

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Bamberg County

R. Ferrell Cothran, Jr., Circuit Court Judge

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MAY - 5 2014

S.C. Supreme Court

JOHNNIE L. JONES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001888

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
VS.)
JOHNNIE L. JONES,)
DEFENDANT.)

TRANSCRIPT
OF
RECORD
07-GS-42-168 - 170

April 13th and 14th, 2010
Bamberg, South Carolina

B E F O R E:
THE HONORABLE DOYET EARLY, JUDGE, and a jury.

A P P E A R A N C E S:
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Transcribed by Pamela E. Green, Circuit Court Reporter

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P R O C E E D I N G S

THE COURT: All right. Solicitor, you may call your first case.

SOLICITOR MAURICE: Thank you, Your Honor.

The State calls the case against the State of South Carolina versus Johnnie Lee Jones, Indictments 2007-GS-05-168, assault and battery with intent to kill, and 169, attempted, attempted kidnapping.

THE COURT: All right. Hand me the---

SOLICITOR MAURICE: Witness list.

THE COURT: ---and the indictment.

Mr. Luginbill.

(Pause.)

THE COURT: All right. Have a seat.

SOLICITOR MAURICE: Two, two indictments, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury panel, we're -- the State of South Carolina has called the case of the State of South Carolina versus Johnnie Lee Jones. He has been indicted on two indictments by the Bamberg County Grand Jury. He has pled not guilty to these indictments.

The indictments are simply the charging documents by which this case is brought into the courtroom. It's not evidence in the case. By pleading not guilty the

1 defendant has the constitutional inference and presumption
2 of he's innocent until proven guilty by the State of South
3 Carolina by evidence convincing you beyond a reasonable
4 doubt.

5 So, I'm gonna ask you some questions about this case,
6 and once we go through these questions then we'll be in a
7 position to select the jury. The alleged victim in the
8 case is a Mr. Donald Hiers. Mr. Hiers is from Ehrhardt,
9 South Carolina.

10 Mr. Hiers, are you in the courtroom?

11 MR. HIERS: Yes, sir.

12 THE COURT: If you would, please stand and face the
13 jury panel.

14 (Mr. Hiers complies.)

15 THE COURT: Thank you. You may be seated.

16 (Mr. Hiers complies.)

17 THE COURT: Any member of the jury panel related by
18 blood or marriage, now or in the past, to Mr. Donald Hiers
19 or do you now or have you in the past had a close personal
20 or social relationship with Mr. Hiers, if so, please
21 stand.

22 (No response.)

23 THE COURT: All right. Let me see the lawyers up
24 here.

25

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the entire jury panel.)

3 THE COURT: Bear with me one second.

4 (Pause.)

5 THE COURT: Ladies and gentlemen, while we're
6 waiting -- you want to have a seat please, sir.

7 I forgot to mention this morning we got the Sheriff
8 with us, Sheriff Ed Darnell, who now has been doing this
9 six years and I have been all over the state and dealt
10 with a lot of sheriffs, but I'll put our Sheriff up
11 against anybody in the state. Sheriff Darnell just does a
12 great job.

13 Thank you, Sheriff.

14 THE SHERIFF: Thank you, Judge.

15 THE COURT: Of course, we got Mr. Hiers who now is
16 the oldest Clerk of Court in the State of South Carolina.

17 Is that right, Mr. Pedie?

18 THE CLERK: That's correct.

19 THE COURT: But he has got more energy and more zip
20 and zap than anybody I know.

21 THE CLERK: Thank you, Judge.

22 THE COURT: He likewise does a great job with his
23 staff. I don't know that y'all have met our new
24 solicitor. Mrs. Barbara Morgan was our solicitor for many
25 years, but didn't run a year and a half ago, and we

1 elected, in the Second Circuit, Strom Thurmond, Jr. Strom
2 is doing a wonderful outstanding job. I'm glad to have
3 him with us in, in Bamberg today.

4 MR. THURMOND: Good morning, ladies and gentlemen.

5 (WHEREUPON, Defendant Jones comes into the courtroom
6 at this time.)

7 THE COURT: He has with him his top assistant,
8 Mr. Bill Weeks, seated back there with the sheriff.

9 Come on up, sir.

10 And throughout the courtroom we have members of the
11 Public Defender's Office, and law enforcement, and
12 probation, and the jail, and bailiffs, my court reporter,
13 my law clerk. So, we have a full staff. We run it day in
14 and day out.

15 All right. Let's keep going.

16 The Defendant in this case is Mr. Johnnie Lee Jones.

17 Mr. Jones, good morning.

18 THE DEFENDANT: Good morning.

19 THE COURT: Would you please stand and face the jury
20 panel and look out there for me?

21 (Defendant complies.)

22 THE COURT: Thank you. You may be seated.

23 (Defendant complies.)

24 THE COURT: Any member of the jury panel related by
25 blood or marriage or do you now or in the past have had a

1 close personal or social relationship with the Defendant,
2 Johnnie Lee Jones?

3 (Juror responds.)

4 THE COURT: Mrs. Downing or Dowling?

5 THE JUROR: Dowling.

6 THE COURT: And?

7 THE JUROR: He is my husband's uncle.

8 THE COURT: He's your husband-in-law?

9 THE JUROR: Husband's uncle.

10 THE COURT: Husband's uncle.

11 All right. We will excuse you from the trial of this
12 case.

13 THE CLERK: Is that Carol S.?

14 THE JUROR: Yes.

15 THE COURT: All right. Just sit, sit with us cause
16 we're not quite done.

17 Is Reverend Dowling your daddy?

18 THE JUROR: No.

19 THE COURT: Okay. Members of the jury panel, I think
20 I asked this now or in the past you had a close personal
21 or social relationship with Mr. Johnnie Lee Jones, if so,
22 please stand.

23 (No response.)

24 THE COURT: All right. Ladies and gentlemen, don't
25 get scared at this next question. I make the lawyers give

1 me all of the potential witnesses in the trial of the
2 case. It's not necessary they're gonna call all of these.
3 I'm gonna ask you the same question, are you related by
4 blood or marriage now or in the past or do you now or in
5 the past have a close personal or social relationship with
6 James Grant.

7 Is he in the courtroom?

8 If you're in the courtroom, please stand.

9 SOLICITOR MAURICE: He's not in the courtroom.

10 THE COURT: John Folk.

11 SOLICITOR MAURICE: He's not.

12 THE COURT: Sergeant Jamie Bearden.

13 (Witness stands.)

14 THE COURT: Thank you.

15 James Preacher.

16 Sandra Tavanis.

17 Steve Lambert.

18 Karonda Williams.

19 Selena Kinard.

20 Amy Stephens.

21 Patricia Crooks.

22 Nikki Perry.

23 Verona Gibson.

24 Doris Yarbrough.

25 Sheree Brown.

1 Jasper Humbert.

2 Lynn Whisenhunt.

3 Kenneth Bamberg.

4 Doreen Beckett.

5 Debra Jones.

6 Michelle McDonald.

7 Any member of the jury panel related by blood or
8 marriage or do you now or in the past have a close
9 personal or social relationship with any of these
10 potential witnesses, if so, please stand.

11 (Jurors respond.)

12 THE COURT: Yes, sir, on the front row.

13 THE JUROR: Brett Mears. I have a personal or close
14 relationship with James Bearden. Close friend.

15 THE COURT: Well, we live in Bamberg. We all have
16 close friends.

17 The fact that you got a close friend as a witness,
18 would that, in any way, keep you from being fair and
19 impartial?

20 THE JUROR: No, sir.

21 THE COURT: Thank you. You may be seated.

22 Your name on the back?

23 THE JUROR: Joseph Lott. I grew up and went to
24 school with Mr. Bearden.

25 THE COURT: All right. The fact that you grew up

1 and went to school with him---

2 THE JUROR: Yeah.

3 THE COURT: ---would that, in any way, preclude or
4 keep you from being fair and impartial?

5 THE JUROR: No, sir.

6 THE COURT: Thank you.

7 All right. Ladies and gentlemen, the lawyers in the
8 case, Mr. Dan Luginbill, practices here in Bamberg,
9 Mr. Kent Kirkland. They will be defending the defendant.
10 They work with Kris Wilson.

11 And who else is in that firm?

12 MR. LUGINBILL: Kelsey Kirkland.

13 THE COURT: Kelsey Kirkland,

14 The State will be represented by Mrs. Lauren Maurice
15 and---

16 MR. MCCALLISTER: Kip McCallister.

17 THE COURT: Kip McCallister.

18 Any member of the jury panel now or in the past been
19 represented by, with legal services by any of these
20 lawyers, if so, please stand.

21 (Juror responds.)

22 THE COURT: Yes, ma'am, your name?

23 THE JUROR: Kris Wilson, Sharon Cling.

24 THE COURT: Your name?

25 THE JUROR: Sharon Cling.

1 THE COURT: And is Mr. Wilson now or in the past
2 represented you?

3 THE JUROR: Yes.

4 THE COURT: Okay. Is he currently representing you?

5 THE JUROR: Yes.

6 THE COURT: In a matter currently pending now,
7 something he's doing---

8 THE JUROR: Yes, it's---

9 THE COURT: Ma'am?

10 THE JUROR: No, it's over, but only as of three
11 months ago.

12 THE COURT: All right. And the fact that one of
13 Mr. Luginbill's partners represented you three months ago,
14 ma'am, would that, in any way, keep you from being fair
15 and impartial in the trial of this case?

16 THE JUROR: No.

17 THE COURT: Thank you. You may be seated.

18 Any member of the jury panel related by blood or
19 marriage or do you now or in the past have a close
20 personal or social relationship with any of the lawyers in
21 the case, if so, please stand.

22 (No response.)

23 THE COURT: Ladies and gentlemen, I'm gonna tell you
24 what the allegations are in the complaint or in the
25 indictments. These are simply allegations. Once again,

1 it is not evidence in the case, but I must tell you a
2 little bit about what is alleged. So, I'm gonna ask if
3 you know anything about the case.

4 It is alleged that here in Bamberg County, back on
5 January 9 of the Year 2007 that -- it's alleged that the
6 defendant, Mr. Johnnie Lee Jones, attempted to kidnap
7 Mr. Donald Hiers and he committed an assault and battery
8 with intent to kill Mr. Hiers.

9 This happened in the Town of Ehrhardt or---

10 SOLICITOR MAURICE: Town of Ehrhardt, yes, Your
11 Honor.

12 THE COURT: So, this happened or allegedly happened
13 on January 9, 2007, where he allegedly attempted to kidnap
14 and allegedly assault and battered Mr. Hiers with intent
15 to kill.

16 Does anybody know anything about this case?

17 Have you read anything about it, heard anything about
18 it, has anybody discussed it with you, seen anything on
19 the news about it, if so, please stand.

20 (Juror responds.)

21 THE COURT: Your name?

22 THE JUROR: Brian Troutman.

23 THE COURT: All right. Mr. Troutman, walk forward
24 for me please.

25 All right. Let me have some lawyers.

1 (WHEREUPON, a bench conference was held out of the
2 hearing of the jury panel with the juror and the lawyers
3 only.)

4 THE COURT: Ladies and gentlemen, one of my main
5 duties as the presiding judge is to make sure that
6 everyone who is tried in this courtroom receives a fair
7 trial and that means the State of South Carolina and the
8 defendant. So, I need to know now if anybody has any
9 reason whatsoever why they cannot be fair both to the
10 State and to the defendant, and that's a broad wide
11 encompassing question.

12 So, if you have any personal beliefs, religious
13 beliefs, social beliefs, political beliefs, any kind of
14 beliefs that keep you from being a fair and impartial
15 juror in the trial of this case I need to know it now.
16 Please stand.

17 (Juror responds.)

18 THE COURT: All right, ma'am. You work for Ivan's
19 Tire and you're a Mennonite?

20 THE JUROR: Yes, sir.

21 THE COURT: I have had many Mennonites here in the
22 courtroom in the past, and I know what your religious
23 belief is, and I will excuse you from the trial of this
24 case, but not from the jury panel.

25 Your name?

1 THE JUROR: Gene Skrivseth.

2 THE COURT: Thank you, ma'am.

3 THE CLERK: Your Honor, may we approach?

4 I do have one issue.

5 (Pause.)

6 THE COURT: All right. It's been brought to my
7 attention, Juror 126, Mrs. Spires, are you still with us?
8 Would you stand up for me please?

9 The lawyer said that Mr. Wilson represented you in
10 the past.

11 THE JUROR: It was -- it's been years ago.

12 THE COURT: That's fine. The fact that he did that
13 work for you in the past, would that, in any way, keep you
14 from being fair and impartial?

15 THE JUROR: No, sir.

16 THE COURT: Number 99, Mrs. Murdock, Tamara Murdock?

17 (No response.)

18 THE COURT: We've already let her go.

19 Mr. Hiers, is she still with us?

20 Apparently not.

21 THE CLERK: She didn't come.

22 THE COURT: Ninety-two, Mr. Mears.

23 Mr. Wilson do some work for you in the past?

24 THE JUROR: Yes, sir, divorce case.

25 THE COURT: And the fact that he did a divorce

1 case---

2 THE JUROR: Yes, sir.

3 THE COURT: ---would that, in any way, keep you from
4 being fair and impartial?

5 THE JUROR: No, sir.

6 THE COURT: And Mrs. Mary Jones, 74, and apparently
7 Mr. Wilson did something for you in the past?

8 THE JUROR: Mary Jones.

9 THE COURT: That's what they say.

10 That's not true?

11 THE JUROR: No, he maybe picked me out---

12 THE COURT: That's fine.

13 THE JUROR: ---for being a federal employee.

14 THE COURT: No problem. My mistake. Not yours.

15 All right. The last question I asked, does anybody
16 know of any reason whatsoever why they should not serve as
17 a juror in this case with particular emphasis being placed
18 on your ability to be fair and impartial both, to both
19 sides, please stand.

20 Last call.

21 (No response.)

22 THE COURT: All right. Let me have a jury please.

23 Five and five.

24 Ladies and gentlemen, the way we pick a jury in a
25 General Sessions or criminal case is that your names are

1 randomly -- is this the last time you're doing it?

2 THE CLERK: This is the last time, Your Honor.

3 THE COURT: Randomly placed into this high tech Tampa
4 Nuggets cigar box, pulled out one at a time. As your name
5 is called, please come forward.

6 The State of South Carolina has five strikes. The
7 defendant has five. When we go through that process we'll
8 end up with 12 and a couple of alternates and we'll have a
9 jury.

10 Now, you ought to feel honored. I've been in Bamberg
11 36 years and we've used that old Tampa Nuggets cigar box
12 for 36 years at least. This is the last time it will ever
13 be used. We have, believe it or not, gotten a computer.
14 No, really the State has, the State Judicial Department
15 has gone on line with everything and Bamberg is
16 currently -- all the information's being put on as we sit
17 and we will be part of the computer system at the next
18 term of court and we'll be done by random selection by the
19 computer. But this is more efficient. It never breaks
20 down. The computer breaks down sometimes.

21 Pedie, we need to save that box.

22 THE CLERK: I plan on it.

23 THE COURT: As your name is called, please come
24 forward. The bailiff will open that little door and you
25 walk right up here and stand right up here in the front

1 and we'll go from there.

2 THE CLERK: Number 27, Thomas Corlin. (white male.)

3 What say ye for the State?

4 SOLICITOR MAURICE: Please present Mr. Corlin.

5 THE CLERK: What say ye for the defendant?

6 MR. LUGINBILL: Please excuse Mr. Corlin.

7 THE CLERK: Have a seat back in the jury pool please,
8 sir.

9 Number 37, Joseph W. England. (white male.)

10 What say ye, what say ye for the State?

11 SOLICITOR MAURICE: Please present Mr. England.

12 THE CLERK: What say ye for the defendant?

13 MR. LUGINBILL: Please excuse Mr. England.

14 THE CLERK: Have a seat back in the jury pool for me
15 please, sir.

16 Number 9, Linda K. Boykin. (white female.)

17 What say ye for the State?

18 SOLICITOR MAURICE: Please present Mrs. Boykin.

19 THE CLERK: What say ye for the defendant?

20 MR. LUGINBILL: Please excuse Mrs. Boykin.

21 THE CLERK: Have a seat back in the jury pool.

22 Number 65, Irene Irons. (Black female.)

23 THE COURT: They can bring their pocketbooks up.

24 Don't make those women leave their pocketbooks.

25 THE CLERK: What say ye for the State?

1 SOLICITOR MAURICE: Please present Mrs. Irons.

2 THE CLERK: What say ye for the defendant?

3 MR. LUGINBILL: Please seat Mrs. Irons.

4 THE CLERK: Have a seat in the jury box please.

5 Number, Number 56, Jamahl D. Hammond. (Black male.)

6 What say ye for the State?

7 SOLICITOR MAURICE: Please present Mr. Hammond.

8 THE CLERK: What say the defendant?

9 MR. LUGINBILL: Please seat Mr. Hammond.

10 THE CLERK: Have a seat in the jury box.

11 Number 29, Charles L. Darnell, III. (White male.)

12 What say ye for the State?

13 SOLICITOR MAURICE: Please present Mr. Darnell.

14 THE CLERK: What say ye for the defendant?

15 MR. LUGINBILL: Please seat Mr. Darnell.

16 THE CLERK: Have a seat in the jury.

17 Number 3, John E. Bamberg. (Black male.)

18 What say ye for the State?

19 SOLICITOR MAURICE: Please present Mr. Bamberg.

20 THE CLERK: What say ye for the defendant?

21 MR. LUGINBILL: Please seat Mr. Bamberg.

22 THE CLERK: Have a seat in the jury box please, sir.

23 Number 91, William McCormick. (White male.)

24 What say ye for the State?

25 SOLICITOR MAURICE: Please present Mr. McCormick.

1 THE CLERK: What say ye for the defendant?

2 MR. LUGINBILL: Please excuse Mr. McCormick.

3 THE CLERK: Have a seat back in the jury pool please,
4 sir.

5 Number 126, Mary Spires. (White female.)

6 What say ye for the State?

7 SOLICITOR MAURICE: Please present Mrs. Spires.

8 THE CLERK: What say ye for the defendant?

9 MR. LUGINBILL: Please seat Mrs. Spires.

10 THE CLERK: Have a seat in the jury box.

11 Number 141, Tracy Waller. (White male.)

12 What say ye for the State?

13 SOLICITOR MAURICE: Please present Mr. Waller.

14 THE CLERK: What say ye for the defendant?

15 MR. LUGINBILL: Please excuse Mr. Waller.

16 THE CLERK: Have a seat in the jury pool please, sir.

17 Number 137, Brian J. Troutman. (White male.)

18 What say ye for the State?

19 SOLICITOR MAURICE: Please present Mr. Troutman.

20 THE CLERK: What say ye for the defendant?

21 MR. LUGINBILL: Please seat Mr. Troutman.

22 THE CLERK: Have a seat in the jury box please, sir.

23 Number 149, George L. Wilson. (White male.)

24 What say ye for the State?

25 SOLICITOR MAURICE: Please present Mr. Wilson.

1 THE CLERK: What say ye for the defendant?

2 MR. LUGINBILL: Please seat Mr. Wilson.

3 THE CLERK: Have a seat in the jury box please, sir.

4 Number 120, Calvin Smith. (Black male.)

5 What say ye for the state?

6 SOLICITOR MAURICE: Please present Mr. Smith.

7 THE CLERK: What, what say ye for the defendant?

8 MR. LUGINBILL: Please seat Mr. Smith.

9 THE CLERK: Have a seat in the jury box please, sir.

10 Number 46, Barbara E. Freeman. (Black female.)

11 What say ye for the State?

12 SOLICITOR MAURICE: Please present Mrs. Williams.

13 THE CLERK: Freeman.

14 What say ye for the defendant?

15 SOLICITOR MAURICE: I'm sorry. Hold on a second. I
16 had 126.

17 THE CLERK: 146.

18 SOLICITOR MAURICE: Please present Mrs. Freeman.

19 THE CLERK: What say the defendant?

20 MR. LUGINBILL: Please seat Mrs. Freeman.

21 THE CLERK: Have a seat in the jury box please,
22 ma'am.

23 Number 92, Brett A. Mears. (White male.)

24 What say ye for the State?

25 SOLICITOR MAURICE: Please present Mr. Mears.

1 THE CLERK: What say ye for the defendant?

2 MR. LUGINBILL: Please seat Mr. Mears.

3 THE CLERK: Have a seat in the jury box please, sir.

4 Number 74, Mary A. Jones. (Black female.)

5 What say ye for the State?

6 SOLICITOR MAURICE: Please present Mrs. Jones.

7 THE CLERK: What say ye for the defendant?

8 MR. LUGINBILL: Please seat Mrs. Jones.

9 THE CLERK: Have a seat in the jury box.

10 Number 146, Myrtis D. Williams. (Black female.)

11 What say ye for the State?

12 SOLICITOR MAURICE: Please present Mrs. Williams.

13 THE CLERK: What say ye for the defendant?

14 MR. LUGINBILL: Please seat Mrs. Williams.

15 THE CLERK: Have a seat in the jury box please,

16 ma'am.

17 THE COURT: All right. Let me have two alternates.

18 Two and one.

19 THE CLERK: Number 57, Monica K. Harley. (Black

20 female.)

21 THE COURT: What say ye for the State?

22 SOLICITOR MAURICE: Please present Ms. Harley.

23 THE CLERK: What say ye for the defendant?

24 MR. LUGINBILL: Please seat Ms. Harley.

25 THE CLERK: Have a seat on the back there please,

1 ma'am.

2 Number 118, Jerrorey Siegel. (White male.)

3 What say ye for the state?

4 SOLICITOR MAURICE: Please present Mr. Siegel.

5 THE CLERK: What say ye for the defendant?

6 MR. LUGINBILL: Please seat Mr. Siegel.

7 THE COURT: Any motions by the State in connection
8 with the selection of the jury?

9 SOLICITOR MAURICE: No, Your Honor.

10 THE COURT: By the defendant?

11 MR. LUGINBILL: None from the defendant, Your Honor.

12 (WHEREUPON, the remaining jurors were excused at this
13 time.)

14 THE COURT: All right. Ladies and gentlemen of the
15 jury panel, I'm gonna let you go with the bailiff back to
16 the jury room now so you can stretch your legs and
17 restrooms are back there.

18 You got refreshments back there, Pedie?

19 THE CLERK: Yes.

20 SOLICITOR MAURICE: I'm sorry, Your Honor. I had a
21 witness back there.

22 THE COURT: Hold on one second.

23 (Pause.)

24 THE COURT: Let me give the lawyers a chance to go to
25 the restroom and stretch their legs. We'll probably start

1 in about ten minutes. We'll get right on into the trial
2 of the case.

3 We'll probably go until about, just depending on
4 where we are, between 12:30 and 1:00. I can do this for
5 you, but we'll take a lunch break somewhere between 12:30
6 and 1:00. We'll probably break for an hour and a half, an
7 hour and fifteen minutes. I can send y'all out to a
8 restaurant here in town and buy your lunch if you'd like
9 or I can let you have the lunch hour to skip out on your
10 own to do what you want to do for an hour and a half.

11 Y'all discuss that when you go back in the jury room.
12 Let me know what's your pleasure on that. I guess today
13 we can send you out to Fryes today, and then, if we're
14 here tomorrow, we'll give you some selections. We got --
15 Cliff's down there has good fried stuff. We got several
16 other places. We can order you a pizza, whatever. I'll
17 have you some biscuits in the morning. I try to make it
18 as pleasant as possible.

19 Y'all step back to your jury room and we'll get
20 started in about 15 minutes.

21 (WHEREUPON, the jury exited the courtroom at 11:09.)

22 THE COURT: All right. Any, anything from the State
23 before we take a quick break before we start?

24 SOLICITOR MAURICE: Your Honor, if we could address
25 the issue on the chain. I have about five people coming

1 from SLED for the internal chain this afternoon. If I
2 could keep them from coming all the way here. If the
3 defense agrees that we've met the requirements of the
4 chain as far as internal technicians we could save them
5 coming.

6 THE COURT: And save a lot of time for everybody.

7 Mr. Luginbill, have you had an opportunity to look at
8 the material provided by the State to see if it complies
9 with the appropriate rules?

10 MR. LUGINBILL: I have, Your Honor. Our position
11 would be that from the time that it first, that the
12 evidence first arrived at SLED, I believe they've
13 established the requisite chain of custody. Prior to that
14 I have an issue with it.

15 SOLICITOR MAURICE: I agree.

16 THE COURT: Okay. We will establish it up until the
17 time it goes to SLED.

18 SOLICITOR MAURICE: Correct, Your Honor.

19 THE COURT: That's fine.

20 SOLICITOR MAURICE: And then the testing.

21 MR. LUGINBILL: The testing itself appears to have
22 been -- the testing itself I, I can't agree to. I do want
23 to cross-examine the, the technicians.

24 SOLICITOR MAURICE: Okay. That's fine.

25 THE COURT: That's understandable.

1 Anything else by the State?

2 SOLICITOR MAURICE: No, Your Honor. Not by the
3 State.

4 THE COURT: By the defendant?

5 MR. LUGINBILL: Your Honor, as we had discussed in
6 chambers, I'm, I'm asking that in the, on the in court
7 line-up---

8 THE COURT: In court line-up?

9 MR. LUGINBILL: I'm sorry. The in court
10 identification, we are asking and we are moving to
11 suppress that based on the fact that there was an
12 improperly suggestive show-up prior to today. During the
13 first day of, first few hours of the, the investigation of
14 the crime or possibly into the next day, it appears that
15 the victim was shown a single photograph taken from a
16 booking photo from which the victim identified my client.
17 There was only a police, one police officer there and only
18 one photograph was shown.

19 THE COURT: Well, from the discussion in chambers
20 with you and the solicitor, it was my understanding that
21 the victim said I know who did it, it was your client, and
22 once they found that out they showed him a picture to
23 confirm that. That's what I've been told in chambers by
24 the State.

25 However, Mrs. Maurice, before you go into that

1 identification before the jury, please stop. Let's do an
2 in-camera proffer to make sure that is correct---

3 SOLICITOR MAURICE: Okay. Your Honor, that's---

4 THE COURT: ---on that matter.

5 SOLICITOR MAURICE: That's going to be our first
6 witness up. I don't know if that makes a difference in
7 your, your schedule type of thing.

8 THE COURT: It doesn't make any difference to me.
9 You can call Mr. Hiers right now and we can do it right
10 this second and get it out of the way.

11 SOLICITOR MAURICE: I'll call him right now, Your
12 Honor.

13 THE COURT: Call him.

14 MR. LUGINBILL: Thank you, Your Honor.

15 THE COURT: Mr. Hiers, if you would come forward
16 please.

17 DONALD HIERS, after being duly
18 sworn, testified as follows:

19 THE COURT: Now, you may have a seat, Mr. Hiers.

20 Let's get right to the point of the matter. We don't
21 need to do a lot of background for this proffer.

22 SOLICITOR MAURICE: Okay, Your Honor.

23 DIRECT EXAMINATION

24 BY SOLICITOR MAURICE:

25

Donald Hiers - Direct examination
By Solicitor Maurice

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1 Q Mr. Hiers, on the day that you were attacked, did you
2 recognize the person who attacked you?

3 A At first I didn't.

4 Q Okay.

5 A But I recognized his voice.

6 Q Okay.

7 A And after -- of course, everything was real shook up,
8 you know, from the attack.

9 Q Sure.

10 A And after that time and on the way to the emergency
11 room to be stitched up and so forth and cared for, I told
12 my wife, who was driving me to the emergency room, that I
13 recognized the voice and I just didn't quite have the name
14 to it. But that I got to the emergency room and kind of
15 got settled in a little bit and I brought the name up.

16 Q Okay. And what name did you give or what name---

17 A Johnnie, Johnnie Lee Jones.

18 Q And who did you---

19 THE COURT: Hold, hold on a second.

20 Between your house and the emergency room, who was in
21 the car with you?

22 THE WITNESS: My wife.

23 THE COURT: No one else?

24 THE WITNESS: No one else.

25 THE COURT: Did your wife ever suggest to you who it

Donald Hiers - Direct examination
By Solicitor Maurice

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1 was?

2 THE WITNESS: No, sir.

3 THE COURT: So, after having reflected on it from the
4 drive from Ehrhardt to the emergency room, you were able
5 to put the, a name to the voice, is that correct?

6 THE WITNESS: That's correct, yes, sir.

7 THE COURT: Before you gave that, came up with the
8 name, did anyone show you a photograph or suggested to you
9 who the, who the person was?

10 THE WITNESS: No, sir.

11 THE COURT: Had you even seen the police at that
12 time?

13 THE WITNESS: I saw the police, you know. He was the
14 first one on the scene after it happened at my, at my home
15 in the backyard.

16 THE COURT: Continue to answer any questions by the
17 solicitor.

18 Q Okay. So, when you got to the hospital, did you talk
19 to the police then?

20 A The police was there shortly after I arrived at the
21 hospital.

22 Q Okay.

23 A In other words, I was already being checked on or
24 whatever, being checked on in the hospital.

25 Q Did you tell the police anything about the man?

1 A I gave them the name of the person which I had
2 recollected, you know. I got kind of settled in and I
3 gave him the name.

4 Q Okay.

5 A And---

6 Q What did he do?

7 A Okay. He said he would go -- I told him where the
8 fellow was from, you know, the county. So, he was going
9 to contact Colleton County and later on he came back,
10 brought me a photograph, and showed it to me.

11 Q How did you recognize Mr. Jones?

12 A I recognized him by, you know, his voice mainly and
13 by his stature and appearance. I mean I could, you know,
14 relate, relate that way.

15 Q But how, how -- where did you know him from?

16 A I've known him for a long time. My dad was in
17 business for a number of years in Ehrhardt. His family
18 traded with us and I've known him and he's been in my
19 place of business and we've never had any discrepancies or
20 anything. He's always been a friend in a way.

21 Q Okay.

22 A I mean a customer.

23 Q In the photo that the officers showed you, did you
24 identify that photo?

25 A I did.

Donald Hiers - Direct examination
By Solicitor Maurice

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1 Q And who did you identify that photo as?

2 A Johnnie Lee.

3 Q Thank you.

4 THE COURT: Mr. Luginbill, anything you want to ask
5 him?

6 MR. LUGINBILL: He's going to cross. Mr. Kirkland
7 will handle that.

8 MR. KIRKLAND: One moment, Your Honor.

9 (Pause.)

10 CROSS-EXAMINATION

11 BY MR. KIRKLAND:

12 Q Good morning, Mr. Hiers. How you doing today?

13 A Just fine.

14 Q The -- I believe what your testimony was just then is
15 that you thought of the name on the way to the hospital,
16 is that, is that correct?

17 A Yes, sir, I was trying to, you know, get the voice
18 and the name. I recognized the voice, the stature, and I
19 told my wife on the way coming to the hospital that, you
20 know, I knew who it was. I just couldn't get the name
21 right at the time. You know, I was all, you know,
22 disturbed.

23 Q So, you, you didn't know the precise name of the
24 person on, on the way to the hospital, that's correct?

25 A That's right.

1 Q And when, when you got to the hospital you didn't
2 know who the person was?

3 A Yes, sir, I did, when I got to the hospital. In
4 other words, after I got calmed down a little bit. I was
5 really shook up. I was hit in the head---

6 Q Yes, sir.

7 A ---Close to my temple.

8 Q Yes, sir.

9 A In fact, they told me if it was a little bit more I
10 could have been killed.

11 Q All right. And you didn't give that name -- at, at
12 the scene when the officer first came up, you didn't tell
13 him who it was, correct?

14 A No name, no, sir.

15 Q Did you tell him you knew who it was at that time?

16 A Actually it wasn't too much conversation carried on
17 because I was getting to the hospital in other words --

18 Q Yes, sir.

19 A -- you know, to be cared for. I was bleeding.

20 Q Did you describe the person who was supposed to have
21 assaulted you to the officer before you left or you just
22 didn't have a conversation about it?

23 A Well, actually we didn't have much of a conversation.

24 Q All right. And, so, you didn't really have a
25 conversation with law enforcement until after you got to

Donald Hiers - Cross-examination
By Mr. Kirkland

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1 the hospital?

2 A Well, the police was there and, you know, I described
3 or told them what happened. But I mean there was no names
4 mentioned at that time.

5 Q At the hospital there weren't any names mentioned?

6 THE COURT: No, sir, no, sir, no, sir. He said at
7 the scene there was no names mentioned.

8 MR. KIRKLAND: All right.

9 THE COURT: When he got to the hospital is a
10 different story.

11 Q All right. All right. But when you get to the
12 hospital, you told the officer -- did you describe him to
13 the officer?

14 A Yes, sir, I, I told him and give him the name and
15 described him and told him what he was wearing and
16 everything.

17 Q All right. And that's before you were shown a
18 picture?

19 A Right.

20 Q All right.

21 A In fact---

22 THE COURT: Thank you, Mr. Hiers.

23 MR. KIRKLAND: That's all, Your Honor.

24 THE COURT: I'll let you step down right now.

25 SOLICITOR MAURICE: Your Honor, based on the issue of

1 this, I was, I was wondering if I could add Mr. Hiers's
2 wife to the witness list since the defense is concerned
3 about it.

4 THE COURT: You may sit down, Mr. Hiers.

5 Y'all discuss it. Call your case like you determine
6 you want to.

7 All right. We'll take a quick break now. Don't
8 dally.

9 (WHEREUPON, a break was taken.)

10 MR. LUGINBILL: I had filed a motion to be relieved.
11 I believe he wants me to continue as his lawyer at this
12 point.

13 THE COURT: Well, do you believe or does he?

14 Mr. Jones, you want to stand up for me please?

15 (Defendant complies.)

16 THE COURT: There was some mention last week that you
17 wanted to fire your lawyer. He's Court appointed.

18 What's the situation now?

19 DEFENDANT: Your Honor, I just feel like---

20 THE COURT: Sir?

21 DEFENDANT: I feel like---

22 THE COURT: You feel like what?

23 DEFENDANT: I'm not really -- you know, I'm not, I'm
24 not really, but yea, I guess I have to.

25 THE COURT: well, you want to explain to me what

1 you're talking about?

2 DEFENDANT: I don't know whether he had enough time
3 to look at the thing, at the thing exactly like it should
4 be.

5 THE COURT: Well, how should it be?

6 It's been since 2007.

7 How much time you need?

8 DEFENDANT: What I---

9 THE COURT: Sir?

10 DEFENDANT: What I'm saying is I don't know if he had
11 time to do -- I mean it's a lot of things. I'm not really
12 satisfied, no, sir.

13 THE COURT: And you want to be specific. I just
14 can't go on that.

15 DEFENDANT: I'm not satisfied -- not with -- he
16 didn't really have time really to look at this case.

17 MR. LUGINBILL: Tell me what you think I've not done.

18 DEFENDANT: There are several witnesses that we
19 should have here that's not here.

20 THE COURT: Who?

21 DEFENDANT: Mr. Brothers is one of them.

22 THE COURT: Mr. who?

23 DEFENDANT: The, the investigator.

24 MR. LUGINBILL: There was a private investigator that
25 was hired early on in the case, Mr. Brothers. We've been

1 in contact with him. I have his report. He'll be
2 available this afternoon and all day tomorrow.

3 THE COURT: Who else?

4 DEFENDANT: His so called -- well, the man I used to
5 work for.

6 THE COURT: So called other man you use to---

7 DEFENDANT: I mean the man I use to work for, Pappy.
8 He's not here.

9 THE COURT: Pappy?

10 DEFENDANT: Yes, sir.

11 THE COURT: Pappy Walker? Pappy who?

12 DEFENDANT: The one I, one I used to work for. I
13 can't recall his last name cause---

14 THE COURT: How in the world can the lawyer get him
15 here if you don't know his name?

16 MR. LUGINBILL: We've actually found him, Your Honor.
17 I have a short statement from him. It doesn't -- in my
18 opinion, it's not particularly useful.

19 THE COURT: And his name is who?

20 MR. LUGINBILL: His name is Wilmer Wright.

21 THE COURT: Pappy Wright, that's who I -- you think
22 Pappy Wright can help you?

23 I'm asking you.

24 Can Pappy Wright help you?

25 DEFENDANT: This so called jacket with, that they got

1 of mine, that's -- that is my jacket. It is the one that
2 was supposed to be given to whoever.

3 THE COURT: And that's the jacket with your DNA on it
4 and Mr. Hiers's DNA?

5 DEFENDANT: Yes, sir, that is, that is my coat.

6 THE COURT: Nobody is disputing it is your coat, are
7 they?

8 MR. LUGINBILL: Well, there may be, Your Honor. The
9 State has a witness that said that he gave that coat to
10 Mr. Jones that night. But we have several other witnesses
11 that are going to say the same thing.

12 THE COURT: What else?

13 DEFENDANT: That's just about it.

14 THE COURT: Well, I've known Mr. Luginbill as a
15 lawyer since the day he started practicing in Bamberg. He
16 does an excellent job. He's been with me to the solicitor
17 a number of times on this case discussing various
18 situations, and I find that he has done a very competent
19 job. He's got help with Mr. Kirkland today, who is the
20 Public Defender here for a number of years, and I
21 respectfully deny, if you have, in fact, made a motion ---

22 MR. LUGINBILL: There is a motion in the file, Your
23 Honor.

24 THE COURT: I'll deny your motion.

25 Anything else?

1 MR. LUGINBILL: Thank you, Your Honor.

2 THE COURT: Anything else from the State?

3 SOLICITOR MAURICE: No, Your Honor.

4 THE COURT: Bring the jury in please.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:39.)

7 THE COURT: Don't sit, don't sit. Y'all stand up.

8 The first thing we have to do is be sworn in again
9 for this particular case. If you'd raise your right hand,
10 and Mr. Hiers will administer the oath.

11 (WHEREUPON, the jury was sworn at 11:39.)

12 (WHEREUPON, eight photographs were marked as State's
13 Exhibit Nos. 1 through 8 for identification purposes only
14 at this time.)

15 THE COURT: All right. Ladies and gentlemen of the
16 jury panel, let me just give you some brief opening
17 remarks. I will tell you what your duties are and what my
18 duties are, and I will generally discuss a few matters
19 concerning the case and tell you sort of where we're
20 going.

21 First of all, as the judge in the case I have two
22 main responsibilities. I am the judge of the law in the
23 case. Not Jack Early. But my position makes me the judge
24 of the law, and I will tell you what the law is at various
25 times during the trial of the case, and particularly at

1 the end of the case I'll tell you specifically what this
2 defendant has been indicted for and what he's charged
3 with. So, I will give you the law in the case.

4 So, I'm the judge of the law. You have to accept the
5 law as I give it to you. If you come into the courtroom
6 with some preconceived idea about what the law is or
7 should be and it does not agree with what I tell you it
8 is, you have to set aside those preconceived ideas and
9 accept the law as I give it to you. I'm the judge of the
10 law in the case. I tell you what the law is.

11 My other job is to rule on the admissibility of
12 evidence. Cases are tried by presenting live witnesses
13 under oath here in the witness stand and/or exhibits that
14 are relevant to the trial of the case.

15 The lawyers have to comply with the rules of
16 evidence, and they have to comply with the rules of
17 criminal procedure. They will ask questions within those
18 rules, and if they do, that testimony or that evidence
19 will be admitted into the trial of the case. So, I sort
20 of watch over the admission of evidence in the trial of
21 the case.

22 So, my job's pretty simple. The law is always the
23 same law. I'll give it to you. I'll rule on the
24 admissibility of evidence. It's not a real tough
25 situation that I have to do.

1 Once I rule on what the admissibility of the evidence
2 is or, or allow it in, then your job comes into play
3 because the 12 of you collectively, acting as one, you are
4 the finders of the facts in the case. You determine what
5 the true facts are in the case, and I can promise you one
6 thing.

7 As a lawyer for 30 years, and now as a judge for six
8 years, you will hear different versions of the facts,
9 different spin on the facts, different facts altogether.
10 So that is your duty is to take those facts as you hear
11 them from the witness stand and determine what the true
12 facts are in the case.

13 You judge what we call the credibility or
14 believability of witnesses. You deal with your wives.
15 You deal with your husbands. You deal with your children.
16 You deal with your employers/employees, day in and day
17 out. You know how to judge who's telling the truth and
18 what the true facts are. And once you make that decision
19 in judging credibility and decide what the true facts are,
20 you take those true facts and apply it to the law as I
21 give it to you, and then you will be in a position to
22 render a true and just verdict in the case.

23 Now, in this particular case that we're trying here
24 today the defendant has been indicted by the Bamberg
25 County Grand Jury on two offenses. One is the offense of

1 assault and battery with intent to kill, and the other is
2 attempted kidnapping.

3 As I told you earlier, the indictments are simply the
4 charging documents by which the case is brought into
5 court. It is not evidence in the case. The defendant has
6 pled not guilty and he has the constitutional presumption
7 of being innocent until the state is able to prove his
8 guilt to you beyond a reasonable doubt.

9 In doing that, obviously the state has the burden of
10 proof. They have to prove his guilt to you, as I say,
11 beyond a reasonable doubt. So, they go first in the
12 presentation of the evidence. They have the burden of
13 proof. So, they will put up their case to start off with,
14 and then the defendant has the opportunity, if he chooses
15 to do so, to put up his defense, and once that is
16 completed, then obviously the lawyers will make final
17 closing arguments, and then I will charge or instruct you
18 on the law, and then you will go back into the jury room
19 and deliberate what the true facts are and apply those
20 facts to the law as I give it to you. So, that's how the,
21 how the process works.

22 In just a few minutes the two lawyers will make
23 opening statements. Please bear in mind that opening
24 statements are not evidence in the case. It is simply
25 what the lawyers contend their positions are, what their

1 defenses are, sort of a road map as to what they're going
2 to show you during the trial of the case.

3 I suspect -- we had a little pretrial conference here
4 just a few minutes ago. We were able to eliminate several
5 what we call chain of custody witnesses. So, it's, it's
6 paired it down a little bit, and I suspect we'll go
7 through today and hopefully get it to y'all for
8 deliberation tomorrow.

9 I'm not trying to run an endurance race up here, but
10 I do try to be efficient. So, we try to use our time very
11 efficiently. But at any time during the trial of the case
12 that you become tired, you need to go to the bathroom, you
13 need to stand up and stretch, you get tired of listening
14 to me, you need a Coca-Cola or whatever, and we hadn't
15 taken a break, please raise your hand. Do not get
16 uncomfortable. And if you raise your hand I will
17 obviously take care of any personal needs that you may
18 have, and we'll take a break right then and there.

19 All right. We're going to go today until about a few
20 minutes before 1:00. Mr. Hiers has made arrangements for
21 you to go down to Fryes. They got a buffet out there with
22 fried chicken and stuff. It's pretty good. I eat out
23 there a lot. We'll feed you lunch out there.

24 When you come back from lunch, and before we start,
25 we need to select a foreperson among the 12 regular

1 jurors. The foreperson is simply the person who acts as
2 the spokesperson for the jury. If you have any particular
3 problems, the spokesperson would relay those issues to me.
4 The spokesperson sort of heads up the deliberations when
5 we get ready to talk about the case. So, if you would,
6 please just select a foreperson among the, the 12 of you.
7 If you can't do it, then I'll pick one out randomly and do
8 it for you.

9 I will tell you every time we take a break or break
10 for the evening, please do not start any deliberations or
11 discussions about the case. You can talk about anything
12 you want to in the jury room except for the case. It's
13 just not proper to start discussing the case or
14 deliberating the case until all of the evidence is in,
15 I've charged you, instructed you what the law is, and
16 obviously the lawyers have made their final arguments.
17 So, please don't discuss the case among yourselves while
18 you are in the jury room waiting for me, and that's one of
19 the duties as the foreperson is to ensure that that is
20 carried out, that nobody discusses it.

21 At this time we're going to go ahead with the opening
22 statements, and we'll get, once those are completed, we'll
23 try to get a witness up before lunch, just depending on
24 where we are, and then if it's okay with everyone we'll
25 run till about 5:00 this afternoon.

1 Is that an imposition to anyone, families?

2 THE JUROR: I have to go to work at 5:00.

3 THE COURT: Where do you work?

4 THE JUROR: St. George.

5 THE COURT: Why didn't you tell me that this morning?

6 You're not going to be out of here by 5:00.

7 You need to call your - who do you work for?

8 THE JUROR: Mrs. Anna Hunt.

9 THE COURT: You need to call her and tell her that
10 you're on jury duty, and that you won't be there at 5:00
11 today.

12 Okay. So, we'll run until about 5:00 or a little
13 after 5:00. And when we get to that point in the game
14 we'll see what we got left and we'll talk about what time
15 you would like to start tomorrow. I always get your input
16 into what time we start. Some of you might want to start
17 earlier than others, but we'll talk about that and try to
18 go with the general consensus of everyone.

19 You have a very important job to play in this case.
20 We live in a country where if you are accused of a
21 crime -- I don't sit up here as the guy in the black robe
22 and make the decision. We don't have a dictator making
23 it. We don't have anybody doing it except 12 citizens in
24 the community who live in the community to determine what
25 the true facts are.

1 So, it's a, it's a good system. Please take your
2 duties seriously, pay attention. I think you will enjoy
3 your experience. This is not TV. This is the real world.
4 So, I ask that you pay very close attention. It's a very
5 important case to both the State and to the defendant, and
6 I look forward to working with each and every one of you.

7 Thank you.

8 Any objections to my opening remarks by the State?

9 SOLICITOR MAURICE: No, Your Honor.

10 THE COURT: By the defendant?

11 MR. LUGINBILL: None by defense, Your Honor.

12 THE COURT: All right. Mrs. Maurice, you may make
13 your opening statement.

14 SOLICITOR MAURICE: May it please the Court,
15 Mr. Luginbill, Mr. Kirkland.

16 I would say good morning, but it's really closer to
17 good afternoon. I am Lauren Maurice and I represent the
18 State, and my job pretty much is just to come up here and
19 present, have, call people to present the evidence.

20 Okay. The evidence is gonna be presented in
21 different manners. One way the evidence can be presented
22 is for a witness to come and he takes that oath and sits
23 on the stand and he tells you what he saw or heard, she or
24 he.

25 Okay. That's one way. Another way is DNA. We

1 happen to have an expert from SLED coming for this case.
2 Some photos, some clothing, et cetera.

3 So, don't get in the mind set though it has to be
4 physical because also when your person is up here
5 testifying, that's evidence also and the judge will
6 explain all of that at the end. As he said, he'll
7 instruct you on the law and he's definitely in charge of
8 that. So, if I say anything different, listen to him.
9 Not me.

10 But on this date, Mr. Hiers came home. It's been
11 three years. I believe he'd been at work. He seems to
12 work a lot, and he pulled up in his driveway. It was
13 around eight o'clock. And the defendant, Mr. Jones,
14 walked up, told him to take him for a ride.

15 Well, Mr. Hiers said no, he wasn't going anywhere. I
16 think he told him that, that his wife was inside, et
17 cetera. Just he knew he wasn't getting back in that car.

18 Okay. When Mr. Hiers tried to leave, Mr. Jones hit
19 him in the head. Mr. Hiers is gonna get on the stand in
20 just a little bit and tell y'all what happened, his
21 injuries, how he recognized Mr. Jones.

22 You're also gonna hear from witnesses that Mr. Jones
23 saw later in the evening, and then some clothing is going
24 to come in and DNA. It won't be that long. I think we'll
25 close on our case tomorrow morning, some time late

1 morning, and I do appreciate y'all paying such good of
2 attention.

3 Getting back to the law a little bit, the two things
4 we're here or presenting today is he's charged with
5 assault and battery with intent to kill and attempted
6 kidnapping. In this case, in particular, I want to kind
7 of bring some things to your attention so you can think
8 about it as the evidence is presented. And after all the
9 evidence is presented, the judge is gonna instruct you
10 exactly what the law is, and you'll listen to him, but
11 it's a little bit, the way it's worded or what we call it
12 kidnapping, you automatically think or I automatically
13 think okay, you got to take somebody across the state line
14 and abduct them or something like that. But the State of
15 South Carolina, that's not the case. If you seize or take
16 control of someone or take their freedom away, that is a
17 crime of kidnapping.

18 So, make sure when the judge starts telling y'all the
19 laws on that, listen real closely because it -- sometimes
20 we watch TV and we think of things differently than what
21 the Legislature has written it.

22 Also assault and battery with intent to kill. Oh,
23 gosh, somebody has to come out of their home with a
24 shotgun and think I'm gonna go kill somebody. That's not
25 the case. There's different types of intent. The judge

1 will go through that with you, but there's pretty much --
2 it, it comes down to viewing a, just reckless disregard
3 for human life. But he'll go through all that with you.

4 Listen, I just kind of wanted everybody to keep an
5 open mind because of how it's worded and listen to the
6 evidence as it's presented and I appreciate you being
7 here.

8 Thank you.

9 MR. LUGINBILL: Thank you, Your Honor.

10 May it please the Court, the State.

11 Ladies and gentlemen, my name is Dan Luginbill. I,
12 along with Kent Kirkland and Kris Wilson, practice law in
13 Bamberg. We also have law offices in Barnwell. We are
14 representing Johnnie Lee Jones here. He's been brought
15 here on the charges that Mrs. Maurice told you about.

16 This case, as you hear the evidence, is gonna be a
17 tale of two cities. You are going to hear from witnesses
18 who are going to place the defendant, Mr. Jones, in
19 Denmark at the time that this incident occurred. So,
20 you're going to have to judge the credibility of who you
21 hear.

22 In any good tale of two cities show you're gonna
23 hear, have some palace intrigue. You're gonna have some
24 why is this person saying what they're saying, why is this
25 person doing what they're doing. That's part of your job,

1 to judge their credibility, the motivation of the
2 witnesses.

3 Then there's gonna be some plain old did the person
4 just get it wrong. Did they really see what they thought
5 they saw. And then there's gonna be some evidence that
6 this doesn't fit, and your job, at the end of all of this,
7 is to try to figure out why it doesn't fit and whether
8 that failure to fit helps the State and whether it helps
9 the defense.

10 And when you're viewing all of this, I want to remind
11 you that you're in criminal court, which means that your
12 burden, as the judge will instruct you at the end of this,
13 is to determine the defendant's, the defendant's guilt
14 beyond a reasonable doubt, and that should color you all
15 the way through this trial. Never forget. The State has
16 the burden to prove what it says happened beyond a
17 reasonable doubt.

18 Not yea, probably, maybe. That's not good enough.
19 If, at the end of the day, you think yea, probably, maybe,
20 your job, your duty, the only way our legal system will
21 continue to work is if you come back with a not guilty
22 verdict. I think, after you've seen all the evidence and
23 after you hear me put it together for you at the end, I
24 think that you are gonna come back with that not guilty
25 verdict, and I'm gonna ask you for that not guilty

1 verdict.

2 But I pray that you pay close attention because you
3 have two very very different versions of who did what.
4 So, it's gonna come down to credibility, and twelve people
5 from the community are gonna be able to do that. I trust
6 each and every one of you to do that cause we do it every
7 day.

8 Do we trust that person that's asking me a question?

9 Do we, do we believe that story our buddy just told
10 us about what he did last weekend?

11 We do, we do that every single day of our lives.
12 We're all singularly equipped to do a great job with that
13 and I trust that all of you will do a great job with that.

