

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

Clifton Newman, Circuit Court Judge

RECEIVED
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S.C. Supreme Court

BRIAN GARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000019

APPENDIX

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1 A Yes, sir.

2 Q Were you able to effectively remove all of that
3 material?

4 A Absolutely.

5 Q And do you believe that there was any material left in
6 that barrel that you could not remove that would have any
7 impact on the accuracy of your test?

8 A No, sir. First of all, let me reiterate. I
9 decontaminated State's Exhibit No. 4 thoroughly, including
10 cleaning inside the barrel. There was nothing there. But
11 to answer your question, any residue that was there would
12 have been removed generally by the first test fire. So
13 anything subsequently that would have been -- I didn't
14 notice anything that was left in the barrel.

15 Q Do you -- is it your opinion that any of the food or
16 other organic material may have contributed to the gun
17 misfiring?

18 A It's possible. It's possible that there was some
19 matter down inside the gun, because I didn't take the gun
20 apart. It is generally not my practice to disassemble a
21 firearm if it will work. You may fix something that you
22 don't know may have been wrong. So I fired it as it came
23 in after decontamination. It may have been, you know,
24 fragments of material around the springs or in the orifices
25 where the firing pin actually protrudes. I didn't notice

1 any, but that could have contributed to it.

2 Q And you've been doing this type of testing for -- I
3 believe you said over 36 years or this will be the 36 year.

4 A Tomorrow, yes, sir.

5 Q Congratulations. What would you say is the percentage
6 of accuracy of a test like this; is it 100 percent or less
7 than that. What would you say?

8 A In my opinion of the accuracy rate, as far as I know,
9 I have never made a mistake in case work. The examiners
10 and there are seven or eight of us at SLED when looking at
11 the same evidence will generally come up with the same
12 conclusion. So sometime somebody is a little more
13 conservative than others, meaning, well, I don't think it's
14 quite enough another saying well, I think it is. But we
15 practically have a zero error rate, to my knowledge.

16 MR. DEAS: No further questions.

17 THE COURT: Ms. Land.

18 MS. LAND: No further questions.

19 THE COURT: Thank you, sir. You can step down.

20 MR. PARNELL: Thank you.

21 THE COURT: Any objection to this witness being
22 excused? Mr. Deas?

23 MR. DEAS: No, sir.

24 THE COURT: Ms. Land?

25 MS. LAND: No, sir.

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1 THE COURT: All right. Sir, you can leave or
2 stay, whatever you like.

3 Make sure before we break for lunch that all the
4 evidence is here.

5 MS. LAND: Yes, sir.

6 THE COURT: All right, ladies and gentlemen, we're
7 going to break for lunch at this time. Obviously, you are
8 still not able to discuss the case. You cannot begin to
9 form any final conclusions in your mind, and also, I will
10 repeat what I always repeat. Don't listen to anything
11 about the case, don't read anything about the case. Don't
12 get any knowledge from any source other than this
13 courtroom. Please be back in your jury room at quarter
14 'til 3:00. That will give you a good hour and 45 minutes
15 to get your lunch and get back inside.

16 Thank you.

17 (Jury out at 1:20 p.m. for lunch break.)

18 (Court in session after lunch at 2:47 p.m.)

19 THE COURT: Mr. Garris, come forward, please.

20 Are all the attorneys here?

21 MS. ROBERTS: Yes, sir.

22 Would you swear him, please, Ms. Roberts.

23 THE CLERK: Would you raise your right hand,
24 please?

25 MR. GARRIS: Yes, ma'am.

1 (WHEREUPON, Brian Garris, was
2 sworn to tell the truth.)

3 THE COURT: All right. Your name is Brian Garris?

4 MR. GARRIS: Yes, sir.

5 THE COURT: Mr. Garris, right now I'm going to go
6 over with you certain of your constitutional rights that
7 are pertinent at this stage of the trial. If at any time
8 you want to discuss this issue with your lawyer, stop me
9 and I'll allow you to time to do that. Do you understand?

10 MR. GARRIS: Yes, sir.

11 THE COURT: All right. We have reached the stage
12 in this trial where you can present your defense. Of
13 course, you're been present in the courtroom during the
14 time that the state has presented its evidence, and your
15 lawyer has been given the opportunity to cross-examine
16 those witnesses. Now --

17 Ms. Land, the state rests; is that correct?

18 MS. LAND: Yeah, that's correct, Judge.

19 THE COURT: All right.

20 You have the right to claim the protection given to
21 you by the Fifth Amendment of the United States
22 Constitution. And it's generically know as the right to
23 remain silent. What the constitution says is that no
24 person shall be compelled in any criminal proceedings to be
25 a witness against themselves. And that simply means that

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1 nobody can make you testify. Do you understand that?

2 MR. GARRIS: Yes, sir.

3 THE COURT: If you decide to testify, that
4 decision on your part has to be made freely, voluntarily,
5 knowingly and intelligently with full knowledge of your
6 rights under the Fifth Amendment of the United States
7 Constitution. If you decide to testify you will be subject
8 to the same rules that govern the direct examination and
9 cross-examination of any other witness in this trial. Do
10 you understand that?

11 MR. GARRIS: Yes, sir.

12 THE COURT: In other words, you will be examined
13 and cross-examined about any issue that are relevant to
14 this case. In addition, and I don't think this is the
15 case, you having been convicted of any crimes involving
16 dishonesty or perhaps the sentencing of any crimes that
17 would carry a potential sentence of more than one year in
18 prison, it's conceivable that you would impeach your
19 credibility with those convictions.

20 Ms. Land, I don't think that's the case here?

21 MS. LAND: No, sir.

22 THE COURT: All right. Now, Mr. Garris if you
23 decide to testify that decision on your part has to be made
24 with the full knowledge of your rights under the Fifth
25 Amendment. You may testify, but you do not have to.

1 If you decide not to the jury will be specifically
2 told that it cannot in any way use the fact that you did
3 not testify against you. And I'll specifically tell them,
4 and in fact I emphasized it, that a person has rights under
5 the Constitution and the assertion of those rights cannot
6 be used against that person. Meaning that I can't even use
7 the word failure to testify when I talk to them about the
8 fact that you did not testify. Do you understand?

9 MR. GARRIS: Yes, sir.

10 THE COURT: Now, have you had enough time to
11 discuss this issue with your family or lawyer or friends
12 and make your decision about whether or not you will
13 testify?

14 MR. GARRIS: Yes, sir.

15 THE COURT: All right. What is your decision?

16 MR. GARRIS: I'm going to take the stand.

17 THE COURT: All right. Has that decision been
18 made by you freely, voluntarily, knowingly, and
19 intelligently?

20 MR. GARRIS: Totally up to me.

21 THE COURT: Totally up to you. Sir?

22 MR. GARRIS: Yes, I'm going to --

23 THE COURT: How old are you?

24 MR. GARRIS: Nineteen years of age.

25 THE COURT: How far did you go in school?

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1 MR. GARRIS: I was supposed to graduate while I
2 was incarcerated for these charges.

3 THE COURT: All right. Have you ever been told
4 you have a mental illness?

5 MR. GARRIS: No, sir.

6 THE COURT: Have you ever been treated for alcohol
7 or drug problems?

8 MR. GARRIS: No, sir.

9 THE COURT: All right.

10 Mr. Deas, do you know of any condition that he has
11 that would make him incapable of making this decision?

12 MR. DEAS: No, sir, Your Honor.

13 THE COURT: All right. Do you have any -- Mr.
14 Garris, do you want to talk to your lawyer or your family
15 any further?

16 MR. GARRIS: No, sir.

17 THE COURT: All right. Mr. Deas, any other
18 questions that you'd like me to ask?

19 MR. DEAS: No, sir, Your Honor.

20 THE COURT: Ms. Land, you think I've covered it?

21 MS. LAND: I think you have, Judge.

22 THE COURT: All right. You can step back, sir.

23 Mr. Deas, Ms. Land, what I'll do is bring the jury in
24 and allow Ms. Land to rest, keeping in mind that she is
25 going to rest Mr. Deas, do you have any motions?

1 Mr. Deas: Yes, sir.

2 THE COURT: Let's go ahead and hear those now.

3 She's rested on the record, but just not in front of the
4 jury. So I'll hear those motions now.

5 MR. DEAS: Yes, sir.

6 Your Honor, we would move for a directed verdict of
7 not guilty on the basis that the evidence, the record
8 linking Mr. Garris to the crime, I do concede that there is
9 evidence to link him, and that would be the identification
10 made by Laura Batista, which is the daughter of the victim.
11 Although that identification, from my position, was
12 relatively shaky, somewhat unreliable. It would be our
13 position that we would concede that there is some evidence
14 from the standpoint of her identification to link him to
15 the crime, however, judge there is no evidence linking him
16 directly to the firearm in question. There was no evidence
17 to explain or to show that he brought -- to explain how he
18 would have gotten the gun into the jail other than just
19 mere conjecture of speculation. There was no direct
20 evidence or circumstantial to explain or to specifically
21 give a theory as to how the gun got into the jail and how
22 it specifically is linked to Mr. Garris other than the
23 testimony of Mr. McCrea, the inmate that said my client
24 placed a tray onto the jail door flap and when he retrieved
25 it and dumped it into the trash can he saw the gun come

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1 out.

2 THE COURT: Right.

3 MR. DEAS: And assume -- made the speculation that
4 the gun came from Mr. Garris. I don't think there's --
5 there's been no evidence per se to establish specifically
6 that Mr. Garris was in his cell by himself.

7 Basically, all the evidence to link him to the gun is
8 speculative at best. He was searched in the jail, no gun
9 was found. The gun was found in the trash can at some
10 point after he arrived at the jail. April 28th of '06 is
11 when he arrived. April 29th of '06 is when the gun was
12 found, but just merely because the gun was found shortly
13 after he arrived in the jail is not evidence that he's the
14 one that brought it in. The jail has many inmates within
15 the facility, many employees, many visitors, all of which
16 could be responsible for how that gun got into that
17 facility. Without any real link between my client and the
18 gun, I think that's necessary to establish his guilt on the
19 crime of possession of a weapon during a violent crime. I
20 think it would be necessary to establish his guilt on the
21 armed robbery charge, as well as, the assault and battery
22 with intent to kill charge.

23 THE COURT: No doubt.

24 MR. DEAS: All right.

25 THE COURT: They would have to find him guilty on

1 at least one of the other two.

2 MR. DEAS: Now, and also, Judge, and my
3 understanding of Rule 5, and this is another basis -- this
4 is now a different motion. That's my basis for the motion
5 as to a directed verdict. As to the three charges is the
6 lack of any direct evidence linking my client to the weapon
7 that was found in the jail. And really the only evidence
8 linking him to the crime, what we believe is the unreliable
9 identification of Laura Batista, since there was really no
10 identification of him made by the actual victim, Ms.
11 Santiago.

12 THE COURT: All right.

13 MR. DEAS: I also have a motion to dismiss under
14 Rule 5, on the basis that although I was not Mr. Garris's
15 initial attorney. His initial attorney, who is a public
16 defender, Mr. Devoe, filed a Rule 5 Brady Motion. The fact
17 that he hires private counsel doesn't somehow negate that
18 Rule 5 Brady Motion. So any exculp --

19 THE COURT: You did that for Mr. Devoe?

20 MS. LAND: I did that for Mr. Devoe, yes, sir.

21 THE COURT: Don't you have to provide for
22 substitution of counsel?

23 MS. LAND: Your Honor, not to my understanding.

24 THE COURT: Well, the lawyer makes motions that
25 come from the party, not from the lawyer.

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1 MS. LAND: Okay. Well, if that's the case, Judge,
2 the only thing that he did not receive is the pictures. And
3 Your Honor, I did give him everything I had given to Mr.
4 Devoe, you know.

5 THE COURT: Is that right, Mr. Deas, only thing
6 you didn't get was the pictures?

7 MR. DEAS: Well, I did not get the photo lineup
8 that was shown to Ms. Santiago. I did not -- I was not
9 even informed that there was a photo lineup shown to Ms.
10 Santiago until today. And I was not given --

11 THE COURT: Until today?

12 MR. DEAS: Right. I did not know --

13 THE COURT: Oh, Ms. Santiago. All right.

14 MR. DEAS: Yeah, Ms. Santiago. I did not -- I was
15 not given the results from the test of the fingerprint
16 analysis. I didn't know about it until I questioned
17 Investigator Elms about it and that there was. I would
18 certainly think that that, the fingerprint analysis is
19 certainly exculpatory evidence and should have been
20 provided to me under Rule 5, just as the pictures of Ms.
21 Santiago.

22 Now, I know that Ms. Land in no way -- I know Ms. Land
23 would in no way to that in some way to compromise --

24 THE COURT: What are you looking for, a mistrial?

25 MR. DEAS: Yes, sir.

1 THE COURT: All right. You can keep going.

2 MR. DEAS: Out of an abundance of caution I make
3 this motion simply because of the fact that is information
4 I did not know about. It was not in the discovery I
5 received and I did not become aware of it until -- in the
6 midst of the court proceeding.

7 THE COURT: All right.

8 MR. DEAS: And that's the basis of the motion.

9 THE COURT: I'll allow you to speak on that later.

10 On the directed verdict motion, the court at this
11 stage the law requires me to be concerned with the -- of
12 evidence -- not the weight. All right, and if the evidence
13 only arises to the level of speculation, where we normally
14 don't permit a jury to speculate then I would have to rule
15 in your favor, but in this case there is testimony that you
16 have attacked on cross of the fleeing or unreliable, as you
17 called it, identification. The height, the weight, and
18 this, that and the other surrounding the identification in
19 what the person may or may not have been wearing and all
20 those things even though there's some differences in the
21 way each side wants the jury to see it. I think there's
22 enough that the jury can make it's verdict accordingly.
23 I'm going to deny your motion for a directed verdict at
24 this time.

25 And I'll hold your motion for mistrial in abeyance,

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1 and we can continue this trial.

2 All right.

3 MR. DEAS: Thank you, sir.

4 THE COURT: And if you want, Mr. Deas, so the
5 record will be clear, if you have a copy of the Rule 5
6 Brady Motions that were made by Mr. Devoe, that they can be
7 made Court's Exhibits at some point. Just don't forget.
8 Ms. Land has communicated that she did receive those from
9 Mr. Devoe.

10 MR. DEAS: Yes, sir.

11 THE COURT: But if y'all want to complete the
12 record you can do that.

13 MR. DEAS: Yes, sir.

14 MS. LAND: And Your Honor, if I can get an idea of
15 how long the defense case will last I can have my rebuttal
16 witnesses ready.

17 THE COURT: Mr. Deas, do you want to share that
18 with her?

19 MR. DEAS: Yeah. Judge, the way that I see it at
20 this point, we've got Mr. Garris testifying. Mr. Hicks,
21 who's here from the detention center. Director Hughes, and
22 possibly Marie Garris.

23 THE COURT: All right.

24 MR. DEAS: So about four witnesses at this point,
25 and I will assume -- depending on how long his direct and

1 cross takes, I might be able to finish it up today.

2 THE COURT: Ms. Land, we might need your rebuttal
3 witnesses today.

4 MS. LAND: Okay. All right.

5 THE COURT: Who would that be?

6 MS. LAND: Well, one is Lin Ham, who would be
7 first, so if we do finish up at 4:30 --

8 THE COURT: Is he on duty?

9 MS. LAND: Yeah, he is.

10 THE COURT: Why don't you go ahead and get him to
11 be here --

12 MS. LAND: Okay.

13 THE COURT: -- between 4:00 and 4:30, just in
14 case. You will know by then where we are --

15 MS. LAND: Yes, sir.

16 THE COURT: -- and you can either give him the
17 heave-ho or tell him to stay.

18 MR. DEAS: And, Judge, we do, also -- added to
19 that would be Sgt. Lee, who did the report, and William
20 McCoy.

21 THE COURT: Okay.

22 MS. LAND: Your Honor, I don't believe Sgt. Lee
23 was on the witness list for anybody's side so none of the
24 jury's been voir dired about him.

25 THE COURT: I'll ask them. If he's called I'll --

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1 would you like me to do that now, Mr. Deas?

2 MR. DEAS: That's fine.

3 THE COURT: All right. What's his name?

4 MR. DEAS: His name's Terry Allen Lee.

5 THE COURT: All right.

6 All right, you can bring in the jury.

7 Ms. Land, you rest and then I'll tell them the last 15
8 minutes we've been talking about scheduling.

9 MS. LAND: Yes, sir.

10 (Jury in at 2:59 p.m.)

11 THE COURT: All right. Thank you for your
12 patience, ladies and gentlemen. I know that it's Thursday,
13 3:00 o'clock, you've all had lunch. I just want to make
14 sure you maintain your focus like you have throughout the
15 rest of the trial. We're ready to continue.

16 Ms. Land?

17 MS. LAND: Your Honor, at this time the state
18 rests.

19 THE COURT: All right. Ladies and gentlemen, I
20 knew that because she told me and Mr. Deas that at 2:45.
21 We took that 15 minutes making sure that we had things laid
22 out for this afternoon. So that's why you were kept back
23 there.

24 Mr. Deas, does the defendant want to present any
25 evidence today?

1 MR. DEAS: Yes, sir.

2 THE COURT: All right, you can call your first
3 witness.

4 MR. DEAS: All right. Thank Your Honor. Please
5 the Court. We call Ms. Marie Garris.

6 THE CLERK: Please raise your right hand.

7 (WHEREUPON, Marie Garris, was
8 sworn to tell the truth.)

9 THE COURT: If you'll come around.

10 MR. DEAS: Please the Court.

11 THE COURT: Yes, sir.

12 MARIE GARRIS - DIRECT EXAMINATION

13 BY MR. DEAS:

14 Q Ms. Garris would you state your full name for the
15 Court, please?

16 A Marie Garris.

17 Q And Ms. Garris, how do you know the defendant, Mr.
18 Brian Garris?

19 A He's my grandson.

20 Q Going back to the day of April 15, 2006, where was Mr.
21 Garris then?

22 A On Church Street with me.

23 Q And on that particular date do you have any
24 recollection whether you took Mr. Garris anywhere that day?

25 A I took him up on, I always called it Clinch Street,

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1 but it's -- you go down to the apartments back in the back
2 -- what is that -- Court Street, that's it.

3 Q And to some apartments?

4 A Yeah.

5 Q Do you remember the name of the apartments?

6 A No, I can't remember the name.

7 Q Do you remember approximately what time of day it was
8 when you took Mr. Garris to those apartments?

9 A It was -- they were outside, and I told Brian to come
10 get something to eat. So that was around supper time.

11 Q Sometime after 5:00 o'clock?

12 A It was after 5:00 o'clock.

13 Q When you told him to come inside and get something to
14 eat, who all was there. You mentioned some boys, who were
15 they?

16 A I heard a car outside, you know, that boom, boom,
17 boom, sound. It was Freddie. That's when I went to the
18 door and called him in to get something to eat. There was
19 a car out that that come up, a car load of boys.

20 Q A car came up and dropped young men off at your house,
21 and then that car left?

22 A I think it did, but I know after that I took them all
23 over to Court Street.

24 Q Now, where is your house in relation to where this
25 Chinese -- the relationship to where the Chinese Cuisine is

1 located?

2 A It's one, two, three, four, -- it's about four blocks.

3 But they are long blocks.

4 Q So basically on the same street.

5 A On the same street.

6 Q Is your house on the same side of the street as the
7 Chinese Cuisine?

8 A Same side.

9 Q So when you say four blocks, maybe five. Would you
10 say about a quarter of a mile, half a mile?

11 A No, not half a mile distance.

12 Q You say about four blocks?

13 A Uh-huh.

14 Q But relatively close in distance, your house and the
15 China Cuisine?

16 A Yes. I say four blocks. They are long blocks.

17 Q Now, you said, do you know who the boys were you took
18 and dropped off at the apartment complex you were talking
19 about; did you know their names?

20 A It was Freddie and Fredrick and Quinton and another
21 boy --

22 Q And Brian?

23 A Yes, sir.

24 Q It was five of them all together?

25 A Yes, sir.

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1 Q So at some point all these young men were together
2 with Brian Garris, your grandson, and Quentin Garris, who
3 is also your grandson, right?

4 A Right.

5 Q Brian's younger brother?

6 A Right.

7 Q Fredrick White, Freddie White, and another gentlemen?

8 A Right.

9 Q Now, Freddie and Fredrick White, they're brothers.

10 A Right.

11 Q Just one of them is named Freddie and the other one is
12 named Fredrick?

13 A Right.

14 Q Those are two different people?

15 A Right.

16 Q Now, once you dropped them off at this apartment
17 complex did you see Brian or any of the other young men
18 again that night?

19 A Yes, later.

20 Q Who did you see later on that night; did you see Brian
21 or did you see Quinton, your other grandson. Who did you
22 see later on that night?

23 A My two grandsons.

24 Q And about -- where did you see them at?

25 A At my house.

1 Q And about what time of day -- what time was it that
2 evening when you saw them back at your house?

3 A I can't remember. I'd say around maybe --

4 Q Was it nighttime when you saw them again?

5 A It was night, it was after all the other stuff was
6 going on, because the commotion was going on in the street.

7 Q When you say the commotion was going on in the street,
8 you're talking about the police coming in the area?

9 A Police coming -- uh-huh.

10 Q So the police were already in the area when you saw
11 Brian and Quinton back at your house?

12 A Yes. I took them down and I was coming back around to
13 Church Street, going on back to my house. When I got to
14 261, there was people everywhere, lights flashing -- all
15 that sort of stuff.

16 Q So by the time you got back home from dropping off
17 Brian and the other gentlemen at this apartment complex are
18 you saying the police were already surrounding the area
19 where this incident occurred?

20 A Yes.

21 Q Did you see the police?

22 A Yes, I saw them.

23 Q Did you go on home at that point?

24 A I went to the house. I told my husband something bad
25 happened out on the street. I said the police was

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1 everywhere on the street. And I went in the house and I
2 called Brian on the cell phone. I said I don't want you
3 out tonight. Call me -- and I come back by around the
4 street, trying to see what was going on. When I talked to
5 him he asked me if I would pick him up.

6 Q So let me just stop you right there. You had dropped
7 Brian and the other fellows off at the apartment complex?

8 A Yes, uh-huh.

9 Q And did you come straight back home or had you made
10 another stop.

11 A (Nods head affirmatively.)

12 Q You've got to answer yes or no. You came straight
13 home, yes or no?

14 A I came home.

15 Q So when you got home, did you stay there for the rest
16 of the evening or you came back out at some point?

17 A I came back out.

18 Q Who was with you when you came back out?

19 A My husband.

20 Q Do you remember about what time of night it was when
21 you and your husband came back out of the house?

22 A (No response.)

23 Q And I know it was several years ago. If you can't
24 remember that's fine, but do you have any idea as to what
25 time it was approximately when you left the house with your

1 husband?

2 A It wasn't long --

3 Q When I say time, I mean actual time on the clock?

4 A I can't say what time.

5 Q Now, where were you and your husband going during that
6 time?

7 A I was trying to come back down the street to see, to
8 check out and see what was going on.

9 Q And the police were still around in the area?

10 A Yes, they were. I stopped by one of the lady -- I
11 stopped by and I said, what's going on. She told us
12 there's been somebody shot.

13 Q Now, did you at some point get a call from Brian?

14 A Brian called and asked me to pick him up.

15 Q Did he say from where?

16 A I said, where you at. I said all these lights up and
17 down the street. I'm not coming out there. I said, you
18 know your granddaddy won't let me come out in the night.

19 Q At the point you got this phone call had you already
20 made it back from your second trip out, had you already
21 made it back to your house?

22 A No.

23 Q You were still in your car when you got the phone
24 call?

25 A I was in the house I got the phone call.

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1 Q That's what I was just asking. I asked you --

2 A I didn't have a cell phone.

3 Q So you had gotten back?

4 A Yeah.

5 Q He called you at home and you were at home to take the
6 call?

7 A Right.

8 Q And you didn't go back out again for the third time
9 did you?

10 A Yeah, I did.

11 Q You did.

12 A I went to get him.

13 Q And were you able to find him?

14 A No. They were coming back around there.

15 Q So when you couldn't find them -- Sorry, go head.

16 A When I was coming back one of the officers hollered at
17 me and he said I saw your two grandsons going in your
18 house.

19 Q Was that Officer Drose?

20 A Drose.

21 Q The one that was here yesterday with the mustache and
22 the beard?

23 A I don't know. He was sitting down. And he said I saw
24 your two grandson going in your house. I said, I was
25 supposed to pick them up but I missed them somehow. So I

1 turned to come back around.

2 Q So when you went out the third time to pick them up
3 you didn't see them.

4 A Right.

5 Q So you went back home?

6 A Right.

7 Q And that's when you bumped into Officer Drose?

8 A Right.

9 Q And that's when he told you he had just seen them go
10 in the house?

11 A Right.

12 Q And did you just go on home after that?

13 A I was at the house. He was at the corner.

14 Q He was right there at your house?

15 A Right at my house on Cedar and Church. I'm on the
16 other side of the street on Cedar and Church.

17 Q And at that point you just went on home, went on
18 inside --

19 A Right.

20 Q -- after you talked to Officer Drose?

21 A Right.

22 Q And do you know approximately what time it was when
23 you got home that night and Brian and his younger brother
24 were there; when you got home that last time, that third
25 time you went out and you talked to Officer Drose and do

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1 you remember what time it was at that point?

2 A No, sir.

3 Q The things you just described, the times that you went
4 out of the house, the time that you got the call from
5 Brian, all of this happened after you dropped them off at
6 that apartment earlier that day?

7 A Right. All this happened after I dropped them off.

8 Q And as you put it, this was some time after
9 suppertime?

10 A Yes, sir.

11 Q So you would say it was after 5:00 o'clock --

12 MS. LAND: Your Honor, I'm going to ask him to not
13 lead her. Just ask her what time.

14 THE COURT: All right.

15 BY MR. DEAS:

16 Q So this all happened at some point after 5:00 o'clock?

17 A Right. Thank you, ma'am, I have no further questions.

18 THE COURT: Ms. Land?

19 MARIE GARRIS - CROSS-EXAMINATION

20 BY MS. LAND:

21 Q All right. Ms. Garris you have me a little confused
22 about the time. Some boys were dropped off at your house,
23 Freddie White, Fredrick White -- was Andrew McBride with
24 them?

25 A I know they was there. I was going to take them -- I

1 told my husband I would be right back.

2 Q Okay. Was Andrew McBride there?

3 A The boys that look alike, the two brothers?

4 Q Yeah, Fredrick and Freddie.

5 A I couldn't tell one from the other.

6 Q So Andrew McBride may have been there?

7 A Andrew McBride?

8 Q Was he with you that night?

9 A Andrew McBride, if I'm not mistaken I think that's the
10 house they went to.

11 Q Okay. And Brian, and you took them to who you believe
12 was Andrew McBride's house?

13 A May or may not have been -- I think that's who it was.

14 Q So wherever you took them you believe it was Andrew
15 McBride's house?

16 A I think so.

17 Q And what time was that?

18 A Suppertime.

19 Q All right. Suppertime. Was it dark out, yet?

20 A No it wasn't dark.

21 Q Okay. How about dusk, was it dusk?

22 A It wasn't dusk either. It was just --

23 Q 5:00 or 6:00, early evening?

24 A I don't know.

25 Q This was before 10:00?

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1 A Yeah.

2 Q And when you got home to pick them up, your grandson's
3 and walked back in the house and they were in the house it
4 was after 11:00 o'clock; is that correct?

5 A I don't know exactly.

6 Q Well, you said all that activity was going on; is that
7 correct?

8 A Uh-huh.

9 Q Okay. So what you're telling the jury is that at the
10 time of this armed robbery you don't know where your
11 grandson was?

12 A They was at --

13 Q No, ma'am. Were you with him during that time?

14 A When all this stuff was going on?

15 Q When the armed robbery occurred at 10:00 o'clock. You
16 just told this jury that you dropped him off and that the
17 next time you saw him was after 11:00. So what you're
18 saying is you don't know where he was at 10:00 o'clock.

19 MR. DEAS: Objection. Judge, that's not her
20 testimony. She didn't say after 11:00. That's not her
21 testimony.

22 THE COURT: Ms. Land, rephrase the question.

23 MS. LAND: Okay.

24 BY MS. LAND:

25 Q The next time you saw them, the robbery had already

1 occurred?

2 A Yes.

3 Q Okay. So what you're telling this jury is that you
4 don't know where he was from around summertime until after
5 the robbery?

6 A I don't know where he was, but when I got back up on
7 the street everything was going on then.

8 Q Okay. So you don't --

9 A I left him at Court Street at those apartments.

10 Q You left him there, but you don't know that he stayed
11 there?

12 A He couldn't get back up there before all that. He
13 couldn't get back up there before I got back to my house.

14 Q Ms. Garris --

15 A Uh-huh.

16 Q -- you don't know where he was at 10:00 o'clock do
17 you?

18 A I don't know what time it was.

19 Q And you can't tell this jury, you can't swear on that
20 Bible and tell his jury where he was at 10:00 o'clock?

21 A I don't know but he couldn't get back at that time.

22 Q Okay. Well, you don't know what time you took him
23 over to Manning Lane Apartments, you don't know time you
24 got back, you don't know what time you left the second
25 time. So how do you now know that that's about the time

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1 you went to pick him up?

2 A It wasn't too long after I got back to the house he
3 called and I told him I couldn't go out there again.

4 Q And that was after the robbery occurred; is that
5 right?

6 A After the robbery occurred.

7 Q So you don't know where he was during the robbery.

8 A I know where he was when I -- where I leave him at.

9 Q And you do know that earlier in the evening he was
10 with Freddie White; you can tell the jury that for a fact,
11 can't you?

12 A Yeah, he was with Freddie White.

13 Q Correct.

14 A I think he was at my house.

15 Q Okay.

16 A On the outside the fence. They didn't come in the
17 house. Brian came in the house and asked me to take him
18 down to the apartments.

19 Q And you testified to this jury that you took Brian and
20 Freddie White to the apartments?

21 A Uh-huh.

22 Q Okay. So you can tell this jury that beyond a shadow
23 of a doubt, he was with Freddie White that evening?

24 A He left in my car -- I mean, my house to the
25 apartment.

1 Q And that was earlier in the evening around suppertime?

2 A That was with -- I knew where he at -- I'm telling you
3 just like I know. I leave them there. I come on back
4 around and went on McLeod and when I got to 261 the cops
5 was everywhere. I remember a long, tall white officer was
6 standing there with his arms stretched out telling me to
7 get off.

8 Q And that was the first time you took him. I thought
9 your husband doesn't let you drive after dark?

10 A (No response.)

11 Q Did you tell him you know granddaddy doesn't let me
12 drive after dark; didn't you say that?

13 A That he don't like for me to go out this time of
14 night.

15 Q Okay. Let you go out at that time of night. You said
16 you took them at suppertime, but now you're telling me that
17 you took them around 10:00?

18 A It wasn't that late.

19 Q The burglary happened at 10:00. The first time you
20 took Brian to the apartment was what time?

21 A I don't know, but I know what happened.

22 Q Well, you said around suppertime, but by the time you
23 got back to your home the police were everywhere, but it
24 wasn't dark?

25 A It was still light.

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1 Q Did make any stops?

2 A No.

3 Q And then where was the second time you went out.

4 A When I come back down the street to show my husband
5 what was going on. Trying to find out what was going on.

6 Q You and your husband left the house for the second
7 time?

8 A Yes.

9 Q To drive down there, and you say you live four blocks
10 from the Chinese Cuisine?

11 A You know that funeral home -- that next funeral home
12 --

13 Q Stephens.

14 A -- I didn't go there.

15 Q Well, if I told you it was three blocks would you
16 disagree with me?

17 A Yeah.

18 Q So you're saying that it's four blocks?

19 A Well, the funeral home be four blocks.

20 Q So you can't tell me what time you left the first
21 time?

22 A That's at suppertime.

23 Q What time do y'all normally eat supper?

24 A I try to have supper ready for my husband at least
25 6:00 o'clock or 7:00.

1 Q What was he wearing that night?

2 A I don't know, some kind of shirt --

3 Q Was it pretty baggy on him?

4 A Brian usually particular about his clothes.

5 Q And speaking of Brian being particular, has he gained
6 a little bit of weight since that time?

7 A I can't tell.

8 Q How much is he to day; do you know?

9 A Looks like the same to me.

10 Q Okay, let's get back to the last time he called you,
11 the time that you said, granddaddy doesn't let me go out
12 this time of night.

13 A Right.

14 Q What time was it?

15 A I don't know.

16 Q Well, what time of night doesn't he let you go out?

17 A Any time when I'm not going with him

18 Q Where did he want you to pick him up. Where did Brian
19 say that he wanted you to pick him up?

20 A Grandmomma, I'm at Safeco. And I'm going, I said, how
21 many of you. He said, me and Quentin. I'm coming up the
22 street, and that's where I was supposed to be going, coming
23 down the street picking them up. Instead I'm must have cut
24 off too short and end up --

25 Q But your husband was at home?

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1 A My husband was at home.

2 Q He was at home?

3 A Yes.

4 Q So there is no reason why Quentin and Brian would come
5 home but not go straight inside?

6 A Unless my husband didn't let them in.

7 Q Your husband didn't let them in?

8 A He might have been they went in.

9 Q How do you know that?

10 A They went in the house. The officer told me that.
11 They went in the house.

12 Q All right, Ms. Garris, that's all the questions I
13 have.

14 THE COURT: Mr. Deas?

15 MR. DEAS: Very brief.

16 MARIE GARRIS - REDIRECT - EXAMINATION

17 BY MR. DEAS:

18 Q Ms. Garris, just for clarification purposes. You know
19 that you took Brian and these other fellows to this
20 apartment complex on Court Street at sometime around when
21 you were preparing supper on April 15th?

22 A (Nods head affirmatively.)

23 THE COURT: You've got to answer yes or no.

24 A Yes.

25 THE COURT: Thank you.

1 BY MR. DEAS:

2 Q And you left that apartment complex after dropping
3 them off?

4 A Yes.

5 Q Did you come straight home?

6 A Straight home.

7 Q You made no stops?

8 A No stops.

9 Q And you correct me if I'm wrong, but when you did come
10 home did you come near the area where the Chinese
11 Restaurant is?

12 A Yes.

13 Q When you came through that area were there already
14 police around?

15 A Yes.

16 Q So you came to that area after dropping them off. How
17 long did it take you to get from the apartment complex
18 where you dropped them off to the area where you saw the
19 police in the area?

20 A I think that was the third time I was --

21 Q Well, I didn't ask you how fast you were going. I'm
22 not trying to get you a ticket. I asked you how long did
23 it take you to -- how long a drive is it from the apartment
24 complex you dropped them off at to the area where this
25 incident happened near the restaurant? Could you get there

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1 in five minutes, 30 seconds. How long a drive was it?

2 A I could get there -- five minutes, 10 minutes --

3 Q How far apart was this area where this Chinese
4 restaurant was and the apartment complex where you dropped
5 off Brian and your other grandson?

6 A That's --

7 Q Do you know what street the apartment complex was on?

8 A Yes. Court Street, I know.

9 Q Do you know how far Church Street is from Court
10 Street?

11 A No.

12 Q But you think you can get from that apartment complex
13 to the area near where you live and where this restaurant
14 is in roughly, you said, about five to 10 minutes, driving?

15 A Driving.

16 Q Do you know -- can you say how long it would take
17 someone to get from that apartment complex to the where
18 this incident happened if they were walking? If it took
19 five to 10 minutes if they're driving, how long would it
20 take if they're walking?

21 A Maybe a half an hour.

22 Q You're certain that when you got back home that day or
23 as you got near your home the police were already in the
24 area?

25 A They were already in the area.

1 Q Thank you, ma'am. I have no further questions.

2 THE COURT: Ms. Land.

3 MARIE GARRIS - RE-CROSS-EXAMINATION

4 BY MS. LAND:

5 Q Ms. Garris, one more time. You took Brian and his
6 friends to Court Road at dinnertime and how long from the
7 Court apartments to your home does it take?

8 A I can probably do it in five or 10 minutes.

9 Q And you went out again the second time?

10 A Uh-huh.

11 THE COURT: You have to say yes or no.

12 A Yes.

13 BY MS. LAND:

14 Q When you got home that second time --

15 A Uh-huh.

16 Q -- is that when all that activity was going on?

17 A The first time when I was going back to my house,
18 that's when everything was going on.

19 Q After you dropped them off?

20 A After I dropped them off.

21 Q That's all the questions I have.

22 THE COURT: Thank you, ma'am. You can step down.

23 Mr. Deas?

24 MR. DEAS: Nothing further for this witness. We
25 have other witnesses.

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1 THE COURT: All right.

2 MR. DEAS: We call Mr. Jermaine Hicks.

3 THE CLERK: Would you raise your right hand.

4 (WHEREUPON, Jermaine Hicks, was
5 sworn to tell the truth.)

6 MR. DEAS: May it please the Court?

7 THE COURT: Yes, sir.

8 JERMAINE HICKS - DIRECT EXAMINATION

9 BY MR. DEAS:

10 Q Mr. Hicks, my name is Garryl Deas. I represent the
11 defendant, Mr. Brian Garris. Mr. Hicks, no disrespect, I
12 take from your current attire that you are currently
13 incarcerated?

14 A Yes, sir.

15 Q You're incarcerated where?

16 A Clarendon County Detention Center.

17 Q And if you could, just state your name for the jury,
18 please?

19 A Jermaine Hicks.

20 Q And Mr. Hicks do you live -- do you reside here in
21 Manning, South Carolina?

22 A Yes, sir.

23 Q Do you know the defendant, Mr. Garris?

24 A Yeah.

25 Q How do you know him?

- 1 A From the neighborhood.
- 2 Q How long have you known him?
- 3 A Since 2004.
- 4 Q 2004?
- 5 A Yes, sir.
- 6 Q And do you have a recollection of the events
- 7 surrounding the robbery and the shooting at the Chinese
- 8 Cuisine Restaurant on April 15, 2006; do you remember that
- 9 day?
- 10 A Yes, sir.
- 11 Q Now, on that day did you at some point during that day
- 12 come in contact with Mr. Garris?
- 13 A At the store.
- 14 Q What store did you see him?
- 15 A I seen him at the SaveWay.
- 16 Q SaveWay Convenience Store?
- 17 A Yes, sir.
- 18 Q And do you remember approximately what time that day
- 19 that you saw him?
- 20 A Somewhere around like 10:00 o'clock, a little bit
- 21 before, 10:00, give or take. Something like that.
- 22 Q A little bit before 10:00?
- 23 A Yeah, pretty sure it was 10:00.
- 24 Q And when you saw him was he by himself?
- 25 A Yes, sir.

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- 1 Q Did anything appear unusual or out of sorts about him?
- 2 A No, sir.
- 3 Q Out of breath?
- 4 A No.
- 5 Q Was he running?
- 6 A No.
- 7 Q How far is the SaveWay from this Chinese Cuisine
- 8 Restaurant?
- 9 A I'd say about 15 minutes by foot. About five minutes
- 10 in a car.
- 11 Q So if you were walking it would be somewhere around 15
- 12 minutes?
- 13 A Yeah, 15, 20 minutes, something like that.
- 14 Q And if you were driving you could get from that
- 15 Chinese restaurant to that SaveWay in probably about five
- 16 minutes?
- 17 A That's right.
- 18 Q Now, the SaveWay is on what street here in Manning?
- 19 A I ain't sure --
- 20 Q But you would agree with me that obviously if someone
- 21 were driving from those two points it would be faster than
- 22 walking?
- 23 A Excuse me?
- 24 Q They'd get there faster driving than they would if
- 25 they were walking?

1 A Yeah, faster.

2 Q Do you know if the SaveWay are on the same street; or
3 you don't know?

4 A I don't know.

5 Q Now when you saw Mr. Garris do you recall whether or
6 not he had on a hat?

7 A I don't recall if he had on a hat.

8 Q Did he have on a mechanic type shirt that had stripes
9 on it?

10 A Not that I can recall.

11 Q What type of shirt do you recall that Mr. Garris was
12 wearing?

13 A I recall a white t-shirt.

14 Q Just a regular white t-shirt?

15 A Just a regular white t-shirt, Fruit of the Loom type
16 t-shirt.

17 Q And did he have on a New York Yankee hat?

18 A No, sir.

19 Q And when you saw him this would have been a little bit
20 before 10:00 o'clock or right at 10:00 o'clock?

21 A Well, I'm pretty sure it was 5:00 o'clock when I left
22 my house. My children are in school. We were going to
23 McDonald's.

24 Q So when you saw him at the SaveWay you were driving?

25 A Yes.

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1 Q You were in your car?

2 A Yes.

3 Q And you had your children with you?

4 A Yes.

5 Q And how many children did you have?

6 A Two.

7 Q Two. Little boys or little girls?

8 A Little girls.

9 Q And when you saw Mr. Garris what did you say to him or
10 what did he say to you?

11 A Well, just said, what's up, J-Town. That's what he
12 calls me.

13 Q He calls you?

14 A Yeah, that what they call me. What's going on. He
15 asked me if I could give him a ride to his grandmother. I
16 told him he'd have to wait. I had to take my kids to
17 McDonald's.

