many ---

25 A. Correct.

KEVIN FLOWERS - DIRECT EXAMINATION BY MR. FOWLER

102

1 Q. --- here today ---

2 A. Yes, that's correct.

3 Q. And y'all were all working together and working in
4 concert?

5 A. Yes.

6 Q. Okay. Now, while you were talking to Mr. Barner did
7 EMS come?

8 A. Yes, they did.

9 Q. Did EMS evaluate him?

10 A. Yes, they did.

11 Q. Did they treat him at all?

12 A. No, they didn't ---

13 Q. Okay.

14 A. --- transport him to the hospital or anything.

15 Q. They didn't transport him, but, you know, did they ---

16 A. Yeah, they checked on him, checked his vitals and
17 stuff, but there was no -- they didn't transport him. He
18 didn't want to go.

19 Q. Right. Okay. So did you stay with Mr. Barner while
20 all this was going on?

21 A. Yes, I did.

22 Q. Okay. And did you receive a call that they had found
23 the Defendant?

24 A. Yes, sir.

25 Q. Okay. Now, did you take Mr. Barner to where they found

KEVIN FLOWERS - CROSS EXAMINATION BY MR. RICHEY

103

1 the Defendant?

2 A. Yes, I did.

3 Q. Okay. Did they bring a man up to Mr. Barner to
4 identify him?

5 A. Yes.

6 Q. Was he able to identify him?

7 A. Yes, he was available to identify Mr. Chappell as being
8 the one that hit him in the face and stole his vehicle.

9 Yes.

10 Q. And what was Mr. Chappell wearing that day?

11 A. He was wearing a camo jacket and blue jeans.

12 Q. Okay. Do you recognize Mr. Chappell today?

13 A. Yes, I do.

14 Q. Is he in the courtroom?

15 A. Yes, he is.

16 Q. Is he ---

17 A. In the white.

18 Q. All right. That's all I've got. If you'll answer any
19 questions Mr. Richey might have.

20 **THE COURT:** Mr. Richey, your witness.

21 **MR. RICHEY:** Thank you, Your Honor.

22 **THE COURT:** Yes, sir.

23 **Cross Examination by Mr. Richey:**

24 Q. You knew that Mr. Barner had already known Mr.
25 Chappell, correct?

NICHOLAS DOWNING - DIRECT EXAMINATION BY MR. FOWLER

104

1 A. Correct.

2 Q. So this identifying him, he knew him because he lived
3 in that community, correct?

4 A. Yes.

5 Q. And -- and as I asked the other officer, all these
6 distances are relatively close, correct?

7 A. Yes.

8 Q. And -- and nobody actually went anywhere -- the whole
9 case was confined to that little area on Staunton Bridge
10 Road, correct?

11 A. Yes.

12 Q. Okay. Thank you.

13 **MR. FOWLER:** I don't have any redirect, Judge.

14 **THE COURT:** All right, sir.

15 **MR. FOWLER:** I'd ask this witness be excused.

16 **THE COURT:** Any objection?

17 **MR. RICHEY:** No objection, Judge.

18 **THE COURT:** Sir, you may step down. You're free to go
19 if you'd like. Thank you very much. The State may call its
20 next witness.

21 **MR. FOWLER:** Yes, sir. The State calls Officer
22 Nicholas Downing.

23 **THE COURT:** Come forward. Be sworn over here, please,
24 sir.

25 **Nicholas Downing,** being

NICHOLAS DOWNING - DIRECT EXAMINATION BY MR. FOWLER

105

1 duly sworn testified as follows;

2 **MADAME CLERK:** Please have a seat. And will you state
3 your full name for the record.

4 **MR. DOWNING:** Nicholas James Downing.

5 **THE COURT:** Thank you. Mr. Fowler, he's your witness.

6 **MR. FOWLER:** Yes, sir, Judge.

7 **Direct Examination by Mr. Fowler:**

8 Q. Officer Downing, where do you work?

9 A. I work for the Simpsonville Police Department.

10 Q. Back in March of 2017 where did you work?

11 A. I worked for the Greenville County Forensics Division.

12 Q. Okay. And so you left forensics and you work with
13 Simpsonville now?

14 A. That is correct.

15 Q. Is there any reason for that?

16 A. It was just closer to where I lived and it worked out
17 better for me and my family.

18 Q. Okay. So but back when you worked for forensics, what
19 were some of the duties that you had?

20 A. We would be called out to crime scenes. We would
21 investigate everything from auto break-ins to homicides. We
22 would document, photograph. We would collect fingerprints,
23 DNA. We would do all -- all things encompassing crime
24 scenes.

25 Q. Okay. Now, did you respond to a call on March 5th,

NICHOLAS DOWNING - DIRECT EXAMINATION BY MR. FOWLER

106

1 2017 to the location we've been talking about?

2 A. I did.

3 Q. Okay. Did you find a vehicle there?

4 A. I did.

5 Q. Okay. What kind of vehicle was it?

6 A. It was a PT Cruiser.

7 Q. Okay. Now, did you -- what did you -- did you
8 inventory that car?

9 A. What I did when I got there is I observed it in the
10 front yard with the driver's side door open. I did
11 inventory it, but I believe other officers may have
12 inventoried it as well.

13 Q. Okay. But so you -- part of your job is that you will
14 -- you'll dust it for fingerprints, right?

15 A. Correct.

16 Q. Okay. And you'll kind of check the vehicle for
17 evidence, essentially?

18 A. Correct.

19 Q. Did you find anything inside that vehicle?

20 A. The biggest thing I found was crutches and a boot,
21 brace, cast in the rear passenger's seat of the vehicle.

22 Q. Okay. Did you find any cigarettes in the vehicle?

23 A. I did. I found a pack of Newport cigarettes on the
24 front driver's side floorboard.

25 Q. And -- okay. The front driver's floorboard?

NICHOLAS DOWNING - DIRECT EXAMINATION BY MR. FOWLER

107

1 A. Yes.

2 Q. Okay. And did the vehicle show any signs of forced
3 entry or anything like that?

4 A. It did not. There was no signs of forced entry. There
5 was no tampering to the key ignition on the steering wheel
6 or to the steering wheel column itself.

7 Q. Okay. So -- and this vehicle, could you describe how
8 it was parked for us?

9 A. It was, I believe, diagonally parked in the front yard
10 of the residence with the driver's side door open. But
11 that's as descriptive as I can be ---

12 Q. Okay. So it's ---

13 A. --- right now.

14 Q. --- in the front yard of this house?

15 A. Yes.

16 Q. Now, it's not in the driveway?

17 A. No.

18 Q. Okay. Is it near a driveway?

19 A. I can't recall, but it wasn't -- it wasn't parked like
20 it was trying to pull into a driveway.

21 Q. That was going to be my -- that's where I was heading.
22 Okay. And do you remember if the doors were open?

23 A. The driver -- the front driver's side door was open.

24 Q. Do you remember -- were lights still on on the vehicle?

25 A. I can't recall.

NICHOLAS DOWNING - CROSS EXAMINATION BY MR. RICHEY

108

1 Q. Okay.

2 MR. FOWLER: That's all I've got, Judge.

3 THE COURT: Mr. Richey, your witness.

4 MR. RICHEY: Thank you, Your Honor.

5 **Cross Examination by Mr. Richey:**

6 Q. You're -- you worked for forensics, right? You worked
7 for ---

8 A. At that time I was, correct.

9 Q. Yeah, at that time you did. And the one thing about
10 forensics is forensics is sort of like an eye in the sky in
11 that -- in that people don't realize what they leave behind,
12 correct?

13 A. Correct.

14 Q. And so -- so if you're in that car and you touch that
15 car, right, that's the kind of evidence you look for,
16 correct?

17 A. It's one of the many kinds.

18 Q. Right. And also like hair particles and all that
19 stuff, too, sometimes, right?

20 A. It can be, correct.

21 Q. And those little bitty things tell you more than
22 sometimes the individuals tell you, correct?

23 A. It can.

24 Q. And in this case you dusted for fingerprints, correct?

25 A. I did.

NICHOLAS DOWNING - CROSS EXAMINATION BY MR. RICHEY

109

1 Q. And you found Jeffrey Locke's fingerprints in the car?

2 That's what the test result -- correct?

3 A. I had not seen the test results. I know that I found
4 them in certain areas, but it's not my job to examine to
5 find out whose they are. So I don't know who they came back
6 to.

7 **MR. RICHEY:** Can I approach the witness, Your Honor?

8 **THE COURT:** You may.

9 Q. You are familiar with the forensic testing, correct?
10 You're familiar that the fingerprints were tested, correct?

11 A. Correct.

12 Q. And that document is -- it's a sheriff's office
13 document, correct?

14 A. Correct.

15 Q. And you're familiar with Jackie Kellett, correct?

16 A. Correct.

17 Q. And she is the fingerprint expert down there, correct?

18 A. Correct. She is the captain over the entire division.

19 Q. Right. And so you send those to Ms. Kellett to be
20 tested, correct?

21 A. Correct.

22 Q. And she generates this report, correct?

23 A. Correct. She -- it doesn't look like she was the
24 officer that actually looked at it, though.

25 Q. But if they said they found Jeffrey Locke's

NICHOLAS DOWNING - REDIRECT EXAMINATION BY MR. FOWLER

110

1 fingerprints in there, you believe that, correct?

2 A. Correct.

3 Q. And you believe this report to be true then, right?

4 A. Correct.

5 Q. Okay. And so -- and so we know that he -- basically we
6 know he was in that car based off the forensics, right?

7 A. It would appear at some point.

8 Q. Okay. And that's the type of evidence that the State
9 often use to contradict somebody when they say I was not
10 there. They say, but we found your fingerprints there,
11 correct?

12 A. They can be used for that.

13 Q. And that's good evidence for that, correct?

14 A. Correct.

15 Q. And that's the type of evidence that you're out there
16 looking for, correct?

17 A. Correct.

18 **MR. RICHEY:** One moment, Your Honor.

19 **THE COURT:** Yes, sir.

20 (Pause)

21 **MR. RICHEY:** No other questions. Thank you, officer.

22 **THE COURT:** Redirect.

23 **MR. FOWLER:** Yes, sir, Judge. Just real quickly.

24 **Redirect Examination by Mr. Fowler:**

25 Q. Officer Downing, you know, just as often as forensic

NICHOLAS DOWNING - REDIRECT EXAMINATION BY MR. FOWLER

111

1 evidence is left behind, is it unusual to go search
2 something and not find any forensic evidence?

3 A. It happens quite a bit.

4 Q. Okay.

5 **MR. FOWLER:** That's all I've got, Judge.

6 **THE COURT:** All right. Sir, you may step down. You
7 wish to excuse this ---

8 **MR. FOWLER:** We'd ask that ---

9 **THE COURT:** --- witness?

10 **MR. FOWLER:** --- he be excused. Yes, sir, Judge.

11 **THE COURT:** Any objection?

12 **MR. RICHEY:** No objection.

13 **THE COURT:** Sir, you're free to go as well. Thank you
14 very much. I'll ask the attorneys to approach briefly.

15 (Whereupon a bench conference was held off the record
16 in the presence of the jury, but out of their hearing)

17 (Whereupon the bench conference was ended)

18 **THE COURT:** All right. Ladies and gentlemen of the
19 jury, I know that we're about to 12:30, not quite, but
20 close. And so it's a good time for us to break for lunch.

21 As you leave the courthouse I'm going to give you some
22 instructions concerning your behavior. As you know, I'll
23 instruct you not to try to gather any information on your
24 own about the case. I'll ask you not to listen to, watch or
25 read any media reports about the case. Don't discuss the

1 case with anyone. Don't allow anyone to discuss it with
2 you.

3 One other thing, should anybody try to contact you
4 about your service on this jury, I want you to report that
5 as soon as you can when you return to the courthouse. Jury
6 tampering is a crime in this State. If somebody tried to
7 influence your decision in this case, that's against the
8 law. And I take that very seriously. So if someone does
9 attempt to contact you or discuss this case with you, please
10 let me know. I can assure you the appropriate
11 investigations would be done if that occurred.

12 Now, I'm going to ask you to be back in the jury room.
13 There's a few things I have to take up with the attorneys,
14 some housekeeping matters. So we're going to take a little
15 longer than an hour.

16 I'll ask you to be back in the jury room at about a
17 quarter til two, 1:45, quarter til two. Be back in the jury
18 room at that time. Hope you have a good lunch. You're free
19 to go at this time. Thank you very much.

20 (Whereupon the jury exited the courtroom at 12:27 pm)

21 **THE COURT:** All right. Based on my bench conference
22 it's my belief that the State is going to rest. Is that
23 correct?

24 **MR. FOWLER:** Yes, sir, Judge.

25 **THE COURT:** So you don't intend to call any additional

1 witnesses?

2 **MR. FOWLER:** No, sir, Judge.

3 **THE COURT:** All right. Mr. Richey, do you have any
4 motions that you'd like to make at this point in time?

5 **MR. RICHEY:** Your Honor, I would make a motion for
6 directed verdict. Like I said, the State has not met its
7 burden. I realize what the testimony is, but I just would
8 like the record to reflect I made that motion.

9 **THE COURT:** Okay. Motion is noted. There is direct
10 testimony from the victim that would be sufficient for the
11 case to go to the jury on the issue before the Court. And
12 so the motion is denied.

13 I want to go over certain things with your client about
14 his right to testify or not testify at this time. So I'm
15 going to ask that the clerk again put the Defendant under
16 oath.

17 **MADAME CLERK:** Yes, Your Honor. Do you swear or affirm
18 to tell the truth, the whole truth and nothing but the truth
19 so help you God?

20 **MR. CHAPPELL:** I do.

21 **MADAME CLERK:** Thank you.

22 **THE COURT:** Sir, you can be seated. At this time we're
23 going to -- I'm going to go over with you certain of your
24 rights.

25 We're about to begin the phase of the trial where you

1 will be allowed to present your defense. And in presenting
2 your defense I will let you know that you have the right to
3 testify. However, you also have certain constitutional
4 guarantees concerning that right to testify or not testify.

5 And specifically what I'm referring to is the language
6 that's in the Fifth Amendment to the United States
7 Constitution. That Amendment states in part that no person
8 can be compelled in any criminal case to be a witness
9 against himself. So that means while you have the right to
10 testify, you cannot be made to testify. So in effect, you
11 have the right to remain silent.

12 Now, if you decided to testify I will tell you that
13 your testimony would be governed by the same rules that
14 govern any other witness' testimony. You'd be examined by
15 your lawyer and you'd be cross examined by the State's
16 attorney.

17 And if the State's attorney felt that there were
18 convictions on your record that would bear on your
19 credibility, and the Court made a determination that the
20 probative value of that information outweighed its
21 prejudicial effect, the State would be able to inquire about
22 those matters and that circumstance of you while you're on
23 the stand.

24 Now, the decision as to whether or not to testify is
25 left entirely up to you. And in making that decision you

1 should be aware that if you decide not to testify that I
2 would instruct the jury that that fact should not be
3 discussed by them at all in reaching a verdict in this case.
4 So there should be no prejudice to your case. My
5 instructions to them, in fact, would be that they could not
6 even discuss during their deliberations the fact as to
7 whether or not you testified in the case and what effect
8 that might have.

9 Now, again, the decision is yours and yours alone as to
10 whether you testify. You have the right to consult with
11 your lawyer. You can talk with family, friends, anybody
12 else you want to consult with, but in the final analysis
13 it's your decision and your decision alone as to whether or
14 not you do, in fact, testify in your case. Now, did you
15 understand the things I just went over with you?

16 **MR. CHAPPELL:** Yes, sir.

17 **THE COURT:** Do you have any questions about what I told
18 you?

19 **MR. CHAPPELL:** No, sir.

20 **THE COURT:** Now, have you had an opportunity to talk
21 this over with your lawyer as far as whether or not you
22 would testify in the case?

23 **MR. CHAPPELL:** Uh ...

24 **MR. RICHEY:** Let me say we talked about it, we haven't
25 made a decision.

1 **THE COURT:** Okay. Well, what I'm going to do then,
2 we're going to take a lunch break. You'll be talking with
3 your attorney, I'm sure. I'll give you a chance to consult
4 with him and anybody else you want to consult with.

5 When we come back after lunch I'll be inquiring of you
6 as to what your decision is as far as whether or not to
7 testify. So do you understand how we're going to handle
8 this?

9 **MR. CHAPPELL:** Yes, sir.

10 **THE COURT:** Okay. We'll be in recess then til quarter
11 til two. Thank you very much.

12 **MR. RICHEY:** Thank you, Your Honor.

13 **MR. FOWLER:** Thank you, Judge.

14 (Whereupon court was in recess at 12:31 pm)

15 (Whereupon court reconvened at 1:46 pm)

16 **THE COURT:** Thank you. You can be seated. All right.
17 We are back on the record in the case of the State of South
18 Carolina versus Joseph Chappell. Mr. Chappell.

19 (No response)

20 **THE COURT:** Mr. Chappell.

21 **MR. CHAPPELL:** Yes, sir.

22 **THE COURT:** I'll remind you that you're still under
23 oath at this time.

24 **MR. CHAPPELL:** Yes, sir.

25 **THE COURT:** Sir, during the break did you have an

1 opportunity to consult with your attorney about the matters
2 I went over with you earlier?

3 **MR. CHAPPELL:** Yes, sir.

4 **THE COURT:** And did you also have an opportunity to
5 talk to anyone else you chose to talk to?

6 **MR. CHAPPELL:** No.

7 **THE COURT:** Did you want to talk to someone else?

8 **MR. CHAPPELL:** I would -- I would like to talk to a
9 family member, but I don't have any means to contact them.

10 **THE COURT:** They're not here?

11 **MR. CHAPPELL:** No.

12 **THE COURT:** Okay, sir. Now, have you made a decision
13 as to whether or not to testify?

14 **MR. CHAPPELL:** No, sir.

15 **THE COURT:** You do not intend to testify?

16 **MR. CHAPPELL:** No, sir.

17 **THE COURT:** Okay. Thank you very much. Now, does the
18 Defense intend to call other witnesses?

19 **MR. RICHEY:** No, sir.

20 **THE COURT:** Okay. So you'll be resting as well?

21 **MR. RICHEY:** Yes, sir.

22 **MR. FOWLER:** Judge, I think since I've not rested yet I
23 am still going to call Mr. Moore since he's here. And I
24 don't think he's going to take too very long.

25 **THE COURT:** Who is Mr. Moore?

1 **MR. FOWLER:** That's Charles Moore right here.

2 **THE COURT:** Oh, ---

3 **MR. FOWLER:** From the detention center.

4 **THE COURT:** I see.

5 **MR. FOWLER:** Yes, sir. He's got -- the substance of
6 his testimony will essentially be a recorded phone call that
7 he made -- the Defendant made from the detention center
8 discussing this case. And I intend to introduce that into
9 evidence saying that there was no drug deal gone bad, that
10 this is not what's going on here.

11 **THE COURT:** Mr. Richey, were you made aware of the
12 phone call?

13 **MR. RICHEY:** Yeah, I was made aware of the phone call,
14 Your Honor, but I don't know that that testimony would be
15 relevant at this point, the conversation between my client
16 and another gentleman about the facts of the case. I don't
17 know that there's been a foundation laid where that's going
18 to be admissible or relevant to the case.

19 **MR. FOWLER:** My come-back to that ---

20 **THE COURT:** Well, if you have an objection to it, now
21 would be the time for us to address it, I suppose.

22 **MR. FOWLER:** Yeah.

23 **MR. RICHEY:** Judge, I would object to it based on it's
24 not relevant and that the State cannot lay a proper
25 foundation for its admissibility.

1 **THE COURT:** Well, do you -- is this gentleman the
2 keeper of those records and can testify that there is a -- I
3 assume this is a jailhouse phone, that there's some type of
4 warning given that it is being recorded, ---

5 **MR. FOWLER:** Yes, sir, Judge.

6 **THE COURT:** --- things of that nature. Okay. I'm
7 going to ask before he gets into the gist of the
8 conversation that he lay a foundation. You certainly would
9 have an opportunity to object if you don't feel sufficient
10 authentication has been made. So I'm not going to exclude
11 it at this point in time.

12 **MR. RICHEY:** Yes, sir.

13 **THE COURT:** But you reserve your right to
14 contemporaneously object depending on what the witness says.
15 I don't know what the witness is going to say at this point
16 in time.

17 **MR. RICHEY:** Thank you, Your Honor.