14 So, I ask that you pay close attention. Bear in mind
15 the State's burden, and at the end we'll, we'll show you
16 what we think happened.

17 Thank you.

18 THE COURT: You may call your first witness.

19 SOLICITOR MAURICE: Mr. Donald Hiers.

20 DONALD HEIRS, after being duly
21 sworn, testified as follows:

22 THE COURT: Have a seat, Mr. Hiers, if you would
23 please. I need you to pull up close, speak into that
24 microphone so everyone can hear.

25 Ladies and gentlemen of the jury panel, if, at any

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1 time during the trial, you cannot hear a particular
2 witness or the lawyers or me, raise your hand so I can
3 make them speak louder or into the microphone.

4 Ma'am.

5 DIRECT EXAMINATION

6 BY SOLICITOR MAURICE:

7 Q Mr. Hiers, where do you live?

8 A I live in Ehrhardt, South Carolina.

9 Q Okay. And where do you work?

10 A I'm self-employed. I run a little variety store in
11 Ehrhardt.

12 Q And how long have you -- how long have you had that
13 little variety store?

14 A It's been since 1962, and, of course, I worked with
15 my father, which was in business for 71 years in Ehrhardt
16 before he passed.

17 Q How many days a week do you work?

18 A I work six days a week. Sometimes on Sunday a little
19 bit. Book work.

20 Q Okay. Tell us -- how old are you?

21 A I'm 74 years old. I just had a birthday April the
22 7th --

23 Q Okay.

24 A -- and a 50th anniversary the 10th.

25 Q Wow. That's something to be proud of.

1 Tell us -- tell the jury please what happened on
2 January 9th in 2007.

3 A Okay. I arrived at home. It was approximately
4 eight o'clock. And as I drove up in the backyard and
5 parked the car, was exiting the vehicle, I noticed someone
6 coming out of the bushes in the, the woods part back of my
7 house, and I, I really was a little shocked because a lot
8 of times I have people come to the house that needs
9 something from the store, maybe plumbing or whatnot,
10 emergency situation, and sometimes maybe somebody has a
11 flat tire or car trouble or something and they come up to
12 the house because I'm right on the main street there, I
13 mean on the main road.

14 And, anyway, I noticed that he was coming from in the
15 bushes and behind a couple of cars that was parked in my
16 backyard, and I was suspicious of that because, like I
17 said, it's unusual for somebody to be coming from that
18 direction and it was at eight o'clock at night, dark,
19 and---

20 Q You said it was dark?

21 A It was dark.

22 Q Okay.

23 A And, any ways, he approached. I spoke out real
24 loudly. I said what is your problem. I was, I was -- I
25 had the car door open and I was fixing to close the door

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1 and was facing back in the direction he was coming from
2 and I repeated it again. I said what is your problem, and
3 he kept walking towards me. Didn't say anything.

4 And when he got right up to me, in other words, just
5 right in front of me, he stood right there and looked me
6 in the face and said get back in, we're going to ride, and
7 I said no. I said my wife is in the house and she's sick
8 and I got to see about her. I'm not going anywhere. He
9 said you get back in or we'll, I'm gonna kill you right
10 here, and that was repeated a couple of times.

11 And after he saw I wasn't getting in the car, he hit
12 me on the head, which I had on a cap and a jacket, and I
13 think it's probably in evidence also, and there's blood
14 all over it and, of course, my head went to bleeding. It
15 was right close to my temple in my head. So, the doctor
16 told me, you know, that---

17 THE COURT: No, sir, you can't say what the doctor
18 said.

19 A Anyway, I was bleeding and I, and I ran to, up toward
20 the house to get away from him.

21 Q Uh-huh. (Affirmative).

22 A And he was in pursuit right behind me, and I was kind
23 of looking back to see, you know, how close he was and, of
24 course, I stumbled in my driveway there. And when I did,
25 my wife in the house there, she heard the commotion out

1 there and the noise and she flipped on the spotlights
2 there at the house and in the carport lights. And he went
3 running around out in the driveway and out towards the
4 street, and she come out the door there and said my
5 goodness, what happened to you.

6 And, of course, I got up as soon as I could. It
7 broke my glasses or whatever when I fell. And she saw
8 there was blood and everything, and I said I've been
9 attacked and I went on in the house and she immediately --
10 I said you call the, call the police, call the law, and
11 she got on the phone there and called, you know, 9-1-1,
12 and it was just a short time there Chief Bearden there,
13 policeman, he had just recently started working with the
14 town and he was immediately there. I mean he was the
15 first one on the scene, and, of course, he, you know, saw
16 what was going on and questioned me and saw I was, you
17 know, bleeding and so forth.

18 Q About how long -- you said he immediately -- about
19 how many -- do you know -- I mean I know it's hard to
20 tell, but about how long do you think it took Mr. Bearden,
21 Chief Bearden to get there?

22 A I would just say five minutes, not over ten minutes.
23 I mean he was -- I was really surprised that he was, you
24 know, there as quick as he was.

25 Q And how were you feeling at this point?

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1 A Well, I was just in shock. I mean I was bleeding and
2 I didn't know where the blood was coming from really, and
3 my jacket was bloody, and I was just, just shook up
4 because I never had any experience like that before.

5 Q Okay. How long after that did you go to the
6 hospital?

7 A It was probably about 15 or 20 minutes. My next door
8 neighbor works with the EMS and fortunately he was on the,
9 you know, the EMS vehicle that night and they checked me
10 in the vehicle there, and he saw that my injuries wasn't,
11 you know, life threatening right at the moment and I told
12 -- my wife is an RN and we'd rather travel in our vehicle
13 to the, rather than going in an ambulance, and she wanted
14 to be with me. And, so, she drove me right on to the, you
15 know, emergency room.

16 Q Okay. And tell us about what, if anything, happened
17 while your wife was driving you to the emergency room.

18 A During the way to the hospital, in other words, I was
19 still kind of shook up and in shock, and I kept telling
20 her, I said I recognize that voice. I know the voice
21 good, and I said I just can't quite get the name on it.
22 But after I got to the hospital and in the emergency room
23 and kind of got calmed down, in other words, it came to me
24 the name and I, I told her who it was, and it wasn't but a
25 short time after I was there, in fact, when I left

1 Ehrhardt, Jamie was tending to some business there, you
2 know, details and he said I'll see you at the hospital,
3 and I forgot just how much time it was, but he was---

4 Q Well, did you tell your wife who you thought, who,
5 who it was when you were at the hospital?

6 A Right. Right.

7 Q And who was that?

8 A Johnnie. Johnnie Jones.

9 Q Is he in the courtroom today?

10 A Yes, ma'am.

11 Q Can you identify him?

12 A He's the gentleman with the white shirt there---

13 Q Okay.

14 A ---sitting between the two lawyers.

15 Q Okay. So, you said Mr. or Chief Bearden came back to
16 the hospital to talk to you?

17 A That's right.

18 Q Or came to the hospital?

19 A Came, came to the hospital and, you know, got details
20 and I told him the name and I also told him that, you
21 know, where I knew that he use to live and it was in
22 Colleton County.

23 Q And tell us how you knew Mr. Jones.

24 A Mr. Jones's parents, mother and dad, they were
25 long-time customers of my Dad's store and also I mean did

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1 business at my place and I've known him, you know, for a
2 long time. We were always good friends or whatever, had
3 no discrepancies that I know of or anything, and I don't
4 know, you know, why this come about.

5 Q You said a long time.

6 Can you just estimate how long?

7 A Well, ever since I was in business there from '62 I
8 mean, you know, I've known him and they've been in the
9 store not every day, but I mean, you know, frequently
10 and---

11 Q A lot of years then?

12 A Right.

13 Q Okay. All right. You, you said something about
14 Mr. Bearden or Chief Bearden talking, talking to you at
15 the hospital.

16 Did -- after that, did he show you anything?

17 A He brought me a photograph after he contacted
18 Colleton County.

19 Q Uh-huh. (Affirmative).

20 A And they faxed him a picture.

21 Q Uh-huh. (Affirmative).

22 A And he brought it to me and said can you identify, is
23 this the person, and I said yes, that's him.

24 Q Okay.

25 A And I might add, that particular night he had -- when

1 he come from the woods, you know, approaching me, he had
2 on this heavy -- it looked like an Army trench coat. It
3 was either navy blue, dark black, or, you know, but it
4 was -- had the collar turned up. Had on a wool cap pulled
5 down close. Had on these brown jersey gloves. And I mean
6 it made me fearful knowing that he was approaching me and
7 he didn't reply to me as I, you know, asked him what's
8 your problem. He just kept walking toward me, and I just
9 automatically said, after he told me, you know, you get
10 back in that vehicle, we're going to ride or I'm going to
11 kill you, well, I just assumed that possibly he had a
12 pistol, but I knew he would probably had a knife because
13 everybody totes a knife that, you know, wears a costume
14 like that.

15 Q But you didn't see a knife, did you?

16 A I did not see one.

17 Q And did you tell the officer -- did you give the
18 description of the clothing, clothing to the officer?

19 A I did.

20 Q Okay. And do you know what he hit you with?

21 A Not really. I'm, I'm pretty certain it was a, half
22 of a brick.

23 Q Okay. And I want to show you what's been marked as
24 exhibit, State's Exhibit 1, 2, 3, 4, 5, 6.

25 Do you recognize what these are or, yeah, just kind

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1 of look through them and see if you know what that is.

2 A Yes, ma'am.

3 Q And how do you recognize them?

4 A Okay. That's my home and my yard and my vehicles in
5 the yard.

6 SOLICITOR MAURICE: Your Honor, the State moves to
7 put Exhibits 1 through 6 into evidence.

8 THE COURT: Any objection, Mr. Luginbill or
9 Mr. Kirkland?

10 MR. KIRKLAND: No, sir, Your Honor.

11 THE COURT: Without objection.

12 One through six you say?

13 SOLICITOR MAURICE: Yes, Your Honor.

14 THE COURT: Photographs.

15 (WHEREUPON, State's Exhibit No. 1 through 6 were
16 received into evidence at this time.)

17 Q Tell us what this is, State's Exhibit No. 5, whose
18 car that is, and where do you -- is that where you usually
19 park?

20 Just kind of tell us a little bit about that.

21 A That's my wife's vehicle. I drove a, a different
22 vehicle than this one in the picture.

23 Q Okay.

24 A But that picture that -- my vehicle was parked over
25 to the left just beyond where this picture was.

1 Q Okay. All right. And that's where you drive up?

2 A Right, uh-huh. (Affirmative).

3 Q Okay.

4 A And I, I park there, uh-huh. (Affirmative).

5 Q This is another vehicle.

6 Is that---

7 A That, that was just an old car that I had that was
8 parked there.

9 Q Okay. And who -- and that was, that was State's
10 Exhibit 4.

11 A Right, yes, ma'am. This is -- in other words, right,
12 right back here was where the car was. The little car was
13 parked right over here. This is my wife's car there and
14 it was parked right over in front of this tree here and
15 that little swing or whatever.

16 Q Okay.

17 A And I was getting out on that backside, you know,
18 from the house.

19 Q Okay. And he came from which way you said?

20 A All right. He was coming from back this way, which
21 was -- I have a bunch of azaleas and there's some pine
22 trees and all. He was coming from out of the woods part.

23 Q Is that -- is State's Exhibit No. 3, is that better?

24 A That's, that's, that's it right there. He came
25 walking through right behind these bushes---

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1 Q Uh-huh. (Affirmative).

2 A ---right by this car.

3 THE COURT: Mr. Hiers, why don't you step down there
4 and just show the jury?

5 Mr. Kirkland and Luginbill, you can step behind the
6 rail. Be careful now.

7 A This is a, a, a picture of my car. In other words he
8 came through right by this white car right here and on
9 this car there was some brick, there was a little tarp or
10 whatever partially on the back. There was some brick on
11 there. I noticed there was a place where a brick had been
12 removed or half of a brick. I presumed that that was what
13 I was hit with, but I'm not -- this is the scene there and
14 he came right through from back in the woods. This was at
15 night now. Dark.

16 THE COURT: Mr. Hiers, move down to the middle so
17 everybody, everybody can see it.

18 Q And, Mr. Hiers, when did you notice that that brick
19 was missing?

20 A Whenever I went to, kind of, you know, got back home
21 and I was trying to find the brick maybe because it was a
22 little, a sharp corner thing, and like I told them at the,
23 at the hospital, in other words, he said that it looked
24 like, you know, signs of a sharp object.

25 Q And where, where were you saying that the bricks were

1 earlier?

2 A They were on the trunk of this car right here.

3 Q Holding that tarp down?

4 A It had a tarp back there, yes.

5 Q Okay. And you said you were wearing a hat or a cap
6 or something?

7 A A knit cap, kind of like.

8 Q No, you.

9 A Oh, me, yes, ma'am.

10 Q Okay. I'm going to show you -- we move this be
11 marked as State's Exhibit 9.

12 (WHEREUPON, a cap was marked as State's Exhibit No. 9
13 for identification purposes only at this time.)

14 Q Do you recognize this?

15 A Yes, ma'am.

16 Q How do you recognize that?

17 A That was a cap that was given to me by the Enterprise
18 Bank of South Carolina.

19 Q Okay.

20 A And I had been wearing it for a long time.

21 Q Okay. And the night this happened --

22 A Yes, ma'am.

23 Q -- were you wearing it that night?

24 A Right.

25 SOLICITOR MAURICE: Okay. Your Honor, we'd like to

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1 move this into evidence, State's Exhibit No. 9.

2 MR. KIRKLAND: Without objection, Your Honor.

3 (WHEREUPON, State's Exhibit No. 9 was received into
4 evidence at this time.)

5 Q Mr. Hiers, later on, and I mean months, years,
6 whatever, later on, did someone come and, and get a sample
7 from you?

8 A Yes, ma'am.

9 Q Tell us about that.

10 A Chief Preacher.

11 Q Uh-huh. (Affirmative).

12 A He was the chief there at the time and he came and
13 was collecting evidence, and at the time Chief Bearden was
14 in school there or whatever, you know, the enforcement
15 school, and he was filling in or taking over the case and
16 he came and got a swab from me for evidence or whatnot.

17 Q Okay. Where did he get the swab from?

18 A Out of my mouth.

19 Q Okay.

20 A A little swab kind of like a Q-tip.

21 Q Yeah.

22 A It tasted like peppermint I think.

23 Q Mr. Hiers, it was dark that night?

24 THE COURT: She's asking you was it dark.

25 THE WITNESS: Yes.

1 Q It was dark?

2 A That's correct.

3 Q How close did Mr. Jones get to you?

4 A Just walked right up within I'd say a couple of feet
5 in front of my face.

6 Q Okay. And---

7 A Looking me right straight in the eye I mean, and, you
8 know, giving me that threat.

9 Q So, what type of -- how well did you get a look at
10 him?

11 A Well, it was very dark. He was bearded up, and, like
12 I say, he had that knit cap pulled right down above his
13 eyes and beard and collar was turned up, and, of course,
14 he had on the brown jersey gloves.

15 Q And how did you recognize him though?

16 A Well, I knew his stature and I knew his voice, and
17 from there, I mean, you know, I put it together I mean.

18 SOLICITOR MAURICE: One moment please, Your Honor.

19 We mark this please State's Exhibit No. 10.

20 (WHEREUPON, a glove was marked as State's Exhibit No.
21 10 for identification purposes only at this time.)

22 Q Have you seen this before?

23 A Yes, ma'am.

24 Q How have you seen this?

25 A Okay. That glove was found right at the scene after

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By Solicitor Maurice

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1 I was attacked.

2 Q Did---

3 A And he was wearing brown gloves, and, of course,
4 after he attacked me I found out where the glove came
5 from.

6 SOLICITOR MAURICE: Okay. Your Honor, we'd like to
7 move State's Exhibit No. 10 into evidence.

8 MR. KIRKLAND: Without objection, Your Honor.

9 (WHEREUPON, State's Exhibit No. 10 was received into
10 evidence at this time.)

11 Q Mr. Hiers, will you please answer any questions that
12 counsel, defense counsel has?

13 THE COURT: All right. Gentlemen.

14 A I will.

15 THE COURT: Cross.

16 MR. KIRKLAND: Yes, sir, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. KIRKLAND:

19 Q Afternoon, Mr. Hiers.

20 A Yes, sir.

21 Q I believe, I believe, when you were testifying just a
22 little bit earlier, you initially were talking about
23 Mr. Jones there and you used the term good friends. You,
24 you -- I believe your testimony is that you've known
25 Mr. Jones and his family ever since you've been in

1 business for yourself, and, in fact, before because your
2 family's run a business for a long time?

3 A That's right.

4 Q Is that correct, sir?

5 A Yes, sir.

6 Q Now, so -- and they were somebody, including
7 Mr. Jones, that you've had, you've had some frequent
8 contact with over the years?

9 A Yes, sir, through business, you know.

10 Q Somewhat regular customers?

11 A Well, sort of regular, yes, sir.

12 Q Yes, sir.

13 Now, on the night this occurred you were -- how much
14 light was in your backyard?

15 A It was sort of a dim light coming from the house.

16 Q But you have a light in your yard?

17 A Yes, sir.

18 Q Is that correct?

19 You have a spotlight in your yard?

20 A I have a spotlight on the corner of the house, and my
21 wife, I had lights on under the carport which kind of
22 reflected out where I was parked.

23 Q Yes, sir.

24 A Of course, I was on the dark side of the vehicle when
25 I was exiting. And after my wife in the house, she heard

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 the commotion out there, she flipped the switch, and, of
2 course, I got flood lights right on the corner of the
3 house which light up the backyard, you know, right in the
4 area where the car was.

5 Q All right. And during this period of time, you had
6 enough light to look around and see, per your testimony,
7 that he had gloves on?

8 Is that accurate?

9 A I could tell that he had gloves on, yes, sir.

10 Q And I believe you described them as jersey gloves?

11 A Yes, sir, brown jersey.

12 Q You, you were able to see the gloves on his hand?

13 A Yes, sir, because when he raised his hands, I mean,
14 you know, I could tell that the gloves, he had them on.

15 Q Now, have you been shown this glove or any gloves
16 since that happened but before today?

17 I mean have you seen these gloves recently or---

18 A No, sir, not since they were taken as evidence.

19 Q So, you haven't seen them in the three years this has
20 happened?

21 A No, sir, not -- I mean I knew they were collected as
22 evidence at the scene, but I hadn't, you know, really seen
23 them since that time.

24 Q All right, sir. And you were also able to -- I
25 believe you gave a little testimony as to his coat that he

1 had on?

2 A Yes, sir.

3 Q And can you describe that coat for us please, sir?

4 A Yes, sir, it was one of these -- it was either dark
5 navy blue or black, which, you know, black and navy blue
6 is very similar.

7 Q Yes, sir.

8 A And it was like a trench coat like the soldiers
9 usually wear and comes down about your knees or whatever,
10 got heavy buttons. I mean it was a thick coat with long
11 sleeves on it.

12 Q And, and when you first saw whoever attacked you, how
13 far away approximately were you when you first saw them?

14 How, how far away from you were they?

15 A About from here to, oh, where those first row of pews
16 are, those seats.

17 Q Right about here?

18 A About that far, yes, sir.

19 Q Where the officer's sitting?

20 A Right, right, about that far out and he was coming
21 out of the woods and I just was looking that way and I
22 could see the figure coming and I kept, you know, asking
23 the question about what is your problem.

24 Q And he -- and you said he had a stocking cap pulled
25 down on his head?

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 A Yes, sir.

2 Q Was it cold?

3 A Well, it was right cool. Yes, sir, it was in
4 January.

5 Q All right. And this stocking cap, you got a look at
6 that also?

7 A Yes, sir.

8 Q And what---

9 A It was pulled down on his head right over his ears
10 and right above his eyes.

11 Q And what color was that?

12 A It was a navy blue.

13 Q All right. So, you were able to get a, a fairly good
14 description and some, some distance of what he had on.

15 Do you remember what kind of shoes he had on?

16 A No, sir, I didn't see his shoes.

17 Q How about his britches, his pants?

18 Do you remember those?

19 A No, sir, because his coat covered the pants. In
20 other words, it came down about the knees.

21 Q All right.

22 A It was a trench coat or whatever.

23 Q Now, so, so, if you were able to see his, what he had
24 on his head, his coat he had on, that he had gloves on,
25 were you able to see his face like if he had a beard or if

1 he had any facial hair, gray?

2 A Sir, he had a heavy beard and all you could see was
3 his eyes and his beard. His collar was turned up. The
4 cap was pulled down to his ears, and it was very little to
5 see in his face.

6 Q But, but you saw his face?

7 A Yes, sir.

8 Q And you saw his face from a distance as he came up to
9 you?

10 A As he neared, but he came right up to me, and, you
11 know, as he came I could focus on him, yes, sir.

12 Q Yes, sir.

13 A And I kept my eyes on him. I wasn't looking at his
14 shoes.

15 Q Yes, sir.

16 But when, when your good friend came up to you like
17 that in that kind of environment, did you say Mr. Jones or
18 Johnnie, what you doing?

19 I mean did you call him out by name?

20 A No, sir, because he didn't speak till he got right in
21 front of my face.

22 Q But, but you knew -- you know who he is by sight?

23 A I knew who he was by his voice when he got right up
24 to me and I knew his stature.

25 Q well, did he run at you or, or he walked across?

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 A No, he come walking right straight, just a steady
2 pace.

3 Q All right.

4 A He didn't run, but just kept walking. He wouldn't
5 answer after I asked him, you know, what was his problem.
6 I asked about three times. He just kept walking towards
7 me.

8 Q And now, after -- when, when this incident is
9 occurring, is the person who is coming up to you -- now,
10 cause you saw the gloves in his hand, is that correct?

11 A He had the gloves on, yes, sir.

12 Q All right. Those gloves, did he have something in
13 his hand?

14 I mean---

15 A I, I couldn't tell what he had in his hand or
16 anything, but, you know, whenever he hit me he raised his
17 hands up, and, of course, all that.

18 Q But you, you saw the gloves, but you don't know if he
19 had anything in them?

20 A That's right. I don't know what was in his hands.

21 Q All right. When this, this -- the first time you
22 were struck, was the person that struck you, did they hit
23 you with the left hand, the right hand?

24 Do you know which hand they struck you with?

25 A I think it was his right hand because the way I was

1 positioned and where I was hit.

2 Q All right. So, if it was with the right hand, now,
3 were you, were you looking at him when you were struck?

4 Were you looking away from him when you were struck?

5 A I was looking him in the face, yes, sir.

6 Q When you got struck by this object, you were looking
7 him in the face?

8 A That's right.

9 Q Now, which side of your head were you struck on?

10 A In fact, whenever I turned, you know, to run, that
11 was when he, you know, hit me in the head.

12 Q Which side of the head were you struck on?

13 A On the left side.

14 Q On your left side.

15 Let's move a little bit to -- you, you, you got into
16 your house. Your wife saw you. Law enforcement came.

17 When law enforcement first came, you had a
18 conversation with them about what happened, it that---

19 A I told them that I had been attacked, yes, sir.

20 Q Did you tell them it was somebody you knew?

21 A No, sir, I didn't tell them at that time, no, sir.

22 Q And I think, per your testimony, you went to the
23 hospital maybe 20 minutes or so after this happened?

24 A Approximately that time.

25 Q Something in that time frame?

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 A Yes, sir.

2 Q And you had ample -- you had plenty of opportunities
3 to talk to the officer?

4 A We discussed, you know, I told him, kind of described
5 what had happened, and, of course, he was checking me and
6 getting things going, you know, where I could be, go on to
7 the hospital.

8 Q Did you tell him, at that time, what this person had
9 on, color of all of that?

10 Did you tell him that then?

11 A Actually it was at the hospital that I give a full
12 description of that.

13 Q You didn't, you didn't describe his facial features
14 at this time either?

15 A Well, no, sir, because I was in shock. In other
16 words, I wasn't in the shape to discuss it.

17 Q Well, did you tell him anything about this person?

18 A No, sir, I didn't give him no name or anything until
19 at the hospital.

20 Q Did you describe him as a white person, Hispanic
21 person, a black person?

22 A I don't recall right off, but I knew that it was a
23 black person, yes, sir.

24 Q But you don't recall whether you told him that?

25 A Not, not at the house I don't---

1 Q All right.

2 A ---because everything was in confusion right at the
3 time.

4 Q All right. And then, sir, y'all went to the
5 hospital, that's correct?

6 A That's correct, yes.

7 Q And when you got to the hospital you -- I'm, I'm
8 assuming you talked to staff at the hospital?

9 Somebody came to help you?

10 A Right.

11 Q And when you talked to the people at the hospital,
12 did you give them a description of any kind as to who
13 attacked you?

14 A Not at the hospital personnel, no. In other words,
15 they -- I just -- they knew I was there for an emergency.

16 Q Do you recall---

17 A And I -- the only one I discussed that with was Chief
18 Bearden.

19 Q So, you didn't, you didn't tell them anything about
20 who, who had attacked you at the hospital, the staff
21 there?

22 A Well, not the staff, no, sir.

23 Q Okay.

24 A They didn't ask me that question I mean, you know,
25 about, nothing about that part of it.

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 Q Was the chief at the hospital when you got there?

2 A No, sir, he -- when we departed from home to come to
3 the hospital, he was doing some gathering up, getting some
4 information there at the house, and they was trying to get
5 a group up to look for the fellow, and he told me he would
6 see me at the hospital emergency room---

7 Q All right, sir.

8 A ---shortly, you know, afterwards.

9 Q Now, I, I believe your testimony was that when you
10 were in route to the hospital you and your wife had a
11 conversation about, about who did this?

12 A Yes, sir, in fact, I was telling her. She kept
13 asking me, you know, how I felt or whatever. She didn't
14 know whether I was gonna pass out or what, and I kept
15 telling her that I recognized that voice, and I just
16 hadn't got the name on it, but it was very familiar, and I
17 kept repeating that on the way. And after I got settled
18 in at, at the nurse, at the emergency room, it took a
19 little while before they, you know, started stitching me
20 up and doing different things to me, but I kind of got
21 calmed down a little bit and I told her, I said I know who
22 it is now.

23 Q And, and when you told her you knew who it was, did
24 you give her a name at the hospital?

25 A Right, I, I told her the name, uh-huh.

1 (Affirmative).

2 Q And, and you told her it was Mr. Jones at the
3 hospital?

4 A Yes.

5 Q All right. And now that is before the officer came
6 to the hospital or after?

7 A It was before I think or about the same time. He
8 came shortly after that because he was -- it was only two
9 that knew about it.

10 Q All right. When an officer came, did you right off
11 the bat tell him who you thought it was?

12 A Yes, sir, I had already knew before he got there the
13 name because I give him the name and he immediately -- you
14 know, I give him the information that I knew.

15 Q All right. Did you give him a description of who the
16 person was at the time?

17 A I don't, I don't think I give him a description
18 because I had, I had probably give him that at the house,
19 but I give him the name and told him, you know, who it
20 was, and he said well, I'm gonna contact Colleton County,
21 and he came back with a faxed picture.

22 Q Well, if you knew the person's name, you would be
23 able to assist the officer by describing him, wouldn't
24 you?

25 A Yes, sir.

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 Q But you didn't give him a description at that time?

2 A Well, he knew what he -- I described what he was
3 wearing and, and everything. Of course, we had the
4 evidence on that.

5 Q Now, when -- once you told him the name, they took
6 care of you, you went back to your house?

7 A Yes, sir, I was there for a while, you know, to --
8 after I got stitched up and all I went back home, yes,
9 sir.

10 Q But that same night you went back to the house?

11 A Yes, sir, I wasn't admitted.

12 Q Do you know about what time you got to the house?

13 A I don't recall right now, no, sir.

14 Q You go in and out the same door to your house all the
15 time, is that right?

16 A That's correct.

17 Q You're -- you go to the back door?

18 A Yes, sir.

19 Q Is that how y'all go in and out?

20 A Under the carport.

21 Q The one under the carport?

22 A Yes, sir.

23 Q Did y'all go in that same door?

24 A Yes, sir.

25 Q Had they secured all of that area when you got there?

1 You know how you see on TV they tape all of this off
2 and people couldn't get in, did you have to go through
3 some kind of a taped up area or did it look just like it
4 did when you left?

5 A No, sir, it wasn't taped up. I don't know what took
6 place after I left because I, you know, immediately left,
7 you know, shortly after I was attacked.

8 Q All right. Now, the next day did you have the
9 opportunity to talk to the officer again?

10 A I don't really recall. I know he was back and forth,
11 you know, contacting me and they were trying to locate
12 him. I, I don't -- that's been over three years ago now.
13 I couldn't tell you exactly.

14 MR. KIRKLAND: May I approach, Your Honor?

15 Let me hand you something and get you to look at
16 that?

17 A Okay.

18 THE COURT: Let him look at it.

19 Q Can you tell us whose name is at the top of that?

20 A Donald C. Hiers.

21 Q Yes, sir.

22 A Yes, sir.

23 Q And that would be you, sir, correct?

24 A That is correct.

25 Q And do you recognize this now having an---

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 A That's, that's my writing. I probably hadn't looked
2 at this in a long time.

3 Q Well, you're free to look at it if you choose to.

4 A All right. All right.

5 (Pause.)

6 A Yes, sir, that's---

7 Q Does that have a date on it for when that statement
8 was given?

9 I believe if you look at the bottom.

10 A Yes, sir.

11 Q All right. And does it also have a time, sir?

12 A That's dated 9:45 a.m. on there.

13 Q And that would be the day after this incident
14 occurred?

15 Is that accurate, sir?

16 THE COURT: If that's what the paper shows or what
17 are you asking?

18 MR. KIRKLAND: Yes, sir.

19 This would have been the next morning after the
20 incident, correct?

21 A That's right.

22 Q Because it happened on the 9th.

23 A It happened on the 9th, yes, sir. This would be the
24 next following morning.

25 Q It happened about 12 or 14 hours later?

1 A I think -- in other words, Chief Bearden came and,
2 you know, wanted me to, you know, do a little explanation
3 of it.

4 Q All right. Is there, is there any kind of
5 description in your explanation of what happened about who
6 did this to you?

7 A Not on this particular piece of paper right here now.

8 Q Did you do any---

9 A But at the time I was hurriedly writing this and then
10 they were trying to locate this fellow.

11 Q All right.

12 A Would you like for me to read this to the jury?

13 Q Yes, sir, that would be fine.

14 A Donald C. Hiers. Jamie Bearden was the investigating
15 officer. I am 70 years of age. This was on April 7,
16 1936. In other words, I was 70 years. That is three
17 years ago.

18 I live at 1945 Low Country Highway. At approximately
19 8:00 p.m. Tuesday, January 9, '07, I drove up from work to
20 the rear of my home, and as I exited my vehicle a black
21 man came walking towards me and repeatedly said for me to
22 get back in my vehicle, and that we were going to ride,
23 and if, if not, he was going to kill me. We argued
24 repeatedly and I told him I could not leave to go
25 anywhere. He then hit me on the head with a hard, hard

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 object. Possibly a brick. I was hit repeatedly as I ran
2 towards my house. The hits were very hard.

3 Q All right, sir. And, and this statement, the next
4 day -- and I believe you testified a while ago that how
5 you, when you, when you calmed down at the emergency room,
6 all of this information about who this was came to you,
7 but the next day when you're calmed down, you don't give a
8 description of who did this, do you?

9 A No, sir, when I wrote that I was -- they were in a
10 hurry, and I didn't give all of the other details in it.

11 Q Well, a big detail would have been the name Johnnie
12 Lee Jones, correct?

13 A Well, that was already given to the officer.

14 Q But I -- in this, in this statement of what happened,
15 you don't mention in here that your good friend, Johnnie
16 Lee Jones, is the person who's supposed to have attacked
17 you, do you?

18 A No, sir, I didn't think it was probably necessary
19 because it was already in the record with the police
20 report.

21 Q But you just described him as a black man, that's
22 all, correct?

23 A On that paper, yes, sir.

24 Q I mean wouldn't it be logical that somebody you'd
25 known, you know, basically all your life, was a somewhat

1 regular customer, and was somebody you described as a good
2 friend, that would be a shock enough that you would call
3 him by his name when you did the statement?

4 wouldn't you think that would be important?

5 A Well, not necessary.

6 Q Do you know how many times you were struck, Mr.
7 Hiers?

8 A I don't know exactly, no, sir, because I was hit hard
9 the first time, and as I was running I was hit once or
10 twice more before I got away from him. The first lick was
11 on the head and that was the, the hard blow.

12 MR. KIRKLAND: One moment please, sir.

13 (Pause.)

14 Q One last thing, Mr. Hiers.

15 When you went to the hospital, did you describe
16 Mr. Jones in any way, shape, or form to the folks at the
17 hospital?

18 A No, sir, just to the police officers.

19 Q Did, did you---

20 SOLICITOR MAURICE: Objection, Your Honor. I think
21 he asked that earlier.

22 THE COURT: He has. That's been asked and answered
23 three times. Sustained.

24 MR. KIRKLAND: Your Honor, given Mr. Hiers's
25 testimony and the statement, we would move, since he's

Donald Hiers - Cross-examination
by Mr. Kirkland

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1 identified this, move this statement into evidence as
2 Defendant's -- this will be Defendant 1.

3 THE COURT: Do you know what you do when you do that,
4 don't you?

5 MR. KIRKLAND: (Nods affirmatively.)

6 THE COURT: Very well.

7 Any objection?

8 SOLICITOR MAURICE: No objection, Your Honor.

9 THE COURT: Anything on redirect?

10 (WHEREUPON, the statement was marked as Defendant's
11 Exhibit No. 1 and received into evidence at this time.)

12 REDIRECT EXAMINATION

13 BY SOLICITOR MAURICE:

14 Q Mr. Hiers, when you wrote that statement, you had
15 already told the officer the name of the person who had
16 attacked you?

17 A That's correct.

18 Q Okay. No further questions.

19 THE COURT: You can step down.

20 Ladies and gentlemen of the jury, we're going to
21 break now for lunch. We're starting back at two o'clock.

22 Mr. Bamberg, I think they're going to want you to
23 pick up the tab. You got your wallet with you.

24 THE BAILIFF: Yes, sir, I got a big credit card.

25 THE COURT: It will be no problem. Enjoy your lunch.

1 when you -- if you get back before two o'clock, obviously
2 you probably will, if you want to enjoy some of this
3 sunshine outside, you're welcome to walk around outside
4 and just be ready to go at 2:00. Don't discuss the case.
5 Don't start deliberating, and y'all select a jury foreman
6 when you get back from lunch. Enjoy your lunch, but don't
7 eat so much you get sleepy.

8 Thank y'all.

9 (WHEREUPON, the jury exited the courtroom at 12:41.)

10 THE COURT: Anything for the record by the State
11 before we break for lunch?

12 SOLICITOR MAURICE: No, Your Honor.

13 THE COURT: By the defendant?

14 MR. LUGINBILL: Nothing.

15 THE COURT: The defendant is in custody.

16 (WHEREUPON, a break was taken.)

17 THE COURT: Is the State ready to proceed?

18 SOLICITOR MAURICE: Yes, Your Honor.

19 THE COURT: Mr. Luginbill?

20 MR. LUGINBILL: We are.

21 THE COURT: Bring the jury in.

22 (WHEREUPON, the jury came into open court at
23 approximately 2:01.)

24 (WHEREUPON, three evidence bags were marked as
25 State's Exhibit Nos. 11 through 13 for identification

1 purposes only at this time.)

2 THE COURT: All right. Did y'all elect a foreperson?
3 who has got the honors? who has the honors?

4 (WHEREUPON, a juror raises her hand.)

5 THE COURT: All right. Let's do this. How about you
6 stand up and walk down here to where Mr. Bamberg sits.
7 That's the foreperson's seat and y'all just all slide down
8 one and Mr. Bamberg can slide down one. I'll share a,
9 I'll share a secret with y'all about the foreperson.
10 Maybe I shouldn't do that.

11 THE FOREPERSON: It's okay.

12 THE COURT: I asked her did she have a, enjoy her
13 lunch and did she eat one piece of fried chicken. She
14 said no, sir, I had four pieces. Then she said that's
15 where they all went. She didn't say four.

16 Thank you for agreeing to serve, but I hope y'all
17 enjoyed your lunch and we'll see how we are running and
18 we'll do something tomorrow.

19 You may call your next witness.

20 SOLICITOR MAURICE: Thank you, Your Honor.

21 Mr. James Preacher.

22 JAMES PREACHER, after being duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR MAURICE:

1 Q Mr. Preacher, where were you employed back on
2 January 9th, 2007?

3 A I was the chief of police of Ehrhardt, South
4 Carolina.

5 Q Okay. All right. And were you involved in the, this
6 case?

7 A This case happened before I came there. I was
8 involved by taking a DNA standard.

9 Q Okay. And who did you take that from?

10 A Mr. Hiers.

11 Q Okay.

12 A Donald Hiers.

13 Q How did you do that?

14 A With a mouth swab.

15 Q Okay. And, so, you went and saw Mr. Hiers?

16 A At his place of business, yes, ma'am.

17 Q And you took the mouth swab and then what did you do
18 with it?

19 A I took it to SLED.

20 Q I'm going to show you what's been marked as, is this
21 the right one, State's Exhibit 13.

22 A That's my initials there.

23 Q Okay. That is what I was going to ask you.

24 A Yes, ma'am.

25 Q Can you identify that?

James Preacher - Direct examination
by Solicitor Maurice

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1 A Yes, ma'am.

2 Q How can you identify it?

3 A Pardon?

4 Q How?

5 THE COURT: How do you identify it?

6 A By my initials at the top and also my handwriting on
7 the plastic envelope and the paper envelope.

8 Q Okay. And where did you take that after you took it
9 from Mr. Hiers?

10 A To SLED in Columbia where they could process it
11 through their lab.

12 Q Okay. All right. Will you answer any questions that
13 Mr. Luginbill may have?

14 A Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MR. LUGINBILL:

17 Q Chief, I may have misunderstood your first answer to
18 Mrs. Maurice.

19 When did you become chief in Ehrhardt?

20 A It was around September of 2007.

21 Q All right. So, you were -- at the time of this
22 incident you were not involved---

23 A No, sir, I was not involved in this incident except
24 taking the DNA sample.

25 Q You weren't involved in questioning or investigation

1 or anything like that?

2 A No, sir, I was not.

3 Q Can you tell me, had this -- had the coat, the
4 gloves, and the hat, had all of that already been
5 transported to SLED by the time you took over as chief of
6 Ehrhardt?

7 A Yes, sir.

8 MR. LUGINBILL: I wouldn't have any further
9 questions, Your Honor.

10 SOLICITOR MAURICE: No questions, Your Honor.

11 May he be excused?

12 THE COURT: He may.

13 THE WITNESS: Thank you so much.

14 THE COURT: Thank you. Good to see you.

15 SOLICITOR MAURICE: Mrs. Hiers.

16 JOANN HIERS, after being duly sworn,
17 testified as follows:

18 THE COURT: Mrs. Hiers, if you would, give us your
19 full name for the record.

20 THE WITNESS: JoAnn Kesler Hiers.

21 THE COURT: Answer their questions.

22 DIRECT EXAMINATION

23 BY SOLICITOR MAURICE:

24 Q Mrs. Hiers, who is your husband?

25 A Donald Claude Hiers.

JoAnn Hiers - Direct examination
by Solicitor Maurice

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1 Q How long have you been married?

2 A Fifty years.

3 Q On the night of this incident, were you home?

4 A I was.

5 Q And where, where do y'all live?

6 A 1945 Low Country Highway in Ehrhardt, South Carolina.

7 Q Okay. Do you know what county that is?

8 A Bamberg.

9 Q On, on this night, tell us what you remember.

10 A I was watching TV. It was dark and I heard voices
11 outside, and I got up to go to the door, and when I got --
12 about the time I got to the door he opened the door, and
13 his face was just covered in blood, and I asked him what
14 happened and he said he had been mugged.

15 Q Okay.

16 A And I called 9-1-1 and they came and, you know, the
17 police came.

18 Q And what's your background?

19 A I'm a registered nurse.

20 Q Okay.

21 A Retired.

22 Q So, were you, I guess, looking after him?

23 A Right, right. And he was, you know, bleeding a lot
24 and I got a towel and gave it to him and he was wiping.
25 And when the rescue squad got there, they took -- they put

1 him in and took his vitals and he wanted me to take him to
2 the emergency room. So, I took him to the emergency room
3 in my car.

4 Q Okay. And on the way to the emergency room, did he
5 say anything to you about the incident?

6 A He said that he remembered, recognized the man's
7 voice, that he couldn't put a name with it, but said he
8 kept -- he remembered the voice and he just couldn't place
9 it yet, and he kept saying that all the way to Bamberg.
10 And after we got him in the emergency room, he was, you
11 know, sitting there and he said that -- he said he
12 remembered the name, but he didn't tell me the name at
13 that time, and about that time Jamie walked in and he told
14 Jamie that he remembered the name.

15 THE COURT: Jamie is who?

16 THE WITNESS: The policeman and he, he told him the
17 name and he even told him what county he was from and---

18 Q Okay.

19 A ---my daughter and I were there and we left out while
20 they were talking.

21 Q Okay. All right.

22 A We didn't stay in there while they were talking.

23 Q Okay. Will you answer any questions that
24 Mr. Luginbill may have?

25 A I'll try.

JoAnn Hiers - Cross-examination
by Mr. Luginbill

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1 CROSS-EXAMINATION

2 BY MR. LUGINBILL:

3 Q Ma'am, I promise, mine will be easy.

4 Did you have a chance to see your husband's attacker
5 at all?

6 A No, huh-uh. (Negative).

7 Q During the course of your 50 years together, have you
8 ever had occasion to work in your husband's store?

9 A No.

10 Q So, if he had only known Mr. Jones from the store,
11 you would not have any direct knowledge?

12 A No, huh-uh. (Negative).

13 Q And, in fact, you don't know who Mr. Jones is?

14 A No, I wouldn't know him if he was to walk in here
15 right now.

16 Q When EMS got there and were, was tending to your
17 husband and Mr. Bearden was there as well, correct?

18 A Right.

19 Q Was your husband able to get any kind of physical
20 description of, of his attacker at that point?

21 A Not to me.

22 Q Did you hear him give it to the police officer?

23 A Not really. All I knew he said he was black and
24 tall.

25 Q And that's all he could say?

1 A That's all that I remember.

2 Q Now, when he told you to call 9-1-1, did you relay
3 that information to the dispatcher?

4 A No, I just said that he had been attacked.

5 Q You didn't say by who or anything like that?

6 A Huh-uh, no.

7 Q And you didn't hear your husband say anything to
8 anybody about who it was?

9 A No.

10 Q He didn't tell you a name on the ride to the
11 hospital?

12 A No, because he didn't remember it until he got to the
13 emergency room.

14 Q And you, and you have no other personal knowledge
15 about Mr. Jones whatsoever?

16 A No.

17 MR. LUGINBILL: That's all I have, Your Honor.

18 THE COURT: Redirect?

19 SOLICITOR MAURICE: Nothing, Your Honor.

20 THE COURT: Mrs. Hiers, you're free to go or welcome
21 to stay.

22 THE WITNESS: Thank you.

23 THE COURT: Next witness please.

24 Be careful stepping down.

25 THE WITNESS: Thank you.

JoAnn Hiers - Cross-examination
by Mr. Luginbill

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1 THE COURT: Next witness.

2 SOLICITOR MAURICE: Mr. Grant, James, James Grant.

3 He's outside. Mr. James Grant.

4 THE COURT: Come around sir, please, right up here.

5 SOLICITOR MAURICE: He can not hear well at all.

6 THE COURT: What?

7 JAMES GRANT, after being duly sworn,
8 testified as follows:

9 THE WITNESS: I'm hard of hearing.

10 THE CLERK: Yeah, okay.

11 THE WITNESS: I can hear you.

12 THE CLERK: Okay.

13 THE COURT: Hold on one second.

14 Did you hear him?

15 THE WITNESS: Yea, but I got to see, but I can't hear
16 good.

17 SOLICITOR MAURICE: He hears better.

18 THE WITNESS: I told them that before I come up here.

19 THE COURT: That you can't hear good?

20 We're going to give it a try, but, but it may not get
21 very far.

22 SOLICITOR MAURICE: Okay.

23 THE COURT: Listen to her.

24 Okay. Can you hear me?

25 DEFENDANT: No, I don't hear her.

1 THE COURT: She hadn't said anything.

2 Can you hear me?

3 (No response.)

4 THE COURT: Can you hear me?

5 (No response.)

6 THE COURT: All right. Ma'am, I find that he is
7 incapable of hearing us.

8 SOLICITOR MAURICE: I won't -- he can answer -- he
9 can tell us what happened that night without me even
10 asking any questions, many questions.

11 MR. LUGINBILL: Your Honor?

12 THE COURT: Hold on, hold on. He has to be subject
13 to cross-examination.

14 We'll try it.

15 Answer her questions when she asks you a question,
16 this lady right here.

17 SOLICITOR MAURICE: Me.

18 THE WITNESS: Yea, I know her.

19 THE COURT: Ask the question.

20 DIRECT EXAMINATION

21 BY SOLICITOR MAURICE:

22 Q Did you see Mr. Jones the night or day of this
23 incident?

24 A I can't hear.

25 Q Did you see him?

James Grant - Direct examination
by Solicitor Maurice

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1 A The only thing, I gave him a coat.

2 THE COURT: Sir?

3 THE WITNESS: I gave him my coat.

4 THE COURT: Gave him a coat.

5 THE WITNESS: That's all I know about it.

6 SOLICITOR MAURICE: Okay.

7 THE WITNESS: That's all.

8 THE COURT: Hold on.

9 THE WITNESS: That's all I know.

10 Q Do you recognize this coat?

11 A Yea, that's the coat I found on my porch there.

12 Q Okay. When did you find it on your porch?

13 When?

14 A The -- it was turned up there. I didn't look at the
15 back of it.

16 Q Okay. What did you do -- where did you find it?

17 Show him what's been, what's marked as State's
18 Exhibit 8.

19 What's that?

20 A No, it was in another chair.

21 Q It was in another chair.

22 A That's where I was sitting on the porch on the chair
23 when he come to my house sitting there talking.

24 Q Okay. When, when did he come to your house?

25 That day?

1 When?

2 THE COURT: Listen to me. When did he come to your
3 house?

4 Q When?

5 What time?

6 Sir, what time?

7 A My sister told you in there what my child support is.

8 THE COURT: All right. Mrs. Maurice, this is not
9 going to work.

10 SOLICITOR MAURICE: Okay.

11 THE COURT: Mr. Luginbill, you got any questions you
12 want to ask this witness?

13 MR. LUGINBILL: I'll attempt to, Your Honor. I just
14 have several questions I need to ask him.

15 CROSS-EXAMINATION

16 BY MR. LUGINBILL:

17 Q Mr. Grant, can you hear me okay?

18 Can you hear me?

19 A Nope.

20 Q Not at all.

21 How about now?

22 Is that any better?

23 A The battery is dead in the thing.

24 SOLICITOR MAURICE: He was hearing much better
25 earlier, Your Honor.

James Grant - Cross-examination
by Mr. Luginbill

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1 THE COURT: Well, where can we get a battery?

2 SOLICITOR MAURICE: Is his sister here?

3 Can you see if his sister has an extra battery?

4 Maybe that's what happened.

5 THE COURT: Mr. Bamberg, y'all can't be doing that.

6 THE BAILIFF: He said talk on the side of the hearing
7 aide.

8 SOLICITOR MAURICE: Ask her if there's not another
9 battery. You don't have one with you.

10 THE COURT: Hold on a second.

11 Where do you get the batteries?

12 MR. LUGINBILL: Judge, Radio Shack ought to have it.

13 THE COURT: Step down.

14 Mr. Bailiff, don't let him leave.

15 Mr. Bamberg, would you go speak with him outside,
16 find out where the batteries are. I'm sure that you can
17 get them at any drug store. Go get me a battery. Don't
18 let him leave.

19 And, ladies and gentlemen of the jury, when, when
20 they get the battery for the hearing aide, then they'll
21 let him be cross-examined. I apologize for that.

22 Call your next witness.

23 THE SOLICITOR: Mr. Jamie Bearden.

24 JAMIE BEARDEN, after being duly sworn,
25 testified as follows:

Jamie Bearden - Direct examination
by Solicitor Maurice

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1 DIRECT EXAMINATION

2 BY SOLICITOR MAURICE:

3 Q Mr. Bearden, where did you or who do you work for?

4 A Ehrhardt Police Department.

5 Q When did you start?

6 A I started December 16th of '06.

7 Q Okay. And this incident occurred?

8 A January 9th of '07.

9 Q So, you were new?

10 A I was new.

11 Q Okay. What time were you dispatched to this
12 incident?

13 You can look at your notes if you need to.

14 A I'll have to. I was dispatched at 19:52.

15 Q Okay. In, in layman's terms, what time is that?

16 A 7:52.

17 Q Thank you. P.M.?

18 A Yes, ma'am.

19 Q Okay. And where, where were you dispatched to?

20 A I was dispatched around to 1945 Low Country Highway.

21 Q Okay. And what county is that in?

22 A It's in Bamberg County.

23 Q Okay. Who lives there?

24 A Mr. Donald Hiers and his wife.

25 Q And what happened when you got there?

Jamie Bearden - Direct examination
by Solicitor Maurice

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1 A When I arrived on scene I seen Mr. Hiers. He come
2 out and he had blood all over his head and his shirt. I
3 had asked him what had happened to him. He said he had
4 been attacked. I asked him did he have a description at
5 the time. He told me it was a black male.

6 We got EMS to come over and check Mr. Hiers out.
7 When they checked him, Mrs. Hiers's wife drove him to the
8 hospital, and I told him that I would be right behind him.
9 I was going to look around the yard and see if I could
10 find anything, any evidence laying around the yard.

11 Q Okay. And did you find anything?

12 A The only thing I found in the yard was a glove.

13 Q Okay.

14 A It was a brown jersey glove.

15 Q Let me show you what's been marked as State's
16 Exhibit No. 10.

17 Do you recognize this?

18 A Yes, ma'am, that's the glove I found in the yard.

19 Q So, when did you go to the hospital?

20 A I contacted the Sheriff's Department and asked them
21 could they come down. During the time of waiting on them
22 to come, I rode around Ehrhardt a little bit just to see
23 if I saw anybody walking on the streets or somebody I
24 didn't know or somebody in that area. I didn't see
25 anybody in the area. It was probably ten minutes went by.

1 I left straight from Ehrhardt and went to Bamberg to the
2 hospital.

3 Q Okay. And when you got to the hospital, did you talk
4 with Mr. Hiers?

5 A Yes, I did.

6 Q Tell us about that.

7 A When I walked in the room Mr. Hiers stated that he
8 had recognized the voice, and on the way to the hospital
9 that he had thought about who it was. And when he got to
10 the hospital, he had put a name to the voice, and he told
11 me that the name he had got was Mr. Johnnie Lee Jones.

12 Q Okay. And what did you do next?

13 A Next I -- well, he, he told me what county he was
14 staying in. So, I contacted Colleton County, had them on
15 the look out for, you know, Mr. Jones. I got a picture
16 of -- I left the hospital and went and got a picture of
17 Mr. Jones. I went back to the hospital, and asked Mr.
18 Hiers, I said Mr. Hiers do you recognize who this is in
19 the picture. He said yes, sir, that's Johnnie Lee Jones.
20 That's the one that hit me in the head.