18 Q When you saw him he asked you to take him home?

19 A Yes, sir.

20 Q To his grandmother's house?

21 A Yes, sir.

22 Q And you had the kids with you, and you were planning
23 to go to McDonald's?

24 A Yes, sir.

25 Q So you basically told him you would take him home but

1 you had to stop at McDonald's first?

2 A Yeah. He would have to go with us to McDonald's.

3 Q Did he go with you all to McDonald's?

4 A Yes, sir.

5 Q Did you order something to eat when he got there?

6 A I didn't.

7 Q Did you order something for your little girls?

8 A Yes, sir.

9 Q Do you know if Mr. Garris ordered something to eat?

10 A I can't recall. I'm pretty sure. I think. I ain't
11 sure if he did. He was talking on the phone, so --

12 Q So when you all left SaveWay and then you went to --
13 towards his grandmother's house to drop him off.

14 A Yes, sir.

15 Q Tell me what y'all did or what happened after y'all
16 left McDonald's?

17 A When we got to McDonald's we sat there and ate. Then
18 I took him to his grandmother's house. When I got to where
19 to turn at his grandmomma's house at, I saw the police at
20 Church Street, right at the corner where his grandmother
21 house. So I didn't have my kids in the car seats and
22 nothing like that, and I didn't have my license with me.
23 So I told him, I'll let you go later, and I dropped him off
24 at that corner.

25 Q So when you saw the police around -- strike that. AS

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1 you all got closer to Mr. Garris's grandmother's house,
2 which -- is her house near the Chinese restaurant?

3 A I don't say it's near the Chinese -- right by the
4 Chinese but it's --

5 Q Was it on the same street?

6 A Yes, sir. Well, not really. It's like on a side
7 street.

8 Q As you were heading towards his grandmother's house
9 you notice the police were already around the area?

10 A Yes, sir.

11 Q Did it seem like some incident had took place?

12 A Yes, sir.

13 Q Was it a few police or a lot of police?

14 A I seen police and ambulance and stuff, too.

15 Q And you got a little concerned because you didn't have
16 a drivers' license?

17 A I didn't have my license, and I didn't have my kids in
18 the car seats, either, so I just went on back the same
19 route I came.

20 Q So instead of taking him all the way home, did you
21 drop him off somewhere near home?

22 A Yeah, right there on the corner on the opposite side
23 where his grandmomma stay at. Right there in front of the
24 water bill place. I dropped him off right there. I did a
25 U-turn and went on.

1 Q So at the time you saw him and took him home or
2 dropped him off near home it appeared the incident had
3 already taken place?

4 A Yes, sir.

5 Q And did Mr. Garris have braids in his hair or dreads
6 in his hair at that time?

7 A No, sir.

8 Q You said you'd know him since 2004?

9 A Yes, sir.

10 Q Has he ever worn dreads or braids as long as you've
11 known him?

12 A No.

13 Q Sir?

14 A No, sir. I ain't never seen him with long hair.

15 Q He's always had a low hair cut?

16 A Yes, sir.

17 Q Kind of like mine?

18 A Yes, sir.

19 Q Thank you, sir.

20 THE COURT: Ms. Land?

21 JERMAINE HICKS - CROSS-EXAMINATION

22 BY MS. LAND:

23 Q You're currently in the Clarendon County Detention
24 Center?

25 A Yes, ma'am.

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- 1 Q And you've been in trouble before; is that correct?
- 2 A Yes, ma'am.
- 3 Q Excuse me?
- 4 A Yes, ma'am.
- 5 Q Okay. That night you were with your two girls, you
- 6 were just spending time with them?
- 7 A I was just spending time with them on Sunday evening.
- 8 Q What were they wearing?
- 9 A The girls?
- 10 Q Uh-huh.
- 11 A I don't know. I think something pink.
- 12 Q But you remember specifically that Brian was wearing a
- 13 white t-shirt?
- 14 A Yeah, he usually wears a white t-shirt. I think it
- 15 was a white t-shirt.
- 16 Q You're not telling this jury that you know it was a
- 17 white t-shirt; you said usually he wears a white t-shirt?
- 18 A Well, like I said, from what I can remember.
- 19 Q Okay. When was the last time you talked to Brian?
- 20 A Last time I talked to Brian?
- 21 Q Uh-huh?
- 22 A Oh, July, August, something like that.
- 23 Q July or August of?
- 24 A This year.
- 25 Q So in the last two months or so?

1 A Yes, ma'am.

2 Q Did you talk about this case?

3 A No, ma'am.

4 Q You didn't say anything about this case?

5 A No, ma'am.

6 Q Really. And it wouldn't surprise you to know that
7 you're the only one that's given him an alibi for before
8 today?

9 A Well, I told Brian that a while back when the
10 situation took place, that I was right up the street. I
11 believe he said the police hadn't talked to him. I never
12 was sure he --

13 Q When did he let you know that, that he needed you to
14 tell them about it?

15 A Back in '07.

16 Q But you haven't talked to him about this all this
17 time?

18 A No, ma'am.

19 Q How long have you been in the detention center?

20 A Since October of last year.

21 Q And who is your attorney?

22 A Scott Robinson.

23 Q Have you talked to Scott Robinson in the past few
24 days?

25 A No.

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1 MR. DEAS: Objection, relevance.

2 THE COURT: Relevance?

3 MS. LAND: I thought that Mr. Robinson represented
4 him. He said no.

5 BY MS. LAND:

6 Q But you haven't let your attorney know that you have
7 some information about this case?

8 A No, ma'am.

9 Q And did you know who I was before today?

10 A Yes, ma'am.

11 Q And I think you wrote me a letter before, haven't you?

12 A No, ma'am.

13 MR. DEAS: Objection. Relevance.

14 THE COURT: Overruled.

15 BY MS. LAND:

16 Q You've never written me a letter?

17 A No, ma'am. I wrote to the courthouse, but I haven't
18 wrote to you personally.

19 Q But you didn't write any kind of letter about this
20 just to let me know?

21 A Excuse me?

22 Q Just to let somebody know that -- you've never written
23 any letters or motions or anything of that nature?

24 A Motions on behalf of my case?

25 Q On behalf of this case to let somebody know that you

1 were with him?

2 A No.

3 Q When you picked him up had the incident already
4 happened?

5 A I can say.

6 Q You don't know?

7 A I wasn't there.

8 Q So you don't know that it happened?

9 A I mean, I can assume it did with the police and stuff,
10 but I can't say it had.

11 Q So when you picked him up there were already out
12 there?

13 A Well, I wouldn't know if there was police down there.
14 I know when I was leaving my house I heard the police but I
15 didn't know exactly what they was going to. I just was
16 minding my own business.

17 Q Okay, when you left your house that evening to go to
18 SaveWay, the police were already out?

19 A Yeah, they were going somewhere.

20 Q Okay. So whatever had happened had already happened?

21 A Yes, ma'am.

22 Q Have you ever seen Brian Garris wear a do-rag?

23 A Not really. Usually his hair is short.

24 Q Okay. Usually. I'm asking if you have ever seen him
25 wear a doo-rag?

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1 A No, not on the street.

2 Q All right. That's all the questions I have.

3 THE COURT: All right. You can step down.

4 All right, Mr. Deas.

5 MR. DEAS: We call Mr. Brian Garris.

6 THE CLERK: Please raise your right hand.

7 (WHEREUPON, Brian Garris, was
8 sworn to tell the truth.)

9 THE COURT: Everybody on the jury okay. Anybody
10 need to take a break?

11 MR. DEAS: Your Honor, may we approach.

12 THE COURT: Yes, sir.

13 (Off the record bench conference with Mr. Deas and Ms.
14 Land, and the Court.)

15 MR. DEAS: I call Director Hughes.

16 THE COURT: All right. Mr. Hughes, you're still
17 under oath. Take the chair right there.

18 SHELTON HUGHES - DIRECT EXAMINATION

19 BY MR. DEAS:

20 Q Director Hughes, good afternoon.

21 A Good afternoon.

22 Q Sir, does the jail keep records as to how many inmates
23 are actually housed in a facility at a given time?

24 A Yes.

25 Q And do you have any record or knowledge as to how many

1 inmates are housed at that facility that April 28, 2006,
2 when Mr. Garris was originally brought to the jail?

3 A Yes. There should be a record of it that's been filed
4 away from the booking department.

5 Q That would show how many inmates were housed at the
6 facility at that time?

7 A Yes.

8 Q Would that information would you have with you today?

9 A No, I wouldn't have that today. But I have access to
10 it.

11 Q Do you know, just based on your own knowledge and
12 having run this jail for as many years as you have; what is
13 the average capacity so far as inmates at the jail?

14 A The average capacity of the detention center
15 fluctuates. And it fluctuates significantly. There is no
16 true figure that I can give you. I'll give you an example.
17 In August of 2006, we had a high count of 127 prisoners.
18 November of 2007, we had a low count of 48. When I left
19 the jail this afternoon we had a count of 106. A few
20 months ago I was in the 70s. So it is dependant upon the
21 courts and the actions of law enforcement.

22 Q Yes, sir. And so today you all have 106 inmates?

23 A Yes, we have.

24 Q Has it ever gone over 200 --

25 A No, it hasn't.

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1 Q -- during your tenure?

2 A No, it hasn't.

3 Q Has it ever been under 20?

4 A Not that I can recall.

5 Q How many staff are under your employ at the Clarendon
6 County Detention Center?

7 A A total of approximately 37 employees.

8 Q How many of those employees would be actually at the
9 facility during any shift?

10 A I would say the shift staff at that time would be
11 anywhere between 5 staff members and 15 staff members.

12 Q At the jail; would that include correctional officers?

13 A Right. That's security staff that are assigned to
14 supervise and manage the inmate population.

15 Q And three to six correctional officers at the jail
16 during any given shift?

17 A Yes.

18 Q Thank you, sir. I have no further questions.

19 THE COURT: Ms. Land?

20 MS. LAND: I don't have any questions.

21 THE COURT: Thank you, sir. You may step down.

22 MR. DEAS: Your Honor, this witness --

23 THE COURT: Is this witness free to leave?

24 MS. LAND: Yes, sir.

25 THE COURT: All right. Thank you.

1 Mr. Deas.

2 MR. DEAS: We call Brian Garris.

3 THE COURT: All right. Mr. Garris has already
4 been sworn, Ms. Roberts?

5 THE CLERK: Yes, sir, I've already sworn him.

6 THE COURT: Mr. Garris, you can take that chair
7 there.

8 BRIAN GARRIS - DIRECT EXAMINATION

9 BY MR. DEAS:

10 Q Mr. Garris, please state your name for the jury?

11 A Brian Rashard Garris.

12 Q Mr. Garris, how old are you?

13 A I'm 19 years of age.

14 Q What's your date of birth?

15 A January 1, 1989.

16 Q And how far did you go in school?

17 A Well, I was getting ready to graduate when I was
18 arrested for the charge.

19 Q All right. What school were you going to?

20 A Manning High School and Central Carolina.

21 Q Now, you lived -- You live here in Manning, correct?

22 A Yes, sir.

23 Q And you live with your grandmother?

24 A Yes, sir, at the time I was.

25 Q And who all lives there with you and your grandmother?

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1 A Just my great-uncle, my grandfather, he passed away
2 late this year, and my grandmother.

3 Q So your grandfather that your grandmother was
4 referencing earlier, he is deceased now?

5 A Yes, sir.

6 Q Now, going back to April 15, 2006, do you remember
7 that day?

8 A Ain't nothing really spectacular happen that day
9 except what was the scene of the crime, but other than
10 that, nothing spectacular happened that day.

11 Q You do have some memory of what was going on, what you
12 were doing that day?

13 A Yes, sir.

14 Q Tell the jury what you did that day, from the moment
15 you got up that morning, the whole thing. From that point
16 forward?

17 A Well, basically, it's the same old routine. My
18 grandmother get me up every morning telling me to come get
19 something to eat. She makes sure I get something to eat.
20 Basically, talk on the phone to the girls and stuff like
21 that. Just the same old thing teenagers do.

22 Q Was this a Saturday or do you know what day it was?

23 A I think it was Saturday. I have worked that Friday.

24 Q Where were you working?

25 A I was working at IGA and a construction roofing

1 company.

2 Q So you got up that morning, you ate breakfast?

3 A Yes, sir.

4 Q You made a few phone calls?

5 A Yeah.

6 Q What did you do after that?

7 A Just lollygag all day. Just basically outside messing
8 with my dog, and phone call from Fredrick White, and he
9 told me that they were getting ready to come over.

10 Q Fredrick White called you and told you he was going to
11 come over to your grandmother's house?

12 A Yes, sir.

13 Q Did they?

14 A Yeah.

15 Q Who all came over to your grandmother's house?

16 A Fredrick White, Freddie White. My brother, he spent
17 the night with them the previous night. And --

18 Q Let me stop you. So your brother Quentin Garris,
19 that's the brother you're referring to, right?

20 A Yes.

21 Q That's your only brother?

22 A I have two other brothers and an older sister.

23 Q You have two brothers that are younger than Quentin?

24 A Yes. I have one younger brother that's younger than
25 Quentin.

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1 Q Okay. And you've got an older sister.

2 A Yes, sir.

3 Q And so your brother, Quentin, spent the night with
4 Fredrick White the night before?

5 A Yes, sir.

6 Q So after you got the call from Fredrick White what
7 happened?

8 A He came and -- he told me he was coming. I was
9 sitting around and waiting for them, about an hour. So I
10 get in the car and go to the store, came back.

11 Q Whose car did you drive when you got in the car?

12 A My grandmother car.

13 Q Okay. And which store did you go to?

14 A I went to Carr's convenience store and liquor store,
15 because my grandfather worked there.

16 Q Your grandfather sent you to the --

17 A He got a call --

18 Q So he was with you?

19 A Yes, sir.

20 Q So when you left to go to the store your grandfather
21 was with you?

22 A Yes, sir.

23 Q Do you know approximately what time of day that was?

24 A I know it was before the liquor store closed. I know
25 it was seven.

1 Q Before 7:00 o'clock?

2 A Yes, sir.

3 Q At night?

4 A Yes, sir.

5 Q And you and your grandfather ran this errand and came
6 back home?

7 A Yes, sir.

8 Q About what time was it when you got home?

9 A It was about -- it didn't take long. It was right
10 down the street here -- roughly about five minutes.

11 Q Let me ask you this question. Do you remember what
12 time it was when Fredrick White called you and said they
13 were coming over to your house?

14 A No, I ain't know.

15 Q You don't remember?

16 A Huh-uh.

17 Q You know at some time, some point before 7:00 you and
18 your grandfather went to the liquor store and came back?

19 A Yes, sir.

20 Q Then what happened?

21 A I sit around and wait for them. It was a fellow named
22 Jerry, he dropped them by the house. When my grandmother
23 was talking about the boom, boom, boom, that was his car.

24 Q The music coming from this Jerry person's car?

25 A Yes, sir.

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1 Q So when they pulled up -- when this person pulled up
2 to drop off Fredrick White and the other fellows, they were
3 dropped, he was dropping them off at your grandmother's
4 house?

5 A He dropped them off and stayed there for a little
6 while, then he left.

7 Q And who all did he drop off at your grandmother's
8 house?

9 A He dropped off Fredrick White, Freddie White and my
10 brother. And this other dude, I think is their cousin,
11 Rashard White. Rashard.

12 Q So they dropped off Freddie, Freddie White, Fredrick
13 White, Quentin Garris, your little brother --

14 A Yes, sir.

15 Q -- and someone named Rashard?

16 A Rashard White, their first cousin.

17 Q And then what happened once they were dropped off?

18 A Basically we went outside in the backyard, and talked
19 on the phone. And it's true that they were smoking. We
20 were smoking. Sitting in the barn and talking on the
21 phone.

22 Q So what were y'all smoking?

23 A We were smoking marijuana cigarettes.

24 Q About what time was it when that was going on?

25 A I know it was getting late.

1 Q Was it dark outside?

2 A When they came to the house it wasn't dark. We sat
3 out there for a while.

4 Q Now, at some point, did you ask your grandmother about
5 taking you somewhere?

6 A I asked her could I get the car but the previous
7 weekend I ain't came home on curfew like I was supposed to.
8 And she told me that was the reason I wasn't getting the
9 car.

10 Q So you asked her about, you asked her could you use
11 her car?

12 A Yes, sir.

13 Q And she told you no?

14 A She told me no.

15 Q That's what you told her?

16 A Yes, sir.

17 Q And so once you all realized that your grandmother
18 wasn't going to let you take the car what did y'all do?

19 A Got her to drop us off at Manning Lane.

20 Q So she dropped you, Freddie White, Fredrick White,
21 Rashard White, your brother, Quentin, off at Manning Lane
22 Apartments?

23 A Yes, sir.

24 Q All y'all were in the car with her?

25 A Yes, sir.

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1 Q She was driving or somebody else was driving?

2 A She was driving.

3 Q And about what time was it, if you know, that she
4 dropped you off at Manning Lane Apartments?

5 A I know it was kind of late, because this girl, Tiara
6 called me and she told me --

7 Q You can't testify as to what she told you. My
8 question to you is do you know approximately what time was
9 it when your grandmother dropped you off at Manning Lane
10 Apartments?

11 A I'm not sure. I know it was getting late.

12 Q Was it before 10:00 o'clock or after 10:00 o'clock?

13 A I know the tv show as on, I think it was Law and Order
14 or something like that. It had to been around -- it could
15 have been around 9:00 o'clock.

16 Q So somewhere around 9:00?

17 A Uh-huh.

18 Q When you think she might have dropped you off at
19 Manning Lane Apartments?

20 A Yeah. Yes, sir.

21 Q And who all -- did she drop all of you off at these
22 apartments?

23 A She dropped all of us off.

24 Q So all of you got out of the car?

25 A Yes, sir.

1 Q You, Freddie, Quentin, Fredrick and Rashard?

2 A Yes, sir.

3 Q Where, specifically, were y'all going at the Manning
4 Apartments?

5 A Well, we went to guy name McBride apartment --

6 Q Is that the same Andrew McBride that testified here in
7 Court?

8 A Yes, sir.

9 Q That's whose house y'all went to?

10 A Yes, sir.

11 Q What happened, what did y'all do once y'all got to his
12 house?

13 A I was told that a female was there. I went over there
14 to see a female.

15 Q So when you went to Andrew McBride's house you didn't
16 go in his house?

17 A I went in but I came back out.

18 Q Then where did you go?

19 A The female went to another residence, so that's where
20 I went. I called Felicia, because she's her sister and she
21 -- she was going to let me borrow her vehicle long as I put
22 gas in it. And I wanted to go -- I had to walk to get her
23 vehicle, her truck.

24 Q How long were you inside of Andrew McBride's apartment
25 before you left?

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1 A Probably about 10 minutes, five or ten minutes.

2 Q And after you left there how long did you go to this
3 other person's apartment -- maybe I heard you wrong. When
4 you left Andrew McBride's apartment where did you go?

5 A Went outside with a female on the steps and stood
6 right there talking on the phone. She wanted to go to --

7 Q How long did you stand outside and talk to her?

8 A Not long. I know that.

9 Q You said you made a call to someone named Felicia?

10 A Felicia White, which is Freddie White's sister.

11 Q Where was she when you called?

12 A I didn't get her. I got her voice mail. I got her
13 voice mail and she usually -- she works at SaveWay. So I
14 went to SaveWay to see if I could see her truck?

15 Q So you left that apartment and went to SaveWay?

16 A Yes, sir.

17 Q How did you get there; were you walking or were you
18 driving?

19 A I was walked.

20 Q So you walked from Manning Lane Apartments, which is
21 on Court Street; is that correct -- or what street is
22 Manning Lane Apartments on?

23 A I don't know what street it is. I know how to get
24 there.

25 Q How far is Manning Lane Apartments from SaveWay?

1 A It's -- it would probably take me about 15 minutes,
2 about 15. About 15 minutes.

3 Q So it's about a 15 minute walk?

4 A Uh-huh.

5 Q So you walked from Manning Lane Apartments to the
6 SaveWay?

7 A Yes, sir.

8 Q What were you going to SaveWay for?

9 A As I say -- Felicia, she lets me drive her truck long
10 as I put gas it in, but when I got there she wasn't there.

11 Q So you were still looking trying to get a ride?

12 A I was looking to get somebody to let me drive their
13 vehicle.

14 Q So when you got to SaveWay was Felicia there?

15 A No, sir.

16 Q And the truck?

17 A The truck wasn't here either.

18 Q Was her vehicle there?

19 A No, sir.

20 Q So what did you do then?

21 A Well, originally, Jermaine, he was right there getting
22 gas and I asked him for a ride.

23 Q So when you came to the SaveWay Jermaine was already
24 there?

25 A He was already there, pumping gas.

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1 Q Who was he there with, who was with him in the car?

2 A His kids. I know his kids were in the car?

3 Q What did you ask him, if anything?

4 A I asked him to give me a ride to my grandmother's
5 house.

6 Q Why would you want to go to your grandmother's house?

7 A So I could ask her for the car.

8 Q You were going to ask her for the car, to see if
9 she'll let you use it?

10 A Yes, sir.

11 Q Were you supposed to be coming back to pick up Freddie
12 White, and your little brother?

13 A Yes, sir. I did receive a phone call from Freddie
14 White. He told me when I get the car to meet them at
15 McDonald's because they was walking to McDonald's.

16 Q When did you get this phone call from Freddie White?

17 A As I was walking.

18 Q As you were walking?

19 A To SaveWay.

20 Q If you got your grandmother's car your intention was
21 to come back to meet them at McDonald's?

22 A Meet them at McDonald's.

23 Q And at that point they were walking towards the
24 McDonald's?

25 A I'm not sure. I'm not sure where they were. I know

1 Freddie called me on Andrew phone, because I got Andrew
2 number programed on my phone. He called me on the phone
3 and told me when I get the car to meet them at McDonald's.

4 Q So after Jermaine Hicks finished pumping his gas what
5 happened then?

6 A I got in the car and we went to McDonald's. That's
7 basically after we went to McDonald's we -- I don't know
8 the streets, but we went down this street, I think it's
9 right between -- come out on the street and all that. He
10 said --

11 Q When you all left the SaveWay heading towards your
12 grandmother's house there were already police in the area?

13 A Yeah, because I could see the police when I walked
14 across the road. When I walked across the road.

15 Q As you were walking to the SaveWay you saw police?

16 A I saw the police.

17 Q You saw there was already something going on in that
18 area?

19 A Yes, sir. And I heard -- I'm not sure I heard shots,
20 but I know I heard something, but as I was going across the
21 street I saw the police.

22 Q And where did you actually see the police, where were
23 these police lights when I saw them?

24 A When I was crossing the street to go to come up by
25 SaveWay, when I was crossing the street that's when I see

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1 the police lights.

2 Q Were they near the Chinese restaurant?

3 A I know they were down that way.

4 Q You didn't know where they were at at the time?

5 A No.

6 Q And so where did Jermaine Hicks drop you off at?

7 A He dropped me right there by the city -- by City Hall,
8 right there on the other side of the road right there.

9 Q How far a walk was it from where he dropped you off to
10 your grandmother's house?

11 A Straight shoot.

12 Q A couple minute walk?

13 A About three minutes. Just across --

14 Q When he dropped you off where did you go?

15 A I went to the house. To the porch. Before I went to
16 the house, I saw the same officer that was in here. He
17 asked me for ID.

18 Q So after Jermaine Hicks dropped you off you ran into
19 Officer Drose?

20 A Officer Drose.

21 Q And you talked to him?

22 A I talked to him.

23 Q And did you give him your identification?

24 A I really didn't have to, but I did, because he knew
25 where I stayed at. He gave me a ticket before.

1 Q And so then after you had this conversation with
2 Officer Drose then what did you do?

3 A I went to the house and bammed on the door, because my
4 uncle he -- my great uncle, he came to the door and let me
5 in the house.

6 Q Do you know about what time it was when you got home?

7 A I know it was late. I'm not positive, but I know it
8 was late. It was probably about 10:30 or 10:40 or
9 something like that.

10 Q And when you got home who was there at that point?

11 A Just my great uncle.

12 Q Did you know where -- at that point did you know where
13 Freddie was -- Freddie White was?

14 A I didn't know -- I know I left him at Manning Lane.

15 Q Did you know where Fredrick White was⁶?

16 A No.

17 Q Did you know Rashard White was?

18 A No, sir.

19 Q Did you know where your little brother was at that
20 point?

21 A No.

22 Q Once you got home, got in the house what did you do?

23 A I went outside to watch Teresa in the backyard. She
24 was barking. It's a German Shepherd.

25 Q Teresa is your dog?

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1 A Yes, sir. I was going to bring her in the house
2 because she was barking and howling with all the sirens and
3 stuff. So I was going to bring her in the house and put
4 her in the laundry room. And I went back outside. My
5 brother called me to say he was about to get a ride with
6 Marcus.

7 Q Your brother, you're talking about Quentin?

8 A Quentin. He called me he was about to get a ride by
9 Marcus. Okay. By the time I got that phone call --

10 MS. LAND: Your Honor, I'm going to object to any
11 hearsay about what Quentin might have said. I don't know
12 where he's getting ready to go, but --

13 THE COURT: Mr. Deas --

14 BY MR. DEAS:

15 Q You can't testify, Mr. Garris, as to what somebody
16 said.

17 A Okay.

18 Q Just talk about what you know of your own personal
19 knowledge, not what somebody said.

20 A Okay. Quentin called my cell phone and came to the
21 house.

22 Q Do you know who dropped him off?

23 A He told me Marcus dropped him off.

24 MS. LAND: Your Honor.

25 THE COURT: Sustained.

1 BY MR. DEAS:

2 Q You can't say who --

3 A All right.

4 Q You can't say what he told you. So he got dropped
5 off.

6 A He got dropped off.

7 Q And did he come in the house?

8 A We sit on the porch for a little while.

9 Q What did you have on that day?

10 A I'm not sure, but I'm usually like Jermaine stated, I
11 usually always wear a t-shirt.

12 Q Did you have on a flannel type stripped shirt with
13 vertical or horizontal -- of that nature?

14 A No, sir. Only shirt I have is a basic shirt with a
15 collar on that.

16 Q A polo type shirt with two or three buttons and a
17 collar?

18 A No, a basic shirt.

19 Q And did you ever own, were you wearing a mechanic type
20 shirt that day?

21 A No, sir.

22 Q Did you have on a hat that day?

23 A No, sir. Anything on my head irritates me, that's why
24 I don't wear hats.

25 Q Have you ever worn your hair in dreads or braids of

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1 locks?

2 A No. I'm going bald.

3 Q So roughly your hair has always being worn short or
4 similar to the way it looks right now?

5 A Yes, sir.

6 Q Now, after Quentin got dropped off what did y'all do?

7 A Went in the house. My grandmother told me to bring
8 the dog in the house. I put her in the house. Went in the
9 refrigerator and got some orange juice. And we went
10 walking down the road. We were going to be nosy.

11 Q So you and your brother actually started walking
12 towards where this incident happened?

13 A Yes, sir.

14 Q And did y'all come into contact with anybody in law
15 enforcement?

16 A Yes, sir. We got in contact with Drose, as well as,
17 Holmes.

18 Q Drose?

19 A Officer Drose, as well as Officer Holmes.

20 Q Is that Holmes Smith.

21 A Holmes Smith.

22 Q All right. Did they stop you or question you?

23 A Drose, he said a couple words and we talked with him.

24 Q You can't say what he said, but all I know is did he
25 stop you, detain you, question you?

1 A No, sir.

2 Q And did Officer Smith stop you, question you?

3 A No, sir.

4 Q As you all were walking towards the crime scene, did
5 you actually get all the way down there to where the crime
6 scene was?

7 A No, sir. Not the crime scene. When we got there by
8 Stephens Funeral Home. I got a home from Tiara said she
9 was getting ready to come to the house.

10 Q So you went back home?

11 A Went back home.

12 Q Did you come back out any time later on that night?

13 A No, sir.

14 Q You got home, you stayed there?

15 A Uh-huh.

16 Q Now, Mr. Garris, you heard about the incident that
17 happened to the Santiago's on this night, April 15, 2006?

18 A Yes, sir.

19 Q Did you, at some point that evening, go to the
20 restaurant and rob Ms. Santiago?

21 A No, sir. I'm actually sorry for that. I ain't had
22 nothing to do with it, but I'm sorry about whatever took
23 place, but I ain't had nothing to do with that.

24 Q Did you have any involvement whatsoever with that
25 incident that occurred with Ms. Santiago and her children

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1 where Ms. Santiago was shot and robbed; did you have any
2 involvement in that crime whatsoever?

3 A No, sir.

4 Q Do you have any knowledge about it; do you have any
5 knowledge about how it happened or what happened?

6 A No, sir. Basically it's hearsay, but no, sir.

7 Q Now, the -- how far, if you know, how far is it from
8 the Chinese Cuisine restaurant where this incident took
9 place and where that Manning Apartments is where you were
10 dropped off? Id you can estimate in miles or yards or
11 however you can estimate it; how far are those two
12 locations from each other?

13 A I'd say about two and a half to three --

14 Q I don't know what that equates to miles, but would you
15 say that's -- would you say it's over a half a mile?

16 A Yes, sir.

17 Q And if you had to walk from the Manning Apartments to
18 the Chinese Cuisine restaurant how long would it take you
19 to make that walk?

20 A In a car I could get there in like five minutes. But
21 on feet, it may be take about -- I'd say about 25 minutes,
22 about 25 minutes.

23 Q Have you ever made that walk -- strike that. Let me
24 ask you this; have you ever walked from your house down to
25 the Chinese Cuisine restaurant?

1 A I never walked before. I never went straight to the
2 Chinese -- yes, sir, I did. I was did. Yes, I did.

3 Q So you've been to this Chinese restaurant before?

4 A Yes, sir.

5 Q How often would you say you went to that Chinese
6 restaurant?

7 A Basically, like -- I went there a couple of times.

8 Q In your lifetime how many times have you been there?

9 A I'd say probably about five or six times.

10 Q Do you ever recall seeing Laura Batista in the store?

11 A Yes, sir, I've seen her. I used to talk to the
12 owner's daughter.

13 Q Did you ever talk to Laura Batista before?

14 A She was the cashier.

15 Q So you've been there to eat; you've been there to
16 order food?

17 A Yes, sir.

18 Q And you would recognize her if you go in there, I'm
19 talking about Ms. Batista, Laura?

20 A Yes, sir.

21 Q How long of a walk would it be from, how long would it
22 take you if you were walking, how long would it take you to
23 get from the SaveWay to the Chinese Restaurant?

24 A About a half an hour. A good half an hour walk.

25 Q Now, you have been in Court, obviously. You've seen

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1 the weapon that's been admitted into evidence.

2 A Yes, sir.

3 Q And I'm just going to hold this up here. Have you
4 seen this weapon before?

5 A No, sir.

6 Q Is this your weapon?

7 A No.

8 Q The first time you saw it in this courtroom?

9 A Yes, sir.

10 Q Now, at some point after this incident happened; this
11 incident happened at April 15, 2006, right?

12 A Yes, sir.

13 Q You were in jail?

14 A Yes, sir.

15 Q Did you bring this weapon, the weapon that's been
16 marked as Defendant -- sorry, State's Exhibit No. 1. Did
17 you bring that weapon into the jail?

18 A No, sir.

19 Q Were you brought to jail on April 28, 2006?

20 A I was brought to jail on April 28, 2006.

21 Q And you were brought there on an unrelated case?

22 A Yes, sir.

23 Q Not related to this case?

24 A No, sir.

25 Q That's you've already been found not guilty?

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1 A Yes, sir.

2 Q And when you got to the jail that day were you
3 searched?

4 A Yes, sir.

5 Q How were you searched?

6 A When I first came in, probably by William McCoy. I
7 was pat down with handcuffs on. Pat down with handcuffs
8 on. Went in the intake room to use the restroom. Came out
9 the restroom went in the intake room. Officer McCants he
10 conducted the strip search. I was told to take my clothes
11 off and place them in the inventory bag. Then he took my
12 clothes and put them in the bag. He told me to squat and
13 cough. To lift up my nuts and spread -- spread my legs and
14 to lift up my nuts, and squat and cough, and I did.

15 Q Now that happened on April 28, 2006?

16 A Yes, sir.

17 Q Who brought you to jail?

18 A Officer William McCoy.

19 Q And before you were brought to jail were you searched?

20 A Yes, sir.

21 Q What kind of search was done on you before you were
22 brought to jail?

23 A I was pat down. I was checked all in between my legs
24 and outside my legs. I was searched two time. I was
25 searched by Lin Ham, Officer Lin Ham and I was searched by

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1 William McCoy.

2 Q That was before you were even brought to the jail?

3 A Before I was brought to the jailhouse.

4 Q Was a gun found on you at that time?

5 A No, sir.

6 Q When you got to the jail you were searched by --

7 A Darryl McCants.

8 Q -- by Officer McCants. That was the correctional
9 officer at the jail?

10 A Yes, sir.

11 Q And before your clothes were taken did Officer McCants
12 conduct a pat down search, a frisk search over your
13 clothes?

14 A Yes, sir.

15 Q Was any gun found?

16 A No, sir.

17 Q You said that your clothes were taken?

18 A Yes, sir.

19 Q were all your clothes taken even your underwear or
20 were you allowed to keep your underwear on?

21 A I was allowed to keep my underwear on.

22 Q And so you're saying, you correct me if I'm wrong, you
23 were instructed to hold your testicles, squat and cough?

24 A Yes, sir.

25 Q At the time you did this your clothes had been taken

1 away for evidence purposes?

2 A Yes, sir.

3 Q Now, sometime, at some point prior to that search the
4 one where you were de-clothed, you were undressed, other
5 than your underwear, at some point prior to that I believe
6 you stated you had asked about going to the bathroom?

7 A Yes, sir.

8 Q Now, before we get into that, when you were brought
9 into the jail by Officer McCoy.

10 A Yes, sir.

11 Q What area of the jail did they take you to?

12 A I was brought in and I was housed in the booking area
13 until a warrant was served on me.

14 Q And so in this booking area were you in a cell or were
15 you in a holding area?

16 A I was in a cell.

17 Q And were you in the B-2 unit?

18 A No, sir, I wasn't in the B-2 unit. I wasn't placed in
19 the B-12 unit until the warrant was served on me.

20 Q Okay, initially you were placed in the booking area?

21 A Yes, sir.

22 Q But you were in a cell?

23 A Yes, sir.

24 Q Were there other inmates in the cell with you?

25 A It was three other inmates in the cell.

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1 Q Did you know any of them?

2 A There was one Hispanic male, and one black -- African
3 American male.

4 Q Before you were placed in that cell, was that when you
5 asked to go to the bathroom or did you ask to go to the
6 bathroom after you were placed in that cell?

7 A I asked to go before I was originally put in the cell.

8 Q And what area of the jail did you go to to go to the
9 bathroom?

10 A The booking area.

11 Q Is the bathroom in a cell?

12 A The bathroom is in the cell.

13 Q And did you go in there by yourself?

14 A Yes, sir, but there's two other inmates in there as
15 well.

16 Q So when you went into the bathroom, there were two
17 other inmates in there with you?

18 A Yes, sir.

19 Q And did the correctional officer watch you while you
20 went to the bathroom?

21 A He was standing there at the desk getting prepared to
22 do some paper work on booking.

23 Q Do you know if he could see you?

24 A Yeah.

25 Q And after you used the bathroom, is that when you're

1 clothes were taken and they did the more involved search?

2 A Yes, sir.

3 Q And then what happened after that second search?

4 A I was then placed in a cell with the two individuals
5 that I mentioned just a while ago. I wait -- the warrant
6 was served on me about 12:00 o'clock that night. And I was
7 taken to the Block 2.

8 Q Were you searched again before you were taken to Block
9 2?

10 A No, sir.

11 Q Now, at some point the next day did you have an
12 occasion to put your food tray out on the flap from the
13 cell door to be retrieved by Mr. McCrea?

14 A Yes, sir.

15 Q Mr. McCrea is an inmate at the jail; correct?

16 A Yes, sir.

17 Q Part of this duties was to pick up trays.

18 A Yes, sir.

19 Q Prior to the day that Mr. McCrea picked up your tray
20 had y'all had any dealings?

21 A I think he was there when I was arrested for a traffic
22 violation. And when I came I was talking to another inmate
23 and he told me to be quiet and that he got violent with him
24 and he wasn't half finished. So there wouldn't be any
25 friction between me and him.

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1 Q So you had had some dealings with Mr. McCrea when you
2 got arrested on a traffic case?

3 A Yes, sir.

4 Q But other than that you had no dealings with him?

5 A No, sir.

6 Q On the day that Mr. McCrea came to pick up your food
7 tray, were you in a cell by yourself or was someone in there
8 with you?

9 A No, sir. I had a -- I think -- I'm not sure -- I've
10 seen him around, but I'm not sure of his name, but it
11 wasn't one tray, that was two.

12 Q So there was someone in the cell with you?

13 A Yes, sir.

14 Q But you don't remember his name?

15 A No, sir.

16 Q And there were two trays placed on your flap?

17 A Yes, sir.

18 Q One from you and one from the other inmate?

19 A Yes, sir.

20 Q And when Mr. McCrea took your tray, did he come back
21 and say anything to you after that or say anything out of
22 the ordinary to you?

23 A No, sir.

24 Q Did you put this gun or any gun, for that matter, on
25 your food tray?

1 A No, sir.

2 Q Did you attempt to hide this gun on your person inside
3 of your person in some body cavity when you went in that
4 bathroom to go to the bathroom after you were officially
5 brought into the jail?

6 A No, sir.

7 Q Did you take this gun, put it on your food tray -- and
8 I would assume it was a food tray like this?

9 A Yes, sir.

10 Q This food tray that's marked as Defendant's Exhibit
11 No. 1. Is it similar to the type food tray that you put on
12 the flap that day?

13 A Everyone in Bravo 2 get those trays except for Block 3
14 and Block 5.

15 Q This type of tray?

16 A Yes, sir.

17 Q Did you put a gun on that food tray and cover it with
18 food?

19 A No, sir. I'm going to eat my food.

20 Q Have you ever -- you understand that the person that
21 committed this offense was described as tall and slender?

22 A Yes, sir.

23 Q Have you ever been taller than what you are right now
24 today?

25 A No, sir.

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1 Q How tall are you?

2 A Five-five, five-six, tops.

3 Q And how much do you weigh today?

4 A 245 pounds.

5 Q And have you ever been slender and big?

6 A No.

7 Q And back when this incident happened in 2006, were you
8 pretty much a chubby fellow then?

9 A Yes, sir. I played defense on the high school
10 football team.

11 Q How much would you say you weighed back in 2006?

12 A I don't know. Probably about the same. Probably
13 about 2 or 3 pounds, but the same size.

14 Q You were always about 200 pounds roughly?

15 A Yes, sir.

16 Q And I'm going to ask you, Mr. Garris, about this gun.

17 A Yes, sir.

18 Q Have you ever seen this gun before?

19 A No, sir.

20 Q Until court?

21 A Until today.

22 Q Did you in some way sneak this gun into the Clarendon
23 County jail on the day you were arrested on April 28, 2006,
24 on this unrelated charge?

25 A No, sir.

1 Q And when you went into the bathroom prior to being
2 searched by Officer McCants, did you take this gun and
3 attempt to hide it on your person, in your clothes, in your
4 body, in some orifice in your body?

5 A No, sir.

6 Q You were searched twice that day you were brought to
7 jail, right?

8 A I was searched twice. The pat -- pat down and the
9 strip-search.

10 Q The pat down search and the cough and squat search?

11 A Yes, sir.

12 Q Pat down search came before or after you went to the
13 bathroom?

14 A It came before I went to the bathroom.

15 Q The cough and squat search came after you went to the
16 bathroom?

17 A After I went to the bathroom.

18 Q And before you were taken to the Block 2 cell?

19 A Before I was taken to Block 2 cell, yes, sir.

20 Q Thank you, Mr. Garris. I have no further questions.

21 THE COURT: All right. Ladies and gentlemen, does
22 anybody need to take a break?

23 You do. All right. We'll take a few minutes.

24 Ladies and gentlemen, please do not discuss the case.

25 Mr. Garris, do not discuss your testimony.

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1 (Jury out for short break.)

2 (Jury in after short break.)

3 THE COURT: Ms. Land.

4 BRIAN GARRIS - CROSS-EXAMINATION

5 BY MS. LAND:

6 Q All right, Mr. Garris, let's start from the beginning.

7 During this time, which was April to May of 2006, you say

8 you were living with your grandmother at 201 North Street?

9 A Well, 402 North Church Street.

10 Q Okay, 402, North Church Street. You went to Manning

11 High School?

12 A Yes, ma'am.

13 Q And you played football for them?

14 A Yes, ma'am.

15 Q Okay. Can you tell me what that is?

16 A It's something from Manning High School.

17 Q Is that where you withdrew from Manning High School in

18 December of 2005?

19 A December 2005?

20 Q Yes.

21 A I withdrew from Manning High School in December 2005.

22 I went back to Manning High School in '06.

23 Q In January of '06?

24 A I went back in March of '06. I withdrew in December

25 of '05.