18 **MR. FOWLER:** Thank you, Judge.

19 **THE COURT:** All right. But you were aware of the
20 conversation? I just want to be sure ---

21 **MR. RICHEY:** Yes, sir.

22 **THE COURT:** This is not a surprise that ---

23 **MR. RICHEY:** No, ---

24 **THE COURT:** --- this ---

25 **MR. RICHEY:** --- it's not.

1 **THE COURT:** --- conversation took place?

2 **MR. RICHEY:** No, it's not.

3 **THE COURT:** Okay. Very good. All right. Let's bring
4 the jury in. Mr. Richey, once that's called we're going to
5 go back to your motions and things to be sure that they've
6 been made at the appropriate time.

7 **MR. RICHEY:** Yes, sir.

8 **THE COURT:** So if something comes up in this testimony
9 that would be the subject of an in-trial-motion, I'll give
10 you the chance to make those motions.

11 **MR. FOWLER:** And, Judge, I -- before trial we --
12 there's one brief, about a ten second period, where the
13 Defendant mentions his record, we'd already talked about
14 skipping that period. So when it gets to that point I'm
15 going to pause it and skip ahead until that part of the ---

16 **THE COURT:** All right.

17 **MR. FOWLER:** --- conversation is over with.

18 **THE COURT:** All right. I would not allow that in.

19 **MR. FOWLER:** Yes, sir. Yes, sir.

20 **THE COURT:** All right. You may bring the jury in now.

21 (Whereupon the jury entered the courtroom at 1:50 pm)

22 **THE COURT:** All right. The record will reflect the
23 jury has returned to the courtroom. If any of you had any
24 difficulty in complying with my instructions during your
25 absence from the courthouse, please stand if you had any

CHARLES MOORE - DIRECT EXAMINATION BY MR. FOWLER

121

1 problems.

2 (No response)

3 **THE COURT:** Looks like everybody's been able to comply
4 with my instructions thus far. The State is in the process
5 of calling its witnesses. And you may call your next
6 witness, Mr. Fowler.

7 **MR. FOWLER:** Yes, sir, Judge. The Judge [sic] calls
8 Officer Charles Moore.

9 **THE COURT:** Come forward, sir.

10 **Charles Moore**, being duly
11 sworn testified as follows;

12 **MADAME CLERK:** Please have a seat. Thank you. And
13 will you state your full name for the record.

14 **MR. MOORE:** Charles Moore.

15 **THE COURT:** Your witness, Mr. Fowler.

16 **MR. FOWLER:** Yes, sir. Thank you, Judge.

17 **Direct Examination by Mr. Fowler:**

18 Q. Mr. Moore, where do you work?

19 A. Greenville County Detention Center.

20 Q. Okay. And what's your responsibilities there?

21 A. My main responsibility is custodian of records of jail
22 calls as well as on-sight maintenance of the jail phone
23 system.

24 Q. Okay. Custodian of records for the jail calls. So is
25 there -- is there a program that y'all use for that?

CHARLES MOORE - DIRECT EXAMINATION BY MR. FOWLER

122

1 A. We use a secure call platform of Securus Technologies.

2 Q. And could you explain to me how exactly it would work
3 if -- first of all, let's just go first if I was in jail and
4 I wanted to make a phone call through Securus, how exactly
5 would it work?

6 A. The first thing you need to do is get booked in. And
7 then from there you do an enrollment call, which records
8 your voice for verification purposes. You're issued a six
9 digit PAT number and a four digit PIN number, which you use
10 together to place a call. And from thereon you make debit
11 or credit calls. Collect calls, I'm sorry.

12 Q. And so when I place a phone call I have to punch in
13 that number?

14 A. Yes.

15 Q. And that number's unique to me?

16 A. Yes.

17 Q. And now is there a -- there's a voice recognition? Can
18 you tell me about that a little bit?

19 A. When your voice is being verified and recognized you're
20 either going to say your first and last name or United
21 States to confirm that it's you who's making the call.

22 Q. And does the computer do that confirmation?

23 A. Yes.

24 Q. Okay. And it's got some kind of program that matches
25 the -- if I got put in jail and I said Brann Fowler, it's

CHARLES MOORE - DIRECT EXAMINATION BY MR. FOWLER

123

1 going to match my voice two months down the road when I get
2 on the phone and say Brann Fowler to that original
3 recording?

4 A. Yes.

5 Q. Okay. And when a -- and are all the calls made from
6 the jail recorded?

7 A. All calls are recorded save for approved private
8 attorney calls.

9 Q. Okay. And is there any way for anybody to get in and
10 mess with one of those recordings once it's been made?

11 A. No.

12 Q. Okay. Before today did you have an opportunity to
13 review two phone recordings made by the Defendant, Joseph
14 Chappell?

15 A. Yes.

16 Q. Okay. Did you -- did you burn those recordings onto a
17 CD?

18 A. I did.

19 Q. Did you then play that CD and listen to it?

20 A. Yes.

21 Q. Is this one of those CDs?

22 A. Yes.

23 Q. Is that your initials right there?

24 A. Yes.

25 Q. Is that -- what's that?

CHARLES MOORE - DIRECT EXAMINATION BY MR. FOWLER

124

1 A. That is the date of recording.

2 Q. Okay. Sir, no, I think that might be the -- I think
3 that's the date of recording. Is that ---

4 A. That's the date that I -- the recording of the disk.

5 Q. Okay. So that's the date you listened to it?

6 A. Yes.

7 Q. And what date is that?

8 A. 2 -- February 2nd, 2018.

9 Q. Okay. All right. Now, and to the best of your
10 recollection this CD represents a fair and accurate
11 recording of what was heard on that call?

12 A. Yes.

13 Q. Okay.

14 **MR. FOWLER:** Your Honor, at this time the State would
15 move into -- enter into evidence State's exhibit number 1, a
16 CD of jail calls.

17 **THE COURT:** Objections?

18 **MR. RICHEY:** No objections.

19 **THE COURT:** Without objections it will be -- I'm going
20 to admit it. I have a question of the witness before I
21 admit it. When someone places one of these calls is there
22 some kind of recording that would indicate to them that they
23 are being recorded?

24 A. Yes. Prior to the start of the call it says that this
25 call is subject to recording and monitoring.

CHARLES MOORE - DIRECT EXAMINATION BY MR. FOWLER

125

1 **THE COURT:** I see. I'll admit the CD.

2 **MR. FOWLER:** Yes, sir, Judge. I move to publish this
3 to the jury.

4 **THE COURT:** Any objections to the publication?

5 **MR. RICHEY:** No objection.

6 **THE COURT:** All right. You may publish. That means
7 I'll allow him to play it for you.

8 (Whereupon State's exhibit 1 was marked and admitted
9 into evidence)

10 (Whereupon the CD was played for the jury)

11 **THE COURT:** Can you hear that?

12 (Negative nods)

13 **THE COURT:** You're going to have to move that over
14 closer to the jury or get it louder. I'm having trouble
15 hearing it myself.

16 **MR. FOWLER:** Yeah, I'm ...

17 (Pause)

18 **THE COURT:** Ladies and gentlemen of the jury, I've
19 decided in my years on the bench that computers are a lot
20 like grandchildren, they never perform when you want them
21 to.

22 (Laughter)

23 (Whereupon the CD was played for the jury)

24 (Whereupon the CD was paused and fast-forwarded and
25 resumed playing)

CHARLES MOORE - DIRECT EXAMINATION BY MR. FOWLER

126

1 (Whereupon the CD was stopped)

2 Q. All right, Mr. Moore, so who was that call made by?

3 A. It was Joseph Chappell, correct?

4 Q. Yes, sir. Now, in that phone call did you hear
5 anything about a transaction involving drugs?

6 **MR. RICHEY:** I object to that. The tape speaks for
7 itself. I mean, that's just trying to bolster the tape.
8 The tape speaks for itself.

9 **THE COURT:** The tape's into evidence.

10 **MR. FOWLER:** Yes, sir, Judge. No further questions for
11 this witness, Judge.

12 **MR. RICHEY:** No questions.

13 **THE COURT:** All right. Sir, you may step down. Thank
14 you very much. You ---

15 **MR. FOWLER:** The State's ---

16 **THE COURT:** --- wish to excuse him?

17 **MR. FOWLER:** --- okay with him being excused.

18 **THE COURT:** Any objection?

19 **MR. RICHEY:** No objections.

20 **THE COURT:** All right. You're excused, sir. Thank you
21 very much. The State may call its next witness.

22 **MR. FOWLER:** Judge, at this time the State rests.

23 **THE COURT:** All right. Ladies and gentlemen of the
24 jury, that completes the presentation of evidence by the
25 State. I have to take up something with the attorneys

1 outside of your hearing at this time. I'll ask you to step
2 back to the jury room. Don't discuss anything about the
3 case until I ask you to do so. Thank you very much.

4 (Whereupon the jury exited the courtroom at 2:07 pm)

5 **THE COURT:** Mr. Richey, I would assume that you renew
6 your motions you made earlier, is that correct?

7 **MR. RICHEY:** Yes, sir.

8 **THE COURT:** All right. It'll be noted that they've
9 been renewed, and I would make the same ruling as far as the
10 motions are concerned.

11 **MR. RICHEY:** Yes, sir.

12 **THE COURT:** Since we have accepted additional testimony
13 it may have changed your client's mind concerning his
14 decision to testify. I'll give you a moment to talk that
15 over with him.

16 **MR. RICHEY:** That has not changed our mind, Your Honor.

17 **THE COURT:** All right. Well, let me be sure. Sir.

18 **MR. CHAPPELL:** Yes, sir.

19 **THE COURT:** You've had an opportunity to hear this
20 additional witness. Is it still your decision not to
21 testify in this matter?

22 **MR. CHAPPELL:** No, sir.

23 **THE COURT:** You do not intend to testify?

24 **MR. CHAPPELL:** No, sir.

25 **THE COURT:** All right. Thank you very much. Are you

1 ready to call your witness when we return?

2 **MR. RICHEY:** Your Honor, we're not going to call ---

3 **THE COURT:** Oh, you're going to rest? Okay.

4 **MR. RICHEY:** We're going to rest.

5 **THE COURT:** All right. Are you prepared to go forward
6 with closing arguments?

7 **MR. RICHEY:** I'm prepared to go forward.

8 **MR. FOWLER:** Yes, Judge.

9 **THE COURT:** All right.

10 **MR. FOWLER:** Yes, sir.

11 **THE COURT:** Now, you have -- I don't believe you've put
12 any evidence into the record, have you?

13 **MR. RICHEY:** No, sir, we have not put any evidence in
14 the record. And I'll just state for the record, we did have
15 a witness that's here to testify, ---

16 **THE COURT:** Uh-huh (affirmative).

17 **MR. RICHEY:** --- but after consultation with that
18 witness and my client, we are not going to use him.

19 **THE COURT:** I see. Okay. So the State will be opening
20 in full and you'll get the last argument.

21 **MR. RICHEY:** Yes, sir.

22 **THE COURT:** All right. We ready to proceed?

23 **MR. FOWLER:** Yes, sir, Judge.

24 **THE COURT:** All right. Mr. Richey, when the jury comes
25 back I'll call on you for any witnesses, you'll rest, and

1 then we'll proceed with closing arguments.

2 **MR. RICHEY:** Yes, sir.

3 **THE COURT:** Before we do that, any specific requests
4 for charge from the State?

5 **MR. FOWLER:** Judge, I've got a copy of just the
6 standard carjacking charge that ---

7 **THE COURT:** I've already put that into my charge. And
8 if I don't cover it sufficiently, I'll give you a chance to
9 ask for additional charges.

10 **MR. FOWLER:** That's all I got, Judge.

11 **THE COURT:** All right. Defense have any specific
12 requests for charge, Mr. Richey?

13 **MR. RICHEY:** What was that, Your Honor?

14 **THE COURT:** Any specific requests for ---

15 **MR. RICHEY:** No, sir, Your Honor.

16 **THE COURT:** --- my charge? Okay. Let's bring the jury
17 back.

18 (Whereupon the jury entered the courtroom at 2:10 pm)

19 **THE COURT:** The record will reflect the jury has
20 returned to the courtroom. At this time the Defense has the
21 right to call witnesses. Does the Defense wish to call any
22 witnesses?

23 **MR. RICHEY:** No. We wish to rest, Your Honor.

24 **THE COURT:** Okay. Then that presents -- you've been
25 presented with all the evidence in the case. And so we've

CLOSING ARGUMENTS - MR. FOWLER

130

1 reached the stage where the attorneys will be given the
2 opportunity to make their summation or closing arguments.
3 The State will be going first. You may proceed.

4 **MR. FOWLER:** Yes, sir, Judge. May it please the Court?

5 **THE COURT:** Yes, sir, Mr. Fowler.

6 **MR. FOWLER:** Ladies and gentlemen, as the Judge said,
7 you've heard the testimony and you've seen the evidence in
8 this case. And when Mr. Richey and I finish with our
9 closing arguments the Judge is going to instruct you on the
10 law about which you are to interpret that information.

11 Now the Judge will tell you carjacking is the taking of
12 a motor vehicle of another by force and violence or by
13 intimidation while the person was in the vehicle. So in
14 this case, as in every case I've ever tried, we've
15 essentially got two theories of what happened.

16 We've got what I would contend to you is the truth
17 where Mr. Barner picked up Mr. Chappell, gave him a ride,
18 Mr. Chappell directed him to a spot of his choosing, Mr.
19 Chappell hit Mr. Barner in the head, and Mr. Chappell took
20 his car. Or we've got what's been insinuated here by the
21 Defense that there was some kind of a drug deal, I guess,
22 gone bad type of situation.

23 Well, ladies and gentlemen, let's examine that line of
24 reasoning for a little bit. You just heard that jail call
25 right here made by Mr. Chappell. On that jail call did you

CLOSING ARGUMENTS - MR. FOWLER

131

1 hear anywhere where he said, yeah, you know, I traded this
2 guy drugs and he freaked out? No, you didn't.

3 Did you hear him say anything like, man, I can't
4 believe that Coneze has double crossed me? No, you didn't.
5 I'll tell you what you did hear. You did hear him say, man,
6 I fucked up.

7 Now, folks, the drugs, there were no drugs found in
8 this case. There were no drugs found on Mr. Barner. There
9 were no drugs found in Mr. Barner's car. The only reason
10 why we're talking about drugs, ladies and gentlemen, is that
11 this is a rough part of town. That's it, folks. That is
12 the only connection.

13 We do have a prior conviction for Mr. Barner for drugs,
14 but as you heard him say, he has to receive dialysis twice a
15 week or he will die. He was receiving dialysis back then.
16 To receive dialysis he had to get drug tested. If he failed
17 a drug screen, he would not receive dialysis. He would then
18 die.

19 I would put to you the fact that Mr. Barner is sitting
20 in that chair right there breathing is pretty good proof
21 that he was not taking drugs in March of 2017, and there's
22 no reason he would have traded his car for.

23 Now, the Defense has further gone on about how Mr.
24 Barner, you know, he didn't go to the hospital, EMS came and
25 checked him out and patched him up a little bit, but he

CLOSING ARGUMENTS - MR. FOWLER

132

1 hadn't had any ongoing treatment, he hadn't had any ongoing
2 trauma because of that.

3 Well, ladies and gentlemen, the Defense has done an
4 excellent job of defeating one element of a completely
5 different crime. The Defense has done a great job of
6 defeating the element of great bodily injury, of the crime
7 of carjacking with great bodily injury.

8 That's not what we're here for. We're here on
9 carjacking. As you heard just there and as you heard when
10 the Judge will give it to you, threats alone can constitute
11 carjacking if it makes you leave your car and somebody else
12 takes it.

13 I'd further put to you that as my football coach once
14 said, there's a difference between being hurt and being
15 injured. Now, Mr. Barner, you heard, played college
16 football. Mr. Barner was in the Army in Iraq where he was
17 wounded. Mr. Barner had just recently fallen off of his
18 roof and broken his leg. I'd put to you that Mr. Barner
19 knows the difference between being hurt and being injured.

20 Therefore when Mr. Barner got punched in the face by
21 Mr. Chappell he knew, yep, that hurt, but I'm not injured.
22 I don't need to go to the hospital. Further, folks, at that
23 point he'd been on the side of the road for two hours by
24 himself, and he probably was pretty ready to get home.

25 Now, that's what I've told you that doesn't make any

CLOSING ARGUMENTS - MR. FOWLER

133

1 sense from the Defense's standpoint, but that's not my job.
2 My job is not to disprove their case, but to prove my case.
3 So let me show you why the only external evidence outside of
4 any testimony we have shows that Mr. Barner's telling the
5 truth.

6 Well, first of all, we've got these crutches, ladies
7 and gentlemen. You see him today, he still walks with a
8 cane. You see he moves slowly. You heard him say that the
9 bottom half of his leg had essentially just been shattered,
10 that he could not really get around without crutches and a
11 knee brace.

12 Now, you didn't just hear it from Mr. Chappell -- from
13 Mr. Barner that he left those crutches and knee brace in the
14 car, you heard that from Officer Downing, who found the car.
15 They were still in there. That proves he's telling the
16 truth.

17 Now, ladies and gentlemen, if I traded somebody my
18 vehicle, first of all, I would probably want them to drop me
19 off somewhere where I wanted to be instead of just on the
20 side of the road. But, secondly, if I was unable to walk
21 without crutches and a knee brace, I'd make sure I had my
22 crutches and my knee brace.

23 And even if by some chance that had slipped my mind, as
24 soon as he stepped out of the car on that bad leg and felt
25 that pain, he would have known, I need my crutches and knee

CLOSING ARGUMENTS - MR. FOWLER

134

1 brace. And he would have stopped and he would have gotten
2 them.

3 You've already heard, ladies and gentlemen, that he
4 can't take drugs because he doesn't and because he has to
5 have dialysis. And, folks, if this is some kind of a drug
6 deal situation, why would he flag down a policeman? That's
7 not what you do.

8 If I'd just traded a car for drugs, and I see Deputy
9 Fuller driving down the street, I don't say, hey, man, come
10 over here to my drug deal. That's not how that works,
11 ladies and gentlemen. I'll tell you when you do do that,
12 though, when you've just been beaten and robbed. That's
13 when you call the police.

14 And further, as he's standing on the side of the road
15 and he's talking to Deputy Fuller and his car goes driving
16 by with Mr. Chappell in it, what does Mr. Chappell do? Does
17 he say, oh, my gosh, there's my friend who just -- was nice
18 enough to loan me his car? And does he say, oh, why is he
19 talking to the police? I hope he's not hurt. I'd better
20 stop and check on him.

21 No, he runs. He flees down the road. He ditches the
22 car in some random yard. He runs so fast that he jumps out
23 of the car, leaving the car door open, cuts around to his
24 house, which is right there. That's what happens, ladies
25 and gentlemen.

CLOSING ARGUMENTS - MR. FOWLER

135

1 I put to you that you've heard one set of true facts
2 tonight, and that's this, that on the night of March 5th,
3 2017 Coneze Barner went to the Spinx on White Horse Road, he
4 saw Joseph Chappell. Joseph Chappell asked him for a ride.
5 Mr. Barner was nice enough to pick him up and give him a
6 ride.

7 He took him to where Mr. Chappell directed, which is
8 very near his house as you've heard. When he got there Mr.
9 Chappell hit Mr. Barner. Mr. Chappell then shoved him out
10 of the car. Mr. Barner was left on the side of the road
11 without his crutches, without his knee brace.

12 Shortly there afterwards a policeman happened by. Mr.
13 Barner flagged down the policeman. Mr. Barner then spoke to
14 the policeman and said, I've just been beaten and robbed.

15 The policeman pursued Mr. Chappell, the Defendant. Mr.
16 Chappell realizes the police are behind him, abandons his
17 vehicle, abandons Mr. Barner's vehicle, rather, and runs.
18 And the police identify Mr. Chappell a short time later, who
19 is then confirmatively [sic] identified by Mr. Barner.
20 That, ladies and gentlemen, is what happened.

21 Now, when the Judge gets up here and he gives you his
22 charge on the law, he's going to tell you about the standard
23 of proof that the State has in every single criminal case.
24 And that standard of proof, ladies and gentlemen, is proof
25 beyond a reasonable doubt.

CLOSING ARGUMENTS - MR. FOWLER

136

1 Now, like the Judge talked about at the beginning of
2 the trial, you all have probably heard that phrase before.
3 But I'd caution you that you've probably not heard the exact
4 legal definition of proof beyond a reasonable doubt.