21 Q Okay. All right. What, what, if any, witnesses did
22 you later talk with?

23 A The next day I talked to -- Mr. Grant had contacted
24 me. He told me that---

25 THE COURT: No, sir, don't say what somebody told

Jamie Bearden - Direct examination
by Solicitor Maurice

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1 you.

2 (Whereupon, a coat was marked as State's Exhibit No.
3 14 for identification purposes only at this time.)

4 Q What, if anything -- let me ask you, do you recognize
5 this.

6 Do you recognize State's Exhibit 14?

7 A Yes, ma'am, I do.

8 Q How do you recognize that?

9 A I got the coat behind a chair or on top of a chair at
10 the residence of Mr. Grant.

11 THE COURT: Residence of who?

12 THE WITNESS: Mr. Grant.

13 THE COURT: Mr. Grant, the guy who was just in here?

14 THE WITNESS: Yes, sir.

15 Q Could he understand you when you were talking to him?

16 A I thought he could at the time. He told me---

17 THE COURT: No, sir, you can't testify to what
18 somebody else told you.

19 Q That's okay.

20 A At the time I thought he could.

21 Q Okay. Did you get any -- did Mr. Grant give you
22 anything else?

23 A I think there was a stocking cap that should have
24 been with the coat.

25

1 (WHEREUPON, a cap was marked as State's Exhibit No.
2 15 for identification purposes only at this time.)

3 Q I'm going to show you what's been marked as State's
4 Exhibit No. 15.

5 Do you recognize it?

6 A Yes, ma'am, I do.

7 Q How do you recognize it?

8 A I got it with the coat.

9 Q Okay. From whom?

10 A From Mr. Grant off the porch.

11 Q Earlier that day -- let me ask you this.

12 Did, did you know Mr. Jones from before this time?

13 A I, I knowed of Mr. Jones. Not really personally
14 knowed him, but I knowed of him.

15 Q Did you -- back then would you recognize him?

16 A Yes, ma'am.

17 Q Okay. Had you seen him that day?

18 A Yes, ma'am.

19 Q Where did you see him?

20 A He was at what we called in Ehrhardt the back lot.
21 They were all standing around back there earlier that day.
22 That was probably between 3:00 and 5:00 that I had seen
23 him back there.

24 Q Explain to us that don't, that aren't familiar with
25 Ehrhardt where the back lot is and what it is.

Jamie Bearden - Direct examination
by Solicitor Maurice

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1 A As you come into Ehrhardt by the Ehrhardt Speed Stop,
2 you'll make a right. There's a liquor store right there.
3 Right behind the liquor store is a street that runs behind
4 it, and back behind it is the back lot where everybody
5 hangs.

6 Q People hangs---

7 A It's where everybody hangs out, the older folks.

8 Q All right. And what time did you say that was?

9 A It was between the hours of 3:00 and 5:00.

10 Q Okay. All right. Now, you went to Mr. Grant's
11 house, correct?

12 A Correct.

13 Q Could you tell us how far Mr. Grant's house is from
14 Mr. Hiers' house, Hiers?

15 I'm sorry.

16 A Probably 150 yards.

17 Q Okay. And explain to us that.

18 I mean where, where it is in relationship.

19 A Mr. Hiers's house sits on Low Country Highway, and if
20 you were standing in Mr. Hiers's front yard, you could
21 almost look directly across the road to your right a
22 little bit and you could see the back of Mr. Grant's house
23 through the edge of the woods.

24 Q All right. Later did you have an opportunity to meet
25 with or to go to Mr. Jones's attorney's office?

1 A I did.

2 Q Okay. And what was the purpose of that?

3 A The purpose of going to the attorney's office was to
4 get a DNA sample from Mr. Jones.

5 Q I'm going to show you what's been marked as State's
6 Exhibit 13.

7 Is that the right -- do you recognize that?

8 A No.

9 Q Not that one. There it is. State's Exhibit No. 11.

10 A Yes, ma'am, I do.

11 Q And State's Exhibit No. 12?

12 A Yes, ma'am.

13 Q Tell us how you recognize those.

14 A I recognize these because they have my signature and
15 my initials on the top along with the date and they also
16 have my signature on them.

17 Q Okay. Tell us -- did you get that sample from
18 Mr. Jones?

19 A Yes, I did.

20 Q And how did you do that?

21 A By mouth swab.

22 Q Okay. And what happened while you were, you were
23 there?

24 A While I was there and after I had gotten the mouth
25 swabs on, after I got everything sealed up, they had, the

Jamie Bearden - Direct examination
by Solicitor Maurice

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1 lawyer and Mr. Jones had asked me could they look at the
2 evidence. I said, of course, you know, you can look at
3 it. During the procedure of me opening the box---

4 THE COURT: Whoa, whoa, whoa.

5 (WHEREUPON, a bench conference was held.)

6 Q When you got there -- you had those clothes?

7 A Yes, ma'am.

8 Q Okay. And when you got them out, what happened?

9 A When I took them out, Mr. Jones looked at his wife,
10 I'm not sure what her name is, and said that's mine. I
11 wonder how he got them.

12 Q What was he referring to?

13 A Referring to the jacket.

14 Q Was there anything else?

15 A Yes, ma'am. When he said that his attorney said
16 don't comment on the clothes and just look at them.

17 MR. LUGINBILL: Your Honor, I'm going to object.

18 THE COURT: Strike that. Sustained.

19 Disregard that, ladies and gentlemen. Our rules
20 won't allow the witness to testify about what somebody
21 else said. That's hearsay.

22 THE WITNESS: Okay. Sorry.

23 THE COURT: Everybody forgets. Just disregard that
24 last statement.

25 Q Did you say what county that was in, the incident

1 date, the incident?

2 A It was in Bamberg County, yes, ma'am.

3 Q Will you answer any questions Mr. Luginbill has?

4 A I sure will.

5 CROSS-EXAMINATION

6 BY MR. LUGINBILL:

7 Q Mr. Bearden, I believe you testified that you were
8 new at the time of this incident?

9 A Yes, sir.

10 Q Had just got on the force?

11 A Yes, sir.

12 Q How long exactly?

13 A How long had I been on the police department?

14 Q Yes.

15 A I started December the 16th. I'm pretty sure it was
16 the 15th or 16th. I'm not real sure.

17 Q And you had not yet been to the Criminal Justice
18 Academy?

19 A I have not been for the police department, no, sir.

20 Q So, you were not a certified officer at the time?

21 A Exactly, yes, sir.

22 Q When did you first go to the academy?

23 A Went to the academy -- I'm not real sure about the
24 date, but it was in January.

25 Q All right. And when did you complete it?

Jamie Bearden - Cross-examination
by Mr. Luginbill

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1 A I didn't complete the first term. I actually got
2 hurt at the academy. I tore my knee up, was out for a
3 year or so. During that time Chief Preacher took over
4 down there. I come back to Ehrhardt, went back to the
5 academy in '08. Graduated in '09.

6 Q In your training at the academy, did you have
7 training on how to conduct a photo line-up?

8 A When I went back to the academy, yes, sir.

9 Q But you had not had it at this time?

10 A No, sir.

11 Q You would agree with me that the proper way to
12 conduct a photo line-up is to have multiple photos of
13 similarly looking individuals, correct?

14 A If I didn't, yes, sir.

15 Q That's the way you're taught to do it?

16 A Yes, sir, that's the way you're taught to do it.

17 Q And the reason for that is we don't want to suggest
18 who the bad guy is?

19 A Right.

20 Q Because people can get that wrong, correct?

21 A Correct.

22 Q In fact, it, it happens enough that we have a lot of
23 rules in place to prevent that, correct?

24 A Correct.

25 Q You only showed Mr. Hiers one picture, correct?

1 A Correct.

2 Q Now, had that been faxed to you from Colleton County?

3 I'm not asking where you, where you got it from.

4 My specific question was was it faxed from Colleton
5 County?

6 A No, sir.

7 Q Do you have the photo?

8 A Yes, sir, I do. I have -- I don't have the copy of
9 the photo that I showed Mr. Hiers, but I have the
10 original.

11 Q Did you turn that over to law enforcement, to the
12 solicitor's office?

13 A No, sir.

14 Q Why would you have evidence that you have not turned
15 over to the solicitor's office?

16 A Going back to what I just said a while ago, during
17 this case I was put into the academy. Mrs. Sandra Tavanis
18 was there. She was supposed to take this case over while
19 I was at the academy. I couldn't answer that question,
20 sir.

21 Q Did you ever do a physical line-up---

22 A No, sir.

23 Q ---with similarly situated people?

24 A No, sir, I did not.

25 Q Never did a full photo line-up?

Jamie Bearden - Cross-examination
by Mr. Luginbill

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1 A No, sir, I did not.

2 Q The only out-of-court identification that was ever
3 made was in the emergency room, correct?

4 A Correct.

5 Q That isn't how they teach you to do it, is it?

6 A No, sir.

7 Q And there is good reasons for that, isn't there?

8 A Yes, sir.

9 Q You would agree with me that the lighting at the time
10 of the incident was poor?

11 A It wasn't very well, but it wasn't absolutely poor,
12 poor vision.

13 Q It might not have been pitch black, but it was dark?

14 A It was dark, yes, sir.

15 Q There was some ambient light, but no direct light?

16 A Yes, sir.

17 Q As described by Mr. Hiers, and in your investigation,
18 the entire incident took place in a matter of a minute,
19 minute and a half, something like that?

20 A Something like that, yes, sir.

21 Q So, he didn't have a real long time to observe his
22 assailant, did he?

23 A No, sir.

24 Q The face-to-face confrontation was from a long way
25 away and it got closer and then he, then he turned to run?

1 That's how it was described to you?

2 A Yes, sir.

3 Q So, the face-to-face confrontation would have been
4 fairly quick?

5 A Yes, sir.

6 Q And when you first asked him who did this to you, the
7 only information he could give you was black male?

8 A Yes, sir.

9 Q He didn't tell you then he recognized the voice?

10 A No, sir, he did not. He was very upset at the time.

11 Q Didn't, didn't describe height?

12 A No.

13 Q Didn't describe weight?

14 A He said he was a bigger fellow. He said he was kind
15 of a big fellow.

16 Q Did he give you skin tone, light skin, dark skin?

17 A He said it was dark skin.

18 Q Can you show me in your report where you noted that?

19 A You want to see it?

20 Right here.

21 Q I'm going to show you what I was given. You tell me
22 if that's the same thing you have since apparently that
23 might not be the same thing.

24 THE COURT: No, sir, Mr. Luginbill.

25 Disregard that, ladies and gentlemen. That's not

Jamie Bearden - Cross-examination
by Mr. Luginbill

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1 proper.

2 You can't be making those comments.

3 Q Officer Bearden, first I want---

4 THE COURT: Wait a minute. You asked him to show it
5 where it was in the report.

6 THE WITNESS: Right here in the report. I got Mr.
7 Hiers stated that while getting out of his car at his
8 residence a black male suspect came up behind him and told
9 him to get back into his vehicle and let's go.

10 Q And that's the extent of the physical description,
11 isn't it?

12 A Yes, sir.

13 Q Now, initially you did a handwritten---

14 A Yes, sir.

15 Q ---one, is that correct?

16 A Yes, sir.

17 Q When did you fill that out?

18 A The handwritten one was did -- it was dated for the
19 same night that this incident had happened.

20 Q You would have filled that out after you had already
21 spoken with Mr. Hiers at the police station, correct?

22 A Correct.

23 Q So, after he presumably had told you who the
24 assailant was, correct?

25 A Correct.

1 Q But you didn't name him in your report, did you?

2 A Not at the time. I put what he had told me. As a
3 matter of fact, it's on the handwritten report too about
4 the black male.

5 Q And that's all it says?

6 A That's all it says at that time.

7 Q You would agree with me that the identity of the
8 assailant is really the most important detail that you
9 could possibly put in your report, isn't it?

10 A It is, sir, and I think that's why I typed up a
11 report and put the name of the victim in it.

12 Q And in your typed report, you don't put that in until
13 the end?

14 A Right.

15 Q As sort of an afterthought?

16 A No, sir, that's just when I put it in.

17 Q Did you put a -- did you call in the description on
18 your CAD report?

19 A I'm pretty sure I did. Like I said, that's been a
20 while back. But, yes, sir, I usually call in a
21 description on the CAD.

22 Q When I say CAD report, you know what I mean?

23 A Yes, I do.

24 Q This is a report generated by the 9-1-1 system?

25 A Yes.

Jamie Bearden - Cross-examination
by Mr. Luginbill

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1 Q Does that look to you like to be an accurate copy of
2 the CAD report in this case?

3 A Yes, sir, it does.

4 Q Can you read me what the description of the assailant
5 is?

6 A To be a black male. No other descriptions.

7 MR. LUGINBILL: Thank you, Your Honor. We'd like to
8 introduce this as Defense 2.

9 THE COURT: Any objection?

10 SOLICITOR MAURICE: No objection, Your Honor.

11 (WHEREUPON, the report was marked as Defendant's
12 Exhibit No. 2 and received into evidence at this time.)

13 Q Getting back to your originally coming up on the
14 scene, was Mr. Hiers able to describe, as he did today,
15 the trench coat that Mr. Jones was wearing?

16 A I don't think he did at the house. I think at the
17 hospital is when he told me the clothing description and
18 what he was wearing.

19 Q Did you ever go back and update the look-out
20 information based on that?

21 A I'll have to look at my notes. I'm not sure.

22 (Pause.)

23 A I don't see in my notes where I put that in.

24 Q The fact of the matter is that once you showed Mr.
25 Hiers the picture and he said yes, that's Johnnie Lee

1 Jones, you quit looking for anybody else, didn't you?

2 A No, sir, not really. Like I said, I had looked that
3 night for anybody out of the ordinary. Mr. Jones was a
4 primary suspect at the time.

5 Q But you testified, you testified that you looked for
6 somebody out of the ordinary before you went to the
7 hospital?

8 A Right.

9 Q My question was after Mr. Hiers had been shown a
10 picture, you stopped looking for anybody else?

11 A Yes, sir, we were looking for Mr. Jones at the time.

12 Q You talked about when you went to see Mr. Grant.
13 How did that come about?

14 Who contacted you?

15 A I'm pretty sure -- I'm positive Mr. Grant had
16 contacted Mr. Hiers the next morning because he had heard
17 what had happened. He had told Mr. Hiers that when he got
18 up that morning that he had found a coat and a hat that
19 was in a chair and he wanted to give it to Mr. Hiers. Mr.
20 Hiers told him no, that he needed to contact me and let me
21 handle that as far as the coat and stuff.

22 Q Let me back up one second in the timeline here.

23 After you went to the hospital or, or between the
24 time that you first showed up on the scene and went to the
25 hospital, did you rope off the scene?

Jamie Bearden - Cross-examination
by Mr. Luginbill

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1 A No, sir, I did not.

2 Q Was a deputy left there to keep anybody from coming
3 and going?

4 A No, sir.

5 Q The scene itself, any blood that would have been on
6 the ground, anything like that, was wide open for anybody,
7 animals, whatever, just to come through?

8 A The only thing that wasn't left on the ground was a
9 glove at the time. The blood and stuff, yea, it could
10 have been.

11 Q That's this glove?

12 A That's that glove, yea.

13 Q And you're absolutely sure that this is the glove
14 that --

15 A Yes, sir.

16 Q -- you found?

17 A Yes, sir. I collected it at the time I got there and
18 put it in an evidence bag.

19 Q And it's the State's position that the assailant was
20 wearing this glove?

21 A Yes, sir.

22 Q Now, when you came back that next morning to go talk
23 to Mr. Grant, where was the clothing?

24 where was the clothing?

25 A The clothing was still in the chair. He had not

1 touched it. It was still in the chair. He showed me
2 where it was. I collected the clothes and put them in a
3 brown paper bag, sealed it up, and put it in our evidence
4 locker.

5 Q All right. Brown paper bag, where is that brown
6 paper bag today?

7 A Sir, like I said, I was at the academy when all of
8 this stuff got turned over to SLED, and Mrs. Sandra
9 Tavanis can answer these questions.

10 Q But you can not say -- but this box that the
11 solicitor took that coat out of is not the box that you
12 put it in?

13 A No, it's not.

14 Q And this is not the bag you put it in?

15 A No, sir.

16 Q Somebody else handled it after you?

17 A Yes, sir, Mrs. Sandra Tavanis.

18 Q Now, this -- do you know when the evidence was
19 actually taken to Columbia?

20 A No, sir, I do not. I was at the academy when it was
21 taken.

22 Q And you don't know by whom directly. Now, not what
23 somebody else told you, but of your own knowledge you do
24 not know who took it?

25 A Just where she had turned it into evidence. Her

Jamie Bearden - Cross-examination
by Mr. Luginbill

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1 initials was on it. Her name was on it. So, she had to
2 turn it in.

3 Q When you observed Mr. Jones earlier, was he with some
4 other people?

5 A There was a bunch of people at the back lot. There
6 was -- well, I say a bunch. There was probably five or
7 six in the back lot.

8 Q At that point in time was anybody doing anything that
9 involved law enforcement or needed law enforcement
10 intervention?

11 A No, sir, we keep an eye back out there in the back
12 lot because there's a lot of drinking that goes on back
13 there, and we ride through occasionally just to keep the
14 peace down and make sure nobody's out of hand.

15 Q And the peace was down and nobody was fussing and it
16 was fine?

17 A No, sir.

18 Q So, nothing you saw there would have given you any
19 reason to believe that Mr. Jones was doing anything
20 illegal at that time?

21 A No, sir.

22 Q Just to make sure, I'm sure you would have told
23 somebody, but no other witnesses come forward.

24 There's no other witnesses who placed Mr. Jones at
25 the scene of the crime?

1 A Yes, sir, Mr. Folk.

2 Q At the scene of the crime.

3 A No, not at the scene, not at the scene of the crime.

4 No, sir, I'm sorry. Not at the scene of the crime.

5 MR. LUGINBILL: One moment, Your Honor. That may be
6 all.

7 (Pause.)

8 MR. LUGINBILL: Your Honor, that's all I would have.

9 REDIRECT EXAMINATION

10 BY SOLICITOR MAURICE:

11 Q Chief Bearden, State's Exhibit 15, the stocking
12 cap---

13 A Yes, ma'am.

14 Q ---did you get this from Mr. Grant's house?

15 A Yes, ma'am.

16 A It was balled up in the coat.

17 Q State's Exhibit 14, is this the jacket you got from
18 Mr. Grant's?

19 A Yes, ma'am, it is.

20 SOLICITOR MAURICE: Okay. Your Honor, we'd like to
21 move those two items into evidence.

22 MR. LUGINBILL: Yes, I would object at this time,
23 Your Honor. We don't believe the sufficient chain of
24 custody's been established.

25 SOLICITOR MAURICE: For what?

Jamie Bearden - Redirect examination
by Solicitor Maurice

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1 THE COURT: Chain of custody for what?

2 MR. LUGINBILL: He just testified people after him
3 had control of those items of clothing.

4 THE COURT: He's just offering, he's just offering
5 them into evidence. Not as any examination of it. We
6 hadn't gotten to that point yet.

7 Overruled. It's in evidence.

8 SOLICITOR MAURICE: Thank you, Your Honor.

9 (WHEREUPON, State's Exhibit Nos. 14 and 15 were
10 received into evidence at this time.)

11 Q State's Exhibit 11, you identified that as what?

12 A This is gonna be the mouth swab that I took from
13 Mr. Jones.

14 Q Okay. And what did you do with that?

15 A As soon as I got the mouth swab I took it to SLED and
16 turned it over to SLED for analysis.

17 SOLICITOR MAURICE: I'd like to move State's Exhibit
18 No. 11 into evidence, Your Honor.

19 THE COURT: Any objection?

20 MR. LUGINBILL: No objection on that, Your Honor.

21 (WHEREUPON, State's Exhibit No. 11 was received into
22 evidence at this time.)

23 Q How did you say you recognized State's Exhibit 12 or
24 did you?

25 A No, ma'am, I did not. I recognize these because they

1 had my name on them. They also have my initials and the
2 date I turned them over to SLED.

3 Q When you say your name on it, what is it actually on?

4 A It's on the sealing official, where it says sealing
5 official, it would be my name, James E. Bearden, and at
6 the top where it's sealed I have to initial and put a date
7 on it.

8 Q And what is that date?

9 A That's the date it was turned in.

10 Q Okay. What is that date though?

11 A The date is 5/27 of '09.

12 SOLICITOR MAURICE: Okay. Your Honor, we'd like to
13 put---

14 THE COURT: What is it?

15 what's in the bag?

16 SOLICITOR MAURICE: I'll have to establish, establish
17 that, Your Honor.

18 what date did you get the swab from Mr. Jones?

19 A It would have been on 7/2 of 2009.

20 Q And your testimony is that Mr. Jones admitted that
21 that was his jacket?

22 A Right.

23 Q Okay. Did Mr. Hiers give you Mr. Jones's name before
24 or after you showed him the picture?

25 A He give me the name before I showed him the picture.

Jamie Bearden - Redirect examination
by Solicitor Maurice

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1 Q Okay. Is that why you went and got the picture?

2 A Yes, ma'am, it is. I just wanted to make sure that
3 he could put that name with the face. I never even told
4 him who the picture was of. He told me who the picture
5 was of.

6 SOLICITOR MAURICE: One moment please, Your Honor.

7 (Pause.)

8 SOLICITOR MAURICE: No further questions.

9 THE COURT: You may step down.

10 Next witness.

11 SOLICITOR MAURICE: Mrs. Sandra Tavanis. She is --
12 she's not here yet. I think I told her 3:00.

13 (Pause.)

14 THE COURT: Come around please, ma'am.

15 SANDRA TAVANIS, after being duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR MAURICE:

19 Q Will you state your name for the record and spell
20 your last name?

21 A My name is Sandra Tavanis. The spelling of my last
22 name is T-A-V-A-N-I-S.

23 Q And where are you employed?

24 A I'm not employed right now.

25 Q Okay. Where were you employed back in -- so, I guess

1 the better question would be do you recognize this box?

2 A Yes, I do.

3 Q Okay. And how about this bag?

4 A I do recognize that bag, yes, ma'am.

5 Q And how do you recognize these items?

6 A When I was employed as an Ehrhardt police officer---

7 Q Okay.

8 A ---I took that bag, which had evidence in it, to the
9 SLED crime office, crime---

10 Q Okay.

11 A ---forensics office.

12 Q And did you see what was in the bag?

13 A Yes, I did.

14 Q Okay. And can you identify -- do you recognize this?

15 A Yes, I do.

16 Q Okay.

17 THE COURT: This being what?

18 THE WITNESS: It was---

19 THE COURT: Hold on.

20 THE WITNESS: It was---

21 SOLICITOR MAURICE: And this being State's

22 Exhibit 14.

23 THE COURT: Thank you.

24 A I recognize that, that jacket as being part of the
25 evidence, yes, ma'am.

Sandra Tavanis - Direct examination
by Solicitor Maurice

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1 Q Okay. And---

2 A There was a glove as well.

3 Q And that's State's Exhibit 10?

4 A Yes, and a hat. I think it's on the other side.

5 Q Is this the hat?

6 A Now that I don't recognize. I think that was
7 probably inside, inside the, the coat.

8 SOLICITOR MAURICE: That was State's Exhibit 15, Your
9 Honor, that she did not recognize.

10 A But the baseball cap I do recognize.

11 Q And that's State's Exhibit No. 9 that you recognize.

12 And when did you say you took them to SLED?

13 A I took them -- it was in June. It was either the 6th
14 or the 7th of June.

15 Q And did you fill that out?

16 A 2007 I believe.

17 Q And did you fill out a form when you did that?

18 A I did ma'am, yes. My name is on the form.

19 Q Okay. Have you seen that recently?

20 A Yes, ma'am.

21 Q Did you tamper with that evidence in any way?

22 A No, ma'am.

23 Q You took it to SLED and left it?

24 A Yes, ma'am, I did.

25 SOLICITOR MAURICE: I just got to verify the date,

1 Your Honor. I don't see it though.

2 Did you, in any way, have anything else to do with
3 the investigation in this case?

4 A No, ma'am.

5 Q All right. Will you answer any questions that
6 Mr. Luginbill has?

7 A Of course.

8 CROSS-EXAMINATION

9 BY MR. LUGINBILL:

10 Q Mrs. Tavanis, is that the inventory sheet that you
11 filled out or a copy thereof?

12 A Yes, I believe it's a copy of it, yes, sir.

13 Q Does that inventory sheet list a knit cap?

14 A No, it did not.

15 Q Three items, correct?

16 A That's correct. I didn't search the pockets of the
17 jacket, you know. So, I don't know whether that was part
18 -- whether anything was inside of the jacket or not.

19 Q And the reason you didn't search it is because it was
20 sealed?

21 A Yea. Well, it wasn't sealed, but we put it in the
22 bag, myself and the state attorney or, excuse me, the
23 solicitor, assistant solicitor and that was -- I forgot
24 his last name. His first name is Ben. I don't remember
25 his last name.

Sandra Tavanis - Cross-examination
by Mr. Lubinbill

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1 Q And that was in June of 2007 you bagged it and
2 shipped it?

3 A Yes.

4 Q And, so, it was not sealed prior to that?

5 A It was in the bag in the evidence area in the
6 evidence room, yes, sir.

7 Q And that's in Ehrhardt?

8 A Yes.

9 Q And how many people have access to that evidence
10 room?

11 A The police officers had access to it, but that's all.

12 Q And you do not have that bag that you took it out of
13 here today, do you?

14 A That is the bag.

15 Q This is the bag that it was in when you first saw it?

16 A Yes.

17 Q Now, now, you were not working on January of 2007,
18 correct?

19 A I was, I was not working on those days, no, sir.

20 Q You had nothing to do with the investigation---

21 A That's correct.

22 Q ---and part of this---

23 A That's correct.

24 Q And, so, the first time you saw this physical
25 evidence, it was already in this bag?

1 A Yes.

2 Q You did not put it there?

3 A No, I didn't put it there.

4 MR. LUGINBILL: No further questions, Your Honor.

5 SOLICITOR MAURICE: No further questions.

6 THE COURT: You may step down.

7 I, I think we got Mr. Grant's hearing aide fixed.

8 Let's get back to him.

9 SOLICITOR MAURICE: Okay.

10 THE COURT: Come back around, Mr. Grant.

11 (Witness complies.)

12 All right. Mr. Grant, can you hear me better now?

13 THE WITNESS: Yes.

14 THE COURT: You got your battery?

15 THE WITNESS: I got it on for you.

16 THE COURT: All right. Listen to this lady. She's

17 gonna ask you a question. Then answer the questions to

18 the best of your ability.

19 Okay.

20 THE WITNESS: (Nods affirmatively.)

21 JAMES GRANT, having been previously

22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY SOLICITOR MAURICE:

25 Q Do you recognize this?

James Grant - Direct examination
by Solicitor Maurice

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1 A Yea, that's the same coat.

2 Q Okay. The same coat as what?

3 Same as what?

4 A It was on the other side when I found it on the
5 porch.

6 Q Okay. You found it on the porch?

7 A On the front porch.

8 Q Okay.

9 A He came by there that night.

10 Q Who is he?

11 A I was done gone to bed. He knocked on the door. My
12 mama heard him. He called for me. She didn't knock on
13 the door, on the wall to wake me up. So, I didn't see him
14 no more.

15 Q Okay. Who is him?

16 A Huh?

17 Q Who are you calling him?

18 THE COURT: Who are you talking about?

19 What man?

20 Who?

21 THE WITNESS: No.

22 Q What man?

23 What's his name?

24 A I didn't give him nothing.

25 THE COURT: What's the man's name that came to the

1 house?

2 THE WITNESS: My mama name?

3 THE COURT: No.

4 THE WITNESS: His name?

5 THE COURT: Yea.

6 Who is he?

7 THE WITNESS: It was Johnnie Lee.

8 THE COURT: That's what I want to know.

9 THE WITNESS: The name is Johnnie Lee. He done been
10 to my house all that day, all of that day, that evening
11 sitting on the porch and talking to me. So, around about
12 five o'clock or 6:00 he left. He left my house and he
13 didn't come back. He come back that night, but I was done
14 gone to bed and I hadn't seen him no more.

15 Q Thank you.

16 A Huh?

17 Q Thank you. That's it. Please answer any questions.

18 MR. LUGINBILL: One moment, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. LUGINBILL:

21 Q Mr. Grant, can you hear me okay?

22 A Come over on this side and I can hear you.

23 Q How about now?

24 Can you hear me okay?

25 Can you hear me now?

James Grant - Cross-examination
By Mr. Lug

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1 A Go ahead.

2 Q All right. Did you give a statement to the police
3 department?

4 A (Witness nods affirmatively.)

5 Q You have to answer out loud so she can take it down.
6 Did you give a statement to the police department?

7 THE COURT: Say yes or no.

8 THE WITNESS: How much I pay?

9 Q Did you give a statement to the police department?
10 You have to say yes or no so she can write that down.

11 A (Witness nods affirmatively.)

12 Q You're shaking your head up and down.

13 Was that a yes?

14 SOLICITOR MAURICE: Ask him if that's his signature
15 on it.

16 MR. LUGINBILL: Your Honor, I'm going to object to
17 the witness. Much of what he said was not in response.

18 THE COURT: No, sir. No, sir. We'll do it outside
19 of the presence of the jury.

20 Keep on going.

21 Q Do you recognize this document?

22 A That's what I told them when they asked me them
23 questions.

24 Q And is that your signature?

25 A Yea.

1 Q You didn't write this part yourself, did you?

2 Did you write this part?

3 A No, I didn't wrote that.

4 Q Somebody else wrote that?

5 A Somebody else wrote that.

6 Q But you signed that?

7 A I signed my name right there. Somebody else wrote
8 that there.

9 Q And in your statement you told the police that you
10 gave that coat to Johnnie?

11 A I ain't give him no coat.

12 Q So, you're saying that's your coat?

13 A I found it on my porch.

14 Q You found it on your porch the next day?

15 A He knocked on the door and I wasn't up.

16 Q How did you give it to Johnnie if it wasn't your
17 coat?

18 A Well, I told Claude Hiers I found a coat on my porch.

19 Q The day after he'd been hit?

20 A He said that boy had on a coat, and I called the
21 Sheriff right yonder to come down there that evening about
22 sundown and got the coat, and I told him.

23 Q And, and that's all you had to do with it?

24 You didn't have anything else to do with it?

25 A Huh-uh. (Negative).

James Grant - Cross-examination
By Mr. Lug

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1 Q And you, and you and Mr. Jones sort of have a history
2 together, don't you?

3 A I ain't had nothing to do with that. Nothing.

4 Q Going back a few years before this happened, you and
5 Mr. Jones hadn't always been the best of friends, is that
6 right?

7 A Johnnie come down when he wants to borrow money from
8 me. I told him I didn't have no money. I just had got my
9 check and I wouldn't lend him no money because of the bad
10 payments. I wouldn't lend him no money.

11 Q And how long ago was that?

12 A Huh?

13 Q How long ago was that?

14 A How long he stayed?

15 Q How long was it that he asked you about the money?

16 A I don't know how long.

17 Q You and Johnnie ever had bad feelings about any kind
18 of a lady?

19 A (Witness nods negatively.)

20 Q Never?

21 A (Witness nods negatively.)

22 Q The two of you never fought over any woman, any woman
23 at any point in time?

24 A He told me sitting on the porch. He sit on the porch
25 a long time and talk, right. I am telling you what I

1 know. All I know.

2 Q Yes, sir.

3 A That's what I'm telling you.

4 Q Yes, sir.

5 A All right. He sat on my porch and me and him talked.
6 He told me somebody killed his brother in walterboro, and
7 he was trying to get away to go to walterboro, and wanted
8 to borrow money to get somebody to carry him to
9 walterboro.

10 MR. LUGINBILL: Your Honor, I'm, I'm gonna object.

11 THE COURT: Mr. Luginbill, you asked the questions.

12 A When he left my house I don't know where he went at.
13 I don't know. That's all I know. He left my house. I
14 don't know nothing else. Nothing else I can tell you
15 because I don't know.

16 MR. LUGINBILL: One moment, Your Honor.

17 (Pause.)

18 MR. LUGINBILL: Nothing further, Your Honor.

19 THE COURT: Redirect?

20 SOLICITOR MAURICE: Nothing, Your Honor.

21 THE COURT: Thank you. You're free to go.

22 Mr. Foreman -- Madam Forelady?

23 Madam Forelady?

24 THE FOREPERSON: Yes.

25 THE COURT: We're going to take a little break,

1 bathroom, Coke. Do not let anybody discuss the case, talk
2 about the case. We'll start back up in about 15 minutes.

3 Everybody else remain seated.

4 (Whereupon, the jury exited the courtroom at 3:06.)

5 THE COURT: Anything for the record before we take a
6 break by the state?

7 SOLICITOR MAURICE: No, Your Honor.

8 THE COURT: By the defense?

9 MR. LUGINBILL: Yes, Your Honor.

10 THE COURT: Be glad to hear from you.

11 MR. LUGINBILL: I would have two motions. One in
12 lieu of the other. I don't believe Mr. Grant was a
13 competent witness. I was denied the opportunity to really
14 adequately cross-examine him. He was -- nothing, nothing
15 he said on cross was responsive to a direct question that
16 I posed him. Most of what he said on direct was his
17 own -- he just took and ran to say what he felt he needed
18 to say. It was not directly in response to what he was
19 asked by the solicitor.

20 I would, I would ask that the Court find he was not a
21 competent witness. Based on that, Your Honor, the jury's
22 already heard it. I don't have any choice but to argue
23 either for a mistrial or for a curative instruction that
24 they disregard everything he said.

25 THE COURT: All right. I respectfully disagree with

1 you. You asked him the questions. You didn't get the
2 answer you wanted. He had difficulty hearing. We cured
3 that with the hearing aide, and then he was responsive not
4 only to your questions, but to the solicitor's questions,
5 and I know his response wasn't what you wanted to hear,
6 but that's his testimony. I respectfully decline your
7 motion.

8 Anything else?

9 SOLICITOR MAURICE: No, Your Honor.

10 MR. LUGINBILL: For the record, I would ask, are you
11 making a specific finding that his, his answer to my
12 question was, in fact, responsive to the question?

13 THE COURT: I'm making a finding that he is not an
14 incompetent witness like you moved for him to do. I don't
15 comment on the facts. That's the jury's determination.

16 MR. LUGINBILL: I had moved, I had moved at the time
17 to strike.

18 THE COURT: I've ruled, I've ruled, Mr. Luginbill.
19 Thank you.

20 MR. LUGINBILL: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 All right. We'll take about a ten minute break.

23 Let me see you guys and ladies in chambers.

24 (WHEREUPON, a break was taken.)

25 THE COURT: Anything for the record by the state?

1 SOLICITOR MAURICE: Nothing by the State, Your Honor.

2 THE COURT: By the defendant?

3 MR. LUGINBILL: Your Honor, in light of your ruling
4 that you won't strike the witness, I would ask the Court
5 allow me to move his statement into evidence. He
6 testified that although he didn't write the middle he did
7 sign it. I believe I was denied an effective
8 cross-examination by his prior---

9 THE COURT: I've already ruled on that,
10 Mr. Luginbill.

11 You want to put that into evidence?

12 MR. LUGINBILL: I would like to put that into
13 evidence.

14 THE COURT: Any objection by the State?

15 SOLICITOR MAURICE: No, Your Honor.

16 (WHEREUPON, the statement was marked as Defendant's
17 Exhibit No. 3 and received into evidence at this time.)

18 THE COURT: Bring the jury in please.

19 (WHEREUPON, the jury came into open court at
20 approximately 3:23.)

21 THE COURT: All right. Mr. Alternate, how about sit
22 on the back?

23 Mr. Alternate, you need to trade places with him back
24 there.

25 MR. LUGINBILL: Your Honor, I believe he's an

1 alternate as well.

2 THE COURT: Mr. Luginbill, let me run the court. You
3 run your case.

4 MR. LUGINBILL: Yes, sir.

5 THE COURT: I know who the alternates are.

6 MR. LUGINBILL: Yes, sir.

7 THE COURT: Next witness.

8 SOLICITOR MAURICE: Mr. John Folk. Mr. Folk, he is
9 outside.

10 JOHN FOLK, after being duly sworn,
11 testified as follows:

12 THE COURT: Good afternoon.

13 THE WITNESS: Good afternoon.

14 THE COURT: How are you doing?

15 THE WITNESS: All right.

16 THE COURT: If you would, sit right there in that
17 chair please. She is going to ask you some questions. If
18 you'll answer those questions. Just speak up so everybody
19 back there can hear you.

20 DIRECT EXAMINATION

21 BY SOLICITOR MAURICE:

22 Q Mr. Folk, where do you live?

23 A In Ehrhardt.

24 Q What address?

25 A It's ■ Ehrhardt Road.

John Folk - Direct examination
by Solicitor Maurice

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1 Q Okay. How far -- do you know where Mr. Hiers lives?

2 A Yes, ma'am.

3 Q Okay. How far do you live from Mr. Hiers?

4 A Approximately about four blocks.

5 Q Okay. All right. And do you know Mr. Johnnie Jones?

6 A Yes, ma'am.

7 Q How do you know him?

8 A I knew his -- I knew him from a while back. I know
9 his family. I know his father and stuff, yes, ma'am.

10 Q Okay. And on the night that Mr. Hiers was attacked,
11 did you see Mr. Jones?

12 A Yes, ma'am.

13 Q Tell me about that.

14 A Well, he came by the house and we was kind of like
15 friends, you know. He came by and he said he was broke
16 down and his car was out of gas. I talked with him, you
17 know.

18 Q About what time was that?

19 A It was about between 11:00 and 12:00, somewhere in
20 there.

21 Q 11:00 or 12:00 at night or in the morning?

22 A At night.

23 Q Okay. All right. Did he stay or leave your home?

24 A Well, he stayed.

25 Q He stayed that night?

1 A Yes, ma'am.

2 Q okay. Do you know what time he got there or is that
3 what time he got there?

4 A Yes, ma'am, about what time he came because he said
5 he broke down and needed gas, but I couldn't help him.

6 Q So, it was after 11:00?

7 A Yes, ma'am.

8 Q Will you please answer any questions that
9 Mr. Luginbill has?

10 CROSS-EXAMINATION

11 BY MR. LUGINBILL:

12 Q Mr. Folk, on the night of January the 9th, did you
13 happen to see any lights and sirens go by your house?

14 A No, sir.

15 Q Didn't notice an ambulance?

16 A No, sir.

17 Q Didn't notice a police car?

18 A No, sir.

19 Q You said you didn't know that on that night that Mr.
20 Hiers had been assaulted?

21 A No, sir.

22 Q You live you said about four blocks on the same road,
23 right?

24 A Right.

25 Q So, the ambulance would have come by your house,

John Folk - Cross-examination
By Mr. Luginbill

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1 right?

2 A No, sir, that's on, that's on a different road. But
3 I lives on Ehrhardt Road, and that's on 601 -- I mean 64.

4 Q Were you awake at about eight o'clock?

5 A Yes, sir.

6 Q So, you don't -- it's your testimony that you didn't
7 hear any sirens?

8 A No, sir.

9 Q And how long did Johnnie stay at your house?

10 A Well, he came because he didn't have any place to go
11 after his car was out of gas and the store, the store was
12 closed and he couldn't get any gas. So, I let him stay
13 over night.

14 Q He stayed at your house that night?

15 A Right.

16 Q What time did he leave that next morning?

17 A I think it was something, it was something before
18 8:00 because I had to go to work.

19 Q Did you carry him anywhere?

20 A No, sir, I don't have a car. I didn't have one at
21 the time. I got one now, but it's not running yet.

22 Q What did he do when you left for work?

23 A Well, he left. Where did he, where did he go I don't
24 know.

25 Q That was at eight o'clock in the morning?

1 A That was about 8:00. I have to be to work at 8:00.

2 Q Do you believe a man can walk from Ehrhardt to
3 Bamberg in two hours?

4 SOLICITOR MAURICE: Objection, Your Honor. I'm not
5 sure how he would know that.

6 THE COURT: Sustained.

7 MR. LUGINBILL: No further questions, Your Honor.

8 THE COURT: Anything on redirect?

9 SOLICITOR MAURICE: No, Your Honor.

10 THE COURT: You may step down. Thank you for coming.
11 Good to see you.

12 THE WITNESS: Good to see you, too, judge.

13 SOLICITOR MAURICE: May he be excused, Your Honor?

14 THE COURT: Certainly. You may leave.

15 Next witness please.

16 SOLICITOR MAURICE: Mrs. Verona Gibson.

17 VERONA GIBSON, after being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR MAURICE:

21 Q Mrs. Gibson, where are you, where are you employed?

22 A I'm employed, employed at the South Carolina Law
23 Enforcement Division commonly known as SLED.

24 Q And what are your duties?

25 A I'm in the DNA evidence processing department as a

Verona Gibson - Direct examination
by Solicitor Maurice

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1 forensic technician.

2 Q Okay. And what's your background as far as
3 education?

4 A I have an Associate's Degrees from Tri-County
5 Technical College. I have an Associate's Degree in
6 Criminal Justice from Greenville Technical College.

7 Q Okay. And what are your, what are your specific
8 responsibilities at SLED?

9 A We receive evidence from the agencies that submit to
10 SLED, and it's usually clothing, bed linens, larger items
11 that we, that we process for basically bodily fluids,
12 hairs, and fibers.

13 Q And how do you do that?

14 A It depends on the bodily fluids. But for semen, we
15 have a light source that makes it fluoresce, semen and
16 urine. For blood, it's a visual exam, and for hair
17 fibers, it's basically a visual exam.

18 Q And I'm gonna -- okay. I'll start with this one.
19 I'm gonna show you what's been marked as State's Exhibit
20 No. 12, and do you recognize that?

21 A Yes, ma'am, the inner bag I do recognize.

22 Q Okay. And how do you recognize that?

23 A When we are packaging evidence up to send to another
24 department or back to the agency, we write our names, the
25 date we did, we took the cuttings or placed the evidence

1 into the bag, where it's going, and then we seal it and
2 initial and date at the top.

3 Q Okay.

4 A So, we're initialing that the seal is correct.

5 Q Okay. And is that -- are your, are your initials on
6 there?

7 A Yes, ma'am, they are.

8 Q And what's the date?

9 A The date is 4/28. It appears to be 2009.

10 Q I guess we need some scissors. You're going to need
11 to open it to see inside, don't you?

12 A It would be best.

13 Q Okay.

14 THE COURT: Mr. Hiers, you got some scissors?

15 They're right there.

16 SOLICITOR MAURICE: They're hidden behind that. I
17 couldn't see it.

18 THE CLERK: They were hiding behind that cigar box.

19 THE COURT: They're hiding real bad. I bragged on
20 him too early today.

21 Q All right. Explain to us how you keep with what you
22 know you've done and how do you know what you did in this
23 case and then explain to us what you did.

24 A Okay. Every case is given an individual scanned bar,
25 and then every container is given an individual number.

Verona Gibson - Direct examination
by Solicitor Maurice

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1 So, this is items that I created as I process it. So, it
2 got an individual container that I made so that the
3 package is signed by me. Also, every cutting or swab or
4 hair sample I collect has that number that was assigned
5 when it was first logged in, the item number, plus the .2
6 is for say it was item number three. If I took two
7 cuttings, this would be the second cutting. So .2 is the
8 second. .1 would be the first one. And then they're
9 sealed on the back with my initials and the date that I
10 took the item from the original item.

11 Q Okay. And how do you tell what the original item is?

12 A Every item, unless it's too small for us to do this
13 with, we write somewhere on the item our initials, the
14 item number it was given as it came into SLED, and the lab
15 number.

16 Q Let me show you what's been marked as State's
17 Exhibit---

18 A It should be in the bag near the tag.

19 Q No, I did this one. State's 14.

20 would you look at this please and tell me if you
21 recognize that and how, what you're talking about?

22 A Yes, ma'am, this is Item 1 of the same case number
23 that I have here.

24 Q Okay.

25 A It has my initials in the back of it.

1 Q Okay. And what do those initials indicate?

2 A Those initials indicate that I am the person who
3 processed this piece of evidence.

4 Q Okay. What does processing mean?

5 A That means, in this case, they requested that we
6 looked for blood and what's called ownership, which is we
7 scrape the areas that come in contact the most with the
8 skin with a plastic scraper, and then we swab those areas
9 to collect any skin cells that have accumulated within the
10 fabric fibers.

11 Q Okay.

12 A And then those items are sent to the DNA department
13 for analysis.

14 Q So, in this case with that jacket, did you do that?

15 A I did, yes, ma'am. I took two cuttings. One of
16 which is here. We label those on the item as well as, as
17 on the envelope, and I'm not real sure where the other one
18 is. It may be on the inside. I'm not sure. Oh, here it
19 is. I'm sorry. There's one here. And then those are
20 packaged up and we send them upstairs. The ownership, I
21 would of scraped the neck area and the cuff areas because
22 those are usually, in a jacket, the area that touched the
23 skin the most.

24 Q Okay. And do you label the different things you
25 take?

1 A Yes, ma'am, for this one I have 1.3, which was the
2 swab from scraping the neck and the, the cuff areas, 1.2
3 corresponds to this cutting here, and then 1.1 corresponds
4 to this cutting that was taken here.

5 Q Okay. And based on what you have there, did you test
6 any other clothing that we sent?

7 A Yes, ma'am, there was a glove.

8 Q Okay. I show you what's been marked as State's
9 Exhibit 10.

10 A Yes, ma'am, this was Item 1 in the case. It had the
11 item number, my initials, and the number on that.

12 Q Okay. And the stocking cap.

13 A That was in Item Number 4.

14 Q And that's State's Exhibit No. 15, and you recognize
15 that?

16 A Yes, ma'am, I saw my initials as you held it up.

17 Q You saw your initials on that?

18 A Yes.

19 Q Okay. And also State's Exhibit No. 9.

20 A Yes, ma'am.

21 Q Do you recognize that?

22 A Yes, ma'am.

23 Q Okay. Did you take samples, swabs, or cuttings from
24 each of those items?

25 A I did, yes, ma'am.

1 Q And you packaged them?

2 A Individually in one of the envelopes except the hair,
3 which was collected from the jacket, and the green hat
4 were collected together because they were packaged
5 together --

6 Q Okay.

7 A -- in, in the white envelope. But everything else
8 was in this one envelope, the cuttings and swabs.

9 Q Okay. And after you did that, what do you do?

10 A They are sealed in the heat seal pouch with a seal
11 across the top so that it's totally sealed as it transfers
12 to the next person who needs to work on these items.

13 Q Okay. And is it -- is it heat sealed so nobody can
14 tamper with it after it leaves you?

15 A Yes, ma'am, it's evident if someone has tried to
16 break the seal.

17 SOLICITOR MAURICE: Your Honor, at this time we would
18 like to put -- does that go in there?

19 A This goes in here and this goes in here.

20 SOLICITOR MAURICE: State Exhibit 12, move it into
21 evidence.

22 MR. LUGINBILL: Your Honor, we would have an
23 objection.

24 THE COURT: State it.

25 MR. LUGINBILL: Your Honor, I don't believe

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1 sufficient chain of custody has been established for the
2 jacket and for the stocking cap as well as the baseball
3 cap. The glove, I don't -- actually it was kept
4 differently. I don't know that I have an objection to the
5 glove. Officer Bearden testified that---

6 THE COURT: All right. Just hold on a minute.

7 You got any other questions of this witness?

8 SOLICITOR MAURICE: No, Your Honor.

9 THE COURT: All right. Let me discuss a matter of
10 law with these -- ladies and gentlemen, y'all step to your
11 jury room just for a second. We're about to conclude for
12 the day. Don't discuss the case.

13 (Whereupon, the jury exited the courtroom at 3:39.)

14 THE COURT: All right. Mr. Luginbill.

15 MR. LUGINBILL: Thank you, Your Honor.

16 I would object to the items coming in as well as the
17 report that was subsequently done as well as the jacket
18 and the two caps coming in.

19 THE COURT: Well, we hadn't got to the report.

20 How can you object to that?

21 MR. LUGINBILL: I'm trying to be judicially economic,
22 Your Honor. But my objection is to the jacket and to the
23 cuttings that were made.

24 THE COURT: Why?

25 MR. LUGINBILL: Maybe I am premature. I could have

1 waited until she actually said the report, but now seems
2 like as good a time as any to do it.

3 THE COURT: Well, no, no, think about what you're
4 doing. She is trying to introduce the cuttings from the
5 jacket, and you're objecting because you say the chain of
6 custody is not sufficient. Tell me why.

7 MR. LUGINBILL: Officer Bearden testified that he
8 placed the jacket and the cap in a brown paper bag.

9 THE COURT: That's correct.

10 MR. LUGINBILL: The next person in the chain of
11 custody for the Town of Ehrhardt was Mrs. Tavanis.

12 THE COURT: Tavanis, Tavanis.

13 MR. LUGINBILL: And she testified---

14 THE COURT: About that white bag.

15 MR. LUGINBILL: About that white bag. Nobody has
16 testified how it got from the brown bag into the white
17 bag.

18 THE COURT: Well, we got a difference in color of the
19 bags. I think that goes to the weight as opposed to
20 admissibility.

21 MR. LUGINBILL: One testified, one testified that it
22 was a brown paper bag. The other person testified that it
23 was a white plastic bag. I specifically asked Officer
24 Bearden is this the bag that you put it in and he said
25 specifically no. He affirmatively said that was not the

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1 bag that he took the evidence from Mr. Grant in and placed
2 it into the evidence locker in. Somehow it had to have
3 gotten from that brown bag into the white plastic bag.
4 And although you don't have to have a complete chain of
5 custody under the, under the new rules and recent case
6 law, you have to have it as close as practicable.

7 The Hatcher case, a 2009 case, Your Honor, it is
8 pretty clear that where you have the party offering the
9 evidence has to establish the chain of custody. That
10 would be the State. Evidence is inadmissible under this
11 rule when the offering party omitted a link in the chain
12 of possession by failing to establish the identity as at
13 least as far as practicable. They have offered no
14 evidence, no witness on their witness list who can fill
15 that gap.

16 THE COURT: Well, that's not true now. They
17 testified that it went from---

18 SOLICITOR MAURICE: Mr. Grant to Mr. Bearden, to
19 Sergeant Bearden.

20 THE COURT: From -- to the lady.

21 SOLICITOR MAURICE: To the evidence locker.

22 THE COURT: That's right.

23 SOLICITOR MAURICE: And then the lady took it out of
24 the evidence locker and took it to SLED.

25 THE COURT: So, that's in, that's in evidence. What

1 you've got is there is some discrepancy in the color of
2 the bag, box, bag, which I think goes to the weight as
3 opposed to the admissibility. Let me see your case that
4 you're talking about here.

5 MR. LUGINBILL: This is State versus Hatcher.

6 THE COURT: I understand that. I think what we got
7 here is we got people in the chain. It is just that
8 they're saying one put in it in a different color bag than
9 the other one got it out of. I don't know that that -- I
10 think that goes to the weight as opposed to the
11 admissibility. I think they've established each
12 custodian.