1 Q Okay. Well, you told the jury you were a senior
2 didn't you exaggerate. That's from December 2005, what
3 grade does it say you were in?

4 A It says 10th.

5 Q Okay. But you're saying that you went back in 2006?

6 A Yes, ma'am.

7 Q Okay, so if I check with Manning High School and get
8 some records it would reflect that you were a student
9 there?

10 A Yes, ma'am.

11 MS. LAND: Your Honor, I'd like to have this put
12 into evidence as State's No. 11.

13 MR. DEAS: If I could just take a look at it.

14 No objection.

15 THE COURT: All right. State's No. 11.

16 (State's Exhibit No. 11, Manning
17 High School Report on Defendant, was marked and entered.)

18 BY MS. LAND:

19 Q All right. So despite those issues in the summer of
20 2008, you returned in March, you were placed on the
21 football team. They let you be on the football team even
22 though you'd missed two months practice?

23 A Coach Griggs did. I know that.

24 Q Coach Griggs did?

25 A Yes, ma'am.

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1 Q All right. And so you were on the football team and
2 everything was going great?

3 A Yeah, everything was going all right.

4 Q Everything was all right?

5 A Yes, ma'am.

6 Q And what you're telling this jury is that on that date
7 you were with Fredrick, Freddie, and Andrew McBride at
8 Manning Lane Apartments?

9 A I was with Fredrick, Freddie, my brother, along with
10 Rashard White and Andrew McBride.

11 Q At Manning Lane Apartments?

12 A Yes.

13 Q All right. At that apartment that night, there's been
14 testimony that you had a gun. A gun that was a small black
15 revolver, a .22 with a tan handle. Is that true?

16 A I don't know whether it's true or not, but I know I
17 didn't have it in my possession.

18 Q Well, there's been testimony that you had it in your
19 possession. Did you have it in your possession?

20 A I know I didn't have it in my possession. It was a
21 firearm.

22 Q Do you own a gun?

23 A Do what?

24 Q Do you own a gun?

25 A No, I do not.

1 Q Do you regularly handle guns?

2 A BB gun, but I don't own a firearm.

3 Q You have a BB gun?

4 A Yes.

5 Q But not any firearms?

6 A No, ma'am.

7 Q No .22?

8 A No .22.

9 Q All right. So far Freddie has lied saying that you
10 possessed a gun that night and Andrew has lied?

11 A Yes, ma'am.

12 Q Okay. So both of them came in the courtroom and lied?
13 When you left Manning Lane Apartments you said that you met
14 a girl named Keisha?

15 A No, her name was not -- her name was Kalica (sp).

16 Q Okay. Kamica (sp). All right, and y'all went
17 outside?

18 A Yes, ma'am.

19 Q Is Kamica here today?

20 A No, she is not.

21 Q And y'all went outside and talked and she invited you
22 back to her apartment?

23 A To her mother house.

24 Q To her mother's house and there was no adult's home.

25 And I think we can assume why she invited you back?

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1 MR. DEAS: Objection, Your Honor. Relevance.

2 THE COURT: You can rephrase the question, Ms.

3 Land.

4 BY MS. LAND:

5 Q Why'd she invite you back to her home?

6 A That's when she told me her mama wasn't there. Doing
7 thing teenagers do.

8 Q What?

9 A Doing things teenagers do.

10 Q Okay. Doing things that teenagers do. But you chose
11 not to go?

12 A I was going to go after I get a vehicle.

13 Q Why did you have to get a vehicle?

14 A Because her mother don't stay in Manning Lane.

15 Q If you were going to get your vehicle to do things
16 that teenagers do at Kamica's home where there were no
17 adults, why wasn't Kamica with you?

18 A Why wasn't Kamica with me? She wasn't going to walk
19 with me to locate no vehicle.

20 Q Okay, so you were supposed to go back and pick her up?

21 A Yes.

22 Q And you went to the SaveWay because you wanted to get
23 the truck from the White brothers sister?

24 A Yes, ma'am.

25 Q And Freddie White's testified that she was working,

1 but you said that that's also a lie?

2 A That's also a lie.

3 Q Okay. You were unable to find her and so -- that's
4 when you ran into Jermaine?

5 A Jermaine was at the pump pumping gas.

6 Q And you saw him, and you got in the car. And instead
7 of having him take you straight to your house or you
8 walking straight to your house you decided to go back to
9 McDonald's with he and his three young children before
10 getting in the car to go get Kamica?

11 A I never actually to McDonald's. I went back to
12 McDonald's. We was at SaveWay. He picked me up then, so I
13 never came back from McDonald's.

14 Q From SaveWay you went to McDonald's?

15 A I went to McDonald's.

16 Q Okay. Isn't McDonald's further from the house than
17 SaveWay is?

18 A Yes.

19 Q Okay, so you're not making progress here. You've
20 moving in the opposite direction?

21 A What -- can you explain it?

22 MR. DEAS: Objection. That's argumentative.

23 THE COURT: Overruled.

24 BY MS. LAND:

25 Q You were going away from the place that you were

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1 trying to go; is that correct?

2 A I was going to away from the place I was trying to go.
3 I was really going to see if Felicia was at work and she
4 wasn't at work. It was Jermaine that -- I got a ride with
5 Jermaine. We went to McDonald's. He told me I would have
6 to wait that he was going to get his little girls something
7 to eat. As he testified earlier. We left SaveWay and went
8 to McDonald's.

9 Q But wouldn't it have been quicker just to walk to your
10 home instead of going to McDonald's with three young
11 children, and then going from there back to your house?

12 A It would have not been quicker.

13 Q It wouldn't have been quicker?

14 A No, ma'am.

15 Q Now, tell me what you were wearing that night?

16 A As I said before, I usually -- me and my brother, we
17 usually have white t-shirts. We get discounts on white t-
18 shirts.

19 Q All right, and you don't ever wear a hat?

20 A No. I've got keloids on my head. It irritates me to
21 wear a hat.

22 Q You have what?

23 A Keloids.

24 Q Keloids?

25 A Keloids or something like that.

1 Q So you don't ever wear a hat because it irritates your
2 head?

3 A Yes, ma'am.

4 Q All right. Have you ever had dread locks?

5 A Never had dread locks a day in my life.

6 Q Do you ever wear a doo-rag?

7 A That is -- no, as I said earlier. It irritates my
8 head.

9 MS. LAND: Your Honor, may we approach?

10 THE COURT: Yes, ma'am.

11 (Off the record bench conference with Ms. Land, Mr. Deas,
12 and the Court.)

13 THE COURT: Ladies and gentlemen, if you will step
14 to your jury room for just a minute.

15 (Jury out at 4:57 p.m.)

16 THE COURT: All right, Ms. Land, if you'll hand
17 this to the court reporter.

18 MS. LAND: Yes, sir.

19 THE COURT: She can mark it with the next number
20 for the state for ID.

21 MS. LAND: Yes, sir.

22 THE COURT: How about put in on the back.

23 MS. LAND: You can put it on the back. I just
24 folded it to try to be --

25 (State's Exhibit No. 12, photo of

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1 defendant with stocking cap, was marked for identification.

2 PROFFER

3 BY MS. LAND:

4 Q All right. Your testimony is that you never wear hats
5 or doo-rags because it irritates your head?

6 A Yes, ma'am.

7 Q Can you tell me what that is?

8 THE COURT: Do you want to identify it, Ms. Land?

9 MS. LAND: Your Honor, that's State's Exhibit No.
10 12, for ID.

11 BY MS. LAND:

12 Q All right. Can you tell me what that is?

13 A Well, --

14 THE COURT: Mr. Garris, the question is, what is
15 it?

16 A It's a stocking cap with a hood.

17 THE COURT: It's a photo of what?

18 A It's a photo of me standing by a police car with a
19 stocking cap on my head.

20 THE COURT: Go ahead.

21 MS. LAND: Okay. That's all the questions I'd ask
22 in regard to that. You mean, what I'd ask in front of the
23 jury?

24 THE COURT: Yes, ma'am.

25 MS. LAND: I would just ask that that then be

1 published to the jury.

2 THE COURT: Mr. Deas?

3 MR. DEAS: Judge, first of all, this is basically
4 an ambush. I've never seen that picture. It was never
5 turned over to me as part of discovery.

6 THE COURT: Does it have to be?

7 MR. DEAS: It's discoverable. If they have a
8 picture of him that's somehow related to this case --

9 THE COURT: All right.

10 MR. DEAS: -- I have a right to see it.

11 THE COURT: All right. All right, Ms. Land, what
12 was the foundational evidence that this photo shows, when
13 it was taken and what is it for?

14 MS. LAND: Your Honor, this --

15 THE COURT: Was it this for this crime?

16 MS. LAND: Absolutely not.

17 THE COURT: Well, Mr. Deas, that point it's --

18 MR. DEAS: How do we know that; just because she
19 says so?

20 THE COURT: I'm talking, Mr. Deas, okay.

21 MR. DEAS: Okay.

22 THE COURT: The testimony that I've heard
23 establishes that he was apprehended on April 28th for a
24 crime that was not the subject of this case for which he
25 was found not guilty. And that instruction was made to the

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1 jury.

2 Now, -- even though you did object to the overall --
3 This witness has testified on direct, and there was an
4 effort made on direct, as you are required to do to
5 represent your client, that he didn't wear hats, he didn't
6 wear doo-rags because they irritated the back of his head.

7 MR. DEAS: Actually, I never asked him about a
8 doo-rag. We can play back the tape. I never asked him
9 anything about a doo-rag.

10 THE COURT: All right. He testified on cross that
11 he didn't wear doo-rags because it irritates the back of
12 his head; is that correct?

13 MR. DEAS: That's correct.

14 THE COURT: All right. Now, aside from the fact
15 of where this photo -- the circumstances of when this photo
16 was taken, do you have an objection?

17 MR. DEAS: I have an objection because we don't
18 know -- this picture cannot be authenticated in any way.
19 We don't know who took the picture, we don't know where it
20 was taken, we don't know when it was taken. It could have
21 been taken two days ago, for all we know.

22 THE COURT: Ms. Land, ask the question such as
23 that, and perhaps another to try to establish that.

24 Go ahead.

25 BY MS. LAND:

1 Q Brian, do you know when this picture was taken?

2 A No, I do not.

3 MS. LAND: And Your Honor, for the record, it's on
4 the back of the photo. Officer Richardson took it.

5 THE COURT: All right. You can ask the witness in
6 light of that photo whether or not his testimony is the
7 same.

8 BY MS. LAND:

9 Q In light of that testimony, in light of that picture
10 is your testimony the same?

11 A I don't understand your question.

12 Q Do you still say that you never wear doo-rags?

13 A No, I don't wear doo-rags.

14 THE COURT: Are you wearing a doo-rag in that
15 photo, sir?

16 A It's a stocking cap with elastic in the front.

17 THE COURT: All right. Follow up on that. Follow
18 up on that, Ms. Land.

19 Do you wear those kind?

20 A No, sir.

21 THE COURT: You don't wear those kinds that show

22 --

23 A They are extremely hot and they irritate my head.

24 THE COURT: All right. Are you wearing one in
25 that photo?

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1 A No, that's not a doo-rag.

2 THE COURT: It's a stocking cap with elastic on
3 it?

4 A It's not a stocking -- it's not a doo-rag, it's
5 stocking cap with elastic band on it.

6 THE COURT: All right. Do you wear those?

7 A I don't --

8 BY MS. LAND:

9 Q Do you wear stocking caps with elastic around the
10 back?

11 A The stocking cap doesn't have elastic around it. I put
12 the elastic around it because doo-rags irritate the back of
13 my head.

14 MS. LAND: And Your Honor, I think the jury has a
15 right to see that.

16 MR. DEAS: And Judge, again --

17 THE COURT: I think what concerns me is the
18 semantical angle the witness has taken. Semantical -- the
19 witness has testified he doesn't wear doo-rags. But he
20 wears stocking caps with elastic band. I think Ms. Land,
21 if I understand where you're going with this line of
22 questioning, if this witness were to testify that yes, I
23 wear stocking caps with elastic bands and they fit tightly
24 around my head much as a doo-rag does. To an uneducated
25 person they might look exactly the same. Would that

1 accomplish your purpose?

2 MS. LAND: Your Honor, he said, I don't wear
3 anything on my head. Those were his exact words. I don't
4 wear anything on my head, they irritate it.

5 THE COURT: All right. Play it back.

6 (The record is played back.)

7 (Jury in at 5:23 p.m.)

8 THE COURT: All right. Continue, Ms. Land.

9 BRIAN GARRIS - CONTINUED CROSS-EXAMINATION

10 BY MS. LAND:

11 Q Okay, you said that in 2006 you worked for the IGA?

12 A In 2006, I did work for the IGA and a construction
13 company out there.

14 Q Okay, the construction company was Kramer, Larry
15 Kramer or Kramer Mathis?

16 A I'm not sure of his last name, but he used to drive a
17 doolie truck.

18 Q All right. His first name is Kramer?

19 A I don't know if it's his first name is -- I think they
20 called him Larry.

21 Q Oh, Larry Kramer.

22 A I don't know his last name. I forgot his last name.

23 Q But earlier you said Kramer?

24 A I said Larry.

25 Q Okay. But you did work at the IGA during this time?

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1 A I did work at the IGA in 2006, and I did work for Mr.
2 Larry.

3 Q One, Donnie Drose, you said he did check your license
4 and he did have a conversation with you that night; is that
5 correct?

6 A Yes.

7 Q And what reason has Donnie Drose have to come into
8 this courtroom and tell this jury something other than the
9 truth?

10 MR. DEAS: Objection. Calls for speculation. He
11 doesn't know what motivation Donnie Drose would have to say
12 or do anything.

13 THE COURT: Okay. Ask the question does he know
14 anything Mr. Drose has against him, if he knows.

15 BY MS. LAND:

16 Q Do you know of anything that Mr. Drose has against you
17 --

18 A I don't --

19 Q -- to come into this courtroom and lie under oath
20 against you?

21 A I'm not saying anything about him, but the way it look
22 it look like somebody is trying to cover up something I
23 said before, because I had nothing to do with anything --

24 Q And Freddie and Andrew -- Freddie White and Andrew
25 McBride have both come into this courtroom under oath,

1 according to what you said, about you having a small .22
2 revolver with a tan handle of the night of this shooting?

3 A I don't know -- Mr. Donnie Drose talked to me on April
4 15, he lied under oath, so I'm assuming they -- I'm not
5 going to assume, they are lying.

6 Q Okay. And what reason, if you know of any, would
7 those two friends of yours have to come in here and lie
8 under oath?

9 A Well, what I suggested as in his sworn testimony he
10 told you I didn't have a gun when y'all arrested me.

11 Q Okay. What reason would Freddie White have to come in
12 here and tell this jury that the day after \$40 in \$20
13 denominations that was stolen from Laura Batista would
14 have? What reason would have for making that up?

15 A I don't know.

16 Q Okay. And you said that Officer McCants came into
17 this courtroom and swore under oath that he did not strip
18 searched you, that he only gave you a pat down search, and
19 you said he strip searched you. What reason does Officer
20 McCants have, if you know of any, to come into this
21 courtroom, take an oath to tell the truth and lie to these
22 jurors?

23 A As I said before, the way it looked like someone was
24 trying to cover something. He conducted -- when I came in
25 he pat me down. He strip searched me. That's what he did.

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1 Anything else you're talking about is irrelevant because he
2 did strip search me.

3 Q All right. Officer McCants, Shelton Hughes, and
4 Officer Baker came in here and said in the booking cells
5 only one person is put in a cell. You said you were in
6 there with two other inmates --

7 MR. DEAS: I'm going to object, because that's a
8 mis-characterization of --

9 THE COURT: Sustained. Rephrase the question.

10 MS. LAND: Okay.

11 BY MS. LAND:

12 Q Shelton Hughes told us that one person was placed in
13 the booking cell at the time. You said that you were in
14 there with two other people.

15 MR. DEAS: Judge, again, that's not what Director
16 Hughes testified to. That's a mis-characterization of his
17 testimony.

18 THE COURT: The jury can sort out. Ms. Land,
19 couch the question in terms -- the weigh the evidence the
20 jury can recall.

21 BY MS. LAND:

22 Q Are you telling this jury that Shelton Hughes told
23 lies about you?

24 A I'm going to tell you, yes, because I've been
25 incarcerated since April 28th, and I know how the inmates

1 are housed in the cells because those are my living
2 quarters.

3 Q And you say that Inmate McCrea, who is in SCDC, who is
4 on trustee status, who has absolutely nothing to gain --

5 MR. DEAS: Objection, this is a summation. This
6 is a closing argument.

7 THE COURT: Sustained.

8 BY MS. LAND:

9 Q What reason, if you know of any, would Johnny McCrea
10 have to come in here and say that that gun was on your
11 tray?

12 A He wouldn't have unless he found a gun on my tray.

13 Q And you're saying that when your grandmother said
14 Quentin was with you, she was lying?

15 A My grandmother, she did true, she did state that, but
16 on that night my brother was not with me that entire night.

17 Q Okay, and you're telling this jury that on the day you
18 were arrested, April 28th, you did not handle a firearm?

19 A I did not handle a firearm on April 28th. I'm
20 positive.

21 Q And you did not hold one or fire one?

22 A I did not hold one or fire one on April 28th.

23 MS. LAND: Judge, aside from the issue that --

24 THE COURT: All right.

25 MS. LAND: -- that's all my questions.

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1 THE COURT: All right. Ladies and gentlemen,
2 we're going to stop for today. If you would be back
3 tomorrow morning at 9:30, we will continue and move forward
4 to the conclusion of the trial. I want to repeat, that you
5 are not allowed to talk about the case, you're not allowed
6 to being forming final conclusions, you're not allowed to
7 listen to anything about this case or read anything about
8 it. If that occurs in your presence, please absent
9 yourself from that situation. And I, as I customarily do,
10 will ask you about that in the morning.

11 All right. You are excused for the day. Thank you
12 very much.

13 And by the way, the hurricane looks like it's going to
14 be -- just what the weatherman calls a rain event.
15 (Jury out at 5:30 p.m.)

16 THE COURT: All right, Mr. Garris, you are not
17 permitted to discuss your testimony with anyone; do you
18 understand that?

19 MR. GARRIS: Yes, sir.

20 THE COURT: Mr. Deas, do you understand that?

21 MR. DEAS: Yes, sir.

22 THE COURT: And that means anyone.

23 MR. DEAS: Yes, sir. I'll make sure.

24 THE COURT: All right.

25 MR. DEAS: I'll tell him.

1 THE COURT: All right. In case the record's not
2 clear, Defense Exhibit No. 12 provided that a foundation
3 would be laid as whether a witness had admitted on May 6,
4 2008, that that was him, as it is stamped. I shows him
5 with a tight fitting head wear with something hanging down
6 the back.

7 Now, Mr. Deas, this witness has clearly testified that
8 he would never wear anything hanging down past the collar.
9 Question number one, when he was booked into the jail was
10 this clothing still be in his possession.

11 Ms. Land, you just ask him and let me know.

12 MS. LAND: Yes, they still have it.

13 THE COURT: All right. Can it be brought in
14 tomorrow so that I can look at it? We can have it modeled,
15 he can try it on.

16 All right. And you might want to do some research as
17 to whether or not the state can request him to put it on.
18 There's laws that clear say that the defendant can be
19 required to show if he has any tattoos. See if there's
20 case law that may apply to a defendant who is testifying or
21 not testifying can be required to put on an article of
22 clothing. I think you will probably find something.

23 All right. Y'all know that there's case law out
24 there.

25 All right. Mr. Deas, who do you think you'll call

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1 next. I'm not going to hold you to it, but how many more
2 do you think you'll have?

3 MR. DEAS: One likely, Judge. We're going call
4 next Officer -- Possibly Officer Ham and Officer William
5 McCoy.

6 THE COURT: All right. Is Mr. McCoy at the
7 sheriff's office? All right. Is he under subpoena?

8 MR. DEAS: He is.

9 THE COURT: What time is he supposed to be here?

10 MR. DEAS: I subpoenaed him for the whole week.

11 THE COURT: Mr. Ham, you can be here tomorrow
12 morning at 9:15?

13 MR. HAM: Yes, sir, I can.

14 THE COURT: Make sure Mr. McCoy is here at 9:15.
15 Anybody else?

16 MR. DEAS: We've got Officer Lee. Sgt. Lee. He
17 came today.

18 THE COURT: Do we need to do anything about Sgt.
19 Lee today that might give us some idea of what you're going
20 to try to elicit from him?

21 MR. DEAS: That may be helpful. We talked about
22 it before, and it's basically just referencing the
23 information with respect to the height of the assailant.

24 THE COURT: Ms. Land, any problem with doing that
25 right now, just to find out what we're doing?

1 MS. LAND: No, sir.

2 THE COURT: All right, and I might say that the
3 lawyers are doing a very excellent, effective job. They're
4 doing their jobs. My problem is with other issues and not
5 a reflection on how you're handling it, it's just the way
6 this set up. Obviously, some time I'm the last to know
7 what's coming and that's very understandable. So don't
8 take my statements to mean -- or comments to mean a
9 reflection on what you're doing.

10 MR. DEAS: Yes, sir.

11 THE COURT: All right. If you'll come up, Officer
12 Lee.

13 THE COURT: The incident report it's not --

14 MR. DEAS: It's not. It needs to be marked.

15 THE CLERK: Raise your right hand, please.

16 (WHEREUPON, Terry Allen Lee, was
17 sworn to tell the truth.)

18 THE CLERK: State your full name for the record.

19 MR. LEE: Sgt. Allen Lee.

20 THE COURT: All right, Mr. Deas.

21 PROFFER:

22 ALLEN LEE - DIRECT EXAMINATION

23 BY MR. DEAS:

24 Q Officer Lee, which law enforcement agency are you
25 with?

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1 A With the Manning Police Department.

2 Q And were you with the Manning Police Department back
3 on April 15, 2006?

4 A Yes, sir.

5 Q And what was your -- in what capacity did you work for
6 the Manning Police Department at that time?

7 A I was a sergeant, same as I am now.

8 Q And were you assigned to any particular unit?

9 A Patrol Division.

10 Q On that point, on April 15, 2006, when this incident
11 happened at the Chinese Cuisine Restaurant where Ms.
12 Santiago was robbed and she was shot, were you call to
13 respond to that scene of that crime?

14 A Yes, sir. I don't remember which officer initially
15 got the call, but I was the first one on the scene.

16 Q You were the first officer on the scene?

17 A Yes, sir.

18 Q And when you arrived on the scene, what, if anything,
19 did you observe?

20 A First thing when I arrived on the scene --

21 Q Yes, sir.

22 A -- I remember an Hispanic female sitting in a chair at
23 the front of the building. There were several people
24 around, possibly, I can't remember the exact number. Not a
25 crowd. You know, I would probably say, generally, three to

1 four people, just on an assumption.

2 Q Do you know what time it was when you got there?

3 A It was approximately 10:00 o'clock because I remember
4 it was right at closing time.

5 Q Pretty much right at 10:00 o'clock?

6 A Yes, sir.

7 Q And at that point had the incident already occurred?

8 A Yes, sir.

9 Q So the incident had to have occurred sometime before
10 10:00 o'clock?

11 A Right in that area. It was in that 10:00 o'clock
12 range. I know it was right around closing.

13 Q So how -- when you got the call to respond to the
14 scene what time was it?

15 A I don't remember what time it was when I got the call.

16 Q Sometime before 10:00?

17 A Yes, right at that 10:00 o'clock area.

18 Q You would have gotten there a little bit after 10:00?

19 A Yes, sir. If I would have gotten the call at 10:00,
20 it would have been maybe a minute or so.

21 Q You were out on patrol?

22 A Yes, sir.

23 Q And you got there, you saw Ms. Santiago?

24 A Yes.

25 Q And did you see her children?

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1 A I remember speaking to them briefly during the ordeal.

2 I don't remember exactly what I spoke to them about.

3 Q Had EMS already been called for Ms. Santiago or do you
4 know; was the ambulance already on the scene?

5 A No, sir. Ambulance wasn't on the scene when I got
6 there.

7 Q Now, at some point did you have an opportunity to talk
8 with Ms. Santiago after you arrived on the scene about what
9 occurred?

10 A I remember trying to speak with her and there was a
11 language barrier there. And I remember trying to speak
12 with the daughter. I did get a little information, but
13 once the situation, investigation chief was called along
14 with the captain, and once they arrived on the scene they
15 basically took over from there and my main job was to make
16 sure that the scene was secure.

17 Q Now at some point after you arrived on the scene and
18 spoke with Ms. Santiago and her daughter, Ms. Batista, at
19 some point after that you had an opportunity to prepare an
20 incident report?

21 A Yes, sir, I actually did the incident report on the
22 scene that night. I do remember doing it inside the car
23 once SLED arrived.

24 Q You prepared the report yourself?

25 A Yes, sir.

1 Q And the report was prepared April 15, 2006?

2 A Yes, sir. The initial report and any investigative
3 notes or anything, they all have access to that if there
4 was any.

5 Q Do you recall as part of your investigation prior to
6 preparing a report, do you recall getting any information
7 from either Ms. Santiago or her daughter regarding the
8 height of the assailant?

9 A I really can't remember what information -- I know I
10 did have a height in the report, but I can't remember right
11 off the top of my head what it was.

12 Q If I gave you -- handed you a copy of your report
13 would that help refresh your memory of what you put in it?

14 A I think so.

15 MR. DEAS: Mark this as Court's Exhibit --

16 THE COURT: Defendant's Exhibit.

17 MR. DEAS: I'm sorry. Defendant's Exhibit No. 3
18 for identification purposes.

19 (Defendant's Exhibit No. 3,
20 incident report, was marked for identification.)

21 MR. DEAS: Your Honor, may I approach the witness?

22 THE COURT: Yes, sir.

23 BY MR. DEAS:

24 Q Officer Lee, I'm handing you what's been marked for
25 identification purposes as Defendant's Exhibit No. 3. Is

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1 that a copy of the report you prepared on April 15, 2006?

2 A Yes, sir.

3 Q And does that refresh your recollection as to whether
4 or not you received any information from the victims
5 regarding the height of the assailant?

6 A It's got the description inside the report, but I
7 don't remember where I'd gotten that description from or
8 who had given it to me.

9 Q You put it in the report; correct?

10 A Yes, sir.

11 Q And the only people you talked to were the victim and
12 the family; correct?

13 A There were some other people there on the scene. I
14 won't call them witnesses. If I had witnesses I would have
15 -- I know that you're trying to get information while on
16 the scene.

17 Q So the only witnesses that you know of now or then
18 that saw the assailant was the victim?

19 A Correct.

20 Q So any description of the assailant would have come
21 from the victim; correct?

22 A Come from somebody. I can't remember exactly who.

23 Q Does your report state that the individual that was
24 described that committed this crime was six foot one to six
25 foot three inches tall?

1 A That's correct.

2 Q And you put that in your report?

3 A Yes, sir.

4 Q And it came from information from someone?

5 A Yes, sir.

6 Q You don't know if it was from Laura Batista or Ms.

7 Santiago?

8 A No I don't know.

9 Q Would it be fair to say that it came from one of the
10 victims?

11 A I would assume so, yes, sir.

12 Q Thank you, sir.

13 THE COURT: You want to ask him about the shirt?

14 I just want to make sure you cover everything.

15 BY MR. DEAS:

16 Q With respect to the other information in the report
17 with regards to the description of the assailant, the
18 assailant, according to the information that you received,
19 what type of shirt was the assailant wearing?

20 A I have reported some type of mechanic shirt.

21 Q Does your report reflect whether that mechanic shirt
22 had horizontal line or vertical lines?

23 A No, sir.

24 Q Just states that it's a mechanic shirt?

25 A Yes, sir.

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1 Q Just based on the information you gathered at the
2 scene does your report reflect whether or not the assailant
3 had a hat?

4 A Yes, sir. He had a hat. Wearing a blue hat.

5 Q Does your report state what color the shirt was, this
6 mechanic type shirt was that the assailant was wearing?

7 A No, sir. Just mechanic type shirt.

8 Q And what other descriptive -- what other ways is the
9 assailant described in your report?

10 A Basically, he was described as six one to six three
11 feet tall, dark complected. Wearing a blue hat and a
12 mechanic type shirt.

13 Q And is that the information that was used to alert
14 other law enforcement officers as to what type of suspect
15 they needed to be on the lookout for?

16 A That would be the information that I give out once I
17 got the initial -- once the investigators come in and they
18 handle it from there, their end of it. They get a little
19 bit more in depth, then they generally broadcast something.
20 I can't recall at the time.

21 Q Thank you, Officer. I have no further questions.

22 TERRY ALLEN LEE - CROSS-EXAMINATION

23 BY MS. LAND:

24 Q Officer Lee, how tall are you?

25 A Six one.

1 Q All right. So is it possible that someone could have
2 said that he was tall, about your size?

3 A It's possible.

4 Q And you could have assumed from that they meant six
5 one?

6 A That's correct.

7 Q So you don't know for sure that somebody said, he was
8 six one to six three?

9 A No, ma'am.

10 Q This is just kind of a -- I was there, this the basic
11 information I get and investigations is taking over?

12 A Yes, ma'am.

13 Q Okay. So you can't testify -- do you know what a
14 mechanic shirt is?

15 A I've got an assumption, but not directly, no, ma'am.

16 Q So -- when I -- because if I say I was just wearing a
17 -- he was just wearing a polo shirt. We kind of all know
18 what that means; correct?

19 A That's correct.

20 Q Do we all know what a mechanic shirt is?

21 A No, ma'am. My dad is a mechanic and he wears a solid
22 blue one with a name tag on there.

23 Q So you wouldn't even assume that a mechanic shirt has
24 stripes?

25 A No, ma'am.

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1 Q And you don't know where you got that information?

2 A I remember hearing it, but I don't recall who actually
3 gave it to me.

4 Q And in fact it could have gone from -- kind of like
5 children playing telephone, it could have gone from the
6 victim who is Spanish speaking to her daughter who is
7 translating for her, to the owner to her niece and then to
8 you?

9 A Correct.

10 Q Okay. All right. Thank you.

11 THE COURT: Mr. Deas?

12 MR. DEAS: Just very briefly.

13 TERRY ALLEN LEE - REDIRECT EXAMINATION

14 BY MR. DEAS:

15 Q Officer Lee --

16 A Yes, sir.

17 Q -- you're not going to make up information to put in
18 your reports are you?

19 A No, sir.

20 Q You base that -- what you put in your report, you're
21 getting that from some source?

22 A That's correct.

23 Q You're not going to make it up as you go along?

24 A That's correct.

25 Q You're not going to put anything in your report unless

1 you've got some information from a source regarding height?

2 A That's correct.

3 Q Because you're not going to put some detail like that
4 in your report unless you got the information from
5 somewhere?

6 A That's correct.

7 Q You're going to base it on your information; correct?

8 A Generally, even if somebody did say about my height.
9 I would estimate it at that range.

10 Q And you didn't talk to -- as far as you know the only
11 people that witnessed or saw the assailant was the victims?

12 A Correct.

13 Q So those would be the only people that could tell
14 anything about what he looked like, what he had on, how
15 tall he was or how small he was?

16 A I remember speaking with the owners of the place, but
17 apparently they didn't say anything because I did not add
18 their name in here. I did speak with several people out
19 there.

20 Q If there had been other witnesses that could describe
21 the assailant you would have included that in your report;
22 correct?

23 A Correct.

24 Q Thank you, sir.

25 THE COURT: Anything further, Ms. Land?

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1 MS. LAND: No, sir.

2 THE COURT: Thank you, sir. You can step down.

3 All right, Ms. Land, any objection to that testimony?

4 MS. LAND: Your Honor, I think it's all hearsay.

5 He doesn't know who told him that he was six one. He said
6 he could have assumed that if someone said he's about your
7 height --

8 THE COURT: Well, stick to hearsay instead of
9 accuracy. How is it hearsay?

10 MS. LAND: Because said that he talked to several
11 other people there and he doesn't know who he got this
12 information from.

13 THE COURT: He testified that based on
14 circumstances, he's got two people down as witnesses, one
15 being one lady and one being the victim. He didn't have
16 anybody else listed so he assumed that it had to come from
17 one or the other.

18 MS. LAND: Right. But I also said, could it have
19 gone from the victim to the daughter to the owner, to the
20 owner's niece and then to you. And he said, yes.

21 THE COURT: All right, Mr. Deas?

22 MR. DEAS: Judge, obviously, if Officer Lee had
23 gotten this information from the niece of the owner of the
24 building, of the restaurant, an experienced officer like
25 him would have put that in his report. If he didn't

1 because got the information as he said, the only place he
2 could have gotten it from which is from the victim.

3 THE COURT: All right.

4 MR. DEAS: That's not hearsay because it's a
5 presence sense impression given by the individuals that
6 observed the assailant.

7 THE COURT: Well, I don't know if it's presence
8 impression, but I'll advise you in the morning of what my
9 ruling is, but my inclination is that it comes in as a
10 statement made by victims, either one, but we'll resolve
11 that in the morning.

12 All right. What time does Officer Lee need to be
13 here?

14 MR. DEAS: Your Honor, we'll probably call him
15 first just to get him --

16 THE COURT: Well, y'all want to be here at 9:15
17 tomorrow morning?

18 You're okay, as far as your shift is concerned?

19 MR. LEE: My shift is tomorrow night.

20 MR. DEAS: Judge, I think she's got to finish up
21 with Mr. Garris.

22 THE COURT: Okay.

23 MS. LAND: And Your Honor I was going to call Lin
24 Ham as my rebuttal witness about the GSR, taking the GSR
25 test from Brian. I assume I can ask him those questions

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1 when he is --

2 THE COURT: You're talking about the test results?

3 MS. LAND: He collected the evidence that was sent
4 to SLED that was analyzed.

5 THE COURT: And who's going to testify?

6 MS. LAND: The SLED analyst.

7 THE COURT: All right.

8 Mr. Deas, we discussed in chambers earlier that GSR
9 was done after the burglary arrest; is that right?

10 MR. DEAS: That's correct.

11 THE COURT: And I don't know what that expert will
12 say or what that means. I'll have to base my decision on
13 what that expert says.

14 Are we going to finish this case tomorrow?

15 MS. LAND: Yes, sir.

16 THE COURT: All right.

17 MR. DEAS: I would hope so, Judge.

18 THE COURT: I'm not going to be charging the jury
19 tomorrow evening.

20 MS. LAND: Yes, sir.

21 THE COURT: Okay?

22 MR. DEAS: Yes, sir.

23 THE COURT: All right. I've got some charges from
24 Mr. Deas and they pretty much all match up from my general
25 charges.

1 Ms. Land, I don't have any from you, but you said,
2 you'll allow my usual charges. Do y'all want to look at
3 it?

4 MR. DEAS: Judge, one other thing. I may ask for
5 -- and this was based on what came out today in testimony,
6 a spoliation charge with respect to the evidence that came
7 in regarding the fingerprints. The fingerprints show that
8 the fingerprints didn't match up with Mr. Garris.

9 THE COURT: That will suit me fine. If you want
10 you can bring it --

11 MR. DEAS: No, I don't know if I really want that
12 kind of charge or not, but I at least wanted to make
13 reference to it just in case I looked at it and decided I
14 did want it.

15 THE COURT: Okay. All right. I'll see y'all
16 tomorrow at 9:15.

17 (9/4/08 Court at recess for the day at 6:15 p.m)

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1 (9/5/08 Court in session at 9:15 a.m.)

2 THE COURT: Ms. Land?

3 MS. LAND: Yes, sir.

4 THE COURT: Why are the prisoners here?

5 MS. LAND: Your Honor, we just brought everybody
6 over and when we get a break, as in deliberations, we'll do
7 the other business that we have.

8 THE COURT: Okay. I just wanted to make sure that
9 there were no cases right now because --

10 MS. LAND: No, no, no. There's no expectations.

11 THE COURT: Probably lunchtime or after?

12 MS. LAND: They've been instructed, I mean, my
13 office --

14 THE CLERK: Your Honor, my office received a
15 telephone call from Nicholas Daugherty, which is one of the
16 alternate jurors, that his truck broke down last night. I
17 think he said after he left here last night. That three
18 tires need replacing.

19 THE COURT: All right. Ms. Land did you hear
20 that?

21 MS. LAND: I did. Yes.

22 THE COURT: Mr. Deas?

23 MR. DEAS: Yes, sir.

24 THE COURT: Any objection to going forward without
25 the alternate Daugherty?

1 MS. LAND: I have no objection, Judge.

2 MR. DEAS: No objection, Your Honor.

3 THE COURT: All right. We're waiting on three
4 jurors?

5 THE CLERK: Yes, sir. I'll go out and check.

6 THE COURT: Mr. Garris is still -- in the middle
7 of cross-examination and issues you have Mr. Deas, before
8 Ms. Land continues that cross-examination about the head
9 wear.

10 MR. DEAS: Of course, I certainly object to the
11 photograph because of the background of the photograph
12 showing the defendant handcuffed in front of a police
13 vehicle. I think that's prejudicial and probative value of
14 catching in a lie about the doo-rag.

15 THE COURT: I'm talking about the doo-rag.

16 MR. DEAS: Judge, I object to the for the record.

17 THE COURT: On what basis?

18 MR. DEAS: Because of the prejudicial affect of
19 it.

20 THE COURT: All right. That's denied.

21 Ms. Land, do you have that apparatus?

22 MS. LAND: Yes, sir, I do.

23 THE COURT: All right. What I don't want to
24 happen is to have -- and these are my words -- a showing of
25 it coming out of a jail property bag.

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1 MS. LAND: All right.

2 THE COURT: So here's what we're going to do. For
3 better or worse, Mr. Garris is going to take the stand now
4 outside of the presence of the jury, since we're still
5 waiting on people, and you can establish the foundation of
6 where that came from off the record, and then, of course,
7 he'll answer the questions in the manner that he is going
8 to answer them, and if we can't lay the foundation in a
9 less prejudicial way as to where you got that from, Ms.
10 Land, then I'll consider letting them lay the whole
11 foundation as to where it came from in front of the jury
12 with witnesses.

13 MR. DEAS: Right.

14 THE COURT: Correct.

15 MR. DEAS: And, of course, she needs to lay some
16 foundation to establish where it came from.

17 THE COURT: She can do that with that photograph.
18 In other words, I guess what I'm saying is, you can take
19 your pick.

20 She has to lay a foundation for me to be satisfied
21 that it came from the place -- from him.

22 MR. DEAS: Correct.

23 THE COURT: All right. If --

24 MR. DEAS: I don't think she can lay the
25 foundation --

1 THE COURT: -- wait a minute. Let me finish.

2 MR. DEAS: Yes, sir.

3 THE COURT: If -- and this is to protect his
4 rights not to be prejudiced in the manner that you don't
5 that photograph in.

6 MR. DEAS: Correct.

7 THE COURT: What I'm saying is, there's an answer,
8 where did it come from. Did it come from his arrest on May
9 6, 2008, and has been put in the personal belongings kit
10 that they all have at the jail?

11 Where's Mr. Baker?

12 THE CLERK: He's right here.

13 THE COURT: Or not.. Now, we can accomplish that
14 In Camera, and then once the jury comes in I'm sure the
15 questions will be the same, but we can skip over the part
16 of where it came from if he answers the question in a way
17 that will cure that problem.

18 MR. DEAS: Yes, sir.

19 THE COURT: If not, then they are going to have to
20 be allowed to show where it came from.

21 MR. DEAS: And I agree with you up to the point
22 that if he doesn't answer the questions the way that
23 establishes the foundation, which I assume he will, but if
24 he doesn't I still don't believe that picture could be used
25 to establish the foundation because of the prejudicial

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1 affect of it and the probative value of what's going to
2 come out regarding the doo-rag is minimal at best. All it
3 does it establish that he lied about some head wear.
4 That's doesn't --

5 THE COURT: That's --

6 MR. DEAS: That doesn't link him to the crime in
7 any way.

8 THE COURT: Well, you asked him on direct if he
9 wore ball caps, and you asked him if he wore doo-rags.

10 MR. DEAS: Correct.

11 THE COURT: Now, we're in the semantical battle of
12 whether or not what he had on in that May 6th photograph is
13 a doo-rag or not. Okay?

14 MR. DEAS: Correct.

15 THE COURT: Ms. Land, on cross -- he said he
16 didn't wear them because of Keloids. Ms. Land explored
17 that. So it evidently has something to do with this case
18 or I assume you wouldn't have brought it up.

19 MR. DEAS: Well, actually I never asked him about
20 a doo-rag. She asked him about a doo-rag.

21 THE COURT: Okay. All right.

22 Mr. Garris, come have a seat.

23 And Ms. Land, during this exercise here you can use
24 the photo.

25 MS. LAND: Yes, sir.

1 THE COURT: And Mr. Garris, of course, you are
2 still under oath.

3 PROFFER:

4 BRIAN GARRIS - DIRECT EXAMINATION

5 BY MS. LAND:

6 Q Mr. Garris, it's your testimony that you do not wear
7 doo-rags; is that correct?

8 A Yes.

9 Q And that you do not wear hats?

10 A Yes.

11 Q Or any sort of head wear?

12 A Yes.

13 Q Okay. Let me show you this; what is this called?

14 A Stocking cap.

15 Q This is a stocking cap?

16 A Stocking cap, doo-rag; whatever you want to call it.

17 Q Isn't a stocking cap something is typically made for a
18 woman's pair of panty hose?

19 A I don't know.

20 Q Okay, and does this item belong to you?

21 A I had one, but I'm not sure if that's mine right
22 there.

23 Q Okay. Do you have one that looks like this item?

24 A Yes.

25 Q And you've worn it sometimes?

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1 A I have worn it before.