5 Proof beyond a reasonable doubt does not mean proof
6 beyond all doubt. Proof beyond a reasonable doubt does not
7 mean without a shadow of a doubt. Proof beyond a reasonable
8 doubt does not mean without a doubt.

9 The most common legal definition used is that proof
10 beyond a reasonable doubt is doubt which would cause a
11 reasonable man to hesitate to act. Well, what does that
12 mean?

13 Well, I imagine that some, if not most or all of you
14 probably own your own homes. Before you bought that
15 property I'd imagine that you looked at several different
16 houses. You probably then went to several different banks
17 and compared several different loans.

18 You then considered your options, weighing all this
19 information you had, which ultimately was not a complete
20 picture. You don't know what property values are going to
21 do in the future. And you can't examine every inch of that
22 house. So without necessarily a complete picture you
23 weighed the information and you made a decision. I put to
24 you, ladies and gentlemen, that decision was beyond a
25 reasonable doubt.

CLOSING ARGUMENTS - MR. RICHEY

137

1 Now, you may still today have some doubt as to whether
2 or not the purchase of that house was the right decision.
3 By the legal definition you hesitated to act, you gathered
4 all the information you could and you ultimately reached a
5 conclusion.

6 And that's what I want you to do here, ladies and
7 gentlemen. I want you to go back into your jury room, I
8 want you to carefully and deliberately consider all the
9 information that's been put before you today, and after
10 going through all of that I want you to reach the only
11 conclusion that this evidence allows. That is that the
12 Defendant, Mr. Joseph Chappell, is guilty of carjacking.
13 Thank you. And it's been a pleasure working with you.

14 **THE COURT:** Mr. Richey.

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

16 **THE COURT:** Yes, sir.

17 **MR. RICHEY:** May it please the Court? This case is one
18 of these cases where I always say if you think, oh, they
19 arrested him, he's guilty, I can't help you. If you believe
20 just because he got arrested, he's guilty, I can't help you.

21 If you believe the State should not be required to
22 prove their case, that they should not be able to do this, I
23 can't help you. I can't help you, okay?

24 But there's a fundamental reason why a defendant does
25 not have the burden of proof, why he doesn't have to prove

CLOSING ARGUMENTS - MR. RICHEY

138

1 anything. Because if somebody decides you did something,
2 you can't talk them out of it, period. We've had those
3 experiences. This person believes that I done it, can't
4 talk them out of it, okay?

5 That's what this case is about. They said, oh, he was
6 on side of the road. This lady came over and did all that,
7 helped him up and did -- where's the lady? Where's the
8 lady? Why didn't the lady come in here and say, you know
9 what, I was out there that night? He was on the side of the
10 road, he was dah, dah, dah, dah. Why -- why she not here?
11 Why? Why?

12 So we'd have to assume that wasn't true? We have -- we
13 have to assume that was not true. And the reason why we
14 assume that's not true is because we will assume that the
15 State will bring all the witnesses to prove their case. We
16 have to assume if the State's going to prosecute us and
17 there's a witness out there who saw us standing out there,
18 who had been carjacked and all that -- who was in bad shape,
19 they would have brought that person. Okay?

20 I think that's the responsibility to every defendant.
21 That's a responsibility. If the State's got up here and
22 going to convict somebody of carjacking, and they have a
23 witness who was out there that day, and they've got the
24 burden of proof to do it, that's a responsibility for them.
25 That's a responsibility on their part.

CLOSING ARGUMENTS - MR. RICHEY

139

1 Bring in the evidence. Don't sit here and ask the jury
2 to do stuff you not going to do. Don't ask -- don't ask --
3 don't ask somebody else to do something you're not going to
4 do.

5 The officer got up there on the witness stand, he said,
6 oh, yeah, I'm the forensic guy. You know, I know that I
7 take these fingerprints and all that. Oh, yeah, these two
8 people, they -- their fingerprints is found in the car.
9 They were found in the car. Why are they not here? Why?

10 But you know -- you know -- you know the thing -- see,
11 we have to look at stuff that we know not true. We know not
12 true because there was a statement made in here and he says
13 this. He says, you know, I was sitting there and Joseph
14 said, this is how I do it.

15 He took the revolver or whatever he had, which we will
16 assume if it's a gun, it's metal. We have to assume that.
17 He took a metal gun and you remember he took the full
18 throttle, bam, that's what he did. That's what he did, a
19 full metal throttle to the head. That's what the testimony
20 was.

21 And, see, what I said -- what I said gets to your
22 common sense. See, this is -- this is what I mean when I
23 say common sense, okay? Common sense is if someone hits you
24 in the head with a full arm swing, would you have to go to
25 the hospital? Would that cause some serious trauma to you?

CLOSING ARGUMENTS - MR. RICHEY

140

1 Would it? Would it?

2 See -- see, we don't have to be a doctor. We don't
3 have to be a lawyer. We don't have to be nothing. We know
4 if somebody took a metal gun and they going to full throttle
5 -- because he didn't say, I put up my hand, I didn't do
6 anything -- I tried to block him. He said, no, he just
7 stood there. I stood there, just stood there and he took
8 the gun and hit me in the head. I just stood there and
9 allowed him to do that.

10 Now, is that believable? Do we believe -- if he had
11 said, you know what, he -- I pulled my hands up, I did this,
12 no, he said -- he just sat there and said, this is how I do
13 it, bam, on top of the head.

14 See, that ain't -- that ain't common sense. That ain't
15 -- that ain't common sense. Okay? That doesn't make any
16 sense, okay? That don't make any sense.

17 And then the EMS people, they came out there. It's not
18 like they didn't -- they came out there. They treated the
19 guy. And if he had got this big gash, he was hurt, they
20 could have brought these people in and said, you know what,
21 I work for dah, dah, dah EMS, Greenville County, they called
22 me out there, I treated him, he had a big gash with blood
23 coming down his head, he was distraught because any time you
24 get hit with a big object like that, it makes you
25 unconscious, you know, it makes you do -- nothing. Zero.

CLOSING ARGUMENTS - MR. RICHEY

141

1 So we have to believe, but that's -- that's not helpful
2 to them. If we use our common sense we have to believe
3 that's not helpful to them. Why? What? Why wouldn't that
4 be here? That's the responsibility on the State's part.

5 You can't ask somebody to say go convict this man for
6 carjacking, okay, because he did all this stuff. Did he
7 bust this man's head? Did he left him out there? Nothing.

8 And you've got people who are hired by the government,
9 EMS, you've got all these people out there. This officer
10 didn't get up there and say, oh, when I got out there he was
11 distraught, man. He had blood oozing from his head. His
12 head was swollen. Said none of it. None of it. None of
13 it. That's just the stuff that we know is not true.

14 I can stand here right now and tell you beyond a
15 reasonable doubt that this man was not hit in the head with
16 a gun with a full arm swing. I can tell you that beyond a
17 reasonable doubt because of that common sense.

18 I can tell you beyond a reasonable doubt there was no
19 lady out there. I can tell you that. I can look in your
20 eyes and tell you that because she's not here. And she
21 would be valuable. That's why the Defendant does not have
22 to prove the case, the State does. So we know that's not
23 true.

24 The next thing we know not true, we went back and
25 forth, the store. Oh, drop me off at the store. He dropped

CLOSING ARGUMENTS - MR. RICHEY

142

1 me off at the store. Everybody agreed the store is not a
2 place you want to be unless something -- unless, unless,
3 unless you got something else going on. That's not the
4 place you want to be. That's not the place you want to be.

5 Then we look at this case and we say this is a
6 carjacking? Wait a minute. I pick up somebody I know.
7 This ain't like somebody I don't know. This ain't like this
8 is somebody I don't know. That ain't what this is about.

9 I pick up somebody I know. We're riding down the road,
10 down Staunton Bridge Road. We're riding down there, and I
11 guess we talking about something. We talking about
12 something. And then all of a sudden I'm going to carjack
13 you. All of a sudden I'm going to carjack you. All of a
14 sudden I'm going to carjack you, as the officer said, within
15 walking distance of your house.

16 I mean -- I mean, see, that's what -- that's why we
17 talk about common sense because it don't make any sense.
18 This is not some stranger out here that he jumps -- this is
19 not what this is. These people know each other. They have.

20 But see, what we're left with -- what we're left with
21 here, we -- we can never know what exactly happened. We
22 can't. We can't -- we can't ever know.

23 So what we do is we look to say what was the evidence?
24 What was the evidence? The only evidence we had was Mr.
25 Barner got up there and said it. That's it. What kind of

CLOSING ARGUMENTS - MR. RICHEY

143

1 corroboration was it? Tell me -- tell me one piece of
2 evidence that corroborated his testimony. One. One piece
3 of evidence.

4 We got no medical reports. So we -- so that don't
5 corroborate the injury. Okay? We don't have any of that.
6 We don't have any eyewitness to say it happened. We don't
7 have the lady who came by and saw us laying in the road and
8 helped us out. We don't have her.

9 So what piece of evidence can you put your hands on and
10 say, this corroborates what he said? Zero. Nothing.
11 Nothing. So how can we -- reasonable doubt? Reasonable
12 doubt? Reasonable doubt is a fancy term that it says -- it
13 makes you hesitate to act or doesn't leave you firm in your
14 conviction.

15 You know, what would make me hesitate to act? We got a
16 lady out there that the State don't bring you. Why you
17 doing that? We got a guy that doesn't get any treatment.
18 Zero. None. So -- so I'm left to say all this happened.

19 Oh, and the State said, oh, you don't -- he haven't
20 done any drugs because he was on dialysis, he'd be dead.
21 You remember that? That ain't what he said, though. He
22 said, this is right before I went on dialysis. This is
23 right before I went on dialysis. That's what he said.
24 That's what he said.

25 You know, and I don't have to get up here and prove

CLOSING ARGUMENTS - MR. RICHEY

144

1 anything. I don't. I don't. That's for the State.

2 Because when you want to take somebody's life, liberty, and
3 freedom, our Constitution requires you to prove beyond a
4 reasonable doubt.

5 Then all this about -- playing the tape. I don't know
6 -- who knows what was on that thing. Maybe they -- maybe
7 you can figure it out. But I did hear one little nugget in
8 that tape that I wrote down. I heard one little nugget.
9 And I wrote it down. And it says, I did not beat him up and
10 take his car. That's what I wrote down from that tape. I
11 did not beat him up and take his car -- and take his car. I
12 didn't do it. I didn't do it.

13 So these are the type of cases that really are --
14 really are important. They're really important. And
15 they're important for this reason. They're important
16 because we have a system here that we have to believe in
17 independently. That's what we have here.

18 And we have a system when the State of South Carolina,
19 with all their resources, when they come to court and ask
20 the Judge to find us guilty, and to prosecute us, and put us
21 in jail, when that happens they'd better have something more
22 than somebody's word. They'd better have something more
23 than that.

24 They'd better go out there and they'd better bring
25 these people in. They'd better bring them to court. They'd

CHARGE OF THE COURT

145

1 better bring that lady out there on the side of the road, if
2 there's such a lady exists. They'd better bring these
3 people with these fingerprints on the car. They'd better
4 bring the EMS people in here.

5 Because if -- because what they're asking to do is take
6 away our life, liberty, and freedom. That's what they're
7 asking to do. That's what they're actually doing. If they
8 want that done, if they want that done, bring the stuff in
9 here.

10 Don't come in here and tell people that this is what
11 happened and you got all these people sitting around. You
12 bring it in here. Because Mr. Chappell, he deserves that.
13 He deserves that. He deserves that. It's a big day in his
14 life. He deserves it.

15 The State hadn't proved any doubt -- they haven't
16 proved anything. They got an allegation that they decided
17 that they -- it was good enough for them, but it's not good
18 enough. It's not. It's not.

19 And I'll say -- I'm Rodney Richey. And it was a
20 pleasure working with you all today. It really was. Thank
21 you.

22 **THE COURT:** Ladies and gentlemen of the jury, that
23 completes the closing arguments or summations by attorneys.
24 I told you that when we reach this stage of the trial it
25 would be my responsibility to charge you concerning the law

CHARGE OF THE COURT

146

1 to be applied.

2 We began the trial by my going over with you the
3 indictment in this case. The indictment is for the offense
4 of carjacking. I'll read it in part to you again so that
5 we've reviewed it, but you'll have it back in the jury room
6 with you during your deliberations.

7 The indictment states that Joseph Chappell did in
8 Greenville County on or about the 5th day of March, 2017
9 take or attempt to take away a motor vehicle, to wit; a 2000
10 Chrysler PT Cruiser from Coneze Barner by force and violence
11 or by intimidation while Barner was operating and/or in said
12 vehicle. This is in violation of section 16-3-1075 of the
13 South Carolina code of laws, 1976 as amended against the
14 peace and dignity of the State and contrary to the statute
15 in such case made and provided.

16 Again, that's the informational document that informs
17 us of the charge that's to be tried in this case and does
18 not constitute evidence and cannot be used by you as
19 evidence in this matter.

20 The Defendant has pled not guilty to that indictment.
21 And under our system of justice that plea puts the burden of
22 proof upon the State to prove the Defendant guilty.

23 A person charged with the commission of a crime in
24 South Carolina is never required to prove himself innocent.
25 I charge you that it's an important rule of law that a

CHARGE OF THE COURT

147

1 defendant in a criminal case, no matter how serious the
2 charge might be, is always presumed to be innocent of the
3 crime for which an indictment has been issued until and
4 unless guilt has been proven to you, the jury, by evidence
5 that satisfies you of that guilt beyond a reasonable doubt.

6 Now, the presumption of innocence doesn't end when you
7 begin your deliberations. It accompanies the Defendant
8 throughout the trial. It accompanies him into your
9 deliberations. It remains with him throughout that process
10 until and unless you reach a verdict of guilt, which is
11 based on evidence, that satisfies you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence, therefore, is not just a
14 legal theory and it's not just a legal phrase. It's a
15 substantial right that all defendants are entitled to until
16 and unless you, the jury, are satisfied of the Defendant's
17 guilt beyond a reasonable doubt.

18 Now, you've heard that phrase, proof beyond a
19 reasonable doubt, several times. I will tell you that the
20 courts that have sought to define what a reasonable doubt is
21 have defined that as that kind of a doubt which would cause
22 a reasonable person to hesitate to act. And the State has
23 the burden of proving the Defendant guilty beyond a
24 reasonable doubt.

25 I want to point out one thing to you. I don't want

CHARGE OF THE COURT

148

1 there to be any confusion on this point. There are
2 different types of trials that are carried on in the courts.
3 And one of the types of trials we do is what's called civil
4 cases.

5 Civil cases are where monetary damages are being
6 sought. And that can be for various reasons. It can be
7 because someone didn't pay a bill, someone didn't do their
8 contract, breached their contract, someone injured someone
9 wrongfully and has to pay for those injuries. So that's the
10 kind of case I'm talking about when I say a civil case where
11 monetary damages are sought.

12 If you've ever been involved in that kind of case you
13 might know that the standard of proof in those cases is
14 proof by the greater weight of the evidence. So you think
15 of the scales of justice, and if they tilt ever so slightly
16 in favor of the plaintiff, the plaintiff is entitled to the
17 verdict. If they tilt ever so slightly after weighing the
18 evidence in favor of the defendant, the defendant is
19 entitled to a verdict.

20 That's the standard of proof in a civil case. The
21 standard of proof in a criminal case such as this one is
22 more powerful than that. In other words, it's proof beyond
23 a reasonable doubt.

24 Now, proof beyond a reasonable doubt is that kind of
25 proof that would leave you firmly convinced of the

CHARGE OF THE COURT

149

1 Defendant's guilt. I'll point out to you, there are very
2 few things that go on in this world that can be proven
3 beyond any doubt whatsoever. And the law does not require
4 the State to present proof that overcomes every possible
5 doubt.

6 What I will tell you is if after you've weighed the
7 evidence in the case if you are firmly convinced that the
8 Defendant is guilty beyond a reasonable doubt, you must find
9 the Defendant guilty as charged. However, on the other
10 hand, if you think there's a real possibility that the
11 Defendant is not guilty, you must give the Defendant the
12 benefit of that doubt and find the Defendant not guilty.

13 Now I'm going to remind you that during the trial we've
14 had separate duties to perform. It's been my responsibility
15 to preside over the case. And we haven't had too many
16 controversies that came up. You are to consider only the
17 evidence that was put into the record of the case and you
18 must disregard anything that I may have excluded. And I
19 don't recall anything of that nature.

20 I will tell you that I have the additional duty now of
21 charging you with the applicable law. And I told you
22 earlier, and it remains true, that I'm the sole judge of the
23 law. And it's your duty as jurors to accept and apply the
24 law as I state it to you and leave any idea that you might
25 have about what the law is or what it ought to be outside of

CHARGE OF THE COURT

150

1 the jury room before you begin your deliberations. You are
2 the sole judges of the facts in this case.

3 And, again, please don't take from anything that I
4 might say or do during the trial and even during this charge
5 on the law to indicate that I have an opinion one way or the
6 other as to how you decide the facts. I don't have an
7 opinion on that subject. The law doesn't allow me an
8 opinion on that subject. And just as I cannot disagree with
9 you concerning your decision on the facts, you're required
10 to follow my instructions concerning the law to be applied
11 in this case.

12 It's up to you, the jury, and you, the jury, alone to
13 determine the effect, the value and the weight of the
14 evidence that's been presented during the trial of this
15 case. In doing so you have the right to consider two types
16 of evidence. Let me explain to you what I mean by two types
17 of evidence.

18 We divide evidence in the law into either direct or
19 circumstantial evidence. Direct evidence is when someone
20 testifies and claims to have direct knowledge of the facts
21 on which they testify. In other words, someone who
22 participated in the event and testifies about what they
23 experienced in that event, an eyewitness, someone who saw
24 something, heard something, smelled something. That witness
25 is offering direct testimony as to those facts.

CHARGE OF THE COURT

151

1 The other type of evidence we have is what's called
2 circumstantial evidence. And you have the right to consider
3 both types.

4 Now circumstantial evidence is proof of a chain of
5 facts or circumstances that indicate the existence of some
6 other fact. It's been described under the law, and this is
7 an awful fancy description, but proof of collateral facts
8 from which a main fact can be reasonably inferred.

9 Now, I use a simple example to explain what I mean by
10 that phrase. Let's say last night before you went to bed
11 you were in your bedroom, and you walked over to the window
12 and you looked outside, stars were shining, the moon might
13 be out, pretty night. And you went to bed, you slept all
14 night, didn't wake up at all.

15 The next morning you walked over to the same window,
16 you looked out that window and while the sun was up you
17 noticed if you looked a little closer there's water dripping
18 out of the trees, there's puddles in the road or driveway
19 that weren't there the night before. Maybe the lawn's
20 covered with water.

21 Now, you slept all night. So you didn't personally
22 experience whether it rained or not, but from the collateral
23 facts that you know to be true, water dripping from the
24 trees, wet lawn, puddles that weren't there before, you can
25 reasonably infer that at sometime during the night it

CHARGE OF THE COURT

152

1 rained. So that's what we mean by a chain of facts or
2 circumstances that indicate the existence of another fact.
3 That's what we mean by circumstantial evidence.

4 And the law doesn't make a distinction between the
5 weight or value that you can give to either direct or
6 circumstantial evidence. We don't require a greater
7 certainty of circumstantial evidence than that of direct.

8 I will tell you you have the right to weigh all of the
9 evidence in the case, both direct and circumstantial. And
10 after weighing all the evidence if you're not convinced of
11 the Defendant's guilt beyond a reasonable doubt, you should
12 find the Defendant not guilty. However, on the other hand,
13 if you are firmly convinced of the Defendant's guilt, again,
14 to the level of proof beyond a reasonable doubt, you must
15 find the Defendant guilty.

16 Now in doing your job as the fact-finder, I told you at
17 the beginning of the trial, you're going to have to weigh
18 the credibility of the testimony that you hear, the
19 believability of what you've heard. Credibility simply
20 means believability.

21 And I asked you to use your good common sense in
22 listening to that testimony and evaluating the evidence in
23 determining which evidence convinces you that it's true.
24 Again, in determining the believability of any witness you
25 have the right to believe all of, none of, or part of what a

CHARGE OF THE COURT

153

1 witness may have said. You have the right to consider the
2 evidence as to whether or not a witness may have an
3 interest, a bias, prejudice or other motive in testifying.