13 Don't you agree with that?

14 They've established each custodian. They just
15 haven't -- one custodian of the evidence says he put it in
16 one kind of bag. The other custodian said it was in
17 another kind of bag.

18 MR. LUGINBILL: Your Honor, I would, I would
19 respectfully -- I do not agree that that is the testimony.
20 Officer Bearden affirmatively said that that was not the
21 bag. He looked at that bag. I held this bag up. His
22 testimony was, is I asked him is this the bag you put it
23 in. He said no. I asked Mrs. Tavanis is this the bag it
24 was in when you picked it up. Yes. Was it already in
25 that bag when she got to it the first time. So, if

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1 officer Bearden didn't put it in there and Officer Tavanis
2 didn't put it in there, somebody else had to have. That's
3 the basis of my objection.

4 THE COURT: Ma'am.

5 SOLICITOR MAURICE: Your Honor, as far as the chain,
6 as far as putting the jacket into the evidence locker in
7 Ehrhardt, actually a locked closet on the shelf. Now, if
8 somebody put it in a different bag on the shelf, I'm, I'm
9 not sure about that. But I know that Mr. Grant and
10 Mr. Bearden looked at this and identified it as the coat
11 that, that was taken into evidence and Mrs. Tavanis
12 unlocked the evidence locker and took it out and took it
13 to SLED and said she didn't tamper with it any more.

14 This box, actually if you look at it, it wasn't in a
15 box either. That was done once it got to SLED. Now, if
16 -- one question---

17 THE COURT: She asked Bearden this question---

18 SOLICITOR MAURICE: Do you have any type of evidence
19 log?

20 THE COURT: No, now don't---

21 MR. LUGINBILL: I would also point out that Officer
22 Bearden said he sealed the brown bag.

23 THE COURT: What?

24 MR. LUGINBILL: He testified that he put it in a
25 brown paper bag and sealed the bag. That was his

1 testimony.

2 THE COURT: Well, the testimony is, is that the
3 police officer, Officer Bearden, collected the coat from
4 Mr. Grant. He put it in the evidence locker. From the
5 evidence locker it was taken out by Mrs. Sandra Tavanis,
6 Tavanis, and taken to SLED, isn't that correct?

7 SOLICITOR MAURICE: Yes, Your Honor.

8 THE COURT: I mean that's the testimony. So, we've
9 identified all people who were involved in the chain.
10 What we have here is that one person in the chain says he
11 put it in one colored bag, and another person in the chain
12 says they took it out of a different colored bag. I don't
13 think that destroys the chain. It may effect the weight
14 of the evidence, and you would certainly be able to argue
15 the, that discrepancy if you choose to do so. But I don't
16 think because we got a discrepancy in the color of the bag
17 that doesn't destroy the chain itself, and I respectfully
18 overrule your motion, overrule your objection to the
19 evidence.

20 MR. LUGINBILL: Thank you, Your Honor.

21 THE COURT: Anything else before I bring the jury
22 back in?

23 MR. LUGINBILL: No, sir.

24 SOLICITOR MAURICE: No, sir.

25 THE COURT: It is my understanding this is your last

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1 witness for today?

2 SOLICITOR MAURICE: Yes, Your Honor.

3 (WHEREUPON, the jury came into open court at
4 approximately 3:47.)

5 THE COURT: Madam Forelady, ladies and gentlemen, the
6 defense objected to the introduction of that particular
7 piece of evidence. I had to hear arguments on it. I have
8 overruled their objection. That evidence, as contained in
9 State's Exhibit No. 12, is introduced into the trial of
10 the case.

11 You may continue, ma'am.

12 SOLICITOR MAURICE: I'm sorry, Your Honor. I don't
13 have any more questions.

14 (WHEREUPON, State's Exhibit No. 12 was received into
15 evidence at this time.)

16 CROSS-EXAMINATION

17 BY MR. LUGINBILL:

18 Q Mrs. Gibson, you testified that you have this bar
19 code system at SLED, and not every police department or
20 law enforcement agency can do that, right?

21 A Correct.

22 Q But one of the key elements of evidence control and
23 tracking is to know if it went from the left hand to the
24 right hand, is that correct?

25 A Basically, yes, sir.

1 Q And that's, that's the key to the whole thing is to
2 know if it went from Person A to Person B and when that
3 happened, correct?

4 A In our system, yes, sir.

5 Q And in your position at SLED and in your experience
6 as a technician receiving evidence, is it the practice of
7 law enforcement agencies in South Carolina to document the
8 chain of custody from---

9 SOLICITOR MAURICE: Objection, Your Honor.

10 THE WITNESS: I---

11 THE COURT: Woa, woa, woa.

12 Your objection is what?

13 SOLICITOR MAURICE: What is she, what is he asking
14 her, for SLED or every law enforcement agency?

15 I mean she's answered as far as SLED. She only works
16 for SLED.

17 THE COURT: Restate your question.

18 Q When you get evidence, are you accustomed to seeing
19 it sealed with somebody's name who's responsible for it as
20 being the person who last handled it?

21 A Not necessarily. Usually I'm one of the first people
22 to examine the evidence. So, this heat sealed pouch would
23 come in and, for instance, this one would be sealed at the
24 top of the agency, the agent who brought it in from the
25 submitting agency. But there may have been someone else

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1 who handled that, but they did not sign the package. It's
2 all a computer chain system where we have bar codes just
3 like the evidence does so we scan it and then scan the
4 evidence that goes into our custody.

5 Q And do you make absolutely clear that you know every
6 single person who touched every single piece of evidence?

7 A Yes, sir.

8 MR. LUGINBILL: That's all I have, Your Honor.

9 THE COURT: You may -- anything on redirect?

10 SOLICITOR MAURICE: No, Your Honor.

11 THE COURT: You may step down.

12 Let me see y'all at side bar.

13 (Whereupon, a bench conference was held.)

14 THE COURT: Madam Forelady, ladies and gentlemen, the
15 State has two more witnesses. They've got a nurse coming
16 in to testify about the wounds that the victim sustained.
17 So, that will not be a very long witness I don't think.
18 And then they have one other SLED person who will testify
19 about the analysis made on the evidence. I don't think
20 that will be a very long person because we're not
21 analyzing a whole lot of evidence like in some cases where
22 we have hundreds of pieces.

23 So, I anticipate two more witnesses by the State and
24 we'll make, make a decision on the defendant's witnesses.
25 They tell me that they've got three or four if they,

1 depending on what they decide to do, but at the outside.
2 So, we should be through with all of the testimony by
3 lunch time tomorrow.

4 Sometimes we have a little bit of problems with
5 logistics trying to get people out of SLED. They're all
6 over the state testifying. I've got a logistical call
7 problem this afternoon with one. So, we're gonna quit. I
8 hate to waste an hour, but we're going to quit at 10
9 minutes till 4:00 instead of going to 5:00.

10 Is 9:30 agreeable to everybody?

11 Can we start at 9:30 in the morning so we can get
12 going?

13 Is that okay with everybody?

14 (Jurors nod affirmatively.)

15 THE COURT: Mr. Hiers has -- he can get us sausage
16 biscuits from Hardees or egg biscuits or whatever?

17 THE CLERK: I'll go in and ask them what they would
18 rather have.

19 THE COURT: What we'll do is have whatever y'all
20 decide back there in a second. But if you're going to
21 partake in the food be here before 9:30. You can't come
22 out here eating. Get here in time.

23 What we'll probably do get, since we're getting close
24 at lunch, we'll probably order lunch in and that way we
25 can keep going and I think that will be a little more

1 efficient if we're at the correct place.

2 So, I ask you tonight a couple of things. Number
3 one, don't discuss the case with any family or friends.
4 This is our case here. You decide it based on what you
5 hear in the courtroom and not anything outside. Don't let
6 anybody discuss it with you. If anybody tries to, please
7 tell them you're on the jury. If they insist, get their
8 names and I'll deal with that.

9 I'm going to ask you not to go home and do any
10 research on the internet or books or call up your lawyer
11 friend and say so and so and so, tell me what is going on.
12 We try this case in here. So, don't be getting any
13 outside advice. I want you to have a pleasant evening.

14 I will let you go now. Everybody else remain seated
15 and I'll see you bright and early in the morning. We'll
16 start at 9:30. So, if you want a couple of biscuits---

17 THE FORELADY: I got to have something sweet.

18 THE COURT: We'll make sure you get some doughnuts.

19 Mr. Hiers, make sure the forelady gets a dozen
20 doughnuts.

21 Thank you.

22 (WHEREUPON, the jury exited the courtroom at 3:55.)

23 THE COURT: All right. Anything for the record
24 before we break for the evening by the defendant?

25 MR. LUGINBILL: No, sir, Your Honor.

1 THE COURT: By the State?

2 SOLICITOR MAURICE: Nothing.

3 THE COURT: All right. Let me put further on the
4 record in regard to the motion to object to the
5 introduction of the evidence on the chain of custody, let
6 the record reflect that I have reviewed the case of State
7 versus Hatcher that was handed up to me by defense
8 counsel, and I think that case is a pretty good synopsis
9 of the current law dealing with the chain of custody and
10 it's, it is my view of the evidence, sitting as the judge
11 on the case, is that we don't have an admission, an
12 omission of the person in the chain. We've got everybody
13 in the chain. We just got some discrepancy in what bag it
14 was put in and what bag somebody took it out of, which I,
15 once again, think goes to the weight as opposed to the
16 admissibility and sort of reiterating the reasoning behind
17 my decision.

18 Now, the defendant's in custody, and we will start at
19 9:30 in the morning. I would ask that y'all please be
20 here by 9:15 at the latest so we can discuss anything that
21 we need to. I'll be in my office for a while. If y'all
22 need me, I'll be in there. Before you get out of here
23 this afternoon, let me just see you to see sort of where
24 we are again.

25 (WHEREUPON, a break was taken.)

1 Wednesday, April 14th, 2010

2
3 THE COURT: Let the record reflect that the Clerk of
4 Court received a call this morning from Johnnie Bamberg,
5 one of our jurors, who has contracted the flu or some bug
6 overnight, and is unable to be here.

7 Mr. Hiers, I got two alternates. We need to draw one
8 of those randomly please.

9 THE CLERK: Yes, sir.

10 THE COURT: That would be Juror Harley and Juror
11 Segal.

12 THE CLERK: Yes, sir. 57, Monica Harley.

13 THE COURT: Thank you.

14 All right. Bring the jury in please.

15 (Whereupon, the jury came into open court at
16 approximately 9:30.)

17 THE COURT: Mrs. Harley, Mr. Bamberg has gotten the
18 flu or gotten something. He's not gonna be able to be
19 with us. That's why we have alternates. I have selected
20 randomly between you and Mr. Segal, and you were chosen
21 randomly. So, if you would, please come down and join us.
22 You're now a regular member of the jury. That's why we
23 have alternates.

24 Everybody get doughnuts this morning?

25 THE FOREPERSON: We did.

1 THE COURT: Were they good?

2 THE FOREPERSON: Excellent.

3 THE COURT: I won't ask the question.

4 You may call your next witness.

5 SOLICITOR MAURICE: Thank you, Your Honor.

6 The State would like to recall Sandra Tavanis.

7 THE COURT: All right, ma'am. You're still under
8 oath from yesterday.

9 SANDRA TAVANIS, having been
10 previously sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR MAURICE:

13 Q Mrs. Tavanis, would you please tell us about the bag?

14 THE COURT: That's not a question. Now, come on.

15 Q Can you tell us about the bag?

16 THE COURT: That's not a question.

17 Q Okay. Do you recognize the bag?

18 A Yes, I do.

19 Q Okay. And was this the only bag that the evidence
20 was in?

21 A During the course of the trial yesterday when the
22 questions of the bags came up, I immediately remembered
23 that that was the bag. However, during the, during the
24 time yesterday when everybody was talking, I remembered
25 that, and there was a mention of the bag being sealed, and

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1 I remembered that there was a paper bag that had been
2 stapled. When I produced the bag, this was in June, the
3 day when I turned the bag into evidence over to SLED,
4 whenever I went to SLED, before that the solicitor, Ben
5 Moore, and Mr. Bamberg, the solicitor's investigator, came
6 down to Ehrhardt and Mr. Moore wanted to inspect the
7 evidence.

8 I attempted to get the staples -- I remembered that I
9 attempted to get the staples out of the bag very nicely to
10 not break the bag. Well, I didn't do it. And, so, I
11 don't remember whether it was Mr. Moore who told me or
12 whether it was me and I tore the bag open in order for
13 them to inspect the evidence. It was a regular, a regular
14 brown bag that you get at the grocery store.

15 And after they inspected the evidence, there was no
16 way that that bag could, could cover the evidence any more
17 because it was all torn up, and I remember asking
18 Mr. Moore what he wanted me to do, and he said just put it
19 in the other bag, and I threw the other bag, the brown bag
20 away at that time because it had nothing to do with the
21 evidence. I sealed it up and subsequently transported it
22 to, to SLED forensics. I apologize to the Court and I
23 apologize to the jury for wasting your time in making this
24 mistake. I forgot. That's it.

25 Q Mrs. Tavanis, how long after you, you changed the

1 evidence from that paper bag to that white bag did you
2 take it to SLED?

3 A I took the white bag to SLED the next morning.

4 Q Okay. Would you please answer any questions that
5 Mr. Luginbill has?

6 A Of course.

7 THE COURT: Mr. Luginbill.

8 MR. LUGINBILL: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. LUGINBILL:

11 Q Did you write this on the outside of the bag?

12 A No, that's not my handwriting.

13 Q Is there anything on this bag, and I'm gonna show it
14 to you, where you would of sealed it and signed over it
15 documenting that you're the person that did that?

16 A No, sir.

17 Q And do you recall whether or not the paper bag that
18 you threw away had been sealed by Officer Bearden and
19 signed by him?

20 A I don't recall whether there had been any signs on
21 it, sir.

22 Q So, where SLED has a procedure where everybody signs
23 who touches it, Ehrhardt has a procedure where we throw
24 away the old bag?

25 A That was during a discussion with the solicitor, sir,

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1 at the, at that time. That's a difficult question.

2 Could you repeat it?

3 Q Is it the policy of the Ehrhardt Police Department to
4 throw away part of the chain of custody?

5 A There's no written policy on that, sir.

6 Q Is there a written policy that you have an evidence
7 log?

8 A At that time, no, sir, we did not.

9 Q So, we have no way to document who handled this
10 evidence?

11 A At this point, sir, no.

12 Q And not at that point?

13 A Correct. Yes.

14 Q And you testified very strongly yesterday that was
15 the bag you saw it in. You were sure.

16 A I believed I was -- I believed it at the time, yes,
17 sir.

18 Q And then you sat on that front row for the rest of
19 the hearing, correct?

20 A Yes, sir.

21 Q And you heard me argue to the judge that there was a
22 chain, a hole in the chain of custody?

23 You heard those arguments?

24 A Yes, sir, I did.

25 Q And after hearing those arguments you changed your

1 testimony?

2 THE COURT: Mr. Luginbill. Don't be badgering her.
3 Just ask her in a very calm manner.

4 Q After you heard me argue that there was a chain of
5 custody problem that could have cost the State this case,
6 you remember---

7 THE COURT: Mr. Luginbill, that's an improper
8 question. That was done outside. Ask the question
9 without all of that editorializing.

10 Q You changed your testimony after you heard me argue
11 the chain of custody, didn't you?

12 A I remembered, during the course of your arguments,
13 that there was -- that the identification -- when y'all,
14 when y'all said something about it being sealed, okay, I
15 literally turned to Acting Chief Bearden and said it was
16 stapled, wasn't it, and he said yes. And that just woke
17 me up, and, and yes, I did -- I am changing my testimony.
18 I made a mistake. I'm very sorry I made a mistake.
19 Obviously I was stuck on stupid yesterday is the only way
20 to put it.

21 Q Of course, if there was a chain of custody we would
22 know?

23 A Absolutely.

24 Q But we don't have that, do we?

25 A That's right.

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by Mr. Luginbill

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1 Q No further questions.

2 THE COURT: Anything on redirect?

3 SOLICITOR MAURICE: No, Your Honor.

4 THE COURT: You may step down.

5 Call your next witness.

6 SOLICITOR MAURICE: The State calls Mrs. Lynn
7 Whisenhunt, Whisenhunt.

8 LYNN WHISENHUNT, after being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR MAURICE:

12 Q Could you tell us where you're employed?

13 A Bamberg Hospital.

14 Q Okay. And how long have you been employed there?

15 A Probably 30 years.

16 Q So, you were employed there at the time of this
17 incident?

18 A Yes.

19 Q Okay. And did you have the opportunity to treat Mr.
20 Hiers---

21 A Yes.

22 Q ---on this occasion?

23 would you please tell us about that, when did he come
24 in, what time, et cetera?

25 A These are my notes from the hospital. He came,

1 arrived at 20:47, which is ten, basically ten minutes till
2 9:00. I triaged him at nine o'clock, which basically they
3 come in and we check their vital signs, and do an overall
4 assessment and then move them to a treatment room.

5 Q Okay. And how long did you make him wait for that
6 treatment room?

7 A It wasn't making him wait. It took ten minutes to
8 actually do the process. He went straight from triage to
9 the room.

10 Q Okay. So, he wasn't sitting around?

11 A No.

12 Q And is that -- I hate to say is that normal at a
13 hospital emergency room, but is it normal?

14 A It depends on what's going on at the time and
15 honestly I can't remember what else was going on at the
16 time. If there is 20 people he could have waited longer,
17 but he went straight to the trauma room and somebody else
18 checked his initial vital signs, which tells me I was
19 actually doing something else and had to come back to him
20 to get him back.

21 Q Okay. And do you remember or do you know the
22 specifics of his injuries?

23 A He had a laceration to his head and his left hand.

24 Q Okay. Will you answer any questions that
25 Mr. Luginbill has?

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by Mr. Luginbill

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1 A Sure.

2 CROSS-EXAMINATION

3 BY MR. LUGINBILL:

4 Q Mrs. Whisenhunt, were you present when Mr. Hiers was
5 speaking with Officer Bearden?

6 A I don't remember.

7 Q Do you recall him making any statements about who had
8 hit him?

9 A He said he knew the person.

10 Q But that -- but he didn't give you a name?

11 A No, I mean a name wouldn't have meant anything to me.

12 Q And the two of you didn't have a conversation about
13 it?

14 A No.

15 MR. LUGINBILL: That's all I have, Your Honor.

16 THE COURT: Redirect?

17 SOLICITOR MAURICE: Nothing, Your Honor.

18 THE COURT: Mrs. Whisenhunt, thank you for coming.

19 You're excused to go back to work.

20 THE WITNESS: Thank you.

21 THE COURT: Next witness.

22 SOLICITOR MAURICE: Mr. Jasper Humbert.

23 JASPER HUMBERT, after being duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY SOLICITOR MAURICE:

2 Q Mr. Humbert, I'm sorry. Could you please tell us
3 where you're employed?

4 A I'm employed at the South Carolina Law Enforcement
5 Division also known as SLED.

6 Q Okay. And how long have you been employed there?

7 A Approximately four years.

8 Q Did you work anywhere before that?

9 A I was a graduate student before that.

10 Q Okay. And tell us about your education.

11 A I have a Bachelor's of Science Degree in Biology from
12 Armstrong Atlantic State University in Savannah, Georgia.
13 I have a Master's Degree in Biological Sciences from the
14 University of Iowa, and I have a further three years of
15 graduate education in a genetic's Ph.D program from Penn
16 State Medical College in Hershey, Pennsylvania.

17 Q Okay. And could you describe your duties at SLED?

18 A My duties are basically involving serology and DNA
19 analysis. So, the serology side, I will basically get
20 evidence items in and, and do presumptive testing to try
21 to see what type of body fluids are present. For
22 instance, like blood, semen, saliva. And for my forensic
23 DNA analysis duties, I basically develop DNA profiles from
24 evidence and standards from known people.

25 Q Do you have -- can you estimate how many times you've

1 tested objects or evidence?

2 A Probably hundreds to thousands of items at this
3 point.

4 Q Okay. And have you ever been qualified as an expert
5 in serology or forensic DNA in a court in South Carolina?

6 A Yes, I have.

7 Q How many times?

8 A Eight times before today.

9 SOLICITOR MAURICE: Okay. Your Honor, the State
10 moves to have Mr. Jasper Humbert be declared an expert in
11 the field of serology and forensic DNA analysis.

12 THE COURT: Mr. Luginbill, do you want to examine him
13 on his qualifications?

14 MR. LUGINBILL: No, sir, Your Honor. We'll stipulate
15 that he's qualified.

16 THE COURT: All right. Madam Forelady, ladies and
17 gentlemen, normally our rules of evidence do not allow a
18 witness to testify about opinions. You can only testify
19 about things that you see, hear, smell, taste, that sort
20 of thing. There's an exception to that rule. Someone who
21 is by way of education, experience, and training has
22 obtained expertise in a field that's not normally within
23 the common ordinary knowledge of ordinary people like DNA
24 and serology, they are allowed to give opinion testimony.
25 So, he will be allowed to give his opinion as to certain

1 matters in this case.

2 At the conclusion of the case I will tell you what
3 weight you have to give, if any, to an expert's opinion.
4 He will be allowed to give opinion testimony. A little
5 different than the rest of the opinions, witnesses who
6 could not give opinion testimony.

7 Q Could you explain to us what DNA is?

8 A DNA is -- it's a chemical and it basically stands for
9 deoxyribonucleic acid, which people really won't read into
10 that much. But basically what that it is, is that DNA
11 basically determines who we are like hair color, eye
12 color, those sort of things. All of that is encoded in
13 our DNA.

14 Basically we get our DNA from our parents. So, we'll
15 get half from our mother, half from our father, and what I
16 do in my job duties is I'll test DNA and develop a DNA
17 profile from a person or evidence and that DNA profile
18 basically is a series of numbers that I get from testing
19 certain regions on the DNA.

20 Q Okay. So, there -- can two people have the same DNA?

21 A Most of the time not. The only exception would be
22 identical twins because they split their same embryo and
23 there, they would have the same DNA and that's why they
24 look alike. They have the same DNA.

25 Q Okay. And did you have an opportunity to test some

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1 evidence in this case?

2 A Yes.

3 Q I'm going to show you what's been marked as
4 Exhibit 12.

5 would you take those items out please, and do you
6 recognize those?

7 A Yes, I do.

8 Q Okay. How do you recognize those?

9 A By their SLED lab number on the top and their item
10 number.

11 Q Okay. And I'm gonna show you what's been marked as
12 State's Exhibit 13.

13 Do you recognize that?

14 A Yes, I do.

15 Q And how about State's Exhibit No. 11?

16 Do you need to open that up?

17 A Oh, there it is. Yes, I, I recognize this.

18 Q Okay. Please explain to us how you do your test and
19 what you did specifically in this, with this evidence.

20 A Okay. Well, basically what I do is I'll open an
21 envelope. If I'm doing the evidence and I -- in this case
22 I did the evidence separately from the standards. I did
23 the evidence before the standards.

24 Q Okay.

25 A And what I'll do is I'll open an item and I'll, well,

1 examine it, and if I'm requested to do serology, I'll look
2 to see if it has like a color of say like blood if I can
3 tell, and then I will do a presumptive test where
4 basically I treat the -- I cut a small piece off of the
5 swab and I'll treat that small piece of that swab with
6 some chemicals to do a presumptive test for blood. If it
7 comes back positive, that's a strong indication that it's
8 possibly blood. Once I do all of that serological
9 testing, I will basically do a series of steps, steps to
10 extract DNA from those items and get a DNA profile at the
11 end.

12 Q Okay. And in this case, what items did you examine?

13 A Okay. The items basically that I examined, according
14 to my report that I record for all of my cases, was Item
15 1.1, which was a cutting from a jacket, Item 1.2, which
16 was another cutting from a jacket, 1.3, a swab from the
17 jacket, Item 2.1.

18 Q Let's -- tell us what -- stop at the jacket first.

19 A Okay.

20 Q Tell us what you did with that and what the results
21 were please.

22 A Okay. For Item 1.1, which was a cutting from the
23 jacket, I did a DNA analysis upon that item, and the
24 result that I received from Item 1.1 was that it, was that
25 it was a mixture of two individuals. Donald Hiers and

1 Johnnie Jones cannot be excluded as possible contributors
2 to that mixture.

3 Q Okay. And what does that mean?

4 I mean what -- tell us more about how you do your
5 analysis and how you know or what you mean by it can't be
6 excluded.

7 A Okay. Well, if you look at a DNA profile from an
8 individual, you basically -- I test 15 different sites and
9 I do a sex determination, and you'll get two numbers for
10 each site. You get one from your mother and one from your
11 father. You get half of your DNA from each.

12 So, if I look at an item, and there's more than two
13 numbers at a lot of the places, I conclude that it's a
14 mixture of more than one person because one person
15 shouldn't have more than two numbers. Okay. When I say
16 someone cannot be excluded from a mixture, their numbers
17 from their DNA profile are present in that mixture, and,
18 therefore, I cannot exclude them from that mixture because
19 their numbers are present in the mixture.

20 Q Okay. And that's Item 1.1?

21 A That's correct.

22 Q Okay. Go to the next one, Item 1.2.

23 A Item 1.2 is also a cutting from the jacket, and I did
24 DNA analysis upon that item, and the conclusion I came to
25 that item was that the DNA profile developed from Item 1.2

1 matches the DNA profile of Donald Hiers.

2 Q Explain to us what matches means.

3 A When I say an item, a DNA profile matches a person,
4 what I mean is that when I look at the 15 locations on
5 the, on the DNA and the sex determination location, they
6 are identical. So, all -- basically 16 sites are the same
7 between the two, and that's why I call it a match.

8 Q Okay. And explain to us what the standard is.

9 A A standard is a sample taken from an individual that
10 I use for comparison. So, if I have an evidence item and
11 I have a, a subject or a victim and they want me to
12 compare to that, I get their standard in which is either
13 typically blood or a swab from the inside of their mouth.

14 Q Okay. And is that one of the items up here?

15 A Yes, it is.

16 Q Could you give us what State's Exhibit No. -- what it
17 is as far as the standard that you used?

18 A Well, I have two standards. Item Number 5, oral swab
19 from Donald Hiers.

20 THE COURT: what exhibit number in this case?

21 THE WITNESS: No. 13.

22 THE COURT: Thank you.

23 SOLICITOR MAURICE: Thank you.

24 THE COURT: And then the other?

25 THE WITNESS: The other Item 6, my Item 6, I'm sorry.

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1 Q And State's Exhibit what?

2 A Eleven.

3 Q Is what?

4 A And that is a Buccal swab from Johnnie Lee Jones---

5 Q Okay.

6 A ---which is from the mouth.

7 Q When you get these, do you know who Johnnie Lee Jones
8 or Mr. Hiers is?

9 A I have no idea.

10 Q Okay. All right. So, let's go to -- oh, 1.2, you
11 explained it was a match.

12 Can you go through the identifiers like you were
13 explaining for this match and explain to us what the
14 statistics are in this, on that item?

15 A Sure. I, I can do that and I can explain a little
16 bit about how we get to it as well.

17 Q That would be great.

18 A So, because these locations we've tested, there's
19 been a lot of work done on finding out what proportion
20 they're present in the population. So, at each location
21 you can find basically what's the probability of someone
22 having that combination of numbers at that location.
23 Okay. And when you do that, you can do that and multiply
24 by every other location. It's the same concept of what's
25 the probability of rolling a six on a dice twice except up

1 to 15. You roll the first time, it's one and six. The
2 second time, it's one and six. So, you would know that
3 the probability of getting two six's and two one's, it
4 would be one in 36 because all of the events are
5 independent.

6 So, because we can do that type of calculation on
7 these locations on the DNA, I can come up with a
8 statistic, and the statistic that I came up for that item
9 was a DNA profile developed from Item 1.2, which was the
10 cutting from jacket, matches Donald Hiers. The
11 probability of randomly selecting an unrelated individual
12 having a DNA profile matching these items or this item is
13 approximately one in 300 quadrillion.

14 Q Okay. All right. And that same point, Item 3.1,
15 what do you show 3.1 as?

16 A 3.1 I have as a cutting from cap and I did serology
17 testing on it, and I came up with blood indicated, and I
18 also did a DNA analysis after I did the serology,
19 serological testing, and I came up with basically the same
20 statistic and match statement as I did for Item 1.2. The
21 DNA profile developed from Item 3.1 matches Donald Hiers,
22 and the probability of randomly selecting an unrelated
23 individual having a DNA profile matching this item is
24 approximately one in 300 quadrillion.

25 Q Okay.

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1 THE COURT: Mrs. Maurice, let's be clear.

2 Now which hat are we talking about, the hat or the
3 stocking cap?

4 Q Let me show you what's been marked as State's
5 Exhibit 9. I don't know.

6 Do you have any, do you have any indicators on that?

7 A I do not label this item, but it has 3.0 V.T.G.,
8 which are Verona Gibson's initials, and it has a SLED lab
9 number. I have never seen this item before today, but
10 that's the item number on that. The only thing I receive
11 is cuttings from items from the processing department.
12 So, I will not have seen that item before today.

13 Q Okay. Would that item number be on one of your
14 packets there?

15 A Well, when we sub-itemize, we sub-itemize from
16 basically a parent item. Like 3.1 will be a cutting from
17 Item 3. So, when I have 3.1 and 3.2 on my items, the way
18 we sub-itemize at SLED would be that those sub-items will
19 be from an item from Item 3.

20 Q Okay. And what item is that label?

21 A That says 3.0---

22 Q Okay.

23 A ---which would indicate the item that these cuttings
24 and swabs were taken from.

25 THE COURT: And for the record, that's Exhibit 9 in

1 this case.

2 Q On State's Exhibit 15, what is that?

3 Can, can you read what item that is?

4 A I'd have to touch it. I guess other people have
5 already. So, it won't matter. It's hard to read because
6 it's so dark, but that appears to be Verona's handwriting
7 as well. But it's, like I said, it's hard to tell. It
8 looks like V.T.G. to me and 4.0, and that's an L07 and
9 those other four numbers I can't make out.

10 Q Okay. That's 4.0 is fine. Okay.

11 All right. Go down, if you would please, and explain
12 your testing on 1.3.

13 A All right. That was a swab from the jacket and
14 basically the result that I got was that the DNA profile
15 developed from Item 1.3 matches the DNA profile of Johnnie
16 Jones. The probability of randomly selecting an unrelated
17 individual having a DNA profile matching this item is
18 approximately one in 21 quadrillion.

19 Q So, when you're -- when it says Item 1 and then 1.2,
20 1.3, are those all from the same item?

21 A Yes, they will be.

22 Q Okay. All right. Did you have an opportunity to
23 also test something else from that jacket or it says 4.21.
24 Tell me what that is.

25 A That was debris from Items 1 and 4, and it didn't

1 really indicate specifically which debris items came from
2 either. But typically what that is is when they send me
3 those items, they're basically assuming it's hair or think
4 it's hair.

5 Q Uh-huh. (Affirmative).

6 A And I test it as if it were hair. I'm not an expert
7 on hair analysis. But I'll look at the fiber that looks
8 like hair, and if I see what looks like a root, which if
9 you pull out someone's hair there's a white root on the
10 end of it, and if I see something that indicates that, I
11 will take that debris forward for DNA analysis and Items 1
12 and 4 were a jacket and a hat based on my paperwork.

13 Q Okay. And you said Item 4 earlier you identified as
14 this hat?

15 A That's correct.

16 Q Okay. Now, were you able to get a match on that on
17 your hair?

18 A Yes, I was. There were two -- there was a population
19 of hairs. There were like some lighter hairs and darker
20 hairs. So, I basically separated them into two groups
21 when I did my analysis, and I found that both the lighter
22 and the darker hairs I got the same result, and that
23 basically the result was that the DNA profile developed
24 from Items 4.2.1 and 4.2.2, which were the light and dark
25 hairs, matched the DNA profile of Johnnie Jones. The

1 probability of randomly selecting an unrelated individual
2 having a DNA profile matching these items is approximately
3 one in 21 quadrillion.

4 Q All right. I'm not sure you said what the statistics
5 were for the 1.3. Just say it again what it is.

6 A Okay. The DNA profile developed. It was the same --
7 it's that statistic, which was also one in 21 quadrillion.

8 Q And what was 1.3?

9 A And 1.3 was the swab from jacket.

10 Q You also had the opportunity to test 2.1.

11 what was -- what were the results of that and how do
12 you have it identified?

13 A 2.1 is identified to me as a swab from glove.

14 Q Okay.

15 A And the result that I came up with when I tested it
16 was that the DNA obtained from Item 2.1 is a mixture of at
17 least two individuals. Donald Hiers and Johnnie Jones are
18 excluded as possible contributors to this mixture.

19 Q Okay. And how about Item 4.1?

20 A Okay. For Item 4.1, which was a swab from hat, the
21 result that I, I got back was that no DNA profile was
22 obtained from that item. So, I didn't get any DNA
23 profile. So, I couldn't do any match or probability or
24 match it to anyone.

25 Q And tell us, do you always, obviously you don't, but

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1 why would you get -- not get a DNA profile?

2 I mean, do you always get a DNA profile on
3 everything?

4 A No, I don't.

5 Q Okay. Explain to us why or why not.

6 A Basically when I test an item I can't tell how much
7 DNA's there. I can't tell how many cells or someone
8 leaves on there, how much DNA. I basically test the item
9 and then later on I will see whether or not there was
10 enough DNA to get a profile there or not, and in this case
11 there was not enough and I did not get a DNA profile.

12 Q Okay. For purposes of keeping this straight, do you
13 have a, a report that states which is which on items or---

14 A For my report I list the items that I tested and like
15 1.1 would be cutting from a jacket.

16 Q Okay.

17 A And in my report they're indicated as such.

18 (WHEREUPON, a SLED report was marked as State's
19 Exhibit No. 16 for identification purposes only at this
20 time.)

21 Q That's what I'm asking, yea.

22 Can you identify this as State's Exhibit 16, and,
23 Your Honor, for purposes of keeping it straight, not the
24 results, but keeping the items straight, I'd like to move
25 that into evidence.

1 THE WITNESS: Do you want the whole report?

2 This is the rest of the report.

3 THE COURT: Show me what you're marking and what you
4 want to put in, ma'am.

5 SOLICITOR MAURICE: Well, Your Honor, I'm marking
6 the, just the labels of what 1.1 is, et cetera.

7 THE COURT: Just the label so we can keep them
8 straight as to what's what?

9 SOLICITOR MAURICE: Yes, Your Honor.

10 THE COURT: No, no findings on this?

11 MR. LUGINBILL: Well, Your Honor, that's the whole
12 report submitted, a four page report. I would ask that if
13 it is going to come in all four pages come in. I would
14 renew my objection from yesterday as to the chain of
15 custody. I understand the Court's ruling.

16 THE COURT: Thank you. We'll do all four.

17 (WHEREUPON, State's Exhibit No. 16 was received into
18 evidence at this time.)

19 SOLICITOR MAURICE: Thank you, Your Honor.

20 Would you please answer any questions the defense
21 has?

22 THE COURT: Mr. Luginbill.

23 MR. LUGINBILL: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. LUGINBILL:

1 Q Mr. Humbert, I noticed, when she was trying to show
2 you that hat, you were very reluctant to put your hands on
3 that hat.

4 Is that because you're cognizant of transferring your
5 own DNA on to the item?

6 A Yes. Typically when I do my testing in the lab I am
7 very very concerned about such things. I always wear
8 gloves and wipe down all of my instruments.

9 Q And you need to be?

10 A Yes.

11 Q Because contamination can lead to wrong results?

12 A That's correct. I could end up with, if I touched my
13 evidence, I could end up with my profile in my evidence
14 and that would be bad.

15 Q And if some unknown person touched the evidence, then
16 their DNA would end up in your results?

17 A That is possible.

18 Q And that's why chain of custody's important, right?

19 A Chain of custody is important for numerous reasons I
20 guess.

21 Q Isn't one of the reasons that chain of custody is
22 important because we need to know what happened to that
23 evidence so that we can verify, before we give it to a
24 jury, that it hasn't been tainted either accidentally or
25 intentionally?

1 A I'm not an expert on the system, but, yea, I mean we
2 make sure our evidence is sealed and everything when we
3 get it.

4 Q And you keep it, a log at SLED for that very purpose?

5 A Yes, we have a bar code system where we scan it
6 between individuals as they get the items.

7 Q And you're well satisfied that once it gets to SLED
8 you can account for it from the minute it gets to your
9 door from the very minute it leaves?

10 A Yes.

11 Q And if you couldn't, that would be a problem?

12 A Yea. Yes.

13 Q It would call into question the accuracy of your
14 testing?

15 A Well, I mean my testimony might be accurate, but I
16 wouldn't know how the evidence got to me I guess.

17 Q Sort of a garbage in garbage out principle?

18 If you don't know how good the information is coming
19 in you can't verify how good it is going out?

20 A I'm not sure how to answer that.

21 THE COURT: You can answer it. Answer it. If you
22 don't know what he's talking about just tell him.

23 THE WITNESS: I don't really understand what
24 you're---

25 Q Let me ask it a different way.

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1 would a tainted sample give tainted results?

2 A Yes, if we had a tainted sample that had someone else
3 on it, it could be a tainted sample that I would test and
4 come up with that result.

5 Q There is, in this case, a glove. This is Item 2.0 I
6 believe.

7 THE COURT: Give the exhibit number.

8 MR. LUGINBILL: This is State's Exhibit No. 10.

9 SOLICITOR MAURICE: Do you need your report back?

10 THE WITNESS: I will need it to testify to my result.
11 I mean I believe I remembered that it was---

12 THE COURT: Hang on. We're not trying to hide
13 anything.

14 THE WITNESS: ---that it could not be excluded, yea.

15 Q 2.1 is a swab from a glove, and this is Item 2.0.

16 So, the swab that you tested should have come from
17 that glove?

18 A Yes, and it has the SLED case number on it to
19 indicate.

20 Q If I'm reading your report correctly, there is DNA
21 from two individuals, at least two individuals on the
22 cutting that you tested, isn't that right?

23 A As far as I could tell, yes.

24 Q But neither of those two individuals were Mr. Jones
25 or Mr. Hiers?

1 A That is a result I came up with, yes.

2 Q So, we have two unknown people whose DNA is now part
3 of this case?

4 A On that item, yes. They do not match the standards
5 that I got.

6 Q Is it safe then to presume or is it reasonable to
7 presume then that somebody else was wearing that glove?

8 A It's reasonable that someone else could have been
9 wearing it because their DNA was present on the item.

10 Q Now, you tested some hairs that you said matched up
11 with Mr. Jones. That would be the debris, 4.2, the white
12 hairs and dark hairs, is that correct?

13 A That's correct.

14 Q And you tested those to be Mr. Jones's hair, correct?

15 A That's correct.

16 Q Loose hairs transfer very easily, do they not?

17 A Yea. Yes, they do.

18 Q They're light. If there is a loose hair, you rub a
19 piece of cloth over it, it is going to pick that hair up
20 or it stands a good chance of picking that hair up?

21 A From my experience, hair moves a lot.

22 Q Much easily than say skin cells, which have to be
23 scraped with some degree of force?

24 A I have no idea because I can't really see skin cells
25 when I test them. So, I don't really know how they are

1 carried. All I know is that when I do deal with hair,
2 they have a lot of static and such things, and such things
3 that make them stick to the tubes I work with. So, I have
4 to be very careful.

5 Q Is that -- it is kind of aggravating?

6 A What's that?

7 Q Those are kind of aggravating?

8 A Yea, they're very aggravating.

9 Q Looking at the last page of your, of your report---

10 A On the table or report?

11 Q On the table itself. I think it's a little easier to
12 go through, and I'll, I'll hold my copy up to the jury
13 while you look at yours.

14 But on the column side, you have the cutting numbers,
15 correct?

16 A That's correct.

17 Q And that's the, that's what's in the little brown
18 packets?

19 A Yes.

20 Q Or the swabs themselves?

21 A Yes, I have item numbers on the items.

22 Q And across the top, this is just a scientific
23 labeling of the actual spot on the strand of DNA that
24 you're trying to match up?

25 A That's correct. Those are the locations.

1 Q Now, and each of those locations have a number, and
2 we'll use Mr. Hiers because he is the first one in that
3 row. At D8S1179, he's got a 13 and a 14, correct?

4 A Yes, Donald Hiers.

5 Q And it just goes on from that, and I'm not going to
6 bore everybody to tears by going through that, but what
7 you're doing is you're trying to match those up to see
8 what's where?

9 A Yes, that's what I do.

10 Q On some of these swabs we have more than two reports,
11 which, to you, indicates there is more than two people
12 there, correct?

13 A That's correct. If there is more than two numbers at
14 more than two location, that's what we, in our protocol,
15 we call a mixture.

16 Q And that's why, on the glove, you've got all of these
17 other numbers that don't match up to either Mr. Jones or
18 Mr. Hiers, but are---

19 A That's correct. That's why I had to exclude them
20 because there weren't enough of their numbers. I mean you
21 occasionally get one or two of their numbers just by
22 chance in a mixture, but if there is a large number of
23 their numbers missing, missing from the mixture, I exclude
24 them from that mixture.

25 Q For instance, on 1.1, which is your third row down---

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1 A Uh-huh. (Affirmative).

2 Q ---you've got several places where you did not get a
3 reading at all?

4 A That's correct.

5 Q And statistically 1.1 is not useful to you, is it?

6 A It would be -- it would not give a good statistic,
7 but I could not exclude with the limited information I
8 had.

9 Does that make sense?

10 Q You couldn't exclude either Mr. Hiers or Mr. Jones as
11 being contributors?

12 A Let me make sure. Yes, that's the conclusion I came
13 up with.

14 Q But you also couldn't exclude anybody else either?

15 A Without having another standard to compare to it, I
16 mean there is a possibility that I could exclude someone.
17 I mean if they had absolutely no, none of their numbers
18 from their profile, in that profile from that mixture, I
19 could exclude them.

20 Q But you can't exclude the two unknown individuals who
21 wore that glove, can you?

22 A Because it's a mixture of two people, and I can't
23 distinguish a major contributor where there's a lot more
24 DNA from one person to another. I can't even determine
25 who the two people are. Okay. Because of that I --

1 without a standard, it would be hard for me because I
2 don't know what numbers go to what person to include or
3 exclude anyone from that mixture to the other one.

4 Q And, so, to be clear, and put it in the phrasing that
5 I have to say, you cannot render an opinion to a
6 reasonable degree of scientific certainty that the person
7 who wore that glove may have also worn or may have also
8 been in contact with the cutting from the jacket that you
9 have listed as 1.1, can you?

10 A I can't make a conclusion on that.

11 MR. LUGINBILL: One moment, Your Honor.

12 (Pause.)

13 Q And I know I jumped around a bit. Just to clarify.
14 Bear with me.

15 Your finding, if I'm reading it right from the glove,
16 has at least two contributors to it, correct?

17 A Yes.

18 Q And neither of which are Mr. Jones or Mr. Hiers?

19 A That was 2.1 that you said, correct?

20 Make sure I heard it.

21 Q 2.1, yes.

22 A Yes, the result I came up with is that they are
23 excluded as possible contributors.

24 Q So, we have two unknown people at least?

25 A Yes.

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1 Q Thank you.

2 THE COURT: Redirect?

3 SOLICITOR MAURICE: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY SOLICITOR MAURICE:

6 Q Your standards, which standards -- who, who belongs
7 to the standard?

8 A The standards I received were from Donald Hiers and
9 Johnnie Jones.

10 Q So, do you have one labeled unknown?

11 A No, I do not have an unknown standard.

12 Q So, when you run your test, are they directly
13 compared to those two, those two standards?

14 A That's correct. I compare my evidence to those
15 standards.

16 Q And when we say standards, is that DNA?

17 A Yea, it's the standard from a person. So, the
18 profile I get is from a person's standard.

19 Q And was Mr. Hiers's DNA on the jacket cuttings?
20 I believe it's 1.2.

21 A The DNA from that item matched Donald Hiers profile.

22 Q Okay. And on 1.3, whose DNA was on that?

23 A The DNA profile developed for Item 1.3 matched the
24 DNA profile of Johnnie Jones.

25 THE COURT: All right, sir.

1 SOLICITOR MAURICE: Thank you.

2 THE COURT: You may step down. Thank you. You can
3 leave that right there.

4 I'm going to release him from his subpoena. Any
5 objection?

6 MR. LUGINBILL: No objection, Your Honor.

7 SOLICITOR MAURICE: Your Honor?

8 THE COURT: Any objection to releasing him?

9 SOLICITOR MAURICE: Yes, I'm sorry.

10 THE COURT: There is an objection?

11 SOLICITOR MAURICE: No, Your Honor.

12 THE COURT: Have a safe trip back. Tell Mr. Lloyd I
13 said hello.

14 Next witness.

15 SOLICITOR MAURICE: Your Honor, that's the end of the
16 State's witnesses. I do want to double check and make
17 sure that my evidence has all been entered into evidence.

18 THE COURT: Well, Madam Forelady, ladies and
19 gentlemen, let's take a quick break. The State has
20 concluded on their testimony. I need to go over a few
21 matters with them. We'll take about a 10 or 15 minute
22 break. Do not discuss or deliberate the case. Thank you.

23 Everybody else remain seated.

24 (Whereupon, the jury exited the courtroom at 10:22.)

25 THE COURT: All right. Any motions by the State?

1 SOLICITOR MAURICE: No, Your Honor.

2 THE COURT: By the defendant?

3 MR. LUGINBILL: Your Honor, I would just again renew
4 my objections to the, to the DNA evidence, specifically
5 the cap evidence, because the transmittal letter didn't
6 even list the cap. I'm not, I'm not going to belabor that
7 point. I think with the fact that it's not on there, to
8 me, it's a hole, and, therefore, it should have been
9 excluded.

10 THE COURT: Any other motions?

11 MR. LUGINBILL: Your Honor, without the DNA evidence,
12 we also would have moved to suppress the in-court
13 identification. The Court has ruled on that. Had both of
14 those motions gone our way, we would have made a motion
15 that there was insufficient evidence to go forward in this
16 case. Subject to my other objections, I would move for a
17 directed verdict based on the fact that there should not
18 be any evidence before this jury for which they could have
19 convicted him.

20 THE COURT: Thank you.

21 Well, you got the direct testimony of Mr. Hiers,
22 notwithstanding all of the other evidence, which
23 positively identified your client as the defendant. So,
24 even if we excluded everything, there is still enough
25 evidence to send it to the jury. But, once again, my

1 ruling stands on the jacket and the hat and various items
2 for the reasons stated yesterday and the cases that I
3 cited. So, your motion is respectfully denied.

4 Can you tell me -- give me some guestimate on the
5 length of your case.

6 MR. LUGINBILL: Your Honor, I would expect to call
7 three witnesses. Well, I'll say four witnesses, I would
8 guess, depending on how long cross-examination of my
9 client goes cause he does wish to take the stand,
10 depending on how long cross-examination of my client goes,
11 I would estimate two hours, two and a half hours.

12 THE COURT: I don't see how it could be that long.
13 Aren't those alibi witnesses?

14 MR. LUGINBILL: They are, Your Honor.

15 THE COURT: Please bear in mind that I'm looking at
16 the testimony very carefully and please bear in mind that
17 I will be looking for perjured testimony. If I deem it to
18 be perjured, I will deal with it accordingly at the
19 appropriate time.

20 MR. LUGINBILL: I can only assume that would apply to
21 both the State and the defense witnesses.

22 THE COURT: All right. Mr. Jones, stand up for me
23 please and raise your right hand.

24 JOHNNIE JONES, after being duly sworn,
25 testified as follows:

1 THE COURT: All right. You can have a seat.

2 Mr. Jones, we've completed the State's case and we're
3 now at the time where you obviously can present your own
4 defense. That means obviously you can call witnesses on
5 your behalf. You can introduce relevant exhibits on your
6 behalf, and you can testify in your own defense if you
7 choose to do so.

8 DEFENDANT: Yes, sir.

9 THE COURT: You are protected by the United States
10 Constitution, which says that nobody can be compelled to
11 testify in a case when they're charged with an offense
12 such as you have in this case, attempted kidnapping and
13 assault and battery with intent to kill. Nobody can make
14 your take that witness stand. You have the right to
15 remain silent. You have the right to exercise your Fifth
16 Amendment constitutional right to remain silent.

17 So, if you decide not to testify---

18 DEFENDANT: Yes, sir.

19 THE COURT: ---and we have defendants who don't
20 testify in a lot of cases, here's what I will tell the
21 jury. I will tell them, when I instruct them or charge
22 them at the conclusion of the case, I'll say that the fact
23 that the defendant did not testify cannot be used by you
24 in deliberating on his guilt or innocence at all. In
25 fact, y'all cannot even mention the fact that he did not

1 testify when you deliberate his guilt or innocence. There
2 is to be absolutely no inferences drawn from the fact that
3 he did not testify. That is a fact that you -- the fact
4 that he did not testify is a fact that you cannot consider
5 at all when you make your deliberations.

6 So, they will be told, if you don't testify, that
7 they can't even consider that. They can't even put it in
8 their mind. That's a very strong charge on that.
9 However, if you decide to testify, then obviously you will
10 be subjected to the same rules that apply to everyone else
11 and you'll be subjected to cross-examination and asked
12 obviously some very pointed questions in this case---

13 DEFENDANT: Yes, sir.

14 THE COURT: ---about your whereabouts and obviously
15 your -- I don't know what all they'll ask you, but you'll
16 be subject to cross-examination, and I think y'all told me
17 yesterday he has no record. So, there will be no
18 impeachment issues involved.

19 Is that correct, ma'am?

20 SOLICITOR MAURICE: That's correct, Your Honor.

21 THE COURT: So, you'll be subjected to the same rules
22 that govern everybody else about cross-examination.

23 Okay?

24 DEFENDANT: Okay.

25 THE COURT: Now, first of all, do you understand your

1 constitutional right to remain silent?

2 DEFENDANT: Yes, sir.

3 THE COURT: And obviously you can invoke that and
4 nobody can make you testify.

5 Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: All right. Understanding your
8 constitutional right to remain silent, you'll have to make
9 a decision in a little while as to whether or not you want
10 to testify.

11 Is that fair?

12 DEFENDANT: Yes, sir.

13 THE COURT: You have the opportunity to talk with
14 both of your lawyers, any family members here, but
15 obviously the ultimate decision is yours and you've heard
16 the evidence and obviously they can ask some very pointed
17 questions maybe I guess.

18 DEFENDANT: Okay.

19 THE COURT: So, when we get back I'll need to know
20 what your decision is.

21 okay?

22 DEFENDANT: All right.

23 THE COURT: Fair enough?

24 DEFENDANT: Fair enough.

25 THE COURT: All right. Let's take just a few minutes

1 to stretch your legs and go to the bathroom. Start back
2 in about ten minutes.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Defense ready?

5 MR. LUGINBILL: We are, Your Honor.

6 THE COURT: Mr. Jones, I need to know, on the record,
7 your decision as to whether or not you will testify.

8 DEFENDANT: Yes, I will.

9 THE COURT: Thank you.

10 (WHEREUPON, the jury came into open court at 10:42.)