2 Q You have worn it before?

3 A I have worn it, but I'm not sure I wore that one.

4 Q Okay. All right. Were you arrested on May 8, 2008?

5 A I wasn't arrested -- I wasn't arrested on May 8th.

6 Q Okay. Were you arrested on May 6, 2008?

7 A I was arrested on May 6th.

8 Q And during that arrest did you have this head gear?

9 A No, I did not.

10 THE COURT: What was that?

11 MS. LAND: I think they may have opened the back
12 door.

13 THE COURT: Oh. All right. The witnesses
14 testimony is that he had one on, but he didn't think it's
15 that one.

16 All right.

17 MS. LAND: All right.

18 THE COURT: Let him hold it. Ms. Land, put it in
19 his hand.

20 All right. You can continue.

21 BY MS. LAND:

22 Q Now, having seen it and touched it, do you know that
23 that is yours that you were wearing on May 6, 2008.

24 A This right here is -- I know this isn't mine because I
25 don't buy this kind.

1 Q Do you recognize this picture that was taken May 6,
2 2008?

3 A That --

4 THE COURT: Take the picture from him.

5 BY MS. LAND:

6 Q Do you recognize the picture?

7 A Yes, I recognize the picture.

8 Q And is that a picture of you being arrested on May 6,
9 2008?

10 A Yes, it is.

11 Q And so if that's the stocking cap from your head that
12 was placed into evidence.

13 A I don't know. I don't know where you get this.

14 Q Would you say that this is --

15 THE COURT: Wait a minute. The witness said,
16 "this." What do you mean by "this," sir? The picture or
17 the hat?

18 A I don't know where she get that at, stocking cap or
19 doo-rag or whatever you want to call it.

20 THE COURT: Okay, so you're calling it a doo-rag
21 or a stocking cap.

22 All right, Mr. Garris, is the item you're holding in
23 your hand --

24 A She said --

25 THE COURT: Let me finish the question. Is the

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1 item you're holding in your hand, that being the stocking
2 cap or doo-rag, as you described it, the same type of thing
3 that is on your head in the picture?

4 A I don't know if it's the same.

5 THE COURT: Is it the same type of thing?

6 A No, it's not.

7 THE COURT: It's not. All right. Put the item
8 that you have in your hand on your head.

9 A (Witness complies.)

10 THE COURT: All right, sir. Tie it around your
11 head in the manner that you would put it on as if you had
12 the apparatus in that photo tied around your head.

13 A (Witness complies.)

14 THE COURT: All right, sir, now that you have that
15 on your head. Does the one that you have on your head
16 appear to be the one that is in that photo, that you're
17 wearing in that photograph?

18 A I wouldn't say that.

19 THE COURT: All right, sir. You can take it off
20 your head.

21 A (Witness complies.)

22 THE COURT: All right. You can continue, Ms.
23 Land.

24 MS. LAND: Your Honor, I don't have any further
25 questions regarding the hat or the picture.

1 THE COURT: All right. You can step down, sir.

2 Ms. Land, where -- you can step down, sir. Wait,
3 wait.

4 Mr. Deas, do you have any questions at this point of
5 this witness on this subject?

6 MR. DEAS: Yes, sir.

7 THE COURT: All right. You can get the item from
8 him or -- and the photo as you would like.

9 May I see the composite exhibit please. The
10 composite?

11 MS. LAND: Oh, yeah.

12 THE COURT: All right. Go ahead, Mr. Deas.

13 MR. DEAS: Thank Your Honor.

14 BRIAN GARRISS - CROSS-EXAMINATION

15 BY MR. DEAS:

16 Q Mr. Garriss, do you know when this photograph was
17 taken?

18 A It was taken on May 6th, maybe.

19 Q Where were you when this photograph was taken?

20 A Yeah, in front of the car.

21 Q Do you remember this photo being taken?

22 A I don't remember it when that photo was taken. I
23 don't remember.

24 Q Is this you in the photo?

25 A Yes, sir.

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1 Q And the head wear that is on your head, how would you
2 describe it; what it is?

3 A Stocking cap, doo-rag.

4 Q Is -- in your view, is a stocking cap or a doo-rag,
5 are those words used interchangeably?

6 A Same thing. What anybody want to call it.

7 Q You were asked on cross-examination whether you've
8 ever worn a doo-rag before; correct?

9 A Yes.

10 Q And what was your answer?

11 A I told her I don't wear doo-rag, I don't wear hats.

12 Q And obviously at some point you have worn a doo-rag?

13 A I have worn a doo-rag to do activities.

14 THE COURT: When did the Keloids start bothering
15 you?

16 A My whole life. It rises up and go back down.

17 THE COURT: Rises up and goes back -- okay.

18 BY MR. DEAS:

19 Q The Keloids you're referring to; where are they?

20 A On the back of my head.

21 Q Do you have some now?

22 A Yes, sir.

23 Q Can you turn around and show them to me?

24 A (Witness complies.)

25 Q Basically, at your neck line?

1 A Yes, sir.

2 Q And what is the reason that you don't wear hats?

3 A Because they can make them bleed and stuff like that.

4 Q And how often do you wear stocking caps or doo-rags or
5 however you want to phrase it?

6 A It depends. Depending on what the occasion.

7 Q So in the course of a week, how many times would you
8 wear a doo-rag.

9 A It depends on what I'm doing.

10 Q Are you talking about every day, once a week, twice a
11 week?

12 A No.

13 Q You tell me?

14 A I'd say probably about once a week.

15 Q So you would roughly put on a doo-rag at least once or
16 twice a week? When do you put a doo-rag on, in the
17 morning, at night, during the day?

18 A During the day time like when I'm doing chores.

19 Q When -- you don't recall this photograph being taken?

20 A No. I don't recall that photo being taken.

21 Q But you don't dispute that it's you?

22 A I don't dispute that.

23 Q Thank you. I have no further questions.

24 THE COURT: Ms. Land, the witness has now equated
25 the stocking cap with the doo-rag.

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1 MS. LAND: Yes, sir.

2 BRIAN GARRIS - EXAMINATION

3 BY THE COURT:

4 Q Now, Mr. Garris, you said that you wear doo-rags from
5 time to time; is that correct, sir?

6 A Yes, sir. Before the Keloids became bad.

7 Q All right. And would that be true in the time frame
8 of 2006?

9 A Did I have one in 2006?

10 Q That's not my question. My question is did you wear
11 doo-rags --

12 A In 2006?

13 Q Yes, sir.

14 A Not to my recollection.

15 THE COURT: All right. You can step down.

16 Is all the jury here?

17 MS. ROBERTS: I'll go check and see if the other
18 two have arrived.

19 THE COURT: Don't let them in yet.

20 MS. ROBERTS: All right.

21 THE COURT: All right, Ms. Land.

22 MS. LAND: Yes, sir.

23 THE COURT: I want to hear from you and Mr. Deas.

24 This trial has ground to a halt over a difference of

25 interpretation as to what is a doo-rag, what is a stocking

1 cap. And whether or not Mr. Garris wears those at any
2 given time.

3 The question was asked on cross and it was not
4 objected to, so it's out there. We have Mr. Garris saying
5 yesterday on cross that he didn't wear doo-rags because
6 they irritate his Keloids. Then we have the photo that two
7 years after this arrest showing him in an apparatus that he
8 used or called interchangeably a stocking cap or doo-cap.

9 To the extent that it makes a difference in this case
10 and this jury -- well, why does it make a difference?

11 MS. LAND: Your Honor, I think it goes to his
12 credibility. Yesterday --

13 THE COURT: I know it does. It's a collateral
14 matter, he cannot be impeached on a collateral matter.
15 What is the relevance of the stocking cap or a doo-rag on
16 this case?

17 MS. LAND: Your Honor, the jury needs to know that
18 he wears something that hangs down that may be mistaken for
19 hair from time to time.

20 THE COURT: All right. I will yield to you --
21 I'll agree with you on that point. How do you propose that
22 we handle this based on his -- the character of his
23 responses to these questions outside the presence of the
24 jury?

25 MS. LAND: Your Honor, I'm willing to ask him if

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1 this is his stocking cap and if he's ever worn it. If the
2 answer is no, I think I have every right to admit that
3 picture into evidence.

4 THE COURT: Mr. Deas. And let's stay on the
5 straight and narrow. Any questions?

6 MR. DEAS: Yes, sir. And Judge, I'll ask you --
7 allow me --

8 THE COURT: I'm asking you.

9 MR. DEAS: Allow me to expand a little bit.
10 Obviously, this an important issue, and I think it bears me
11 being heard.

12 THE COURT: Yes, sir.

13 MR. DEAS: This is my concern. I understand
14 there's two things going on. Number one, he said he never
15 wore doo-rags. She has pictures showing that he has worn
16 doo-rags. Obviously, it's beneficial to the state's case
17 to establish that he's lied about it, but whether he's lied
18 about it or not that's not relevant to this case.

19 The reason why it is -- the reason why state believes
20 it's relevant is because she wants to establish that the
21 victim or the victim's children mistook a doo-rag for hair
22 because the victims described the assailant as having on a
23 hat with braids or dreads hanging down from under the hat.
24 That was the description that was given. There was no
25 testimony that I recall from any of the victims that

1 testified, that said that it was something else other than
2 braids or hair hanging from under the hat.

3 So the theory that the doo-rag can be mistaken for
4 hair or braids isn't the result of any testimonial evidence
5 that's been presented. It's based on a theory that's been
6 established by the state, by the prosecutor. Not based on
7 any evidence, not based on any testimony that I recall.

8 I don't believe Ms. Laura Batista ever said that she
9 -- that there was something other than braids or hair
10 coming out from under that hat.

11 I don't believe that Ms. Santiago ever said there was
12 something other than braids or dreads coming down from
13 under the hat. So the theory about the hair being mistaken
14 for a doo-rag comes strictly from the state. That's their
15 own deal. But I don't believe that you can admit
16 prejudicial evidence, which is what that picture would be,
17 to legitimize the state's theory.

18 Now, if this doo-rag was part of the case, if the
19 victims had specifically said that they didn't know exactly
20 what was coming out from under the hat, could have been
21 hair, could have been braids, could have been dreads, could
22 have been something else, could have been a doo-rag. Or if
23 the doo-rag was part of the identification of the assailant
24 and now she wants to establish that the victims were
25 correct in the identification because the defendant lied

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1 and said he never wore a doo-rag when he really did. She
2 wants to establish that the victims description of him was
3 accurate when they said it might have been a doo-rag
4 hanging under his hat.

5 I believe that picture could come in to establish her
6 -- to basically confirm or corroborate the victim's
7 description and to show that he lied about it. But even if
8 in that scenario, it would be questionable whether that
9 particular picture could come in because of the fact that
10 it's got a date on it that shows May 6, 2008. He's in
11 handcuffs, he's standing in front of the police car. Even
12 in that scenario, even if the doo-rag was part of this
13 case, even if it was part of the victims, I'd even think
14 then the prejudicial affect of that picture would far
15 outweigh the probative value.

16 Certainly in this scenario where the doo-rag is only
17 an issue because the state wants to put in the jury's mind,
18 even though there's no evidence to this effect that the
19 material hanging from the assailant's hat could have been a
20 doo-rag and not a dread or a braids as was testified to by
21 the victims. That's the theory the state wants to put into
22 the jury's mind, not -- it's not emanating from any
23 evidence or testimony. It's just a theory that they've
24 come up with, that they've conjured up.

25 You can't use prejudicial evidence like that picture

1 to establish the state's theory that's not based on
2 anything relevant to this case. Not based on any testimony
3 or evidence.

4 THE COURT: All right.

5 MR. DEAS: That's my problem with it.

6 THE COURT: Mr. Deas, I understand all the rules
7 about prejudicial impact, but -- kind of leads me back to
8 Rule 102, which I just pulled out.

9 These rules, rules of evidence, shall be construed to
10 secure fairness in administration and elimination of
11 unjustifiable expense and delay and the promotion of growth
12 and development of the laws of evidence.

13 Here's the key. To the end that the truth may be
14 ascertained and the proceedings justly determined.

15 Now, we have this, what the jury heard yesterday. All
16 right. Unobjected to testimony, the question was asked,
17 have you ever worn a doo-rag. No. Okay.

18 Do you agree with me there?

19 MR. DEAS: Yes, sir.

20 THE COURT: All right. And it went on from there.
21 Sure you don't own a doo-rag? I'm sure. Never worn a doo-
22 rag. They irritate the back of my head. Then the picture
23 is shown. Spent 30 minutes on that yesterday. Then today
24 Mr. Garris retakes the stand and he agrees that what he is
25 wearing in that picture is a doo-rag, and that he wears

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1 doo-rags, sometimes. And then the attorney got into the
2 haircut and going bald or whatever he said.

3 Now, on the flip side, this jury is now left with --
4 and I haven't gotten to your point about the state's
5 theory. The jury is left knowing this guy doesn't wear
6 doo-rags. Where today he has said, I do wear doo-rags.

7 How am I supposed to slice that apple?

8 MR. DEAS: Well, I think she can ask him, and I
9 certainly wouldn't object to this, she can ask him, is it
10 true that you've worn doo-rags. I don't know what he'll --

11 THE COURT: In spite of what you said yesterday,
12 is it not true that you do, in fact, wear doo-rags.

13 MR. DEAS: Right. And if he says yes, I have worn
14 doo-rags before then the jury knows, well, then, he wasn't
15 completely honest on yesterday or he wasn't completely
16 forthright on yesterday, and they can take from that
17 whatever they will. They can say, well, he lied or they
18 can say --

19 THE COURT: What about that?

20 MS. LAND: Your Honor, I don't think that's
21 enough. I need to show him the one that he owns, that he
22 was wearing as early as May 6, 2008.

23 THE COURT: Two years after this event?

24 MS. LAND: Two years after this event. And as for
25 Mr. Deas argument about our theory, there was plenty of

1 evidence in the record. The composite picture shows
2 braids. Rick Elms testified to the fact that Laura Batista
3 did not pick him in the first picture because it was a
4 person with short hair. And she believed that the person
5 had braids.

6 THE COURT: Okay. I'll be back in just a minute.
7 (Pause.)

8 THE COURT: All right. I'm really -- I'm
9 troubled, Mr. Deas. I think you've done an excellent job
10 arguing your point. I'm troubled by the -- well, I'll
11 bypass that. I'm not troubled by anything you've done. As
12 much as Rule 102 saying what it says, I still have to make
13 sure that evidence is admitted, that is probative of the
14 issue in this case, and I have to balance the probative
15 value and the prejudicial impact as we've been doing all
16 week.

17 And I'm reluctantly ruling the following: Mr. Garris
18 retakes the stand on cross-examination. The question will
19 be put by Ms. Land to him as a repeat. Yesterday, you
20 testified to this jury that you don't wear doo-rags. Mr.
21 Garris, is it not true that you do or that you have worn
22 doo-rags.

23 Now, In Camera, Mr. Deas, you said that he did from
24 time to time. He answered your question the same way that
25 he did In Camera. You're not going to talk about that doo-

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1 rag, you're not going to talk about that photo. If he
2 strays from what he's already said under oath In Camera,
3 it's a whole new ball game.

4 MR. DEAS: Yes, sir.

5 THE COURT: Is that clear?

6 MR. DEAS: Yes, sir.

7 MS. LAND: And Judge, I am going to ask him about
8 the long ties and how you do the ties and how you tie it
9 and where they hang?

10 THE COURT: Don't pick up that thing you've got in
11 your hand until we revisit again, so I can lay that ground
12 work.

13 MS. LAND: Yes, sir.

14 THE COURT: Now, Mr. Deas, of course, you can't
15 discuss this point with Mr. Garris, but I assume since he's
16 sitting right next to you he understands what I'm saying.

17 MR. DEAS: Yes, sir.

18 THE COURT: Okay. I appreciate you folks efforts
19 on that point.

20 Mr. Garris, when the jury comes back in you'll retake
21 the stand and cross-examination will continue.

22 MS. LAND: Thank you, Judge.

23 THE COURT: All right.

24 MR. DEAS: Yes, sir.

25 THE COURT: You can bring in the jury.

1 THE CLERK: Yes, sir.

2 (Jury in at 9:57 a.m.)

3 THE COURT: All right. Thank you for your
4 patience, ladies and gentlemen. One of your number, as a
5 reason for the delay, one of your number is no longer with
6 us this morning. He is one of the alternates, and he had
7 -- he made a call to the clerk's office and he was on the
8 road from Greenville last night and had broken down. Is
9 that right, Ms. Roberts?

10 THE CLERK: That's right.

11 THE COURT: What we are required to do is wait for
12 a period of time and then -- it is rare to lose an
13 alternate. The alternates are those folks who are there in
14 case somebody else falls by the wayside. That's the reason
15 we had to start a little bit late.

16 Now, Mr. Garris, you can retake the stand, please,
17 sir.

18 Let the record show that Mr. Garris is still under
19 oath from yesterday, and cross-examination, at this time,
20 will continue.

21 BRIAN GARRIS - CONTINUED CROSS-EXAMINATION

22 BY MS. LAND:

23 Q All right. Mr. Garris, yesterday you told this jury
24 that you don't have any kind of doo-rag; is that what you
25 said?

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1 A Yes, ma'am.

2 Q And you talked about you never had any braids?

3 A Yes, ma'am.

4 Q And that you don't wear hats?

5 A Yes, ma'am.

6 Q All right. Let me ask you again today. Do you ever
7 wear doo-rags?

8 A From time to time it depends on the back of my head is
9 cleared up or not.

10 Q So you do wear doo-rags from time to time?

11 A It depends on what -- yes, it depends on my head.

12 Q Can you describe to this jury what the doo-rags that
13 you wear look like?

14 A Basically, a doo-rag with a beaver back.

15 Q Beaver back. How long is the tail?

16 A You got all different ways you can tie it. You got
17 several different ways. You can back tie it.

18 Q Well, I want to know about the kind you wear?

19 A Well, me, personally, I tie mine with a knot.

20 Q Okay, so what does that mean, in the back is one large
21 knot?

22 A Yes.

23 Q With a big piece of fabric hanging down?

24 A No, it's not a big piece of fabric hanging down.

25 Q Well, when you say a big piece of fabric, I want you

1 to correct me on this. How long is the piece of fabric
2 that hangs down from the knot?

3 A About this big. (Indicating.)

4 Q Okay, that big. So you'd say inch and a half, two
5 inches?

6 A About two to three inches.

7 Q Okay, about two to three inches. Is there a long set
8 of ties that go on the end edges of the doo-rag?

9 A Yes, but that's irrelevant, because you wrap it and it
10 ties on your head.

11 Q Okay, well, tell the jury how you do it?

12 A Basically, tie it around -- tie it about your head and
13 wrap it and tie it.

14 Q Okay. So you flip it around like this? (Indicating.)

15 A Yes.

16 Q And you tie it back here? (Indicating.)

17 A Yes.

18 Q And in what manner do you tie it?

19 A As I said before, in a knot.

20 Q In a knot?

21 A Yes.

22 Q In a knot or a large bow?

23 A In a knot.

24 Q In a knot. And so does it have strings hanging?

25 A No, because I tie it in a knot.

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1 MS. LAND: Judge, may we approach?

2 THE COURT: Yes, ma'am.

3 (Off the record bench conference with Ms. Land, Mr. Deas
4 and the Court.)

5 BY MS. LAND:

6 Q All right, Mr. Garris, how long are those strings that
7 hang from the side of the doo-rag?

8 A As I told you just a while ago, you tie it around your
9 head, I tie it to my head. It's not a long -- once you tie
10 it around your head there don't be -- there's no string
11 once you tie it in a knot.

12 Q Okay. How long are the strings --

13 A It's --

14 Q No. Wait. Don't get upset. But before you tie it,
15 how long are the strings then you tie that knot?

16 A I'd say about three -- four --

17 Q Four feet?

18 A Not four feet, it's like --

19 Q Three feet?

20 A No. It's about six to eight, nine inches long. Tops.

21 Q You're sure about that?

22 A Positive.

23 Q So nine inches will go all the way around your head
24 and come to the back.

25 A And tie.

1 Q And tie in a knot?

2 A Yes.

3 Q And there's no dangling?

4 A No.

5 THE COURT: Y'all come on up.

6 (Off the record bench conference with Ms. Land, Mr. Deas,
7 and the Court.)

8 THE COURT: All right. Go on, Ms. Land.

9 MS. LAND: Your Honor, if I can beg the Court's
10 indulgence for one minute?

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 BY MS. LAND:

14 Q All right, Brian, is this the kind of doo-rag that
15 you're talking about?

16 A Yes.

17 Q Okay. So these are the long strings that hang from
18 the sides?

19 A Yes.

20 Q And these go around the top?

21 A Yes. May I try it on, please?

22 Q Sure.

23 A (Tries on doo-rag.)

24 Q All right, would you say -- all right, once you get it
25 secured, would you stand up and show the jury the back of

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1 that hat?

2 A (Witness complies.)

3 Q Is that the knot?

4 A Yes.

5 Q Okay, what you call a knot, I call a bow. Okay,
6 you've got this long fabric is what you call a knot and I
7 call a bow. Is that correct?

8 A Yes.

9 Q Okay, and that is what you wear sometimes?

10 A Yes.

11 Q Okay. All right.

12 THE COURT: Return to the seat.

13 (Witness returns to witness chair.)

14 BY MS. LAND:

15 Q I just want to ask you a couple of follow up
16 questions. Let's go to that day, April 15, 2006, if you
17 would briefly go through the day and tell the jury what you
18 did on that day?

19 A As I said, yesterday, I got up in the morning, my
20 grandmother told me to come get something to eat. I talked
21 on the phone. Go outside. But I received a phone call
22 from my friends saying they're coming to my house.

23 Q Who was that friend?

24 A Freddie White.

25 Q Okay.

1 A And he said they was coming to the house. They didn't
2 came straight to the house. Before they came me and my
3 grandfather went to the store, and we came back before they
4 came. When we came back they got there, and we basically
5 just sat in the barn and smoked and talked on the phone to
6 girls.

7 Q All right. You said you went to the store, what
8 grocery store, hardware store?

9 A Carter's Grocery Store and liquor store.

10 Q All right. So y'all went and bought groceries and
11 liquor, I assume for your grandfather?

12 A We didn't went to buy no groceries. We went to
13 Carter's Store.

14 Q All right. What's Carter's?

15 A A store.

16 Q Okay. So they have food?

17 A Yes.

18 Q And then you left the store and you came home and you
19 sat out in the barn?

20 A Oh, I think I went in the house first. I think I went
21 in the house first. But anyway, I did went in the barn
22 after I went in the house.

23 Q Okay. And you just sat there and y'all smoked weed
24 and talked on the phone?

25 A Yeah.

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1 Q And then what did you do?

2 A Set around for a little while talking on the phone
3 trying to set something up for that night. And then my
4 grandmother said come in the house and get something to
5 eat. So we went in the house to get something to eat.
6 Then I was begging my grandmother for the car. The
7 previous weekend I didn't came home like I was supposed to.
8 I got a curfew, and I didn't came home on time. So I asked
9 her for the car and she told me no, I wasn't getting the
10 car that weekend. So she -- I did ask her to take us to
11 Manning Lane, which Fredrick White, Freddie White, Rashard
12 White and my brother and I.

13 Q And she took all of y'all to Manning Lane Apartments?

14 A Yes.

15 Q All right. So you admit you were with them that
16 night?

17 A Yes.

18 Q All right. Well, let me ask you some questions about
19 that day. You said you played football. Did y'all play
20 football in the yard that day or anything of that nature?

21 A No.

22 Q You said you didn't do any shooting of any kind?

23 A On that day?

24 Q Yeah.

25 A No.

1 Q With a gun?

2 A No.

3 Q You didn't play with your BB gun?

4 A No.

5 Q Let me -- Now, you're saying you played football;
6 you're not handicapped in any way?

7 A No.

8 Q All right. When did you play?

9 A In 2003, 2004, something like that, but I did have
10 surgery during that time.

11 Q But that didn't stop you from playing football for
12 Manning High?

13 A No. I just stopped activities as any average teenager
14 would do.

15 Q All right. So you would describe yourself as an
16 average teenager?

17 A Yes.

18 Q All right. Let's go to the day of the 28th, when you
19 were arrested. The day before the gun was found in the
20 jail. Do you recall that day, the 28th?

21 A I remember that day vividly.

22 Q You remember what?

23 A I remember that day very vividly.

24 Q Oh, very vividly. On that day did you have the gun?

25 A No, I did not.

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1 Q On that day did you handle a gun?

2 A No, I did not.

3 Q That day did you play football?

4 A No.

5 Q Did you go fishing that day?

6 A Yes, with my grandfather -- there's a pond --

7 Q Well, I mean, what did you do that day --

8 MR. DEAS: Objection. Relevance.

9 THE COURT: What date?

10 MR. DEAS: The 28th.

11 MS. LAND: I'm talking about April 28, the day
12 that he was arrested.

13 BY MS. LAND:

14 Q Can you tell the jury what your activities were that
15 day?

16 A When I say I remember that day very vividly I'm not
17 talking about -- I'm talking about receiving, when I was
18 booked, I was arrested for something I had nothing to do
19 with. That's what I'm talking about.

20 Q All right. I guess what I need -- what I want to
21 know was on that day did you ever handle a firearm?

22 A As I testified earlier, I didn't.

23 Q Okay, and you didn't handle specifically this firearm?

24 A No, ma'am.

25 Q Have you ever seen this gun before?

1 A No.

2 Q And it's not yours?

3 A No, ma'am.

4 Q And I think you told me yesterday that you don't even
5 have a gun?

6 A Correct. I have a BB gun.

7 Q Have you ever fired a gun?

8 A Yes, I have fired a gun.

9 Q But on that day you did not fire one?

10 A No, ma'am.

11 Q When was the last time you fired a gun from that day

12 --

13 MR. DEAS: Objection. Relevance.

14 THE COURT: Overruled.

15 A As I testified earlier, I have shot a gun before, but
16 to my recollection I shot a rifle on the 27th.

17 BY MS. LAND:

18 Q On the 27?

19 A Yes.

20 Q How do you remember that?

21 A How do I remember that, I know what I did that day
22 before.

23 Q And that was early in the day on the 27?

24 A That was two days before the Striped Bass Festival.

25 Yes.

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1 Q Okay, so two days before the Striped Bass Festival?

2 A Yes.

3 Q Which was on what day?

4 A Striped Bass was on the 29th.

5 Q Okay. So the day of the Striped Bass Festival was the
6 day that they found the gun in the jail?

7 A Yeah.

8 Q Okay, and you fired one then. That night did you
9 bathe?

10 A As I testified in the other one, I fell asleep. So no,
11 I did not bathe.

12 Q Okay. All right.

13 MS. LAND: Your Honor at this time, I'd like to
14 have this admitted as State's Exhibit No. 12.

15 MR. DEAS: Objection. Relevance. It is in no way
16 linked to this case.

17 THE COURT: I sustain the objection. It was to be
18 used for demonstrative purposes only.

19 MS. LAND: I understand.

20 THE COURT: All right.

21 BY MS. LAND:

22 Q Okay. And during that time, meaning from April 15 to
23 April 28, you went to Manning High School and you played on
24 the football team?

25 A What was that last day?

1 Q April 28th.

2 A I don't remember --

3 Q Well, I mean, you told the jury yesterday when Mr.
4 Deas spoke to you that during this period of time you were
5 at Manning High School and --

6 A I told you -- Mr. Deas that I was going to Manning
7 High School and I was going to play football. That's what
8 I told them yesterday.

9 Q Okay. And you told them you were a senior?

10 A I told them I was going to school and I was on the way
11 to graduation.

12 Q You were on the way to graduation. And you said that
13 you were on the football team, that you played football?

14 A Football season was gone. Football season was over in
15 November.

16 Q Had you been on the Manning High School Football team?

17 A Yes, I was.

18 Q Okay. That's all the questions I have.

19 THE COURT: Mr. Deas?

20 MR. DEAS: Thank Your Honor. Please the Court.

21 BRIAN GARRIS - REDIRECT EXAMINATION

22 BY MR. DEAS:

23 Q Mr. Garris, going back to April 15 of '06, did you
24 have on a doo-rag that day?

25 A April 15th, I know I didn't have on a doo-rag that day.

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1 Q Did you have dreads or braids in your hair that day?

2 A I've never had braid, dreads, curls in my hair.

3 Q Now, when you were arrested on April 28th of '06, did
4 you on that date have a gun in your possession?

5 A No, sir.

6 Q On April 15th of 2006, the day that this incident
7 happened, did you ever have a gun?

8 A No, sir.

9 Q Have you ever seen this weapon that's been marked as
10 State's Exhibit No. 4; have you ever seen this gun before?

11 A No, sir.

12 MR. DEAS: May I approach the witness, Your Honor,
13 with State's Exhibit No. 4, not to give it to him. I just
14 want to show him a little closer.

15 THE COURT: All right.

16 BY MR. DEAS:

17 Q Take a look at this weapon. Have you ever seen this
18 weapon before?

19 A I ain't never seen that gun in my life until I came in
20 the courtroom today.

21 Q Has this weapon ever been in your possession?

22 A It's never been in my possession.

23 MR. DEAS: Thank Your Honor. I have no further
24 questions.

25 THE COURT: Any re-cross?

1 MS. LAND: Your Honor, I don't have any further
2 questions.

3 THE COURT: All right. You can step down.
4 Mr. Deas?

5 MR. DEAS: I call Sgt. Terry Allen Lee.

6 THE CLERK: Please raise your right hand.

7 (WHEREUPON, Terry Allen Lee, was
8 sworn to tell the truth.)

9 TERRY ALLEN LEE - DIRECT EXAMINATION

10 BY MR. DEAS:

11 Q How are you doing, Officer Lee?

12 A Pretty good. How are you, Mr. Deas?

13 Q Office Lee, tell me which law enforcement department
14 you work for?

15 A I work for the Manning Police Department.

16 Q And what is your rank, sir?

17 A Sergeant.

18 Q And do you mind if I call you Sgt. Lee?

19 A That's fine.

20 Q Sgt. Lee, back on April 15th of 2006, were you still
21 employed with the Manning City Police Department?

22 A Yes, sir.

23 Q And in what capacity were you employed with the
24 Manning City Police Department at that time?

25 A Sergeant over the patrol division.

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1 Q And were you on patrol on April 15, 2006?

2 A Yes, sir.

3 Q At some point did you respond to a call regarding the
4 incident involving Ms. Santiago and her children at the
5 Chinese Cuisine Restaurant?

6 A Yes, sir.

7 Q And how -- where were you when you received that call;
8 you said you were on patrol?

9 A I was on patrol. I don't know exactly where I was in
10 the city of Manning, but I was in the city when the call
11 came in.

12 Q And when you got the call what did you do?

13 A Went directly to the location, the Chinese Cuisine.

14 Q Approximately, what time was it, if you know, when you
15 got the call about this incident?

16 A Looking at the report yesterday, around 10:00 o'clock
17 that night

18 Q So you got the call around 10:00?

19 A Yes, sir.

20 Q So the incident had to have happened, obviously, some
21 time before you got the call?

22 A Yes, sir.

23 Q And then how long did it take you to get from wherever
24 you were when you got the call to get -- how long did it
25 take you to get to the Chinese Cuisine?

1 A I really don't know where I was, but generally in all
2 calls that we generally run in the city within about a two
3 minute -- two to three minute arrival time is generally
4 what we deal with from one side of town to the other.

5 Q And when you arrived on the scene what did you
6 initially observe?

7 A When I first arrived on the scene there was a -- I
8 remember seeing a Hispanic female sitting in a chair in
9 front of the Chinese Cuisine. I don't know the exact
10 figures. I would say probably two, three, four, maybe five
11 people around her. I remember her van because the Chinese
12 Cuisine is here and there's another business here, and
13 there's a driveway. Ms. Santiago's van was parked right in
14 the driveway between both those businesses. And what did
15 you do, if anything, at that point with respect to
16 gathering information about the crime?

17 A At that time, anytime a crime like that, I go check to
18 make sure the victim is okay and render aid to them. I
19 can't remember if I called EMS or dispatch already had EMS
20 in route, but they did show up and deal with the care of
21 Ms. Santiago. Then at that time, once I start getting a
22 little bit of information and secure the scene, it's my job
23 to notify investigations and my superiors.

24 Q Were you the first law enforcement officer on the
25 scene?

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1 A Yes, sir.

2 Q SLED agents arrived at some point after you got there?

3 A At some point, yes, sir.

4 Q And did you have an occasion, once you arrived on the
5 scene to begin your investigation, to speak with Ms.

6 Santiago?

7 A I attempted to speak to her. There was a language
8 barrier that we had. I wasn't able to communicate with her
9 and vice-versa, her with me.

10 Q Were you able to talk with her daughter, Laura
11 Batista; was she able to talk with you?

12 A I believe that I did speak with her briefly.

13 Q And at some point during your conversation with Laura
14 Batista or in your attempts to talk with Ms. Santiago, did
15 you gather any information that you used to put into a
16 police report?

17 A Well, I put several things in the police report. I
18 can't remember exactly who I'd gotten it from, but, yes,
19 sir.

20 Q And you did prepare a report with respect to the
21 information you gathered at the scene of this crime?

22 A Yes, sir.

23 Q And the report was prepared by you?

24 A Yes, sir.

25 Q And what date did you prepare the report?

1 A On the date of the incident, on the 15th.

2 Q Did --

3 A April 15th.

4 Q On April 15th of '06?

5 A Yes, sir.

6 Q Did you prepare the report there on the scene or did
7 you do it at law enforcement offices?

8 A I done it on the scene.

9 Q Do you have any recollection, Sgt. Lee, of whether or
10 not your report contained any information regarding the
11 description of the assailant that committed this crime,
12 specifically terms that referenced the individuals height?

13 A Yes, sir.

14 Q And what did you indicate in your report that the
15 person, who was the alleged assailant's height was?

16 A Do you have a copy of that --

17 Q You don't have a complete recollection of that?

18 A No.

19 Q And if I were to hand this report to you to give you a
20 chance to peruse it, you think that might refresh your
21 recollection?

22 A Yes.

23 MR. DEAS: Your Honor, may I approach the witness?

24 THE COURT: Yes, sir.

25 (Mr. Deas hands report to Officer Lee.)

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1 BY MR. DEAS:

2 Q Have you had a chance to review it?

3 A Yes, sir.

4 Q In your report did you indicate or make any reference
5 to the height of the assailant?

6 A Yes, sir. In the report.

7 Q And what did you indicate in the report?

8 A Male is described as approximately six one to six
9 three feet tall.

10 Q And did you make any reference in your report with
11 respect to what the assailant was wearing?

12 A Yes, sir. Wearing a blue hat and a mechanic type
13 shirt.

14 Q Is that the extent of the description that was given
15 to you regarding the assailant that you placed in the
16 report?

17 A The whole description is male African American
18 described as six feet one to six feet three feet tall,
19 wearing a blue hat and wearing a mechanic type shirt.

20 Q Do you recall getting any information from either
21 Martha -- Ms. Santiago or Ms. Laura Batista or anyone else
22 at the scene that the individual that committed this crime
23 had on a New York Yankee hat. Do you recall getting any
24 information like that?

25 A That I don't recall.

1 Q But you do recall getting information that the person
2 had on a blue hat?

3 A Yes, sir.

4 Q In your report you reference that the individual, the
5 assailant, that committed this crime had on a mechanic type
6 shirt. Do you know where you got that information?

7 A No, sir. Somebody on the scene give me the
8 information, but I don't know exactly who it came from.

9 Q And as far as you know the only individuals that
10 actually saw the assailant were Ms. Santiago, her daughter,
11 Laura, and her two sons; correct?

12 A I don't recall two sons.

13 Q You tell me, who all was in the vehicle when this
14 assailant assaulted Ms. Santiago and her family?

15 A The ones that I remember would be Ms. Santiago, her
16 daughter and a son. And then --

17 Q Was there a younger child?

18 A I don't remember. But -- and then there was the
19 owners of the Chinese Cuisine.

20 Q Do you have any recollection of whether the owners of
21 the restaurant or any of the other individuals that were
22 there at the restaurant, whether they saw or observed the
23 assailant?

24 A I don't remember. I know I spoke with them, but I
25 really don't remember what they told me.

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1 Q And if they had seen the assailant or were able to
2 give you a description of him you would have included that
3 in the report; correct?

4 A Yes, sir.

5 Q And the fact that that's not referenced in your report
6 would that mean, then, that the information you gathered
7 about the description of the assailant had to come from the
8 people that saw the assailant, which would be the victims?

9 A It would have come from somebody on the scene.

10 Q And the only people on the scene were the victims;
11 right?

12 A The victims --

13 Q And the restaurant owners?

14 A -- and the restaurant owners.

15 Q The restaurant owners didn't give a description
16 because if they did you would note that in your report;
17 correct?

18 A I would have put the description. Like I said, I
19 really don't remember who I got the description from.

20 Q Regardless of where you got it from, correct me if I'm
21 wrong, the description you give in the report says the
22 individual was six feet one to six feet three inches tall,
23 dark complected, wearing a blue and white shirt and a blue
24 hat?

25 A No, sir. A blue hat and a mechanics type shirt.

1 Q Mechanic shirt?

2 A Yes, sir.

3 Q But you don't know where the description of mechanic
4 came from?

5 A That I can't remember. No, sir.

6 Q Do you recall whether or not it was your information
7 that you gathered from the report that was used to get
8 information out to other law enforcement officers as to
9 what type of suspect they needed to be looking for as far
10 as race, the height, their size, and what they were
11 wearing. Did that information come from you or from your
12 report?

13 A Yes, sir. Generally, once I arrive on the scene, I
14 try to get the information quick and get it out to the guys
15 on patrol, and once the investigation -- SLED and the chief
16 get there they tend to do things a little bit different and
17 update a little bit more for us.

18 Q And since the investigation that going to be ensued by
19 other law enforcement officer, it depends on what
20 information you gather. Obviously, you're going to make
21 sure the information you gather on the scene is accurate;
22 correct?

23 A As accurate as I can get it, yes, sir.

24 Q And you normally get that information from individuals
25 who observe something or saw something?

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1 A Yes, sir.

2 Q And the information that other law enforcement
3 officers receive from you in your report was that they
4 should be on the look out for somebody six one to six foot
5 three inches tall, dark complected, with a mechanics shirt
6 on, and a blue hat?

7 A Yes, sir.

8 Q Did you recall -- do you recall if you observed any
9 footprints leaving from the scene on the day of this
10 incident when you arrived at this crime scene?

11 A No, sir. I really didn't look, because there was some
12 sand and stuff in the back, but like I said, my job was to
13 secure the scene until the investigators get there.

14 Q And at the Chinese Cuisine restaurant is there any
15 lighting in the back of the building, like street light or
16 pole light?

17 A There is a street light I know at the -- so in the
18 back of there -- is minimal, I mean you hit and miss
19 places.

20 Q Is it fair to say it's pretty dark back there?

21 A Yes, sir.

22 MR. DEAS: Court's indulgence.

23 THE COURT: Yes, sir.

24 MR. DEAS: Thank you, Your Honor. I have no
25 further questions.

1 Thank you, sergeant.

2 THE COURT: Ms. Land?

3 TERRY ALLEN LEE - CROSS-EXAMINATION

4 BY MS. LAND:

5 Q Sgt. Lee, describe for the jury what the scene was
6 like when you got there?

7 A When I arrived, I remember pulling up to the front of
8 the building when I got there. I'm going to use this paper
9 here as a -- this is the Chinese Cuisine. Church Street
10 runs in front of it. There's an alleyway here. That's
11 where Ms. Santiago's van was parked in the roadway. There
12 was another business right here. When I arrived the front
13 door is about middle ways of this pavement. There was an
14 Hispanic lady sitting there in a chair with several people
15 around her. As I arrived I did notice a puncture wound to
16 her upper left arm and that's when EMS arrived and went
17 ahead and took care of Ms. Santiago. And I was also
18 speaking with Chief Garrett and my superiors and my
19 investigation was to get them to the scene so they can go
20 ahead and process how investigators generally process their
21 scenes.

22 Q Were people crying?

23 A Yes.

24 Q And there was blood everywhere?

25 A Yes.

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1 Q And you needed backup?

2 A Yes, ma'am.

3 Q And so part of your responsibility was getting
4 everybody there?

5 A Yes, ma'am.

6 Q Making sure nobody walked on that sand that may or may
7 not have footprints?

8 A Yes, ma'am.

9 Q While talking to the people in the front?

10 A Yes, ma'am.

11 Q Did you have help at that point?

12 A Yes, ma'am. I had a couple of the officers present.

13 Q Okay, that had also responded?

14 A Yes, ma'am.

15 Q Okay. What is the difference between what you do on
16 patrol and what Investigator Elms' responsibilities were in
17 an investigation?