4 You have the right to consider the manner and the
5 appearance of the witness as the witness delivered their
6 testimony. Again, use your good common sense and make a
7 determination as to the credibility or the believability of
8 the evidence that you've heard.

9 Now there's one thing that I want to emphasize to you.
10 I'm going to instruct you and I'm going to emphasize to you
11 that the fact the Defendant did not testify in this case is
12 not a factor to be considered by you in any manner in your
13 deliberations and in your consideration of the question of
14 guilt or innocence. It must not be considered by you in any
15 manner whatsoever.

16 You see, a defendant has a constitutional right to
17 remain silent. And the assertion of someone's right to
18 remain silent should not be considered by you in your
19 deliberations. And I repeat, under the oath that you've
20 taken, you are to draw no conclusions from the fact the
21 Defendant did not testify in the case.

22 The fact the Defendant did not testify should not even
23 be discussed by you in the jury room. The burden of proof
24 in this case is upon the State. The Defendant is not
25 required to prove his innocence. The burden of proof

CHARGE OF THE COURT

154

1 remains upon the State to prove the Defendant guilty beyond
2 a reasonable doubt.

3 Now in this case the Defendant is charged with
4 carjacking. The legal definition of that offense is not
5 very long. And I'll go over it with you so that you
6 understand what is meant by that particular offense.

7 When a defendant is charged with carjacking, in order
8 to prove that charge the State must prove beyond a
9 reasonable doubt that the defendant took or attempted to
10 take a motor vehicle from another person by use of force, or
11 violence, or by intimidation while that person was operating
12 the vehicle or while the person was in the vehicle. That's
13 the entire definition of the offense.

14 And I'll go over it with you one more time. The
15 Defendant is charged with carjacking. And in order to
16 approve [sic] that offense the State must prove beyond a
17 reasonable doubt that the Defendant took or attempted to
18 take a motor vehicle from another person by either force, or
19 violence, or by intimidation while the person was operating
20 the vehicle or while the person was in the vehicle.

21 Now, Ms. Pressley, you're going to be the foreperson of
22 the jury. That means you'll be the person who will conduct
23 the discussions of the jury. You will -- if the jury has
24 any questions to ask me during deliberations, you'll write
25 those questions down, submit them to the bailiff, I'll

CHARGE OF THE COURT

155

1 consider the question, and I'll give what answer that I can
2 give.

3 I'm going to give you a verdict form in a few minutes.
4 And I'll explain it to you so that you understand it. And
5 once the jury reaches a unanimous verdict, whatever it may
6 be, you'll record it on that form, sign it, again, knock on
7 the door and tell the bailiff a verdict's been reached.
8 You'll be returned to the courtroom to receive the verdict.

9 Now, I'm going to remind you, though, that your verdict
10 must be unanimous. All of you must agree upon a verdict
11 before it becomes the verdict of the jury.

12 Now, I've gone over a good bit with you. And there's a
13 few pieces of evidence that'll go back to you. And I have
14 to go over some kind of housekeeping matters with the
15 lawyers before I tell you to begin your deliberations
16 finally.

17 So this'll be the last time I'll tell you to leave the
18 courtroom, don't discuss anything about the case until I
19 bring you back for final instructions. You may retire to
20 the jury room.

21 (Whereupon the jury exited the courtroom at 2:47 pm)

22 **THE COURT:** Any objections or additions to the charge
23 from the State?

24 **MR. FOWLER:** None from the State, Judge.

25 **THE COURT:** Any from the Defense?

CHARGE OF THE COURT

156

1 **MR. RICHEY:** None, Your Honor.

2 **THE COURT:** All right. I'm going to ask you to come
3 forward and take a look at the exhibits and let's segregate
4 those over to the side so the bailiffs can give them to the
5 jury.

6 I have the indictment here. Let me pass that down so
7 you can look at that as well to make sure there's nothing on
8 there that can affect the jury. She's gone to get a verdict
9 form, and we'll agree on that before we call the jury back.

10 (Pause)

11 **THE COURT:** If you'll approach, please.

12 **MR. FOWLER:** Sure.

13 (Whereupon a bench conference was held off the record)

14 (Whereupon the bench conference was ended)

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

16 (Whereupon the jury entered the courtroom at 2:53 pm)

17 **THE COURT:** All right. Mr. Bailiff, if you would, hand
18 the papers here to the forelady, please. Ms. Pressley, what
19 I'm having him hand you is the indictment as well as the
20 verdict form.

21 If you'll look at that verdict form, at the top you'll
22 see it has the County and State we're in, has the name of
23 the case, the State versus Mr. Chappell. There's one
24 indictment. So there's one question on the jury form. And
25 that is as to that case number, carjacking, the choices --

CHARGE OF THE COURT

157

1 the possible verdicts are either not guilty or guilty.

2 You'll put a check on the line adjacent to the
3 appropriate verdict once a unanimous verdict has been
4 reached. You'll then sign the form, let the bailiff know
5 that a verdict's been reached and then you'll come back into
6 the courtroom for us to receive the verdict.

7 Now, ladies and gentlemen, again, before a verdict can
8 be reached, the verdict must be unanimous. You must all
9 agree upon the verdict before it is the verdict of the jury.

10 Please don't take from the order in which I've put
11 those choices on the form to somehow indicate to you that
12 I've got a preference as to what verdict you reach. I told
13 the jury yesterday, I tell every jury, I've been preparing
14 those for about fourteen years in the Circuit Court, every
15 one I've ever done has those choices in the same order.

16 So I don't change the order on the forms based on the
17 case. That's just the order I put it on there. So don't
18 take that to be some suggestion on my part. I have no
19 suggestions.

20 So at this point in time I'm going to ask that the
21 twelve members of the regular jury return to the jury room
22 to begin your deliberations. Sir, you're the alternate. I
23 want you to remain seated in the courtroom. All right. You
24 may retire to begin your deliberations.

25 Oh, one other thing. Sit down just a second, I meant

CHARGE OF THE COURT

158

1 to tell you. There was a recording put into the record. If
2 you wish -- if during your deliberations you feel the need
3 to listen to that recording, you'll need to let the bailiff
4 know. We'll bring you back into the courtroom for us to
5 play that for you.

6 Normally we would let that recording go back with you,
7 but I had ruled portions of it not admissible. And so those
8 portions have not been taken off the disc. So we'd have to
9 bring it back here to play you only the appropriate portions
10 that I have deemed as admissible.

11 So that's the reason I don't let it go back with you.
12 But if you do need to listen to it, you have every right to,
13 just let us know and we'll bring you back to take care of
14 that, okay? You may retire to the jury room. Thank you
15 very much.

16 (Whereupon the jury exited the courtroom at 2:56 pm to
17 begin deliberations)

18 **THE COURT:** All right, sir. I believe your name is
19 Tyrone McDonald, is that right?

20 **MR. McDONALD:** Yes, sir.

21 **THE COURT:** Mr. McDonald, you were my alternate. And
22 if one of the jurors had gotten sick, or had a family
23 emergency or something had happened and they couldn't finish
24 their duties, I would have put you on the jury so we could
25 continue without stopping.

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

2 **THE COURT:** But the law says once they retire and start
3 their deliberations, your job has ended. And so I'm
4 releasing you from any further responsibility in this
5 matter.

6 Now, when you get -- when you go home after 5:00, be
7 sure to call that number. There'll be some additional
8 instructions concerning your future jury service at that
9 time.

10 Now I'll tell you you have the right to discuss the
11 case if you want to. You don't have to talk about it if you
12 don't want to.

13 See, a citizen owes no one an explanation for what they
14 do on a jury. So you don't have to talk about it unless you
15 choose to do that. And if anybody were to harass you or
16 bother you about serving on the jury, you report to the
17 clerk's office immediately, and we'll take appropriate
18 action ---

19 **MR. McDONALD:** Yes, sir.

20 **THE COURT:** --- should that happen, okay?

21 **MR. McDONALD:** Yes, sir.

22 **THE COURT:** Now, be sure to call in after 5:00 for your
23 additional instructions. Of course, if you want to stick
24 around, you'd have the right to listen to the verdict if you
25 want to, but ---

1 **MR. McDONALD:** No, sir.

2 **THE COURT:** --- you're free to go. Thank you very
3 much.

4 **MR. McDONALD:** I'm gone.

5 (Laughter)

6 **MR. McDONALD:** Y'all have a nice day.

7 **THE COURT:** You have a good day, sir.

8 (Pause)

9 **THE COURT:** Any objection to my final instruction from
10 the State?

11 **MR. FOWLER:** No, sir, Judge.

12 **THE COURT:** Any from the Defense?

13 **MR. RICHEY:** No, sir.

14 **THE COURT:** All right. We'll be in recess until we
15 reach a verdict or have a question.

16 **MR. RICHEY:** All right. Thank you, Your Honor.

17 **MR. FOWLER:** Thank you, Judge.

18 (Whereupon court was in recess at 2:58 pm)

19 (Whereupon court reconvened at 3:18 pm)

20 **THE COURT:** All right. I have received an inquiry from
21 the foreperson that says if we re-listen to the audio
22 recording of the phone conversation, will it be exactly what
23 we heard during the initial playing? Of course, the answer
24 would be yes. I'm going to ask that you just bring the
25 forelady in so I can respond to her question.

1 (Whereupon the forelady entered the courtroom at 3:20
2 pm)

3 **THE COURT:** Come in and have a seat in the box, please.
4 Thank you, ma'am. Ms. Pressley, I have received your
5 inquiry. I've gone over it with the attorneys.

6 If you wanted to listen to that recording again, it
7 would be played. It would be the same playing that occurred
8 during the trial, same portions of the recording.

9 So -- but we have the ability to do that for you if you
10 would like for us to do that. Do you want to listen to that
11 again or do you know whether the jury's made that decision
12 or not?

13 **MADAME FORELADY:** I think there were some questions.
14 So ---

15 **THE COURT:** Okay. Well, if you want to hear it again,
16 let the bailiff know and we can bring you in. But it would
17 be played -- the exact same portions would be played for you
18 again.

19 **MADAME FORELADY:** Okay.

20 **THE COURT:** We have to play the whole thing. We can't
21 play parts of it. Okay?

22 **MADAME FORELADY:** Okay.

23 **THE COURT:** Thank you, ma'am.

24 **MADAME FORELADY:** Thank you.

25 (Whereupon the forelady exited the courtroom at 3:20

1 pm)

2 **THE COURT:** All right. The inquiry from the jury will
3 be made a Court's exhibit. And we'll remain in recess
4 unless they wish to inquire further.

5 (Whereupon Court's exhibit 1 was marked)

6 **THE COURT:** I'll stay up here because they may be
7 coming back pretty quick.

8 (Whereupon court was in recess at 3:21 pm)

9 (Whereupon court reconvened at 3:29 pm)

10 **THE COURT:** Thank you very much. I'm told by the
11 bailiffs that they do wish to hear the recording. So if
12 you'll get it ready and let me know when it's ready.

13 **MR. FOWLER:** We can do it right now, Judge.

14 (Pause)

15 **MR. FOWLER:** Ready for them, Judge.

16 **THE COURT:** Okay. Bring the jury in.

17 (Whereupon the jury entered the courtroom at 3:31 pm)

18 **THE COURT:** All right. The record will reflect the
19 jury has returned to the courtroom. My understanding is you
20 do wish to rehear the recording.

21 **MADAME FORELADY:** Yes, sir.

22 **THE COURT:** We've got it ready. I'll direct that the
23 -- Mr. Fowler play that absent any portions I've ruled not
24 admissible.

25 **MR. FOWLER:** Yes, sir.

1 **THE COURT:** You may proceed.

2 (Whereupon the CD was played for the jury)

3 (Whereupon the CD was paused and fast-forwarded and
4 resumed playing)

5 (Whereupon the CD was stopped)

6 **MR. FOWLER:** That's all, Judge.

7 **THE COURT:** All right. That completes the playing of
8 the recording. I'll ask you to step back and resume your
9 deliberations.

10 (Whereupon the jury exited the courtroom at 3:42 pm)

11 **THE COURT:** All right. Any objections to my response
12 from the State?

13 **MR. FOWLER:** No, sir, Judge.

14 **THE COURT:** Any from the Defense?

15 **MR. RICHEY:** No, sir.

16 **THE COURT:** All right. We'll be in recess. Thank you.

17 (Whereupon court was in recess at 3:42 pm)

18 (Whereupon court reconvened at 4:01 pm)

19 **THE COURT:** Thank you very much. I'm informed by the
20 bailiff that a verdict has been reached. Is the State ready
21 to receive the verdict?

22 **MR. FOWLER:** Yes, sir, Judge.

23 **THE COURT:** The Defense ready to receive the verdict?

24 **MR. RICHEY:** Yes, sir.

25 **THE COURT:** Let's bring the jury in.

VERDICT OF THE JURY

164

1 (Whereupon the jury entered the courtroom at 4:03 pm)

2 **THE COURT:** All right. The record will reflect the
3 jury's returned to the courtroom. And I've been told that a
4 verdict has been reached. Is that true?

5 **MADAME FORELADY:** Yes, sir.

6 **THE COURT:** Pass the form to the bailiff, please.
7 Thank you, ma'am.

8 (Pause)

9 **THE COURT:** Madame Clerk, you may publish the verdict.
10 If the Defendant will, please, rise.

11 **MADAME CLERK:** In the State versus Joseph Chappell,
12 indictment number 2017-GS-23-4041, we find guilty. If this
13 is your verdict, so say you all. Please signify by raising
14 your right hand.

15 (Whereupon all jurors raised their right hand)

16 **MADAME CLERK:** Thank you.

17 **THE COURT:** Thank you very much. Anything further from
18 the State before I release the jury?

19 **MR. FOWLER:** No, sir, Judge.

20 **THE COURT:** Anything further from the Defendant?

21 **MR. RICHEY:** No, sir.

22 **THE COURT:** All right. You can be seated. Thank you
23 very much.

24 Ladies and gentlemen of the jury, I want to thank you
25 very much for your attention to your duties in this case and

VERDICT OF THE JURY

165

1 your attention to the case. At this point in time I'm going
2 to release you from any further responsibility in this
3 matter.

4 I've told you throughout the trial not to discuss the
5 case with anyone. I'll tell you now that you have the right
6 to do so. You also have the right not to do so.

7 You see, a citizen owes no one an explanation for their
8 service on a jury. You're not required to discuss this with
9 anyone unless you choose to do that. Should anybody in any
10 way harass you or bother you concerning your service on the
11 jury, please report that to the clerk's office. We'll take
12 appropriate action should that occur.

13 Now, I wish I could tell you you're through for the
14 week, but I can't tell you that. What I can tell you is
15 that you'll need to call into the call-in number after 5:00
16 this evening. You'll receive additional instructions
17 concerning your future service.

18 Again, I want to thank you very much for your attention
19 to your duties. The bailiffs will check you out.

20 Madame Forelady, you're going to need to meet with the
21 clerk before you leave the courtroom. She's got one other
22 thing for you to sign. Okay. Thank you very much. You're
23 free to go at this time.

24 (Whereupon the jury exited the courtroom at 4:05 pm)

25 **THE COURT:** Thank you, ma'am.

SENTENCE OF THE COURT

166

1 (Pause)

2 Mr. Richey, if you'll come forward, please.

3 **MR. RICHEY:** Yes, sir.

4 **THE COURT:** Madame Clerk, hand this sentencing sheet to
5 him. I have marked it as a conviction.

6 **MR. RICHEY:** Yes, sir.

7 **THE COURT:** And I'd ask that you, please, sign that for
8 me.

9 **MR. RICHEY:** Yes, sir. You want ---

10 **THE COURT:** I need for him to sign it, if he will,
11 please.

12 **MR. RICHEY:** Yes, sir.

13 (Pause)

14 **THE COURT:** Thank you very much. All right. If you'd
15 please stand at -- stand, please. You can stand at the
16 counsel table.

17 **MR. RICHEY:** All right. Thank you.

18 **THE COURT:** Thank you very much. All right. Mr.
19 Chappell having been -- Chappell, having been found guilty
20 by a jury of your peers of the offense of carjacking, it is
21 now up to the Court to consider the appropriate sentence in
22 your case.

23 I'm going to hear from your lawyer. I will give you an
24 opportunity to speak to me if you wish to do so. I will
25 also be hearing from the State concerning any prior record

SENTENCE OF THE COURT

167

1 that you might have and any other circumstances they think I
2 should consider in reaching a sentence.

3 I do not see the victim in the courtroom. Does he wish
4 to be present?

5 **MR. FOWLER:** No, sir, Judge. He waives his presence
6 for this ---

7 **THE COURT:** Okay. So he does not wish to be present.
8 Mr. Richey, then, I'll be happy to hear from you at this
9 time.

10 **MR. RICHEY:** Thank you, Your Honor. I think the Court
11 -- the trial showed that he's from Greenville, where he
12 resided. He's forty-nine years old.

13 And I say this to the Court, I've been with him for
14 over a year now. At his age he has really impressed upon me
15 that he's really ready to settle down, stop some of this,
16 and I use this lightly, nonsense that he has done. At his
17 age, we discussed this, you know, a major sentence would
18 basically take him to retirement. He knows that.

19 When I say retirement, I mean the age of sixty-two.
20 You know, I don't think he's going to quit working.

21 **THE COURT:** Well, according to the information I have
22 here, he's forty-nine ---

23 **MR. RICHEY:** Yes, sir.

24 **THE COURT:** --- at the present time, is that correct?

25 **MR. RICHEY:** Yes, sir.

SENTENCE OF THE COURT

168

1 **THE COURT:** All right.

2 **MR. RICHEY:** And, you know, we talked about this this
3 morning, asking the Court to consider something to the
4 extent of a suspended sentence. We -- we know we going to
5 get some jail time. We -- we know that. But he would ask
6 the Court to consider suspending some of the time to
7 probation.

8 He's -- to be honest with you, I talked to him. And I
9 said that I feel like the Court would give him a minimum of
10 five years, minimum. That's at the best -- that's the best.
11 So I'd ask the Court to consider that, put him on probation.

12 He'll be -- if the Court gave him that, he'd be fifty-
13 three when he got out. And I ---

14 **THE COURT:** Yes, sir. I'm looking at the offense. And
15 my understanding, it is classified as a violent and most
16 serious offense.

17 **MR. RICHEY:** Yes, sir.

18 **THE COURT:** It is a -- what's considered a no parole
19 offense. He'll have to serve eighty-five percent at this
20 time. I don't know if that'll change in the future, but
21 that's what it is at this point in time. So I'm aware of
22 the severity of the ---

23 **MR. RICHEY:** Yes, sir.

24 **THE COURT:** --- offense and the collateral issue.

25 **MR. RICHEY:** Yes, sir. And so that's what he asked me.

SENTENCE OF THE COURT

169

1 And I'll just say, Your Honor, from the evidence, it
2 wasn't something like he beat the man up. I think the
3 evidence is clear on that.

4 And so I'd just ask the Court to consider, he didn't
5 run across town. He was -- fortunately, he stayed there.
6 So I'd just ask the Court to consider some type of sentence,
7 you know, he's getting older. That's what he expressed to
8 me.

9 **THE COURT:** Sir, I'll be happy to hear from you.

10 **MR. CHAPPELL:** Your Honor, I would just like you to
11 consider a lighter sentence for me. I've learned that
12 whether dealing with drugs directly or indirectly, whether
13 you're using them or you're selling them, it's no good, you
14 know what I'm saying, to be involved in that situation. And
15 that's what brought this situation about.

16 I've been through -- while I've been incarcerated in
17 Greenville County I've been through drug classes. I've been
18 participating. And I've been doing a lot of things to help
19 myself out to better myself. I just wish you could give me
20 a lighter sentence, if you could.

21 **THE COURT:** Mr. Richey, I know he has already served
22 some time. How much time or credit is he claiming?

23 **MR. RICHEY:** I think it's four hundred and one days.

24 **THE COURT:** Does the State agree with that number?

25 **MR. FOWLER:** Yes, sir, Judge. That's the number I've

SENTENCE OF THE COURT

170

1 got.

2 **THE COURT:** All right. Four hundred and one. I want
3 to be sure he gets credit for all the days he's served.

4 **MR. RICHEY:** Judge, he has some certificates of all the
5 stuff he completed.

6 **THE COURT:** Uh-huh (affirmative).

7 **MR. RICHEY:** Because he's done some things out at the
8 jail and they gave him certificates. And so those are back
9 there. But he has completed some programs down there.