11 THE COURT: You may call your first witness on behalf
12 of the defense.

13 MR. LUGINBILL: Thank you, Your Honor.

14 The defense calls Johnnie Lee Jones.

15 THE COURT: Come around, Mr. Jones.

16 JOHNIE LEE JONES, after being duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LUGINBILL:

20 Q Mr. Jones, you got a microphone in front of you. I'm
21 going to stand way back here. If you talk loudly enough
22 that I can hear you we should be fine.

23 okay?

24 A okay.

25 Q would you state your full name for the record?

Johnnie Jones - Direct examination
by Mr. Luginbill

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1 A My name is Johnnie L Jones.

2 Q Where are you from Mr. Jones?

3 A Denmark, South Carolina.

4 Q All right. And where do you live in Denmark?

5 A At the time I was living in The Hook.

6 Q Tell, tell the jury, for those that don't live in
7 Denmark, where The Hook is.

8 A It's behind the old Piggly wiggly off of 70.

9 Q In that corner off of 70 and 321?

10 A Uh-huh. (Affirmative).

11 Q What kind of work do you do?

12 A Mechanic. Mechanic work.

13 Q Have you always done mechanic work?

14 A Mechanic and logging, yes.

15 Q Did you use to do some logging?

16 A That's right.

17 Q When did you quit logging?

18 A When I got hurt back in '90, '95, '94.

19 Q And tell the jury what happened to you in that
20 accident.

21 A I got slapped in the back of the head with a log and
22 crushed the back and disabled me pretty much.

23 Q Have you had another accident since then?

24 A Yes, sir, a four-wheeler crushed a couple of ribs and
25 messed up both knees.

1 Q Now, when you say messed up both knees, what did it
2 do to your knees?

3 A It crushed -- the cartilage was wore out and the
4 knees is busted, the hips, they are busted up too.

5 Q You got problems with both knees and your hip?

6 A That's right. Correct.

7 Q What kind of limitations do those injuries cause you?

8 A Disability.

9 Q Well, how do they limit your day-to-day functioning?

10 A Pretty painful, yea.

11 Q Do they keep you from moving around?

12 A Yea, moving so much, yea. So much, right, yea.

13 Q How long can you stay on your feet before you need to
14 sit down?

15 A Not very long.

16 Q Is it eight hours, six hours, one hours?

17 A I mean really not -- that's why I do a lot of
18 mechanic work. That's the way I am on the bottom. I am
19 always either up under something. I can lean on to
20 something.

21 Q Okay. Now, where were you doing mechanic work on
22 January 9th, 2007?

23 A At Pappy's Garage in Bamberg.

24 Q And that's Pappy wright I believe?

25 A That's correct.

Johnnie Jones - Direct examination
by Mr. Luginbill

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1 Q Where is his shop here in Bamberg?

2 A Well, it's right off of 601 in -- it's right behind
3 The Keg, a place called The Keg up here.

4 Q So, you would have SCB&T Bank, would be across the
5 street?

6 A Yes.

7 Q And the Enterprise Bank across the other side?

8 A Correct.

9 Q And you mentioned The Keg.

10 What is The Keg?

11 A It's a little pool place where they shoot pool and
12 beverages and stuff in there.

13 Q Kind of a hang out place?

14 A Hang out, yea, that's correct.

15 Q How did you get back and forth to work?

16 A Pappy -- me and Pappy. He had a fellow that was
17 living in Bamberg. He would come pick me up in the
18 morning from my house in The Hook and bring me back to
19 Bamberg in the morning and bring, takes me back in the
20 afternoon.

21 Q And was that part of your pay?

22 A Yea, he got part of the pay.

23 Q Did -- I know in a lot of garage shops everybody
24 wears a uniform.

25 Did you have a uniform at Pappy's?

1 A No, I just had a change of clothes at Pappy's.

2 Q Where did you keep that change of clothes?

3 A At a pickup truck outside of the shop. It always,
4 like I said, when I was riding with this fellow, he had
5 kind of a new truck that you had -- I couldn't really
6 change clothes at work. You know, being a mechanic, and
7 then get in his truck and ride with him like that.

8 Q He didn't want you sitting in his new truck all full
9 of grease?

10 A Right.

11 Q So, you changed at the shop?

12 A At the shop, yes, sir.

13 Q Was that, was that somebody's truck or did it just
14 sit there?

15 A Most of the time it was just -- he was working on it,
16 but the parts wasn't really in. So, I had a change of
17 clothes in that vehicle at the time.

18 Q And what kind of clothes did you keep in there?

19 A Like pants and a shirt, anything I could change out
20 of, coats like that. Change out of that. I would have
21 another change of clothes.

22 Q Was, was this coat kept in there?

23 A Correct.

24 THE COURT: Get the exhibit number.

25 Q This is State's Exhibit 14.

Johnnie Jones - Direct examination
by Mr. Luginbill

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1 Do you recognize that jacket?

2 A Yes, I do.

3 Q Who does that jacket belong to?

4 A That's a jacket of my son's I've been wearing to
5 work.

6 Q Would you classify this as a military style jacket?

7 A No, sir, I wouldn't.

8 Q Does it have a collar?

9 A It don't have no collar. It's got a hood.

10 Q Does it come down to your knees?

11 A No, sir, it don't.

12 Q Who all had access to that truck?

13 A The truck was outside. You know, a lot of people
14 would, you know, sit on it that come through and all. It
15 was just outside. Access to anyone.

16 Q On a typical day at Pappy's shop, how many people
17 might come and go between his shop and The Keg?

18 A A whole bunch of them.

19 Q Ten to twenty?

20 A Every bit of that I guess, yes, sir.

21 Q Maybe more?

22 A Maybe more.

23 Q Any one of those people would of had access to that
24 coat?

25 A Yes, sir.

1 Q Did you know a lot of the folks that came and went?

2 A Not a lot of them. I knowed some of them by working
3 maybe with Pappy. No, I didn't know all of them, no, I
4 don't.

5 Q Based on your own knowledge of who was coming through
6 in there, did any of those fellows have criminal records
7 to your knowledge?

8 SOLICITOR MAURICE: Objection, Your Honor.

9 THE COURT: That calls for pure speculation.

10 MR. LUGINBILL: I asked him based on his own personal
11 knowledge of it.

12 THE COURT: I've ruled. Move along.

13 Q Was that your work coat?

14 A That's correct.

15 Q All right, Johnnie. January 9, 2007, tell the jury
16 how your day began.

17 A Which night?

18 Q January 9th, 2007, how did your day begin?

19 A Went to work. I got up in the morning and went to
20 work with Pappy.

21 Q About what time?

22 A I left there about 7:00, 7:30.

23 Q Okay. Was Pappy there when you got there?

24 A Not, not on that particular morning, no, he wasn't.

25 Q What did you do while waiting for him?

1 A I sat around waiting. I went to The Keg, inside The
2 Keg, and shot a few games of pool in The Keg. Pappy did
3 not return. So, later on that about, I don't know, 1:00
4 or 2:00, 1:30 or two o'clock, that's when I had talked
5 with this fellow running the store in Ehrhardt. He told
6 me that he wanted me to do -- tell me came back about
7 doing some carpentry work for him. He asked me, did I --
8 as a matter of fact, did I do carpenter work. I told him
9 yea, on the side I still do that. So, he asked me about
10 coming to check on the house that he wanted to remodel.

11 Q All right. Let me stop you there. Just -- when you
12 say he, you mean the gentlemen from Ehrhardt that owns the
13 store?

14 A Own the liquor store, right.

15 Q He had talked to you on the 9th or prior to the 9th?

16 A He talked to me prior -- I mean talked to me as a,
17 matter of fact, that was on the 8th. So, after, on the
18 8th, the 9th is when Pappy didn't come into the shop. So,
19 that's when I made a decision I'll check him out today.

20 Q All right. So, how did you get from Bamberg to
21 Ehrhardt if you didn't have a car?

22 A I caught a ride from The Keg.

23 Q All right. So, somebody at The Keg took you over?

24 A Right.

25 Q All right. Were you able to talk to this gentleman

1 about the work?

2 A Yes, I did.

3 Q Did he give you any work?

4 A Well, his sister had. No, he said something about
5 his sister had passed or something in New York and he
6 couldn't get to it because he had, he had learned that she
7 had just passed. So, he couldn't get to it that week. It
8 would be the next week or something like that.

9 Q And about what time of day was it that you spoke with
10 him?

11 A It was about two or three o'clock, something like
12 that.

13 Q All right. And then what did you do after you had
14 that conversation with him?

15 A After I found out that, I stepped on the back lot for
16 a second. When I came out from back there I went to walk
17 over to the station and that's when I caught a young man,
18 I asked this young man at the station was he coming
19 towards Bamberg, and that's when I caught a ride back to
20 Bamberg at The Keg.

21 Q All right. You say you went to the back lot.

22 Now, the back, the back lot is sort of a hang out
23 area?

24 A It is a hang out area, right.

25 Q And there was some other folks hanging around?

Johnnie Jones - Direct examination
by Mr. Luginbill

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1 A Uh-huh. (Affirmative.)

2 Q And that's the same back lot that Officer Bearden had
3 testified about?

4 A Uh-huh. (Affirmative).

5 THE COURT: Say yes or no please.

6 THE WITNESS: Yes, sir.

7 Q You have to say that so she can write it down. The
8 -- that would have been sometime in, in the afternoon you
9 said?

10 A Correct, yes, sir.

11 Q Did you know the family of the boy that gave you a
12 ride back?

13 A I knew the family. He was -- I can't call the boy's
14 name. I knew some of the people, yes, I did.

15 Q He knew you?

16 A No, he didn't really knowed me, but after we start
17 talking and he told me some---

18 THE COURT: Sir, you can't testify about what he
19 said.

20 Q You can't say what anybody else said.

21 But after the two of you talked, did, did you have a
22 better feel for who he was?

23 A Yes, I did.

24 Q And did he ultimately agree to take you back?

25 A Yes, after I give him a couple of dollars to bring me

1 back to Bamberg.

2 Q Okay. And where did he drop you off at?

3 A Right back at Pappy's Garage.

4 Q Okay. How long did you hang out there?

5 A Until about 7:00 because that's when my ride picks me
6 up in, in the afternoon any way to return me back to
7 Denmark.

8 Q Is that, is that why you had him drop you off at the
9 shop even though Pappy wasn't there?

10 A Yea, right. Because that's when my ride picked me
11 up. That's where he dropped me off that morning. That's
12 where he picked me up that afternoon.

13 Q Did you have any other way to get from Bamberg to
14 Denmark?

15 A Yes, but that particular day that's when I seen my
16 niece and I caught a ride with her back to Denmark.

17 Q And, and what is her name?

18 A Mahogany Beckett.

19 Q All right. Where did she, where did she see you at?

20 A I hollered at her at The Keg, in front of The Keg.

21 Q All right. Where did she take you?

22 A She took me to Denmark back home.

23 Q And what time was that?

24 A I don't know. About 7:00. It had to be about 7:00
25 cause I caught -- before the store closed, the package

Johnnie Jones - Direct examination
by Mr. Luginbill

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1 store closed, I went back to the package store to get
2 change for a \$50 bill that I had, and that's when I went
3 and got her to take me home.

4 Q And that was -- when you say the package store, you
5 mean Green's Package Store?

6 A That was Green's, Green's Package Store.

7 Q And the package store closes at what time?

8 A 7:00.

9 Q All right. Who was home when you got there?

10 A It was nobody home when I got, when I got there.

11 Q All right. What did you do after you got home?

12 A I went inside and light the heater and got me
13 something to eat. That was it and then that's all I did
14 that day.

15 Q Did you hang out or talk to anybody else later that
16 night?

17 A It was a, it was a few people out there on the
18 street, but Michelle, she came by and asked me about
19 working on her car.

20 Q Who's Michelle?

21 A Michelle McDonald I think.

22 Q Okay. What time, the best you can remember three
23 years later, what time did Michelle come by?

24 A It was after 7:00. It was after 7:00. I can't
25 really tell you.

1 Q And what did she ask you specifically?

2 A would I look at her car and tell her, work on her car
3 because I had promised her that I would fix her car, but
4 it was -- I forgot what it really was. She wanted me to
5 look at her car.

6 Q Could you do it that day?

7 A I couldn't. It was already dark.

8 Q You don't have a shop?

9 A No, I don't have a shop.

10 Q All right. Did -- when did you tell her you would
11 work on it?

12 A The next day.

13 Q Okay. And was she agreeable with that?

14 A Yes, sir.

15 Q Now, you've heard testimony from a lot of people in
16 here today.

17 How long have you known Mr. Grant?

18 A Grant, I knew him for quite a while.

19 Q Would you describe you and Mr. Grant as friends?

20 A No, he's not.

21 Q Have you ever been friends?

22 A Never have.

23 Q Why are you not friends?

24 A Well, I ended up taking the wife away from him. I
25 ended up with his wife.

Johnnie Jones - Direct examination
by Mr. Luginbill

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1 Q It's not the sort of thing friends do?

2 A No, sir, I wouldn't think so.

3 Q Mr. Grant always harbored a grudge?

4 Has he always had hard feelings about you about that?

5 A Always did, yes, sir.

6 Q Would you spend an hour or two sitting on the porch
7 with Mr. Grant?

8 A No, sir. I mean, no, sir, I wouldn't have did that
9 no way, and if I did, everybody in the neighborhood would
10 have heard me.

11 Q How long have you known Mr. Hiers?

12 A All my life.

13 Q Do you like Mr. Hiers?

14 A Yes, I ain't got no hard feelings against Mr. Hiers,
15 no, sir, I don't.

16 Q Would you do to Mr. Hiers what somebody did to him in
17 this case?

18 A No, sir, I wouldn't.

19 Q Were you in Ehrhardt, South Carolina between seven,
20 between seven and eight o'clock on the night of Tuesday,
21 January 9, 2007?

22 A No, sir, I wasn't.

23 Q Now, you heard some testimony that the assailant ran
24 off.

25 Do you remember that?

1 A I heard it.

2 Q Given your condition at the time, not how you are
3 now, but at the time, could you have run away?

4 A No, sir, I couldn't.

5 Q Please answer any questions that the State may have.

6 CROSS-EXAMINATION

7 BY SOLICITOR MAURICE:

8 Q Mr. Jones, you testified that you were in a logging
9 accident in 1995 or 1994?

10 A That's right.

11 Q When did you have the four-wheeler accident?

12 A This was in 2006.

13 Q In 2006?

14 A 2006.

15 Q Okay. Now, where did you ride your four-wheeler?

16 A Up and down the back roads up in Bamberg. What they
17 call, right out of town, Midway.

18 Q So, you rode it a lot?

19 A Pretty, pretty much.

20 Q Okay. So, you weren't hurt bad enough not to ride a
21 four-wheeler?

22 A No, well, not at that time. That's what finished
23 this job off.

24 Q I'm sorry?

25 A That's where I got really broke up on the

Johnnie Jones - Cross-examination
by Solicitor Maurice

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1 four-wheeler when it crashed and it fell back on me.

2 Q Okay. And when was that?

3 A 2006, ma'am.

4 Q Do you live in or you lived in Denmark at the time of
5 this incident?

6 A Yes, ma'am.

7 Q Okay. Where's your family from?

8 A Denmark.

9 Q Okay. You don't have any family in Colleton?

10 A Not right now.

11 Q In the past?

12 A Yes.

13 Q Okay. All right. And you said you do know Mr.
14 Hiers.

15 How many times -- did you go to, to the store very
16 often?

17 A Always did go to Mr. Hiers's store.

18 Q You, you did?

19 A Uh-huh. (Affirmative).

20 Q Always go?

21 A My mother and them. When we came up to going
22 shopping at Mr. Hiers, his father and all. Yea, I knew
23 all of them.

24 Q And when -- where -- what county did your family live
25 in then?

1 A I live in Colleton County.

2 Q Okay. Now then, I'm confused.

3 Okay. Where is The Keg located?

4 A Keg is right up the street in Bamberg on 601.

5 Q Okay. It's in Bamberg?

6 A Right.

7 Q I mean the city?

8 A Huh?

9 Q In the City of Bamberg?

10 A I guess you could say city.

11 Q Okay. Not in Ehrhardt?

12 A No, it's not in Ehrhardt.

13 Q Okay. All right. And the back lot, it is in
14 Ehrhardt?

15 A That's correct.

16 Q Okay. Now, you testified that you were at the back
17 lot at sometime on that afternoon.

18 About what time were you at the back lot?

19 A I guess it was somewhere around 3:00, somewhere
20 around 3:00 I reckon.

21 Q Okay.

22 A It was a long time ago.

23 Q Okay. And it's your testimony that you went to work
24 that morning?

25 A I went to go to work, yes, ma'am.

Johnnie Jones - Cross-examination
by Solicitor Maurice

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- 1 Q Okay. About 7:00?
- 2 A About 7:00, 7:30.
- 3 Q But Pappy wasn't there?
- 4 A No, ma'am.
- 5 Q So, you went to The Keg?
- 6 A Right.
- 7 Q About how many games of pool did you shoot?
- 8 A I don't remember right now.
- 9 Q You go there often to shoot pool?
- 10 A Yea, we go there on lunch break and all.
- 11 Q Okay.
- 12 A The Keg is right behind Pappy's.
- 13 Q Okay. So, what time did you leave The Keg and go to
- 14 Ehrhardt?
- 15 A It had to be about, I don't know, 1:00, 1:30.
- 16 Q Okay. Now, you testified that your niece, Becky,
- 17 picked you up at The Keg?
- 18 A Yes, ma'am.
- 19 Q At what time?
- 20 A That was around, around 7:00 because -- it was
- 21 somewhere around 7:00 because I was, like I said, I had to
- 22 get change for a \$50 bill and I caught the store before it
- 23 closed, the package store before it closed to get the
- 24 change.
- 25 Q All right. And where did you meet the young man that

1 you said dropped you -- what was the young man that you
2 weren't sure about?

3 where did you meet him?

4 A At the right down -- right across the street from the
5 liquor store in Ehrhardt.

6 Q So, that was in Ehrhardt?

7 A That was in Ehrhardt, yes, ma'am.

8 Q Okay. What time was that?

9 A I imagine that was around about 4:00, 4:30. Maybe
10 4:30 or 5:00. Somewhere along in there.

11 Q All right. And how long did you hang out with him?

12 A Hang out with who?

13 Q The, the young man.

14 A I just caught a ride from there. I walked up to the
15 gas station. He was getting gas and I was talking and
16 asking him was he going back towards Bamberg, South
17 Carolina. If he is, I said, look here, I'll give you a
18 couple of dollars to get me back, too, and that's where I
19 was.

20 Q Okay. And where did he drop you off?

21 A Right at Pappy's shop between the shop and The Keg.

22 Q Okay. As soon as you -- it's your testimony, as soon
23 as you got to Ehrhardt that day, you went and talked to
24 that man about remodeling his home?

25 A That's correct.

Johnnie Jones - Cross-examination
by Solicitor Maurice

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1 Q And what type of remodeling do you do?

2 A I'm a jack of all trade and master of none. I can do
3 just about anything you want to do to the house.

4 Q So, you're well enough to do remodeling of a house?

5 A Well, if I had help. I had somebody that I could get
6 to help me right.

7 Q But you can do about anything?

8 A Cutting wire, yea, cutting wire, and mechanic wise,
9 yes, I will.

10 Q And you can shoot pool?

11 A Uh-huh. (Affirmative).

12 Q Okay. How do you know Mr. Folk, John Folk?

13 A Oh, I just knew him from around town. That's it.

14 Q All right. And you were in here when he testified?

15 A Yes, I was in here when he testified.

16 Q You didn't spend the night with Mr. Folk?

17 A No, sir, I did not.

18 Q But you -- nobody else was at your house that night?

19 A Nobody was at the house that night, no, ma'am. But
20 there was people that see-ed me at that house that night.

21 Q When you were at your lawyer's office and asked to
22 look at the clothes, do you remember that?

23 A Uh-huh. (Affirmative).

24 Q Okay. And you, and you told them that the jacket was
25 yours, right?

1 A Yes, exactly right.

2 Q Okay. And didn't you also say you recognized the
3 hat?

4 A Uh-huh. (Affirmative).

5 THE COURT: Say yes or no please.

6 THE WITNESS: Yes.

7 THE COURT: Thank you.

8 Q Is the hat yours?

9 A Yea. Yes, ma'am.

10 SOLICITOR MAURICE: No further questions, Your Honor.

11 THE COURT: Redirect, if any?

12 MR. LUGINBILL: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. LUGINBILL:

15 Q Mr. Jones, did you keep the hat and the jacket
16 together?

17 A That's correct.

18 Q In the, in the truck?

19 A In the truck.

20 Q So, if somebody had access to the jacket, they would
21 have had access to the hat?

22 A Right. Just like all the rest of my clothes was gone
23 out the truck when I got back and went back out there.

24 Q Thank you.

25 THE COURT: You may step down.

Johnnie Jones - Redirect examination
by Mr. Luginbill

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1 Next witness. Next witness please.

2 MR. LUGINBILL: Your Honor, we'd call Doreen Beckett.

3 THE COURT: I thought we had these witnesses
4 sequestered.

5 MR. LUGINBILL: I did not move prior to the trial.
6 The State's witnesses were not sequestered.

7 THE COURT: Come around, ma'am.

8 DOREEN BECKETT, after being duly sworn,
9 testified as follows:

10 THE COURT: Give us your full name please.

11 THE WITNESS: Doreen Beckett.

12 THE COURT: B-E-C-K-E-T-T?

13 THE WITNESS: Yes, it is.

14 DIRECT EXAMINATION

15 BY MR. LUGINBILL:

16 Q Mrs. Beckett, where do you live?

17 A I stay in Orangeburg.

18 Q In Orangeburg?

19 A Yes.

20 Q Now, how are you related to Mr. Jones?

21 A He's my uncle.

22 Q Do you recall the night of, of Tuesday, January 7th
23 of 2007?

24 A Yes.

25 Q Where were you coming from and where were you going

1 to?

2 A Well, I was coming, going down to the Green's store
3 because it's about the time it was getting ready to close,
4 and I was going to get me something to drink.

5 THE COURT: Going where, ma'am?

6 THE WITNESS: To the Green's store.

7 Q By the Green's store, you mean the package store?

8 A Right.

9 THE COURT: Mr. Luginbill, you said January 7th,
10 2007. Is that---

11 MR. LUGINBILL: I'm sorry, Your Honor. January 9th.
12 I misspoke.

13 Q January the 9th, 2007, the night of the incident?

14 A Right.

15 Q Tell me who you saw when you came up to the store.

16 A I seen my uncle. He was standing up there. So, I
17 asked him did he wanted a ride.

18 Q And what, what did he say?

19 A He said yes.

20 Q And where did you take him?

21 A I dropped him off to his house and U-turned back
22 home.

23 Q And about what time of the night was this?

24 A It was around 7:00. I dropped him off a little after
25 7:00.

Doreen Beckett - Direct examination
by Mr. Luginbill

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1 Q It takes you how long to get from Bamberg to, to his
2 house in Denmark?

3 A About ten minutes.

4 Q All right. Please answer any questions that the
5 State may have.

6 THE COURT: Sure.

7 CROSS-EXAMINATION

8 BY SOLICITOR MAURICE:

9 Q So, was it on January 7th or was it on January 9th?

10 A The day of the incident.

11 Q And how do you know that?

12 How do you remember that?

13 A How do I remember the date?

14 Q Uh-huh. (Affirmative).

15 A Because you just said the date.

16 Q Okay.

17 A I picked him up that day.

18 Q Okay. Were you with your uncle at 7:50 that evening?

19 A No, I wasn't. I dropped him off and went back home.

20 SOLICITOR MAURICE: No further questions, Your Honor.

21 THE COURT: Anything?

22 MR. LUGINBILL: No.

23 THE COURT: You may step down.

24 Next witness.

25 MR. LUGINBILL: I call Michelle McDonald.

1 MICHELLE McDONALD, after being duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. LUGINBILL:

5 Q Mrs. McDonald, where do you live?

6 A I stay in Denmark, South Carolina.

7 Q And do you know Mr. Jones?

8 A Yes, sir.

9 Q Have you had occasion to have Mr. Jones do some auto
10 repair work for you?

11 A Yes, sir.

12 Q Did you speak to him on January 7, 2009, about doing
13 some auto repair work. 2007. My apologies.

14 THE COURT: You still got the wrong date.

15 MR. LUGINBILL: The 9th. I apologize.

16 Did you speak with him on January 9, which was
17 Tuesday night, about doing some repair work?

18 A I can't recall exactly what day it was, but I did
19 speak with him about doing some work on my car.

20 Q And when did he tell you he was gonna do it?

21 A The next day.

22 Q And when you brought the car to him to work on, was
23 he there?

24 A No, he wasn't.

25 Q Did you subsequently find out why he was not there?

Michelle McDonald - Direct examination
by Mr. Luginbill

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1 A Yes.

2 Q And why is that?

3 A I found out that he was locked down.

4 Q Thank you. Please answer any questions that the

5 State may have.

6 CROSS-EXAMINATION

7 BY SOLICITOR MAURICE:

8 Q But you're not sure what day that was?

9 A No, ma'am.

10 THE COURT: You may step down.

11 Next witness.

12 MR. LUGINBILL: If I may have one minute, Your Honor.

13 (Pause.)

14 THE COURT: Next witness please.

15 MR. LUGINBILL: Your Honor, we'd call Mrs. Jones, his

16 wife.

17 SOLICITOR MAURICE: Your Honor?

18 THE COURT: Does she have a name?

19 MR. LUGINBILL: Yes, sir, Debra Jones, Your Honor.

20 SOLICITOR MAURICE: May we just approach for just a
21 moment please, Your Honor?

22 (WHEREUPON, a bench conference was held.)

23 THE COURT: Come around, ma'am.

24 DEBRA JONES, after being duly sworn,

25 testified as follows:

1 DIRECT EXAMINATION2 BY MR. LUGINBILL:

3 Q Ma'am, do you recognize this jacket?

4 A Yes.

5 Q Whose jacket is this?

6 A My oldest son.

7 Q Was your husband wearing this jacket from time to
8 time?

9 A Yes.

10 Q Do you know where he kept it?

11 A He told me he was leaving it in a truck at the shop
12 that he was working at.

13 MR. LUGINBILL: That's all we have, Your Honor.

14 THE COURT: Any cross?

15 SOLICITOR MAURICE: Yes, Your Honor.

16 CROSS-EXAMINATION17 BY SOLICITOR MAURICE:

18 Q How long have you been married to Mr. Jones?

19 A We've been married 16 years, but we've been together
20 for 26.

21 Q Okay. And who were you married to before that?

22 A Lafayette Moncrief.

23 Q Who?

24 A Lafayette Moncrief.

25 Q Okay. Were you married to Mr. Grant?

Debra Jones - Cross-examination
by Solicitor Maurice

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1 A No.

2 Q Okay. Were you with Mr. -- were you with your
3 husband at 7:50 that night?

4 A No.

5 Q No further questions.

6 THE COURT: You may step down.

7 Next witness.

8 MR. LUGINBILL: Your Honor, that is all from the
9 defense.

10 THE COURT: Anything in reply by the State?

11 SOLICITOR MAURICE: No, Your Honor.

12 THE COURT: All right. Madam Forelady, and ladies
13 and gentlemen, that concludes all the testimony. Let me
14 have a few minutes with the lawyers. I think what I'm
15 going to do is send Mr. Hiers back there and let y'all
16 order lunch. We can have the, do the final arguments and
17 charge and have the lunch when you come in while you're,
18 y'all are deliberating.

19 Does that suit to do it that way instead of taking an
20 hour and a half to go out for lunch?

21 You take a head count when you get back there to make
22 sure that's okay. Don't discuss the case. Don't
23 deliberate. I'll be right back with you.

24 (WHEREUPON, the jury exited the courtroom at 11:18.)

25 THE COURT: Anything by the defense before we do

1 final arguments?

2 MR. LUGINBILL: No, Your Honor.

3 THE COURT: By the State?

4 SOLICITOR MAURICE: No, Your Honor.

5 THE COURT: Any special requests to charge by the
6 State?

7 (No response.)

8 THE COURT: By the defense?

9 MR. LUGINBILL: Your Honor, we would ask for a
10 A.B.H.A.N. charge, the lesser included of the A.B.W.I.K.
11 other than that, I believe the standard charge would be
12 okay, and Mr. Kirkland just reminded me we would also ask
13 for the identification charge since that's an issue in the
14 case.

15 THE COURT: What do you say to that by the State,
16 about the lesser included?

17 SOLICITOR MAURICE: Your Honor, I'm gonna agree to
18 that if you, as far as the lesser included.

19 THE COURT: Well, anything else?

20 SOLICITOR MAURICE: No, Your Honor.

21 THE COURT: All right. We'll stand at ease for about
22 ten minutes and we'll -- are you going to require the
23 State to open in full?

24 MR. LUGINBILL: I will, Your Honor.

25 SOLICITOR MAURICE: Your Honor, for the record, I

1 have never opened in full with you. Some judges like you
2 to put the whole case out there even in the beginning.

3 THE COURT: Open on the law.

4 SOLICITOR MAURICE: Thank you, Your Honor.

5 THE COURT: All right. We'll stand at ease for a few
6 minutes and then be ready to go.

7 (WHEREUPON, a break was taken.)

8 THE COURT: Is the State ready?

9 SOLICITOR MAURICE: Yes, Your Honor.

10 THE COURT: The defense ready?

11 MR. LUGINBILL: We are, Your Honor.

12 (Whereupon, the jury came into open court at
13 approximately 11:36.)

14 THE COURT: If y'all get uncomfortable, please raise
15 your hand. I got a -- I try to do the best I can. I have
16 some women who complain about being hot. Some complain
17 about being cold. Some guys complain about being cold.
18 Some hot. I try to please everybody.

19 All right. Madam Forelady, and ladies and
20 gentlemen---

21 (Pause.)

22 THE COURT: All right. Mr. Bailiffs, y'all make sure
23 that the doors are locked.

24 Madam Forelady, ladies and gentlemen, we are now, as
25 I told you when I gave you my opening remarks, we're at

1 the place in the trial where the lawyers make their final
2 arguments. Now, final arguments are like opening
3 statements that is not evidence in the case. It is simply
4 how they will argue the evidence as it pertains to their
5 particular side. You've heard all of the evidence in the
6 case, and obviously you'll ultimately be asked to decide
7 who's telling the truth and what the true facts are in the
8 case.

9 So, please pay close attention to their arguments.
10 Once they have completed the arguments I will charge or
11 instruct you on the law, that won't take very long, and
12 then you'll be in a position to begin your deliberations
13 and decide the case.

14 Thank you.

15 The State goes first. They normally, by the rules,
16 will open up on what we call the law, followed by the
17 defendant in full, followed by the State in reply.

18 Mrs. Maurice.

19 SOLICITOR MAURICE: May it please the Court?

20 THE COURT: Yes, ma'am.

21 SOLICITOR MAURICE: Mr. Kirkland, Mr. Luginbill,
22 ladies and gentlemen of the jury, I gave you a brief
23 overview in opening on assault and battery with intent to
24 kill and kidnapping. I did so because it sounds different
25 than what the law actually says. That's why it's gonna be

1 very important, when the judge charges you on the law,
2 that you listen closely.

3 when I think about assault and battery with intent to
4 kill, you think intent. You think you got to go get a
5 shotgun, go to somebody's house, and, and shoot them and
6 mean to kill them.

7 I guess if you shot them and you didn't kill them,
8 you know, where's the intent?

9 The only way the State can show intent is by the
10 actions of the defendant. You can't go and get in the
11 defendant's head. You can't do some kind of DNA analysis
12 on the defendant, what the defendant's thinking.

13 So, when we look at the actions, and the actions
14 being walking into Mr. Hiers's yard, getting a brick,
15 walking over to him and him, and him saying I'm gonna kill
16 you if you don't take me for a ride, and when he says no
17 and tries to get away, hits him in the head. Mr. Hiers
18 has testified it was more than once.

19 The State doesn't have to prove that the defendant
20 left home that day and said I'm gonna go kill Mr. Hiers.
21 But when he walked in that yard and got that brick and
22 walked over and threatened to kill him and then hit him in
23 the head with the brick, he showed he didn't really care
24 about how Mr. Hiers's health was.

25 reckless disregard for human life. There is

1 different ways it's said. Listen closely when the judge
2 gives you those instructions.

3 Malice is or malice aforethought is part of the
4 instructions, and that comes back to intent in a way
5 because malice can be the meanness or disregard for human
6 life. They say it can happen in a twinkling of an eye.
7 That's the same thing. You don't have to go and plan to
8 kill someone. So, think about that and listen closely to
9 the judge's instructions.

10 Now, kidnapping, that's another thing we talked about
11 at the beginning. You know, when we think about
12 kidnapping, we think okay, I'm gonna go grab a child and
13 take them across state lines because that's the way they
14 do it on TV.

15 Well, to South Carolina, that's not what the law
16 says. The law says when you keep someone or take away
17 someone's freedom, it doesn't matter how long, by force,
18 and you're not like a policeman where you have a lawful
19 right to do so, that that's kidnapping. When Mr. Jones
20 told Mr. Hiers get in the car and take me for a ride or
21 I'm gonna kill you, and he has the brick, not only was Mr.
22 Jones, Mr. Hiers not able to leave, Mr. Hiers tried to
23 leave and was stopped by being hit in the head with a
24 brick.

25 Now, the charge today is attempted kidnapping. That

1 even makes it easier because the State realizes it's, it's
2 hard on mentality, after you see all of this on TV to get
3 that intent part of assault and battery with intent to
4 kill. It is hard, even listening to the judge, and that's
5 what you have to do, it's sometimes hard for us to move
6 and just realize that it's not exactly how it sounds.

7 He's going to also give you the law on beyond a
8 reasonable doubt. Listen closely to that because I submit
9 to you he's not going to say beyond any and all doubt.
10 You have many life experiences, and based on those
11 experiences you make really important decisions every day.
12 Sometimes we call it common sense, and reasonable doubt is
13 a high standard and, and we accept that burden. That's
14 the way it should be.

15 But as I said, nothing is absolute. It doesn't say
16 any, all, every. That's not going to be in it. It is
17 going to be beyond a reasonable doubt. Not beyond all
18 doubt. Not beyond every doubt. It's beyond a reasonable
19 doubt, and that's when you use and determine what's
20 reasonable.

21 He's gonna also give you a charge on credibility,
22 credibility of witnesses.

23 When you go back and deliberate, who has a reason to
24 lie?

25 who has a reason to tell the truth?

1 I'll have another opportunity to address you after
2 Mr. Luginbill or Mr. Kirkland finishes.

3 THE COURT: Mr. Luginbill.

4 MR. LUGINBILL: Thank you, Your Honor.

5 May it please the Court?

6 THE COURT: Yes, sir.

7 MR. LUGINBILL: Lauren, Kip.

8 I will try to get this out of the way here.

9 Ladies and gentlemen, I want to thank you for your
10 attention so far, and ask you to bear with me just a
11 little bit longer, and I will try to make good use of your
12 time.

13 When we started this case yesterday I told you this
14 was a tale of two cities. Now you know which two cities I
15 was talking about. We got Denmark on the one hand, and we
16 got Ehrhardt in the other. Mr. Jones can't have been in
17 both places.

18 I told you that there would be some things that
19 wouldn't necessarily be as they initially appeared. I
20 submit to you that there are several such things. The
21 first such thing is the statement of Mr. Grant. He sat in
22 the witness chair there, and for whatever reason, he
23 didn't answer very many questions. He didn't answer any
24 questions from the State. He didn't answer any questions
25 from me. He said what he wanted to say and basically that

1 was that.

2 I would submit to you that you shouldn't believe a
3 word he said. It was incoherent, it didn't make any
4 sense, and it wasn't responsive to the questions that were
5 being asked. Trials are fair because the witnesses have
6 to ask, have to answer questions from both sides. They
7 don't just get to say what they want to say. They got to
8 answer those questions that they don't want to have to
9 answer, those tough pointed questions. Mr. Grant ducked
10 all of that.

11 Did he have a motivation to lie?

12 Yes, he had a motivation to lie. He and Johnnie
13 Grant didn't like each other. They didn't like each other
14 because they -- both are after the same woman at one point
15 in time. You shouldn't believe Mr. Grant because what he
16 said from the witness stand had absolutely nothing to do
17 and bears no resemblance to State's or to Defendant's
18 Exhibit 3, which was the written statement he made the
19 following day.

20 In that statement he says, on 1/9/2007, Mr. Johnnie
21 Lee Jones came by my house around 7:00 p.m. He told me
22 that he needed a coat and a pair of gloves for himself
23 because he was cold. So, I gave him a dark blue coat and
24 a pair of brown gloves. Later on that night he came back
25 to my house, knocked on the door, we would not let him in.

1 This was about 11:30 p.m. When I got up the next morning,
2 the jacket and the hat were stuck behind my chair on the
3 porch. This is the same ones he got from me. I heard
4 about what happened to Mr. Hiers. So, I called the police
5 to come get the clothing.

6 He sat right there and said we oh, hung out all
7 afternoon. That wasn't in his statement. He sat there
8 and said all I know is that the clothes were on my porch.
9 That's all I know. That's all I know. I would submit to
10 you none of it happened and you shouldn't believe a word
11 he said.

12 Mr. Folk testified that Johnnie spent the night at
13 his house. Johnnie flat denies it. Didn't happen. I
14 asked Mr. Folk did you hear the sirens. I mean sirens
15 don't run through Ehrhardt every night. It ain't New York
16 City. It ain't Chicago. It's Ehrhardt. When you hear a
17 siren in Ehrhardt at night, everybody knows something's
18 up. I didn't hear nothing.

19 Do you believe that?

20 Does that make any sense?

21 That's for you to decide.

22 He said he left Johnnie on foot the next morning
23 while he went to work. Well, if that's true, then you got
24 a man with a bad hip and two bad knees limping around
25 Ehrhardt when all of Ehrhardt is looking for him, every,

1 every sheriff deputy is looking for him for Bamberg
2 County. Colleton County is looking for him, but he's
3 limping around Ehrhardt on foot and nobody can find him.

4 Does that make sense?

5 I submit to you it doesn't.

6 Let me get to Sandra Tavanis. I submit to you that
7 you should not believe her testimony regarding that bag.
8 She testified Monday she was absolutely sure that was the
9 bag the evidence was in. That's the only bag she ever saw
10 it in, and that's what she took it to SLED in. I asked
11 her two or three different ways. She was sure. She was
12 sure until she sat on that bench, heard me argue well, if
13 that's true, then somebody else had to monkey with that
14 evidence, and then she knew that was a problem because
15 that might cause the State to lose its case. Then she
16 remembered.

17 What was her motivation for the first statement?

18 What was her motivation for the second statement?

19 Her motivation for the second statement is she wants
20 to win. She is a cop. Cops want to win their cases.

21 You heard the SLED forensic scientist that actually
22 ran the DNA report say that tainted evidence equals
23 tainted results. I want you to remember that. Tainted
24 evidence gives you tainted results. The crime scene was
25 completely unsecured. I submit to you somebody did handle

1 that evidence between the brown paper bag that Mr. Bearden
2 put it in and the white plastic bag, and there was plenty
3 of time for it to get intentionally, accidentally,
4 however, but there was plenty of opportunity and common
5 sense ways that that evidence could have been tainted,
6 which gives you tainted results.

7 And ask yourself this. She sat there and
8 Mrs. Tavanis said me and Mr. Moore, the solicitor, Ben
9 Moore, we looked at it.

10 Well, where is Ben Moore?

11 He is still a lawyer in this state. Doesn't work for
12 the, for the solicitor's department anymore. I'm assuming
13 that he's handled cases upon cases. I'm assuming they
14 know how to get a hold of him.

15 where was his testimony today to say, yes, she was
16 right, we took it out of the brown bag and put it in the
17 plastic bag?

18 He could have corroborated that. He is not here.
19 His absence should draw a question in your mind. That was
20 an easy thing they could have done, an easy piece of
21 information they could have given you. They didn't do it.

22 Why didn't they do it?

23 You have to ask yourself do you believe everything
24 Mr. Hiers said. Now, I'm gonna sit here and tell you that
25 I think Mr. Hiers is 100 percent convinced that everything

1 he said is the gospel truth and it's 100 percent accurate.
2 I believe Mr. Hiers believes that in his heart of hearts,
3 but he might be wrong.

4 we've all had experiences where we were sure. We
5 were just sure we were right and then some other piece of
6 evidence comes along and we have to admit to ourselves we
7 got it wrong.

8 why would we want -- why should we think that Mr.
9 Hiers got it wrong?

10 well, there is a few reasons. Mr. Hiers is basing
11 his identification off of a voice recognition. He said
12 the, his assailant only said a few things. He said get in
13 the car, let's go, get in the car or I'm going to kill
14 you. That's all he said. We're talking about just a
15 handful of words in a very brief amount of time. Get in
16 the car, let's go. Get in the car, I'm gonna kill you,
17 let's go. That is not a very big sample.

18 I'll submit to you that that short of a phrase that
19 you're trying to remember in your mind could very easily
20 lead you to get it wrong. You might think you recognize
21 it, but you might be wrong. But then you take that, that
22 voice recognition off, just a snippet of time, and you add
23 to it the completely improper photo show, and now you've
24 got I think it's this guy. You've got the police saying
25 this is the guy right. Oh, yea, yep. That's him.

1 That -- it suggests the answer that the police want.

2 That's why you don't do it that way.

3 You heard Mr. Bearden say that's not how they're
4 taught to do it. He did it wrong. And they're not taught
5 to do it that way because they know that showing a single
6 photograph is suggestive. It plants, in the mind of the
7 person, the witness looking at that picture, this is the,
8 this is the guy we want. This is who we're after. So, if
9 you agree, I'll be happy. Look at that picture. That's
10 who it is.

11 It's just improper. There's case law upon case law
12 that says it's heavily in his favor---

13 THE COURT: Mr. Luginbill, I've ruled that it's
14 admissible for the jury. Don't argue that it's improper.
15 You can argue about the police techniques. Don't go into
16 case law. I've made that decision.

17 MR. LUGINBILL: The technique is improper, and it's
18 improper for good reasons.

19 What else was Mr. Hiers perhaps inaccurate about?

20 What else did he get wrong?

21 He very confidently sat in that witness chair and
22 told you that his assailant approached him from some 50 to
23 60 feet away, walked up to him. He saw what he was
24 wearing. He was wearing a trench coat, a military style
25 trench coat is what he testified to with the collar turned

1 up. Remember how he turned the collar up and he scrunched
2 his head down and said all he could see was this part of
3 his face because there was a cap and the collar was turned
4 up.

5 There's no collar on this coat. The coat only comes
6 to your waist. It's a draw string at the waist coat.
7 It's not a military style trench coat. It's just not.

8 So, if that's the coat the assailant wore, then
9 either Mr. Hiers was attacked by somebody else wearing a
10 different coat or he misidentified and misdescribed the
11 coat. It's got to be one or the other.

12 And if he misdescribed the coat, if what he saw he
13 got wrong, is it so hard to believe, is it such a stretch
14 that what he heard in that little snippet he might have
15 got that wrong, too?

16 Again, I submit to you that's very reasonable. I
17 think it's quite likely, in fact, but that's for you to
18 decide. That's the questions you're going to have to
19 answer back there.

20 Mr. Hiers told you he had on a pair of brown gloves.
21 A brown glove was found at the scene, State's Exhibit 10.
22 Officer Bearden testified yep, we think the assailant wore
23 these gloves. That's our theory.

24 Well, SLED told you that that glove doesn't belong to
25 Mr. Hiers. So, we can assume it wasn't his glove that got

1 left in the yard, and it was never worn by Mr. Jones
2 because there is none of his DNA on it. So -- and there's
3 at least two other people have had that glove on and
4 contributed DNA to it.

5 This glove got into Mr. Hiers's yard from somebody
6 else. Maybe it's the guy wearing the trench coat that Mr.
7 Hiers saw. I don't know. We don't have that person. But
8 it wasn't Johnnie Lee Jones, and we know it wasn't Johnnie
9 Lee Jones to a one in 20 quadrillion or whatever they
10 calculated it to. That we know for sure. It wasn't him
11 wearing that glove and we got testimony that said that the
12 man who attacked me holding that brick in my hand, his
13 hand and hit him was wearing the glove. It wasn't
14 Johnnie.

15 Finally, Mr. Hiers said that after he got away the
16 assailant took off once the lights came on. His words
17 were he ran out of my yard.

18 Simple fact of the matter is that Johnnie Jones can't
19 run anywhere. He could not at the time.

20 Who can you believe?

21 You can believe James Bearden. I want to commend
22 James Bearden. He sat right there in that chair and
23 answered some very pointed questions. When I asked him if
24 he had done something wrong he fessed up to it. He said
25 yes, sir, I did it wrong.

1 Is that how they train you to do it at the academy?

2 No, sir, that's not how they train you. I did it
3 wrong.

4 He was very forthcoming, answered the questions
5 immediately, directly, and took the hit.

6 So, what does Mr. Bearden say?

7 I did the line-up wrong. I shouldn't have shown him
8 a single photograph.

9 Why not?

10 It's improperly suggestive. It plants that in the
11 mind of the juror or the witness. I submit to you that
12 once he showed Mr. Hiers that picture, Johnnie Jones
13 became fixed in Mr. Hiers mind as the man who did this
14 like cement around a poll. There wasn't no shaking it.

15 You can believe Mr. Bearden when he tells you that
16 the only description he had that night was a black male.
17 It's in the CAD report. It's in his initial handwritten
18 report. It's in his subsequent typed up report. Only
19 description. The only physical description, black male.
20 No height, no weight, no facial hair, no limp, walks with
21 a limp, nothing. Black male.

22 Mr. Bearden told you, after talking with Mr. Jones,
23 he immediately went out and started looking for a black
24 male. That's all he had to go on. The next day, in that
25 morning, Mr. Hiers sits down and writes out a description

1 that says only black male. He doesn't mention Johnnie by
2 name. He doesn't say a black male, 6'2", with broad
3 should, beard, tattoos, nothing. Black male. Nothing
4 else. That should draw a large doubt into your mind.

5 There's also a piece of missing evidence that Mr.,
6 that Officer Bearden told you about. Officer Bearden told
7 you he doesn't know what happened to the actual picture he
8 showed Mr. Hiers. The State's assuming the picture is
9 Mr. Jones. Officer Bearden testified it's who he thought
10 Johnnie Lee Jones was. But we hadn't seen it. I haven't
11 seen it. It wasn't provided to me in discovery. You
12 haven't seen it. It wasn't offered as an exhibit.

13 Where's the actual picture that was used to identify
14 Mr. Jones?

15 Don't know. That's another piece of evidence that's
16 gone missing.

17 You heard Michelle McDonald testify that she came up
18 to talk to Johnnie about working on her car. She's not
19 related to Johnnie. She doesn't have a dog in this fight
20 other than she knows a very critical piece of information.
21 She got up there, told you what she knows.

22 I came -- I don't remember exactly what day it was.
23 It was three years ago. But I came, said I wanted him to
24 work on my car, he couldn't do it that night. He wanted
25 to do it the next day. I brought him the car. He wasn't

1 there. They told me he had been arrested. In Denmark she
2 had that conversation.

3 You can believe Doreen Beckett. She testified she
4 was coming through Bamberg. She stopped at the package
5 store to get herself something to drink. She saw her
6 uncle. Asked him if he needed a ride. He said yes. She
7 took him home, dropped him off, and went on her way.
8 There is nothing dis, to disbelieve about that. That's a
9 perfectly rational perfectly every day common ordinary
10 thing that happens in Bamberg County every single day.

11 But if she's at the package store, and said it was
12 around closing time. Package store closes at 7:00 by law.
13 So, she sees him. At seven o'clock he's in Bamberg. At
14 seven o'clock or just lightly before he is in Bamberg.
15 Then they take him. She takes him to Denmark, drops him
16 off. He said it was a, it was a little after 7:00. She
17 went on her way.

18 Well, if that's true, how would he have gotten from
19 Denmark back to Ehrhardt to Mr. Hiers house and why would
20 he have done it?

21 There's no reason for him to, to go to Mr. Hiers
22 house at that point at night. There's no motive in there
23 for that. It doesn't make any sense that he would do
24 that.

25 The fact of the matter is he was in Denmark sometime

1 after seven o'clock on Tuesday night, and he stayed there
2 until the next morning. So, you can believe Mr. Jones.
3 He sat there, and unlike Mr. Grant, answered every
4 question posed to him by the solicitor. He gave you a
5 step-by-step-by-step detailed description of what he did
6 that day, what his normal routine was, how he got where he
7 was going, what he did, where he was going, and we had
8 independent corroborating witnesses from what he says he
9 did.

10 There's two other people that say he was some place
11 that he says he was. Both stories match up. Nothing in
12 Mr. Grant's story matches up. And I've given you all the
13 reasons why I think Mr. Hiers made a mistake.

14 So, now you've got the set. The State thinks he's in
15 Ehrhardt. We believe he was in Denmark. You have to ask
16 yourself whether those big chain, holes in the logical
17 chain of how the State thinks this happened can be filled
18 to your satisfaction when the State puts him in Denmark in
19 the afternoon, through Officer Bearden's testimony.

20 Johnnie agreed with that. I wasn't in Denmark, I mean in
21 Ehrhardt in the afternoon. I was on the back lot.
22 Mr. Bearden says he saw him there. He says yep, I was
23 there. More corroboration.

24 But Mr. Grant is the one saying he was there late
25 late at night. That's not believable.

1 For the state to prevail in this case there are so
2 many things you have to just overlook. You have to
3 overlook the fact that Officer Bearden did a procedurally
4 impermissive photo showing or show-up as it's called. You
5 have to over, overlook that that improper show-up may have
6 been planted in Mr. Hiers mind that Johnnie Lee Jones was
7 the person. You have to overlook the glove that doesn't
8 have his DNA on it, and that has somebody else's DNA on
9 it.

10 You have to overlook the flip-flopping testimony of a
11 police officer. You have to overlook the flip-flopping
12 testimony of Mr. Grant. You have to completely disbelieve
13 and just completely ignore the testimony of Mrs. Beckett
14 and Mrs. McDonald and of Mr. Jones himself. You have to
15 overlook the fact the crime scene was wide open, no crime
16 scene tape, nothing. And you have to overlook that
17 somebody may have handled this evidence before it got to
18 SLED, and we don't know who that somebody is and we don't
19 know what they did with it.

20 You've also got to overlook the, the description
21 initially versus the description that you heard here
22 today. You've got to overlook the fact that the coat
23 doesn't match up. You've got -- we talked about the
24 blood.

25 You have to overlook the glove, and you have to ask

1 yourself, if I overlook all of these things, if I just --
2 that's not important to me, if all of those things don't
3 matter, are you doing your job as jurors?

4 A juror's duty is to ensure, the very best we can as
5 human beings, only the guilty are punished. There's
6 nothing worse than bringing down the awesome power of the
7 State to take away somebody's freedom---

8 THE COURT: No, sir. No, sir, that's improper
9 argument. You're not to concern yourself with punishment
10 or sentencing. That's the province of the Court.