18 A I really don't know the investigative side of it.

19 Like I said, my job is when I get to a scene, I secure the
20 scene until investigations arrives and takes precedence
21 over it, and then they get in and get a little bit more
22 technical than as far as what we do on patrol.

23 Q And would you say that an investigator has a much more
24 detailed training about crime scenes and collecting
25 evidence and things of that nature?

1 A Yes, ma'am.

2 Q Okay. And that's just simply not your job?

3 A No, ma'am.

4 Q Do you have any of that training?

5 A No, ma'am.

6 Q What is the purpose of getting the description out as
7 quickly as possible?

8 A To possibly identify anybody matching that description
9 as quick as possible.

10 Q And is it safe to say that the quicker you do that the
11 more likely the person will still be in that vicinity?

12 A Yes, ma'am.

13 Q Can you come into this courtroom today and tell this
14 jury that you absolutely did not make a mistake in the
15 description that you put in this report?

16 A The information that I've got was given to me on the
17 scene, but as far as any information that comes after
18 leaving it to investigations I really don't know what
19 information they had gotten.

20 Q And that information in the incident report was
21 preliminary, meaning it was very early after you got there?

22 A That is the information that I got at the scene.

23 Q Okay. And there was a language barrier; is that
24 correct?

25 A Yes, ma'am.

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1 Q How tall are you?

2 A I'm six one.

3 Q Okay, so if somebody said he was about your size what
4 would you have put in this incident report?

5 A About my size, I would have put approximately six one.

6 Q And is it your job and your training to say was he
7 standing on anything?

8 A Yes, ma'am.

9 Q Okay. And did you do that?

10 A Yes, ma'am. Nobody stated that he was standing on
11 anything. The general impression was size so I can get the
12 description out.

13 Q Okay. And are you sure you asked?

14 A I would assume I would have, but I really don't
15 remember.

16 Q So you can't tell the jury that you did?

17 A No.

18 Q And when you say dark complected does that mean
19 African American male or African American?

20 A It -- at that point I do remember them saying that he
21 was an African -- you know, black male. I do ask was he
22 medium, light or dark complected. And I know if I had dark
23 complected on the report I did ask that.

24 Q Okay. And you did put wearing a blue hat?

25 A Yes, ma'am.

1 Q Do you know what color the New York Yankees are?

2 A Would be dark blue, yes, ma'am.

3 Q Do you speak Spanish?

4 A No, ma'am.

5 Q All right. So if somebody said something in broken
6 English or broken Spanish that sounded like a mechanic
7 shirt is that the description that you would have put?

8 A Yes, ma'am.

9 Q Okay. And what does mechanic shirt mean to you?

10 A I've seen a difference in mechanics. My father is a
11 mechanic. He's got a solid blue shirt with a name tag.
12 When I worked there, you know, we had brown shirts with
13 stripes, flannel shirts.

14 Q So if you were given the term mechanic shirt, as you
15 put in this incident report, and you misunderstood an
16 English/Spanish translation --

17 MR. DEAS: Objection.

18 THE COURT: Yes, sir?

19 MR. DEAS: She's testifying. She's putting words
20 in his mouth.

21 THE COURT: Overruled.

22 BY MS. LAND:

23 Q If you were given what you believed the word mechanic
24 shirt and it was a mixup in the English/Spanish translation
25 would you have put that in the report?

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1 A I would think so. Like I said, I think I heard
2 mechanic and that's basically what I put in there.

3 Q And I'm not saying you did anything wrong. I'm just
4 saying it was a preliminary question asking process to
5 people who speak both English and Spanish?

6 A Yes, ma'am.

7 Q A what you put in here is in no way an investigation?

8 A No, ma'am.

9 Q And you're not trained in investigations?

10 A No, ma'am.

11 Q You're simply asking some questions to get the
12 quickest description that you can get?

13 A Yes, ma'am.

14 Q Okay. Did you do the best job that you could?

15 A I tried.

16 Q . And even though you tried your best and did a good job
17 you can't swear to this jury that the guy was six one to
18 six three?

19 A No.

20 Q And you can't swear that he has a dark, dark
21 complexion?

22 A No, ma'am.

23 Q You weren't there?

24 A No, ma'am.

25 Q And you didn't see what happened?

1 A No, ma'am.

2 Q Tell the jury what the purpose of an incident report
3 is?

4 A The purpose of an incident report is to basically get
5 a basis on any parameters. When we first get there, us on
6 patrol, we do an initial report. If it needs to be further
7 investigated, then investigations will take over. And
8 obviously our forms are checked to probably one of the best
9 ones. Somebody comes in with a counterfeit check, a bad
10 check, us as the patrol, we will generally do the report,
11 say on such and such a day somebody comes in and attempts
12 to cash a bad check or did cash a bad check on an account
13 that is close or something like that. They may use a
14 drivers' license number or something. We do the general
15 information and then pass it on to our investigators. Once
16 our investigators get in they further go over the
17 information that we give them, plus they in turn contact
18 the people and get more information from them to go ahead
19 and prosecute their case.

20 Q All right. Thank you, Sergeant. That's all the
21 questions I have.

22 MR. DEAS: Just very briefly.

23 TERRY ALLEN LEE - REDIRECT-EXAMINATION

24 BY MR. DEAS:

25 Q Sgt. Lee, you've had years of experience gathering

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1 information at crime scenes, correct?

2 A Yes, sir.

3 Q And you do reports, you've done many reports like this
4 haven't you?

5 A Yes, sir.

6 Q When you do these reports you're not going to just
7 make up information as you go along are you?

8 A No, sir.

9 Q You're going to interview the people who have had some
10 opportunity to observe the crime. You're not going to add
11 your opinion to these type of reports are you?

12 A No, sir.

13 Q You're going to get --

14 A I'll get the best description as possible.

15 Q You're going to base the report that you write up on
16 the information you receive at the scene; correct?

17 A Yes, sir.

18 Q And only the information you receive at the scene?

19 A Yes, sir.

20 Q Thank you, sir.

21 MS. LAND: No further questions.

22 THE COURT: Thank you, sir. You can step down.

23 Can this witness be excused, Ms. Deas, Ms. Land?

24 MS. LAND: Yes, sir.

25 MR. DEAS: Yes, sir.

1 THE COURT: Thank you, sir. You can leave or
2 stay, whichever you'd like.

3 SGT. LEE: Thank you.

4 THE COURT: Mr. Deas?

5 MR. DEAS: Your Honor, we call Officer William
6 McCoy.

7 THE COURT: Officer McCoy.

8 THE CLERK: Please raise your right hand.

9 (WHEREUPON, William McCoy, was
10 sworn to tell the truth.)

11 WILLIAM MCCOY - DIRECT EXAMINATION

12 MR. DEAS:

13 Q How are you Officer McCoy?

14 A All right.

15 Q My name is Garryl Deas, I represent Mr. Garris.

16 Officer McCoy, which law enforcement department are you
17 employed by?

18 A Clarendon County Sheriff's Department.

19 Q How long have you been employed by Clarendon County
20 Sheriff's Department?

21 A Two years.

22 Q In what capacity are you employed at the Sheriff's
23 Department?

24 A Traffic.

25 Q Traffic. Do you -- going back a few years to April

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1 28th, 2006, do you have any recollection to carrying Mr.
2 Brian Garris to jail on that day?

3 A Yes, sir.

4 Q And when you brought him to jail on April 28, 2006,
5 that was in relation to another crime that he was charged
6 with?

7 A Yes, sir.

8 Q Were you the individual that actually -- were you
9 there on the scene when he got arrested back on April 28th
10 of '06 for this other crime that's not related to this
11 case. The other crime?

12 A I was in the area when we apprehended him.

13 Q And you're the one that actually brought him to jail?

14 A Yes, sir.

15 Q And is it your practice that before you transport
16 someone to make sure they're searched?

17 A Yes, sir.

18 Q And did you conduct a search on Mr. Garris?

19 A I did a prior search, but he was already searched.

20 Q So he had actually already been searched one time
21 before you even got there?

22 A Yes, sir.

23 Q And do you know who performed that search before you
24 got there?

25 A To my knowledge, another officer who worked with us.

1 Q And you took the necessary precautions to search him
2 again once you arrived?

3 A Yes, I did.

4 Q And when you got on the scene, the officer that
5 searched him prior to you getting there, there was no
6 indication that a gun was found --

7 MS. LAND: Your Honor, I would ask that he not
8 discuss hearsay.

9 THE COURT: All right. The objection of hearsay is
10 sustained.

11 BY MR. DEAS:

12 Q When you arrived on the scene and after you searched
13 Mr. Garris, did you find a gun on him?

14 A No, sir.

15 Q Then what type of search did you perform, basically a
16 pat down search --

17 MS. LAND: Judge. Leading.

18 THE COURT: Sustained.

19 BY MR. DEAS:

20 Q What type of search did you perform?

21 A I really did a pat down search.

22 Q What's the normal type of search that you conduct on
23 someone before you transport them?

24 A Well, the search, full body.

25 Q Can you kind of educate me and the Court and the jury

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1 for a second. Did you do that type of search basically
2 head to toe, over the clothes? How was it done?

3 A From head to toe.

4 Q And it's over the clothes?

5 A Over the clothes, yes, sir.

6 Q That's the type of search you conducted on Mr. Garris?

7 A Yes, sir.

8 Q And then after that you put him in your police car and
9 you took him to the Clarendon County Detention Center?

10 A No, sir.

11 Q Tell me what happened next?

12 A After I got him in my vehicle we sat on the side of
13 the road just a few minutes. I think that, to my knowledge
14 I remember him -- Investigator Ham talked to him and then I
15 transport him to the jail.

16 Q Who went with you to the jail; who was in the car with
17 you other than Mr. Garris?

18 A Just me and Mr. Garris.

19 Q And you didn't transport any other --

20 A No. No, sir.

21 Q And when you got to the jail what did you do?

22 A We went inside the jail and I put him in the custody
23 of the jail.

24 Q Did you -- were you there long enough to observe
25 whether or not Mr. Garris was searched once he got to the

1 jail?

2 A No, sir.

3 Q So basically once you got him to the jail you dropped
4 him off and you left?

5 A I released him. Basically stand around for a few
6 minutes. I think I stayed -- I'm not too sure.

7 Q Do you recall whether or not the jail official gave
8 you his clothes to take as evidence?

9 A I can't remember that, sir.

10 Q Would you have been the officer that would have been
11 given the clothes to?

12 A If the investigator asked me to pick them up, I would.

13 MR. DEAS: Court's indulgence.

14 THE COURT: Yes, sir.

15 BY MR. DEAS:

16 Q And going back, again, to April 28th of '06, Officer
17 McCoy, are you saying that you didn't take his clothes or
18 you just don't remember?

19 A I don't remember taking his clothes.

20 Q Possibly you could have?

21 A It's possible I could have.

22 Q That would mean you'd have to stick around long enough
23 for him to get undressed for you to get the clothes?

24 A If I had taken the clothes I would have stick around.

25 Q And who would you have taken the clothes to?

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1 MS. LAND: Judge, these are hypothetical
2 questions. He said he doesn't remember.

3 THE COURT: Mr. Deas.

4 MR. DEAS: Normally, if you'd a patrol would you
5 take the clothes.

6 THE COURT: He said he didn't remember whether he
7 took the clothes or not.

8 MR. DEAS: Yeah, but now I'm asking him was it
9 customary to do that --

10 THE COURT: I'll allow it.

11 BY MR. DEAS:

12 Q Customarily, if you're asked to take clothes by the
13 investigator who would you take them to?

14 A The investigator that asked me to get the clothes.

15 Q But you just don't remember doing that?

16 A No, sir.

17 Q But you're not saying you didn't?

18 A I don't remember if I took the clothes.

19 Q Thank you, sir. I have no further questions.

20 THE COURT: Ms. Land?

21 WILLIAM MCCOY - CROSS-EXAMINATION

22 BY MS. LAND:

23 Q Officer McCoy, on the 28th, when you came and took Mr.
24 Garris to transport him you think he had been patted down?

25 A No, I didn't think that. I know he was because he was

1 on the ground and I know they did that.

2 Q Did you see them pat him down?

3 A Well, when they said they got him from his car on the
4 side of the road. There were items out of his pockets on
5 the ground when I got there.

6 Q Okay. What were those items in his pockets?

7 A I can't remember all that.

8 Q You can't recall because the items in his pockets were
9 out of his pockets you assumed that he had been searched?

10 A Yes, ma'am.

11 Q Okay. And because he had been patted down once you
12 may or may not have done it again?

13 A I did a pat down. I did another pat down.

14 Q Okay. If he had already been patted down once why did
15 you pat him down again?

16 A For my safety.

17 Q Do you recall what he was wearing?

18 A Baggy pants, hips were falling off of that, and a
19 short sleeve shirt. I think -- he had something over his
20 head. I can't tell you what he had on his head, but it
21 wasn't no cap. He had on baggy pants. He kept pulling his
22 pants up when they put him in the back of Investigator Elms
23 truck.

24 Q Do you ever, in your line of work, conduct any strip
25 searches?

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1 A No, ma'am.

2 Q And on Mr. Garris you certainly didn't?

3 A No, ma'am.

4 Q And you believe you patted him down and he was wearing
5 very baggy pants?

6 A I remember the baggy pants. I know I patted him down.

7 Q And you believe he was patted down before you got
8 there?

9 A I believe he was searched because the stuff from his
10 pockets was on the ground beside him.

11 Q But you didn't see it?

12 A No, ma'am.

13 MS. LAND: That's all the questions I have.

14 THE COURT: Mr. Deas?

15 MR. DEAS: Nothing.

16 THE COURT: Thank you, sir. You can step down.

17 All right, Mr. Deas.

18 MR. DEAS: We call Mr. Fredrick White.

19 THE COURT: Fredrick White.

20 MS. LAND: Your Honor, Officer McCoy can be
21 excused.

22 THE COURT: Mr. Deas?

23 MR. DEAS: No objection.

24 THE COURT: Thank you, Mr. McCoy.

25 THE CLERK: Raise your right hand, please.

1 (WHEREUPON, Fredrick White was
2 sworn to tell the truth.)

3 FREDRICK WHITE - DIRECT EXAMINATION

4 BY MR. DEAS:

5 Q Please state your name?

6 A Fredrick Jamal White.

7 THE COURT: You have to speak up, sir.

8 A Fredrick Jamal White.

9 Q Mr. White, my name's Garryl Deas. I represent the
10 defendant, Mr. Garris. Mr. White, you are currently
11 incarcerated?

12 A Yes, sir.

13 Q Where are you incarcerated?

14 A Manning County.

15 Q Manning County Detention Center?

16 A Yes, sir.

17 Q Do you know Brian Garris?

18 A Yes, sir.

19 Q I'm going to take you back a couple of years to April
20 15, 2006, okay. Do you remember that day, that's the day
21 that this incident occurred where Ms. Santiago and her
22 family were robbed and Ms. Santiago was shot. Do you
23 remember the day that actually happened?

24 A (No response.)

25 Q I'm not asking you anything other than do you remember

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1 the day it happened?

2 A I remember it.

3 Q Do you remember whether or not on that day you went by
4 Brian Garris' house; you, your brother, Quentin and Rashard
5 White. Do you remember that?

6 A No, I don't remember.

7 Q You don't remember going by his house that day?

8 A No, sir.

9 Q Do you remember Ms. Marie Garris, Brian's grandmother,
10 taking you, Freddie, your brother, Rashard White, Quentin
11 Garris and Brian Garris and dropping y'all off at Manning
12 Lane Apartments; do you remember that?

13 A (No response.)

14 Q You're just drawing a complete blank, Mr. White?

15 A Yeah. I remember being over there --

16 Q Do you remember being dropped off at --

17 THE COURT: Mr. Deas.

18 Have you finished with your answer, sir?

19 Mr. Deas. Go ahead.

20 MR. DEAS: Please the Court.

21 A The testimony I gave I don't really remember what I
22 said or what went on that day. I don't go by testament. I
23 know the day, but what I remember of the day because I
24 don't remember anything that went down that day. I just go
25 by the day.

1 Q Well, I'm not asking you about what you told the
2 police. All I'm asking you right now is whether or not you
3 remember Marie Garris dropping you, Freddie, Rashard, Brian
4 and Quentin off at Manning Lane Apartments. Either you
5 remember it or you don't.

6 A I don't remember.

7 Q Now, do you recall giving an interview or being part
8 of an interview, you were questioned by Investigator Elms
9 regarding this incident?

10 A Yes, sir.

11 Q Do you remember coming to his office and talking to
12 him about what you remembered and what you saw and what you
13 didn't see?

14 A It's been so long ago that I don't remember. I don't
15 really remember but I -- that was a long time ago.

16 Q Do you recall whether or not Mr. Garris had a gun in
17 his possession that day?

18 A (No response.)

19 Q Would playing you a tape help refresh your
20 recollection? The tape of your interview with Mr. Elms
21 that shows what you said, would that help you or you think
22 you can remember?

23 A You can play the tape because I don't remember.

24 MR. DEAS: Your Honor, may we approach?

25 THE COURT: Yes, sir.

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1 (Off the record bench conference with Mr. Deas, Ms. Land
2 and the Court.)

3 THE COURT: All right. Ladies and gentlemen,
4 please go to your jury room. If you would like some
5 refreshments that aren't in there let Mr. Hill know.
6 Please do not discuss this case.

7 (Jury out at 10:57 a.m.)

8 THE COURT: All right. Could I see the lawyers.
9 (Off the record bench conference with Mr. Deas, Ms. Land,
10 and the Court.)

11 (Jury in at 11:24 a.m.)

12 THE COURT: All right. Mr. Deas.

13 FREDRICK WHITE - CONTINUED DIRECT EXAMINATION

14 BY MR. DEAS:

15 Q All right, Mr. White, we now have the video tape
16 interview when Investigator Elms questioned you. You
17 indicated that it might refresh your recollection to see
18 the portion of the video take where you talked about
19 whether or you remember seeing Mr. Garris had a gun on the
20 night of April 15th of '06. If you can, step down here and
21 we'll play that video for you to refresh your recollection
22 regarding what you told Investigator Elms.

23 A (No response.)

24 (The video was played.)

25 FREDRICK WHITE - CONTINUED DIRECT EXAMINATION

1 BY MR. DEAS:

2 Q Is that your recollection regarding the gun?

3 A (Inaudible response.)

4 Q Sir?

5 THE COURT: Speak up, Mr. White.

6 BY MR. DEAS:

7 Q Now, that you've seen that I'm going to ask you again.

8 Do you recall your interview with Investigator Elms?

9 A (No response.)

10 Q Do you recall that; you saw yourself on the video tape
11 conduct the interview; correct?

12 A Yes.

13 Q You told the investigator, correct me if I'm wrong,
14 you told the Investigator Elms that Mr. Garris didn't have
15 a gun that night, didn't you?

16 A Yes, sir.

17 Q I'm asking you today, based on your recollection did
18 Mr. Garris have a gun on April 15th of '06?

19 A No, sir.

20 Q Now, you said your memory of that evening was shaky.

21 Do you recall what time it was when you all arrived at the
22 Manning Lane Apartments?

23 A It would be --

24 Q Pardon me?

25 A (No response.)

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1 MR. DEAS: No further questions.

2 THE COURT: Ms. Land.

3 FREDRICK WHITE - CROSS-EXAMINATION

4 BY MS. LAND:

5 Q Do you recall what date you interviewed with Lt. Elms?

6 A No, ma'am.

7 Q If I told you it was August 22, 2006, would you
8 dispute that?

9 A I couldn't remember.

10 Q When you went to the police department who were you
11 with, if anybody, that day?

12 A My brother.

13 Q Who's that?

14 A Freddie White.

15 Q Okay. When you went in there did you go one by one or
16 did you go in together?

17 A I can't remember.

18 Q Okay. Well, I mean, you just saw the video. Was your
19 brother in there with you?

20 A Oh, no. He wasn't in there.

21 Q Okay. And did Lt. Elms ever threaten you, told you
22 what to say or anything of that nature?

23 A No, ma'am.

24 Q And you went in that day and spoke to him freely and
25 voluntarily?

- 1 A (No response.)
- 2 Q Is that correct?
- 3 A Yes, ma'am.
- 4 Q And your brother did the same; is that correct?
- 5 MR. DEAS: Objection. Calls for speculation of
- 6 the situation surrounding his brother.
- 7 THE COURT: Sustained.
- 8 MS. LAND: Okay.
- 9 BY MS. LAND:
- 10 Q Now, today you are not here by choice, is that right?
- 11 A (No response.)
- 12 Q Are you here because you want to be here?
- 13 A No, ma'am.
- 14 Q Why, why are you here?
- 15 A (No response.)
- 16 Q Did you get a subpoena to be here?
- 17 A Yes, ma'am.
- 18 Q From Mr. Deas?
- 19 A Right.
- 20 Q Tell me what it means to be a rat?
- 21 A I couldn't tell you.
- 22 Q Let me ask you this, are you scared of Brian Garris?
- 23 A No, ma'am.
- 24 Q Is he your friend?
- 25 A Socially my friend.

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1 Q Well, he used to spend just about every night at your
2 place didn't he?

3 A No, he didn't.

4 Q Fredrick, during the time of 2006, how often, how many
5 days of the week did he spend the night at your house?

6 A I can't remember. We were back and forth to his
7 grandmother house.

8 Q And when you were there did he ever spend the night?

9 A Yeah, he did. He spent the night.

10 Q Many times, one time. How many times?

11 A A couple times.

12 Q A couple times he spent the night, two times?

13 A More than that.

14 Q How many, 30, 40, 50?

15 A I can't remember.

16 Q Okay. Did you spend a lot of time with him?

17 A I had a girlfriend. Everybody go do their own thing.

18 Q All right. We're not talking about this night --
19 you're not in trouble. You haven't done anything wrong.
20 We just want to know what happened that night. Did you
21 come to his grandmother's house?

22 A I can't remember.

23 Q Do you remember being at Manning Lane Apartments?

24 A I don't remember.

25 Q On April 15, 2006, the day of the shooting?

- 1 A I was out there.
- 2 Q Who was at Manning Apartments that night?
- 3 A Me, my brother, Drew, Brian and his brother.
- 4 Q Drew is Andrew McBride?
- 5 A Yes.
- 6 Q All right. There's been testimony that on that date
- 7 when y'all were all together at Manning Lane Apartments,
- 8 Brian had a gun. You are under oath. Did he have a gun
- 9 that day at Manning Lane Apartments?
- 10 A No, he didn't.
- 11 Q You didn't see him with a gun?
- 12 A I didn't, no.
- 13 Q Have you ever seen him with a gun?
- 14 A No, ma'am.
- 15 Q The next day, -- well, tell me a little bit about his
- 16 finances. Did he typically have a lot of money or short on
- 17 money or what?
- 18 A I don't know about that.
- 19 Q The next day do you remember Brian having some money?
- 20 A I can't remember.
- 21 Q Fredrick, is it safe to say you don't want to get
- 22 involved in this?
- 23 A No, ma'am.
- 24 Q You don't want to tell the truth because you don't
- 25 want your friend to go to prison; is that true?

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1 MR. DEAS: Objection. Argumentative.

2 THE COURT: Sustained.

3 MS. LAND: That's all the questions I have.

4 FREDRICK WHITE - REDIRECT EXAMINATION

5 BY MR. DEAS:

6 Q Mr. White, how long have you had your hair in braids?

7 THE COURT: Is that within the scope of redirect?

8 MS. LAND: No, it's not, Judge.

9 MR. DEAS: Nothing further.

10 THE COURT: You can step down.

11 Mr. Deas?

12 MR. DEAS: Court's indulgence.

13 Your Honor, that's defendant's case.

14 THE COURT: Ladies and gentlemen, if you'll go to
15 your jury room. We'll have a brief recess. We'll have you
16 back out here in a moment. Thank you. Do not discuss the
17 case.

18 (Jury out at 11:36 a.m.)

19 THE COURT: Any motions, Mr. Deas?

20 MR. DEAS: Yes, sir. Same motions as yesterday.

21 THE COURT: All right.

22 Your motion for mistrial. I do not want to give it at
23 this time. Any other motions?

24 MR. DEAS: I want to have that Rule 5 made a

25 Court's Exhibit. I have not had an opportunity to do that,

1 but I will do whenever the Court directs me to.

2 THE COURT: We'll do that on the very next break.

3 Okay. Ms. Land, do you have a reply?

4 MS. LAND: I do, yes, sir.

5 THE COURT: How many?

6 MS. LAND: Two, possibly three.

7 THE COURT: All right. Can you tell me who they
8 are?

9 MS. LAND: Lin Ham, John Roberts with SLED, and
10 Barbara Proctor.

11 THE COURT: All right. Is Mr. Roberts here?

12 MS. LAND: Yes, he is.

13 THE COURT: That's Mr. Roberts dealing with what
14 issue?

15 MS. LAND: On the GSR analysis.

16 THE COURT: All right. I hate to ask this
17 question. Do you think we'll finish today?

18 MS. LAND: I think we'll finish it in the next
19 hour.

20 THE COURT: All right. I'm assuming we'll have to
21 take testimony outside of the jury's presence based on what
22 was said yesterday --

23 MR. DEAS: Correct.

24 THE COURT: -- on the GSR.

25 All right. Come around, Mr. Ham.

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1 THE CLERK: Please raise your right hand.

2 (WHEREUPON, Lin Ham, was sworn to
3 tell the truth.)

4 THE COURT: All right. We're going have testimony
5 on the GSR. Do you have any objections to his testimony on
6 any basis?

7 MR. DEAS: I object to his testimony on relevance
8 and he's going to have to reference the prior arrest for
9 the burglary case he was already tried and found not
10 guilty.

11 THE COURT: All right.

12 Go ahead, Ms. Land.

13 PROFFER:

14 LIN HAM DIRECT EXAMINATION

15 BY MS. LAND:

16 Q Investigator Ham, did you have the opportunity to come
17 to a place where Mr. Garris was on the 28th?

18 A Of April 2006?

19 Q I'm sorry. April 28, 2006?

20 A Yes, I did.

21 Q And at that time was Mr. Garris in custody?

22 A Yes, he was.

23 Q Did you any opportunity to pat him down or anything of
24 that nature?

25 A I did not pat him down. He was already in custody

1 with Officer McCoy.

2 Q And what was your role that day?

3 A I took him out and performed a gunshot residue test on
4 him.

5 Q And how do you perform that test?

6 A It's a kit that we have. I open up the seal and
7 there's a set of directions in there.

8 Q Okay. And what do those directions instruct you to
9 do?

10 A To actually collect samples from the hands of the
11 suspect.

12 Q And did you do that?

13 A Yes, ma'am.

14 Q Does the kit contain swabs?

15 A Yes, ma'am.

16 Q And it instructs you to swab one of the fingers?

17 A It would be better if I had an actual kit to read the
18 instructions, but yes. You swab the back of the hands and
19 the palms of the hands.

20 Q And then you put it into a sterile kit?

21 A Correct.

22 Q And did you do that?

23 A Yes, ma'am.

24 Q And what did you do with that kit once you -- did you
25 get the test successfully performed on him?

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1 A I collected my samples and it was turned over to
2 evidence and sent to SLED for analysis.

3 Q Okay.

4 MS. LAND: Judge, that's all the questions I have.

5 THE COURT: Any follow up, Mr. Deas?

6 MR. DEAS: Is the kit going to be here?

7 MS. LAND: The kit is not here. The analysis is.
8 We've got the evidence custodian and the person from SLED.

9 THE COURT: All right, Mr. Deas, any questions of
10 this witness?

11 MR. DEAS: Yes, sir.

12 LIN HAM - CROSS-EXAMINATION

13 BY MR. DEAS:

14 Q You conducted a gunpowder residue test on Mr. Garris
15 that day?

16 A Gunshot residue.

17 Q Gunshot residue?

18 A Yes, sir. It's referred to as GSR.

19 Q And is that information is sent on to SLED for further
20 analysis?

21 A Correct.

22 Q Before you conducted that test, did you search him?

23 A No, sir, I did not.

24 Q It's not your customary practice to search a defendant
25 before you --

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1 A He was already in the custody of the other officer.

2 All I was doing was testing for GSR.

3 Q This GSR test that you performed, was it in relation
4 to this case?

5 A No, sir.

6 Q And you don't -- when you performed this test you said
7 he was already in custody?

8 A Yes, sir.

9 Q Did you have to take handcuffs off of him in order to
10 conduct the test?

11 A No. I did it with his hands behind his back.

12 Q And what did you do with the test?

13 A I sealed it and turned it in to evidence.

14 Q Where is the test kit now?

15 A It was sent to SLED for analysis.

16 Q And has that analysis come back?

17 A Yes, sir.

18 Q You don't have the test kit?

19 A No.

20 Q Does SLED have it?

21 A I turned it into evidence and it was sent to SLED. So
22 I don't know.

23 Q What exactly was sent to SLED?

24 A The samples that I took.

25 Q Would you have been the only person to handle this

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1 kit?

2 A Yes, sir, before --

3 Q Prior to it being turned over to SLED?

4 A It was a sealed evidence kit. I cut the seal and took
5 the stuff out. Performed the kit as per instructions. Put
6 everything back in there and sealed it back up. I took it
7 to evidence.

8 Q Thank you. No further questions.

9 THE COURT: Follow up?

10 MS. LAND: No, sir.

11 THE COURT: All right. You can step down.

12 And is Mr. Roberts up next?

13 MS. LAND: Yes. And, Your Honor, of course, if
14 Mr. Deas would like I will call Barbara Proctor after that
15 to maintain the chain.

16 THE COURT: All right. Come on up, Mr. Roberts.

17 THE CLERK: Please raise your right hand.

18 (WHEREUPON John Roberts, was sworn
19 to tell the truth.)

20 Your Honor, do you want me to go through his
21 qualifications as an expert or just --

22 THE COURT: No.

23 MS. LAND: Okay.

24 PROFFER:

25 JOHN ROBERTS - DIRECT EXAMINATION

1 BY MS. LAND:

2 Q Mr. Roberts, can you explain to us a little bit about
3 the GSR test?

4 A Gunshot residue kit is two different types of samples.
5 There are four particle lifts which are simply sticky tabs
6 with carbon tape on them. They're applied to the right
7 palm, right back, left palm, left back of the hand. In
8 addition to those there are four -- five swabs that are
9 taken. One is a control sample. There is a right palm,
10 right back of the hand; left palm, left back. We run the
11 swabs first to ascertain the amount of metal that would be
12 present on somebody's hand, and then we run the particle
13 lifts and look for the metals in those also.

14 Q And when you say we look for the metals, what exactly
15 do you do to these samples and what are you looking for?

16 A With the swabs, we use an instrument that atomizes the
17 metals present in the swabs and detects the metals. With
18 the particle lifts, we put the particle lifts themselves
19 under a very powerful microscope and look for gunshot
20 residue particles.

21 Q Tell me a little bit about how when one gets these
22 particles on their hands and what the shelf-life is, so to
23 say, of those particles?

24 A There's three ways you can get it on your hands. You
25 can shoot a gun, you can be near it when it goes off, say

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1 within two or three feet, or you can handle a weapon that's
2 been fired recently.

3 Once it's been fired, our protocol is six hours for
4 the test to be found and after six hours the metals are no
5 longer present in detectable quantities on the hands. As
6 far as being present on inanimate objections it is present
7 on an inanimate until it's physically cleaned.

8 Q But an animate object like somebody hands?

9 A Six hours.

10 Q Okay. And what is the reason for this six hour magic
11 number?

12 A We've done testing and have noticed that after six
13 hours there is very little of these materials present on
14 someone's hands. And we have thresholds that we have to
15 meet to call detectable one of these elements.

16 Q So if somebody said, Mr. Roberts I want you to do a
17 GSR kit. We believe that this person shot a gun 12 hours
18 earlier?

19 A We would not do it.

20 Q Okay, and simply because --

21 A Our research has found that after six hours there's
22 little residue left.

23 Q Okay. Did you get a kit from the Clarendon County
24 Sheriff's Office with a gunshot residue kit from Brian
25 Garris?

1 A Yes, ma'am.

2 Q And when did you receive that kit?

3 A We received this on June 2, 2006.

4 Q And let me ask you one other thing, does it matter how
5 long the kit is in evidence before you receive it or how
6 long it sits before you receive it?

7 A No, ma'am.

8 Q Okay. So once you take those prints, those swabs and
9 the prints, it is either there or it's not there?

10 A Once the swab is taken the metal there is in a state
11 of -- it's not going to disappear. If they're either there
12 or they're not. Same with the particle lifts, they're
13 either there or they're not.

14 Q Okay. What did you do with this kit that you received
15 from Clarendon County Sheriff's Office?

16 A On of 7/17/06, it was processed. And on August 3,
17 2006, the swabs were run on incubator we run the swabs on.

18 Q Okay. And what did your -- what did you find from
19 running these tests?

20 A On the swabs from Brian Garris I found high quantities
21 of lead on the right palm, right back; left palm and left
22 back. In fact, they were high enough for me to go ahead
23 and proceed with the second examination, which is the
24 microscope. In that case I took all four of those particle
25 lifts to the microscope and I found ground lead on the

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1 right palm. I found no gunshot residue on the right back,
2 no gunshot residue on the left back, and the left palm was
3 inconclusive. Inconclusive means I had -- I didn't have
4 enough particles.

5 Q Meaning there may have been some but not enough for
6 you to make a finding?

7 A I found one ground particle, but according to our
8 protocol --

9 Q What conclusions -- well, from those findings could
10 you conclude that in the last six hours Brian Garris
11 handled a firearm, or fired a firearm?

12 A Based on both tests, the quantities of metals that I
13 have and the particles I have I concluded that he had
14 either been near the weapon when it was fired, well, he
15 fired it, he fired the weapon.

16 Q My last question. Can you get these particles on your
17 hands from a BB gun?

18 A No, ma'am.

19 Q And what's the reason for that?

20 A BB guns use compressed air and not carbon dioxide --

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

22 THE COURT: Mr. Deas?

23 MR. DEAS: Thank Your Honor. Please the Court.

24 JOHN ROBERTS - CROSS-EXAMINATION

25 BY MR. DEAS: .

1 Q Sir, I didn't catch your name?

2 A John Roberts.

3 Q John Roberts. Mr. Roberts, I'm Garryl Deas. I

4 represent the defendant, Mr. Garris. You stated your

5 tests, gunshot residue test, that you performed would show

6 one of three things, that the person shot a gun, was near a

7 gun that was shot or handled a gun that had been shot?

8 A Those are the conclusions that I draw based on the

9 amount --

10 Q So that means that a person doesn't necessarily need

11 to shoot a gun in order for gunpowder to be on their hands?

12 A That is correct.

13 Q And also a person could simply be near somebody who

14 shot a gun?

15 A Yes, sir, that's correct.

16 Q Well, those three situations apply to an individual

17 being tested?

18 A Not conclusively, but based on the levels of metals

19 that I find and the second test, the particle lifts, I can

20 make an opinion on it.

21 Q But you can't make an opinion that's conclusive?

22 A I can't be positive, no, sir.

23 Q Now, you indicated that your test, the test that you

24 performed would test gunshot residue only if the gunshot

25 residue was on the individual's hands six hours prior to

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1 the test?

2 A Yes, sir.

3 Q So is it possible for your test to detect gunpowder
4 residue on someone's hand if the gunshot occurred more than
5 six hours before, will it detect it? I'm not asking you
6 will you make an opinion, but I'm asking you will it detect
7 it?

8 A It will detect the elements that are present in
9 gunshot residue more than six hours previous.

10 Q And if a person had shot a gun, let's say, 12 hours or
11 more -- let's say 12 hours before the test. Nothing, could
12 wash their hands or cleanse themselves, is it possible your
13 tests would detect the gunshot residue?

14 A It's possible it would detect it, however, the human
15 body absorbs these materials. That's what we've found in
16 our research and our testing that someone who has fired a
17 gun and not washed their hands, not gone to the bathroom,
18 not used their hands in an active manner --

19 Q But the tests will detect it on hands that have those
20 particles?

21 A It can.

22 Q Now, the gunpowder residue test you performed on Mr.
23 Garris, was in relation to another charge, not the one
24 we're here about today, correct?

25 A As I understand it, yes, sir.

1 Q Now, if the officer -- if you received the gun from --
2 in this particular situation when did you receive the gun?

3 A I didn't receive the firearm.

4 Q Who did you receive the test material from?

5 A The gunshot residue test kit?

6 Q Yes.

7 A The person who delivered the kit is listed as Barbara
8 Proctor on my report.

9 Q And does that also indicate which law enforcement
10 department, which officer performed the test kit?

11 A I have Thomas Ham, Clarendon County Sheriff's Office
12 listed.

13 Q What affect would it have on your tests if the officer
14 had performed the test kit and obtained the gunshot residue
15 from the subject, what affect would it have on your tests
16 if that officer did not have on gloves when they gathered
17 the gunshot residue from the subject's hands and they also
18 handle guns?

19 A If the officer was not wearing gloves they could
20 possibly contaminate the test kit.

21 Q Do you know whether or not the officer in this
22 situation had on gloves before handling the gun?

23 A I don't know, but the kit comes with directions, and
24 it is spelled out very clearly that they are to wear
25 gloves.

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- 1 Q And based on the test that was performed on Mr. Garris
2 and results you can't conclude, can you, whether or not he
3 shot a gun, was near a gun that was shot or handled a gun.
4 You don't know which one of those would apply to Mr.
5 Garris, do you?
- 6 A No, sir, I don't know which one would apply.
- 7 Q All right. May I take a look at -- do you have the
8 report there?
- 9 A I do have my report here.
- 10 Q May I take a look at it?
- 11 A (Passes report to Mr. Deas.)
- 12 Q Do you have a copy, as well?
- 13 A No. That's my copy.
- 14 Q Now, I don't know if you can recall specifically --
15 reading the report stated that there were lead particles
16 found on the right palm?
- 17 A Yes, sir.
- 18 Q And back of right hand, no gunpowder residue was found
19 on the back of the right hand?
- 20 A Give me one second and I'll -- That's correct. No
21 gunshot residue was found on the back of the right hand.
- 22 Q And the left palm, your test results read --
- 23 A Yes, sir, that's correct.
- 24 Q And on the left back -- back of the left hand no
25 gunshot residue was found; correct?

1 A That is correct, yes, sir.

2 Q Now, when you go down to item -- can you explain what
3 led your report to be inconclusive as to the left palm?

4 A Left palm is inconclusive because of the fact that I
5 had high levels of lead that were taken from the swabs and
6 I only found one ground lead particle on the particle lift.
7 I can't make the report, a conclusive report result on
8 that. I can use what I've seen in research and I can use
9 the levels of metal that I found to make an opinion about
10 it, but as far as my report goes, it has to go out
11 inconclusive.

12 Q And based on this report, then, is it possible to have
13 gunshot residue on one portion of the hand or on one hand,
14 but none on another portion or another hand?

15 A That's correct. That's how I made a determination on
16 where he's fired a gun or handled a gun.

17 Q Thank you, sir. I have no further questions.

18 THE COURT: Ms. Land?

19 JOHN ROBERTS - REDIRECT EXAMINATION

20 BY MS. LAND:

21 Q You said that from the levels of metal you have an
22 opinion?

23 A Yes, ma'am.

24 Q As to which one is was. What is that opinion?

25 A My opinion would be that he had either handled the

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1 weapon or had fired the weapon.

2 Q Thank you.

3 THE COURT: May I ask a question.

4 MS. LAND: Sure.

5 JOHN ROBERTS - EXAMINATION

6 BY THE COURT:

7 Q Did your testing, your field of expertise, in this
8 case can you develop an opinion to a reasonable degree of
9 certainty whether the handling or the firing was a pistol
10 as opposed to a rifle?

11 A I could make a general, not to a reasonable degree of
12 certainty.

13 Q Most probably?

14 A Most probably.

15 Q All right, sir. What's that?

16 A A pistol because I've seen the firearms in question,
17 it's close to your hands, whereas a rifle, you've got your
18 hands stretched away from the exit portion -- you have one
19 that's fairly close. A rifle is also a closed, a more
20 closed system than a handgun. There's basically less
21 places for gunshot residue to come out of the rifle. And
22 any bolt or lever and depending on whether that lever --
23 the gunshot residue is going to come out in a cloud.

24 Q And contaminate the hand closest to the muzzle?

25 A Closest to the muzzle.

1 THE COURT: Follow up on that, Ms. Land?

2 MS. LAND: No, sir.

3 MR. DEAS: Just briefly.

4 THE COURT: Yes.

5 JOHN ROBERTS - RE-CROSS EXAMINATION

6 BY MR. DEAS:

7 Q If an individual were to shake hands with someone that
8 had handled a gun, could that cause a transfer of these
9 particles?

10 A It could, however, it doesn't transfer one to one.
11 It's a very light portion, unless the person's hands are
12 covered in residue. As -- and by covered, I mean a shot
13 they shot 25, 35, 45 times and then they shake someone
14 else's hand. I would expect the transfer to happen. If
15 not then it doesn't transfer one on one. I wouldn't expect
16 to see very much, but yes, it could transfer.

17 Q Is it possible, sir, based on your expert opinion a
18 person can actually have gunpowder residue on their hands
19 and not even know it, not realize it; correct?