10 **THE COURT:** I see. Are they getting those for us now?

11 **MR. RICHEY:** Yes, sir.

12 **THE COURT:** Okay.

13 **MR. RICHEY:** Your Honor, I'll pass this up. This is
14 the drug and alcohol class ---

15 **THE COURT:** Okay. It does indicate that he has
16 completed the detention center alcohol and other drug abuse
17 treatment program. He had twenty-two contact and four
18 independent study hours on that. Okay.

19 **MR. CHAPPELL:** May I say something?

20 **THE COURT:** Yes, sir.

21 **MR. CHAPPELL:** Prior to me coming to the jail, I was
22 going to school for my CDL, but I got my permit. And, you
23 know, I wish that it was some kind of way that I could
24 continue to ...

25 **THE COURT:** All right. And I'll hear from the State at

SENTENCE OF THE COURT

171

1 this point in time. First of all, does he have a prior
2 record?

3 **MR. FOWLER:** Yes, sir, Judge. I'll read that to you.
4 It's 1988, accessory after the fact to burglary, second,
5 times three; 1990, strong arm robbery; 1991, strong arm
6 robbery; 1992, grand larceny, times two, burglary, second,
7 auto-breaking; 1993, auto-breaking, grand larceny, times
8 two, burglary of a building; 1995, assault and battery,
9 criminal domestic violence; 1996, petty larceny; 1997, petty
10 larceny, times two, burglary, third, resisting arrest; 1997,
11 burglary, third; 1999, burglary, second, accessory after the
12 fact for burglary, times three, assault and battery with
13 intent to kill, grand larceny, burglary and auto-breaking;
14 2007, arson, second degree, entering premises after warning;
15 2009, assault and battery and assault and battery of a high
16 and aggravated nature; 2015, malicious injury to real
17 property and assaulting a police officer while resisting
18 arrest.

19 And I'd just like to point out that that 2009 ABHAN, he
20 received ten years in prison. And that 2015 assaulting a
21 police officer, he received three years in prison.

22 **THE COURT:** All right. Anything else the State would
23 like for me to consider in sentencing in this case?

24 **MR. FOWLER:** Judge, I think you've pretty much heard
25 everything. I think as the Defendant said, a lengthy

SENTENCE OF THE COURT

172

1 sentence would put him, hopefully, towards retirement. And
2 that's exactly what I look for in this case.

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

4 (Pause)

5 **THE COURT:** I think we're all in agreement that this
6 particular offense carries not more than twenty years. Is
7 that correct?

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

9 **MR. FOWLER:** Yes, sir, Judge.

10 **THE COURT:** All right. Mr. Chappell, when I listened
11 to your record, I'm struck by the fact of the length of it,
12 the number of years that you have been involved in criminal
13 activity, and those are the convictions that you suffered.
14 I don't know what lies behind -- I'm talking now, sir.

15 **MR. CHAPPELL:** (Affirmative nod).

16 **THE COURT:** I don't know what lies behind that, but I
17 do note that a good many of those involved acts of some
18 violence. There are several -- there were several
19 burglaries involved in this process.

20 And then when I look at the offense that you were
21 convicted of this time, again, an act of violence. It's
22 considered a violent and most serious offense by our State
23 and by this Court.

24 The gentleman was in his car. He testified he was kind
25 enough to give you a ride and as a result of that he was

10 **MR. RICHEY:** Thank you, Your Honor.

12 (Hearing Ended at 4:18 pm)

13 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 11th day of April 2018.

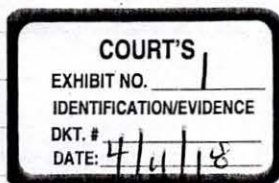
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 22, 2018

Circuit Court Reporter

If we re-listen to the
audio recording of the
phone conversation, will it
be exactly what we
heard during the initial
playing?

Crystal Presley



WITNESSES

B S Smith

Greenville County Sheriffs Office

3/6/2017

ARREST WARRANT NUMBER

2017A2330202171

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Crystal Chressley
Foreperson of Petit Jury

Date: *4/11/18*

DOCKET NO. 2017-GS-23 ✓

BWF

004041

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2017

THE STATE

vs.

JOSEPH CHAPPELL

Indictment for

✓
2599

CARJACKING

VIOLATION § 16-03-1075

JP
ENTERED
1001

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CARJACKING

At a Court of General Sessions, convened on

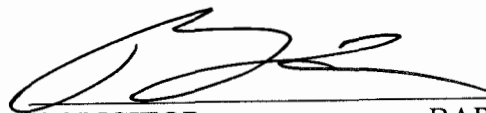
MAY 23 2017

the Grand Jurors of Greenville

County present upon their oath:

That JOSEPH CHAPPELL did in Greenville County, on or about the 5th day of March 2017, take or attempt to take a motor vehicle, to wit: a 2000 Chrysler PT Cruiser, from CONEZE BARNER by force, and violence or by intimidation while CONEZE BARNER, was operating and/or was in the said vehicle. This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 102029

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville SC.)JOSEPH CHAPPEL)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-23- 06803APPLICATION FOR
POST-CONVICTION RELIEF2019 MAY 20 PM 3:48
FILED CLERK OF COURT
JUDICIAL BRANCH**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 HEC Correctional Inst.
2. Name and location of Court which imposed sentence 13th Circuit Court Greenville S.C.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-23-04041
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 11, 2018 (15yrs)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 9, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

Answers to questions 10-11

10.

- A. Ineffective assistance of Counsel.
Evidence Attorney had or knew about but failed to use.
- B. Ineffective assistance of Counsel:
Discovery violation BRADY v. Maryland.

11.

- A. Counsel failed to use Forensic officer's report as evidence.
During Cross examination he never asked or question the officer about the report. Where he said He didn't observe victim to have any physical signs of injury and had him point to where he was struck. Also he took still photo's of victim.
- B. Counsel failed to provide me with all of my Brady motion.

I NEVER RECEIVED PICTURES OF THE VICTIM. COUNSEL HAD KNOWLEDGE THIS EXCULPATORY EVIDENCE IF PRESENT AT TRIAL OR BEFORE WOULD HAVE BEEN MATERIAL TO THE OUTCOME OF THIS CASE. THUS DEPRIVING OF A FAIR TRIAL.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (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? No
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. DIRECT APPEAL
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Appeal Dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. October 9, 2019

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) _____
 (b) _____
 (c) _____

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

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

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Rodney Richey P.O. Box 10916 Greenville
S.C. 29603
 ii. Taylor Gilliam P.O. Box 11589 Columbia
S.C. 29010
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. trial attorney
 ii. Direct Appeal attorney
 iii. _____

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

REVERSE Conviction and REMAND for
new trial.

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

No

STATE OF SOUTH CAROLINA)
County of Greenville S.C.)

VERIFICATION

I, JOSEPH CHAPPELL, 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.

Joseph Chappell

SWORN to and subscribed before me this 28th
day of Oct 2019.

Debra McTeke (L.S.)
Notary Public

My Commission Expires: 09/04/2021

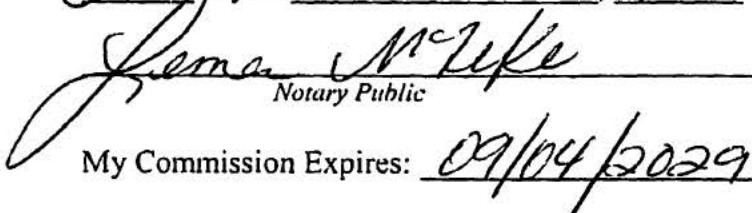
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JOSEPH CHAPPEL, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
28th day of Oct, 2019.


Notary Public

My Commission Expires: 09/04/2029

2019 NOV 20 PM 3:48
FILED-CLERK OF COURT
PAUL R. WICK
COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Joseph Chappell, #179150,	)	Case No.: 2019-CP-23-6803
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	PARTIAL SUMMARY DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The State (Respondent), making its return to the application for post-conviction relief filed by Joseph Chappell (Applicant) on November 20, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to orders of commitment of the Greenville County Clerk of Court. During its May of 2017 term, the Greenville County Grand Jury indicted Applicant for carjacking (2017-GS-23-4041). Applicant was represented by Rodney Wade Richey, Esquire, (trial counsel) and Assistant Solicitor Brann W. Fowler of the Thirteenth Circuit Solicitor's Office prosecuted the case. On April 11, 2018, Applicant proceeded to a jury trial with the Honorable Roger L. Couch (trial court) presiding. At the conclusion of trial, the jury found Applicant guilty as indicted. The trial court sentenced Applicant to imprisonment for fifteen years, with credit for time served.

Trial counsel filed a timely notice of appeal. Appellate Defender Taylor D. Gilliam (appellate counsel) of the South Carolina Commission on Indigent Defense represented Applicant on appeal. Senior Assistant Deputy Attorney General J. Benjamin Aplin of the South Carolina Attorney General's Office represented the State. Appellate counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), arguing the trial court erred in failing to direct the jury's verdict

in Applicant's favor because the State did not present evidence at trial that Applicant committed the offense of carjacking, and moved to be relieved as counsel. Applicant filed a pro se brief, arguing the trial court deprived Applicant of his rights under the Sixth Amendment and Fourteenth Amendment, his right to the effective assistance counsel, and his right to "conflict-free counsel" by informing Applicant at the start of trial that he would grant Applicant's motion to relieve counsel but would not continue the trial if Applicant persisted in the motion to relieve trial counsel. The South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. State v. Chappell, Op. No. 2019-UP-345 (S.C. Ct. App. filed October 9, 2019) (per curiam). The remittitur was issued on October 25, 2019.

II. Current Application

Applicant filed his application for post-conviction relief on November 20, 2019. Applicant alleges therein that he is entitled to post-conviction relief on multiple grounds, which are as follows:

- 1) Ineffective assistance of counsel;
 - a) "Evidence Attorney had or knew about but failed to use."
 - i) "Council failed to use Forensic officer's report as evidence During Cross Examination he never asked or question the officer about the report. Were he said he didn't observe victim to have any physical signs of injury and had him point to were he was struck Also he took still photo's of victim."
 - b) "Ineffective Assistance of Council: Discovery violation Brady v. Maryland"
 - i) "Council failed to provide me with all of my Brady motion. I never received pictures of the victim. Council had knowledge this exculpatory evidence if present at trial or before would have been material to the outcome of this case. Thus depriving of a fair trail."

Applicant prays the Court will grant post-conviction relief and reverse his conviction and remand for a new trial. Attached to this return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject conviction; he Record on Appeal, Anders

brief, pro se brief, opinion, and remittitur from Applicant's direct appeal; page 172 from the trial transcript;¹ and the application for post-conviction relief and Applicant's attachment thereto. Respondent reserves the right to amend this return upon its receipt of any relevant materials.

III. Response to Applicant's Claims of the Ineffective Assistance of Counsel

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he 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, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 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 v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment."

¹ This page was not included in the Record on Appeal filed during Applicant's direct appeal. Appellate counsel sent the missing page to the undersigned by email as a courtesy on March 5, 2020. The undersigned assumes that the page was omitted from the ROA by unintentional oversight.

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 Petitioner 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.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney. Id. at 690.

Respondent submits that Applicant cannot likely cannot show trial counsel was constitutionally ineffective; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not

conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

III. Motion for Summary Dismissal

Applicant alleges that he is entitled to post-conviction relief because trial counsel violated his rights under Brady v. Maryland, 373 U.S. 83 (1963). As to this issue, the undersigned hereby moves for summary dismissal.

The Supreme Court of South Carolina has recognized that:

A Brady claim is based upon the requirement of due process. Such a claim is complete is the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to the guilty or punishment.

Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (internal citations omitted).

In this case, Applicant is alleging his trial counsel violated Brady; however, Brady affords relief to a defendant whose rights have been violated by the State. As such, Brady cannot offer any aid to Applicant with his dissatisfaction with trial counsel as a matter of law.

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the “pleadings, depositions and admissions and agreements of fact . . .” and the movant is entitled to judgment as a matter of law. With regard to this claim, Respondent is entitled to judgment as a matter of law and there is no genuine issue of material fact. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795

S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)). Even if the facts alleged by Applicant are true, Respondent is entitled to judgment as a matter of law. Therefore, this Court should summarily dismiss this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

IV. Denial of All Other Allegations

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

V. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCP. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VI. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on Applicant’s claims that trial counsel was constitutionally ineffective and requests that the PCR summarily

dismiss the claim that trial counsel violated Brady by withholding photographs from Applicant.

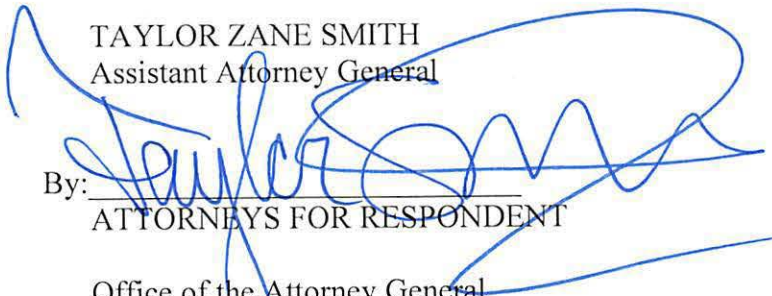
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Telephone: (803) 734-3737

March 16, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2019-CP-23-6803

JOSEPH CHAPPELL, 179150,)

Applicant,)

vs)

CERTIFICATE OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for Partial Summary Dismissal** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee Street
 Greenville, SC 29601

DATED this 16th day of March, 2020.

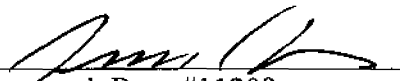

 Judy A.C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
JESEPH CHAPPELL,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	ENTERED COMPUTER
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2019-CP-23-6803
RESPONDENT.	)	

This matter comes before the Court by way of application of post conviction relief filed November 20, 2019. A Return and Motion for Summary Dismissal was made on March 16, 2022. In addition to the allegations in the original application, the Applicant alleges Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to ineffective assistance of counsel for proceeding with trial when he knew Coneze Bonner, the alleged victim in the case, creating a conflict of interest in his representing the Applicant. (R. p. 79, l. 2)

Furthermore the Applicant alleges a Due process violations in that the knowingly presented false information of injury to the victim's head when officers saw no signs of injury and pictures showed no signs of injury. (R. p. 63)

Respectfully submitted,


 Susannah Ross #11209
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 8 day of Sept, 2022

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

JESEPH CHAPPELL,)

Applicant,)

vs.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

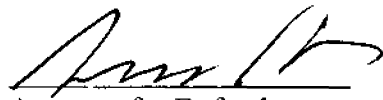
IN THE COURT OF COMMON PLEAS

2019-CP-23-6803

AFFIDAVIT OF SERVICE
BY MAIL

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Application** on the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Attorney General
Alan Wilson
P.O. Box 11549
Columbia, SC 29211



Attorney for Defendant

This 8 day of Sept., 2022

B E F O R E:

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

APRIL HERRON
Official Court Reporter

INDEX OF WITNESSES

JOSEPH CHAPPELL

Direct By Mrs. Ross 8
Cross By Ms. Brown 21
Redirect By Mrs. Ross 27
Examination By The Court 28

RODNEY RICHEY

Direct By Ms. Brown 29
Cross By Mrs. Ross 39

JOSEPH CHAPPELL

Redirect By Mrs. Ross 44
Recross By Ms. Brown 44
Further Redirect By Mrs. Ross 46

» > ○ < «

Certificate of Reporter 51

APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Crime scene investigation report	15	26
	All exhibits were retained by the Greenville County Clerk of Court.		

1 THE COURT: If we are ready regarding
2 Mr. Chappell?

3 Is it Chappell?

4 MR. CHAPPELL: Chappell, yes, ma'am.

5 THE COURT: Chappell, okay vs. The State. It is
6 civil action number 19CP236803. I note that The
7 Applicant is here in the courtroom with his counsel.

8 Counsel, if you all will identify yourselves for
9 the record.

10 MRS. ROSS: I'm Susannah Ross representing
11 Mr. Chappell.

12 MS. BROWN: Melody Brown for The State of South
13 Carolina.

14 THE COURT: Okay, thank you.

15 And Mr. Chappell is in the courtroom. Sir, let
16 me -- these folks know who I am, but let me tell you,
17 I'm Judge Knie, I'm from the Seventh Circuit,
18 Spartanburg and Cherokee Counties. It is my pleasure
19 to be with you today. It is my understanding that
20 this matter is before The Court as Post-Conviction
21 Relief Application. And so we will -- if you
22 testify, you will be sworn at that time, okay, do you
23 understand?

24 MR. CHAPPELL: Yes, ma'am.

25 THE COURT: All right.

1 So let me get a little procedural background
2 from the attorney for the respondent before Mrs. Ross
3 begins her case for The Applicant.

4 MS. BROWN: Thank you, Your Honor, may it please
5 the Court. Mr. Chappell was convicted by a jury on
6 April 11th, 2018 of carjacking pursuant to South
7 Carolina Code Section 16-310-75. Mr. Rodney Richey
8 was his appointed counsel, represented him at trial.
9 The Honorable Roger Couch sentenced Mr. Chappell to
10 15 years imprisonment. He did timely appeal. The
11 appeal was perfected through the Anders process.
12 South Carolina Court of Appeals dismissed the appeal,
13 therefore, affirmed the convictions and sentences by
14 unpublished opinion filed October the 9th of 2019.
15 Mr. Chappell filed the instant action November 20th
16 of 2019.

17 And, Your Honor, there is a return and existing
18 motion. The State filed a return on March 18th,
19 2020. We moved for a partial summary judgment based
20 on the nature of the claim. Specifically, Applicant
21 claimed that counsel violated Applicant's rights
22 under Brady vs. Maryland. That is a claim that we
23 submit is against The State, it's not against
24 counsel, that's not properly drawn. So the motion,
25 Your Honor, is still pending and we're maintaining

1 that that particular issue should be summarily
2 dismissed.

3 Applicant is represented by counsel Mrs. Ross.
4 And Mrs. Ross filed an amendment on September the
5 13th of 2022 and there are two claims to be heard,
6 according to that amendment. The first is
7 ineffective assistance and a conflict of interest on
8 the basis of counsel, Mr. Richey, knowing the victim,
9 Coneze Barner, personally. The second issue is a due
10 process violation allegation, the presentation of
11 false information regarding the head injury to the
12 victim. The allegation is that the officer who
13 responded saw no sign of injury and there's an
14 allegation that the pictures or a picture shows no
15 sign of head injury.

16 And as far as I know, Your Honor, those are the
17 two issues that will be heard today.

18 THE COURT: Okay. Thank you.

19 Mrs. Ross.

20 MRS. ROSS: In brief reply, as to the Brady
21 violation, we sort of turned that over into a
22 possible due process violation and would like the
23 testimony to flesh that out more clearly. We move
24 for the pleadings to conform to the testimony
25 pursuant to State v. Love. And I believe I had noted

1 another related issue that the ineffective assistance
2 of counsel for failing to contest the victim's
3 statement about injury to his head when the officers
4 saw no signs of injury and the pictures did not show
5 signs of injury.

6 Related to that, there is an issue, I have a
7 forensic report that we'll present during testimony
8 that refers to the officer seeing no visible signs of
9 injury to Mr. Barner. And it states that a picture
10 was taken back in September of 2022. I had an order
11 of production signed that I sent to the solicitor's
12 office, 13th Circuit Solicitor's Office. Kyle
13 Thompson responded to that and did give me appellate
14 papers, indictments, clerk of courts files, but
15 stated, specifically, we do not have a copy of
16 discovery. So I have not been able to locate this
17 picture that has been referred to.

18 So that being said, we are still ready to
19 proceed because I don't have a good way to locate
20 that other than some of the evidence that
21 Mr. Chappell presents. So, at this time, we call
22 Joseph Chappell to the stand.

23 THE COURT: Okay.

24 Ms. Brown, any objection to any of that so far?

25 Come on up, sir.

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 MS. BROWN: No, Your Honor. And I have, also,
2 spoken with Mr. Thompson, and it does appear that
3 there's nothing that we can produce at this point or
4 the solicitor's office can produce. So I can confirm
5 that, as well.