11 MR. LUGINBILL: The duty to only convict the guilty
12 and to free the innocent is at the very core of our
13 judicial system. We all depend on that. We have to know
14 that we're not gonna be falsely accused and convicted
15 based on shoddy police work or lying witnesses. And for
16 us to know that, as we go through our daily lives, we have
17 to depend on the 12 of you and the 12 people that sit on
18 the next jury and the jury after that. We have to know
19 that you're going to stand in-between the State and the
20 individual.

21 I'm asking you to take that stand today because I
22 believe we are on the cusp of convicting an innocent man.
23 The judge will most likely tell you that the definition of
24 reasonable doubt is that doubt that causes a reasonable
25 man to hesitate before acting.

1 when you hear a dog bark outside and he's raising all
2 kind of cane, you don't think there's anything wrong.
3 He's probably barking at a deer or dog next door or
4 whatever, but you're not sure. And if he's really raising
5 cane, and you have that little fear in the pit of your
6 stomach before you walk outside to see what the problem
7 is, that's that hesitation.

8 Am I sure about this?

9 Am I sure Johnnie Lee Jones was there on January 9th,
10 2007?

11 Am I sure that evidence didn't get contaminated in
12 some way, tainted in some way?

13 Am I sure Mr. Hiers saw what he thinks he saw?

14 Am I sure he heard what he thought he heard or am I
15 not sure?

16 Do I believe Mrs. McDonald and Mrs. Beckett and
17 Mr. Jones were right, that he went about his day and tried
18 to find some work and went home?

19 Because if you're not sure, there's only one verdict
20 you can come back with. Your duty, as a juror, is to come
21 back with a not guilty verdict unless you are sure beyond
22 a reasonable doubt, and I would submit to you today that
23 the state has failed to give you enough competent good
24 evidence that you can be sure about it, that you can say
25 Mr. Jones committed this crime beyond a reasonable doubt.

1 Thank you for your time. Thank you for your service.
2 Our society can't function the way it's supposed to
3 without that service, and I thank you for stepping away
4 from your lives today to do this, and I thank you for
5 going back there and keeping your, your duty in mind and
6 doing what you're supposed to do and look at everything
7 that you've seen here from every witness and through that
8 filter of reasonable doubt because it's there.

9 There is a lot of reasonable doubt in this case.
10 There is enough reasonable doubt that I submit to you the
11 only proper verdict is not guilty.

12 Thank you.

13 THE COURT: Madam Forelady, ladies and gentlemen,
14 everybody okay, bathroom wise?

15 All right.

16 SOLICITOR MAURICE: Thank you, Your Honor.

17 Let me move things around a little bit because I kind
18 of have to touch stuff. My memory is not real good
19 sometimes and it helps me remember. I want to go through
20 each piece of evidence so I don't forget anything.

21 Let's start with testimony, the testimonial evidence.
22 Mr. Hiers got on the stand and told you what happened to
23 him. A black man came in his yard and he believes it was
24 a brick, and he believes it was a brick because it was a
25 hard hard object and also because he showed you where he

1 keeps bricks on this tarp back here, and there was one
2 missing, and you know how it indents into the thing when
3 it's been there for a long time.

4 When he was told to get in the car and go for a ride,
5 he said no, my wife is inside. Probably wasn't the answer
6 that the defendant thought he was gonna get. I mean this
7 is a 70 year old man. But he says no. When he tries to
8 get away, he hits him in the head with the brick. Mr.
9 Hiers keeps on running, falls down, trips over something.
10 His wife, his wife opens or turns on the light and the
11 defendant takes off.

12 On the way to the hospital after this man has been
13 hit in the head with a brick, is bleeding, he tells his
14 wife I know that voice. I can't put a name with it. I
15 know that person. I'm just -- you know, it's there, but
16 it's not there. He gets to the hospital. He tells his
17 wife I know who it is. I know who did this to me.

18 When Officer Bearden gets there, he tells him who did
19 it. He gives him a name. That's Johnnie Jones.

20 How does he know Johnnie Jones?

21 He's known Johnnie, both of them, they've known each
22 other forever. No animosity between them. He says that's
23 Johnnie Jones.

24 The defense wants to make a big deal about the photo
25 line-up. This wasn't a photo line-up. This was he told

1 the officer who it was. The officer was just double
2 checking. Went back and got, got a photo and said is this
3 the man you're talking about. It wasn't like he gave a
4 description of all of this and then, you know, photo
5 line-ups you get five different similar looking people so
6 you can try to ID whoever.

7 It's not needed in his, in this case. He gave him a
8 name. The officer wouldn't know to go make, get the
9 picture, wouldn't have known five pictures to get if he
10 hadn't had the name. It wasn't a photo line-up.

11 One thing I thought was interesting is, to the point
12 of Mr. Hiers memory, I think, I think it was his wife he
13 was tell, he said he's from Colleton County or told the
14 officer right away he was from Colleton County. And when
15 I asked Mr. Jones where his family was from, at first he
16 said Denmark, and then I asked about Colleton County and
17 he said yea, we did use to be from Colleton County, and
18 the, my whole family did do business with Mr. Hiers.
19 Pretty good memory.

20 Mr. Grant. Mr. Grant's testimony. Mr. Grant, to
21 nicely say this, is very difficult to communicate with.
22 You sat here and saw the issues and he didn't act like he
23 wanted to be here either. But he was here and it was
24 difficult for both myself and the defense to question him.
25 But I submit to you he was just telling you what happened

1 that day.

2 Johnnie was at his house hanging out. He kept saying
3 I don't know anything else, I don't know anything else.
4 But he know -- he doesn't know -- he wasn't there when
5 Mr. Jones did it. He didn't say Mr. Jones did this. All
6 he said is Johnnie was at my house and then the next
7 morning or in the middle of the night he was banging on
8 the door to come in, and the next morning he found this
9 jacket and this stocking cap on his porch.

10 Now, Mr. Grant lives a, a stone's throw away from Mr.
11 Hiers.

12 But why in the world would somebody steal Mr. Jones's
13 coat from where was it, in, in the city, from Mr. Pappy's
14 or whatever and take it and put it on Mr. Grant's porch?

15 That doesn't make any sense. That doesn't make any
16 sense.

17 Mr. Grant did the right thing. When he saw the
18 clothes and he found out that somebody had attacked Mr.
19 Hiers and he didn't know where the clothes came from, he
20 called the police or the police came and Jamie Bearden
21 took the coat from that porch. This statement -- this is
22 Defense Exhibit 3. Look at it when you go back, and I
23 totally agree that this is, you'll see, this is different
24 than what he testified to today, but look at how Mr. Grant
25 wrote his name and signed it and think about the

1 difficulty in communicating that you witnessed.

2 The officer testified he wrote this for Mr. Grant and
3 Mr. Grant just signed it. I think that there was a
4 miscommunication. Shoot, I wish, I wish -- this actually
5 is better for me, the State. But that's not what
6 happened. That's not the truth. That's what Mr. Grant
7 was trying to tell you. I didn't have the coat. I found
8 the coat. It wasn't my coat.

9 And when he signed this, he didn't understand, I
10 submit to you, that this said that he, that he was saying
11 that it was his coat and he had given it to the defendant.
12 He was just saying I found the coat, I called the police,
13 and I handed it to them. They came and got it. I don't
14 know nothing else. That's believable.

15 All right. The description of the coat. Mr. Hiers
16 said, did say it was a trench coat or something, and it's
17 not a trench coat. But he also said it was dark in color
18 and it was bulky, and it's dark in color and bulky and it
19 has his DNA on it. It has Mr. Hiers's, the victim's DNA
20 on it.

21 How did that happen?

22 Why in the world would Mr. Hiers's DNA be on this
23 coat?

24 Oh, oh, somebody stole it from Bamberg, took it to
25 use in this crime I guess, and then left it on Mr. Grant's

1 porch.

2 what makes sense?

3 The hat, too. And, you know, this DNA, about it
4 being tainted, it being this, it being that, I tried to
5 and I think, I think I succeeded -- the two standards,
6 there were two standards sent to SLED.

7 Okay. One was from the victim, Mr. Hiers. One was
8 from the defendant, Johnnie Jones. That's the only
9 comparisons that that SLED technician or scientist could
10 do. He wasn't testing for my DNA. He wasn't testing for
11 Kip's DNA. He was testing to see if Mr. Hiers or
12 Mr. Jones's DNA was on these objects, and I'm glad
13 that the report is in, in evidence, and it's State's
14 Exhibit 16 because it does get confusing about what
15 numbers match up with what, and one is called a cap and
16 one is called a hat. But they've got numbers on it.

17 Mr. Hiers and Mr. Johnnie Jones's DNA is on this.
18 Mr. Jones's DNA is on the -- I'm not sure. Y'all look.
19 I'm not sure. I can't remember now if it, if it was on
20 that stocking cap. I do know that the stocking cap was
21 with the coat, and that was another part too that Mr.
22 Hiers said he had a stocking cap on.

23 The glove. The glove wasn't found with these two
24 things. The glove is way over here. It's in the yard. I
25 don't know if that was the glove somebody had on because

1 they didn't come back with any DNA. We don't know. It's
2 possible. You don't always get DNA. It's possible that
3 that glove---

4 MR. LUGINBILL: Your Honor, I'm gonna object to that.
5 That is a misstatement of the fact. There are two
6 persons' DNA on that.

7 THE COURT: Sir, please sit down.

8 Jury, y'all have heard all of the testimony in this
9 case. These are not facts in the case. This is argument,
10 like I told you. You will determine what the true facts
11 are. Not what these lawyers claim it to be. That --
12 y'all make that decision.

13 SOLICITOR MAURICE: And I'm gonna double-check myself
14 cause I don't want to misstate it, wrongly state it. This
15 is Item 2, and on Item 2, and you can look at this, it
16 says Donald Hiers and Johnnie Jones are excluded as
17 possible contributors to this mixture. I take that to
18 mean that they're not on there. But y'all have got that.

19 The cap, he testified what, what you would expect.
20 This is just Mr. Hiers's DNA. This is the cap that Mr.
21 Hiers had on when it happened. It's Mr. Hiers. Okay.
22 That's -- you wouldn't expect any different.

23 And, and, you know, if you ask well, why did -- why
24 did the State put that glove in if it doesn't show
25 anything?

1 It's because it was taken as evidence, and it was
2 collected and you have a right to know what was collected.

3 The bag situation. Mrs. Tavanis -- I can't pronounce
4 her last name. She made a mistake and she was willing to
5 admit it. She testified -- she, she didn't go and get
6 anybody's DNA and, and mess with this coat. She took it
7 from that bag, she put it in that bag, and she took it to
8 SLED, and then SLED took the cuttings.

9 And, and that's another thing. SLED's evidence
10 processing, that's really cool. I mean they've got lab
11 scanners and all that kind of stuff and everything's heat
12 sealed and that is really good and that's the way it
13 should be. I mean that's our South Carolina DNA lab and
14 all.

15 And, no, Ehrhardt does not have the scanner, the heat
16 sealer, or anything fancy like that. They got a storage
17 closet that's locked. They probably don't have as much
18 evidence come through their office either as, as the State
19 lab does.

20 Mr. Jones admits this is his coat, and crap, if it's
21 his coat and the victim's DNA is on his coat, hmm, that's
22 hard to explain. Oh, somebody stole it.

23 Mr. Grant, I'm a little bit confused about who, what
24 wife he stole because it looked like their wives, he had
25 been married a long time. When I asked his wife how long,

1 I think she said they'd been together 26 years. So, I'm a
2 little bit confused about the relationship and it wasn't
3 her. She said it wasn't her that was married to
4 Mr. Grant, and I didn't get the impression it was a
5 relationship, and Mr. Grant didn't want to be here. I
6 didn't find him vindictive, vindictive at all.

7 How about Mr. Folk?

8 Why would Mr. Folk lie?

9 Why would Mr. Folk say he came to my house that night
10 and spent the night?

11 I gave him a place to sleep. It was about midnight.

12 What motive would he have to do that?

13 None.

14 What motive would Mr. Hiers have to say well, I'm
15 going to just blame this on Johnnie Jones?

16 What motive -- you know, I guess they said something
17 about they don't like each other, Mr. Grant and Mr. Jones,
18 and that's why he would come in here and lie that he was
19 with him that day. That doesn't make sense to me either.

20 Okay. We've gone over the bag. We've gone over the
21 jacket. We've gone over the cap. We went over the DNA.
22 You have the DNA report, and et cetera. So, go back and
23 double check everything.

24 Another coincidence is that Mr. Hiers's home is a
25 stone's throw away from Mr. Grant's, and then Mr. Folk is

1 only four blocks away. And then Mr. Folk just decides
2 okay, I'm gonna, I'm gonna say Mr. Jones spent the night
3 with me. Think it through.

4 What is logical?

5 It's easy to, you know, be a back seat driver or
6 quarterback and say you should of done this, you should of
7 done that, blah blah blah. Think about it.

8 Oh, oh, the defendant's physical problems. When he
9 said he got hit by a logging truck or a big old log or
10 something, I mean that sounded really bad to me. Then
11 when he started talking about he was four-wheeling and
12 that's when he got hurt this last time, I'm starting to
13 think, four-wheeling, not that easy especially when you're
14 going over bumps and stuff.

15 So, he was injured, but he wasn't injured bad enough
16 that he couldn't ride four-wheelers. Now, the
17 four-wheeler threw him off, but then he wasn't injured bad
18 enough that he couldn't shoot pool. When you shoot pool,
19 you, you lean down. It's kind of an awkward position.
20 Mr. Grant -- I mean Mr. Jones may have physical problems,
21 but I submit to you they're not nearly as much as what
22 appeared today.

23 That picture in the case file of, of -- he said
24 something about the ID, that big old photo line-up, and
25 where the picture was, and it's lost evidence, I think

1 that the officer testified it was in his case file. He
2 didn't give it to me. I didn't see it. Defense didn't
3 see it. But, like I said, it wasn't a photo line-up.
4 It's, it's just not -- it's not relevant. It's not -- it
5 doesn't change anything.

6 The, the holes that the defense puts or tries to put
7 into evidence doesn't explain the victim's DNA on
8 Mr. Jones's coat. It doesn't explain it. DNA doesn't
9 lie. DNA doesn't lie and I don't -- you know, when I
10 asked Mrs. Beckett, I can't remember, and Michelle, I
11 can't remember their names, but the two witnesses that got
12 up here, I don't think that they purposely were not
13 telling the truth or anything. I think, you know, it's
14 hard to remember what, what you ate for breakfast three
15 years ago on Tuesday, January 9th. It's very easy to get
16 days mixed up three years later.

17 And I believe that they were with Mr. Jones at some
18 point in time, and I believe they're telling the truth,
19 and when I asked them about the day, are you sure, they
20 really weren't. They were kind of on the fence with that.

21 Now, they did both say that they weren't with him at
22 7:50 that night.

23 But could they be wrong as far as dates three years
24 later?

25 Mr. Luginbill listed all the kinds of things that you

1 have to look over or something. I can't remember his
2 exact thing. Well, I'm gonna tell you, you don't have to
3 look over DNA, and you don't have to look over the fact
4 that Mr. Hiers named Mr. Jones right after it happened.
5 Maybe not when he was in shock from his head being busted
6 wide open. But he knew. He was thinking and he told his
7 wife and then he told Mr., Officer Bearden.

8 Ladies and gentlemen, that is the man that went into
9 Mr. Hiers's yard. That is the man that took a brick and
10 hit him upside the head and left him just cause he wanted
11 a ride somewhere. He didn't care what happened to Mr.
12 Hiers. That's the man that wouldn't let Mr. Hiers leave,
13 and when he tried to leave, ran him down and knocked him
14 with a brick.

15 Take your time. Go through the evidence. Think
16 about what I've said. Think about what the defense said.
17 Think about the testimony of your witnesses.

18 Who could be confused?

19 Who has reason to tell the truth?

20 Who has reason not to?

21 I ask that you come back, come back with a guilty
22 verdict. Find the defendant guilty of assault and battery
23 with intent to kill and of attempted kidnapping.

24 Thank you for your time.

25 THE COURT: Madam Forelady, ladies and gentlemen,

1 let's take about five minutes. I got to go get some jury
2 verdict forms from my law clerk. I'm sure probably
3 somebody needs to go to the bathroom.

4 Don't discuss the case. Don't deliberate. As soon
5 as y'all are finished with the bathroom break, knock on
6 the door so I can do my charge. It's about 10 or 15
7 minutes and then we can let you go back and start
8 deliberating and your lunch ought to be here by then. We
9 can do it all at one time.

10 Everybody else remain seated.

11 (WHEREUPON, the jury exited the courtroom at 12:38.)

12 THE COURT: Mr. Bailiff, let me know as soon as
13 they're ready.

14 we'll stand at ease just a second.

15 (WHEREUPON, a break was taken.)

16 THE COURT: All right. Mr. Luginbill, both of y'all
17 look up here, Mrs. Maurice.

18 MR. LUGINBILL: I have no objection.

19 SOLICITOR MAURICE: No objection.

20 THE COURT: Good.

21 (WHEREUPON, the jury came into open court at
22 approximately 12:45.)

23 THE COURT: All right. This is going to work out,
24 out just about perfect. This -- my charge is about 15
25 minutes, and lunch is supposed to be delivered here in

1 about 15 minutes. We'll talk about that when I finish.

2 Ladies and gentlemen, as I go around the state in
3 cases, the first part of the charge or instructions deals
4 with general proposition of law dealing with all criminal
5 cases. So, let me go through that part first and then
6 we'll go to the specific, two indictments in this case,
7 and talk about those, and then I'll go over the verdict
8 forms with you and then I'll give the case to you for your
9 decision.

10 As we started earlier, let me remind you that the
11 fact that the defendant in this case was arrested,
12 charged, and indicted is not evidence in the case and
13 cannot be considered as evidence of guilt in the case nor
14 does it create any presumption of innocence or guilt. The
15 two indictments are simply the charging document by which
16 the case is brought into court. It's just simply the
17 formal documents by which any case is started.

18 In this case, there are two different indictments,
19 attempted kidnapping and assault and battery with intent
20 to kill, and the law allows what's called a lesser
21 included offense of assault and battery of a high and
22 aggravated nature, and I'll explain that to you in a
23 little bit. But each indictment charges a separate and
24 distinct offense. You must decide each indictment
25 separately and apart from the other, and the law

1 applicable to it uninfluenced by your decision as to each
2 indictment. In other words, you'll be asked to write
3 separate verdict forms on both indictments, the attempted
4 kidnapping and the assault and battery with intent to
5 kill.

6 As I told you earlier, obviously the defendant has
7 pled not guilty to these two indictments, and that plea of
8 not guilty puts the burden on the State of South Carolina
9 to prove the defendant, as to each indictment, guilty
10 beyond a reasonable doubt. I charge you that a person who
11 is accused or indicted for committing a criminal offense
12 in South Carolina is never ever, never ever required to
13 prove himself innocent. I charge you that it is an
14 important rule of law, constitutional rule of law, that in
15 a criminal case, no matter how serious the charges may be,
16 the defendant will always be presumed to be innocent of
17 the crimes which he was indicted unless guilt has been
18 proven by the State by evidence satisfying you of that
19 guilt beyond a reasonable doubt.

20 The presumption of innocence does not end when you
21 begin your deliberations, but it stays with the defendant
22 throughout the trial until you reach a verdict of guilty
23 based on evidence satisfying you of that guilt beyond a
24 reasonable doubt.

25 The presumption of innocence is not a mere legal

1 theory. It's not just a legal phrase. It is a
2 substantial constitutional right to which every defendant
3 is entitled unless you, the jury, are satisfied, from the
4 evidence, of the defendant's guilt beyond a reasonable
5 doubt.

6 Reasonable doubt has been defined by our courts in
7 South Carolina simply as this. A reasonable doubt is the
8 kind of doubt that would cause a reasonable person to
9 hesitate to act. A reasonable doubt is the kind of doubt
10 that would cause a reasonable person to hesitate to act.
11 Very simply, that's what it means.

12 As I told you earlier, you and I have had certain
13 duties to perform. Obviously, as the trial judge, I have
14 to rule on the admissibility of the evidence and you're to
15 only consider the evidence obviously that was introduced
16 into the trial of the case.

17 I also have the duty to charge you on the law. So,
18 as I told you earlier, if you have a preconceived idea
19 about what the law is or it should be and it doesn't agree
20 with what I tell you now, you have to set that aside and
21 accept the law as I give it to you. In every case tried
22 in this state before a jury I'm the judge of the law, not
23 me, but my position makes me that. But you are the sole
24 and exclusive judges of the facts in the case, and I
25 wasn't being rude to Mr. Luginbill when I interrupted him

1 when he made that objection. But, you know, lawyers are
2 going to argue the facts, but their argument is not facts.
3 You have heard the facts. You have to make the decision
4 what the true facts are.

5 Since you are the sole judges of the facts in the
6 case, please do not infer anything that I have done during
7 the trial of the case that I have an opinion about the
8 facts. The law does not allow me to have an opinion about
9 the facts. You are the fact finders.

10 So, if I've yawned or smiled or stretched or acted
11 like I was aggravated during the trial of the case, set
12 that aside. I cannot have any opinion whatsoever about
13 the facts. You are the sole finders of the facts in the
14 case. That's what makes the system so good because we
15 have 12 ordinary citizens from our community who decide
16 what the true facts are in the case.

17 Now, in deciding what the true facts are in the case,
18 necessarily you must determine the credibility of the
19 witnesses who have testified in this case. Credibility
20 simply means believability. Who did you believe.

21 I told you at the beginning of the case that this
22 case was like all the others that I try. You may hear two
23 separate versions of the facts, three or four versions of
24 the facts, or different spins on the facts. I think my
25 prediction came through. Obviously you've got several

1 different facts that have been presented to you.

2 So, you have to determine who is telling the truth,
3 whose credibility do you believe, who do you believe. It
4 becomes your duty to analyze and evaluate the evidence and
5 determine which evidence convinces you of its truth.

6 Now, in determining believability or credibility of
7 witnesses you have these rights or these choices. You can
8 believe one witness over several, several over one. You
9 don't have to believe a thing a witness says. You can
10 believe everything a witness says. You can believe a
11 little bit of what he says and disregard the rest. You
12 can believe a lot of what he says and disregard the rest.
13 Use your common ordinary sense in dealing with family,
14 friends, employers, husbands, wives, whatever. You know
15 who's telling the truth. You know how to judge
16 credibility, and that's what you have to do in this case.

17 You even have the right to consider how the witness
18 acted on the witness stand, how he appeared on the witness
19 stand, and whether or not any witness has exhibited to you
20 any interest, bias, prejudice, or other motive in the
21 case. You have the right, and it is your duty to
22 determine, from the facts that you've heard in this case,
23 what the true facts are, and then apply those facts to the
24 law as I give it to you, and you'll be in a position to
25 reach a true and just verdict.

1 That's a big responsibility, but that's what the law
2 puts on the jurors. It's a much bigger responsibility
3 than mine, and I have watched you throughout the trial of
4 the case. All of you have paid close attention. I tried
5 a case last week in Aiken and my court reporter is getting
6 ready to smile, but I had to scold two jurors who fell
7 asleep twice, and finally had to do something with them.
8 But y'all have been great. You even paid attention, and I
9 appreciate everything.

10 We had an expert who testified in this case. As I
11 told you at that time, the rules of evidence ordinarily do
12 not permit a witness to testify about opinions or
13 conclusions. We had an exception to that rule dealing
14 with expert witnesses. A witness who by education and
15 experience has become an expert in some art, science, or
16 profession such as this guy with serology and DNA, they
17 may give an opinion in which they claim to be an expert in
18 the area they claim to be an expert.

19 You should consider any expert opinion received in
20 the evidence in this case, and like any other evidence,
21 give it the weight you think it deserves. If you decide
22 the opinion of an expert witness is not based on
23 sufficient education and experience or if you conclude the
24 reasons given in support of the opinion are not sound or
25 that opinion is outweighed by other evidence, you may

1 disregard the opinion entirely.

2 An expert witness's testimony is to be given no
3 greater weight than any, than that of any other witness
4 simply because the witness is an expert, and you're not
5 even required to accept an expert's opinion even though
6 it's contradicted. You treat an expert witness's
7 testimony like you do anybody else. You determine the
8 credibility of his opinion and give it whatever weight, if
9 any, you think it deserves.

10 One last proposition of law dealing with, in general
11 case, and in this case we're dealing with or there is an
12 issue in the case dealing with the identification of the
13 defendant as the person who committed the crimes charged.
14 The State has the burden of proving identity beyond a
15 reasonable doubt. You must be satisfied, beyond a
16 reasonable doubt, of the accuracy of the identification of
17 the defendant before you may convict the defendant.

18 Identification testimony is an expression of belief
19 or impression by a witness. You must determine the
20 accuracy of the identification of the defendant. You must
21 consider the believability of each identification witness
22 in the same way as any other witness. You may consider
23 whether the witness had an opportunity or an adequate
24 opportunity to observe the defendant at the time of the
25 offense.

1 This will be affected by things like how long or
2 short a time was available, how far or close the witness
3 was, the lighting conditions, whether the witness has had
4 the chance to see or know the person in the past. Once
5 again, I instruct you the burden of proof on the State
6 extends to every element of the crime charged and this
7 specifically includes the burden of proving, beyond a
8 reasonable doubt, the identity of the defendant as the
9 person who committed the crime. If, after examining the
10 testimony, you have a reasonable doubt as to the accuracy
11 of the identification, then obviously you must find the
12 defendant not guilty.

13 Now, Madam Forelady, ladies and gentlemen, that's
14 sort of the general law that I charge in all cases. Let's
15 talk specifically about the charges in this case.

16 There are two separate indictments. One is assault
17 and battery with intent to kill. In South Carolina we
18 have three types of assault and battery. We have assault
19 and battery with intent to kill, which is up here. We
20 have assault and battery of a high and aggravated nature,
21 which is the middle one, and then we have what's called
22 just simple assault and battery.

23 In this case the defendant has been charged with
24 assault and battery with intent to kill. In order to
25 prove assault and battery with intent to kill the State

1 must prove, beyond a reasonable doubt, that the defendant
2 committed an unlawful act of a violent nature to the person
3 of another with malice aforethought. Must prove beyond a
4 reasonable doubt that the defendant committed an unlawful
5 act of a violent nature to the person of another with
6 malice aforethought.

7 Now, in that you got several things. You got
8 assault. You got battery. You got an unlawful act of a
9 violent nature and you got malice aforethought. First of
10 all, assault occurs when a person unlawfully attempts or
11 offers to commit a violent injury upon another person and
12 had the present ability to complete the attempted injury.
13 An assault is the intentional creation of a reasonable
14 fear of immediate bodily harm. A lot of times it's, it's,
15 it's -- the example is given of assault is if you walk up
16 to somebody and you draw back to hit them with a knife or
17 a gun, that's the attempt. That's the assault.

18 The battery is the unlawful touching of another
19 person by a person who has committed the assault. In
20 other words, you draw back and that's the assault. You
21 hit, that's the battery. That's the unlawful touching,
22 assault and battery.

23 The battery is the unlawful touching of another
24 person by a person who has committed the assault. An
25 unlawful touching can be caused by a part of the accused

1 body or by any object the accused puts in motion. The
2 battery is the completion of the assault. So, that's what
3 assault and battery means. Pretty common ordinary
4 concept.

5 Malice is defined as hatred, ill will, or hostility
6 towards another person. It is the intentional doing of a
7 wrongful act without just cause or excuse and with an
8 intent to inflict an injury or under circumstances that
9 the law will infer an evil intent.

10 Malice aforethought does not require that malice
11 exist for any particular time before the act is committed,
12 but malice must exist in the mind of the defendant just
13 before and at the time of the act, at the time the act is
14 committed. Therefore, there must be a combination of a
15 previous evil intent and the act.

16 Malice aforethought may be what we call express or
17 inferred. It does not mean there are two different kinds
18 of malice, but merely the manner which malice may be shown
19 to exist. Express malice is shown when a person speaks
20 words, speaks words which expresses hatred or ill will for
21 another or when the person prepared beforehand to do the
22 act which was later accomplished.

23 Malice also may be inferred from conduct showing a
24 total disregard for human life. Inferred malice may be,
25 may also arise when the deed is done with a deadly weapon.

1 our law is defined obviously a deadly weapon is any
2 article, instrument, or substance which is likely to cause
3 death or great bodily harm, and ordinary objects may
4 become deadly weapons when the facts show that they have
5 been used to inflict serious bodily harm, bodily harm.

6 The facts are proven beyond a reasonable doubt
7 sufficient to raise an inference of malice to you, to
8 your satisfaction, this inference, inference would simply
9 be an evidentiary fact to be considered by you along with
10 the other evidence in the case, and you may give it the
11 weight, if any, you decide it should receive. A specific
12 intent to kill is not an element of assault and battery
13 with intent to kill, but there must be a general intent to
14 commit serious bodily injury.

15 Intent simply means the, intending the result which
16 actually occurred. It's not accidental or involuntary.
17 Intent may be shown by acts and conduct of the defendant
18 from other circumstances from which you may naturally and
19 reasonably infer intent.

20 Evidence of the character of the assault, the
21 character, character of the instrument used, the manner in
22 which it was used, the purpose to be accomplished, and the
23 resulting wounds or injuries may be considered in
24 determining the intent with which the assault and battery
25 was committed. Intent may be inferred when it is

1 demonstrated that the defendant voluntarily and willfully
2 commits an act, the natural tendency of which is to harm
3 another person.

4 Now, that is what the law says assault and battery
5 with intent to kill means. In this particular case, if
6 you find that the State has failed or not proven that the
7 defendant is guilty of assault and battery with intent to
8 kill, then you must determine whether the State has proved
9 that the defendant is guilty of what we call assault and
10 battery of a high and aggravated nature, the lesser
11 included offense is what it's called.

12 Assault and battery of a high and aggravated nature
13 includes all the elements of assault and battery with
14 intent to kill except malice aforethought. In addition,
15 the State must prove, beyond a reasonable doubt, an, an
16 aggravating circumstance. The State must also prove a
17 circumstance of aggravation. Circumstances of aggravation
18 include the use of a deadly weapon, the intent to commit a
19 felony, the infliction of a serious bodily injury, a great
20 disparity between the ages or physical conditions of the
21 parties, the difference in the genders. These are
22 examples of circumstances of aggravation.

23 Madam Forelady, ladies and gentlemen of the jury, you
24 must consider each, as I said, each of these indictments
25 separate and apart from the other.

1 I guess I need to tell you about kidnapping, don't I?

2 In the kidnapping indictment we have what's called
3 attempted kidnapping. We have, we have crimes that if you
4 commit the crime, obviously you're guilty of committing
5 that crime. But we also have laws that say that if you
6 attempt to do that, then you're, you're guilty of the
7 attempt to commit the crime. In this case we're talking
8 about an attempt to kidnap, attempted kidnapping.

9 The law defines an attempt. It is an effort to
10 accomplish a crime which does not succeed. An, an attempt
11 includes a specific intent to do a particular criminal act
12 along with an act falling short of the act intended. The
13 State must show more than mere preparation, an intent.
14 There must be some overt act committed in the effort to
15 commit the crime. Intent means intending the result which
16 actually occurred, not accidentally or involuntarily.
17 Obviously intent may be shown by acts and conduct of the
18 defendant and other circumstances from which you may
19 naturally and reasonably infer intent.

20 So, in this case the State has indicted the defendant
21 on attempted kidnapping. So, they must prove to you,
22 beyond a reasonable doubt, that he attempted to accomplish
23 the crime of kidnapping, and kidnapping is when a
24 defendant knowingly and unlawfully seizes, confines,
25 inveigles, decoys, kidnaps, abducted, or carries away

1 another person without authority of law. To do something
2 unlawfully is to do it willfully, against the law, and
3 knowingly means with knowledge, consciously, not
4 accidentally. Seize means to take hold of suddenly or
5 forcibly. Confine means to limit, restrict, or enclose
6 within bounds, imprison, or shut or keep in. Inveigle
7 means to lure, entice, and lead astray by false
8 representation, promises, or other deceitful means. Decoy
9 means to lure by or as if by decoy. Kidnap is to remove a
10 person against his will by unlawful force or by fraud.
11 Abduct means to carry off secretly or by force for an
12 illegal purpose. Carry away simply means to remove.

13 The State does not have to prove that the defendant
14 attempted to do all of these things. Instead, you must
15 find, beyond a reasonable doubt, that the defendant
16 attempted any of these things. Then you may find the
17 defendant guilty of attempted kidnapping. The kidnapping
18 does not have to be for any personal or monetary gain, but
19 for any illegal purpose. Kidnapping does not have to be
20 for any personal or monetary gain, for any illegal
21 purpose, but may be for any reason whatsoever.

22 So, they have to prove that he attempted to kidnap
23 and kidnap is defined as I just gave it to you.

24 Madam Forelady, ladies and gentlemen, like I said,
25 you have to consider both of them separate and apart from

1 the other one. You will have two verdict forms in the
2 jury room dealing with assault and battery with intent to
3 kill and the attempted kidnapping. On the assault and
4 battery with intent to kill, if you find that the State
5 has proven the elements of that crime to you beyond a
6 reasonable doubt, then obviously your verdict would be
7 guilty. If you find that they have failed to do it beyond
8 a reasonable doubt, then it would be not guilty, and if
9 it's not guilty, then you have to decide whether or not
10 they have proven the lesser included offense of assault
11 and battery of a high and aggravated nature, the two that
12 I talked to you about. So, if you find him not guilty,
13 you go to the second one. If you find him guilty, you
14 stop and you don't consider the second one.

15 Okay. On the attempted kidnapping, it's simply a not
16 guilty or guilty verdict on that. As I said, your verdict
17 must be unanimous. Your verdict cannot be based on
18 anything other than the evidence that you've heard here in
19 the courtroom. And whatever your decision is as to what
20 the true facts are, apply those facts to the law as I have
21 given it to you. You don't have any enemies to punish,
22 friends to reward. Y'all have to base your decisions
23 simply on what you heard here and it has to be unanimous.

24 I'm gonna let you return to your jury room now and
25 ask you not to start talking about the case until I can

1 ask the lawyers if I have left anything out, and they'll
2 -- we'll gather, we'll gather up the evidence and send the
3 evidence back with the two verdict forms and then you can
4 go ahead and start eating. However you want to do it.
5 You're in charge.

6 okay. Put the alternate in a separate room,
7 Mr. Bailiff.

8 (WHEREUPON, the jury exited the courtroom at 1:09.)

9 THE COURT: All right. Any objections requested,
10 additions, or deletions by, to the charge by the State?

11 SOLICITOR MAURICE: Your Honor, the only question was
12 about the high and aggravated nature, the aggravation
13 part, is it doesn't have to be all of them. It can be
14 just one. I'm not sure that was clear that it was an and.

15 THE COURT: Defense?

16 MR. LUGINBILL: Your Honor, I believe you charged it,
17 the exact phrase was that any of these -- if you find any
18 of these, of these -- I was satisfied with the charge. I
19 have no objections to it.

20 THE COURT: Well, I think I charged it just like
21 this. I normally do. In addition, the State must prove,
22 beyond a reasonable doubt, an aggravating circumstance.
23 Circumstances of aggravation include the use of a deadly
24 weapon, the intent to commit a felony, infliction of
25 serious bodily injury, a great disparity between the ages

1 or physical condition, and then I said these are examples
2 of circumstances of aggravation. So, I think I'll stand
3 by the charge.

4 SOLICITOR MAURICE: Thank you, Your Honor.

5 THE COURT: Anything else?

6 (No response.)

7 THE COURT: All right. Y'all please come up and
8 gather the evidence, and let the record reflect both sides
9 have looked at the verdict form and approved them. So, if
10 y'all check the evidence, we'll send it to the jury.

11 (Pause.)

12 THE COURT: Let the record reflect that the sticker
13 on---

14 MR. LUGINBILL: 15.

15 THE COURT: ---15 was on a piece of paper. It would
16 be better to put it on the hat itself.

17 (Pause.)

18 THE COURT: All right. Mr. Luginbill, let's keep all
19 of that, you know, for appeal purposes. It may be some of
20 that needs to be---

21 MR. LUGINBILL: I, I would actually ask that all of
22 that be kept together.

23 SOLICITOR MAURICE: I'll put it all in the box.

24 THE COURT: Okay. I thought y'all were throwing it
25 in the trash can.

1 All right. Let the record reflect that some of the
2 packaging we are preserving it by putting it in the
3 cardboard box for any appellate issues.

4 SOLICITOR MAURICE: Yes, we have Defense Exhibits 1,
5 2, and 3 also.

6 THE COURT: All right. Mr. Luginbill, have you
7 reviewed all of the evidence and are in agreement that we
8 have it all in order?

9 MR. LUGINBILL: I do, Your Honor.

10 THE COURT: Mrs. Maurice?

11 SOLICITOR MAURICE: Yes, Your Honor.

12 THE COURT: You do?

13 SOLICITOR MAURICE: I do agree.

14 THE COURT: All right. Mr. Bailiff, if you'll take
15 the evidence, the verdict forms, and tell Madam Forelady
16 that she may commence the deliberations at 1:15.

17 THE COURT: We'll stand at ease. Don't get too far.
18 (WHEREUPON, a break was taken.)

19 THE COURT: Let me see the lawyers up here quickly.
20 (WHEREUPON, a bench conference was held.)

21 THE COURT: Y'all don't get far.

22 All right. Let the record reflect, in the case of
23 Johnnie Lee Jones, I received a note from the foreperson
24 says, just says copy of transcript of Sandra Tavanis. I
25 have shared that with all counsel. Let the record reflect

1 the defendant is present in the courtroom. My response is
2 we do not have a transcript. Her testimony or portions
3 can be replayed if you wish.

4 Any objection by the state?

5 SOLICITOR MAURICE: No, Your Honor.

6 THE COURT: By the defense?

7 MR. LUGINBILL: None by the defense.

8 (WHEREUPON, a break was taken.)

9 (WHEREUPON, the Court spoke privately with the
10 forelady of the jury at this time.)

11 (Whereupon, the jury came into open court at
12 approximately 2:41 and the testimony of Mrs. Sandra
13 Tavanis was played for the jury and then the jury
14 requested that it be played again louder.)

15 THE COURT: That's about as good as we can do it. We
16 can try one other procedure. I'll ask her to do that and
17 y'all step back and continue to work. If I see that I can
18 get it to work I'll call you back out.

19 (WHEREUPON, the jury exited the courtroom at 2:48,
20 and returned with a verdict at 3:56.)

21 THE COURT: All right. Madam Forelady, have y'all
22 reached a verdict?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: Hand it to me, please.

25 (Forelady complies.)

1 THE COURT: Thank you, ma'am.

2 All right. Y'all ready to receive the verdict?

3 MR. LUGINBILL: We are.

4 THE COURT: Those in the audience, the victim,
5 victim, victim's family, the defendant's family, wife,
6 daughter, cousin, whoever, fair warning. If you can not
7 control your emotions, I'm asking you please to leave now.
8 That goes to all of you. If you, if you show outburst and
9 act up I'm gonna have you arrested for contempt of Court.
10 I'm not picking on anybody. I tell everybody that at this
11 point in the game.

12 All right. Gentlemen, y'all ready to receive the
13 verdict?

14 MR. LUGINBILL: We are, Your Honor.

15 THE CLERK: The State of South Carolina versus
16 Johnnie Lee Jones, Indictment Number 2007-GS-05-168, it is
17 assault and battery with intent to kill. Not guilty. As
18 to a verdict, as to the offense of assault and battery of
19 a high and aggravated nature, guilty. We unanimously
20 agree. Foreperson.

21 2007-GS-05-169, State of South Carolina versus
22 Johnnie Lee Jones, attempted kidnap, we find guilty.
23 Unanimously agree.

24 Madam Forelady, is that your verdict and is it still
25 your verdict?

1 THE FOREPERSON: Yes.

2 THE COURT: Members of the jury, is that your verdict
3 and is it still your verdict?

4 (WHEREUPON, all jurors respond affirmatively.)

5 THE COURT: Let the record reflect all answered in
6 the affirmative.

7 All right. Madam Forelady, ladies and gentlemen of
8 the jury, that concludes your service obviously on this
9 case and for the balance of the week. We've got one case
10 left. We're right in the middle of it. This young man is
11 testifying.

12 I want to thank you. Y'all have paid wonderful
13 attention. I think your verdict reflects the evidence. I
14 certainly agree with you. It's not an easy task. It's
15 not as fun as it looks on TV, but I still can't think of a
16 better way if somebody's, you know, accused of something,
17 letting 12 people in the community make the decision as
18 opposed to some judge or some dictator or somebody else,
19 you know. Y'all, y'all make the decision. Y'all are the
20 conscience of the community, and I appreciate you
21 performing your services admirably as you've done.

22 So, having said that, we'll be sending you a check.

23 THE CLERK: Yes, sir.

24 THE COURT: I'm going to get Mr. Hiers to pay you an
25 extra day if I can. But anyway, it'll be coming in the

1 mail. I want to thank each and everyone of you for your
2 service. I'm gonna -- we've got another jury.

3 Did y'all leave anything back there?

4 THE FOREPERSON: Yes.

5 THE COURT: All right. What I'm gonna ask you to do,
6 how about step in there and ask them just to hand out
7 whatever they got and y'all can pick it up out there in
8 the hall. I need you to sign some stuff for me.

9 Thank y'all so very much. Be sure and let the
10 alternate go.

11 Thank y'all.

12 (WHEREUPON, the jury exited the courtroom at 4:00.)

13 THE COURT: All right. Mr. Luginbill, we'll sentence
14 your client around five o'clock. I'm going to keep this
15 jury going.

16 SOLICITOR MAURICE: Thank you, Your Honor.

17 THE COURT: And I'll, and I'll hear anything y'all
18 need then.

19 (WHEREUPON, a break was taken.)

20 THE COURT: All right. You got the sentence sheets
21 ready?

22 SOLICITOR MAURICE: Yes, Your Honor.

23 THE COURT: All right. Mr. Luginbill.

24 MR. LUGINBILL: Your Honor, we have a motion prior to
25 sentencing.

1 THE COURT: I'm sorry. I apologize.

2 MR. LUGINBILL: The jury had sent out a question
3 asking to review the transcript. They were unable to view
4 that transcript and they rendered a verdict prior to ever
5 getting that, that transcript read to them or being able
6 to hear it.

7 Based on that, Your Honor, I would ask for a new
8 trial. I think if the jury felt it was important enough
9 to ask that question they should have been afforded the
10 opportunity to get that testimony especially since it was
11 a law enforcement witness who clearly changed -- nobody
12 disagrees that she changed her testimony from one day to
13 the next. They were asking for her initial testimony.
14 That's what they wanted to hear and just technologically
15 they were denied the ability to do that. And, and based
16 on that, Your Honor, I think that could have changed the
17 outcome of the jury. They clearly deliberated for quite
18 some time. And based that, based on that, I, I would ask
19 that the Defendant be afforded a new trial. It's the only
20 way to cure that.

21 THE COURT: Thank you. Respectfully denied.
22 Anything else?

23 MR. LUGINBILL: No, Your Honor.

24 THE COURT: All right. Please come forward.

25 MR. LUGINBILL: You want to do it over here or have

1 him step up?

2 THE COURT: I'd like to have him step up like normal.

3 MR. LUGINBILL: That one is on.

4 THE COURT: I'll be glad to hear from you.

5 MR. LUGINBILL: Thank you, Your Honor.

6 Mr. Jones is 50 years old. We've talked about --

7 THE COURT: The sentence sheet says 52.

8 DEFENDANT: Fifty-two.

9 MR. LUGINBILL: I apologize, Your Honor. I just did
10 the math wrong. He is married. His wife is in the
11 courtroom. Altogether he has five children. He's also
12 raising one grandchild, Jerome. He has three other
13 grandchildren in addition to that.

14 As you can see, he's physically disabled. He does
15 take medication for seizures as a result of the logging
16 accident that he had. He takes medication for the
17 inflammation that he has in both knees. That's chronic.
18 And also for his hip. He has no significant prior record.
19 The State didn't -- has brought none forward in this case.

20 THE COURT: He has no record.

21 MR. LUGINBILL: I'm not aware of any. At his age,
22 it's very unlikely that he would ever reoffend based on
23 the statistics of it, and I think also physically it's a
24 situation where he's just quite frankly isn't going to be
25 a threat to anybody.

1 I don't want to minimize what happened to the victim
2 in this case. Thankfully he suffered no permanent injury,
3 but it is certainly nothing that he should have ever had
4 to go through, and I freely acknowledge that from
5 happening and Mr. Jones.

6 Given the lack of prior record, given his age, given
7 his health conditions, and the fact that there is a family
8 who is financially dependent on, on what little bit of
9 money he can make, I would ask the Court to be as lenient
10 as it can be.

11 THE COURT: Anything you want to tell me, Mr. Jones?

12 THE DEFENDANT: No.

13 THE COURT: All right. Anything the victims would
14 like to say?

15 Mr. Hiers, anything you want to tell me as far as
16 sentencing goes?

17 MR. HIERS: No, just that we'd like to bring it to a
18 closure. It's been over three years.

19 THE COURT: Let me comment, first of all, on the
20 request by the jury. They did send a request to hear,
21 wanted the transcript, first of all, of the, the officer,
22 Mrs. Sandra Tavanis. Obviously we had no means of
23 providing a transcript and I told them that we could
24 replay portions of their testimony, and they then asked us
25 to play a portion of the testimony, which would have been

1 the testimony from yesterday, the 13th, the first day of
2 trial.

3 We came back out. We started playing it, and quite
4 frankly, the sound was not loud enough to be able to be
5 heard by the jury. I then asked my court reporter to make
6 any other modification to her equipment she could and make
7 the sound louder. She was unable to do so. So, I sent
8 the jury back and told them that we would try to make it
9 louder, for lack of a better term, but we were unable to
10 do so. And, of course, we did not get any further notes
11 from them.

12 According to my calculations, they deliberated from
13 1:15 to what, Lisa?

14 Came back when?

15 COURT REPORTER: For the verdict you mean?

16 Four o'clock.

17 THE COURT: The verdict -- they came back in -- I was
18 informed, of course, we were in the middle of the second
19 trial. I was informed by the bailiff, probably about 15
20 minutes before that, that they reached a verdict. Two or
21 three of them wanted to go smoke, is that correct?

22 THE BAILIFF: That's correct.

23 THE COURT: I told them as soon as we finished, as
24 soon as we finished the witness we would receive the
25 verdict.

1 So, they didn't deliberate very long at all. I felt
2 like the evidence was overwhelming that showed beyond a
3 reasonable doubt his guilt. I found that his testimony,
4 as the 13th juror, was totally unbelievable. I thought that
5 forensic evidence backed up the story of Mr. Hiers and the
6 two independent witnesses.

7 Mr. Luginbill, I, for those reasons, I, I
8 respectfully deny the motions that you made. I compliment
9 you on your final argument. It was well thought out,
10 organized, and I don't think you left out a point that was
11 reasonable points to point out to the jury concerning
12 reasonable doubt. You covered all of the bases. I
13 commend you for your defense of Mr. Jones and it was
14 commendable.

15 You certainly did all you could to argue the evidence
16 in the light most favorable to your client. But, you
17 know, I learned a long time ago as a young lawyer, lawyers
18 don't make the facts and certainly, in my opinion, you did
19 all you could for your client. Just forensic evidence as
20 well as the testimony from credible witnesses supported
21 the jury's verdict, and I respectfully deny your request
22 for a new trial or mistrial, whatever motion you made.

23 MR. LUGINBILL: Thank you, Your Honor.

24 THE COURT: Of course, the most difficult job I have
25 as a circuit court judge is trying to decide what is a

1 fair sentence to a man who's 52 years of age who basically
2 in the past has never been involved in any criminal
3 activity. But when he gets started he gets involved in
4 something that's, you know, we're all entitled to be able
5 to go home from our jobs, to our house particularly, and
6 not be accosted and attacked and beat in the head with a
7 brick and attempted to kidnap him.

8 I mean -- so, I have to balance trying to protect
9 society, punishing him, and also taking into consideration
10 his lack of a prior record, and it's unfortunate that he
11 chose to attack this man. I have no rhyme nor reason why
12 he should have. That's what makes it difficult.

13 All right. Mr. Jones, on the Indictment
14 2007-GS-05-169, the indictment for attempting kidnapping,
15 the sentence of this Court is you be committed to the
16 State Department of Corrections for a period of 18 years.
17 On the offense of assault and battery of a high and
18 aggravated nature, the sentence of the Court is that you
19 be committed to the State Department of Corrections for a
20 period of 10 years. They will run concurrent with each
21 other. In other words, the 10-year sentence will run
22 concurrent to the 18-year sentence.

23 Good luck to you. You'll be given credit for your
24 time that you served previously.

25 MR. LUGINBILL: Thank you, Your Honor.

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(End of Transcript of Record.)

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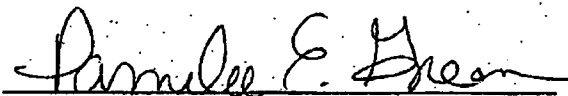
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 General Sessions for Bamberg County, South Carolina, on the 13th and 14th day of April, 2010, as reported by Lisa Davenport and transcribed by myself.

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

September 18th, 2010



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNIE JONES,

APPELLANT

INITIAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

The trial judge erred in allowing the accuser's identification testimony into evidence at trial because the highly suggestive out-of-court identification procedure used by police where only one photograph was displayed in the photographic layout and shown to the accuser resulted in an unreliable identification and a misidentification in the case.

STATEMENT OF THE CASE

Appellant Johnnie C. Jones was convicted of assault and battery of a high and aggravated nature and attempted kidnapping during the April, 2010 term of the Bamberg County General Sessions Court before the Honorable Doyet Early, Judge. Appellant was sentenced to imprisonment for an aggregate period of eighteen years.

Appellant appealed. This brief follows.

ARGUMENT

The trial judge erred in allowing the accuser's identification testimony into evidence at trial because the highly suggestive out-of-court identification procedure used by police where only one photograph was displayed in the photographic layout and shown to the accuser resulted in an unreliable identification and a misidentification in the case.

At trial, Donald Hiers testified that when he arrived at his Bamberg County home at 8:00 p.m. on January 9, 2007, he noticed someone coming out of the bushes from the woods behind his house. Hiers testified that as he exited the car and commenced closing the door, a black male approached and told him to get back in the car because they were going for a ride. When Hiers refused to follow instructions, he recalled that the man hit him on the head with an object thought to have been a brick. Hiers stated that his wife turned on the lights outside and around the house when she heard the commotion. At that point, the man fled. Hiers stated that he was taken to the hospital thereafter where he received medical attention for his bleeding head. While at the hospital, Hiers told police officer Jamie Bearden that he recognized the perpetrator by his voice and stature and identified him as appellant Johnnie Jones. App. 55, l. 1 – p. 62, l. 25; Tr. 89, l. 18 – p. 85, l. 2; Tr. 103, ll. 1-5; Tr. 104, ll. 7-12.

Neighbor James Grant testified that he gave appellant a dark blue coat on January 9, 2007, and that later on during the same night someone knocked on his door and left the coat on his porch. Police confiscated the coat in question. Tr. 98, l. 21 – p. 99, l. 23; Tr. 130, l. 22 – p. 132, l. 18. A comparison of a swab taken from this coat matched the DNA profile taken from a swab out of Hiers' mouth. Tr. 177, l. 22 – p. 178, l. 3; Tr. 182, ll. 11-21.