20 A If they have handled the weapon or been near the
21 weapon when it's fired or have shot a weapon, yes.

22 Q And is it, correct me if I'm wrong, but I believe you
23 testified a little earlier that you could say with a
24 reasonable degree of medical certainty --

25 THE COURT: Not medical certainty.

1 BY MR. DEAS:

2 Q I'm sorry. To a reasonable degree of certainty that
3 in this particular situation, Mr. Garris, in your view had
4 handled the pistol?

5 A Yes, sir.

6 Q And not a rifle?

7 A Yes, sir.

8 Q And if you had to describe your level of certainty
9 with respect to that percentage how certain are you of
10 that, 50 percent sure, or more; 50 percent sure or less?
11 You describe it for me?

12 A Based -- based on what I've seen firing weapons and
13 running gunshot residue kits, you get higher levels of
14 these metals from your hand by firing a handgun as opposed
15 to firing a rifle.

16 Q That's based on your experience?

17 A Yes, sir.

18 Q My question to you is how certain are you, you gave an
19 opinion just a moment ago as to what type of firearm you
20 believed Mr. Garris handled. What I'm asking you is can
21 you place a percentage on your level of certainty what
22 would it be?

23 A I couldn't place a percentage on that.

24 Q It's not 100 percent is it?

25 A No, sir, it's not 100 percent.

1 Q Thank you. No further questions.

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

3 All right. Mr. Deas?

4 MR. DEAS: Your Honor, basically I understand what
5 the attempt here is. That's to establish that Mr. Garris
6 had handled or shot a gun or had some dealing with a gun
7 when he was detained on April 28, 2006, or sometime prior
8 to that.

9 THE COURT: No, sir. The question is the only way
10 I'm going to -- here's the only way it comes in. The
11 witness testified. There were no objections. He was asked
12 if he had ever been tested for GSR. He was asked if he had
13 ever fired a gun. He said, no.

14 MR. DEAS: He also said he --

15 THE COURT: I'm not finished. He said the only
16 thing he'd ever fired was a rifle. It impacts his
17 credibility. He cannot dance around -- and say I've never
18 fired a pistol and just back away and none of that
19 testimony was objected to. And then have that out there
20 and then see that he not see whether or not the jury -- I'm
21 not talking about why he was arrested. The jury has
22 repeatedly been told that he was arrested for different
23 charges that were ultimately ended by not guilty. I don't
24 want to hear about that. I want to hear about what your
25 position is relevant to this test at this time on the

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1 credibility.

2 MR. DEAS: First of all, it's not relevant. It's
3 not relevant. Second of all, even the expert says that it
4 is possible for a gunpowder residue to be detected by their
5 tests well beyond six hours. Mr. Garris testified --

6 THE COURT: In this case. That's why I asked the
7 follow up question. In this case, he had an opinion to a
8 reasonable degree of certainty, most probably. Those were
9 his words, that it was a pistol.

10 MR. DEAS: That's his opinion. It's not in his
11 report.

12 THE COURT: That's why he's here.

13 MR. DEAS: It's not in the report, which is not in
14 any discovery material I've seen. I can have -- I can be
15 given an opportunity to rebut his opinion since this is
16 something that we're just hearing about on yesterday.

17 THE COURT: All right. So is your objection that
18 or is your objection not relevant or --

19 MR. DEAS: First, it's not proper since it's
20 something we're just hearing about on yesterday.

21 THE COURT: All right. So is your objection that
22 or is your objection not relevant, credibility impeachment
23 --

24 MR. DEAS: First, it's not proper, credibility
25 impeachment evidence, and I --

1 THE COURT: Why not?

2 MR. DEAS: I --

3 THE COURT: Why not?

4 MR. DEAS: It's not because -- well, it's
5 prejudicial.

6 THE COURT: How was it substantially prejudicial.

7 MR. DEAS: And in this situation I believe it is
8 because we're talking about tests. Now, not in relation to
9 this case. In relation to another case. He gave no
10 opinion with respect to what type of gun Mr. Garriss fired,
11 even in the previous case that he was found not guilty.

12 THE COURT: No, this one.

13 MR. DEAS: Now --

14 THE COURT: We're not talking about the prior
15 case. We're talking about this case.

16 MR. DEAS: Now, he's given his opinion, this
17 opinion, an opinion that has not been reduced to writing,
18 an opinion that on cross he stated he can't even, he can't
19 be 100 percent sure. And so if he's not 100 percent sure
20 about it --

21 THE COURT: He doesn't have to be 100 percent
22 sure.

23 MR. DEAS: Well, even if he --

24 THE COURT: Where in the law is it that has to be
25 100 percent sure?

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1 MR. DEAS: He can give an opinion, but the
2 question is what impact is that going to have with respect
3 to this jury. So if the jury believes his opinion, which
4 which he said he can give within a reasonable degree of
5 certainty, that Mr. Garris had a pistol --

6 THE COURT: All right. That's where cross
7 examination comes in. What's your evidentiary -- you've
8 tried many cases. Doctor's all the time say to a
9 reasonable degree of medical certainty, that crick in the
10 neck came from this or automobile accident. It's not 100
11 percent sure. That's my opinion to a reasonable degree of
12 medical certainty.

13 MR. DEAS: And in a civil case it wouldn't be that
14 big of an issue, but in a criminal matter, a criminal
15 proceeding where he has a right to a fair trial and not to
16 be subjected to prejudice, to allow this witness to testify
17 about his opinion as to what type of gun Mr. Garris fired
18 or had in his possession or handled or was near without
19 number one, that being part of the discovery. Without me
20 having an opportunity to rebut it through my own expert, if
21 need be. That's prejudicial.

22 THE COURT: All right. Ms. Land?

23 MS. LAND: Your Honor, first of all --

24 THE COURT: All right. What I want to hear from
25 you --

1 MS. LAND: Okay.

2 THE COURT: -- is nobody has mentioned this,
3 danger of misleading the jury. That's the other part of
4 the -- I understand that the state, witnesses play with the
5 truth. That's your argument. You ought to be able to come
6 back with collateral matter, if he fired the gun, because
7 this expert says he fired the gun, and matter of fact this
8 expert's opinion is that it was a pistol. Okay. Within
9 six hours before he was tested on April 28th.

10 All right. Tell me how that relates logically to the
11 issue.

12 MS. LAND: Your Honor, he testified to the jury
13 that he did not have a gun. I'm talking about the 28th, the
14 day that he would have had to have it when he got arrested.
15 He said he did not have a pistol, he did not own a pistol,
16 he didn't fire a pistol.

17 THE COURT: Okay. Mr. Deas, I'm going to allow
18 the testimony to the jury and I think -- I might be wrong,
19 might be 100 percent right. Not 100 percent right, but you
20 might be enough right to where this is an issue that can be
21 visited at a later time by another court, but I'm going to
22 allow the evidence.

23 As the witnesses testify you can state your objections
24 again.

25 (Jury in at 12:14 p.m.)

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1 THE COURT: All right. Thank you ladies and
2 gentlemen.

3 Mr. Deas, any other witnesses?

4 MR. DEAS: Your Honor, defense rest.

5 THE COURT: Ladies and gentlemen, the defense
6 rest. That means that the next stage of the trial is the
7 state can produce its reply evidence.

8 Ms. Land, do you have any reply evidence?

9 MS. LAND: I do, Your Honor.

10 THE COURT: All right. You may call your first
11 witness.

12 MS. LAND: Your Honor, we call Investigator Lin
13 Ham.

14 THE CLERK: Please raise your right hand.

15 (WHEREUPON, Lin Ham, was sworn to
16 tell the truth.)

17 STATE REPLY:

18 LIN HAM - DIRECT EXAMINATION

19 BY MS. LAND:

20 Q State your name for the jury, please?

21 A Thomas Ham. Everybody calls me Lin.

22 Q And you're an investigator; is that correct?

23 A Yes, ma'am, I am.

24 Q Okay. Tell the jury a little bit about your
25 employment?

1 A I'm an investigator with the Clarendon County
2 Sheriff's Office, have been since 2001. Prior to that I
3 started my law enforcement career with the City of Manning
4 in '94.

5 Q Did you have an opportunity on April 28, 2006, to come
6 to a call where Brian Garris was a suspect?

7 A Yes, ma'am, I did.

8 Q And that was a completely unrelated case; is that
9 correct?

10 A Yes, ma'am.

11 Q What was your role during that -- during that time
12 that you --

13 A I came back to perform what we perform what we call a
14 gunshot residue kit, a GSR test.

15 Q Okay. Will you explain a little bit about GSR kit?

16 A A GSR kit is done to detect metals and all. I'm not
17 an expert in that field, so -- I take the samples and
18 that's sent to SLED and they test them there.

19 Q And is it typical for an investigator to have, and I'm
20 talking all around the state, to have a GSR kit that you
21 can take the samples and send to SLED for analysis?

22 A Yes, ma'am.

23 Q And you and your agency typically have many of those
24 kits that you can use?

25 A Yes, ma'am.

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1 Q Let me show you -- do you recognize that?

2 A That is a gunshot residue kit.

3 Q And is that the -- not the kit, but the kind of kit
4 that you used on Brian Garris that day?

5 A Yes, ma'am.

6 MS. LAND: Your Honor, I'd like to have this put
7 into evidence as State's No. 13.

8 MR. DEAS: Objection.

9 THE COURT: All right. Ms. Land, any of Mr. Deas
10 objection will continue to run throughout.

11 MS. LAND: That's fine, Judge.

12 THE COURT: All right. That's number 13?

13 MS. LAND: For ID at this point.

14 THE COURT: For ID. All right.

15 (State's Exhibit No. 13, GSR kit,
16 was marked for identification.)

17 BY MS. LAND:

18 Q All right, so Investigator Ham, this is the kit that
19 is identical to the one that you performed on Brian Garris
20 on April 28th; is that correct?

21 A Yes, ma'am.

22 Q Will you open it and show the jury exactly how you
23 perform that kit on any suspect?

24 A It actually comes sealed. You have to break the seal
25 and --

1 Q Okay. It's open. What do you do then?

2 A You unseal the kit. It comes with a set of
3 instructions that pretty much tell me what -- you read the
4 instructions, go word for word, follow the instructions.

5 Q What does the first set of instructions say?

6 A It says, it has been shown that the concentration of
7 gunshot residue on any suspect decreases beyond detectable
8 limits after approximately 6 hours. In view of these
9 findings if more than six hours has passed since the
10 shooting do not collect samples from living subject. This
11 is just notes at the top of the kit. That was A. B, says,
12 when the cap is removed from the clear plastic vials
13 containing the -- adhesive is exposed and care must be
14 taken not to drop the particle lift or contaminate the
15 collection vial -- when collecting with the particle lifts
16 avoid heavily soiled areas if possible. When impressing
17 the swabs on the questioned area use enough pressure to
18 cause mild irritation on the surface of the subject's hand.
19 All right. That's basically how to use the kit. Then you
20 go down and it says, fill out the information request on
21 the enclosed gunshot residue analysis information.

22 Q Do you remember from the top of your head what time of
23 the day or night you took the kit?

24 A I know it was daylight hours, but without getting the
25 copy of this that goes along with the kit --

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1 Q Okay.

2 A -- with the kit, I don't know.

3 Q Okay. We'll get to that in a minute. Did you
4 determine after reading that first portion that you were
5 within the six hour period?

6 A Yes, ma'am, I did.

7 Q Okay. And continue the instruction number one?

8 A Instruction number one, like I said, was fill out the
9 information requested on this enclosure -- we did this, and
10 it basically the collecting officer's name, badge number,
11 collection agency name, case number. Whether it was a
12 homicide, suicide or assault or drive-by -- And it goes
13 down to the subject information. Subject's full name, date
14 of birth. Asks if this subject is living, does he right-
15 handed, left-handed -- any debris or blood on the subject's
16 hands -- then it goes on to say -- basically, see what the
17 subject has been doing since the shooting.

18 Q Okay. And you filled all of that out?

19 A Yes, I did.

20 Q And did what does the instruction number two tell you?

21 A Instruction number two says put on disposable plastic
22 gloves provided in the kit. Do not substitute with other
23 gloves.

24 Q And did you do that?

25 A Yes, ma'am.

1 Q Okay. And can you show the jury, if you would, the
2 gloves that come with the kit?

3 A It is cumbersome to put these on, but it says to use
4 these gloves. So we do.

5 Q Then what is step number three?

6 A Put the gloves on -- like that. (Demonstrating.)

7 Q And you had no problems with those gloves that day?

8 A No, ma'am. Step number three, start with right back,
9 and it's talking about the -- all these are labeled left
10 palm, right palm, left back, right back. These are the
11 swabs themselves.

12 Q Would you be more comfortable stepping down?

13 A I probably would.

14 Q All right.

15 A (Witness steps down to demonstrate.)

16 Q You'll just have to speak up, so we can all hear you.

17 A I'll try. These are the gloves that we use -- then it
18 says remove the cap from the vials like that. We remove
19 the cap, while holding the vial by the vial cap press the
20 collecting surface -- particle lift --

21 Q Okay, so go ahead and do my hand.

22 A I have to kind of press down to get any particles
23 that's on the hand. I'll go through what you do.

24 (Demonstrating.)

25 Q And did you do that with Brian Garris on April 28th?

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1 A Yes, ma'am. Then you -- and then you do the right
2 palm.

3 Q And that would be the same process on the palm?

4 A Correct. Go to the left palm, the left palm --
5 (Demonstrating.)

6 Q Let me ask you a question about that. At that point,
7 do you peel off your gloves or do you continue wearing the
8 gloves?

9 A Yes, ma'am.

10 THE COURT: Ms. Land, could y'all come up here for
11 just a minute?

12 MS. LAND: Sure.

13 (Off the record bench conference with Ms. Land, Mr. Deas
14 and the Court.)

15 BY MS. LAND:

16 Q And you just go to the palm?

17 A Yes, ma'am.

18 Q All right. You can have a seat back up on the stand.

19 A (Witness returns to witness stand.)

20 Q So you performed that kit on Mr. Garris back that day,
21 April 28, 2006?

22 A Correct.

23 Q What did you do with this kit once it was completed?

24 A Once it was completed, I made sure all the paper work
25 was inside of it. And I folded it over -- there's a seal

1 that's provided, and sealed it.

2 Q Okay. And once you sealed it what did you do with it?

3 A I turned it over to evidence.

4 Q Okay. And did you do that?

5 A Yes, I did.

6 Q And if I could show you -- this document, do you
7 recognize that?

8 A Yes, ma'am.

9 Q Okay, and what is that?

10 A That is an evidence inventory sheet at the Clarendon
11 County Sheriff's Office. That's what is used to keep track
12 of evidence, the time line. I've got listed on here one of
13 which is GSR, Brian Garriss.

14 Q And you turned it into the evidence locker or the
15 evidence custodian herself?

16 A I would turn it into the evidence locker.

17 Q Okay.

18 MS. LAND: Your Honor, may I have this marked as
19 State's Exhibit No. 14, for ID?

20 THE COURT: Mr. Deas, do you have any objection?

21 MR. DEAS: Nothing other than the previous.

22 THE COURT: All right.

23 (State's Exhibit No. 14, evidence
24 sheet, was marked for identification.)

25 BY MS. LAND:

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1 Q All right. That's all the questions I have. Please
2 answer any that Mr. Deas has.

3 THE COURT: All right, Mr. Deas.

4 LIN HAM - CROSS-EXAMINATION

5 BY MR. DEAS:

6 Q Good morning -- well, good afternoon, Investigator
7 Ham. I'm Garryl Deas, I represent the defendant, Mr.
8 Garris. You came upon this upon this situation back on
9 April 28th of '06 where you had the opportunity to do a
10 gunshot residue test on Mr. Garris?

11 A Yes, I did.

12 Q And it was on that date, April 28th, '06?

13 A Yes, sir.

14 Q And this was in relation to a charge, a criminal
15 charge that is not the one we're here about today?

16 A Totally unrelated. Yes, sir.

17 Q And you went through this elaborate process just now,
18 everything you do to gather samples; correct?

19 A Yes, sir.

20 Q And when you did this back in -- you recall, you did
21 this back on April 28th of '06, did you have on those gloves
22 that's in that test kit?

23 A Yes. Not those, but the ones that came with the kit
24 itself, yes.

25 Q This is not -- this is just a sample test kit?

1 A That's an actual test kit that we opened, but it's not
2 the one --

3 Q This is not the one that you submitted to SLED --

4 A No.

5 Q -- on the 28th?

6 A No. That's one that's never been used before.

7 Q Now, was there ever a time while you were performing
8 that test that you took those gloves off?

9 A No, sir.

10 Q When you arrived on the scene where was Mr. Garris?

11 A Mr. Garris was already in the backseat of a patrol
12 car.

13 Q Was he handcuffed?

14 A Yes, sir.

15 Q Obviously there were already other officers on the
16 scene?

17 A Yes, sir.

18 Q Before you conducted the GSR gunshot residue test, did
19 you search Mr. Garris?

20 A No, I did not.

21 Q Is that customary or the normal practice to search a
22 detainee before you perform the shot residue test?

23 A There is no set in stone procedure to doing this. He
24 was already in custody. An officer had handcuffs on him.
25 I didn't feel threatened by him at the time. All I was

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1 doing was performing the GSR kit.

2 Q And when you performed -- did you perform the GSR test
3 on anyone else that day?

4 A I did.

5 Q On Quentin Garris?

6 A Yes.

7 Q His brother?

8 A Yes.

9 Q Both of those test kits were submitted to SLED?

10 A Correct.

11 Q Now, when you performed the test on Brian Garris --

12 A Yes, sir.

13 Q -- was he -- did you have to take him out of the car,
14 first, or just inside --

15 A Took him out of the car and went to the back of my
16 truck on the side of the road.

17 Q And was he handcuffed the entire time you performed
18 the test?

19 A Yes, sir.

20 Q Do you recall if Officer William McCoy was present?

21 A Yes, he was.

22 Q Was it Officer William McCoy that transported Mr.
23 Garris to the Clarendon County Detention Center after you
24 performed the gunshot residue test?

25 A I would assume so. That's whose car they put him back

1 into.

2 Q Did you accompany Officer McCoy to the Clarendon
3 County Detention Center when he took Mr. Garris?

4 A No, I did not.

5 Q You weren't there when Mr. Garris got processed?

6 A Not at the jail.

7 Q And with respect to this test you don't have any
8 knowledge as regards the results, your job was simply just
9 to gather the material used in the test?

10 A Yes, sir. I gather the materials, turn it into
11 evidence, and it's sent to SLED, SLED analyses it and the
12 reports back.

13 Q Thank you, sir. I have no further questions.

14 MS. LAND: No further questions, Judge.

15 THE COURT: All right. Thank you, sir. You can
16 step down.

17 Ms. Land?

18 MS. LAND: Your Honor, we call Barbara Proctor.

19 THE COURT: Has she testified earlier?

20 MS. LAND: Yes, sir.

21 THE COURT: All right. You're still under oath.

22 BARBARA PROCTOR - DIRECT EXAMINATION

23 BY MS. LAND:

24 Q Ms. Proctor, let me show you what's been marked as
25 State's No. 14 for ID and I apologize for not introducing

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1 you to the jury, but you have already met them.

2 A That's right.

3 Q Tell me what that is, please?

4 A An evidence inventory sheet for the Clarendon County
5 Sheriff's Office.

6 Q All right. Does that reflect that you received
7 evidence in the form of a GSR kit from Investigator Ham on
8 April 28, 2006?

9 A Actually, two GSR kits.

10 Q Okay. And does it indicate one if for Brian and one
11 was for Quentin?

12 A That's correct.

13 Q Okay. And what did you do with that evidence once you
14 received it?

15 A Once I received it, it was carried to SLED to be
16 analyzed. It was carried on 6/2/06, so it obviously stayed
17 in the evidence room until we made a trip to SLED. It was
18 transported on 6/2/06.

19 Q Okay, and did you transport it?

20 A Yes.

21 Q Okay. And you signed it over to SLED?

22 A Right.

23 MS. LAND: Your Honor, at this time I'd like to
24 have that document put in as evidence.

25 THE COURT: The inventory sheet?

1 MS. LAND: Yes, sir.

2 THE COURT: Not the kit?

3 MS. LAND: Not the kit.

4 THE COURT: All right. Mr. Deas?

5 MR. DEAS: If I could just take a look at it.

6 THE COURT: Ms. Land, the one that you're
7 referring to, has that been marked yet?

8 MS. LAND: Yes, sir. It's just --

9 MR. DEAS: Your Honor, may we approach?

10 THE COURT: Yes, sir.

11 (Off the record bench conference with Mr. Deas, Ms. Land
12 and the Court.)

13 THE COURT: Mr. Deas, any objections other than
14 the ones made previously?

15 MR. DEAS: None.

16 THE COURT: All right. Number 14 is admitted.

17 (State's Exhibit No. 14, evidence
18 sheet, was marked and entered.)

19 BY MS. LAND:

20 Q Thank you, Ms. Proctor, that's all the questions I
21 have.

22 THE COURT: Mr. Deas?

23 MR. DEAS: No questions.

24 THE COURT: Thank you, ma'am. You may step down.

25 MS. LAND: Your Honor, we call Agent John Roberts.

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1 THE CLERK: Please raise your right hand.

2 (WHEREUPON, John Roberts, was
3 sworn to tell the truth.)

4 JOHN ROBERTS - DIRECT EXAMINATION

5 BY MS. LAND:

6 Q Agent Roberts, would you introduce yourself to this
7 jury, please?

8 A My name is John Roberts. I work for the State Law
9 Enforcement Division, also known as SLED, out of Columbia,
10 in the trace evidence department.

11 Q And tell the jury what that means in English, when you
12 say you work in the trace evidence department?

13 A I'm the lab -- I do analysis for gunshot residue
14 powder, which is the determination, fire debris analysis,
15 which is arson. Explosives, glass, paint, duct tape
16 analysis in the lab.

17 Q And do you have frequent opportunity to work with GSR
18 kits which are submitted from law enforcement agencies?

19 A Previous to the last two years I have. I've come off
20 gunshot residue verification. Luckily, I don't do it very
21 much any more. We analyzed approximately 3000 a year. But
22 previous to the last two years, yes, I was on that for
23 about year.

24 Q So I assume that in April, 2006, you were in that
25 area?

1 A Yes, ma'am. Right in the middle of it.

2 Q Okay. And they just saw how samples are taken and, if
3 I may, I will hand you what they swabbed my right palm with
4 and my right back. Tell the jury when you see those two
5 what you do with them; the different tests and what you are
6 looking for and trying to detect?

7 A As you saw earlier, there are two different types of
8 samples. There's the swabs, which are done first. That's
9 important to do that first. Then there's the particle
10 lifts. We analyze the swabs first for the presence of any
11 metals that may come from gun powder on somebody's hands.
12 Metals that we look for are lead, residue particles or a
13 combination of levels that would indicate if somebody has
14 fired a weapon. When a weapon is fired -- based on the
15 information we get these samples would go to the
16 correspondence samples from the particle lifts. The
17 particle lifts remove the actual gunshot residue particles.
18 Gunshot residue particles, like I said, are composed of
19 three different elements, lead bearing and -- and they are
20 present in a ground particle, and when we find it it is
21 unique to gunshot residue because it doesn't come from
22 anything else. In addition to looking for any unique
23 particles, we look for ground lead. Ground lead is one of
24 the gun powders. We also look for -- based on the
25 combination of these two samples we then make an opinion on

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1 if someone has fired a gun or near a gun when it has gone
2 off.

3 Q Thank you. And let me clear up one thing. You said
4 the swabs were done first and it's important that they're
5 done first. You mean in your test?

6 A In both.

7 Q Okay.

8 A It's important that the samples are taken first,
9 because the acid that's used to moisten those swabs
10 distorts the shape of the gunshot residue powder.

11 Q Okay.

12 A That's backwards. I apologize. It's important that
13 the particles are taken first.

14 Q In that --

15 A So that we can tell the difference in the actual
16 sample.

17 Q Okay, and how -- have you ever taken a sample from
18 somebody?

19 A Yes, ma'am.

20 Q Okay. And very often?

21 A Yes, ma'am.

22 Q Let me show you this package, if I may, and ask you
23 did you receive a packet or a GSR kit from the Clarendon
24 County Sheriff's Office that you were requested to test?

25 A Yes, ma'am. I did. I received this package.

1 Q Okay, and what date did you receive that package?

2 A We received it at SLED on June 6, 2006.

3 Q All right. Let me ask you this, if a sample was taken
4 in April and you get it in June, does that affect the
5 results of the test at all?

6 A No, ma'am. Once the material is removed from the hand
7 it is stable in both forms; the particle lifts and swabs.
8 It doesn't evaporate or anything like that.

9 Q Okay. And I do have one other question. The first
10 instruction or guideline said that if you believed that the
11 action took place more than six hours to not test the
12 subject. What is the reason for that?

13 A We found research that from our studies that after six
14 hours there is not enough material present on a living
15 person's body for us to make a call on.

16 Q And, you know, when -- when I asked did you work for
17 SLED, I did forget to follow up with that. What sort of
18 training did you have to come into this area of SLED?

19 A I have a bachelor's in science in chemistry from Texas
20 A&M. After I came to work with SLED I went through our in-
21 house training for gunshot residue. I studied under my
22 lieutenant. He showed me how to prep samples, how to
23 receive the evidence, how to use the instrumentation that
24 were used. I followed him to court numerous times and I I
25 still follow him to court to testify so I can learn. I

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1 attended mock court on our instrumentation, how our
2 instrumentation is used. And then I was cleared to run
3 gunshot residue test, which I still do.

4 Q Do you still contend -- do you continue to train?

5 A Yes, ma'am. I attend seminars, I got to classes in
6 addition to any other case work that I do I have to review
7 gunshot residue reports that other analyst generate.

8 Q Have you been qualified as an expert in other courts
9 of law?

10 A Yes, ma'am. I have.

11 Q Okay. Can you tell the jury a little bit about that
12 experience?

13 A I've been qualified, including this time, 18 times as
14 an expert in gunshot residue. Seventeen times in gunshot
15 residue and once as an arson expert. Being qualified, the
16 lawyers and the judge explained what being qualified means,
17 but it's essential in my testimony that I'm qualified as an
18 expert.

19 MS. LAND: Your Honor, at this time I would offer
20 Agent Roberts in an expert in firearm residue?

21 THE COURT: Mr. Deas, any questions as to his
22 qualifications?

23 MR. DEAS: I don't object to his qualifications
24 with respect to giving his perspective -- being an expert
25 in gunshot residue analysis.

1 THE COURT: All right. Ladies and gentlemen, the
2 same instruction I gave you earlier about the testimony of
3 experts is the same requirement as any other witness. In
4 that you give the weight of the witnesses testimony the
5 same as you would any other witness. He is qualified.

6 MR. ROBERTS: Thank you.

7 BY MS. LAND:

8 Q Agent Roberts, when you have the swabs and you told
9 the jury what you're detecting, how do you detect it?

10 A The swabs are put on an instrument that takes the
11 liquid that we use to extract metals from inside the cotton
12 swabs, and it breaks it down into its component. As I said
13 before, the elements that we look for are lead, ground
14 metal bearing -- residue and based on the amount of each of
15 those metals that we find on swabs you would render an
16 opinion as to whether someone has fired a gun or been near
17 weapon when it's gone off or simply handled the gun.

18 Q And then when you get to the particle lifts, how do
19 you detect what you're looking for in that?

20 A Particle lifts are put under a very powerful
21 microscope. We actually look for the ground particles.

22 Q Could you open that package that I handed you, please.

23 A (Witness complies.) This is the evidence envelop,
24 most of the time, gunshot residue kits come in these.
25 Sometimes we get one, sometimes we get two, as in this case

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1 I have two. This one is still sealed from when I sealed it
2 on January 3, 2007. I know it's mine because it's my
3 initials and it's my handwriting.

4 Q And does that include a kit that was taken from Brian
5 Garris on April 28, 2006?

6 A Yes, ma'am, there are two kits in here and one of them
7 is labeled Brian Garris. It has my lab number, my number.
8 It also has when it was prepped, when it was prepared for
9 analysis, and then I ran it under the microscope, as well.

10 Q Okay. Could you open that kit, and the information
11 that the officer provided to you is in there; is that
12 correct, or it should be?

13 A No, ma'am. The information that comes with the kit is
14 made part of my case jacket.

15 Q Okay.

16 A That is not in the kit.

17 Q Well, what I was really looking for is, do you have
18 your case jacket?

19 A I do.

20 Q Okay. So can you tell me what time exactly the officer
21 took the kit?

22 A Just a second. The kit that is labeled Brian Garris.
23 The date the kit was taken was 4/28/2006. Time is 11:15
24 a.m.

25 Q Okay. Did you perform your test on that kit that was

1 submitted to you?

2 A Yes, ma'am, I did.

3 Q And what did you find as a result of the test?

4 A I found -- let me get my data sheets here. I ran
5 swabs first. I found high levels of lead on the right palm
6 and right back; left palm, and left back. Because the
7 levels were high enough I took the corresponding lifts on
8 these and I analyzed those on the microscope as well. When
9 I analyzed those I found ground metal particles on the
10 right palm and I found no gunshot residue on the right back
11 and no gunshot residue on the left back, and my results for
12 the left palm were inconclusive. Inconclusive means that I
13 have some but I didn't find enough to generate a report on.

14 Q And in your expert opinion can you conclude with a
15 reasonable degree of certainty that he fired a firearm that
16 day?

17 A Yes, ma'am, it is most likely that he did fire a
18 firearm within six hours of this test we did.

19 Q Okay, and earlier you told us that you're looking for
20 three things or that there's three possibilities; that the
21 person was near the firearm that was fired, they handled a
22 gun that had been fired, or they fired the gun themselves?

23 A Yes, ma'am, that's correct.

24 Q Would you say that any of the three of these are
25 possible for this case?

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1 A All three are possible.

2 Q Which are probable?

3 A That he fired the gun or handled the weapon. Those
4 are the two of the three that are most probable.

5 Q Okay. And why are those most probable?

6 A Based on the amount of lead that was present on the
7 areas and where it was present. That's how I made a
8 determination on whether somebody has handled a weapon or
9 has been near when it's gone off. And the best example I
10 can give is somebody being shot and being close to the
11 weapon. Somebody being shot and being close to the weapon
12 will -- when they go that all that material comes out of
13 the muzzle of that weapon and deposits on the hands, and
14 it's way more material than if someone grips the gun and
15 shots because if you grip the gun in this hand and shoot it
16 the areas that are exposed are just the back and it's not
17 very much of the back especially if you shoot a semi-
18 automatic weapon whereas the powder or the gun primer just
19 come out that little bitty ejection. So there's not much
20 exposure, whereas if you're holding both hands up on the
21 gun that's being fired all that material is coming out that
22 muzzle at you and that's how I make a determination on
23 whether somebody is near or they're handling it or they
24 fire it based on the amounts and where they are.

25 Q And let me ask you another question. Is there any way

1 for you to detect whether the person had fired a shotgun or
2 a pistol?

3 A I can't tell just from the gunshot residue whether
4 it's a pistol or a long-arm type gun, a rifle or shotgun.
5 I can make an opinion based on the amounts that I find
6 whether it's a pistol or a rifle or shotgun.

7 Q And in this case can you render an expert opinion?

8 A Yes, ma'am. It's --

9 MR. DEAS: I'm going to object to any opinion
10 that's not included in his report.

11 THE COURT: Overruled.

12 A It would be my opinion that it would most likely be a
13 pistol in this case.

14 BY MS. LAND:

15 Q And for what reason would you think that?

16 A Because your hands are so much closer to where the
17 gunshot residue comes out of a pistol, you're more likely
18 to get it on your hands. If you fired a shotgun or a rifle
19 there are basically two places that that shotgun residue
20 can come out of, the muzzle, which is far away from your
21 hands or the ejector port, which is close to your hands,
22 but if you only fire once you can keep that system closed
23 and all that residue is going to come out of the muzzle,
24 which is not close to your hands.

25 Q May I see the report that you prepared?

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1 A Yes, ma'am.

2 Q And this was simply on what was found on Mr. Garris's
3 hands, nothing about whether it was a pistol or a shotgun
4 or whether he fired it or was near; is that correct?

5 A Yes, ma'am. That's correct.

6 Q And this is your typical report that you give to law
7 enforcement agencies upon request?

8 A Yes, ma'am. That's it.

9 MS. LAND: Your Honor, I'd like to have this
10 report entered into evidence as State's No. 15.

11 THE COURT: Mr. Deas?

12 MR. DEAS: Just let me take a look at it, Your
13 Honor.

14 Judge, may we approach?

15 THE COURT: Yes, sir.

16 (Off the record bench conference with Mr. Deas, Ms. Land,
17 and the Court.)

18 THE COURT: All right. Anything else, Mr. Deas;
19 any objections?

20 MR. DEAS: Nothing more than my previous
21 objection.

22 THE COURT: All right. That's number 15?

23 COURT REPORTER: Yes, sir.

24 (State's Exhibit No. 15, SLED
25 report, was marked and entered.)

1 MS. LAND: That's all the questions I have at this
2 time.

3 THE COURT: Mr. Deas?

4 MR. DEAS: Thank Your Honor. Please the Court.

5 JOHN ROBERTS - CROSS-EXAMINATION

6 BY MR. DEAS:

7 Q Mr. Roberts, how are you doing, sir?

8 A Yes, sir. I'm fine.

9 Q With respect to the test that you performed with the
10 analysis that you did with regards to Mr. Garris, you said
11 you received the test kit on June 17th of 2006?

12 A We received it at SLED on June 2nd.

13 Q June 6th?

14 A Yes, sir. I'm sorry.

15 Q And that would have been roughly about two months
16 after the tests was taken?

17 A Hold on, I'll check. It was taken on April 28, so a
18 little less than two months.

19 Q All right. Now, the test that you performed, that
20 you're an expert in doing, that you have years of
21 experience performing is called gunshot residue test;
22 correct?

23 A Yes, sir, that is correct.

24 Q What it determines, just simplified, it determines
25 whether or not the test subject had gunshot residue on

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1 their hands?

2 A That is correct, yes, sir.

3 Q Now, based on your analysis of this gunshot residue
4 you're able to conclude whether or not the person either
5 shot a gun, was near a gun or handled a gun?

6 A I'm able to make an opinion on that, yes, sir.

7 Q And when you did this analysis with respect to Mr.
8 Garris, you were able to conclude that one of those three
9 things applied to him, at least within six hours from the
10 time the test was done?

11 A Yes, sir.

12 Q In other words, you were able to conclude that within
13 six hours of a test kit being done by Investigator Ham, Mr.
14 Garris either shot a gun, was near a gun that had been
15 short or handled it?

16 A That's correct, yes, sir.

17 Q Your test, the analysis that you performed wouldn't
18 tell us, wouldn't say anything with respect to what
19 occurred on April 15, 2006, would it?

20 A No, sir.

21 Q That would have been -- the test kit was done on April
22 28th, and anything that happened on April 15th would have
23 been days prior?

24 A Correct. That's correct.

25 Q And you said your test can't detect, any gunshot

1 residue or you can't make a conclusion about gunshot
2 residue if the test kit was performed six hours or more
3 after the individual either shot a gun, was near a gun,
4 handled a gun?

5 A We're able to detect the elements. We're not able to
6 render a conclusion based on the test that was taken longer
7 than six hours after the shooting.

8 Q Your analysis would not say anything or make any type
9 of conclusion with respect to whether or not Mr. Garris
10 shot a gun, was near a gun that had been shot or handled a
11 gun on April 15, 2006; correct.

12 A That's correct.

13 Q The case we're here about today?

14 A As I understand it, yes, sir.

15 Q Now, the -- if a person had handled a gun or shot a
16 gun or had been near someone who shot a gun, let's say more
17 than six hours prior to the test kit being done by the
18 investigating office, is it possible that your test would
19 detect the lead particles?

20 A It's possible to detect it, yes, sir.

21 Q So let's say if a person had shot a gun 12 hours prior
22 hours prior to Investigator Ham or a law enforcement
23 officer performing the test, it is possible that your test
24 would detect lead particles; correct?

25 A It's possible that we could have detected some of the

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1 elements, yes, sir.

2 Q Now, you stated that it's your opinion, that based on
3 your analysis of the gunpowder residue that was taken from
4 Mr. Brian Garris on April 28, 2006, that he had either shot
5 a gun, handled a gun, or had been near someone who shot at
6 least six hours prior to Investigator Ham doing the test;
7 right?

8 A Yes, sir.

9 Q Now, that would address April 28, 2006, but nothing
10 else; correct?

11 A Yes. Part of the day on April 28th.

12 Q Did -- you also gave an opinion, if I'm not mistaken,
13 that in your view, the type of weapon that he handled or
14 shot or was near someone who shot it, was a pistol and not
15 some other type of firearm?

16 A Yes.

17 Q Now, was that the basis for the analysis that you gave
18 when you received it on June 2, 2006, were you running your
19 analysis to determine what type of gun Mr. Garris had?

20 A No, sir.

21 Q You were conducting your analysis to determine whether
22 or not he had gunpowder residue on his hands; correct?

23 A Yes, sir. That's correct.

24 Q And that's what's in your report, right?

25 A Yes, sir.

1 Q Your report doesn't reference anything regarding what
2 type of gun Mr. Garris may have had?

3 A No, sir, it doesn't.

4 Q Doesn't say whether -- doesn't even say whether he
5 even shot a gun, does it?

6 A No, sir, it doesn't.

7 Q Doesn't say whether he was near someone who shot a
8 gun, does it?

9 A No, sir.

10 Q And it doesn't say that he handled a gun?

11 A No, sir, it does not.

12 Q It just states that he had gunpowder on certain
13 portions of certain hands, on one of his two hands?

14 A Yes, sir. That's correct.

15 Q I don't have that report. Do you still have it?

16 MR. DEAS: Is it in evidence?

17 THE COURT: Is that No. 15?

18 MS. LAND: Yes, sir.

19 BY MR. DEAS:

20 Q Do you still a copy of it or is this the --

21 A If you want to read off of it, I've got some of it.

22 Q And in your report you indicated, based on your
23 analysis, that he had no gunshot residue on his right --
24 right back hand?

25 A Right.

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1 Q Back of his right hand?

2 A I found no gunshot residue on the back of his right
3 hand. That is correct, yes, sir.

4 Q And your results were inconclusive as to the left
5 palm?

6 A That is correct, yes, sir.

7 Q And you found no gunshot residue on the back of his
8 left hand?

9 A Yes, sir, that's correct.

10 Q And the only hand that showed that particle -- the
11 conclusion on, the right palm?

12 A That's correct, yes, sir.

13 Q And again, those results would address whether or not
14 Mr. Garris either handled a gun, shot a gun or was near
15 someone how shot on April 28, 2006?

16 A Yes, sir. That's correct.

17 Q It wouldn't have addressed anything that happened on
18 April 15, 2006?

19 A No, sir.

20 Q Thank you, sir. I have no further questions.

21 MS. LAND: I just have one follow up.

22 JOHN ROBERTS - REDIRECT EXAMINATION

23 BY MS. LAND:

24 Q Mr. Deas asked you several questions about what type
25 of firearm. And I want to make it clear. If you were to

1 shoot a BB gun would you have these lead particles on your
2 palms or outside of your hands?

3 A No, ma'am.

4 Q Okay. Why is that?

5 A Because BB guns use compressed air, or in the case of
6 a pellet gun, it used compressed carbon dioxide.

7 Q Okay, and he also asked you about what if he had shot
8 a firearm 12 hours before. If that was the case would the
9 particles be found in the levels that you found them?

10 A No, ma'am.

11 Q Okay, tell the jury why that is?

12 A We've found that after six hours that reportable
13 levels of these metals have disappeared from somebody's
14 hands. The body absorbs them. It starts absorbing them as
15 soon as you shoot, which is why we have to have it within
16 six hours.

17 Q So your body absorbs them?

18 A Yes, ma'am.

19 Q And are you more likely to wash your hands and things
20 of that nature?

21 A Yes, ma'am. You know, you wait 12 hours, you're more
22 than likely to have washed your hand at least once.

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

24 MR. DEAS: No further questions.

25 THE COURT: Thank you, sir. You can step down.

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1 MS. LAND: And I have one more very quick one.

2 THE COURT: Okay. Who?

3 MS. LAND: Robbie Griggs. Your Honor, we call
4 Robbie Griggs.

5 THE CLERK: Please raise your right hand.

6 (WHEREUPON, Robbie Griggs, was
7 sworn to tell the truth.)

8 ROBBIE GRIGGS - DIRECT EXAMINATION

9 BY MR. LAND:

10 Q State your name for this jury?

11 A Robert F. Griggs, III.

12 Q Where are you employed?

13 A Manning High School. AD, football coach, and school
14 teacher.

15 Q AD, meaning athletic director?

16 A Correct.

17 Q How long have you been the AD and head football coach?

18 A I've been the head coach for eight years, AD for eight
19 and a-half. I've been at Manning 15 years total.

20 Q So in April of 2006 through May of 2006, were you
21 working in that capacity?

22 A Correct.

23 Q Do you know this person sitting at the defense table
24 with the white shirt and tie?

25 A I do not.

1 Q His name is Brian Garris? Have you ever met him?

2 A I have not.

3 Q Did you check your records regarding Mr. Garris?

4 A I did. The only Garris -- when I was questioned if I
5 knew Brian Garris, the only Garris that I remember is an
6 Eric Garris that played for us years ago. I do not
7 remember Brian Garris. We have a pretty close relationship
8 with our kids. I don't remember him.