6 THE COURT: Okay, thank you.

7 Okay, sir, I'm going to have you sworn by the
8 clerk of court.

9 THE CLERK: Please raise your right hand. Place
10 your left hand on the Bible and raise your right
11 hand, I'm sorry.

12 JOSEPH CHAPPELL, after being duly
13 sworn{,} testified as follows:{F}

14 THE CLERK: Please be seated.

15 THE WITNESS: Thank you.

16 THE CLERK: Please state your full name for the
17 record.

18 THE WITNESS: Joseph Chappell.

19 THE COURT: This will be direct examination,
20 sir, okay? Do you need some water?

21 THE WITNESS: No, thank you.

22 THE COURT: Okay.

23 DIRECT EXAMINATION

24 BY MRS. ROSS:

25 Q Okay, Mr. Chappell, you do understand that if

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 you win post-conviction relief, the relief is to start all
2 over again?

3 A Yes.

4 Q And you said you'd like to proceed?

5 A Yes, I'd like to proceed.

6 Q Now, you had -- you were accused of carjacking,
7 correct?

8 A That's correct.

9 Q And you had a trial and Mr. Richey represented
10 you?

11 A That's correct.

12 Q Now, at this point, you've alleged ineffective
13 assistance of counsel by Mr. Richey. Can you briefly
14 outline the basis of that allegation?

15 A The conflict of interest, first.

16 Q Sure.

17 A Mr. Richey on page -- can I refer to my--

18 Q Yes.

19 A Yes.

20 THE COURT: And you're referring to a
21 transcript?

22 THE WITNESS: My transcript.

23 THE COURT: Of the trial?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay, please continue.

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 BY MRS. ROSS:

2 Q It is Page 79, Line 2.

3 A Yes. Well, Mr. Richey was cross-examination of
4 Mr. Coneze Barner, and on Line 2 he says, I understand who
5 I'm talking to?

6 And the answer from Mr. Coneze Barner was,
7 Yes, because I grew up with you.

8 So before, when they started on page -- let
9 me go back. On page -- Page 75, at the beginning of
10 cross-examination they had a casual conversation where
11 Mr. Richey says, Oh, you're pretty good at [indiscernible]
12 Mr. Barner, you're pretty good at football?

13 And Mr. Coneze Barner said, Yeah, you're
14 pretty good at baseball.

15 So I know they had some type of knowledge
16 of knowing each other. And that put it in perspective
17 when he said they grew up with each other.

18 Q All right. And on Page 82 they talk about the
19 neighborhood they grow up in as well, isn't that true?

20 A Right, that is correct.

21 On Page 82, Mr. Richey was -- Line 1 says,
22 Y'all always stayed -- y'all always say -- I mean, says,
23 always say McDavis [ph] lived on the right?

24 And the answer was, Right.

25 Yeah, the question said -- and the answer

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 was, Then y'all stayed down -- Mr. Barner said, Then y'all
2 stayed down at the side skreet [verbatim] in the back.

3 So they were very aware of where each other
4 stayed at. That's what I'm. . .

5 Q Now, in your discussions with Mr. Richey, did he
6 ever represent to you or tell you that he knew Coneze
7 Barner?

8 A No, ma'am.

9 Q So that was never discussed between y'all?

10 A No, ma'am.

11 Q And do you believe that created a conflict of
12 interest on Mr. Richey's part in representing you?

13 A Yes.

14 Q You didn't waive that in any way because you
15 didn't know about it?

16 A I couldn't waive it because I didn't know about
17 it.

18 Q Okay. Let's move on to the next issue about
19 Mr. Barner's alleged head injury. And I just refer you to
20 Page 63.

21 A Okay. We start at?

22 Q Line 11?

23 A Line 11, yes. The question was: Okay, so hold
24 on. So you now you're pointing at your head and at it's a
25 little hard to see from back here. But he hit you where

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 on your head?

2 And the victim, Mr. Coneze, pointed to the
3 head.

4 And the prosecutor said, Okay. And there's
5 a knot there?

6 And then Mr. Barner again says, It's a knot
7 and a gash.

8 Now mind you, these -- this happened on
9 17th March the 5th [verbatim]. I didn't have a trial
10 until April 18th. And he had those injuries.

11 Q A year later?

12 A A year later. He came to court with injuries a
13 year later.

14 Q Now, that's direct testimony so that's solicited
15 by the solicitor?

16 A Yes, ma'am.

17 Q And what did you -- let me show you this. Do
18 you recognize this?

19 A Yes, ma'am.

20 Q What is that?

21 A That is the forensic report.

22 Q All right. Did you get that with your
23 discovery?

24 A Yes, I did.

25 Q And what did you highlight for me in that?

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 A I highlighted the--

2 MS. BROWN: Your Honor, I do have one objection
3 just to place on the record. I do object to hearsay.
4 As long as it's not asserted for the truth of the
5 matter but from what he knows from the discovery, I
6 would not have an objection. I do have an objection
7 to hearsay itself.

8 THE COURT: Okay. And so there is hearsay in
9 the report?

10 MRS. ROSS: I didn't see it as a statement. I
11 guess the report itself is a forensic report.

12 THE COURT: Right.

13 MRS. ROSS: But--

14 THE COURT: What is the date of the report? Can
15 y'all give me a little bit more detail about it?

16 MRS. ROSS: Sure. Can you read the date on it?

17 THE WITNESS: I don't see a date. It is at the
18 bottom? I don't know what the date was. The date is
19 3/13/17.

20 THE COURT: Okay. And where was this made? Who
21 made the report?

22 THE WITNESS: Reporting officer is Downing.

23 THE COURT: What is the title of it?

24 THE WITNESS: Crime scene investigation report.

25 MRS. ROSS: We would argue this would be a

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 report made in the regular course of business and
2 therefore would be a hearsay exception. That being
3 said, I certainly would accept what's in the report
4 for what it is. As a record kept in the regular
5 course of business.

6 THE COURT: Okay.

7 And so, Ms. Brown, is your objection that there
8 would be a conclusion in this?

9 MS. BROWN: It is.

10 THE COURT: As opposed to just an observation?

11 MS. BROWN: Yes, ma'am. Yes.

12 THE COURT: Okay.

13 MS. BROWN: But as far as his notice of
14 information, how he received that, I don't object to
15 that. I don't see that asserted for the truth of the
16 matter, it's just simply if the officer says he did
17 something, his impression, his personal opinion, I
18 would lodge a hearsay objection to that.

19 THE COURT: Okay. Well, can I see it, I guess?
20 Let me just look at that real quick.

21 MRS. ROSS: I can proffer it if we need to do it
22 that way.

23 THE COURT: Okay.

24 (WHEREUPON, The Court reviews the crime scene
25 investigation report.)

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 THE COURT: Okay, why don't we go ahead and
2 proffer it. But the officer isn't making some type
3 of medical conclusion or diagnostic, he said -- I
4 think he said, I didn't notice any marks, didn't see
5 any blood, right? I think that's -- I don't know if
6 he used the term visible signs of injuries. Where he
7 said he was struck with the gun, right?

8 Okay, let me just have you proffer it. And I'll
9 let Ms. Brown put any objection on the record to
10 preserve the record, okay.

11 MRS. ROSS: Okay, we can mark it as Applicant's
12 Exhibit 1 and proffer it at this time?

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, Applicant's Exhibit No. 1 was marked
15 for identification only.)

16 MRS. ROSS: Thank you.

17 BY MRS. ROSS:

18 Q So after reviewing this report, what did you
19 think about that Mr. Richey should have done about the
20 testimony of Mr. Barner at your trial?

21 A Mr. Richey should have presented this to refute
22 or challenge his false testimony about his injuries.

23 Q When you say this, there's some photographs
24 referred to there?

25 A Yes. They are -- they are old secured digital

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 still images of the victim. And I never received those
2 pictures.

3 Q All right. So according to that report, the
4 officer didn't see visible signs of injury and he took
5 pictures?

6 A Correct.

7 Q Of Mr. Barner. Now, did Mr. Richey subpoena
8 that officer to testify at your trial?

9 A Yes. Mr. Downing did testify.

10 Q Did Mr. Richey cross-examine Mr. Downing about
11 that information in that report?

12 A No, he didn't.

13 Q Do you think he should have?

14 A Yes, he should have.

15 Q Do you think that would have made a difference
16 in the outcome of your case?

17 A Yes, it would have.

18 Q Now, did you ever see these pictures that are
19 referred to in that report?

20 A No. No, I haven't.

21 Q Do you know whether -- well, let's talk a little
22 bit about the discovery. You understand that I've been
23 unable to get the discovery file from the solicitor's
24 office, correct?

25 A That's what you told me, yes, ma'am.

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 Q And you received a copy of your Rule 5 Brady
2 discovery motion from Mr. Richey; is that correct?

3 A Yes, I did.

4 Q Now, what kind of pictures were in there?

5 A The pictures where the officer took still
6 pictures of the car. That was just pictures of the inside
7 of the car. That's the only pictures I received.

8 Q All right. So you, despite what it says in that
9 report, you never saw any pictures of Mr. Barner's head?

10 A No, ma'am.

11 Q Now, do you have any way of knowing whether the
12 solicitor turned those pictures over or not?

13 A I have no way.

14 Q But you never saw them prior to your trial?

15 A I never saw them.

16 Q And if they, in fact, existed or based on that
17 report, why do you think there was a due process violation
18 in the way Mr. Fowler, the solicitor, questioned
19 Mr. Barner and argued his case?

20 MS. BROWN: Objection, calls for a legal
21 conclusion.

22 THE COURT: Okay, I'll sustain that.

23 Can you rephrase?

24 MRS. ROSS: Thank you.

25

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 BY MRS. ROSS:

2 Q Why do you think your due process rights were
3 violated?

4 A Because I didn't have--

5 MS. BROWN: Your Honor, I apologize, that's the
6 same objection. It calls for a legal conclusion.
7 It's not -- it's not testimony based on the facts of
8 what he thinks the error was or what he would have
9 liked Mr. Richey to do. It actually goes to whether
10 a due process violation is made up.

11 THE COURT: Okay, I'll sustain it.

12 But I'll just ask Mrs.~Ross to rephrase and
13 maybe get a little foundation.

14 MRS. ROSS: Thank you, Judge.

15 THE COURT: I think he's jumping to the end and
16 I think that he needs to talk more about what could
17 have been done differently.

18 BY MRS. ROSS:

19 Q Now, do you believe Mr. Barner had an injury to
20 his head?

21 A No, ma'am.

22 Q Now, what did the solicitor do regarding
23 questioning Mr. Barner?

24 A Well, he questioned Mr. Barner, what did I
25 allegedly hit him with? And Mr. Barner pointed to his

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 head.

2 And the solicitor said, Is there a knot? I
3 can barely see it from back here.

4 And Mr. Barner said, There's a knot and a
5 gash.

6 Q Now, do you think that knot and gash came from
7 you?

8 A No, ma'am.

9 Q And your defense was that this was an issue car
10 and can you explain what your defense was?

11 A My defense is that Mr. Barner -- we both used
12 drugs, at the time. We was both using drugs, at the time.
13 And he lent his car out for drugs.

14 Q And have you heard the expression, an issued
15 car?

16 A Yes, I've heard that issue -- I mean, that
17 expression, yes.

18 Q All right. For that reason -- or why was the
19 knot important or damaging in your case?

20 A Because Mr. Richey said I assaulted him and took
21 his car.

22 Q Mr. Barner?

23 A Mr. Barner, excuse me. Mr. Barner said that I
24 assaulted him and took his car.

25 Q All right. And, in fact, your defense was that

JOSEPH CHAPPELL-DIRECT BY MRS. ROSS

1 you did not?

2 A I did not.

3 Q And so what was the effect of those comments
4 about the knot on the head?

5 A The effect?

6 Q On the jury?

7 MS. BROWN: Your Honor, speculation.

8 THE COURT: Okay, yeah, I will sustain that.

9 MRS. ROSS: I apologize, Your Honor.

10 BY MRS. ROSS:

11 Q In your opinion, after reviewing discovery, what
12 did you think should have happened?

13 A I think it had an effect on the jury because he
14 did not have those injuries. And it was like a year later
15 he came to court with those injuries. And the jury seen
16 those injuries so I think it had an effect on their
17 opinion.

18 Q Did Mr. Richey talk to Officer Downing to bring
19 out what's said in this report?

20 A No, he didn't. Mr. Richey only questioned
21 Mr. Downing about the fingerprints.

22 Q So the jury didn't get to hear anything about
23 what was in this report?

24 A No, ma'am.

25 Q Now, and the solicitor brought out all these

JOSEPH CHAPPELL-CROSS BY MS. BROWN

1 arguments to the jury?

2 A That's correct.

3 Q Now, are there any other issues that you'd like
4 to present at your PCR?

5 A No, ma'am, that's it.

6 MRS. ROSS: Thank you, no further questions.

7 THE COURT: Cross-examination, okay.

8 MS. BROWN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. BROWN:

11 Q Mr. Chappell, good morning to you, sir.

12 A Good morning.

13 Q Just have a few questions. If you recall, prior
14 to your trial going forward, you made the motion to
15 dismiss Mr. Richey as your counsel; is that correct?

16 A Yes, I did.

17 Q And part of that was because you allege that he
18 hadn't gone to the scene where the carjacking occurred;
19 correct?

20 A Not actually gone to the scene.

21 Q Okay.

22 A I was trying to relay the message to the Judge
23 that Mr. Richey did not do a reasonable investigation.
24 And I had witnesses that could put me at the store, which
25 was -- which really wasn't a store, it was just like a

JOSEPH CHAPPELL-CROSS BY MS. BROWN

1 clubhouse. And could put me there during the time that
2 Mr. Barner said this alleged event happened. And
3 Mr. Richey did not go and try to do an investigation on my
4 witnesses. He said he went there the day of Christmas.
5 And he was going to see his mom. Which his mom stayed
6 down the street from where this alleged event happened.

7 Q Do you recall Mr. Richey explaining that he grew
8 up in that area?

9 A He said he grew up in that area. He said he was
10 familiar. Familiar doesn't mean that you investigate. He
11 was just familiar with the area.

12 Q And you shared with us that you knew Mr. Barner
13 and y'all were from that area as well?

14 A Well, Mr. Barner and Mr. Richey are from that
15 area. I have a sister that stays in that area. They grew
16 up in that area. They are a little older than I am. And
17 but yeah, they grew up in that area.

18 Q Okay. Well, knowing that there was already a
19 connection and Mr. Richey had expressed that prior to
20 trial --

21 A No, Mr. Richey did not express that prior to
22 trial. I didn't know anything that Mr. Richey had any --
23 that he knew Mr. Barner. I didn't know that. He didn't
24 never express it before trial.

25 Q Well, let me make it clear. I'm talking about

JOSEPH CHAPPELL-CROSS BY MS. BROWN

1 the motion that you made?

2 A Oh, I'm sorry.

3 Q That's okay. That's all right. We'll get to
4 the same portion of the transcript. During that motion
5 when you're trying to dismiss him, he did say he was from
6 that area, in fact, had been visiting there. And that was
7 to address your, at least, the concern about going to the
8 scene. So you were aware that he was from that area, at
9 least, by the motion to dismiss it; is that a fair
10 statement, Mr. Chappell?

11 A That's a fair statement.

12 Q But what I wanted to ask you is, you heard the
13 cross that -- the cross-examination testimony from
14 Mr. Barner, when Mr. Richey was asking Mr. Barner
15 questions. And they asked about football or talked about
16 football or softball and that sort of thing. So at trial
17 when you heard that and knowing what you knew from the
18 motion to dismiss Mr. Richey, did you do anything at that
19 time? Like, alert the Judge I have a concern that there
20 may be a conflict or ask the Judge to clarify?

21 A No, I didn't. But let me -- let me say, I'm
22 not -- I'm not a lawyer. So I don't know these things
23 until it comes out later on when you do a little research
24 and study. So, you know, that's the way I am with that.

25 Q The first time you brought it up would be in the

1 PCR?

2 A Yes, ma'am.

3 Q And isn't it true, sir, that you contacted
4 Mr. Richey and obtained your file that Mr. Richey had?

5 A Yes, I wrote Mr. Richey and asked for my entire
6 case file.

7 Q Okay. And in that case file you saw some
8 reports, correct?

9 A I got three reports, yes.

10 Q And I wasn't clear on all your testimony before
11 when you said that you had reviewed certain photographs,
12 you actually saw those photographs in SCDC?

13 A Well, at the institution I'm at, they don't
14 allow you to have photographs. But they will allow me to
15 look at them and they put them up. I seen the
16 photographs. They was photographs of the inside of the
17 car. And I was looking for the photograph of Mr. Barner
18 so that I could dispute his alleged injuries. The
19 pictures, to me, are more than -- speak louder than a
20 thousand words to me, you know.

21 Q And when you're reviewing that file, you're
22 sitting there going through the pages -- I'm sure you're
23 going page-by-page, is that fair?

24 A Somewhat.

25 Q Okay. Do you recall seeing any listing from the

JOSEPH CHAPPELL-CROSS BY MS. BROWN

1 solicitor's office that, essentially, said, these are the
2 items that we're given you, Mr. Richey. Do you remember
3 that?

4 A No, I didn't see any items -- see any listings
5 of that nature.

6 MS. BROWN: Okay. Okay. Beg the Court's
7 indulgence for just a second, Your Honor, please?

8 THE COURT: Okay.

9 BY MS. BROWN:

10 Q Mr. Chappell, during the trial, you didn't have
11 any indication that The State was attempting to show some
12 substantial injury, did you?

13 A What do you mean substantial injury? I mean. .
14 .

15 Q Okay. Well, I think you might agree with me
16 that you can be hit and there's not a bruise or blood or a
17 cracked bone and you can still receive a hit?

18 A Yes but he didn't never say that. That's what
19 Mr. Barner's testimony. Mr. Barner's testimony is that I
20 hit him with a gun and that he sustained injuries from
21 that. Which was a gash and a knot. The solicitor, who
22 was questioning Mr. Barner, even says, You got a knot?
23 That's a knot right there. And Mr. Barner relayed that
24 message saying that yeah, that's what it was. Even when
25 Mr. Richey was cross-examining him, he even said to

JOSEPH CHAPPELL-CROSS BY MS. BROWN

1 Mr. Richey --

2 Mr. Richey was saying, How did he hit you?
3 Did he hit you with a full swing? He said here's the
4 proof right here, you know. He's showing this to the
5 jury.

6 MS. BROWN: Thank you, Mr. Chappell, I
7 appreciate that.

8 No further questions, Your Honor.

9 THE COURT: Redirect?

10 MRS. ROSS: No redirect, Your Honor.

11 THE COURT: Okay, I do have one matter, though,
12 in regard to this report from the officer, that was
13 proffered and I am going to admit that into evidence.
14 I understand The Respondent's objection to that.
15 That will be Applicant's Exhibit No. 1.

16 (WHEREUPON, Applicant's Exhibit No. 1 was
17 admitted into evidence.)

18 THE COURT: Is there any further testimony
19 regarding that document or that exhibit? Either on
20 direct or cross?

21 MRS. ROSS: I can direct more readings from it
22 and bring that out.

23 THE COURT: Okay.

24 MRS. ROSS: But it's also apparent on the report
25 itself.

JOSEPH CHAPPELL-EXAMINATION BY THE COURT

1 THE COURT: Okay. And, of course, Ms. Brown,
2 I'll allow you to ask any questions you deem
3 appropriate regarding that issue.

4 REDIRECT EXAMINATION

5 BY MRS. ROSS:

6 Q Just one more thing, and this goes to what the
7 victim stated, which I understand would be hearsay. But
8 it is just what that officer said and would go to his
9 cross-examine. What did he say about -- what does the
10 report say that victim one stated he thought that you had
11 done?

12 A Says, Victim one stated that he thought the
13 suspect had struck him in the head with a gun but stated
14 that he did not see anything in the suspects hands during
15 the incident. So he could not be positive.

16 Q And that's before the report goes on to say they
17 did not observe any visible signs of injury and took
18 pictures?

19 A Right. Right.

20 MRS. ROSS: All right, nothing further.

21 THE COURT: Any cross?

22 MS. BROWN: No further questions, Your Honor,
23 thank you.

24 THE COURT: Okay, thank you.

25 EXAMINATION

JOSEPH CHAPPELL-EXAMINATION BY THE COURT

1 BY THE COURT:

2 Q So sir, I do have just one thing that I think I
3 need to state. In the transcript that you've been
4 referring to, that was your jury trial of April the 11th
5 of 2018; correct?

6 A Yes.

7 THE COURT: Okay. I just thought we needed to
8 put that on the record just to make sure we are all
9 on the same page about that. Okay, thank you. Sir,
10 if you'll watch your step, okay.