Appellant testified at trial and explained his alibi defense. Appellant stated that he went to work at Pappy's at 7:00 a.m. on January 9, 2007, but left when the shop did not

open. Appellant stated that he then spent the afternoon in Erhardt, but left there and went to Denmark where he stayed and worked on girlfriend Michelle's car until the evening's close. Appellant stated that he was not in Erhardt between 7:00 p.m. to 8:00 p.m. on January 9, 2007. App. 202, l. 16 – p. 216, l. 4.

Prior to trial, defense counsel moved to suppress Hiers' identification testimony in the case on the ground that it was "an improperly suggestive show up," in that the photographic layout was comprised of "a single photograph taken from a booking photo." Tr. 30, ll. 9-18. While at the hospital, Hiers told police that the perpetrator was appellant. Shortly thereafter, police officer Jamie Beardon presented Hiers with a single photograph of appellant for viewing. After viewing the single photograph, Hiers confirmed that this was a photograph of appellant and identified him as the perpetrator in the case. Hiers stated that he knew appellant during the years that he (appellant) conducted business with his father at their family store. Tr. 33, l. 18 – p. 35, l. 3. The court in effect denied the motion to suppress the identification evidence and allowed the jury to hear this identification evidence at trial. Tr. 60, l. 4 – p. 61, l. 24; Tr. 104, l. 1 – p. 110, l. 4.

As a rule, an in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000). First, a court must ascertain whether the identification process was unduly suggestive, and then ascertain whether the out-of-court identification was nevertheless sufficiently reliable such that no substantial likelihood of misidentification existed. Neil v. Biggers, 409 U.S. 188 (1972). The central question is whether the identification was reliable under the totality of circumstances. State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2005); State v. Simmons, 384 S.C. 145, 682

S.E.2d 19 (2009). Per Neil v. Biggers, *supra*, the following factors should be considered in evaluating the totality of circumstances to determine the likelihood of a misidentification:

(1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. State v. Cheeseboro, 346 S.C. 526, 541, 552 S.E.2d 300, 308 (2001), *cert denied* 535 U.S. 933, 122 S.Ct. 1310, 152 L.Ed.2d 219 (2002).

In the case at bar, the photographic layout shown to Hiers was comprised of a single photograph only. Clearly, a photographic line-up that consists of one photograph is unduly suggestive. One photograph in the line-up presupposes that this is the picture of the perpetrator. Also, the accuser faced with a single picture photographic layout knows to respond in kind by agreeing that this is a picture of the perpetrator indeed. *See, State v. Knight*, 282 N.C. 220, 192 S.E.2d 283 (1972) and State v. Woodruff, 691 S.E.2d 133 (2010), where the courts held that photographic lineups which contain only one picture constitute impermissibly suggestive photographic lineups. Clearly, a one picture photographic layout is inherently suggestive. *See, United States v. Wade*, 388 U.S. 218 (1967), where the Court noted that a single-suspect identification procedure can clearly convey the suggestion to the witness that the one presented is believed to be guilty by the police. *Compare, State v. Yancey*, 291 N.C. 656, 231 S.E.2d 637 (1977), where the Court condemned the practice of showing suspects singly to persons for the purpose of identification.

Nonetheless, however, assuming an identification procedure is suggestive, it need not be excluded so long as under the circumstances, the identification is reliable not

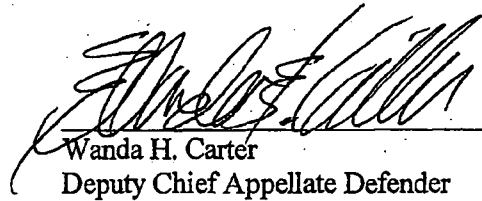
withstanding suggestiveness. State v. Traylor and State v. Turner, 373 S.C. 121, 644 S.E.2d 693 (2007) citing to Neil v. Biggers, *supra*. However, here, Hiers' identification cannot be deemed reliable under the totality of the circumstances. For example, Hiers never viewed the perpetrator's face. Rather, Hiers relied on an identification via the perpetrator's voice and stature. Also, the witness could not view the perpetrator properly because it was dark when the crimes were committed. No lighting was available until Hier's wife, who was inside the house, turned on the outside lights after hearing noise outside of the house. Also, Hiers was struck on the head seemingly after the encounter and was then taken to the hospital, which meant he never had an opportunity to devote adequate attention to the perpetrator. Also, note that Hiers never described appellant from his prior dealings with him. Although Hiers made his voice identification on the same evening of the attack, it took him a while to match the voice with appellant and Hier seemed unclear and uncertain during the time he contemplated the identification issue. Additionally, the only match of Hier's blood on what was believed to have been a coat worn by the perpetrator's coat found near the scene was of no consequence because the evidence did not establish that appellant committed the crimes charged. Undoubtedly, in light of the totality of the circumstances, the unduly suggestive out-of-court identification procedure conducted in the case at bar was not cured by circumstances that would render the identification reliable. Thus, this out-of-court identification in question was so unreliable that there was a substantial likelihood of misidentification in the case. State v. Turner, *supra*, Neil v. Biggers, *supra*. A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. State v. Moore, *supra*, State v. Traylor, *supra*.

The trial judge erred in admitting the identification evidence in question at trial because the highly suggestive identification procedure rendered the identification unreliable. The error violated the Fourteenth Amendment Due Process Clause.

CONCLUSION

Based on the following argument, appellant's conviction and sentence should be reversed and his case remanded to the lower court.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

This 18th day of February, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNIE JONES,

APPELLANT

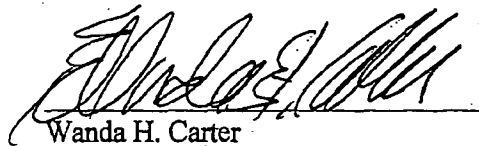
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Tr. 30 – 37; Tr 55 – 151; Tr 157 – 159; Tr. 163 – 198; Tr 202
– 229; Tr 284; Tr 286 – 287; Tr 292.

I certify that this designation contains no matter which is irrelevant to this appeal.

February 18th, 2011



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg CountyDoyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

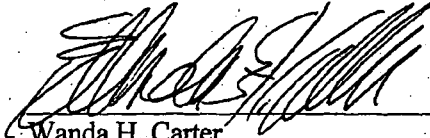
V.

JOHNNIE JONES,

APPELLANT

CERTIFICATE OF SERVICE

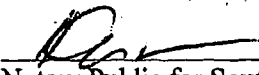
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 18th day of February, 2011.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 18th day of February, 2011.



(L.S.)
Notary Public for South CarolinaMy Commission Expires: October 2, 2013.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Johnnie Jones,

Appellant.

Appeal From Bamberg County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2012-UP-034
Submitted January 3, 2012 – Filed January 25, 2012

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General David Spencer, all of

Columbia; and Solicitor J. Strom Thurmond, Jr., of Aiken, for Respondent.

PER CURIAM: Johnnie Jones appeals his convictions for attempted kidnapping and assault and battery of a high and aggravated nature, arguing the trial court erred in allowing the accuser's identification testimony into evidence at trial. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) (holding a ruling in limine is not final and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review).

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

County of BAMBERG)

2012-CP-05-77

IN THE COURT OF COMMON PLEAS

Johnny L. Jones # 340271)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

2012 APR 30 AM 10:55

FILED
BAMBERG COUNTYINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
P.O. Box 205, 136 Wilborn Ave, Ridgeville, SC. 29472
2. Name and location of Court which imposed sentence Bamberg County, General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-05-168 (assault and battery intent to kill)
but was found guilty of the lesser included, ABHAN

A TRUE COPY

Attest: J. B. Hiers
CLERK OF COURT
BAMBERG COUNTY, SC

- (b) 2007 GS 05-169 (attempted kidnapping)
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 19, 2010, 10 years for the ABHAN
- (b) April 19, 2010, 18 years for the attempted kidnapping
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury
- (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. affirmed sentences and convictions
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 25, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Un. Pub. 2012-UP-034
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached statement of facts and memorandum
- (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? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? 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. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. n/a
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. n/a
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. n/a
 - 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?

first filing for post conviction relief

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. n/a
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. n/a
 - 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) first filing for post conviction relief
- (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? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
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. Dan Luginbill and Kent McAllister, esq.
Bamberg County Bar
- ii. _____
- iii. Wanda H. Carter, esq.
South Carolina Indigent Defense
- (b) the proceedings at which each such attorney represented you:
- i. trial and sentencing
- ii. same as above
- iii. Direct Appeal

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG
IN THE COURT OF COMMON PLEAS

Indict. No. 2007-GS-05-168, 169

Johnny L. Jones -- Petitioner,

-V-

State of South Carolina -- Respondent,

MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR
POST CONVICTION RELIEF PURSUANT TO
§17-27-20 THROUGH §17-27-160

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BAMBERG)

Johnny L. Jones) Indict.No.2007-GS-05-168,169
Petitioner,)
-V-)
State of South Carolina) MEMORANDUM IN SUPPORT OF
Respondent,) APPLICATION FOR POST CONVICTION
) RELIEF PURSUANT TO S.C.CODE ANN.
) §17-27-20 THROUGH §17-27-160

COMES NOW, above captioned Petitioner, Johnny Jones, claiming that his rights were violated during trial in a number of ways, including, but not limited to his Sixth Amendment right to the effective assistance of counsel and his Fourteenth Amendment right to a fair trial. Petitioner believes through the issues presented, statement of facts and citations of authorities relied on he will show unto this Honorable Court his entitlement to the requested relief of a new trial.

Respectfully Submitted,

/s/ Johnny L. Jones
Johnny Jones

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE SOLICITOR'S IMPROPER CLOSING THAT VIOLATED THE GOLDEN RULE AND DENIED PETITIONER HIS RIGHT TO A FAIR TRIAL?

FACTS

Petitioner asserts he was denied the effective assistance of trial counsel when counsel failed to object to the solicitor's improper closing that impermissibly violated the "Golden Rule". Petitioner asserts the closing used references of I and you and the language used could have reasonably led the jury to believe the solicitor was placing them in the shoes of Petitioner.

During closing the following argument was recorded:

When I think of assault and battery with intent to kill, you think intent. You think you got to get a shotgun, go to somebody's house, and, and shoot them and mean to kill them.

I guess if you shot them and you didn't kill them, you, know, where's the intent? [Tr.p.233, L.3-8].

You don't have to go and plan to kill someone. [Tr.p.234, L.7-8].

Well, to South Carolina, that's not what the law says. The law says when you keep someone or take away someone's freedom, it doesn't matter how long, by force, and you're not a policeman where you have a lawful right to do so, that's kidnapping. When Mr. Jones told Mr. Hiers get in the car and take me for a ride or I'm gonna kill you, and he has a brick, not only was Mr. Jones, Mr. Hiers not able to leave, Mr/ Hiers tried to leave and was stopped by being hit in the head with a brick. [Tr.p.234, L.15-24].

And I believe that they were with Mr. Jones at

some point and time, and I believe they're telling the truth, and when I asked them about the day, are you sure, they really weren't. [Tr.p.262, L.17-20].

As was seen above the solicitor not only invoked the Golden Rule but as is seen in the underline portions above the prosecution went on the "vouch" for witnesses testimony in order to "bolster" the credibility of the State's case.

DISCUSSION

Petitioner asserts he was denied his constitutionally guaranteed right to the effective assistance of counsel when counsel failed to object to the prosecution's improper closing argument that violated the Golden Rule and resulted in impermissible vouching that denied Petitioner his right to a fair trial.

Golden Rule arguments are generally improper and may constitute reversible error, *State v. Henry*, 78 P.3d 403, 410 (Kan.2003). A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors passions or prejudices, *Humphries v. State*, 351 S.C. 362, 570 S.E.2d 160, 166 (2002), accord, *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 165 (1998).

The traditional notion of the Golden Rule, though not yet contained in any rule of evidence or procedure, but can be seen

at 75 Am.Jur.2d §282 p.357, which provides a lawyer shall "not" urge the jury members to imagine themselves or their families or friends in the place of the victim or the defendant and to render their verdict from that prospective. Although the forbiddance of Golden Rule arguments began in civil trials to hinder the plaintiff from urging the jury to put themselves in the place of the victim in order to obtain higher damages, the prohibition has now also been made applicable to criminal actions as well. See 75 A.Am.Jur.2d Trial §650 (1991), also see, Lucas v. State, 335 So.2d 566, 568 (Fla.Dist.Ct.App.1976)(holding that "[t]he techniques of asking jurors to place themselves in the position of the victim has been held to be "improper in both civil and criminal").

The Golden Rule argument, suggesting to jurors as it does, that they put themselves in the shoes of one of the parties, is generally impermissible because it encourages the jurors to depart from the neutrality and to decide the case on the basis of personal interest and biases rather than on the evidence. Regardless of the nomenclature used, any argument that importunes the jurors to place themselves in the shoes of one of the parties is disallowed, See Johnson v. State, 587 S.E.2d at 781 (2003).

The Court, quoting State v. Gilstrap, 205 S.C. 412, 416, 32 S.E.2d 163, 164-65 (1944), reasoned, "the rule in the State and we think in most jurisdictions, is that upon the whole case, it appears to the court that the defendant was prejudiced by the language used, as a result of which he did not have a fair and

impartial trial, it would be the duty of the court to reverse the case and remand for new trial." The Court further opined "an argument of this nature addressed to the jury tends to completely destroy and nullify all sense of impartiality in a case of this kind. It's logical affect is to arouse the passions and prejudices of the jury. Jurors are sworn to be governed by the evidence and it is their duty to regard the facts of the case impersonally. Id at 417.

Statements such as those made in State v. McDaniel, 462 S.E.2d 883, 884, in her closing argument, the solicitor used you or a form of you, and I some forty-five times, asking the jury to put themselves in the place of the victim. Moreover, the request concerned family members, as in State v. White, 144 S.E.2d 481 (1944), but directly to the jurors themselves. This was clearly reversible under White. Surely counsel should have objected to the solicitor's improper closing argument, for the argument here parrots McDaniels, and also mirrors and found impermissible language used in White, supra.

For the aforementioned reasons, Petitioner respectfully prays this Court will grant the requested relief of a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FAILING TO REQUEST THE TRIAL COURT INSTRUCT THE JURY ON THE ESSENTIAL ELEMENT OF "CRIMINAL INTENT", WHICH IS AN ESSENTIAL ELEMENT OF EVERY COMMON LAW OFFENSE?

FACTS

Petitioner asserts he was denied the effective assistance of counsel when counsel failed to request the Trial Court to instruct the jury on the essential element of "criminal intent."

During trial the Trial Court charged the jury as follows:

There are two separate indictments. One is assault and battery with intent to kill. In South Carolina we have three types of assault and battery. We have assault and battery with intent to kill, which is up here. We have assault and battery of a high aggravated nature, which is the middle one, and then we have what's called just simple assault and battery.

In this case the defendant has been charged with assault and battery with intent to kill. In order to prove assault and battery with intent to kill the State must prove beyond a reasonable doubt, that the defendant committed an unlawful act of a violent nature to the person with malice aforethought. [Tr.p.272, L.16-25, p. 273, L.1-3].

Malice is defined as hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict injury or under circumstances that the law will infer evil intent. [Tr.p.274, L.5-9].

Therefore, there must be a combination of a previous evil intent and the act. [Tr.p.274, L.14-15].

A specific intent to kill is not an element of assault and battery with intent to kill, but

there must be a general intent to commit serious bodily injury. [Tr.p.275, L.11-14].

Intent may be inferred from when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to harm another person. [Tr.p.275, L.25, p.276, L.1-3].

Now, that is what the law says assault and battery with intent to kill means. In this particular case, if you find that the State has failed or not proven that the defendant is guilty of assault and battery with intent to kill, then you must determine whether the State has proved that the defendant is guilty of what we call assault and battery of a high aggravated nature, the lesser included offense is what it's called.

Assault and battery of a high aggravated nature includes all the elements of assault and battery with intent to kill except malice aforethought. [Tr.p.275, L.4-14].

Circumstances of aggravation include the use of a deadly weapon, with intent to commit a felony. [Tr.p.275, L.18-19].

As was seen above the Trial Court used repeated references to "criminal intent" coupled with the doing of a "wrongful act" instruction that was confusing, overlapping and misleading in such that a reasonable jurist could have interpreted this instruction to be over broad and vague to the point the jury was lead to believe that Petitioner was guilty but of what offense.

Petitioner asserts that counsel was ineffective for failing to request the Trial Court to instruct the jury on the essential element of criminal intent, and the failure to do so denied Petitioner his right to the effective assistance of counsel and his right to a fair trial.

DISCUSSION

Petitioner asserts counsel was constitutionally ineffective for failing to request the trial court to instruct the jury on the essential element of "criminal intent." The jurors are believed to follow the instructions of the trial court, *Richardson v. Marsh*, 481 U.S. 200 (1987)(citations omitted).

As was seen supra the Trial Judge's instructions included repeated references to "intent", yet the Court never instructed the jury on what "criminal intent" entails and how the jury is to assess criminal intent in rendering their verdict. The definition of assault and battery with "intent" to kill in no wise affects the ingredients which are necessary to constitute the offense of assault and battery intent to kill and assault and battery high aggravated nature, but leaves them exactly and in every particular as they stood at common law, *State v. Judge*, 208 S.C. 497, 505, 38 S.E.2d 715, 719 (1946). Consequently, the element of "criminal intent" though not alluded to in the statutory definition of assault and battery high aggravated nature, still is a necessary element in South Carolina under common law practice, *State v. Thraikill*, 73 S.C. 314, 318, 53 S.E. 482 (1906)("....criminal intent....is an essential element in every common law crime."), Cf. *State v. American Agricultural Chemical Co.*, 118 S.C. 333, 337, 110 S.E. 800, 802 (1920)(emphasis original).

Assault at common law, was an "unlawful" setting upon one's person." Chase's Blackstone's Commentaries, 4th ed 1914, p.675 (emphasis supplied). The charge given by the trial Court used

repeated references of "intent", and the accompanied "unlawful act" language used in the Court's instructions. The Court instructed the jury "In order to prove assault and battery with intent to kill the State must prove, beyond a reasonable doubt, the defendant committed an "unlawful act", (Tr.p.272, L.25, p.273, L.1-2), and further instructed, "Must prove beyond a reasonable doubt that the defendant committed an "unlawful act" of a violent nature to the person with malice aforethought, (Tr.p.273, L.3-6).

The Court went to charge the jury, that "you got several things, You got assault. You got battery. You got an "unlawful act" of a violent nature and you got malice aforethought, (Tr.p.273, L.7-9). The battery is the "unlawful" touching of another person by a person who has committed the assault. In other words, you draw back and that's the assault. You hit, that's battery. That's the "unlawful" touching, assault and battery. The battery is the "unlawful" touching of another person by a person who has committed the assault. An "unlawful" touching can be caused by a part of the accused's body, (Tr.p.273, L.18-25, p.274, L.1).

Petitioner asserts the Court instructions were confusing and overlapping to the point that without being instructed on the element of "criminal intent" the Court's repeated reference to "unlawful act" allowed the jury to render a verdict of guilty on an erroneous jury instruction since the instruction lacked the essential element of "criminal intent" (emphasis supplied).

Petitioner asserts that counsel was ineffective for failing to request the trial court to instruct the jury on the element of criminal intent. Had counsel requested the instruction and the Court charged the jury with the proper instruction there is a reasonable probability that, but for this error, the results of the trial would have been different.

For the aforementioned reason, Petitioner respectfully prays this Court grant the requested relief of a new trial.

CONCLUSION

WHEREFORE, based on the foregoing, issues presented, statement of facts, and citations relied on Petitioner respectfully believes he has shown unto this Court he is entitled to the relief requested of a new trial.

THEREFORE, Petitioner respectfully prays this Honorable Court will grant a new trial.

Respectfully Submitted,

/s/ Johnny Jones
Johnny Jones

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

I, Johnny L. Jones, 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.

Johnny L. Jones
Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

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

vacate sentences and convictions and remand for new trial

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

Revised 3/2003

STATE OF SOUTH CAROLINA)

DORCHESTER)

County of ~~XXXXXXXXXXXX~~)

VERIFICATION

I, Johnny L. Jones, 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.

Johnny L. Jones

SWORN to and subscribed before me this 26th
day of April, 2020.

Lechean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Johnnie L. Jones, #340271,

2012-CP-05-77

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief filed April 30, 2012, would respectfully show this Court:

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. The Applicant was indicted during the January 2007 term of the Bamberg County Grand Jury for attempted kidnapping (2007-GS-05-169) and assault and battery with intent to kill (2007-GS-05-168). The Applicant was represented by Dan Luginbill, Esquire. The Applicant proceeded to a jury trial and was convicted of attempted kidnapping and assault and battery of a high and aggravated nature, a lesser included offense of assault and battery with intent to kill. On April 19, 2010, the Honorable Doyet A. Early, III, sentenced the Applicant to a period of eighteen years confinement for attempted kidnapping and ten years for assault and battery of a high and aggravated nature, with the sentences to be served concurrently.

Applicant subsequently filed a Notice of Appeal and an appeal was perfected. On January 25, 2012, the South Carolina Court of Appeals affirmed the sentences and convictions and dismissed the Appeal. State v. Jones, (Op. No. 2012-UP-034). The Remittitur was sent on

on February 14, 2012.

Attached herewith and incorporated herein are the records of the Bamberg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, appellate records, and Applicant's trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Failing to object to the solicitor's improper closing that violated the golden rule and denied petitioner his right to a fair trial."
- b. "Failing to request the trial court instruct the jury on the essential element of "criminal intent", which is an essential element of every common law offense."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 6, 2012

STATE OF SOUTH CAROLINA
County of BAMBERG

Johnny L. Jones # 340271
Full name and prison number (if any) of Applicant

v.

State of South Carolina

FORM 5
FILED
BAMBERG COUNTY
2012 SEP -5 IN THE COURT OF COMMON PLEAS
JAMES B. WERS
CLERK OF COURT
BAMBERG, SC

Rule 15(a), SCRCF
AMENDED/SUPPLEMENT
APPLICATION FOR
POST-CONVICTION RELIEF
2012-CP-05-77

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
P.O. Box 205, 136 Wilborn Ave, Ridgeville, SC. 29472
2. Name and location of Court which imposed sentence Bamberg County, General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-05-168 (assault and battery intent to kill)
but was found guilty of the lesser included, ABHAN

- (b) 2007-GS-05-169 (attempted kidnapping)
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 19, 2010, 10 years for the ABHAN
- (b) April 19, 2010, 18 years for the attempted kidnapping
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty trial by jury
- (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. affirmed sentences and convictions
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 25, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Un.Pub. 2012-UP-034
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/a

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) ineffective assistance of counsel
 (b) ineffective assistance of appellate counsel
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) see attached statement of facts and memorandum
 (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? no
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 (d) any other petitions, motions or applications in this or any other Court? 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. n/a
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. n/a
 ii. _____
 iii. _____

- iv. _____
- (c) the disposition thereof:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. n/a
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. n/a
- 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?

first filing for post conviction relief

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. n/a
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. n/a
- 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) first filing for post conviction relief
- (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? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
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. Dan Luginbill and Kent McAllister, esq.
Ramberg County Bar
- ii. _____
- iii. Wanda H. Carter, esq.
South Carolina Indigent Defense
- (b) the proceedings at which each such attorney represented you:
- i. trial and sentencing
- ii. same as above
- iii. Direct Appeal

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

~~Set aside conviction, Reconsideration, Reversal and remand for new trial.~~
 Vacate sentences and Convictions and remand for new trial.

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

NO

NO

STATE OF SOUTH CAROLINA

DORCHESTER

County of ~~_____~~

VERIFICATION

I, Johnny L. Jones #340271, 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.

X Johnny L. Jones

SWORN to and subscribed before me this

day of

August

15th
2012

Sybil Jones

(L.S.)

Notary Public

My Commission Expires:

1/24/2018

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

I, Johnny L. Jones, 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.

Johnny L. Jones
Applicant

SWORN or affirmed to and subscribed before me this

1st day of August, 2012

Sifura Jones
Notary Public

My Commission Expires: 1/24/2018

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO THE SOLICITOR'S IMPROPER CLOSING THAT VIOLATED THE GOLDEN RULE AND DENIED PETITIONER HIS RIGHT TO A FAIR TRIAL?

FACTS

Petitioner asserts he was denied the effective assistance of trial counsel when counsel failed to object to the solicitor's improper closing that impermissibly violated the "Golden Rule". Petitioner asserts the closing used references of I and you and the language used could have reasonably led the jury to believe the solicitor was placing them in the shoes of Petitioner.

During closing the following argument was recorded:

When I think of assault and battery with intent to kill, you think intent. You think you got to get a shotgun, go to somebody's house, and, and shoot them and mean to kill them.

I guess if you shot them and you didn't kill them, you, know, where's the intent? [Tr.p.233, L.3-8].

You don't have to go and plan to kill someone. [Tr.p.234, L.7-8].

Well, to South Carolina, that's not what the law says. The law says when you keep someone or take away someone's freedom, it doesn't matter how long, by force, and you're not a policeman where you have a lawful right to do so, that's kidnapping. When Mr. Jones told Mr. Hiers get in the car and take me for a ride or I'm gonna kill you, and he has a brick, not only was Mr. Jones, Mr. Hiers not able to leave, Mr/ Hiers tried to leave and was stopped by being hit in the head with a brick. [Tr.p.234, L.15-24].

And I believe that they were with Mr. Jones at

some point and time, and I believe they're telling the truth, and when I asked them about the day, are you sure, they really weren't. [Tr.p.262, L.17-20].

As was seen above the solicitor not only invoked the Golden Rule but as is seen in the underline portions above the prosecution went on the "vouch" for witnesses testimony in order to "bolster" the credibility of the State's case.

DISCUSSION

Petitioner asserts he was denied his constitutionally guaranteed right to the effective assistance of counsel when counsel failed to object to the prosecution's improper closing argument that violated the Golden Rule and resulted in impermissible vouching that denied Petitioner his right to a fair trial.

Golden Rule arguments are generally improper and may constitute reversible error, *State v. Henry*, 78 P.3d 403, 410 (Kan.2003). A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors passions or prejudices, *Humphries v. State*, 351 S.C. 362, 570 S.E.2d 160, 166 (2002), accord, *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 165 (1998).

The traditional notion of the Golden Rule, though not yet contained in any rule of evidence or procedure, but can be seen

at 75 Am.Jur.2d §282 p.357, which provides a lawyer shall "not" urge the jury members to imagine themselves or their families or friends in the place of the victim or the defendant and to render their verdict from that prospective. Although the forbiddance of Golden Rule arguments began in civil trials to hinder the plaintiff from urging the jury to put themselves in the place of the victim in order to obtain higher damages, the prohibition has now also been made applicable to criminal actions as well. See 75 A.Am.Jur.2d Trial §650 (1991), also see, *Lucas v. State*, 335 So.2d 566, 568 (Fla.Dist.Ct.App.1976)(holding that "[t]he techniques of asking jurors to place themselves in the position of the victim has been held to be "improper in both civil and criminal").

The Golden Rule argument, suggesting to jurors as it does, that they put themselves in the shoes of one of the parties, is generally impermissible because it encourages the jurors to depart from the neutrality and to decide the case on the basis of personal interest and biases rather than on the evidence. Regardless of the nomenclature used, any argument that importunes the jurors to place themselves in the shoes of one of the parties is disallowed, See *Johnson v. State*, 587 S.E.2d at 781 (2003).

The Court, quoting *State v. Gilstrap*, 205 S.C. 412, 416, 32 S.E.2d 163, 164-65 (1944), reasoned, "the rule in the State and we think in most jurisdictions, is that upon the whole case, it appears to the court that the defendant was prejudiced by the language used, as a result of which he did not have a fair and

impartial trial, it would be the duty of the court to reverse the case and remand for new trial." The Court further opined "an argument of this nature addressed to the jury tends to completely destroy and nullify all sense of impartiality in a case of this kind. It's logical affect is to arouse the passions and prejudices of the jury. Jurors are sworn to be governed by the evidence and it is their duty to regard the facts of the case impersonally. Id at 417.

Statements such as those made in State v. McDaniel, 1462 S.E.2d 883, 884, in her closing argument, the solicitor used you or a form of you, and I some forty-five times, asking the jury to put themselves in the place of the victim. Moreover, the request concerned family members, as in State v. White, 144 S.E.2d 481 (1944), but directly to the jurors themselves. This was clearly reversible under White. Surely counsel should have objected to the solicitor's improper closing argument, for the argument here parrots McDaniels, and also mirrors and found impermissible language used in White, supra.

For the aforementioned reasons, Petitioner respectfully prays this Court will grant the requested relief of a new trial.

ISSUE (B) WAS COUNSEL INEFFECTIVE FAILING TO REQUEST THE TRIAL COURT INSTRUCT THE JURY ON THE ESSENTIAL ELEMENT OF "CRIMINAL INTENT", WHICH IS AN ESSENTIAL ELEMENT OF EVERY COMMON LAW OFFENSE?

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There are two separate indictments. One is assault and battery with intent to kill. In South Carolina we have three types of assault and battery. We have assault and battery with intent to kill, which is up here. We have assault and battery of a high aggravated nature, which is the middle one, and then we have what's called just simple assault and battery.

In this case the defendant has been charged with assault and battery with intent to kill. In order to prove assault and battery with intent to kill the State must prove beyond a reasonable doubt, that the defendant committed an unlawful act of a violent nature to the person with malice aforethought. [Tr.p.272, L.16-25, p. 273, L.1-3].

Malice is defined as hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict injury or under circumstances that the law will infer evil intent. [Tr.p.274, L.5-9].

Therefore, there must be a combination of a previous evil intent and the act. [Tr.p.274, L.14-15].

A specific intent to kill is not an element of assault and battery with intent to kill, but

there must be a general intent to commit serious bodily injury. [Tr.p.275, L.11-14].

Intent may be inferred from when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which is to harm another person. [Tr.p.275, L.25, p.276, L.1-3].

Now, that is what the law says assault and battery with intent to kill means. In this particular case, if you find that the State has failed or not proven that the defendant is guilty of assault and battery with intent to kill, then you must determine whether the State has proved that the defendant is guilty of what we call assault and battery of a high aggravated nature, the lesser included offense is what it's called.

Assault and battery of a high aggravated nature includes all the elements of assault and battery with intent to kill except malice aforethought. [Tr.p.275, L.4-14].

Circumstances of aggravation include the use of a deadly weapon, with intent to commit a felony. [Tr.p.275, L.18-19].

As was seen above the Trial Court used repeated references to "criminal intent" coupled with the doing of a "wrongful act" instruction that was confusing, overlapping and misleading in such that a reasonable jurist could have interpreted this instruction to be over broad and vague to the point the jury was lead to believe that Petitioner was guilty but of what offense.

Petitioner asserts that counsel was ineffective for failing to request the Trial Court to instruct the jury on the essential element of criminal intent, and the failure to do so denied Petitioner his right to the effective assistance of counsel and his right to a fair trial.

DISCUSSION

Petitioner asserts counsel was constitutionally ineffective for failing to request the trial court to instruct the jury on the essential element of "criminal intent." The jurors are believed to follow the instructions of the trial court, *Richardson v. Marsh*, 481 U.S. 200 (1987)(citations omitted).

As was seen supra the Trial Judge's instructions included repeated references to "intent", yet the Court never instructed the jury on what "criminal intent" entails and how the jury is to assess criminal intent in rendering their verdict. The definition of assault and battery with "intent" to kill in no wise affects the ingredients which are necessary to constitute the offense of assault and battery intent to kill and assault and battery high aggravated nature, but leaves them exactly and in every particular as they stood at common law, *State v. Judge*, 208 S.C. 497, 505, 38 S.E.2d 715, 719 (1946). Consequently, the element of "criminal intent" though not alluded to in the statutory definition of assault and battery high aggravated nature, still is a necessary element in South Carolina under common law practice, *State v. Thraikill*, 73 S.C. 314, 318, 53 S.E. 482 (1906)("....criminal intent....is an essential element in every common law crime."), Cf. *State v. American Agricultural Chemical Co.*, 118 S.C. 333, 337, 110 S.E. 800, 802 (1920)(emphasis original).

Assault at common law, was an "unlawful" setting upon one's person." Chase's Blackstone's Commentaries, 4th ed 1914, p.675 (emphasis supplied). The charge given by the trial Court used

repeated references of "intent", and the accompanied "unlawful act" language used in the Court's instructions. The Court instructed the jury "In order to prove assault and battery with intent to kill the State must prove, beyond a reasonable doubt, the defendant committed an "unlawful act", (Tr.p.272, L.25, p.273, L.1-2), and further instructed, "Must prove beyond a reasonable doubt that the defendant committed an "unlawful act" of a violent nature to the person with malice aforethought, (Tr.p.273, L.3-6).

The Court went to charge the jury, that "you got several things, You got assault. You got battery. You got an "unlawful act" of a violent nature and you got malice aforethought, (Tr.p.273, L.7-9). The battery is the "unlawful" touching of another person by a person who has committed the assault. In other words, you draw back and that's the assault. You hit, that's battery. That's the "unlawful" touching, assault and battery. The battery is the "unlawful" touching of another person by a person who has committed the assault. An "unlawful" touching can be caused by a part of the accused's body, (Tr.p.273, L.18-25, p.274, L.1).

Petitioner asserts the Court instructions were confusing and overlapping to the point that without being instructed on the element of "criminal intent" the Court's repeated reference to "unlawful act" allowed the jury to render a verdict of guilty on an erroneous jury instruction since the instruction lacked the essential element of "criminal intent" (emphasis supplied).

Petitioner asserts that counsel was ineffective for failing to request the trial court to instruct the jury on the element of criminal intent. Had counsel requested the instruction and the Court charged the jury with the proper instruction there is a reasonable probability that, but for this error the results of the trial would have been different.

For the aforementioned reason, Petitioner respectfully prays this Court grant the requested relief of a new trial.

Ineffective Assistance of Counsel Continued:

Issue (C) Trial counsel rendered the ineffective assistance of counsel in his failure to object to, and motion to quash unlawful indictment, denying the Applicant of his Fifth, Sixth, and Fourteenth Amendment rights to a lawfully returned indictment, effective assistance of counsel, and due process to a fair proceeding.

Indictment No. 2007-GS-05-169 "Attempted Kidnapping" and Indictment No. 2007-GS-05-168 "Assault and Battery with Intent to Kill" shows that said indictments were true-billed May 31, 2007, and signed by the Foreperson of the Grand Jury on May 31, 2007. The same indictments shows that the Grand Jury convened on June 4, 2007, well after being signed and true-billed on May 31, 2007. (see attached indictments)

Here, Applicant was denied his Fifth Amendment, and S.C. Constitution art. 1, Section 11 rights that "no man shall be held to answer for any capital offense or infamous crime except that indictment be handed down by a grand jury." And,

Section 14-9-210 of the South Carolina Code of Laws requires strict compliance with its provisions, and mandates that the grand jury shall be impaneled under the jurisdiction of the Court of General Sessions before the lawful return of a true-billed indictment be made. In the instant case, this procedure was not followed.

Counsel's failure to object to this "rubber-stamped" unlawful indictment denied Applicant the 6th Amend. as well as 14th Amend right to a fair trial with the effective assistance of counsel and due process and in violation of his Fifth Amend. right to indictment by a lawfully impaneled grand jury.

Issue (D) Ineffective Assistance Of Counsel

Trial counsel rendered the ineffective assistance of counsel in his failure to object to the in-court identification of Applicant as the perpetrator, that was inadmissible due to a suggestive out-of-court identification procedure that created a very substantial likelihood of irreparable misidentification thereby denying the Applicant of his Sixth and Fourteenth Amendment rights to the effective assistance of counsel.

During in camera/in limine hearing, trial counsel did object to the in-court identification due to the improper and highly suggestive out-of-court identification procedure used in this case. (Tr. p. 30, L. 5 - p. 37, L. 21). But trial counsel failed to object to the victim's in-court identification and the out-of-court identification procedure, was entered/offered during trial and failed to procure a final ruling, therefore failing to preserve this issue for appellate review. (Tr. p. 61, L. 16-23).

Trial counsel's failure to investigate and prepare to challenge the in-court identification and the improper and highly suggestive out-of-court identification procedure, as there was more than ample evidence that would have shown this in-court identification was unreliable and highly prejudicial to the Applicant.

(i) The victim's testimony was extremely inconsistent during both direct examination by the State and cross by the defense. (Tr. p. 55, L. 7 - p. 86, L. 18) and redirect examination (Tr. p. 87, L. 14-17) and his prior testimony during in camera/in limine hearing. (Tr. p. 32, L. 1 - p. 37, L. 21).

(ii) Victim testifies that he recognized Applicant by his voice, his stature and appearance, (Tr. p. 34, L. 12-13, p. 35, L. 17-20, p. 68, L. 17-20, p. 74, L. 22-25), that the police officer brought a photograph from Colleton County after he told them the Applicant's name (Tr. p. 34, L. 7-10; p. 37, L. 11-22), and shown one photograph from Colleton County ~~to~~ booking photo (Tr. p. 30, L. 15-18).

(iii) The victim testifies that Applicant walked right up to him, right up in front of him, stood there and looked at him in the face. (Tr. p. 57, L. 4-6, p. 68, L. 3-7). That Applicant pursued him when he ran toward the house, and after his wife turned on the outside lights, then Applicant ran around out in the driveway and out towards the street (Tr. p. 57, L. 19-23, p. 58, L. 1-4), and Applicant kept walking at a steady pace. (Tr. p. 75, L. 1-4).

(iv) Victim further testifies that Applicant's parents, ^{he knew} had known Applicant for a long time, were good friends or whatever. (Tr. p. 60, L. 19 - p. 61, L. 1-3; p. 69, L. 21 - p. 70, L. 1-12).

The victim never gave the Applicant's name to the police ~~in~~ his written-hand-written statement nor a description of clothing nor any identifying characteristic(s) in statement (see attached statement of Daniel Hiers) nor any other physical description of the Applicant, whom he was good friends and had known for years (Tr. p. 76, L. 20-21, p. 77, L. 17 - p. 87), and no description on CAD report generated by the 9-1-1

system (Tr. p. 116, L. 22 - p. 118, L. 12) but "a black man".

In the instant case, the photographic layout shown to Hiers was comprised of a single photograph only. This is unduly suggestive. This one photograph in the line-up that presupposes that this is the picture of the perpetrator. The accused knew to respond in kind by agreeing that this is the picture of the perpetrator indeed. This was an impermissibly suggestive photographic lineup.

Hiers' identification cannot be deemed reliable. The witness could not view the perpetrator properly in the face because it was dark when the crimes were committed. Hiers could see good enough to describe an Army trench coat that the perpetrator was wearing and the color as well as the coat had heavy buttons on it and the length was well ~~below~~ the knees because the coat obscured the pants perpetrator was wearing. No lighting was available until Hiers' wife, who was inside the house, turned on the lights after hearing noises outside of the house. Applicant can barely walk and can not run. And it is common knowledge among the persons of the town of Ehrhardt, the people that Applicant works with, most every one around the Bamberg area. And Applicant's medical condition can be traced back to at least 1996, due to an accident, and his medical records would substantiate the fact of his "permanent limp," an identifying, prominent characteristic. Hiers testified that Applicant ran ~~back~~ behind him hitting him in the head, then ran around driveway and to the street. Hiers nowhere in his handwritten statement to police that he had been assaulted by a long time friend, never described Applicant from his prior dealings with him. Hiers claimed to have made the voice identification on the same evening of attack, but took a while to match voice to his good friend. Additionally, the only match of ~~Hiers'~~ blood on what was believed to have been a coat worn by perpetrator found elsewhere is ^{of} no consequence not only because the evidence does not establish that Applicant committed the crimes charged but the evidence was misdescribed, at best.

The victim also testified that Applicant was wearing a "heavy" like an Army trench coat either navy blue or dark black (Tr. p. 62, L. 2-3) and was wearing a cap pulled down on his face but he never gave a description of any clothing in his handwritten statement. Hiers did testify that his own cap and jacket - cap was given to him by the Enterprise Bank of South Carolina that's in evidence had blood all over it (Tr. p. 66, L. 5-24, p. 72, L. 4-11, p. 73, L. 19-22, p. 57, L. 12-14). Said statement given the night of the attack and the morning after the alleged attack and before Applicant was arrested. And, coat entered into evidence at trial was a reversible light blue and navy blue with designs on either side.

Had trial counsel reviewed my ^{medical} records as I had asked him to do and spoken with several persons that I wanted to testify at trial - Applicant could have

shown the jury documented medical evidence of his inability to walk normal but with a "very pronounced permanent limp" that makes Applicant easily identified at a distance, due to injuries he received in accident(s), that did damage to the hips, legs and knees. Applicant could have shown that he can not possibly run. These injuries to his hips, legs and knees occurred in the early 1990's, a very minimum ten (10) years prior to the charges here.

Here, trial counsel's failure to investigate and interview several witness that would have verified injuries to Applicant and his statute and Applicant's medical records and doctors would have proved Applicant's medical claim that he was unable to run as well as an identifying characteristic - very pronounced limp - an extremely prominent identifying characteristic.

Counsel's failure to further object to this in-court identification of out-of-court identification when entered into trial - at the time it was entered into trial and in his failure to object to and obtain a final ruling, denied the Applicant Appellate review, in that, this issue was not preserved for review.

Furthermore, had counsel prepared for this trial, when the in camera/in limine ring was held, Applicant could have ^{shown} the above facts to the court, and in all probability, said evidence would have been suppressed.

This deprived the Applicant of his Sixth and Fourteenth Amendment right to the effective assistance of counsel and a fair proceeding.

Ineffective Assistance of Counsel continued...

Issue (09) Trial Counsel failed to object to and motion to quash unlawful "rubber-stamped" indictment.

Here, Indictment No(s). 2007-GS-05-169 "Attempted kidnapping" and 2007-GS-05-168 "Assault and Battery with Intent To Kill" were true-billed May 31, 2007, and signed by the Foreperson of the Grand Jury on May 31, 2007.

Said indictments show that the grand jury convened on June 4, 2007, in the body of the indictment, well after being true-billed and signed by the grand jury foreperson on May 31, 2007.

Trial counsel's failure to object to and motion to quash this unlawful "rubber-stamped" indictment denied the Applicant his Fifth, Sixth, and Fourteenth Amendment rights to a lawful indictment, effective assistance of counsel and due process.

(E) Ineffective Assistance of Appellate Counsel.

Appellate counsel rendered the ineffective assistance of appellate counsel in three different instances in the instant case: (i) Failure To Raise On Direct Appeal the following issues: (i) Defective/Insufficient Chain of Custody; (ii) Motion For a Mistrial or Curative Instruction That Jury Disregard Everything Said ^{by} A "Non-Responsive" or Possibly An Incompetent Witness; and (iii) Motion For A New Trial Based On The Fact Trial Jury Asked To Review Testimony of An Expert State's Witness Who Had Changed Her Testimony Completely From The Day Before But Jury Rendered A Verdict Without Having Reheard Testimony. All of which were duly objected to and preserved for appellate review. Thus, denying Applicant his Sixth and Fourteenth Amendment rights to the effective assistance of appellate counsel and a fair appeals process/proceeding.

(i) Defective/Insufficient Chain of Custody.

This defective/insufficient ~~evidence~~ - Chain of Custody was objected to being entered into evidence because sufficient chain of custody had not been established (Tr. p. 122, L. 11 - p. 123, L. 7). Again, because one police officer had testified that he had placed coat and stocking cap in a brown paper bag and ^{the} other police officer testifies that she placed evidence in a white plastic bag (Tr. p. 150, L. 22 - p. 156 L. 19) as well as p. 162, L. 3-17; p. 186, L. 11-15, p. 197, L. 3 - p. 198, L. 3.

Here, there's testimony of two Ehrhardt police officers testifying that one place coat and stocking cap in a brown paper bag, the other testifies that she put evidence in white plastic bag (Tr. p. 120, L. 2-4) and (Tr. p. 168, L. 1-3;).

Stocking was not on the "Evidence Log Sheet" that state's witness signed at SLED Forensics Department Lab and one police officer testifies that there should have been a stocking cap with coat (Tr. p. 105, L. 23-24) and the other testifies that she did not check pockets of the coat and that she did not recognize stocking cap (Tr. p. 128, L. 15-20) and (Tr. p. 127, L. 6-7). Police officer further testified that she destroyed brown paper bag - the original bag - evidence had been placed in (Tr. p. 165, L. 19-21).

Next, Expert State's Witness, former Ehrhardt police officer changes her testimony completely around from the previous day's testimony.

Sandra Tavanis, first cross-examination by defense:

Ms. Tavanis, is that the inventory sheet you filled out on a copy thereof? Yes, I believe it's a copy of it, yes sir. Does that inventory sheet list a knit cap? No, it did not. Three items, correct? (Tr. p. 128, L. 10-15).

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p. 128, L. 16-25

That's correct. I didn't search the pockets of the jacket, you know. So, I don't know whether that was part --- whether anything was inside of the jacket or not. And the reason you didn't search it is because it was sealed. Yea. Well, it wasn't sealed, but we put it in the bag, myself and the state attorney on, excuse me, the solicitor, assistant solicitor and that -- I forgot his last name. His first name is Ben. I don't remember his last name. And that was June of 2007 you bagged it and shipped it? Yes. And, so, it was not sealed prior to that. It was in the bag in the evidence area in the evidence room, yes, sir. (Tr. p. 128, L. 16 - p. 129, L. 6). And you do not have that bag that you took it out of here today, do you? That is the bag. This is the bag that it was in when you first saw it. Yes. Now, now, you were not working on January of 2007, correct? I was, I was not working on those days, no, sir. (Tr. p. 129, L. 12-19). And, so, the first time you saw this physical evidence, it was already in this bag? (Tr. p. 129, L. 24-25). Yes. You did not put it there. No, I didn't put it there. (Tr. p. 130, L. 1-3).

Sandra Tavanis, recalled the next day, direct by State:

Okay. Do you recognize the bag? Yes, I do. Okay. And was this the only bag that the evidence was in? During the course of the trial yesterday when the questions of the bags came up, I immediately remembered that that was the bag. However, during the time yesterday when everyone was talking, I remembered that, and there was a mention of the bag being sealed, and I remembered that there was a paper bag that had been stapled. When I produced the bag, this was in June, the day when I turned the bag into evidence over to SHED, whenever I went to SHED, before that the Solicitor, Ben Moore, and Mr. Bamberg, the Solicitor's investigator, came down to Ehrhardt and Mr. Moore wanted to inspect the evidence. I attempted to get staples -- I remembered that I had attempted to get the staples out of the bag very nicely to not break the bag. Well, I didn't do it. And, I do remember whether it was Mr. Moore who told me or whether it was me and I tore the bag open in order for them to inspect the evidence. It was a regular, a regular brown bag that you get at the grocery store. And after they inspected the evidence, there was no way that that bag could, could cover the evidence any more because it was all torn up, and I remember asking Mr. Moore what he wanted me to do, and he said just to put it in the other bag, and I threw the other bag, the brown bag away at that time because it had nothing to do with evidence. I sealed it up and subsequently transported it to, to SHED forensics. I apologize to the Court and I apologize to the jury for wasting your time in making this mistake. I forgot. That's it. Ms. Tavanis, how long after you, you changed the (Tr. p. 164 - p. 165, L. 25). continued page #17

evidence from that paper bag to that white paper bag did you take it to SLED? I took it to SLED the next morning. (Tr. p. 166, L. 1-3).

Sandra Tavanis, Cross by Defense (Tr. p. 166, L. 11 - p. 168, L. 25):

Did you write this on the outside of the bag? No, that's not my handwriting. Is there anything on this bag, and I'm gonna show it to you, where you would of sealed it and signed over it documenting that you're the person that did that? No, sir. And do you recall whether ~~or~~ not the paper bag that you threw away had been sealed by Officer Bearden and signed by him? I don't recall whether there had been any signs on it, sir. So, where SLED has a procedure where everybody signs who touches it, Ehrhardt has a procedure where we throw away the old bag? That was during a discussion with the solicitor, sir, at the, at the time. That's a difficult question. Could you repeat it? Is it policy of the Ehrhardt Police Department to throw part of the chain of custody? There's no written policy that you have an evidence log? At that time, no, sir, we did not. So, we have no way to document who handled this evidence this evidence? At this point, sir, no. And not at that point? Correct. Yes. And you testified very strongly yesterday that was the bag you saw it in. You were sure. I believe I was -- I believed it at the time, yes, sir. And then you sit on that front row for the rest of the hearing, correct? Yes, sir. And you heard me argue to the judge that there was a chain, a hole in the chain of custody? You heard those arguments? Yes, sir, I did. And after hearing those arguments you changed your testimony?

The Court: Mr. Luginbill, Don't be badgering her. Just ask her in a very calm manner. After you heard me argue that there was a chain of custody problem that could have cost the State this case, you remember --

The Court: Mr. Luginbill, that's an improper question without all of that editorializing. You changed your testimony after you heard me argue the chain of custody, didn't you? I remembered, during the course of your arguments, that there was -- that the identification -- when y'all, when y'all said something about it being sealed, okay, I literally turned to Acting Chief Bearden and said it was stapled, wasn't it, and he said yes. And that just woke me up, and, and yes, I did -- I am changing my testimony. I made a mistake. Obviously I was struck on stupid yesterday is the only way to put it. Of course, if there was a chain of custody we would know. Absolutely. But we don't have that, do we? That's right.

Three objections were made against the evidence being entered: (a) Tr. p. 122, L. 22-24; (b) Tr. p. 123, L. 2-3; (c) Tr. p. 151, L. 16-18; p. 151, L. 22-23; and (d) Tr. p. 197, L. 3-9.

All three objections were denied. The first objection was overruled, and put into evidence (p. 123, L. 4-7); second objection, the court again overruled objection (p. 156, L. 2-19); and third objection, overruled again (p. 197, L. 21 - p. 198, L. 3).

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Here, Applicant submits that the defective/insufficient chain of custody was objected to when entered into evidence, and ruled on in the instant case.

I was denied the effective assistance of appellate counsel here, when appellate counsel failed to raise on direct appeal defective/insufficient chain of custody that was properly preserved ~~by~~ by objection for appellate review on direct appeal of his conviction and sentence, denying the Applicant the Sixth and Fourteenth Amendment rights guaranteeing Applicant the effective assistance of appellate counsel and due process to a fair appeals process.

Trial Court erred in allowing the defective/insufficient chain of custody that was clearly defective, insufficient and tainted and was highly prejudicial to the Applicant and should not have been entered into evidence. Had this evidence been suppressed and jury not allowed to see, and hear the reference to it, the outcome of instant case would have been different.