9 Q So he did not then nor has he ever played football for
10 Manning High School?

11 A No. He's never played a JV game or varsity game at
12 Manning High School. We have hundreds of kids that come
13 out periodically. We have a pretty strenuous program and I
14 know every kid that's come through our program. Did he
15 show up for one practice or one work-out, possibly. But as
16 far as our program, he's never been part of our program at
17 the high school level.

18 Q Okay, thank you, Coach Griggs. That's all the
19 questions I have.

20 THE COURT: Mr. Deas.

21 MR. DEAS: Just very briefly.

22 ROBERT F. GRIGGS - CROSS-EXAMINATION

23 BY MR. DEAS:

24 Q Coach Griggs, how are you, sir?

25 A Fine, sir.

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1 Q Good. My name's Garryl Deas. I represent the
2 defendant, Mr. Garris.

3 A Yes, sir.

4 Q You said you don't recognize this gentleman?

5 A I do not recognize him. In fact, I pulled his records
6 to see his picture to see what he looked like. We deal
7 with hundreds of kids over a period of years. I do
8 remember a young man by the name of Eric Garris. He was a
9 great kid. Ran track, played football. But I do not
10 remember this young man.

11 Q You have those records with you?

12 A I do not. No, sir.

13 Q Since you don't really recognize him, and based on
14 your previous testimony, you said it's possible he may have
15 come out to practice or come to a scrimmage or something of
16 that nature?

17 A We have -- you really have two seasons. We have
18 Spring football. You may have a hundred kids out there.
19 When that's over we start with Summer conditioning, Winter
20 conditioning. But we're in contact with those kids from
21 the time they're in 7th grade until the time they leave
22 Manning High School. And I, to be honest, I never remember
23 seeing him at a practice or anything.

24 Q Just because you don't remember seeing him doesn't
25 mean he may not have participated?

1 A No, sir. He could have participated for maybe a day,
2 but I -- at Manning we have a small school with only about
3 800 kids. I know pretty much ever kid from the time
4 they're in 5th grade until the time they graduate.

5 Q Do you know anything about his enrollment status at
6 Manning High School?

7 A I know it was fragmented. I think he was there for
8 part of the time as a 9th grader from what I understand,
9 part of the time as a 10th grader from what I understand.
10 Which brings this up, as far as eligible athletes, he would
11 be eligible if he was promoted from 8th grade to 9th grade.
12 And he would be on our eligibility sheet. Then as a
13 sophomore he would have to have academic credits to be
14 eligible. At least two of which he would have had to have
15 passed the second semester. And I don't see how any
16 eligibility. I know he never participated in a game.

17 Q Thank you, sir.

18 A Yes, sir.

19 MR. DEAS: No further questions.

20 MS. LAND: No further questions.

21 THE COURT: Okay. You can step down.

22 MS. LAND: And that's the state's reply.

23 THE COURT: All right. Ladies and gentlemen, we
24 are going to break for lunch at this time. The next stage
25 of the trial will be closing arguments of the attorneys and

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1 my charge to you on the law. That will begin promptly, I
2 guarantee you promptly at 2:30. So if you will be back in
3 your jury room at 2:30, we will be prepared to go forward
4 at that time. Do not discuss the case.

5 Thank you, very much.

6 (Jury out at 1:13 p.m.)

7 MR. DEAS: Could we put something on the record?

8 With respect to the opinion testimony given by Mr.
9 Roberts I would like to have an opportunity to rebut that.

10 THE COURT: Ms. Land, do you know the authority
11 for that?

12 MS. LAND: I don't.

13 THE COURT: Mr. Deas?

14 MR. DEAS: Well, again, Judge, I'll just go back
15 to my previous objection. This was evidence that was
16 presented that was not part of discovery. It was in the
17 reply. And he gave an opinion that is not in his report.

18 THE COURT: How would you propose to rebut it?

19 MR. DEAS: Through an expert of my own.

20 THE COURT: All right. That request is denied.

21 Do you have any other motions at this time other than
22 that?

23 MR. DEAS: No more. I'll just renew my motion for
24 directed verdict and my motion for a mistrial, and again,
25 my objections under Rule 403, as to the admission of the

1 evidence regarding the GSR test.

2 THE COURT: Yes, sir. All right. Those motions
3 are denied.

4 At this time I want to take just a few minutes. First
5 of all, I want to go over these charges. Y'all have a
6 seat.

7 If anybody connected with the case needs to leave
8 that's fine.

9 I just want to make sure that I cover all this and
10 clarify a couple of things.

11 On the issues that came in through the reply testimony
12 as a whole. I want to make sure the record is clear, Mr.
13 Deas. I want to make sure you thought you had ample
14 opportunity to argue these issues, and I think you have.

15 The reply testimony pertaining to gunshot residue
16 pertains to other things, one of which is the part going to
17 the jury is proper, so to speak, as to the analysis of Mr.
18 Garris's credibility on the issue of whether or not he'd
19 ever handled a firearm other than a pistol. We covered
20 that. Also one of the issues that is intertwined with this
21 case are the circumstances surrounding his arrest on April
22 28, 2006. The jury has been and will be again instructed
23 that they cannot and shall not consider the fact that he
24 was arrested on another charge for which he was found not
25 guilty. It can not in any way be considered. Just because

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1 he was arrested and charged with another crime, not this
2 crime. They will be told that very clearly.

3 However, I the circumstances of this case necessarily
4 cross over that with the detention, the road-side detention
5 and the GSR because of the fact that according to the
6 state, a gun was found under food on his tray when he was
7 in that cell alone. I understand you have a different take
8 on the facts, and that circumstantially state is entitled,
9 the state is entitled to circumstantially show that he
10 handled a pistol on or about that date within the six hour
11 time frame. I want to make sure that was all clear.

12 All right. Now, moving forward with the charges, the
13 jury charges. I'll let you two look at this during the
14 break. The presumption of innocence, which you're both,
15 I'm sure, you're familiar with, the jury's duties and my
16 duties. They jury's, which I will repeat. About that
17 other arrest and charge. I'll charge them on their
18 analysis of credibility. I will tell them that if a person
19 who testifies has a past criminal record, and the only
20 witness that applies to is Mr. McCrea, the person who has a
21 past criminal record is competent to testify, but that
22 record can be considered in determining whether or not the
23 jury should believe that -- that's the only witness who has
24 with a record; is that correct?

25 MS. LAND: No, sir.

1 THE COURT: An impeachable record.

2 THE COURT: No other witnesses. Mr. McCrea, is
3 in prison for 15 years on drug charges. No one else, --
4 they may as they came in their various uniforms, nothing
5 was put in about whether or not they had convictions.

6 MS. LAND: Okay. One of mine, I said to them, and
7 you've been in trouble before, and he said, yes.

8 THE COURT: Well, --

9 MS. LAND: And I never go into his crimes.

10 THE COURT: That's --

11 MR. DEAS: Are you going to tell the jury
12 specifically who that instruction applies to?

13 THE COURT: I'll do that, but y'all have to
14 confine your arguments on the record to only Mr. McCrea.

15 MR. DEAS: Yes, sir.

16 THE COURT: All right. And I will tell the jury
17 that if a witness has made a prior statement which is not
18 consistent with the witnesses trial testimony the jury may
19 use that evidence and decide whether to believe the
20 witness, and also use the evidence from earlier
21 inconsistent statement to determine the truth of those
22 statements. It's up to the jury to determine whether to
23 believe the earlier statement, the testimony at trial or --
24 neither.

25 Okay. I'll go with circumstantial and direct

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1 evidence. I'll tell the jury that they are to weigh those
2 in the same fashion. The law makes no distinction between
3 the weight or value given to direct or circumstantial and
4 that neither is any better than the other. Of course, you
5 can always argue, lawyers argue that the links in the chain
6 are certainly sufficient. But, I'll tell them that the two
7 types of evidence as a whole are just as good as the other.

8 All right. Expert witnesses. You're both familiar
9 with that charge. We'll proceed with that charge. I'll
10 tell them about what burden of proof is. You may want to
11 copy that or look at it before we start. This is the
12 charge that says, a reasonable doubt is not any sort of
13 doubt. It is not an imaginary doubt, it's not a fanciful
14 doubt, it is not a substantial doubt. A reasonable doubt
15 is a doubt which would make an honest, sincere
16 conscientious juror in search of the truth hesitate to act.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the defendant's guilt. Reasonable
19 doubt may arise from the evidence in the case or from a
20 lack of or absence of evidence in the case. And I'll let
21 you put the charge as a whole.

22 I'll charge the jury that the fact that the defendant
23 testified does not put the burden of proof on that
24 defendant. The defendant is not guilty, and that places
25 the burden on the state to prove the guilt beyond a

1 reasonable doubt. I'll tell the jury that they gauge the
2 credibility and believability of the defendant in the same
3 way they would any other witness. That he does not have
4 the burden of proving his innocence.

5 All right. I'll give the jury an identification
6 charge that I'll let you look at during the break.

7 Then I'll go into assault and battery with intent to
8 kill. I'll go into armed robbery. And then possession of
9 a weapon during a crime of violence.

10 I'll charge the jury with criminal intent. And I will
11 tell the jury that the defendant raised an alibi -- the
12 doesn't have to prove the alibi. The state has the burden
13 of proving that the defendant was actually present,
14 actually participated in this crime. He was not somewhere
15 else.

16 All right, and the final part, I'll go over the
17 verdict forms. I've gone over that with you before. I
18 will tell the jury that with regards to armed robbery and
19 assault and battery with intent to kill, those two charges
20 are independent. Their verdict on one does not control
21 their verdict on the other, However, if they find the
22 defendant not guilty of both, then they would not get to
23 the question of whether or not he is guilty or not guilty
24 of possession of a weapon during a violent crime. Okay.

25 Mr. Deas, I think that covers all the charges you gave

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1 me as well.

2 MR. DEAS: You're going to give a multiple count
3 charge? I think you referenced that just a minute ago.

4 THE COURT: No, that the verdict on one does not
5 control the verdict on the other one.

6 MR. DEAS: Right.

7 MS. LAND: Did you say you were going to give an
8 alibi defense charge?

9 THE COURT: Yes, ma'am.

10 MS. LAND: Your Honor, I would ask that that not
11 be included. Jermaine Hicks, when he testified said it has
12 already happened when he got in the car. When he got in
13 that car and they went to McDonald's it was already police
14 lights, there was already activity up by the Chinese
15 Cuisine. I think that it's too close in time.

16 THE COURT: All right. I'll give the charge. And
17 from your perspective, your argument, I can anticipate what
18 your argument is, but I'm not going to state it for you,
19 but -- I'll give the charge.

20 All right. Anything else, Mr. Deas?

21 MR. DEAS: No, nothing further.

22 THE COURT: I'll leave these up here if y'all want
23 to look at it here or in my office, either one. Okay.

24 THE COURT: Okay.

25 MS. LAND: Thank you, Judge.

1 THE COURT: All right. If y'all can be back at
2 2:15.

3 MS. LAND: Yes, sir.

4 (Court at recess for lunch.)

5 (Court in session after lunch.)

6 THE COURT: All right. Both of you have looked at
7 the verdict form. Any objections to the verdict form?

8 MS. LAND: None from the state.

9 MR. DEAS: No, Your Honor.

10 THE COURT: All right.

11 Has that been redacted properly.

12 MS. LAND: Yes, sir.

13 (State's Exhibit No. 14, evidence
14 sheet, (2pgs), was redacted.)

15 THE COURT: All right. Mr. Hill, bring them in.
16 (Jury in at 2:31 p.m.)

17 THE COURT: All right, ladies and gentlemen, we
18 thought we were one short, but that was the one we were
19 already short of. I apologize for the slight delay.

20 We've now reached the point in the trial where the
21 attorneys are permitted under our rules to give what are
22 called closing arguments. At this point they're allowed to
23 argue the inferences or the conclusions they think you
24 should draw or not draw from the evidence presented.

25 I'll remind you that what the lawyers say to you is

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1 not evidence at all.

2 Under the rules the state will open to you first.

3 Then the defendant will then argue and then the state will
4 have a reply argument. If I could request you to continue,
5 as you have throughout the trial, to play very close
6 attention.

7 I will remind you that what the lawyers say to you is
8 not evidence. If a lawyer argues a point to you that does
9 not correspond with your collective memory of the evidence,
10 you got with your collective memory.

11 All right, Ms. Land.

12 MS. LAND: Thank you, Judge.

13 Ladies and gentlemen, this is the home stretch. We're
14 almost there. And before we get there, before you start
15 deliberating, the Judge will explain to you in great detail
16 the law in this case. Before he tells you the law I'm
17 going to try to give you an overview. So just listen to
18 our closing arguments. He is going to be telling you what
19 the law is and what your opinions are as the fact finders
20 in this case apply to the law.

21 Now, assault and battery with intent to kill, is an
22 assault and battery, as the Judge will define it, with the
23 intent to kill somebody. We'll explain that when you shoot
24 someone in the eye we believe that your intent is to kill
25 them. When you shoot somebody in their face.

1 The second of what Mr. Garris is accused of is armed
2 robbery. Armed robbery is when you arm -- is when you rob
3 somebody of something that belongs to them with a deadly
4 weapon. Of course, a gun is considered a deadly weapon
5 under the law.

6 And then possession of a weapon during a violent
7 crime. If you find Mr. Garris guilty of either one of
8 those crimes or both of them, if you find that he had a
9 deadly weapon in his possession during one of those crimes
10 then he is guilty. And the Judge will explain those to you
11 in great detail, as I said, this is a basic overview.

12 What I really wanted to talk to you about and make
13 sure that you had a good understanding of is that you are
14 the judges of the credibility and two, reasonable doubt. I
15 told you in our opening arguments that you can decide to
16 believe or disbelieve anything that you choose to, that you
17 learn from these witnesses. You can believe somebody
18 because of their demeanor, because of their expertise,
19 because of their experience, because of the reason that
20 they have to tell the truth or because of the reason that
21 they have to not tell the truth. What do they have to gain
22 or lose. You can decide by their demeanor. You can use
23 your gut feeling.

24 In this case, is largely based on credibility and
25 believability. If you believe that Mr. Garris got up here

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1 and lied about everything that he said to protect himself.
2 And the state's witnesses got up and told the truth, and
3 that Mr. Garris, did, in fact, shoot Ms. Santiago in the
4 head on April 15, 2006, then you should find him guilty.

5 Second thing, and I suspect that you'll hear a great
6 deal more about this from Mr. Deas, is reasonable doubt.
7 The Judge will tell you that a reasonable doubt is not any
8 fanciful doubt. It's not any doubt. It is a doubt that is
9 so strong that it causes a reasonable person to hesitate to
10 act.

11 Now, there are very few things in this world that we
12 know with absolute certainty. And the law does not require
13 absolute certainty. The law requires that you be firmly
14 convinced. The reason why I'm opening with that and
15 letting you know this piece of law right now is because
16 when Mr. Deas gets up he's going to talk a lot about
17 reasonable doubt. And because of the description that was
18 given at the beginning of six one, does that cause
19 reasonable doubt. Don't get confused with any doubt.
20 Because there are other explanations or excuses offered
21 does not make those explanations or excuses the truth.

22 When you go back to your jury room and you deliberate
23 and you discuss whether Mr. Garris is guilty of those
24 crimes, the law requires that you be firmly convinced.

25 Thank you.

1 Mr. Deas is here and he will speak to you, and then
2 I'm going to come back and speak to you about the facts. I
3 know that this has been a long trial, but I do appreciate
4 your patience and your attention.

5 THE COURT: Mr. Deas.

6 MR. DEAS: Thank Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 MR. DEAS: Ms. Land, ladies and gentlemen of the
10 jury, Your Honor. Ms. Land is right. We're closing in on
11 the end of our journey. I want to first say, I commend
12 each of you for how attentive you were in the course of
13 this trial. You've paid close attention to everything that
14 was said, heard and done. It's been a long trial. You're
15 all probably tired, and ready to bring some closure. And I
16 know that some people that want some closure more than
17 anybody and that's Ms. Santiago and her family.

18 There's one thing I want to say, right off the bat,
19 this is a terrible horrendous thing that happened to this
20 family. And Ms. Santiago and her children, my heart and
21 prayers go out to you.

22 Now, you're doing here today, and what you've been
23 doing all week, at least that's what you're supposed to be
24 doing; to find the truth. A person who is accused of a
25 crime, charged with a crime, as I told you on Tuesday when

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1 I first spoke with you, doesn't mean they're guilty. The
2 state has to establish through proof beyond a reasonable
3 doubt that the suspect is guilty of a crime before they can
4 be convicted. Accusation and arrest on criminal charges
5 don't automatically equate to guilty. A lot has to happen
6 in between those two things.

7 I want to talk to you a little bit about what happened
8 with this case. Now, Mr. Garris is charged with assault
9 and battery with intent to kill. Been accused of it.
10 Charged with armed robbery, been accused of it. Charged
11 with possession of a weapon during a violent crime.
12 Accused of it, charged. It's his position, I say to you,
13 ladies and gentlemen, that Mr. Garris vehemently maintains
14 his innocence to those charges. He says he wasn't
15 involved. He says he wasn't there.

16 Now, as I told you on Tuesday when a defendant comes
17 into the courtroom they are as any person in the United
18 States of America who is charged with a crime is innocent
19 until he's proven guilty beyond a reasonable doubt by the
20 state. The burden lies squarely on the state, squarely on
21 the prosecution.

22 Mr. Garris has no burden to prove his innocence. He
23 doesn't have to establish anything. Under our law and the
24 law that made our judicial system the envy of the world,
25 the defendant is innocent until proven guilty. Not the

1 other way around. It's not that he's guilty until he's
2 proven innocent. That's not the way our system works.

3 Now, as I told you, also, on Tuesday there are certain
4 things that we're here for. Certain roles that I do,
5 certain roles that Ms. Land can do, certain roles that the
6 Judge can do. We're all here to perform our duties, to
7 perform our jobs.

8 You, today, have the most important job of all. You
9 have the responsibility to turn the clock back to April 15,
10 2006, and try to determine the truth of what really
11 happened. You have to decide, based on not what I say, not
12 based on what Ms. Land says, but squarely based on what
13 you've heard from this witness stand. Squarely based on
14 what you've seen as evidence. You have to decide from that
15 alone whether or not in your opinion the state has met the
16 burden of proving Mr. Garris's guilt beyond a reasonable
17 doubt as to each and every crime that he is charged with.
18 And all you have to do is be fair and just in your verdict.
19 That's all I ask of you. That you base your final decision
20 on the facts and nothing else. Not on any bias, not on
21 prejudice, any previous -- just the facts.

22 Now, let's talk about the facts. State's position,
23 their theory they have come up with is that Mr. Garris
24 committed this crime on April 15, 2006. That it's him that
25 shot, robbed, terrorized -- What they want you to believe

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1 of their theory is that on April 28, 2006, Mr. Garris was
2 arrested on unrelated charges. That part's true. On April
3 28, 2006, he was arrested and charged. A charge that had
4 nothing to do with what happened on April 15, 2006. The
5 Judge is going to tell you -- that's part of his role. One
6 of his roles is to give you certain instructions to tell
7 you how to follow the law. One of the things he's going to
8 tell you when the time comes is, he is going to tell you
9 that you are not to consider that Mr. Garris was charged on
10 an unrelated crime on April 28, 2006, in your deliberations
11 in this case. That can't be helped. And I humbly ask you
12 to follow that instruction when you get to the jury room.

13 But the reason why I believe that, as Ms. Land said on
14 Tuesday, I believe this case is complicated and complex and
15 remember I told you that complex should be pretty simple as
16 long as you could follow the facts. I think the reason why
17 she said that was because you're basically having to
18 consider something that happened in another crime in
19 connection with this crime, and that can be a little
20 tricky. But I believe the Judge's instruction to you not
21 to use the fact that he was charged with a crime on April
22 28, 2006, didn't have anything to do with April 15, 2006.
23 As long as you follow the Judge's instruction and not in
24 any way draw any inferences from that, I think you'll be
25 fine, because what happened on April 28, 2006, didn't have

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1 anything to do with April 15, 2006. He was arrested on an
2 unrelated charge and found not guilty.

3 Now, what is important about April 28, 2006, is that
4 part of the state's theory is that he was arrested on April
5 28, 2006, Mr. Garris, they're saying that when he was on
6 the side of the road detained by officers, that he had that
7 gun that was used in the April 15th shooting incident of Ms.
8 Santiago.

9 Now, they want you to believe that in spite of the
10 fact, ladies and gentlemen, that he was, according to
11 Officer McCoy, he was searched at the scene, when he was
12 arrested on April 28, 2006. He was searched before Officer
13 McCoy got there. And then searched again by Officer McCoy
14 himself. No gun. No gun after being searched twice.
15 Where's the gun?

16 They want you to believe that he had one on him at
17 that time. You know he was searched, twice. Then they
18 want you to believe that despite the fact that no gun was
19 found that somehow he took the gun with him to the
20 Clarendon County Detention Center. And that he brought
21 that gun, smuggled it somewhere either on his body or in
22 his body into the jail. This is -- brought it into the
23 jail somehow.

24 Now, at the time, remember that Director Hughes said
25 they didn't have a metal detector in the system at that

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1 time. They do now. Wonder why?

2 But he was searched again, a third time prior to him
3 taking his clothes off he was searched by Officer McCants.
4 McCants said he gave him a head to toe pat down search.

5 And you can -- the Judge will instruct you on this,
6 too, you don't have to rely on what I tell you the
7 testimony was, you rely on your own recollection of what
8 the testimony was. And the Judge will instruct you on that
9 at the appropriate time.

10 Gave him a pat down, head to toe search by Officer
11 McCants, no weapon.

12 Goes to the bathroom, comes out. Mr. Garris said his
13 clothes were taken from him. The clothes were given to the
14 investigator for evidence purposes. He's there with no
15 clothes and shorts. Mr. Garris says he was given a cough
16 and squat search. No gun.

17 This is now the fourth search, no gun.

18 Still yet, the state's theory is, what they want you
19 to believe is that despite those searches he still had a
20 gun somewhere; either on him or in him. I think the theory
21 is that it was in some body cavity. I don't know where the
22 proof of that is, but that's what they want you to believe.
23 You know of some proof of it, rely on that proof. You
24 heard some proof of that, rely on it.

25 I submit to you, ladies and gentlemen, there's

1 absolutely no proof of that. No testimony, no evidence
2 there, whatsoever. Unless you're going to take that
3 fanciful leap that the state's taking and based on no
4 facts, no evidence, conjure up this belief. That's what
5 you're going to have to do.

6 Now, then they want you to believe that despite those
7 searches he took that gun with him after being clothed in
8 jail clothes, put in a cell. Mr. Garris says he wasn't the
9 only person in that cell when he got to the B-2 Unit.
10 Cell 2. He wasn't the only person in that cell, but they
11 want you to believe that he was the only person in the cell
12 even though Director Hughes, when I asked him on cross-
13 examination if he had any documentation that would
14 establish specifically whether or not Mr. Garris was in a
15 cell by himself or with other people, he said, no.

16 And the only way you could give any type of view as to
17 whether or not Mr. Garris was in the cell by himself or
18 with other people is based on the recollection and memory
19 of Officer Baker.

20 They have no documentation to show one way or the
21 other.

22 Mr. Garris says he had somebody in the cell with him.
23 They say he didn't. They don't have any documentation one
24 way or the other.

25 When he gets to that cell, whether he's by himself or

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1 not, they want you to believe that he put the weapon that
2 he somehow smuggled into the jail onto this food tray and
3 covered it with food, put it on his flap at his cell door,
4 and that weapon had enough food on it where it could not be
5 seen by Mr. McCrea, the inmate who came along and picked it
6 up.

7 Now, you'll have that gun with you when you go back to
8 the jury room, that's part of the evidence. You'll have
9 that food tray. I'm not going to tell you how to assess
10 that situation, but I will tell you -- take that with you,
11 use your common sense. You take a look at those two pieces
12 of evidence. You tell me what you think. Would there be
13 enough food on that tray to cover up a full size gun.

14 The only way it would is if Mr. Garris, somehow, took
15 a trip to the buffet line sometime during the time he was
16 in jail. Last time I checked there was no buffet line at
17 that Clarendon County Jail. I might be wrong.

18 Now, let me tell you something... They want you to
19 believe, again, he covers it with food. Nobody didn't see
20 it. Mr. McCrea dumps it out in the trash can and they see
21 the gun fall out. Then, bingo, presto, now they have an
22 opportunity to connect him to this gun that was involved in
23 the April 15, 2006, shooting.

24 Now, I'm going to tell you the part of this case that
25 gives me the most trouble is this. Mr. McCrea, he reported

1 it. He did exactly what he should. Who did he tell? He
2 told Ms. Jones. He told his supervisor. His boss. What
3 did she do; the right thing. She did exactly what she was
4 supposed to. She told her supervisor. Her supervisor
5 about this weapon, a firearm in the jail. Of all places
6 for a firearm to show up in the jail. Ms. Jones tells her
7 supervisor, Officer Baker. Officer Baker tells, first goes
8 to the trash can to get it. First puts on gloves. He did
9 the right thing. First puts on gloves so he won't
10 contaminate it. You know why, because this is a crime
11 scene, ladies and gentlemen. It's contraband, whether it's
12 a gun, whether it's any other kind of weapon, whether it's
13 drugs. When contraband is found in the jail that's a crime
14 scene. That's why Officer Baker used gloves when he went
15 to retrieve it. Not to contaminate it. What's he do? The
16 right thing. Of course, he reports it. That's when the
17 right thing stopped happening, right there.

18 What does the Director Hughes do? He told him. He
19 told him. He doesn't notify law enforcement that there's a
20 gun in his jail. He says he conducted his own internal
21 investigation. He's not a police officer, he's not a law
22 enforcement officer. It's not his job to investigate when
23 a crime occurs.

24 He admitted that when a gun or any other kind of
25 contraband is found in the jail, that's a crime.

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1 But what did he do? He held onto it. And how did he
2 hold onto it, ladies and gentlemen, and this is the part
3 that -- nine days that gun sat there. Nine days from April
4 29, 2006 to May 8, 2006. That gun was -- Sheriff's
5 Department, Manning Police Department, law enforcement was
6 oblivious that there was a gun in the Clarendon County
7 Jail. Had no idea.

8 Now, within those nine days who knows what was going
9 on. What should have been going on with it, it should have
10 been reported to the police immediately.

11 When I asked Director Hughes if in hindsight he'd do
12 something different, he said he doesn't know. He doesn't
13 know if he'd do something different or not. I asked him if
14 he found cocaine in his jail would it report that to the
15 police immediately. He said he didn't know how he would
16 handle it.

17 I'll tell you how he would handle it, ladies and
18 gentlemen, he would handle it completely different than he
19 did in this particular case. You decide whether you think
20 he would really repeat his actions down the road in the
21 same way he did this case.

22 Now, still, I'm trying to figure out how a gun is
23 found in jail and it's held onto for nine days by the
24 director of the jail, turned over to the police, finally,
25 in May of 2006, is somehow linked to my client simply

1 because he was arrested and brought to the jail
2 approximately 30 hours before they found it.

3 Do you know how many other inmates came to that jail
4 within that 30 hours? Do you know how many employees of
5 that jail came to that jail facility within those 30 hours.
6 Many, a number. All of which could have had an opportunity
7 to bring that gun in. So he's got just as much of a link
8 to that gun as we've got to my client has to the gun,
9 unless you subscribe again to theory.

10 But theory, ladies and gentlemen, isn't evidence.
11 Conjecture and speculation is not evidence. And that's
12 what you've got to base your decision on. Evidence. Who.
13 Facts. Not theory.

14 Now, let's talk a little bit more about facts. I'm
15 not going to have another opportunity to address you. When
16 I'm done Ms. Land will have another opportunity to address
17 you and then the case is yours. It's yours at that time to
18 put the pieces of this puzzle together.

19 Now, if you remember from testimony, from witnesses
20 called by the state, Ms. Santiago said that person that --
21 the person that did this came to the door, pulled it open,
22 the person demanded money. The car light was on. She
23 really didn't get a good look at the person, so she never
24 had an opportunity to truly see this person, and you know
25 what, I'm sure she didn't. Who would be thinking about

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1 looking at a person when something like that is happening
2 to you.

3 If you ask me, Ms. Santiago, her children, they
4 performed heroic. They did exactly what they were supposed
5 to do. They're heroes of mine because they survived.

6 Now, she didn't get a good look at him. Laura Batista
7 did. She said she saw the person for about five seconds.
8 You saw she had an unobstructed clear view of the person
9 for about five seconds. And based on that view that she
10 had she was able to give a description to the police,
11 according to her testimony. She said that that individual,
12 she described him as tall, dark skinned African American
13 male wearing a blue hat and a mechanic shirt. And that the
14 person had braids or dreads. That was the haircut. And
15 based on that this composite drawing was done. That's how
16 the police knew who to look for. Who was the suspect.

17 Now, Ms. Santiago was shown a photo lineup, although,
18 I didn't know that until the trial. And she couldn't
19 identify him. Matter of fact, she identified -- she
20 identified someone other than Mr. Garris. Laura Batista,
21 when she was shown the photo lineup on April 22nd of '06, by
22 Investigator Elms, she could not pick out anyone from that
23 photo lineup. She wasn't sure. And this was only seven
24 days after the incident happened. She couldn't pick -- she
25 didn't know. She couldn't pick out Mr. Garris that day,

1 during that initial photo line up, and I asked her to take
2 a look, April 17th, '06. Mr. Garris had a short haircut.
3 This was two days after the incident. No braids, no
4 dreads. But low and behold, Investigator Elms comes back
5 the second time, I guess hoping for a different result.
6 And guess what, he got one. Second time around, almost a
7 month later.

8 Now, when is a person's recollection of what they saw
9 or hear or recollect fresh in their minds. Seven days
10 after the incident happened or more than a month later. Is
11 your recollection going to be better the longer times goes
12 by. You tell me, ladies and gentlemen. Normally, when
13 time passes the less you remember, but for some reason in
14 this situation the state wants to believe that the more
15 time that passes by the better. First time she couldn't
16 pick him out. Second time miraculously she's able to pick
17 him out.

18 Now, Mr. Garris told you -- Ms. Batista said, too,
19 they had seen each other. He comes to the restaurant. I
20 submit to you, ladies and gentlemen, she picked a person
21 she was familiar with when it comes to how they look. She
22 didn't pick a person that actually committed this crime.
23 She picked out someone she was familiar with. A face that
24 she recognized. Not a face she recognized from the car,
25 but a face she recognized from her past.

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1 Let me tell you, this is a case of mistaken identify.
2 That's exactly what this is. Because the person that
3 committed this crime does not fit the description of Mr.
4 Garris. Mr. Garris is probably one of the few people in
5 this courtroom shorter than me. Six foot one to six foot
6 three inches tall. That's what this person was described
7 as. Six foot one to six foot three inches tall and
8 slender. Mr. Garris can be described as many things.
9 Slender ain't one of them.

10 The person was also described as having on a mechanic
11 type shirt and a New York Yankee's hat, and Laura Batista
12 told the police that. But it wasn't in their incident
13 report. It's not in their composite sketch. That's an
14 important detail. How could they leave that out? More
15 importantly why was the fact that the fingerprints that
16 were taken off the van, which were compared to my client's
17 fingerprints and they didn't match. Why wasn't that
18 brought out during the state's case? Fingerprints on the
19 van were -- the van where this incident, the van that Ms.
20 Santiago and her family were in when this incident
21 happened, that van had fingerprints on it. The assailant
22 touched the van. That means possibly that person's
23 fingerprints were on the van. And the fingerprints that
24 were taken off the van and sent to sled and matched up with
25 my client did not match.

1 You've got an ID, identification that doesn't match my
2 client. You've got the fingerprints on the van that don't
3 match my client. You've got footprints at the scene where
4 a cast was done. A footprint that never matched up with
5 any shoes that my client possesses.

6 In a case like this, ladies and gentlemen, it's
7 incumbent on the officers to do their duties. Check every
8 lead, check every circumstance with respect to a case, and
9 to ensure that no mistake has been made, because it's a
10 tragedy what happened to Ms. Santiago and her family. It's
11 also a tragedy for the wrong person to be held accountable
12 for what happened. That would be a tragedy as well.

13 That's why the police should follow every lead. They
14 should conduct ever test possible to confirm that they have
15 the right suspect. You ask yourself, why were there no
16 fingerprints -- if that fingerprint on the van showed no
17 match that's important. The fact that Ms. Batista said the
18 person had a New York Yankee hat on, but it wasn't in the
19 initial report. That's not the information that was given
20 to the police when they were searched for the suspect.
21 That's important. The fact that of the shoe prints that
22 were at the scene were never matched up with my client to
23 rule him out as a potential suspect. That's important.
24 Now, in addition to that, you've got -- and let me
25 tell you this, the job of these officers, I wouldn't want

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1 that. I'm sorry. They're good men and women. They do the
2 best they can with the resource they have. I understand
3 the limitation that they face.

4 Now, the bottom line in this, officers can be wrong.
5 Not intentionally, but they can be wrong. They're human
6 beings. They're just like you and I. Just like we're
7 wrong, they can be wrong. I submit to you ladies and
8 gentlemen, in this situation, not intentionally, they're
9 just wrong. And two wrongs don't make a right.

10 Now, I'm going to supply just a few more important
11 facts for you to consider. Now, y'all, I know y'all
12 remember the testimony of Fredrick White, Freddie White and
13 Andrew McBride. The three gentlemen who testified, who
14 were with Mr. Garris at some point that day. Mr. Garris
15 testified and said, he got up that morning, did his own
16 thing. Ate breakfast. Got a call from friends that they
17 were coming over. They came over, went outside, and they
18 were smoking some weed, talking on the phone to people.
19 His grandmother called him to come inside to eat. He
20 started asking his grandmother for the car. She wouldn't
21 give it to him. Eventually, she agrees to take him, Mr.
22 Garris, Quentin Garris, Freddie White, Fredrick White,
23 Rashard White, over to the Manning Lane Apartments. Drops
24 them off.

25 Ms. Garris says on her way back from dropping them off

1 at the apartment the incident had already happened.

2 Now, you tell me, how would Mr. Garris have time to
3 get from where his grandmother dropped him off at Manning
4 Apartments all the way back down to Church Street where
5 they live, how can he meet a car going back there walking.
6 How can he do that? How can go from Manning Apartments
7 back down to the Chinese Cuisine, commit this robbery,
8 because when his grandmother's coming back she said it had
9 already -- she already saw police. She was stopped by
10 officers across the road waiving down traffic or directing
11 traffic.

12 Did Mr. Garris truly have a sufficient opportunity to
13 commit this crime?

14 Freddie White, Fredrick White, Andrew McBride, for all
15 we know -- based on the way those gentlemen conducted
16 themselves, certainly I would not have any issue if you
17 didn't believe a word that came out of none of their
18 mouths. Because of them, we had to bring them down from
19 the witness stand, and show them videos before they told
20 the truth or before they would testify in a lucid way that
21 you could understand.

22 Andrew McBride said Mr. Garris had a gun that night.
23 Then he turned around and said on the stand he didn't. He
24 says it was because he was scared. He says he told
25 Investigator Elms that Mr. Garris had a gun because he was

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1 scared. He thought Investigator Elms was going to arrest
2 him or charge him with something. He told Investigator
3 Elms, he thought Investigator Elms wanted him to say Brian
4 had a gun, so he told him. That's what he said on this
5 witness stand that that's the reason why he said during the
6 interview with Investigator Elms that Brian had a gun.

7 But this is the part that is also somewhat
8 interesting. Fredrick White testified today, he said that
9 Brian never had a gun that night. He was consistent with
10 that testimony. He was the only one that actually was
11 consistent with what he said on the tape. He said on the
12 tape, no, I've never seen Brian with a gun. I know Brian
13 didn't have a gun that night. And said that here on this
14 witness stand.

15 What would be the motive for some of those other
16 folks, Andrew McBride, Freddie White, to say that. Maybe
17 they know something about this crime. They've already got
18 him, let's put it on him.

19 It would be a tragedy, just like the tragedy that's
20 already occurred if the person that did this is still at
21 large, walking around with braids or dreads, walking around
22 still six foot one to six foot three inches tall and
23 slender.

24 Now, the other thing I want to point out. The day
25 this thing happened, remember when Mr. Garris said he ran

1 into -- he saw the two officers. Officer Drose and Officer
2 Smith, Officer Holmes Smith. They say they saw Brian
3 Garris and his brother, near their home where they live
4 with their grandmother, and when they saw them nothing
5 eventful is happening that would even lead these gentlemen
6 to question or detain him as a suspect. Officer Holmes
7 said that the clothing that Mr. Garris had on did not match
8 the description that he was given based on the report that
9 was taken at the scene by Sgt. Lee. I said, Officer
10 Holmes, I meant Officer -- that's what they said. I didn't
11 stop them to talk to them. They didn't match the
12 description. He didn't have on the type of shirt that the
13 victims described that the assailant had on. So I sent him
14 on his way.

15 Now, Mr. Garris said he took a ride home that day from
16 Jermaine Hicks. Jermaine Hicks came in from the Clarendon
17 County Detention Center to testify. He's minding his own
18 business, taking his two daughters to supper at McDonald's.
19 He stops at SaveWay Gas station and was pumping gas. He
20 sees Brian Garris. Brian Garris comes up and asks him for
21 a ride. He said nothing out of the ordinary about Brian
22 Garris. Remember if Brian Garris had just committed this
23 crime -- it happened at 10:00 o'clock.

24 How do we know that? Sgt. Lee, the first responding
25 officer, said he got the call to come to this scene at

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1 10:00 o'clock. Well, if he got the call to come to the
2 scene at 10:00 o'clock, that means the crime had happened
3 before 10:00 o'clock.

4 Mr. Hicks said that when he saw Brian Garris it was
5 right around 10:00 o'clock or a little bit before. He said
6 there was nothing out of the ordinary about Mr. Garris,
7 said he had on a white t-shirt. Not a mechanic shirt, not
8 a flannel shirt, not a stripped shirt with horizontal or
9 vertical stripes. Mr. Hicks doesn't really have a reason
10 to be dishonest. He didn't have anything to do with it.
11 He just gave a man a ride home that day. He told him, you
12 got to wait because I got to feed my kids first. He took
13 him over to McDonald's, took him home and dropped him off.
14 He said he didn't take him all the way home because he saw
15 the police.

16 Now, remember this is around 10:00 o'clock. It had
17 all happened already.

18 For Mr. Garris to have been able to go to the Chinese
19 Cuisine, pull off this horrendous crime and somehow make it
20 all the way back to SaveWay to catch a ride with Jermaine
21 Hicks he's have to be Speedy Gonzales to do that. He'd
22 have to be running like a flash to do it. Mr. Garris said
23 and Mr. Hicks confirmed that he dropped him off. Mr. Hicks
24 said he dropped him -- he didn't take him all the way home
25 because he didn't -- Mr. Hicks said he didn't have his

1 license and he was a little nervous, so instead of taking
2 him all the way home, he dropped him off and he went on.

3 Now, you ask yourself, did Mr. Garris have time to
4 commit this horrific robbery at the Chinese Cuisine, make
5 it back to SaveWay. Take a ride with Mr. Hicks home. He
6 said it was a 25 to 30 minutes walk from Manning Lane
7 Apartments to SaveWay, or from the Chinese Cuisine to
8 SaveWay. Remember the time when this crime had to happen
9 was probably somewhere between 9:45 and 10:00. I don't see
10 how he would have time -- I don't see how he could be in
11 two places at one time. If he wasn't at two places at one
12 time, because the person who really did this crime was
13 there at the scene when Mr. Garris was at SaveWay. Or
14 walking from Manning Lane Apartments to SaveWay.

15 Now, the other part, April 28th of '06, charged him,
16 charge that he has already been found not guilty. And the
17 Judge is going to tell you you can't consider it. Because
18 when the did the gunpowder residue, or the gunshot residue.
19 Now, remember this gunshot residue test has absolutely no
20 tie to the April 15th, '06, crime. This ties to the April
21 28th, '06 crime, but nevertheless, you heard testimony from
22 it. Now, I'm going to tell you that those two things have
23 nothing to do with each other.

24 The gunpowder test said he had gunpowder on his hands
25 on April 28th, of '06. Well, whether he had gunpowder

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1 residue on his hands on April 28th, of '06, doesn't have
2 anything to do with whether or not he was involved with a
3 shooting on April 15th of '06. Why? Because the gunpowder,
4 the gunshot residue on that, that after six hours you're
5 not going to be able to detect -- you're not going to get a
6 conclusive result anyway.

7 So certainly if after six hours you can't get a
8 conclusive results you know you can't get one after 13
9 days; from April 15th to April 28th. But I guess the
10 relevance of his testimony is, what the theory is is that
11 he had that same gun on him from the April 15th incident and
12 that he had fired that same gun in the -- during the April
13 28th, '06, crime. And just like that jury rejected that
14 theory then, I ask you to reject it now. Because those two
15 things don't have anything to do with each other.