11 THE WITNESS: Thank you.

12 THE COURT: And I have the transcript in my
13 packet, Mrs. Ross and I've marked the pages you've
14 been referring to, okay?

15 MRS. ROSS: Thank you, Your Honor.

16 THE COURT: Okay.

17 MRS. ROSS: That's The Applicant's case, at this
18 time.

19 THE COURT: Okay.

20 Ms. Brown, are there any motions, I guess,
21 before we hear from The Respondent?

22 MRS. ROSS: No.

23 MS. BROWN: Nothing from The State, Your Honor.

24 THE COURT: I'm happy to hear from The
25 Respondent.

1 MS. BROWN: Thank you, Your Honor, The State
2 calls Mr. Rodney Richey, please.

3 THE CLERK: Mr. Richey, please place your left
4 hand on the Bible and raise your right hand.

5 RODNEY RICHEY, after being duly sworn, testified
6 as follows:

7 THE CLERK: Thank you. Please be seated and
8 state your name for the record.

9 THE WITNESS: Rodney Richey.

10 DIRECT EXAMINATION

11 BY MS. BROWN:

12 Q Good morning, sir.

13 A Good morning.

14 Q Mr. Chappell's trial was April 11th of 2018,
15 just for purposes of the record today. Would you briefly
16 describe the nature of your practice at the time that you
17 were representing Mr. Chappell and your experience.

18 A I was doing criminal, car wrecks, about 20
19 years, 22 years, somewhere around there.

20 Q Okay. And you routinely received discovery from
21 the solicitor's office?

22 A Yes, I do.

23 Q And do you go over that discovery with your
24 client?

25 A Yeah. And he was in jail so mailed him a copy,

RODNEY RICHEY-DIRECT BY MS. BROWN

1 so he got a copy while the case was pending. And I talked
2 to him about it.

3 Q Do you recall, Mr. Richey, any photographs taken
4 in or about the time the carjacking occurred?

5 A It was photographs taken. What that were now I
6 can't remember. He requested a second copy of discovery
7 when he got to SCDC. I sent him his file because that was
8 his property.

9 Q And would those photographs, to your knowledge,
10 have been in the file that you sent to SCDC?

11 A Yeah, everything I had in the file, I sent it to
12 him.

13 Q In your opening statement on Page 54 of the
14 transcript, you started out with explaining to the jury
15 that this was about addiction. Can you tell us a little
16 bit about the theory that you used for the defense?

17 A Okay. Let me say this, Joe, he wanted to pursue
18 the case in way that wasn't to his advantage. What his
19 theory was in the case was, as he said, this was a drug
20 transaction. As he testified to, where this happened, I
21 kind of grew up in this neighborhood. My dad still lives
22 down there. And there was a fingerprint in the car from a
23 guy, Jeffrey Lock, okay. And Jeffrey was -- Jeffrey is
24 probably 15 years younger than me but he lived kind of up
25 the street and my dad, you know, he knows everybody down

RODNEY RICHEY-DIRECT BY MS. BROWN

1 there, he's been down there so long.

2 And so I was talking to my dad, actually,
3 about Jeffrey Lock. And I said, Dad, you know, because
4 they live -- he lives somewhere down there because Jeff
5 was a streetwalker, as I called him. He's walking up and
6 down the street on drugs.

7 And so I asked my dad, I said, Hey, can you
8 help me find Jeffrey Lock?

9 And my dad was like, yeah, I see him out
10 here and I'll help you find him.

11 Well, I was able to find Jeffrey because he
12 was in and out of jail. And his fingerprint was in that
13 car. And Mr. Chappell's whole theory was if we get Jeff
14 to come testify, Jeff will say that he was there that
15 night and none of this happened because -- so we got
16 Jeff's fingerprint in the car, you know, I told
17 Mr. Chappell, I said, listen, this Jeffrey Lock, you
18 can't -- I would not trust him to come to your case and
19 testify for you. I would not do that because he's not a
20 trustworthy person. And he was adamant about, oh, yeah,
21 Jeff, Jeff, Jeff, Jeff.

22 And so the day of the trial, we actually,
23 got lucky because Jeff had gotten arrested the day before,
24 so he was coming. For a long period of time we couldn't
25 find him, he was gone. Luckily, the day before trial, he

RODNEY RICHEY-DIRECT BY MS. BROWN

1 got arrested on some charge that he was down at the jail
2 and I had them bring him over. And I told Mr. Chappell
3 look, this is not what we need to be doing. We don't need
4 to be doing this case this way because we can't depend on
5 him.

6 So when the trial started, I believe he
7 wasn't in the building yet. And so I gave this opening
8 statement, talked about these fingerprints, all this
9 stuff. I go down, after I got a break, Jeff's downstairs.
10 I'm like, Hey, Jeff, you're going to testify, da da da.

11 And Jeff to me says, No, I can't say that's
12 what happened. No, I can't say that.

13 I'm like, Well, you were in this car with
14 prints?

15 He says, No, I can't say that that's not
16 what happened, okay.

17 So now I come up here and I tell
18 Mr. Chappell, I say, Hey, Jeff's downstairs, he's not
19 going to testify the way that we think he's going to --
20 the way you think he's going to testify. So now, we're
21 just -- now we're just, you know, we done -- we done done
22 all this stuff and now it's just not going to work. And I
23 told Mr. Chappell that this is not the way this case
24 should be pursued. But he was -- this is what he wanted
25 to do, this is how he wanted to try the case. And being

RODNEY RICHEY-DIRECT BY MS. BROWN

1 the attorney, it wasn't reasonable for me to pursue the
2 case the way he wanted. Wasn't unreasonable, did I agree
3 with it? No. But it wasn't unreasonable in light of the
4 plea offer we had gotten, which I think was like five
5 years or something that that wasn't the way to pursue the
6 case. But that's what happened and that's what -- that's
7 what transpired.

8 And I'm talking about this Coneze Barner.
9 Coneze Barner was a guy that grew up in my neighborhood.
10 And he was about four or five years older than me. And so
11 when I was in like fifth or sixth grade, he was playing
12 high school football. We went to the games. He was a
13 fairly good player, I knew him. He never came to my
14 house, never. My mom would -- he never came to my house.
15 And as a high school student, I was a elementary, maybe
16 middle school, so I never talked to him. I was thinking
17 about this yesterday. The first time I, actually, talked
18 to him was at the trial. I mean, had the first words I
19 ever spoke to him.

20 And during the pendency of the case, I --
21 Joe and I talked about it and he told me, he said, Hey,
22 this guy's on drugs now, he went to the military, he told
23 me all this information about him. And he said something
24 about Mr. Barner being sick. I don't know if it was
25 diabetes, it was something. And he told me he was on a

RODNEY RICHEY-DIRECT BY MS. BROWN

1 walker. So he gave me all this information about him.
2 And so my whole thing with him is I told him, look we're
3 going to go up here and try this case, this guy is going
4 to come in, he's going to, based off what he said, he's
5 going to be sickly, he's going to be on crutches, all this
6 stuff, that the appearance of him, in terms of you, you're
7 a bigger build, he looks like a weak, feeble guy that I
8 don't think this is going to work. But he was like Jeff's
9 going to come and save the day and that's not quite what
10 happened.

11 Q Were there any other witnesses that Mr. Chappell
12 offered that you can recall?

13 A No. When those fingerprints came back from that
14 car and they were Jeff Lock's, he -- he thought that was a
15 winner.

16 Q And when you were saying that he knew the
17 victim, that was Mr. Chappell knew the victim?

18 A Yeah, he knew him real well because he said that
19 he had -- as he said before, he'd done drugs. And see, I
20 told him that there's a perception out there that what
21 happens in that neighborhood, okay, I told Joe, I said, I
22 can understand what you're saying, that neighborhood, he
23 gave you the car for drugs, all that, I understand how all
24 this stuff works. But I think when you get 12 people up
25 here, they may not see it that way because sometimes they

RODNEY RICHEY-DIRECT BY MS. BROWN

1 don't have, I phrase it, that street understanding of what
2 goes on.

3 Q Mr. Richey, I'm sure that you looked at the
4 elements of the offense at the time of trial?

5 A Yes, ma'am.

6 Q Can you recall those offhand?

7 A I can't recall what it was. I just know that in
8 this particular case, that we -- we were not -- I just
9 told Joe that we were not going to win. Because I just
10 believed that because of the way this victim looked, that
11 The State could believe -- that The State could prove or
12 give a good case that he used threat, force and
13 intimidation and overtook the guy to get the car. And I
14 said, that's the problem we have and I just think that
15 we're not going to win because of that.

16 Q And I've got a few questions about the head
17 injury. Would it help you to look at the statute so I can
18 talk to you about the elements?

19 A Yeah.

20 MS. BROWN: May I approach to refresh my
21 recollection?

22 THE COURT: Yes, ma'am.

23 BY MS. BROWN:

24 Q Mr. Richey, I'm showing you a copy of code
25 section that's 16-310-75.

RODNEY RICHEY-DIRECT BY MS. BROWN

1 A Okay.

2 Q Would that have been what you used for trial?

3 A Yes, ma'am.

4 Q Okay. And that sort of set out separately, that
5 injury -- or was it a significant injury?

6 A Yes, ma'am.

7 Q How they have it phrased?

8 A Yes, ma'am.

9 Q Okay. That actually goes to the sentencing
10 range, does it not?

11 A Yes, ma'am.

12 Q Did you happen to explain the elements to your
13 client?

14 A I actually -- me and him went over the elements,
15 we went over the case. He was just so adamant that Jeff
16 was going to come in the courtroom and testify that he was
17 a witness to it and it never happened. I could not get
18 him out of that. I just couldn't get him out of that.
19 But I explained the elements with him and we went through
20 with the trial.

21 Q And you didn't have any indication that The
22 State was trying to, actually, show infliction of great
23 bodily injury; right?

24 A Well, I knew -- I knew that The State was
25 pursuing the case in a way that he used great force and

RODNEY RICHEY-DIRECT BY MS. BROWN

1 overcame this guy and took the car. But I just believed
2 in the case because of the shape that this victim was in.
3 A feebly guy with crutches and all this stuff, that --
4 that that's what they're going to use on the case. And
5 that's what I told Mr. Chappell. That I thought that he
6 might would have to testify in the case. But his prior
7 record, he didn't want to testify. And I'll say this, I
8 told him, I told him during this case, I was like, listen,
9 with what goes on down there, you know, I don't doubt that
10 you're telling the truth. I mean, that's what I told him.
11 I said, I don't doubt what goes on down there, I don't
12 doubt you're telling the truth. I just don't think it's
13 going to play real well in the courtroom.

14 Q And at sentencing, I believe you stated the
15 maximum would have been 20 because there was no showing or
16 an offer of substantial bodily injury; is that correct?

17 A Yes, ma'am.

18 Q So his maximum was 20 and he got a 15 year
19 sentence?

20 A Yes, ma'am.

21 Q And did Mr. Chappell ever contact you after
22 sentencing and make any complaints or comments about the
23 trial and sentence?

24 A No. We knew once Jeff was not going to
25 cooperate, we knew what was -- we kind of knew it might

RODNEY RICHEY-DIRECT BY MS. BROWN

1 not go our way.

2 Q Okay. And let me ask you a little bit about
3 your cross-examination of Mr. Barner. If you recall, you
4 asked about the swing and what kind of swing would be used
5 with that gun. What was your intent to show the jury by
6 those questions?

7 A Well, I guess I was trying to show, I'm
8 assuming, I can't remember, but -- I can't remember, I
9 just can't remember.

10 Q Okay. And you did ask about the kind of
11 strength that it would take and I believe he might have
12 said it was strong enough to daze him?

13 A Right, okay.

14 Q So you did try to elicit testimony, exactly what
15 kind of hit from the gun that Mr. Barner received;
16 correct?

17 A Yes, ma'am.

18 Q And I believe you did establish that the victim
19 didn't have to go to the hospital?

20 A Yes, ma'am.

21 Q And the victim actually offered that EMS workers
22 came by but he didn't get the treatment; is that correct?

23 A Yes, ma'am.

24 MS. BROWN: Thank you, Mr. Richey.

25 No further questions, Your Honor.

RODNEY RICHEY-CROSS BY MRS. ROSS

1 THE COURT: Okay, cross-examination.

2 CROSS-EXAMINATION

3 BY MRS. ROSS:

4 Q Hi there. I guess I'm going to first start
5 with, Mr. Richey, I just want to show you the warrant in
6 the case.

7 A Yes, ma'am.

8 Q What does that say?

9 A Can you tell me because I don't have my glasses?

10 Q Oh, yeah. Does it say, The defendant hit the
11 victim in the head with a metal object?

12 A Yes, ma'am.

13 Q And that's the warrant that you were working --

14 A Yes, ma'am --

15 Q -- off, pretty much.

16 A That's the warrant, yes, ma'am.

17 Q And then I, also, refer you to page -- the
18 closing arguments, Page 130, Line 19.

19 A Yes, ma'am.

20 Q Could Mr. Fowler had said Mr. Chappell hit
21 Mr. Barner in the head and Mr. Chappell took his car?

22 A Okay, yeah.

23 Q In closing. Then on Page --

24 Excuse me, Judge, 135, Line 10, Line 9.

25 Excuse me, 135, Line 9.

RODNEY RICHEY-CROSS BY MRS. ROSS

1 A Yes, ma'am.

2 Q Could he have said when he got there, excuse me,
3 Line 8, When he got there Mr. Chappell hit Mr. Barner?

4 A Uh-huh.

5 Q That's in his closing arguments. So there were
6 a number of references to this hit besides the direct
7 examination of Mr. Barner?

8 A Yes, ma'am.

9 Q Now, do you recall, could you see a head injury
10 on Mr. Barner in the courtroom?

11 A I don't remember it. I don't remember if he had
12 a head injury or not. I don't remember.

13 Q But if the record reflects he was talking about
14 a head injury during his testimony--

15 A I can't dispute that, no, ma'am.

16 Q All right. And this trial was 13, 14, over a
17 year after the incident, correct?

18 A Yes, ma'am.

19 Q And you heard direct about the forensic report
20 of Officer Downing?

21 A Yes, ma'am.

22 Q Now, you didn't cross-examine Mr. Downing about
23 those comments?

24 A If the transcript said I didn't, I didn't.

25 Q All right. And but Mr. Fowler did elicit

RODNEY RICHEY-CROSS BY MRS. ROSS

1 testimony about a injury that Mr. Downing didn't put on
2 that report?

3 A Yes, ma'am.

4 Q All right. And did you by any chance keep -- I
5 know you sent all this discovery to Mr. Chappell at his
6 request, did you by any chance keep the cover letter or
7 did you get a cover letter with that like they use to do,
8 give us?

9 A Yeah, I probably did but I sent him the whole
10 thing. He wrote me a letter saying that it was his
11 property and he wanted it. So I sent it to him.

12 Q All right. And that included pictures?

13 A The whole thing, yes, ma'am. The whole thing I
14 sent it to him. He made a request and then pursuant to, I
15 think, the [indiscernible] act that it was his property
16 and he wanted it and I gave it to him.

17 Q Do you specifically recall any pictures of
18 Mr. Barner's head?

19 A I don't know, they could have been in there, I
20 don't know.

21 MRS. ROSS: All right. Beg the Court's
22 indulgence. I've got no further questions.

23 THE COURT: Okay, any redirect?

24 MS. BROWN: No, Your Honor. Thank you.

25 THE COURT: Okay, any objection to Mr. Richey

RODNEY RICHEY-CROSS BY MRS. ROSS

1 being excused?

2 MS. BROWN: None from The State.

3 MRS. ROSS: None from The Applicant.

4 THE COURT: Thank you.

5 THE WITNESS: Thank you.

6 MS. BROWN: Your Honor, that's The State's case.

7 THE COURT: Okay.

8 MRS. ROSS: Judge, one thing I sort of messed
9 up, I did not elicit testimony from Mr. Chappell. He
10 did receive discovery but the photographs, he's not
11 allowed to see photographs. SCDC keeps him from
12 having his photographs. And that's the reason if
13 there is some photograph of --

14 MR. CHAPPELL: I viewed the photographs when
15 they sent them to me. I couldn't keep them with me.
16 I couldn't have them on my person.

17 MRS. ROSS: Did you recall the photograph?

18 MR. CHAPPELL: There was no -- I looked through
19 it and there was no photograph of Mr. Barner with
20 those injures.

21 MRS. ROSS: Okay.

22 MR. CHAPPELL: Or without the injuries.

23 MRS. ROSS: That would have been the testimony I
24 would have elicited.

25 THE COURT: Okay. And so the testimony that I

1 understood was that Mr. Chappell did not receive the
2 photograph of the injury, is that still the
3 testimony?

4 MR. CHAPPELL: Yes, ma'am, yes, ma'am.

5 THE COURT: And my understanding was there were
6 some photographs but it was of the car or something
7 that was listed on this forensic report?

8 MR. CHAPPELL: Yes, ma'am.

9 THE COURT: But not of the victim?

10 MR. CHAPPELL: Yes, ma'am.

11 THE COURT: Okay.

12 Any objection to what?

13 MS. BROWN: I would just have a question.

14 THE COURT: Okay, well, why don't we do this.

15 Any reply testimony on behalf of The Applicant?

16 MRS. ROSS: Thank you, Your Honor. We'd call
17 Mr. Chappell again to the stand.

18 THE COURT: Okay, sir, just take your time
19 coming up, okay.

20 THE BAILIFF: You're still under oath.

21 THE COURT: Sir, I'll put it on the record.

22 You're still under oath, okay.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: Okay. And so we are now in reply
25 testimony of Mr. Chappell on direct examination, he's

1 still under oath.

2 Mrs.~Ross.

3 MRS. ROSS: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MRS. ROSS:

6 Q Mr. Chappell, you heard Mr. Richey's testimony
7 about sending you the discovery, did you receive that?

8 A Yes, I wrote Mr. Richey and asked for my entire
9 discovery. I received it, yes.

10 Q And as far as the photographs in the discovery,
11 what were they?

12 A The photographs were of the inside of the car.
13 Just the inside of the car.

14 Q Now, you testified earlier regarding a forensic
15 report referring to a photograph of Mr. Barner's injury?

16 A Yes.

17 Q Were there any photographs Mr. Barner that you
18 saw?

19 A No.

20 MRS. ROSS: All right. And I believe that would
21 be the extent of my questions for you, at this time.

22 THE COURT: Okay, anything, Ms. Brown?

23 MS. BROWN: Briefly, Your Honor.

24 RECROSS-EXAMINATION

25

JOSEPH CHAPPELL-RECROSS BY MS. BROWN

1 BY MS. BROWN:

2 Q Mr. Chappell, do you have a property report from
3 SCDC that would list out everything that you would have
4 available in your legal materials?

5 A No, I don't have a property report.

6 Q And you are aware that SCDC does not allow
7 inmates to look at photographs of their victim?

8 A I was made aware of that at that time but she
9 said that I could look at them photographs. I have to be
10 up there and look at them, I couldn't take them back to my
11 cell and keep them on my person. I could look at them
12 anytime I wanted to. I could come up there and look at my
13 discovery anytime I wanted to. I just couldn't keep it on
14 my person.

15 Q Okay. And did you ask them, in reviewing the
16 file, if there were photographs of the victim that they
17 were not putting in that stack for you to view?

18 A She opened -- when I went to the mail room, she
19 opened my mail right then in front of me. And allowed me
20 to look through my discovery right then. There was no
21 pictures of Mr. Barner in there. She opened it right in
22 front of me.

23 Q Okay.

24 A So I never got those pictures. The only
25 pictures I got were of the car. The inside of the car.

JOSEPH CHAPPELL-FURTHER REDIRECT BY MRS. ROSS

1 MS. BROWN: Okay, thank you, Mr. Chappell.

2 No further questions, Your Honor.

3 THE COURT: Okay.

4 Anything else on redirect?

5 MRS. ROSS: No, Your Honor.

6 FURTHER REDIRECT EXAMINATION

7 BY MRS. ROSS:

8 Q Well, was there by any chance a cover sheet from
9 the solicitor's office listing everything that they had
10 provided in discovery?