Clothing evidence - coat, gloves, baseball cap, and stocking cap should not have been entered into evidence, at trial, in that, a non-certified police officer, not trained in the proper collection and handling and storage of said evidence; worked on the Ehrhardt Police Force for less than thirty (30) days and transported evidence around on patrol, even carried it to trial counsel's office (Tr. p. 108, L. 24 - p. 109, L. 1-3, 6-7). Stocking cap entered into evidence, that was not properly recorded and documented where found or seized, not on the Evidence Inventory that State's witness signed when turning the evidence into SHED Forensics Lab. Then admits that she did not recognize the stocking cap (Tr. p. 127, L. 4-7, L. 10) and testifying - actually assuming that coat was inside the jacket (Tr. p. 127, L. 6-7) and another police officer testified that he thought that there was a stocking cap that should been with the coat (Tr. 105, L. 23-24).

Then evidence bags being torn open and changed from brown paper bag to white plastic bag without any chain of custody. Neither could testify how evidence was taken out of one bag and placed in another (Tr. 120, L. 2-4, 10-13, 14-17; p. 126, L. 4, L. 24-25, p. 127, L. 2, 4-7, 10; p. 128, L. 10-25, p. 129, L. 1-6, 12-19, 24-25).

Then the most wholly incredible testimony of Sandra Tavanis, a former Ehrhardt police officer, on recall/redirect by the state (Tr. p. 164, L. 17 - p. 166, L. 3) and cross/recross by defense (Tr. p. 166, L. 11 - p. 168, L. 25). Even Tavanis agreed that there was no chain of custody (Tr. p. 168, L. 21-25).

Applicant would assert that, at the least, this was deception and fraud on the court, as well as perjury on the part of a state's witness - a police officer or rather, former police officer.

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The trial court erred in allowing this defective, insufficient and tainted evidence into evidence over trial counsel's objections, thereby violating the Applicant's Sixth and Fourteenth Amendment rights to a fair trial process. And that appellate counsel's failure to raise this issue that was properly preserved for appellate review by objecting to and receiving a ruling from the trial court denied the Applicant appellate review of this issue, effective assistance of appellate counsel and fair ~~appellate~~ appeals process, in violation of Applicant's Sixth and Fourteenth Amendment rights.

Ineffective Assistance of Appellate of Counsel:

Issue (E)(ii) Appellate counsel rendered the ineffective assistance of counsel for her failure to raise on direct appeal the issue of the Trial Court's denial of Motion For A Mistrial or Curative Instruction That Jury Disregard everything said by a "Non-responsive" or possibly an incompetent witness.

Here, State's witness, James Grant, testified that he was hard of hearing he also appeared to not understand questions, was answering questions totally out of the frame of questions (Tr. p. 97, L. 9 - p. 100, L. 9). Then when trial counsel attempted to question him - claimed his hearing aid battery was dead, the court allowed Grant to step off witness stand while bailiff got him an hearing aid battery (Tr. p. 100, L. 17 - p. 101, L. 21).

Grant resumes his testimony. He seems to answer ~~in~~ incoherently at times, nodding his head at times, and was not directly in response to questions being asked him (Tr. p. 131, L. 1 - p. 136, L. 9).

During questioning during cross by defense, Grant's testimony was not in response to questions, he nodded many times, testifies that he signed statement but did not write middle, that someone else wrote it, that he had given Applicant coat, then that he did not give Applicant coat (Tr. p. 131, L. 1 - p. 136, L. 9; p. 133, L. 21 - p. 134, p. 11).

Trial counsel motioned that the he didn't have the opportunity to adequately cross-examine Grant, that he didn't believe him to be a competent witness on for a mistrial or for a curative instruction that they disregard everything ~~Grant~~ Grant said, and the trial court declined motion (Tr. p. 137, L. 11 - p. 139, L. 4).

Grant's testimony, at the very least, should have been stricken and the jury advised to disregard what had been said due to witness being incompetent. This objections and motions were again properly preserved for appellate review.

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Here, the trial court again erred in allowing Grant's testimony as it is clear that he did not ~~be~~ realize or understand questions being asked. At the least, trial court should have stricken his testimony and give a curative instruction. Appellate counsel again rendered ineffective assistance of ~~appellate~~ appellate counsel and denied the Applicant his Sixth and Fourteenth Amendment rights to effective appellate counsel and fair appeals process.

Ineffective Assistance of Appellate Counsel continued:

Issue (E)(iii) Appellate counsel rendered ineffective assistance of counsel in her failure to raise on direct appeal the denial of motion for a new trial Based on the Fact Trial Jury Asked to Review Testimony of an Expert State's Witness who had changed her testimony completely from the day before but jury rendered a verdict without having reheard testimony.

During deliberations, the jury sent a note to the trial court requesting a copy of transcript of Sandra Tavanis, the trial court responded that they did not have a transcript. That her testimony or portions could be replayed if they wished (Tr. p. 282, L. 22 - p. 283, L. 3).

The jury then came into open court and the testimony of Sandra Tavanis was played for the jury; then the jury requested that it be played again louder (Tr. p. 283, L. 11-14) but the court states that's about as good as it gets. We can try another procedure. I'll ask her to do that and y'all step back and continue to work. Advises the jury that if he could get it to work that call them back out (Tr. p. 283, L. 15-18).

Then the jury ~~exit~~ exited the courtroom (p. 283, L. 19) and returned a verdict (p. 283, L. 20).

Trial counsel makes a motion prior to sentencing, asking for a new trial based on - the jury asking a question to review the transcript and they rendered a verdict prior to ever getting that transcript read to them or being able to hear testimony (p. 286, L. 24 - p. 287).

Based on that, counsel brought to the attention of the trial court that the jury felt it important enough to ask that they be afforded opportunity to get that testimony especially since it was a law enforcement witness who clearly changed her testimony from one day to the next. They wanted to hear her initial testimony.

Here, the trial court clearly committed a grievous error of the ~~the~~ greatest magnitude. The trial court denied the fact finders - the jury -

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their request to hear or to have the testimony of a state's witness-law enforcement officer whom had the most wholly incredible testimony before the Court, the finders of facts, and the public and Applicant.

The Applicant submits that had the jury heard or been read Sandra Tavanis testimony as they requested, the outcome of his trial would have been different.

At the very least, here state's witness, Sandra Tavanis, committed fraud on the court. A law enforcement officer was allowed to commit perjury at Applicant's trial.

In the instant case, convictions and sentences were gained through the judicial acts of the perjury of Sandra Tavanis.

Under the Due Process Clause of the Fourteenth Amendment, the Applicant's conviction can not be allowed to stand on the "wholly incredible testimony of Sandra Tavanis nor the mishandled, defective and tainted evidence, of such that items could not even be said where they were taken from. Applicant asserts that even the very basic search protocol is checking pockets for contraband and then testify that she destroyed an evidence bag. This blatant misconduct not only harmed Applicant, an innocent man, by rendering him guilty and imprisoned him, this misconduct harm and destroys the integrity of the Applicant's trial. It's shocking - a total miscarriage of justice.

And, here, appellate counsel failed her duty to Applicant, in that she did not even attempt to do an Anders brief and present transcript to the High Court of South Carolina. Denying Applicant the basic protections of the Sixth and Fourteenth Amendments.

Appellate counsel presented the following argument on Appellate's direct appeal: "The trial judge erred in allowing the accuser's identification testimony into evidence at trial because the highly suggestive out-of-court identification procedure used by police where only one photograph was displayed in the photographic layout and shown the accuser resulted in an unbelievable identification and a misidentification in the case.

This, Applicant asserts is an issue for PCR. This argument was not properly objected to - object to the evidence at the time it is entered. Here, the objection was during in limine hearing and therefore, not preserved for appeal.

continued page #22

In the instant case, there was no objection at the time the evidence was entered.

As the South Carolina Appellate Court Rules, Rule 220(b)(1) and the following authority hold: State v. Wannemaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) (holding a ruling in limine is not final and unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review). That's what the opinion in Applicant's case says.

Applicant's submits that he has a limited understanding of the law but he believes that rule is to the point.

Appellate counsel rendered ineffective assistance of appellate counsel in failing to raise the fact that the trial judge/court erred in not allowing the jury to hear the testimony of Sanders Tavanis again or the transcript being read to them, in violation of his Sixth and Fourteenth Amendment rights.

1 State of South Carolina)

In the Court
Of Common Pleas

2 County of Bamberg)

3 Docket No. 2012-CP-05-077

4
5
6 Johnnie L. Jones,)
Applicant,)

7
8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent)

11
12 July 8, 2013
13 Aiken, South Carolina

14
15 B E F O R E:

16 The Honorable R. Ferrell Cothran, Jr., Judge.

17
18 A P P E A R A N C E S:

19 Charles T. Brooks, III, Esquire
Attorney for the Applicant

20 Daniel Gourley, Assistant Attorney General
21 Attorney for the Respondent

22
23
24 Brenda J. Sigwald, Circuit Court Reporter
For the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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Certificate of Reporter

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25

1 MR. GOURLEY: May it please the Court, Your Honor?

2 THE COURT: Yes, sir.

3 MR. GOURLEY: Your Honor, the next case is Johnnie
4 L. Jones versus State of South Carolina, Docket Number
5 2012-CP-05-077. The applicant was indicted during the June
6 2007 term of the Bamberg County grand jury for assault and
7 battery with intent to kill and attempted kidnapping. On
8 April 13th, 2010, applicant proceeded to a jury trial in
9 front of the Honorable Doyet A. Early.

10 The applicant was found guilty of assault and
11 battery of a high and aggravated nature and attempted
12 kidnapping. On April 14th, 2010, Judge Early sentenced
13 applicant to 18 years for attempted kidnapping and 10 years
14 for the ABHAN charge. The applicant was represented by Dan
15 Luginbill, Esquire, who is present in the courtroom today.

16 Applicant filed a timely application for post
17 conviction relief on April 30th, 2012, alleging he was
18 being held in custody unlawfully based on ineffective
19 assistance of counsel by failing to object to the
20 solicitor's improper closing statement and failing to
21 effect any proper jury instruction regarding criminal
22 intent.

23 The State made its return on August 9, 2012. The
24 applicant is represented by Charles T. Brooks, III,
25 Esquire.

1 THE COURT: Okay. Mr. Brooks?

2 MR. BROOKS: How you doing, Judge.

3 THE COURT: I'm good.

4 MR. BROOKS: Judge, we would go ahead and call
5 Johnnie Jones. I notice you did one earlier in a
6 wheelchair.

7 THE COURT: He can sit right there if he can talk
8 loud enough. Can you talk loud enough, Mr. Jones?

9 THE APPLICANT: Yes, sir.

10 MR. BROOKS: Now, you've got to talk loud enough
11 for that lady to hear you there.

12 THE APPLICANT: (Reporter could not hear.)

13 THE COURT REPORTER: I didn't hear him.

14 THE COURT: All right. We'll try it.

15 JOHNNIE JONES,

16 having been duly sworn, testified as follows:

17 THE CLERK: Would you please state your full name
18 for the Court.

19 THE WITNESS: Johnnie L. Jones.

20 DIRECT EXAMINATION

21 BY MR. BROOKS:

22 Q Mr. Jones, I'm going to stand over here like the
23 other lawyer did with the other person who was in a
24 wheelchair. So when you talk to me, if I can hear you over
25 here, then I know she can hear you over here, okay?

1 A Yes, sir.

2 Q All right. Now, you had Mr. Luginbill to represent

3 you?

4 A That's correct.

5 Q Was he Court appointed?

6 A Yes.

7 Q Okay. Now, remember, you got to talk up.

8 A Yes, sir.

9 Q And you understand what you're here for today?

10 A Yes, sir.

11 Q Post conviction relief?

12 A Yes, sir.

13 Q Where we're asking Judge Cothran to give you a new

14 trial?

15 A That's right.

16 Q Okay. All right. Now, you raised certain issues

17 on PCR.

18 A Yes, sir.

19 Q About Mr. Luginbill's representation of you?

20 A Yes, I did.

21 Q Now, let's go through them.

22 A Okay.

23 Q First one, you said he didn't raise an issue about

24 something on the closing argument with the prosecution.

25 Explain that.

1 A He didn't raise -- he did not raise the --

2 Q Talk up.

3 A Closing statement, he did not raise the clothing,
4 the clothing they had, the items was wrong, all the items
5 was wrong.

6 Q All the items were wrong on the clothing.

7 A Yes. It was supposed to be a trench coat and he
8 came in with a windbreaker.

9 Q Now, I'll tell you what we're going to do,
10 Mr. Jones.

11 A Sir?

12 Q Why don't we roll you over here because I can sense
13 this is a little bit of a problem for everybody to hear
14 over here and it's important for this court reporter to get
15 you down. We're going to put you right hear where I'm
16 standing.

17 A Okay.

18 Q All right. Mr. Jones, we were talking about the
19 clothing.

20 A That's correct.

21 Q Go ahead and explain?

22 A The victim pointed out that I was wearing a trench
23 coat and when we got to trial, they brought a windbreaker
24 to trial. The victim pointed out two or three different
25 times that it was a trench coat, went blow the knee. They

1 brought a wind breaker about waist length with a hood on
2 top. He said I had a trench coat with the collar turned
3 up. Wasn't no collar on the windbreaker. The windbreaker
4 had a hood on it. He didn't object to it and he kept right
5 along with the program.

6 Q You say he went right along with the program, he
7 didn't object to it?

8 A He didn't object to it, no.

9 Q And that's one of the issues that you raised about
10 ineffective assistance of counsel?

11 A Exactly.

12 Q And another issue you raised was something about
13 criminal intent that's in your application of assault and
14 battery, attempted kidnapping. You remember that being
15 raised in your application?

16 A Sort of.

17 Q Criminal intent, you talked about intent?

18 A You might have --

19 THE COURT REPORTER: I didn't understand him.

20 THE WITNESS: He might have to refresh me on that.

21 BY MR. BROOKS:

22 Q You want me to refresh your memory on that?

23 A Yeah, do that, please, sir.

24 Q You said -- I'm going to try to go -- Counsel
25 failed to question trial court to instruct the jury on the

1 essential element of criminal intent. Does that help you
2 now?

3 A You talking about the Court, when the jury sent not
4 one, not three notes up saying they couldn't hear part of
5 the statement of the person, Sandra Savene had -- she had
6 brought forth the day before about the evidence was in a
7 plastic bag the first day she saw it and then the second
8 day of court they put her back on the stand again and she
9 said was she stuck on stupid.

10 THE COURT: Wait a minute, say that again.

11 THE WITNESS: The second day of trial, she said the
12 officer came back and said that she was stuck on stupid the
13 first day --

14 MR. BROOKS: She was stuck on stupid?

15 THE WITNESS: She was stuck on stupid. Okay. She
16 said she was stuck on stupid and she got like -- she said
17 it was like in a plastic bag the first day she saw it and
18 then the second day she said she was stuck on stupid and it
19 was in a brown paper bag. Mr. Benjamin Moore, the
20 solicitor and investigator came down to inspect the
21 evidence. The evidence she said was in -- she told they
22 had a paper bag open so that Mr. Moore --

23 MR. GOURLEY: Objection, Your Honor, hearsay.

24 MR. BROOKS: He's talking about stuff that came out
25 in trial.

1 THE COURT: I understand. He's talking about
2 testimony in the trial.

3 MR. GOURLEY: I apologize.

4 THE COURT: Is that what you're talking about?

5 Yes. Yes, sir. See Mr. Moore asked the
6 investigation and he didn't even investigate or examine the
7 evidence. So the evidence was in a plastic bag and he
8 turned around and tore it open. Then he throw it away.
9 Mr. Moore and the investigator told her to throw away part
10 of the evidence, the old bag and put it in another bag, in
11 a plastic bag. That's how the evidence got tampered.
12 Somebody had to -- had take the trench coat out of there
13 because the trench coat wasn't there. He brought a
14 windbreaker to trial. So really where did the trench coat
15 go to?

16 BY MR. BROOKS:

17 Q And so you're saying basically --

18 THE COURT: Wait a minute, just so we can get --
19 we're back on the trench coat now or are we dealing with
20 the charges? You asked him what the charge was and he's
21 somehow back on the trench coat.

22 Which one are you talking about?

23 THE APPLICANT: Well, we're talking about the bag,
24 that perjury statement that she made, the first day it was
25 in a plastic bag and then she turned around and said on the

1 second day that she was stuck on stupid, it was a paper bag
2 and then the paper bag, she tore the evidence out of the
3 paper bag so they could investigate it. Then she said the
4 solicitor, Benjamin Moore told her to put the paper bag in
5 the trash and put the evidence in a plastic bag so when she
6 threw away the paper bag away evidently she throw away the
7 trench coat too.

8 THE COURT: Did the evidence custodian testify to
9 that? At trial?

10 THE APPLICANT: It's not in the transcript.

11 THE COURT: That's all the issue dealing with the
12 trench coat, right?

13 MR. BROOKS: The trench coat versus windbreaker.

14 THE COURT: Right.

15 THE APPLICANT: Yeah.

16 THE COURT: Okay.

17 BY MR. BROOKS:

18 Q All right. Now, did you raise any other issues
19 that you want to tell the judge about?

20 A The perjury.

21 Q The perjury?

22 A The chain of custody, the chain of custody that was
23 lost.

24 Q Perjury, chain of custody and what else?

25 A And tampering.

1 Q And tampering of evidence? Okay. Now, the perjury
2 you're talking about the Sandy lady, right?

3 A Uh-huh.

4 Q Is that a yes?

5 A Yes, sir.

6 Q Okay. All right. Are there any other issues that
7 you want the judge to consider on PCR?

8 A Where the judge really -- he abused his power when
9 the jury sent out three notes saying that they want to hear
10 the statement from the day before Sandra -- they sent out
11 not one, two but three notes to hear, which could have been
12 a big difference in my trial, what did she say the day
13 before. But Early, he told the jury to go back and go
14 ahead and deliberate, you know, like this lady talking like
15 she's doing right here, she could read it to the jury
16 because they wanted to hear the perjured statement that
17 she made the day before.

18 Q Okay. So that's what you mean by the perjury?

19 A Uh-huh.

20 Q Is that a yes?

21 A Yes, sir.

22 Q Now, remember, when you're speaking, you got to say
23 yes or no, you got to talk.

24 A Yes, sir. I'm trying to keep my head together,
25 yes, sir.

- 1 Q I know, I know, you want a new trial, right?
- 2 A Right.
- 3 Q All right. Now, didn't you tell me something else
- 4 about a plea offer?
- 5 A Yeah. There was a plea offer that was made and
- 6 that one I did not receive until I was at R & E.
- 7 Q After your trial?
- 8 A After the trial I was already at R & E.
- 9 Q What did you find out there?
- 10 A That it was a three-year plea and it was three
- 11 years plea and probation and then I could go home. I did
- 12 not know that at the time. If I did, I probably would have
- 13 took that to keep my life on track.
- 14 Q Okay. Now, were you in jail the whole time waiting
- 15 to go to trial or did you get out on bond?
- 16 A No, it took me 8 months to get out on bond because
- 17 Kirkland, which is not here. Kirkland was supposed to be
- 18 the public defender at the time. He was saying he couldn't
- 19 get me before the judge and finally at last, I finally got
- 20 a bond, then he took the bond and Kirkland took the bond
- 21 and he disappeared and it took me another month to get out
- 22 after Kirkland got me the bond.
- 23 Q Okay. And then how long were you out of jail
- 24 before you went to trial with Mr. Luginbill?
- 25 A About -- just about four years.

1 Q About four years?

2 A Just about. It happened in '07, so I got out -- I
3 mean I ain't went back to court until '010.

4 Q Now, you went to trial --

5 A In '010.

6 Q And you said that the case happened in '07?

7 A '07.

8 Q Okay. So you were out for about three years before
9 going to trial?

10 A Yes, sir.

11 Q Okay. You remember meeting with Mr. Luginbill
12 about your case?

13 A Well, I can't -- well, first it started off with
14 Kirkland and then Kirkland dropped me and Luginbill was
15 supposed to pick up because Kirkland got his own law firm
16 and then in the trial, I see Kirkland doing a lot of
17 cross-examining and I didn't see Kirkland in the trial,
18 but --

19 Q But you didn't -- those lawyers --

20 A I only talked to Luginbill about two -- about
21 twice, but he mostly called and -- he wanted me to come
22 take a DNA -- they wanted a DNA sample. He came to get the
23 sample and he came in over at the sheriff's department with
24 a swab with no gloves and envelope opened. The evidence
25 that went to SLED in '07, he had that in the back of the

1 police car. That's why he couldn't see the evidence
2 because it was in the back of the police car. I looked in
3 the back of the car. The evidence was on the back seat of
4 the car which was my windbreaker jacket with a no limit
5 soldier on the back. That's how I know. That's why I
6 asked him. He said the lawyers -- I told him I wouldn't do
7 anything until I seen evidence. So Luginbill didn't do any
8 investigating at all.

9 Q Okay.

10 A He ended up paying the investigator to investigate,
11 then come to find out the investigator -- wait a minute,
12 let me say this: The lawyer brought the evidence -- the
13 police officer brought the evidence in with a period and
14 ask let me see it so he took out a plastic bag. He showed
15 the coat which was my windbreaker jacket and the hat. No
16 gloves on his naked hands.

17 Now, how this evidence get back to SLED again,
18 which he had took it back.

19 Q Okay. And that's one of the issues that you raised
20 for ineffective assistance of counsel, Mr. Jones?

21 A Yes, sir. And Luginbill sitting right there, he
22 didn't want the family in his office -- he didn't want my
23 wife and daughter in the office because he didn't work that
24 way.

25 Q Okay. Now, let me ask you this, Mr. Jones.

1 A Yes, sir.

2 Q Mr. Luginbill was court appointed?

3 A Court appointed, yes, sir.

4 Q You did not go out and hire your own lawyer?

5 A No, sir, I would not, no, sir. I didn't do that.

6 Q Okay. Now, is there anything else you want to say
7 about this case that we have not covered?

8 A Well, like I said, the man when he tore the
9 evidence open in the office, Mr. Luginbill stood -- why
10 would this man bust open the evidence in the plastic bag
11 and touched the coat with no gloves on and then come to
12 find out, the gloves and stuff that he said was -- somebody
13 else messed up the evidence. The man said I hit him with a
14 brick several times. I mean, the brick never come to
15 court. It was only a point saying a brick. This man is 70
16 something years old and I'm getting -- it must have been a
17 sponge. But he said it was a brick.

18 Q I understand, Mr. Jones. Is there anything else
19 that we haven't covered? This is the day to get everything
20 out.

21 A The chain of custody is another that you --

22 Q Now, you can't testify -- you're talking about the
23 stuff in the officer's car?

24 A Right. The clothes they found -- they found out we
25 had a conflict of interest long time ago. They found the

1 evidence the way it was at his house. That's another
2 problem. That evidence had nothing to do me. What was my
3 windbreaker have to do with it. It didn't have anything to
4 do with this crime. This man saying its a trench coat. I
5 want to know why it was the trench coat wasn't at trial.
6 Luginbill didn't actually believe it was a trench coat.

7 Q Okay. All right. Is there anything else?

8 A I'm pretty sure I covered most of it.

9 Q All right.

10 A And I mean, excuse me, the investigator that my
11 wife had hired to help us with the case because Luginbill
12 didn't hire, didn't do no investigation or nothing. He
13 came -- and like I said, my sister was talking he had been
14 my sister's house I was doing some work for my sister at
15 her house with the investigator. The investigator said
16 that this man was always in trouble but he said this man
17 should know my brother by voice. I didn't see this man in
18 about ten years, but she said he would have known him by
19 voice and the investigator told Luginbill, one of them
20 turned it over to the solicitor, voice, because voice never
21 come up until the day of trial and I wanted to know how the
22 question in trial never came up -- none of the stuff I got
23 from Luginbill until the day of trial.

24 Q Okay. Now, didn't you also tell me something about
25 your classification at SCDC?

1 A You mean what I'm doing in there?

2 Q Did you tell me about they had you listed as a sex
3 offender?

4 A Oh, oh yes, they got me down as a registered sex
5 offender and I'm wondering what was up with that. I mean
6 it wasn't no part of sex was going on with that.

7 Q Obviously, you would like to have that lifted off?

8 A I would like to have that lifted off if I could.

9 Q Okay.

10 A That's something I don't know nothing about.

11 Q Okay. Is there anything else you want to tell
12 Judge Cothran before I sit down and let the attorney
13 general's office ask you questions?

14 A No, sir, I think it's all covered.

15 Q All right. Answer any questions they may have.

16 **CROSS-EXAMINATION**

17 By MR. GOURLEY:

18 Q Mr. Jones, how many times did you meet with
19 Mr. Luginbill prior to your trial?

20 A About twice.

21 Q About twice. Did he ever go over discovery with
22 you? The evidence they had in the case or anything like
23 that?

24 A He didn't do anything about the trench coat.

25 Q But did you review the other State's evidence that

1 they had against you that potentially proved your guilt?

2 A Yeah, he said it was the coat there. He said he --

3 Q Did you -- did y'all discuss any possible defenses
4 regarding this? I believe there was an alibi defense that
5 was tried to be raised at trial? Correct?

6 A I don't recall.

7 Q Y'all didn't discuss any defenses of how you were
8 going to combat this trial?

9 A Could have; I can't recall any of that.

10 Q No problem. And did you give Mr. Luginbill any
11 witnesses or leads to investigate?

12 A Yes, I did.

13 Q And who would those be?

14 A I give my wife, my niece over there, Maricky.

15 Q I'm sorry, Mr. Jones, I can't hear you.

16 A Maricky.

17 Q And who is that?

18 A My niece.

19 Q Okay.

20 A And my wife.

21 Q Okay.

22 A And Michelle McDonald.

23 Q And who is that?

24 A That's the lady I was supposed to work on her car
25 that afternoon they say this occurred.

1 Q Okay. And they all testified at your trial,
2 correct?

3 A Uh-huh.

4 Q Okay.

5 THE COURT REPORTER: Is that a yes?

6 THE WITNESS: Yes.

7 BY MR. GOURLEY:

8 Q Mr. Jones, I'm going to go back to your testimony
9 with you real quick so we can try to clarify a few things.
10 Now, one of your allegations is the issue with the chain of
11 custody with the evidence going from a brown paper bag to a
12 plastic bag, correct?

13 A Uh-huh.

14 Q And your defense counsel didn't object to that
15 chain of custody, correct?

16 A He didn't --

17 THE COURT REPORTER: I didn't understand.

18 THE WITNESS: He didn't intentionally object to it

19 BY MR. GOURLEY:

20 Q He didn't object to it?

21 A No. Like he should have, he didn't.

22 Q But he did object to it, you're just saying he
23 didn't object as well as he should have?

24 A He didn't object to the evidence because the
25 evidence should have been suppressed to start with.

1 Q And he did make a suppression motion for the
2 evidence, correct?

3 A Who?

4 Q He did make a motion to suppress the evidence. He
5 did object to the evidence though?

6 A He didn't object, he argue that -- he didn't argue
7 enough.

8 Q Okay. And regards to the -- whether or not the
9 replaying of the testimony throughout the trial, that's
10 another one of your allegations that the jury came back and
11 requested that the tape be played for them to hear it?

12 A Right.

13 Q And Judge Early did attempt to play the tape, did
14 he not?

15 A He said he did, but why he couldn't get the lady to
16 read it. That lady sitting right there could have read it.
17 That was a big part of my case. Why she couldn't put that
18 thing down and talk to the jury.

19 Q Okay. But he did attempt to?

20 A I don't -- attempt, no. I don't -- not he just
21 hold the trial and they found me guilty. They never could
22 hear her to start with.

23 Q Right. And your defense counsel objected to that
24 as well, did he not? He made a motion?

25 A He went along with the questioning, he did.

1 Q But he objected to that line of questioning due to
2 the fact that the witness could not hear properly and was
3 just essentially up there rambling on, correct?

4 A He questioned him, he went on and questioned the
5 man.

6 Q And then another one of your allegations was
7 regarding the perjured testimony of the, I believe it was
8 the solicitor?

9 A No, that was Sandra -- the Court's officer.

10 Q Okay. I apologize about that. She came and
11 testified on one day of trial to something and then the
12 next day she came back and essentially admitted perjury and
13 said that she did recognize, she did take the evidence out
14 of the brown paper bag and place it into the clear plastic
15 bag, correct?

16 A That's what she said. So that must have been where
17 the trench coat is at.

18 Q Right.

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

20 (WHEREUPON there was a pause in the proceedings.)

21 MR. GOURLEY: No further questions, Your Honor.

22 THE COURT: Okay.

23 MR. BROOKS: No other questions, Judge.

24 THE COURT: All right. Anything -- you can go back
25 to your attorney.

1 Any other witnesses?

2 MR. BROOKS: I can go ahead and call Mr. Luginbill
3 to the stand.

4 THE COURT: Okay.

5 DANIEL LUGINBILL,

6 having been duly sworn, testified as follows:

7 THE CLERK: Please have a seat and state your name
8 for the record.

9 MR. BROOKS: Ready, Judge?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. BROOKS:

13 Q Mr. Luginbill, you were appointed to represent
14 Mr. Jones in this matter?

15 A I was.

16 Q Can you give a brief summary of what the State's
17 evidence was against him?

18 A Brief summary would be there was physical evidence
19 found at the scene; there was a coat, there was a jacket
20 and a glove and there was a -- the coat had a stocking cap.
21 The coat had both Mr. Jones' DNA and the DNA of the victim
22 on it in blood spatter. There was also a stocking cap that
23 had hair from Mr. Jones and also had some of the victim's
24 blood on it. Whether the glove was involved or not was
25 kind of up in the air, but it was also brought to trial as

1 part of it.

2 Additionally the victim identified Mr. Jones by the
3 sound of his voice and was able to pick him out of a single
4 photo lineup. That would be the physical evidence, that
5 was it.

6 Q Was there ever any plea negotiations in this case?

7 A At one point there was an ABHAN offer by me to the
8 chief of police, Mr. Bearden. We had it very, very close
9 to a deal and then the solicitor's office basically
10 wouldn't take it.

11 Q Okay. Did they offer anything? The solicitor's
12 office?

13 A No, not after that initial back and forth. I want
14 to say at one point in time, they were willing to do an
15 ABHAN, but it would have been to the max 10 year cap and
16 Mr. Jones wasn't interested in that. We had talked about
17 three years with a probationary sentence after that is what
18 we had counter offered back to them, but the solicitor's
19 office never accepted that.

20 Q Okay. So three year probation and that was a
21 counter that you made to them?

22 A Correct.

23 Q That they never agreed to?

24 A Yes and Mr. Jones told me he would take that if the
25 solicitor's office would accept it.

1 Q They just never accepted it?

2 A It was just never officially on the table.

3 Q Okay. Now, he testified in this trial, himself, is
4 that correct?

5 A I believe so, yes.

6 Q Okay. And do you recall whether or not he made a
7 motion to object to some of the chain of custody evidence?

8 A There was. Initially we objected -- during the
9 State's case, the initial officer who had collected the
10 coat described how she did it, how she put it in the bag,
11 everything -- her entire procedure. She very clearly
12 described a brown paper bag that it had been put into, I
13 believe, initially. And I may have the order reversed, I
14 don't recall exactly. Then when the SLED evidence
15 technician who actually did the sampling testified, when
16 she received it, it was in a clear plastic bag or a white
17 plastic similar to a trash bag. At that point, I raised
18 the objection that that evidence should be suppressed based
19 on the fact that somebody had to have taken it from one bag
20 and put it into the other bag and that person was not here,
21 was not listed on the State's witness list and nobody knew
22 who it was. Judge Early denied that motion and then the
23 State then recalled the initial officer that had gathered
24 the coat and the stocking cap and she testified that she
25 was the one that took it out of one bag and put it into the

1 other.

2 Q That's when she had basically given conflicting
3 statements?

4 A Correct. And we argued that to the jury in
5 closing.

6 Q Now, according to the transcript, he was acquitted
7 of assault and battery with intent to kill; is that your
8 recollection?

9 A Honestly, I don't remember if it was submitted. He
10 certainly was not convicted of it. I don't remember
11 whether it was submitted or they just submitted the ABHAN
12 or whether the jury actually returned a not guilty on that
13 or not. I'd have to go back and look at the transcript.

14 Q But whatever the transcript shows, obviously you
15 would defer --

16 A I would defer to the transcript.

17 Q All right. And were you aware that he had hired an
18 investigator?

19 A He had indicated he wanted to hire an investigator.
20 If there was a separate independent investigator, he never
21 talked to me.

22 Q Now, you can't put in a request for funds to hire
23 an investigator in this case?

24 A No, there would have been nothing to investigate.
25 There was nothing -- this idea of a trench coat, that's the

1 first time I heard the trench coat argument. The issue
2 with the coat was also where it came from and who had
3 access to it. When the -- they brought it to -- as
4 Mr. Jones testified to, they brought it to my office and
5 opened the box. It was sealed in the bag and as soon as
6 they opened the bag up, Mr. Jones --

7 Q You say they, was that --

8 A Officer Bearden.

9 Q Okay. So the actually police brought it to your
10 office?

11 A Brought it to my office, opened it up, let us look
12 at it, inspect it and then at that point they did a DNA
13 swab. And I explained to Mr. Jones we could object to it
14 but that Judge Early was going to issue the order for the
15 DNA swab at that point.

16 Q And that's when they took the swab -- come and did
17 the test that come back and showed it was his DNA?

18 A That's correct.

19 Q And of course, they had all this personnel come to
20 the trial?

21 A They did. They had a chain of custody -- once they
22 went back and recalled the original officers, they were
23 able to, I guess, close that chain of custody. I believe
24 absolutely that the evidence should have been suppressed,
25 but the judge felt differently.

1 **MR. BROOKS:** Beg the Court's indulgence, Your
2 Honor.

3 **THE COURT:** Yes, sir.
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1 BY MR. BROOKS:

2 Q Do you remember whether or not it was a baseball
3 cap versus a stocking cap?

4 A I'm pretty sure it was a stocking cap, darker
5 colored stocking cap you'd pull over your head.

6 Q Do you recall at any time there being an issue of
7 it being a baseball cap?

8 A As I stated, I don't recall that being an issue.

9 Q Okay.

10 MR. BROOKS: Beg the Court's indulgence.

11 BY MR. BROOKS:

12 Q Mr. Luginbill, do you remember whether or not there
13 was an issue about the officers certification, who had
14 collected the evidence, put all the evidence in one bag?
15 That person might not have been a certified officer?

16 A Had she completed the academy?

17 Q Correct.

18 A I do not recall that being an essential issue in
19 the trial. As I sit here, I don't know whether she was or
20 not at the time. Certainly I'll defer to the transcript if
21 I asked her about it. The State did ask for her
22 qualifications on the stand. I recall that.

23 Q Okay. So if that issue came up in the transcript,
24 you would defer to that?

25 A I would defer to the transcript.

1 Q Okay.

2 MR. BROOKS: No other questions, Judge.

3 CROSS-EXAMINATION

4 BY MR. GOURLEY:

5 Q Mr. Luginbill how long have you been practicing
6 criminal law?

7 A Since November of 2000.

8 Q And when were you appointed in this case?

9 A Whenever it was that -- Mr. Kirkland was initially
10 the public defender for the second circuit. He had the
11 case initially. He left the public defender position and I
12 was appointed sometime after that, so it would have been
13 2008 probably, somewhere in there.

14 Q And do you feel you had adequate time to prepare
15 for trial?

16 A Absolutely. It was an old case by the time we got
17 to trial. I would like to say I met with him far more than
18 two times.

19 Q How many times? Do you recall?

20 A At least half a dozen.

21 Q And did you receive discovery in this case?

22 A We did. In fact, there was a -- Mr. Jones
23 complained about not receiving a copy of discovery. I had
24 sent it to him at least three times. He actually even
25 filed a grievance against me because I didn't send it to

1 him, despite the fact that I'd sent it to him twice at that
2 point.

3 Q He ever give any witnesses to be investigated?

4 A He did and we investigated with those. I spoke to
5 every witness that he gave me who could testify. He had an
6 alibi defense that he'd been picked up from town in Erhardt
7 earlier that day and had been driven back to Bamberg -- got
8 a ride from Bamberg to Denmark and had actually been around
9 people at the time the crime was committed. And we brought
10 those witnesses to trial and interviewed each one of them
11 and we put our version to the jury.

12 Q Did you have an overall trial strategy in this
13 case?

14 A It wasn't us. That was the overall strategy.
15 Basically it was the tainting of the evidence was how we
16 had to try to defuse the DNA that the State had.

17 Q And in his application, Mr. Jones alleged that you
18 were ineffective for failing to object to use of you and I
19 in the solicitor's closing statement?

20 A I've read that in this application. He simply
21 misapplies the concept of the golden rule. I didn't -- I
22 did not, in my opinion, during the solicitor's closing
23 statement hear her make a, we have to do this -- or you and
24 I -- it's-you-and-I-against-the-criminals type of argument
25 or put-yourself-in-this-victim's-place type argument. To

1 me that's the golden rule. Had I heard it, I certainly
2 would have objected. When she used the you or I it was
3 more I heard this and I didn't believe it would work. You
4 have to find such and such when she was speaking to the
5 jury. In my opinion there was no golden rule violation,
6 and therefore, I did not object.

7 Q She didn't vouch for anybody's credibility or
8 anything like that?

9 A She did do a little bit at the end. She kind of
10 got close to that line. There was a little bit of
11 bolstering at the end, but it wasn't an egregious
12 violation.

13 Q And he also alleged in his application the issue
14 with the jury charge regarding criminal intent
15 specifically. Was there any basis for that?

16 A No, and I've read the argument on that and it's not
17 sensical (sic).

18 Q Okay. And in your opinion it accurately reflected
19 the law in the jury charge?

20 A It was a standard jury charge right out of the
21 book.

22 Q Okay. During his testimony he also alleged the
23 issue of chain of custody and you objected to that,
24 correct?

25 A Absolutely. That was the major issue of the case.

1 Q Okay. And also, just to verify, there was an
2 initial plea offer from yourself, but not from the
3 solicitor?

4 A I want to say the State offered 10 years straight
5 up.

6 Q Okay.

7 A On an ABHAN.

8 Q With a 3 year --

9 A That was not from the solicitor's office.

10 Q And in regards to the jury having problems hearing
11 the or requesting to rehear the testimony, Judge Early did
12 attempt to play that to the jury, correct?

13 A Correct.

14 Q And then you also made the motion at the end of
15 trial regarding that?

16 A We did.

17 Q Okay. And that was denied?

18 A It was denied.

19 Q And with the --

20 MR. GOURLEY: Beg the court's indulgence.

21 BY MR. GOURLEY:

22 Q And when the police officer brought the evidence to
23 your office, Mr. Jones did reply that that was his trench
24 coat, correct?

25 A It wasn't a trench coat, it was just a jacket.

1 Q But he did --

2 A He said that's my jacket.

3 Q Okay. And the victim did identify or knew the
4 applicant from his voice, correct?

5 A Correct.

6 Q He initially said, I heard his voice and it said I
7 know this is Johnnie L. Jones and at that point the police
8 officer brought a single photo ID and said, Is this who
9 Johnnie L. Jones is?

10 A That was his testimony that he recognized his voice
11 and he went and got a picture of him and brought it back
12 and the victim then confirmed that it was. And we crossed
13 him pretty extensively on that as to whether or not that
14 was the actual order or whether or not he then said I
15 recognized his voice after he saw the picture.

16 Q And you made a motion to suppress that prior to
17 trial?

18 A Prior to trial.

19 Q Okay.

20 MR. GOURLEY: No other questions, Your Honor.

21 THE COURT: Okay, anything further?

22 REDIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q Mr. Luginbill, do you recall Mr. Jones wanting you
25 to get some medical records from a doctor to show that he

1 couldn't --

2 A He wanted me to get some medical records regarding
3 his knees. In fact, he had severe arthritis in both knees,
4 the idea being that he would be physically incapable of
5 hitting this man with a brick and running off any
6 significant distance and not being taught. I want to say
7 we got some of these records and they didn't really -- they
8 weren't as helpful as he thought they were going to be.

9 Q Okay.

10 MR. BROOKS: No other questions, Judge.

11 THE COURT: Okay. You can step down.

12 MR. BROOKS: Judge, that's the applicant's case.

13 THE COURT: All right.

14 MR. GOURLEY: No further witnesses, Your Honor.

15 THE COURT: All right. I'll read the file and let
16 y'all know.

17 MR. BROOKS: Thank you, Judge.

18 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

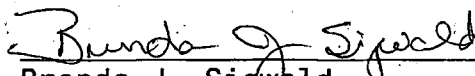
Certificate of Reporter

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4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 9th day of July, 2013.

12 I FURTHER CERTIFY that pages, numbered 1 through 41
13 constitute a true, accurate and complete transcript of said
14 hearing.

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

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 12th day of November, 2013.

19
20
21
22 

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

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STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Johnnie L. Jones, #340271,

Case No. 2012-CP-05-077

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 April 30, 2012, and amended July 1, 2013. Respondent made its Return on August 9, 2012. An evidentiary hearing into the matter was convened on July 8, 2013, at the Aiken County Courthouse. Applicant was present at the hearing and was represented Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. Applicant was indicted at the June 2007 term of the Bamberg County Grand Jury for Attempted Kidnapping (2007-GS-05-169) and Assault and Battery with Intent to Kill (2007-GS-05-168). On April 13, 2010, Applicant proceeded to a jury trial before The Honorable Doyet A. Early, III. Judge Early sentenced Applicant to a period of eighteen years confinement for Attempted Kidnapping and ten years for Assault and Battery of a High and Aggravated Nature, with the sentences to be served concurrently.

Applicant subsequently filed a Notice of Appeal and an appeal was perfected. On January 25, 2012, the South Carolina Court of Appeals affirmed the sentences and convictions and dismissed the Appeal. State v. Jones, No. 2012-UP-034 (Ct. App. January 25, 2012). The Remittitur was sent on February 14, 2012.

In his original and amended application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel.
 - a. "Failing to object to the solicitor's improper closing that violated the golden rule and denied Petitioner his right to a fair trial."
 - b. "Failing to request the trial court instruct the jury on essential element of 'criminal intent,' which is an essential element of every common law offense."
 - c. "Lack of Chain of Custody"
 - d. "Solicitor misleading witness"
 - e. "Counsel never discussed plea bargain with Applicant."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Daniel W. Luginbill, Esquire (Counsel). This Court also had before it a copy of Applicant's trial transcript, the records of the Bamberg County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified Counsel was appointed to represent him for his various charges and he met with Counsel twice prior to his trial. Applicant testified he was out on bond for three years prior to his trial. Applicant testified he recalled reviewing discovery with Counsel. Applicant further testified Counsel conducted no investigation in the case. Applicant testified he discussed possible defenses with Counsel and gave Counsel several

witnesses to investigate all of whom testified at trial. Applicant testified that he viewed evidence with Counsel and Police at Counsel's office. Applicant further testified SLED conducted a mouth swab for DNA analysis. Applicant testified Counsel failed to object to Solicitor's closing argument when the Solicitor mischaracterized the trench coat as a windbreaker. Applicant testified he was concerned that the jury was unable to hear a portion of the testimony of one of the witnesses. Applicant further testified Sandra Tavanis perjured herself regarding a chain of custody issue involving evidence being placed in a brown paper bag and then a clear plastic bag. Applicant testified that he learned after his trial that there had been a three year plea offer with additional probation time. Applicant further testified "I know I deserved time and [Judge] Lee gave me time I know I deserve."

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified he has been practicing Criminal Law since the early 2000's. Counsel testified he was court appointed. Counsel further testified he met with Applicant at least six separate times prior to his trial. Counsel testified he received discovery in this case and reviewed it with Applicant. Counsel further testified he received and reviewed several medical records per Applicant's request. Counsel testified he investigated all leads and spoke with all potential witnesses prior to trial. Counsel testified they raised the defense of alibi. Counsel testified there was incriminating evidence against Applicant. Specifically, Counsel testified there was physical evidence including a jacket, stalking cap, and blood splatter. Counsel testified Applicant's DNA and Victim's DNA were found on several different pieces of evidence.

Counsel testified that Applicant was mischaracterizing the law in regards to the Solicitor's closing argument and he did not feel there was any basis for an objection. Counsel further testified there was no basis for an objection to the jury charge as given and it was his

opinion that as a whole, the charge accurately reflected the law. Counsel testified he attempted to negotiate a plea bargain with the Solicitor. However, the Solicitor refused to offer a plea deal. Counsel testified the police brought evidence, including a coat, wool cap, and glove to his office, and he and Applicant viewed the evidence. Counsel testified Applicant stated the coat belonged to him. Regarding the chain of evidence, Counsel testified he objected to the introduction of the evidence based on a chain of custody issue. Counsel was concerned that the evidence was initially placed in a brown paper bag and then was documented as being in a clear plastic bag. Counsel testified, at the time there had been no testimony explaining who removed the evidence from the brown paper bag into the clear plastic bag. Counsel testified the State recalled Sandra Tavanis, who perjured herself by admitting that she had taken the evidence out of the brown paper bag and placed it in the clear plastic bag. Counsel testified he made it a point to argue to the jury that Sandra Tavanis had perjured herself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not as credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

Counsel was ineffective for failing to object to Solicitor's closing argument

This Court finds Applicant's allegation that he was denied effective assistance of trial counsel due to Counsel's failure to object to Solicitor's closing argument is without merit. This Court finds that after careful review of the trial transcript, along with Counsel's credible testimony, there was nothing improper with the Solicitor's closing argument. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be

drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). Furthermore, the solicitor's closing argument must not appeal to the personal biases of the jurors. Id. To be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). This Court finds the Solicitor's closing argument was confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. Therefore, this Court finds Applicant has failed to meet his burden of proving Counsel's performance was deficient for not objecting to the Solicitor's closing argument or that he was prejudiced thereby. Accordingly, this allegation is denied.

Counsel failed to request the trial judge instruct jury on essential element of criminal intent

Applicant alleges Counsel was ineffective for failing to request the trial judge instruct the jury on the "essential element of criminal intent" is without merit. The trial judge charged "Intent simply means the, intending the result which actually occurred. It's not accidental or involuntary. Intent may be shown by acts and conduct of the defendant from other circumstances from which you may naturally and reasonably infer intent." This Court finds the trial judge properly charged the standard intent charge. See State v. Foust, 325 S.C. 12, 15, 479 S.E.2d 50 (1996) (holding "in charging juries the law of ABWIK, South Carolina trial judges should give a standard 'intent' charge). Counsel testified that he saw no basis for an objection to the jury instruction. Counsel further testified that in his opinion the jury instruction accurately charged the law. This Court finds Counsel's performance was reasonable and effective. Therefore, this Court finds this allegation of ineffective assistance of counsel must be denied and dismissed with prejudice.

Counsel was ineffective for failing to object to chain of custody

Applicant alleges Counsel was ineffective for failing to object to chain of custody issue involving evidence being removed from a brown paper bag and put into a clear plastic bag is without merit. Counsel testified that he objected to the chain of custody and that objection was overruled. Counsel further testified the State called Sandra Tavanis, whose perjured testimony explained that she took the evidence out of the brown paper bag and put the evidence into the clear plastic bag. This Court finds Applicant has failed to meet his burden of proof in regards to this allegation and therefore, it must be denied and dismissed with prejudice. Based on the foregoing, this Court finds that Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Solicitor misleading witness

Applicant alleges Counsel was ineffective for failing to object to the Solicitor misleading witnesses. This Court finds Applicant failed to allege any specific incidents where Solicitor allegedly mislead witnesses. Further, this Court finds Counsel's performance reasonable and effective. Based on the foregoing, this Court finds that Applicant has not shown that Counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Counsel never discussed plea bargain

Applicant alleges Counsel was ineffective for failing to relay a "three year plea offer plus probation" is without merit. Counsel testified that he presented various plea offers to the Solicitor, however the Solicitor never accepted any of the presented offers. The decision

whether to offer a plea bargain is within the Solicitor's discretion. State v. Johnson, 287 S.C. 171, 337 S.E.2d 204, 205 (1985). Counsel further testified, Solicitor never offered a plea deal in this case. Based on the foregoing, this Court finds that Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

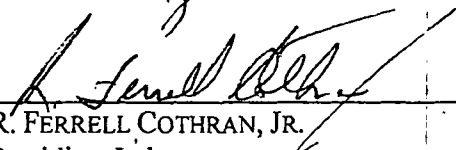
This Court notes that that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's

behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

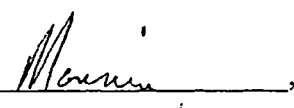
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Aug., 2013.



R. FERRELL COTHAN, JR.
Presiding Judge
Second Judicial Circuit


_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG
IN THE COURT OF COMMON PLEAS

JOHNNIE L. JONES, #340271

Applicant,

v.

STATE OF SOUTH CAROLINA,

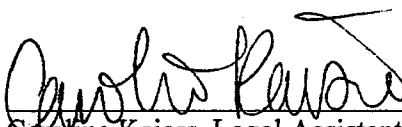
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

**Charles T. Brooks, III, Esquire
Law Office of Charles T. Brooks, III
309 Broad Street
Sumter SC 29150**

This 27th day of August, 2013.


Caroline Kaiser, Legal Assistant
For Respondent

SWORN to before me this 27th day of August, 2013.

 7/18/2017
Notary Public for South Carolina.
My Commission Expires:

411

WITNESSES

Bearden-E.P.D.

ARREST WARRANT NUMBER

J400446

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: May 31, 2007

VERDICT

Guilty of ABH.A.N.
Martin D. Williams

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-05-168

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

JUNE 4, TERM 2007

THE STATE

vs.

JOHNNIE LEE JONES

Indictment for

ASSAULT AND BATTERY WITH
INTENT TO KILL

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

A TRUE COPY

[Handwritten signature]
JUN 14 2007

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on June 4, 2007 the Grand Jurors of Bamberg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That JOHNNIE LEE JONES did in Bamberg County on or about January 9, 2007, with malice aforethought commit an assault and battery upon one Donald Hiers with intent to kill the said victim. All in violation of §16-03-620 of the *Code of Laws of South Carolina*, (1976), as amended.

A TRUE COPY

Attest: J. S. Hiers
CLERK OF COURT
BAMBERG COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Barbara R. Morgan
BARBARA R. MORGAN, SOLICITOR
FOR

WITNESSES

Bearden-E.P.D.

DOCKET NO. 2007-GS-05-169

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

JUNE 4, TERM 2007

ARREST WARRANT NUMBER

J400447

THE STATE
vs.

JOHNNIE LEE JONES

ACTION OF GRAND JURY

*True Bill**[Signature]*
Foreperson of Grand Jury
Date: May 31, 2007

VERDICT

*Guilty**Myrtis G. Williams*Foreperson of Petit Jury
Date:Indictment for
ATTEMPTED KIDNAPPINGSC Code: 16-03-910
CDR Code: 0095
Class FEL-AJUNE 10 2007
BAMBERG COUNTY
CLERK
J. L. JONES
J. L. JONES

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

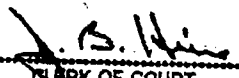
At a Court of General Sessions, convened on June 4, 2007 the Grand Jurors of Bamberg County present upon their oath:

ATTEMPTED KIDNAPPING

That JOHNNIE LEE JONES did in Bamberg County on or about January 9, 2007 unlawfully attempt to seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim Donald Hiers without authority of law, all in violation of §16-03-910 of the *Code of Laws of South Carolina*, (1976), as amended.

A TRUE COPY

Attest


CLERK OF COURT
BAMBERG COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

For