11 A No, no, ma'am.

12 MRS. ROSS: All right, no further questions.

13 THE COURT: Okay. Thank you, sir watch your
14 step.

15 Anything else in reply, Mrs. Ross?

16 MRS. ROSS: No, Your Honor.

17 THE COURT: Anything by way of motions from
18 either party?

19 MRS. ROSS: No, Your Honor.

20 MS. BROWN: Nothing from The State, Your Honor.

21 THE COURT: Okay. I am happy for y'all to make
22 a summation if that is your wish, you're not required
23 to. Don't feel any pressure to. I just don't like
24 to deny that if people believe they should or if they
25 think it would be helpful to me.

1 MRS. ROSS: Well, I can be fairly brief and go
2 back over the issues you heard. Mr. Chappell did
3 initially put in a Brady argument but I don't know
4 how to substantiate it because the solicitor's office
5 no longer has the file. And I just don't know, there
6 seems to be suggestions that there might have been
7 some pictures of the victim out there. It certainly
8 is something that would happen in the regular course
9 of pursuing the case. But Mr. Richey didn't recall
10 any pictures. Mr. Barner -- I mean, Chappell didn't
11 recall seeing any pictures. So I just do not see any
12 pictures there. But I do think referring to that
13 injury and it was on the warrant, it was part of this
14 case when there was some reports by law enforcement
15 and EMS results that the injury really wasn't there.
16 And that's certainly problematic in this case. And
17 that didn't give Mr. Chappell a right to a fair
18 trial.

19 THE COURT: Okay, thank you.

20 Ms. Brown.

21 MS. BROWN: Thank you, Your Honor. A few
22 comments. We do maintain that the Brady motion
23 should be dismissed. Excuse me, Brady issue should
24 be dismissed. We, also, maintain it should be
25 dismissed because counsel would not have had an

1 obligation under Brady. That is, specifically, The
2 State. And there has been no evidence of what The
3 State actually did turn over. But I will say that
4 there's certainly an indication that discovery
5 reflected, if not for the truth of the matter, but
6 something to investigate for the visible appearance
7 of any type of injury. The problem with that, Your
8 Honor, is really a photograph or testimony along
9 those lines is of negligible value.

10 The carjacking statute does not require to show
11 any kind of significant injury. One can be hit and
12 not have a particular injury. No broken bones, no
13 blood. You can be hit and have that force necessary
14 to exert, when you're taking a motor vehicle from
15 another, that would satisfy the element of
16 carjacking. So again, all of the information -- and
17 it is a little bit hit or miss on the photographs,
18 who saw what, when, where, what they would have
19 shown. That has not been sufficiently proven, I
20 would submit to you. At least, not by the
21 preponderance of the evidence.

22 But again, if for the sake of argument, we say
23 there's no photograph there, it's negligent. We
24 still have the testimony at trial from the victim
25 that he was hit on the head with a gun. If the

1 absence of a significant injury, however, was
2 beneficial. Because under the carjacking statute,
3 that would put Mr. Chappell in the lower mandatory
4 sentence -- I'm sorry, maximum sentencing. He was
5 facing 20 years as opposed to 30, with significant
6 injuries, the sentencing range increases. But that,
7 again, is the only thing that we're talking about
8 with the showing the injury of the victim. We
9 certainly have the evidence that supports it.

10 So, Your Honor, that leaves us, I believe, with
11 the amended issues. Due process violation flows into
12 what we were just talking about with the presentation
13 of the evidence. There's been no showing that
14 anything was false. You do not have to have a
15 picture video recording of any type, you have direct
16 testimony. We have direct testimony from the victim
17 that there was injuries. So there's not false
18 information of a head injury to the victim shown.
19 Therefore, there is nothing to show in the corollary
20 ineffective assistant of counsel claim based on that
21 set of circumstance.

22 And lastly, Your Honor, there's been no showing
23 of an actual conflict of interest. It is true
24 Mr. Richey knew individuals from this area. But
25 knowing individuals from this area was actually

1 beneficial to Mr. Chappell because Mr. Richey
2 testified that he was able to locate Mr. Lock through
3 his contacts in that area. It's too broad and vague,
4 Your Honor. This testimony about a connection to
5 Mr. Barner, to constitute an actual conflict of
6 interest that would cause Mr. Richey to act in such a
7 way that would be detrimental to his client's
8 interest. I would submit to you that that has not
9 been proven by preponderance of the evidence. Which
10 is Mr. Chappell's burden to show. I thank you for
11 the opportunity to argue, Your Honor.

12 THE COURT: Yes, ma'am.

13 Okay. So is there anything else y'all need time
14 to get to me? Any other documents or anything?
15 Okay. All right. So the only exhibit that we have
16 is Applicant's Exhibit 1, correct? Then, of course,
17 I've got the filings in my packet. Okay. So thank
18 you all very much.

19 So, Mr. Chappell, I know that you don't
20 routinely appear in front of me but I want to read
21 everything and then I will issue instructions for my
22 decision or the decision, okay. I've already heard a
23 lot of hearings this week, I've got a lot of reading
24 to do, but I will make my decision as quickly as I
25 can. I do appreciate your being here. The insight

1 is very important to me. But I wanted the benefit of
2 that to review the transcript of the trial and all of
3 the filings, okay. All right, thank you and good
4 luck to you.

5 MR. CHAPPELL: Thank you.

6 MRS. ROSS: Thank you, Judge.

7 MS. BROWN: Thank you, Your Honor.

8 THE COURT: Okay, that will conclude the
9 hearing.

10 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
21 day of September, 2023.

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

May 6, 2025

APRIL P. HERRON, Court Reporter

**Greenville County Forensic Division
CRIME SCENE INVESTIGATION REPORT**

AGENCY: Greenville County Sheriff's Office
AREA: 7

CASE NUMBER: 1-17-040380

INCIDENT TYPE:	Armed Robbery Recovered Stolen Vehicle	INCIDENT LOCATION:	216 Satterfield Dr. Greenville, SC
VICTIM (1):	Barner, Coneze	ADDRESS:	[REDACTED]
VICTIM (2):	Parker, Lillian		Greenville, SC
COMPLAINANT:		ADDRESS:	
INV. OFFICER	Stroud	UNIT NUMBER	D10

INCIDENT SUMMARY/ACTION (S) TAKEN:

PAGE 2 Of 3

Victim 1 and Deputy Fuller (Unit K16) then arrived on scene. Deputy Fuller stated that the suspect had been apprehended at [REDACTED] Greenville, SC but stated that he did not know the suspect's name at that time. Victim 1 stated that at approximately 2145 hours on the above listed date while he was parked at 3158 White Horse Rd. Greenville, SC (Spinx) he was approached by the suspect who asked him for a ride. Victim 1 stated that he agreed and the suspect entered the vehicle and sat in the front passenger side seat. Victim 1 stated that while driving the suspect, the suspect began to put his hands in his pocket and began to dig around for something making victim 1 feel uncomfortable. Victim 1 stated that the suspect then asked him to pull the vehicle over, which he did. Victim 1 stated that the suspect then told him he was going to take the vehicle. Victim 1 stated that he believed the suspect was only joking around at that time. Victim 1 stated that the suspect then struck him on the left side of his head with an unknown object and began to kick him. Victim 1 stated that he then exited the vehicle through the front driver side door while still being kicked by the suspect and stated that the suspect then got into the front driver side seat and drove off in the listed vehicle. Victim 1 stated that he thought the suspect had struck him in the head with a gun but stated that he did not see anything in the suspect's hands during the incident so he could not be positive. Victim 1 stated that a Newport cigarette box located on the front driver side floorboard was not his and did not know how it got there.

The R/O did not observe Victim 1 to have any visible signs of injuries and had the victim point to the location where he was struck. Victim 1 pointed to the left side of his head, near his hairline and above his left ear.

The R/O secured digital still images of the victim.

The R/O then collected the following item:

-NJD5- (Empty) Newport cigarette box located on front driver side floorboard (0103 Hrs.)

The R/O then processed the following areas for latent print development utilizing latent powder:

- The exterior and interior of the front passenger side door
- The exterior and interior of the rear passenger side door
- The exterior of the rear passenger side quarter panel

Positive results were obtained from the following areas:

- The exterior of the rear passenger side door
- The exterior of the front passenger side door
- The exterior of the rear driver side door

Elimination prints were obtained from the victim.

REPORTING OFFICER	Downing, N.J.	STAR#	9152	UNIT #	933	DATE	3/13/17
REPORTING OFFICER		STAR#		UNIT #		DATE	
APPROVING SUPERVISOR	<i>[Signature]</i>	STAR#	8922	UNIT #	919	DATE	3-14-17

TB/03/25/2017

2017 MAR 24 PM 9:27

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Joseph Chappell, #179150,	)	Case No.: 2019-CP-23-6803
	)	
Applicant,	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter comes before the Court by way of an application for post-conviction relief filed by Joseph Chappell on November 20, 2019. A motions hearing was scheduled for September 21, 2023, at the Greenville County Courthouse. Applicant and his appointed counsel, Susannah C. Ross, Esq., were present. Senior Assistant Deputy Attorney General Melody J. Brown represented the State. By agreement, the motions hearing was converted to an evidentiary hearing. After consideration of the testimony given at the hearing, and after reviewing and considering the record, arguments presented by counsel, and the controlling case law, this Court finds that Applicant has failed to carry his burden of proof. Consequently, this Court DENIES relief for the specific reasons set out in this order.

General Procedural History

Applicant is presently incarcerated pursuant to orders of commitment of the Greenville County Clerk of Court. A Greenville County grand jury indicted Applicant in May 2017 for carjacking (2017-GS-23-4041). Rodney Wade Richey, Esq., represented Applicant on the charge. A jury trial was held April 11, 2018. The Honorable Roger L. Couch presided. The jury convicted as charged. Judge Couch sentenced Applicant to 15 years imprisonment. Applicant timely filed a notice of appeal.



Appellate Defender Taylor D. Gilliam of the South Carolina Commission on Indigent Defense, Division of Appellate Defense, perfected the appeal in the form of an *Anders*¹ brief. After the required review, the Court of Appeals dismissed the appeal. *State v. Chappell*, Unpublished Opinion No. 2019-UP-345 (S.C. Ct. App. filed October 9, 2019). The Court of Appeals issued the remittitur on October 25, 2019.

Current Allegations

In his original *pro se* application, Applicant alleged:

- 1) Ineffective assistance of counsel;
 - a) "Evidence Attorney had or knew about but failed to use."
 - i) "Council failed to use Forensic officer's report as evidence During Cross Examination he never asked or question the officer about the report. Were he said he didn't observe victim to have any physical signs of injury and had him point to were he was struck Also he took still photo's of victim."
 - b) "Ineffective Assistance of Council: Discovery violation Brady v. Maryland"
 - i) "Council failed to provide me with all of my Brady motion. I never received pictures of the victim. Council had knowledge this exculpatory evidence if present at trial or before would have been material to the outcome of this case. Thus depriving of a fair trail."

In the amendment filed on September 22, 2022, Applicant, through counsel, raised the following issues:

Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10 & 14 of the South Carolina Constitution due to ineffective assistance of counsel for proceeding with trial when he knew Coneze Bonner, the alleged victim in this case, creating a conflict of interest in his representing the Applicant. (R. p. 79, l. 2)

Due Process violations in that the [State] knowingly presented false

¹ *Anders v. California*, 386 U.S. 738 (1967).

information of injury to the victim's head when officers saw no signs of injury and pictures showed no signs of injury. (R. p. 63).

At the hearing, PCR counsel moved to conform the allegation to the evidence by adding an ineffective assistance of counsel claim regarding counsel's failure to question Coneze Barner about his injury.

Standard of Review: Ineffective Assistance Claims

This Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). "A reasonable probability is a probability sufficient to undermine confidence in the outcome" of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant's burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCF. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) ("the burden of proof is on the applicant to prove the allegations in his application").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the remand hearing and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

Applicant's trial attorney, Rodney W. Richey, appeared credible when he testified during the hearing. Upon review of the transcript of the jury trial, which was held on April 11, 2018, for the criminal offense of Carjacking, the Application, the Return, and all other pertinent documents,

the Court concludes that Applicant does not meet the required standard articulated in *Strickland*, in which Applicant is required to prove by a preponderance of the evidence that counsel was deficient and that he was prejudiced by any deficiency. Therefore, the Applicant has failed to meet his burden of proof and relief must be denied.

Specifically, in regard to Applicant's allegations regarding questioning and potential evidence not used at trial regarding the injuries sustained by Coneze Barner, this Court finds credible Mr. Richey's testimony that he had investigated the facts and prepared for the defense in this matter. His testimony was also credible that he shared his whole file with Applicant. The trial record alone supports that counsel was prepared for trial, vigorously cross-examined witnesses, and argued on behalf of Applicant. Moreover, Applicant has not shown that potential further cross-examination of the victim, or presentation of other witnesses or evidence concerning victim's injuries, shows either deficient performance or prejudice for several reasons.

First, the victim testified that Applicant "looked at [victim] and he said, you going to give me this car. I'm a beast, exactly what he said...." (Trial Tr., at 63). He continued that Applicant hit him "upside [his] head" and asserted that there was a "knot and gash." (Trial Tr., at 63). Barner testified he was hit again, and Applicant "g[o]t against the door of the car and start[ed] kicking [victim] out the car." (Trial Tr., at 64). While he testified that he was "hopping" because his medical boot and crutches were still in the car, and that he was "bleeding," he also testified that he tried to decline the responding deputy's offer to call EMS. (Trial Tr., at 68). Mr. Richey followed-up with cross-examination concerning the "intensity" of the hit; elicited testimony that victim was a soldier and consider the blow "nothing" compared to injuries received in his military career; and elicited that victim required only a "little stitch or Band-aid thing on it, and that's it." (Trial Tr., at 84-86). In other words, while the victim may have appeared to overstate his injuries, he also

admitted a band aid was sufficient. Mr. Richey also underscored the State's burden of proof and challenged the evidence in closing, arguing that had a significant injury been visible, then the State could have presented witnesses who treated such injury or explained the injury, but the State failed to do so. (Trial Tr., at 138-141).

Second, the "great bodily injury" component of the carjacking statute is an element affecting sentencing and will increase the sentencing maximum from twenty years to thirty years. S.C. Code Ann. § 16-3-1075 (A) and (B)(2). The statute, though, provides that carjacking may be proven when the vehicle is taken "by intimidation" such that injury is not required at all to prove the crime. S.C. Code Ann. § 16-3-1075 (B). Here, there was no allegation of "great bodily injury" and none was found to support a greater sentencing range. At sentencing, the parties agreed that "this particular offense carries not more than twenty years" which falls under (B)(1) in the statute; the sentencing portion of the statute that does not require proof of "great bodily injury." (Trial Tr., at 172). In fact, the parties agreed on that prior to trial as well. (Trial Tr., at 10). In short, this was not a "great bodily injury case" at all.

Third, this Court also finds credible and logical the testimony agreeing that an injury can be sustained without a physical showing of the injury, *i.e.*, not every hit on the head will produce a visible bruise or "knot" immediately, or for that matter, at all. Moreover, as noted above, intimidation will suffice to support the charge of carjacking.

Fourth, Mr. Richey's testimony was credible that the defense was originally going in a different direction per Applicant's instructions, but Mr. Richey, upon investigation, determined that the witness to be relied on was not trustworthy and that he would not call him.² Mr. Richey reasonably pivoted to a defense that there was an arrangement for use of the car, and that the

² Applicant has not challenged counsel's strategic decision on this matter in his PCR action.

exchange was fueled by drug addiction. (See Trial Tr., at 53-54; see also Trial Tr., at 97).

“Because decisions regarding cross-examination are strategic, they usually ‘will not support an ineffective assistance claim.’ ” *United States v. Bernard*, 762 F.3d 467, 472 (5th Cir. 2014) (quoting *Dunham v. Travis*, 313 F.3d 724, 732 (2d Cir. 2002)). Additionally, a “decision whether to call any witnesses on behalf of the defendant, and if so which witnesses to call, is a tactical decision of the sort engaged in by defense attorneys in almost every trial.” *United States v. Nersesian*, 824 F.2d 1294, 1321 (2d Cir. 1987).

Based on the facts and circumstances in this case, this Court finds that Applicant has failed to carry his burden of showing deficient performance. Trial counsel impeached the victim’s testimony regarding injury, and credibility as a whole, in other ways and did not leave the testimony about injury unaddressed. That trial counsel followed a different approach than that which Applicant now favors is not evidence of deficient performance. See *Strickland*, at 689 (“There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.”). This Court finds Applicant has not shown that the referenced omitted questions or other “omissions were outside the wide range of professionally competent assistance.” *Id.*, at 690. Even so, had Applicant shown deficient performance, he has still not shown a reasonable probability of a different result, *i.e.*, *Strickland* prejudice. The record shows that trial counsel challenged the victim’s recollection of and description of the injury. And, while Applicant concentrates his argument on a report and picture regarding injuries which were not presented or otherwise used a trial, the presence and extent of physical injury was not at issue. Further, there was no finding of “great bodily injury” used to increase his sentencing exposure – as the prosecution argued, “the Defense has done an excellent job of defeating one element of a completely different crime ... the crime of carjacking

with great bodily injury” however, “[t]hat’s not what we are here for.” (Trial Tr., at 132). And, as noted previously, Applicant’s trial counsel challenged credibility on this point and others, repeatedly referencing common sense and the familiarity of the victim and defendant (suggesting this was not a crime but a deal) and kept the burden of proof squarely on the State. (Trial Tr., at 137-145). Applicant has failed to show a reasonable probability of a different result.

As to his allegation of a due process violation based on the victim’s testimony regarding extent of injury, as shown, the extent of injury was not in any way left unchallenged, but, critically, it was also not material. Nothing shows false evidence was presented, relied upon, or left uncorrected to Applicant’s detriment. Notably, in addition to the victim’s testimony, a responding deputy (Fuller) testified that the victim “had an injury to his head” and that victim “was having trouble ... standing.” (Trial Tr., 89-91). Also notably, the State elicited information from another responding deputy (Flowers) that while EMS was called for the victim, and he was checked but not transported. (Trial Tr., at 102). But critically, the State did not rely upon the evidence of injury to obtain a conviction. (Trial Tr., at 132-135). Consequently, there could be no reliance on false testimony regarding injury in securing a conviction; thus, no due process violation. *See generally Napue v. People of State of Ill.*, 360 U.S. 264, 269 (1959) (“a conviction obtained through use of false evidence” is a due process violation). To the extent Applicant claims counsel failed to provide him a picture of the victim reflecting no injury, that cannot be the *Brady*³ violation he alleges. A *Brady* violation is premised on circumstances where the State does not produce material and favorable evidence in its possession; it does not extend to defense counsel’s actions. *See, e.g., Gibson v. State*, 334 S.C. 515, 526, 514 S.E.2d 320, 325 (1999) (“The overriding theme of the *Brady* cases is the emphasis the Supreme Court has placed on the prosecutor’s responsibility for

³ *Brady v. Maryland*, 373 U.S. 83 (1963).

fair play.”).

As to the claim of conflict in representation, Applicant has failed to show any divided loyalties simply because his trial counsel knew of the victim. Mr. Richey testified that he had grown up in the same area as the victim, that victim was “4 or 5 years older” than him, and admitted a general knowledge of the victim and victim’s background. However, “to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer’s performance.” *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). “[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.” *Id.*, at 350. Here, Applicant did not raise any concern at trial. Applicant conceded in his PCR hearing testimony that he made no motion at trial based on counsel’s prior general knowledge of the victim, even though the trial testimony reflected at least a general knowledge of the victim’s background. (See Trial Tr., at 75-76). Notably, Applicant had attempted to relieve Mr. Richey at the beginning of trial, but not for his knowledge of the victim. (Trial Tr., at 5-15). In fact, Applicant never raised a potential conflict at any point at trial. Further, there is no indication that counsel held any loyalty, duty or obligation to the victim. In fact, the trial record shows counsel used his knowledge both of the area of the crime and the victim’s background in preparing and presenting the defense. (See Tr. p. 8-9 and 75-76). There is no evidence of divided loyalties. Thus, Petitioner has failed in his burden of proof. *Duncan v. State*, 281 S.C. 435, 439, 315 S.E.2d 809, 811 (1984) (finding no actual conflict of interest existed in the absence of evidence that counsel “owed a duty to a party ... whose interests were adverse to his”).

CONCLUSION

For the above stated reasons, this Court finds that Applicant failed to carry his burden of

proof in showing a constitutional violation that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. Applicant's application for post-conviction relief is denied and dismissed with prejudice; and,
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 31st day of October, 2023.



GRACE GILCHRIST KNIE
Presiding Judge