16 Then the analyst tried to -- gave an opinion, said,
17 well, in my opinion Mr. Garris had handled a pistol. As he
18 brought out or as he ultimately said on cross-examination
19 after I questioned him, he can't say with any real
20 conclusive or any real specificity whether or not Mr.
21 Garris had a gun, shot a gun or was near someone who shot a
22 gun. All he can say is he was near someone who had
23 gunpowder residue on his hands. He's not sure whether he's
24 been shooting a gun or handling a gun or near someone who
25 shot a gun.

1 Well, Mr. Garris said he just shot a rifle on April
2 27th. April 28th was when he had the gunpowder residue
3 test. Mr. Garris told them he had been shooting a rifle on
4 April 27th. If he had gunpowder residue on his hands, that
5 probably where it came from, from the rifle he said he
6 shot.

7 Now, the last thing I want to say to you, we're not
8 here today, ladies and gentlemen, go try to confuse you,
9 trick you, use smoke and mirrors, make you see things our
10 way. All I want you to do is what I asked you to do
11 earlier, base your verdict on the facts.

12 Ms. Land said this earlier, and I agree with her. It
13 is your legal obligation to return a verdict of guilty if
14 you believe the state has proven its case beyond a
15 reasonable doubt in each and every crime in each and every
16 element of the crimes that Mr. Garris has been charged
17 with.

18 If you believe they've proven their case beyond a
19 reasonable doubt in ever crime, in every element of ever
20 crime, then it is your obligation to return a verdict of
21 guilty. But the burden, first, will have to be met by the
22 state. And that burden is proving the case beyond a
23 reasonable doubt. Proof not based on theory, not based on
24 conjecture, not based on speculation, not based on what
25 they think, not based on what they believe, but based on

1 the fact.

2 Now, ladies and gentlemen, if you find that they have
3 not met that burden, that they have not proved their case
4 beyond a reasonable doubt then it's equally your obligation
5 to return a verdict of not guilty.

6 What is reasonable doubt? The Judge will tell you
7 more about that later. Reasonable doubt is the doubt that
8 type of doubt that would cause a reasonable person to
9 hesitate to act. If you have hesitation based on the facts
10 that have been presented in this case, if you have some
11 hesitation, with respect to finding Mr. Garris guilty of
12 each crime that he's been charged with, you should adhere
13 to your oath as jurors and return a verdict of not guilty.

14 Ladies and gentlemen, I'll tell you if there was ever
15 a case that was teeming with reasonable doubt, this one is.

16 Now, this case is about to be yours to deliberate. I
17 want to thank you for hearing me. I want to thank you for
18 the time and your dedication you've displayed all week
19 long. I commend you.

20 All I ask you to do is think about the facts, not the
21 theory. Think about the testimony and the evidence, not
22 what people believe, not what they think, not what they
23 theorize, but what's been proven. When you do that ladies
24 and gentlemen, I can say with confidence you will return a
25 verdict of not guilty.

1 Thank you.

2 THE COURT: Ms. Land.

3 MS. LAND: Thank you, Judge.

4 Ladies and gentlemen, this is the pistol that shot
5 Martha Santiago in the face as her three young children
6 watched with horror and terror in their hearts. That's a
7 fact. That's a fact that you have had an expert come into
8 this courtroom and tell you. The bullet that was taken out
9 of her arm was shot from this gun that was found in the
10 jail in Brian Garris's cell.

11 Now, as I told you in my opening, this is complex
12 case. This isn't where somebody said, he robbed the
13 Chinese on video, here's your video, see him doing it. Go
14 back there and find him guilty.

15 There are lots of pieces to this puzzle that we have
16 put together for you. Nineteen, witnesses, 19 witnesses
17 who all had something to add to this large series of events
18 that should prove Brian Garris guilty of armed robbery,
19 assault and battery with intent to kill and possession of a
20 weapon during a violent crime.

21 And, also, I will go over the facts with you and I
22 will tell you that there is an old saying in criminal law,
23 if you're a defense attorney. If you can't attack the
24 facts attacks law enforcement. And Mr. Deas has gotten up
25 before you and he's attacked how long Shelton Hughes has

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1 kept the gun and that Allen Lee got the description wrong,
2 and all kinds of things. But when you deliberate -- when I
3 go through these facts, I'm going to ask you think about
4 the relevance of that.

5 Why does it matter that Shelton Hughes kept the gun
6 for nine days. Did it change the facts that this gun shot
7 this bullet that entered Ms. Santiago? Absolutely, not.
8 Absolutely not.

9 Reasonable doubt, as I told you before, is not any
10 doubt. It does not allow Mr. Deas to get up here and say,
11 Shelton Hughes did something wrong, Allen Lee did something
12 wrong. A doubt is something that should cause you to
13 hesitate to act. And in this case, by this point, there
14 should be no doubt that Brian Garris committed this crime.

15 Now, I'm going to go through the series of events with
16 you and talk about the facts. The facts as they were
17 presented and the facts as they are in this case.

18 You heard from Andrew McBride and Freddie White. Now,
19 the state cannot pick and chose the caliber of witnesses
20 that we were able to bring to you. These are Brian
21 Garris's friends. Probably not the best people that you or
22 I have ever met, but I'll tell you what they did. They did
23 what a lot of people do when they are in an interview room
24 by themselves in the safety of the police. They talk.
25 They sang like a bird. They sang like a bird. And they

1 said, I know who had a gun. Brian Garris had a gun that
2 night. It was a revolver with a tan handle. I saw Brian
3 Garris with it.

4 And you'll remember that Andrew McBride said -- I
5 said, how did you know that it had a tan handle. If you
6 remember, we didn't bring this out, yet. It wasn't even
7 here, because we wanted you to hear from Andrew McBride,
8 and from Freddie White exactly what they saw and that's why
9 we played you those portions of the video. We saw Brian
10 Garris with a black revolver with a tan handle.

11 Now, Andrew McBride tried to tell you that he knew
12 that because Sgt. Elms showed him a picture. Remember when
13 we sat here for those awkward five minutes of silence, and
14 I pressed on forward. And he did, in fact, show him a
15 picture at the end of the interview after Andrew McBride
16 had given him a full description of the gun. He said, is
17 this the gun you're describing? Yes, that's the gun.
18 That's the gun that Brian Garris had that night. So I
19 asked Andrew McBride if that was at the end of the
20 interview how did you know what description go give Lt.
21 Elms. That was the gun I saw in the woods.

22 He was not open and honest with y'all like he was with
23 Lt. Elms because his buddy Brian Garris was here and he
24 don't want to be a rat in open court. But we found the
25 truth, ladies and gentlemen, the recorded statement where

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1 they say that he had this gun that night. That's April
2 15th, very shortly before it happened. We all know that he
3 was there. We know that because every person that
4 testified for the state and the defense said that he was
5 with -- Brian Garris was with his brother, Freddie White,
6 Andrew McBride, Fredrick White and Rashard White. They
7 were all together. There were not questions about that.

8 And his grandmother got up and testified that at first
9 she had taken him about six. Then it got later and later
10 and later. She took him at dinnertime. At dinnertime to
11 Andrew McBride's house. And she told you dinnertime is
12 6:00 or 7:00, and she said it was just getting dark. And I
13 eat late as probably many of you do, but 10:00 is not
14 dinnertime. And it is not getting dark in April at 10:00.
15 It's been dark.

16 And I think his grandmother's a sweet woman, and I
17 think she got up here and tried to do the right thing, but
18 she doesn't with him and she doesn't know what he did. And
19 I don't think she wants to think about what he did.

20 Anyway, then we have the -- Laura Batista told you
21 that the way that she got that man to stop shooting her
22 mother and to leave them along was to give him \$40. This
23 whole case was over \$40. And how did she get paid? With
24 two \$20's. And you saw Freddie White, and you heard him
25 testify. What did he have the next day? Brian Garris had

1 two \$20's. Two \$20's.

2 Another fact, another piece of the puzzle. And like
3 Mr. Deas told you, it would be unreasonable for us to come
4 in here on behalf of the state and say, well, she saw him
5 do it, you should convict him. And we're not asking you to
6 do that. We don't think that that's enough either. Every
7 avenue leads to Brian Garris. He was seen with the gun.
8 He was seen with the \$40. He was in the area. He was by
9 himself.

10 Now, let's talk about Laura Batista and Martha
11 Santiago, and their description. Allen Lee got up here and
12 he told you, I'm not an investigator. I went to the scene.
13 I went to the scene when I was called out. I said, were
14 you by yourself? No, four or five other people came.

15 So think of the police cars that were going and the
16 sirens and the three children sitting there crying, who had
17 just seen their mother shot. And try and secure everything
18 that may or may not be evidence.

19 Ladies and gentlemen, you have the pictures in
20 evidence and you can look at them. Obviously, there's a
21 great deal of blood. A woman is sitting in a chair that's
22 just been shot. And he did the best he could. Mr. Deas
23 said, we're all human.

24 Now, I don't know how you say stripe in Spanish. I
25 don't know how you say long-sleeve, I don't know how you

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1 say cotton, but they gave a description to Allen Lee that
2 he gave to other law enforcement officers to look out for
3 this person. He's tall. He's wearing a mechanic's shirt
4 and he's dark complected.

5 Now, Mr. Deas got up with every witness and said, did
6 you say he was slender? I don't know where that came from
7 because Officer Lee read from his incident report. It
8 said, six one to six three, dark complexion, wearing a
9 mechanics shirt. Maybe the slender part is something he
10 put in there to muddy the waters, to cause a little bit of
11 reasonable doubt. So then he could ask every witness,
12 because that's his job to create reasonable doubt. But
13 that's the description that went out and that's what
14 Officer Drose and Officer Smith and all the other officers
15 were looking for that night. And that's why they didn't
16 stop Brian Garris because he didn't meet the description,
17 but he was there. He was there in that area. And we
18 didn't just get Officer Drose up here to tell you I saw
19 him, yeah, he was there and he was wearing that shirt.

20 And Mr. Deas said to you, why didn't Officer Smith
21 talk to him. Well, they both looked -- he didn't come all
22 the way across the street. He walked towards him and
23 turned around and came back. But when they were able to
24 get the composite drawing from SLED and after the
25 description with a Spanish speaking officer, they got the

1 hat and they got the shirt. What did Officer Drose do, he
2 came down to them and said, that's the shirt that Brian
3 Garris was wearing. That's the shirt.

4 And like we all said earlier in our openings, this
5 isn't tv. This isn't a 30 minutes crime committed tried
6 and solved in 30 minutes. It doesn't happen like that.

7 So several days later the composite comes out and
8 Officer Drose says that's what he was wearing that night.
9 And that's another thing, and then Laura Batista, she was
10 given the lineup to look at. Investigator Elms told you
11 that she looked at all those pictures and she said, I think
12 this one, but he doesn't have on the hat and -- but I think
13 he had long hair. Now, does that sound like someone who
14 wants to throw the first person she thinks she sees in
15 prison? Or someone who wants to be absolutely certain.

16 And he had the nerve, the audacity, to get up on the
17 stand and say, I never wear a doo-rag. I never wear
18 anything like that. I have something on my head that
19 hurts. Remember we went through that, yesterday, last
20 night, and this morning. Okay, I wear one from time to
21 time. I'll show you how it works. He sure did look like
22 he'd put one of those on before. And worn from time to
23 time.

24 He was wearing a doo-rag very similar to the -- tied i
25 the back and this hangs down, and those were the braids.

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1 Those were the braids.

2 Now, let's talk about the gun, because I think that is
3 the most important part of this case, and Brian has come up
4 with a great conspiracy theory, and I hope that Mr. Deas is
5 the only one that's bought it, because I haven't fallen for
6 it for a second.

7 Johnny McCrea who came in here and has no reason to
8 say anything except the absolute truth. He is in prison,
9 but he is a trustee. He was brought to the Clarendon
10 County Detention Center to work in the kitchen. He has no
11 reason to tell a lie. He has no interest in this case. He
12 had nothing to lose and I asked him, is this going to help
13 your time by testifying. Absolutely not. Are you here
14 because I subpoenaed you? Yes, I am. And he picked up
15 that tray and he thought it looked funny, because it had a
16 mound of food. And I will tell you that Mr. Deas has made
17 it seem virtually impossible to cover that with food.

18 I'll tell you, ladies and gentlemen, when I was a
19 little girl, I hated pork chops, I hated them, and it
20 seemed like my mom made them twice a week. And I was a
21 professional at putting that pork chop on my plate and
22 pilling it up. And he wants y'all to think that's
23 impossible. Take it back there. Play with it a little
24 bit. Use your imagination. That's easily done. Easily.

25 But Brian comes up with this conspiracy theory that

1 Andrew McBride and Freddie White's lying. And not only are
2 they lying, but the officer, the booking officer, Officer
3 McCants. He lied. He really did strip search him. And he
4 didn't stop then when he came in here yesterday and took an
5 oath to tell the truth and say he didn't strip search him.
6 What reason would Officer McCants have to come in here and
7 tell you that he did less than his job. They came in here
8 and admitted their mistakes. He said this gun was in our
9 detention center and that's not a good thing. So Office
10 McCants had to come in here with his tail between his legs
11 and say, I didn't pat him down.

12 Mr. Deas would have you believe he was patted down
13 several time at the scene when he was arrested. Well, you
14 heard, well, he had already been patted down. Were you
15 sure? Well, I think. He was in custody. Did you see him
16 get patted down? No, I didn't see him. Are you sure you
17 patted him down? Well, I think I did. Maybe things got
18 confusing at the jail. I don't know.

19 And I agree with Mr. Deas. We have wonderful law
20 enforcement here in Manning. They are human beings and
21 from time to time we all make mistakes.

22 On that day, I think that officer number one thought
23 that officer number two had searched him, and officer
24 number two thought that officer number three had searched
25 him. And they weren't on the same page. They did not

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1 communicate. And it's a shame.

2 Then Lin Ham got up and said, I tested his hands. I
3 tested his hands. Because Brian gets up here and tells
4 you, I don't own a gun. The only thing I've ever shot is a
5 rifle. I have a BB gun, but I didn't handle a gun that
6 day. I handled it the day before.

7 Ladies and gentlemen, you have expert proof, expert
8 proof that on the day of the 27th he handled a gun or he
9 fired one. And the agent from SLED got up there and he
10 told you, he wasn't near a gun that was fired. With a
11 reasonable degree of certainty he was holding it or he
12 fired it himself. And then he was able to tell us and it
13 wasn't a rifle that he fired it was a pistol. So that's
14 another lie that Brian told.

15 We're going on with the Brian conspiracy theory and
16 all the people that lied. Officer Drose lied, because he
17 really did get his ID from him and Holmes Smith lied, and
18 McCrea was lying when he said he found the gun in B 2, when
19 he really didn't.

20 There is no conspiracy. Nobody has a conspiracy but
21 Brian Garris. There is no conspiracy. These are the facts
22 that happened. Johnny McCrea came in there and told you
23 that, my job was to get his tray out of the flap at the
24 jail. Brian Garris was the only one in the cell and he was
25 the one standing behind that flap handing him his tray.

1 And the other officers told you he was the only person in
2 that cell.

3 Now, let's talk about Brian's testimony for a few
4 minutes. He came off as a genuine person at first. But
5 then he said he wasn't there. He was with his friend
6 Jermaine Hicks. He -- said all kinds of other things. He
7 was going through the teenager things with the girls, I
8 think is what he told us. He also said he as a student at
9 Manning High School. Well, we've got his -- we have his
10 withdrawal papers from Manning High School from December of
11 2005. I know that Manning football is not what this case
12 is about, but I wanted to show y'all that he lied when he
13 got up there and said, I played football for Manning High.
14 He lied. I never handled a gun that day. I never handled
15 a gun. That's a lie.

16 The last thing is we have his alibi, Jermaine Hicks.
17 Jermaine Hicks comes up here in his orange jumpsuit to tell
18 you that Brian couldn't have done this, he was with me that
19 day. Well, what was he wearing? He was wearing a white
20 shirt. How do you know that. Well, he usually wears a
21 white shirt. Well, your three young children who were in
22 the backseat that you were taking to McDonald's at 10:00
23 o'clock at night, what were they wearing? Pink. Why?
24 Because they always wear pink. And then at the end of all
25 that testimony I said, when you got Brian, had it already

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1 happened? Yeah. Well, that's not an alibi.

2 Ladies and gentlemen, think about it. If Brian Garris
3 was going to see a girl to do teenage things, he would
4 rather walk to his house to get that car than to go out of
5 his way to McDonald's. We've all been teenagers. We've
6 all been teenagers. He wouldn't have gotten in the car
7 with Jermaine Hicks to go to McDonald's with those three
8 kids if his life had depended on it, if he was going to
9 meet a girl.

10 These are all facts. This is all the evidence. This
11 is what you need to go back and deliberate about. About
12 this gun that was found in Brian Garris's cell that shot
13 this woman in the face for \$40. \$40.

14 Thank you for your attention. I know that when I sit
15 down I'll think of two or three things that I forgot to say
16 to you, but I know that you will know everything that we've
17 said and I know that you people will use your common sense
18 like I asked you to in the my opening. And when you
19 consider all of these facts, I believe that you will find
20 Brian Garris guilty of assault and battery with intent to
21 kill, armed robbery, and possession of a weapon during a
22 violent crime beyond a reasonable doubt.

23 THE COURT: Thank you, Ms. Land.

24 All right, ladies and gentlemen, does anyone want to
25 take a brief break and be back before we begin the next

1 process before you begin to deliberate you may do that.

2 No?

3 All right, ladies and gentlemen, you've heard all the
4 evidence in this case. At this time, I'm going to give you
5 a charge on the law. And just to give you an idea of what
6 you're going to hear, you're going to hear a lot of words
7 that you may have hear before. You're going to hear some
8 words and phrases that you may not have heard before. I
9 want to remind you that at the beginning of this case that
10 you have to accept the law as I give it to you. Do not
11 make any decisions in this case based on what you think the
12 law is or what you think the law ought to be. You have to
13 accept the law as I give it to you.

14 In this case, the defendant has been charged with
15 assault and battery with intent to kill, armed robbery, and
16 possession of a firearm during the commission of a violent
17 crime.

18 Of course, ladies and gentlemen, the defendant has
19 entered a plea of not guilty to those charges and that plea
20 puts the burden of proof on the state to prove each element
21 of those crimes beyond a reasonable doubt.

22 Madam Forelady, when you begin your deliberations you
23 will have with you in your jury room this verdict form.
24 That's got the case caption on there and it's got an
25 inquiry on each one of these counts.

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1 The instructions that I give you, are to be clear, so
2 listen very carefully. I want you be looking at these
3 questions, you will begin to understand exactly how you are
4 to use my charge on the law from the facts in this
5 particular case.

6 Now, the fact that person is arrested for a crime,
7 charged with a crime and indicted for a crime is never
8 considered evidence. The case has to get to court some
9 way, and, again, an indictment, that's been referenced in
10 this case is in and of its self not evidence of anything.

11 You, ladies and gentlemen, are the sole finders of the
12 facts. No one will be in the jury room with you while you
13 deliberate and no one will be in there with you recording
14 anything that you say. It will be just you. Obviously,
15 from time to time I've had to send you out to discuss
16 points of law with the lawyers and from time to time I have
17 made rulings in your presence. You are not to take into
18 consideration anything that I've said, that I've done or
19 any ruling that I've made when you're trying to figure out
20 if I favor one side over the other, because I don't. It's
21 up to you. You determine the fact. I do not have a view
22 of the facts. If I did I wouldn't be able to express it to
23 you.

24 Now, ladies and gentlemen, a very important principle
25 of law that I am going to discuss with you, the presumption

1 of innocence, and that is a defendant in a criminal trial,
2 no matter what the seriousness of the charge might be is
3 always presumed to be innocent of the crime for which the
4 indictment was issued, unless and until guilt is proved
5 beyond a reasonable doubt. The presumption of innocence,
6 those words is not a mere legal theory, it is not a catch
7 phrase, it's not a fancy way of saying anything. It is a
8 substantial right that ever defendant in every criminal
9 case, and the presumption of innocence has been described
10 as like a robe of righteousness and that robe stays on the
11 defendant from the beginning until the state proves by the
12 weight of competent evidence that establishes the guilt
13 beyond a reasonable doubt.

14 All right, ladies and gentlemen, during the course of
15 your deliberation you are to consider the facts, and you
16 can consider the testimony that has come to you from this
17 witness stand. The exhibits that have been introduced into
18 evidence and agreed upon by the attorney and published to
19 you.

20 I want to specifically tell you, ladies and gentlemen,
21 in this case you have heard testimony that on April 28,
22 2006, the defendant was arrested on a charge that is
23 completely unrelated to this case. The defendant, as you
24 know, was found not guilty on that unrelated charge. I
25 charge you and I emphasize to you that you are not to

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1 consider the mere existence of those other charges in any
2 way in determining the guilt or non-guilt in this case.

3 Now, ladies and gentlemen, as the finders of the
4 facts, you are the only people in the world that can do
5 that in this case, you have to evaluate the credibility or
6 believability of the witnesses. How do you do that? As I
7 told you at the beginning of this case you use your good
8 common sense and judgment. In passing on the credibility
9 you can take into consideration these things in addition to
10 other things you think are appropriate. What was the
11 manner and character of the witnesses who testified. Was
12 that witness hesitant or straightforward in their
13 testimony. You can consider how the witnesses came to know
14 the facts the witness claimed to have knowledge of. What
15 was his or her ability to know those facts. You can
16 consider whether or not there's a reason that a witness
17 would want to give testimony that would help or hurt one
18 side or the other. In other words, would that witness lie
19 under oath. Was the testimony of the witness weakened or
20 strengthened by other testimony or evidence, or was that
21 witnesses testimony strengthened or weakened by something
22 that witness may have said on a prior occasion. You can
23 believe as much or as little of what a witness has to say.
24 You can believe all of it, none of it, or parts of it.
25 That is totally in your province. The fact that the

1 testimony is not controverted or contradicted does not mean
2 that you have to accept it. You can still weigh that
3 evidence in the exercise of your good common sense.

4 Now, ladies and gentlemen, in your evaluation of
5 credibility, and in your evaluation of all the evidence,
6 you have one objective and that's to seek the truth.

7 Ladies and gentlemen, I charge you that a person who
8 has a past criminal record is competent to take the stand
9 and testify. In other words, that record does not affect
10 his ability under the law to testify. However, the past
11 record may be considered by you if you think it's
12 appropriate in determining the witnesses believability.

13 Now, if a witness has made prior statements which are
14 not consistent with the witnesses trial testimony you may,
15 if you like, use that evidence to decide whether to believe
16 that witness. You may also use evidence of an earlier or
17 any earlier inconsistent statement to determine the truth
18 of those earlier statements. It's up to you to determine
19 whether to believe the earlier statement or the testimony
20 given at trial. If a witness has show to have knowingly
21 testified untruthfully concerning any material matter you
22 may consider this in determining whether to trust that
23 witnesses testimony as to any other matters to which that
24 witness testified.

25 All right, now, ladies and gentlemen, I've now used

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1 the word evidence numerous times during this charge to you,
2 already. There are two type of evidence that are normally
3 presented during a trial. These are called direct evidence
4 and circumstantial evidence.

5 Direct evidence is typically that give by an eye-
6 witness or a witness who says, I saw this, I heard this,
7 touched this, I smelled this. That's direct evidence. I
8 see him sitting over there or I heard him say this.

9 The other type of evidence is called circumstantial
10 evidence. Circumstantial evidence is proof of a chain of
11 fact and circumstances that indicate the existence of a
12 fact. Now, that sounds a little complex. I will give you
13 an example. If you were sitting in a completely sound
14 proof room for five hours. You couldn't hear anything,
15 couldn't see anything because there were no windows. You
16 have no direct evidence of what the weather is outside
17 because you can't see it. If someone were to walk in that
18 door, shaking off a wet umbrella and said, I just came in
19 from outside. You would have direct evidence by what you
20 saw that that person was shaking off a wet umbrella. And
21 that that person by what they said came in from the
22 outside. You can circumstantially infer that it's raining
23 outside. That's an example of circumstantial evidence.

24 I charge you, ladies and gentlemen, the law makes
25 absolutely not distinction between the weight or value you

1 are to give to direct evidence or circumstantial evidence.
2 Nor is a greater degree of certainty required of
3 circumstantial evidence than of direct evidence. In other
4 words, you weigh all the evidence in this case, direct and
5 circumstantial, in the same way.

6 Now, after weighing all that evidence, if you are not
7 convinced of the guilt of the defendant as to a particular
8 charge beyond a reasonable doubt you must find the
9 defendant not guilty.

10 I've told you, ladies and gentlemen, twice, that
11 you've heard the testimony of a witness or witnesses who
12 have special knowledge, training, experience, in a
13 particular field and those witnesses were qualified as
14 experts in a particular field. Now, you do not have to
15 accept the testimony of an expert simply because it came
16 from an expert. If the reasons given for the opinion are
17 not sound in your judgment or if the education, training
18 and experience that is testified to by that witness are not
19 sufficient in your mind or for any other reason that you
20 think in the exercising of your common sense, you should
21 not give that testimony any weight, you can do that. You
22 can accept it all, reject it all, or accept parts and
23 reject the rest. In other words, this expert testimony is
24 weighed by you in the exact same fashion that you weighed
25 any other evidence.

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1 Now, ladies and gentlemen, obviously, as the sole fact
2 finders, you should have listened very carefully, and I
3 have been watching the last two and a-half days, and you've
4 done that, and I appreciate that. That's how you, Madam
5 Forelady, ladies and gentlemen of the jury, take what I've
6 said and take what you've seen and heard and that's how you
7 reach your verdict in this case.

8 Now, weighing evidence is a mental process. During
9 the course of this trial you may have heard reference to
10 rules. There is no rule that I could point to that tells
11 you how to weigh evidence. You do it in your mind's eye
12 and you use your good common sense.

13 All right, ladies and gentlemen of the jury, the state
14 of South Carolina has the burden of proof as to each
15 element of the crimes charged by the standard of proof
16 known as reasonable doubt. What is reasonable doubt? I'll
17 read it to you. It's not -- first of all, it's not an
18 imaginary doubt, a fanciful doubt, or a weak doubt. A
19 reasonable doubt is a substantial doubt. A reasonable
20 doubt is a doubt that makes honest, sincere, conscientious
21 jurors in search of the truth hesitate to act. The truth
22 beyond a reasonable doubt is proof that leaves you firmly
23 convinced of the defendant's guilt. If you have a doubt
24 for which you can give or assign a reason as to the guilt
25 of the defendant, then that defendant would be entitled to

1 a verdict of not guilty. Reasonable doubt, I further
2 charge you, may arise from evidence which is in the case.
3 The doubt may arise from the lack of or absence of evidence
4 in the case. You, the jury, make the determination as to
5 whether or not reasonable doubt exists in this particular
6 case.

7 Now, the very fact that a jury engages in the course
8 of its deliberations in a full and free discussion of the
9 issues of guilt and non-guilt, that in and of itself, in
10 other words, normal conversational ebb and flow is not
11 necessarily mean in and of itself that reasonable doubt
12 exists in the case.

13 All right. Ladies and gentlemen, during the course of
14 this trial the defendant has testified and has offered or
15 made certain explanations. I charge you that it is not
16 required for the defendant to prove that explanation or
17 anything else. The defendant has pled not guilty, as I
18 previously charged you, that places the burden on the state
19 to prove his guilt beyond a reasonable doubt. And you
20 gauge the credibility and believability of the defendant in
21 the same manner that you gauge the credibility and
22 believability of any other witness.

23 Now, ladies and gentlemen, you have heard testimony in
24 this case concerning the identification of the defendant as
25 the person who committed the crime as charged. The state

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1 has the burden of proving identity beyond a reasonable
2 doubt. You must be satisfied beyond a reasonable doubt of
3 the accuracy of the identification of the defendant before
4 you can convict the defendant. Identification testimony is
5 an expression of belief or impressions by a witness. You
6 must determine the accuracy of the identification of the
7 defendant and you must consider the believability of each
8 of the identification witnesses in the same way as that of
9 any other witness. You may consider whether that witness
10 had an adequate opportunity to observe the offender at the
11 time of the event. This will be affected by things like
12 how long or short a time was available. How far or close
13 the witness was. Lighting conditions and whether the
14 witness had a chance to see or know that person.

15 Again, I instruct you that the burden of proof on the
16 state extends through every element of the crime charged
17 and that includes the burden of proof beyond a reasonable
18 doubt the identity of the defendant as the person
19 committing the crime. If after examining the testimony you
20 have a reasonable doubt as to the accuracy of the
21 identification of the defendant as the one committing the
22 crime charged, you must find the defendant not guilty.

23 Now, I'm going to get more specific. I'm going to
24 talk to you about the charges in the indictment.

25 The defendant has been charged with assault and

1 battery with intent to kill. I'll tell what that is and
2 I'll tell you what the state has to prove, again, each
3 element beyond a reasonable doubt. In order to prove
4 assault and battery with intent to kill, the state must
5 prove beyond a reasonable doubt that the defendant
6 committed an unlawful act of a violent nature upon the
7 person of another with malice aforethought. Now, the word,
8 assault is in that charge. An assault occurs when a person
9 unlawfully attempts or offers to commit a violent injury
10 upon another person and has present ability to complete the
11 attempted injury. Assault is the intentional creation of a
12 reasonable fear of immediate bodily harm. In other words,
13 if I were to walk up to Ms. Roberts, within an arms reach
14 and draw my arm back and hit her, and I had the apparent
15 present ability to complete that act, the act of drawing my
16 arm back would be assault. That is the assault.

17 Now, a battery is the unlawful touching of another
18 person by a person who committed the assault. An unlawful
19 touching can be caused by a part of the accused body or it
20 can be caused by any object that the accused lifts in
21 motion. A batter is the completion of the assault by using
22 force with another person, however slight, which is rude,
23 angry, or resentful manner without legal justification.
24 I'm going to use that other example. I draw my arm back.
25 I have assaulted Ms. Roberts. If I draw it forward and

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1 strike her that is the battery. Assault and battery.

2 Now, the word malice in the context of assault and
3 battery with intent to kill. As I earlier told you, any
4 unlawful act of a violent nature has to be committed with
5 malice aforethought. Malice is a hatred, an ill will, or
6 hostility toward another person with the intention of doing
7 a wrongful act without just cause or excuse and with an
8 intent to inflict an injury or under circumstances that the
9 law will infer evil intent. Malice aforethought does not
10 require that malice exist at any particular time before the
11 act is committed, but malice must exist in the mind of the
12 defendant just before and at the time the act is committed.
13 Therefore, there must be a combination of the previous evil
14 intent and the act itself. All right. Malice aforethought
15 may be express or inferred. These terms, express and
16 inferred do not mean different kinds of malice but merely
17 the manner in which malice may be shown to exist. Now,
18 express malice is shown when a person speaks words which
19 express hatred for or ill will to another or when the
20 person prepared beforehand to do the act which is later
21 accomplished. Now for inferred malice. Malice may be
22 inferred by conduct that shows total disregard for human
23 life. Inferred malice may also exist when the deed is done
24 with a deadly weapon. A deadly weapon is any article,
25 instrument, or substance which is likely to cause death or

1 great bodily harm. Whether an instrument has been used as
2 a deadly weapon depends on the facts and circumstances of
3 the case.

4 Here's some examples of what may be deadly weapons: a
5 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
6 sling shot, brass knuckles, a razor, gasoline, a fire bomb,
7 or a Molotov cocktail. These are examples of what could be
8 a deadly weapon.

9 Ladies and gentlemen, if the facts prove beyond a
10 reasonable doubt sufficient to raise malice to your
11 satisfaction and it is simply an evidentiary fact that you
12 can consider along with the other evidence in this case.
13 You can give it the weight you think it deserves.

14 Specific intent to kill is not an element in an
15 assault and battery with intent to kill. But there must be
16 a general attempt to commit serious bodily harm. Now,
17 intent means intending that the bodily harm actually occurs
18 and not accidentally, was voluntary.

19 Now, ladies and gentlemen, I further charge you that
20 intent may be shown by acts and conduct of the defendant
21 and other circumstances from which you may naturally and
22 reasonably infer intent. Evidence of the character of the
23 assault, the character of the instrument used, the manner
24 in which it was used and the purpose for the assault to be
25 accomplished and the resulting wounds or injuries may be

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1 considered by you in determining the intent with which the
2 assault was made.

3 I further charge you that intent may also be inferred
4 when it has been demonstrated that the defendant
5 voluntarily and willfully commits an act that the tendency
6 of which is to destroy another's life.

7 All right, ladies and gentlemen, the defendant is also
8 charged with the offense of armed robbery. This is a
9 little bit shorter legal definition than the one I just
10 gave you.

11 All right, in order to prove armed robbery the state
12 must first prove beyond a reasonable doubt that the
13 defendant took the personal property from the person or
14 presence of another person. Property is in the presence of
15 a person if it is within that person's reach, possession,
16 observation or control. With regard to armed robbery they
17 also have to prove beyond a reasonable doubt that the
18 defendant carried the property away. Now, ladies and
19 gentlemen, taking and carrying away of the property must
20 have been done by violence or by putting the owner of the
21 property in fear of violence. Finally, the state must
22 prove beyond a reasonable doubt that the defendant was
23 armed with a deadly weapon. Again, a deadly weapon is an
24 any article, instrument or substance likely to cause death
25 or great bodily harm. Again, a deadly weapon, pistol,

1 shotgun, rifle, dagger, knife, brass knuckles, razor,
2 gasoline, fire bomb or Molotov cocktail.

3 All right, lastly, ladies and gentlemen, the defendant
4 is charged with possession of firearm during the commission
5 of a violent crime. I charge you that a assault and
6 battery with intent to kill is a violent crime. I further
7 charge you that armed robbery is a violent crime.

8 Now, in order to prove this offense the state has to
9 prove beyond a reasonable doubt that the defendant was in
10 possession of a firearm or visibly displayed what appeared
11 to be a firearm during the commission of a violent crime.
12 A firearm means a handgun, automatic rifle, revolver,
13 pistol or any weapon which will or is designed to expel a
14 projectile.

15 Now, in order to find the defendant guilty of
16 possession of a firearm during the commission of a violent
17 crime you have to find the defendant guilty of either
18 assault and batter with intent to kill or armed robbery or
19 both.

20 All right. Ladies and gentlemen, criminal intent.
21 The necessary element of each crime it has to be proven by
22 the state that -- you have to determine that criminal
23 intent has been established by -- and proved beyond a
24 reasonable doubt. Criminal intent is the state of mind
25 that operates acts or omissions in the commission of a

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1 crime. Criminal intent is mental state -- that's why it's
2 up to you to determine whether or not the intent is shown
3 to have existed.

4 Now, ladies and gentlemen the defendant in this case
5 has raised the defense of alibi. In order to establish an
6 alibi it must be shown that the defendant was at another
7 specified place at the time that the crime was committed
8 and that it was therefore impossible for the defendant to
9 have been at the scene of the crime. Mere denial of
10 presence at the scene of the crime is not constitute an
11 alibi. Now, theirs is no burden on the defendant to prove
12 alibi. The burden is on the state to prove beyond a
13 reasonable doubt that the defendant was actually present at
14 the scene of the crime, actually participated in the -- in
15 other words, the state must additionally disprove the
16 defense of alibi.

17 Now, ladies and gentlemen, I move closer to the end of
18 this charge. Listen very carefully. You're going to have
19 with you this verdict form. As to assault and battery with
20 intent to kill and armed robbery the verdict of one does
21 not control your verdict of the other. If in your view of
22 the evidence if the defendant is guilty of one and not
23 guilty of the other that would be your verdict.

24 All right. If you find that the defendant not guilty
25 of assault and battery with intent to kill and not guilty

1 of armed robbery it would necessarily be that you would not
2 consider the determination of whether or not he was guilty
3 or not guilty of possession of a weapon during the
4 commission of a crime of violence. I going to give you the
5 verdict form right now. It's got the case caption on it.
6 It's got the word, verdict form. Question number one says
7 this: As to the charge of assault and battery with intent
8 to kill we the jury unanimously find the defendant -- and
9 you've got two choices, not guilty or guilty.

10 Now, Madam Forelady, ladies and gentlemen, your
11 verdict must be unanimous. That means that all of you have
12 to agree with the verdict. This is not a majority vote.
13 Every one has to agree on the verdict before you can check
14 the appropriate block. After you resolve question number
15 one, you go to question number two. As to the charge of
16 armed robbery, we the jury unanimously find the defendant
17 -- and your choices are not guilty or guilty. If you have
18 found the defendant not guilty for both number one and
19 number two, stop. And then Madam Forelady you will sign
20 the verdict form and date it and knock on the door to let
21 the bailiff know you have reached a verdict.

22 Your role, Madam Forelady is not to have any greater
23 vote than anyone else in that jury room. You're to give
24 every one who wants to speak a full and fair opportunity to
25 speak. If someone excuses himself or herself to go to the

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1 restroom you have to stop. You are not allowed to cut off
2 anyone who is speaking. You're not permitted to check any
3 appropriate block until all of you agree on the verdict.

4 If you have any questions during the course of your
5 deliberations you have note pad for you to write a question
6 on. Tap on the door, let the bailiff know that you have a
7 question. And I will answer it. You are allowed to
8 consider the evidence that has been introduced in this
9 trial and the law as I give it to you.

10 In a moment I'm going to excuse you, speak with the
11 lawyers. They are permitted to let me know if I have left
12 anything out or if I have charged anything incorrectly. If
13 need be, I'll bring you back out. If they don't have any
14 additional matters for me to address with you then the
15 bailiff, in a few minutes, will come to your door with the
16 exhibits. Once that is done, that is your signal to begin.
17 I told you at the beginning of this trial, some may say
18 that you have the honor and the integrity of Clarendon
19 County in your hands at this time. And after you examine
20 the evidence as conscientiously as you have paid attention,
21 I'm confident that your verdict will be your verdict. I'm
22 not so concerned with what your verdict is going to be.
23 I'm not concerned about that. I know you paid attention.
24 I just want to make sure you all understand that your
25 jurors process is extremely important.

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1 All right. Ladies and gentlemen, if you will excuse
2 yourselves for just a moment. If you are to begin your
3 deliberations you will have all the time that you need. If
4 we have to bring back out I will tell you.

5 Madam Alternate, you stay with us, please.

6 Do not begin discussing the case, yet.

7 (Jury out at 4:16 p.m.)

8 THE COURT: All right. Anything from the state?

9 MS. LAND: No, sir.

10 THE COURT: From the defense?

11 MR. DEAS: No, sir, Your Honor.

12 THE COURT: All right. While I speak to the
13 alternate, you make sure that exhibits are ready.

14 (Exhibits sent back to jury at 4:20 p.m.)

15 (Court in recess awaiting a verdict at 4:20 p.m.)

16 (Court in session for jury question.)

17 THE COURT: I have a question from the jury.

18 All right. Mr. Deas, Ms. Land, Court's Exhibit No. 4.
19 Several questions. I'll read it just like it says. We
20 need clarification where Manning Lane is located. Second,
21 map of city, where Chinese Cuisine is located. Next, where
22 Church street is located. Next, transcript of alibi
23 testimony.

24 All right. The first three, I will tell the jury that
25 they can consider what's in evidence and nothing else will

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1 be given to them.

2 Any objection to that, Ms. Land?

3 MS. LAND: No, sir.

4 THE COURT: Mr. Deas?

5 MR. DEAS: None.,

6 THE COURT: All right. The last question.

7 Transcript of the alibi testimony. I -- only thing I can
8 ask for is clarification from them of what they're talking
9 about. If they want to rehear testimony of a specific
10 person, we can get that person's name and we can rehear
11 that. Any objection to that?

12 MR. DEAS: No, sir.

13 THE COURT: Ms. Land?

14 MS. LAND: No, sir.

15 THE COURT: All right. You can bring them out.

16 (Jury in at 4:32 p.m.)

17 THE COURT: All right, ladies and gentlemen, your
18 questions are -- clarifications of where Manning Lane is
19 located. As to that, ladies and gentlemen, you have to
20 rely on testimony that was presented in the courtroom.
21 Testimony and evidence can't be supplemented or added to.
22 That inquiry of, map of the city where Chinese Cuisine is
23 located. Same response there. And the third, where is
24 Church Street located? Same response there. The record
25 can't be supplemented or added to. Now, the last one, the

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1 transcript of the alibi testimony. I'll tell you this, if
2 you want to hear it played back to you, the testimony of a
3 particular witness that can be done. Transcript is not
4 readily available with the technology that we have. It has
5 to be typed. If you have testimony of specific witness or
6 witnesses you'd like played back to you, that can be done.
7 I can't take it upon myself to determine who you're talking
8 about. You have to tell me who you want to hear by way of
9 playback. All right. If you want to take a couple of
10 minutes in there and then perhaps write on another note
11 who's testimony you want to hear, we can make that happen.
12 All right.

13 (Jury out for continued deliberation at 4:34 p.m.)

14 THE COURT: All right. Any objections to those
15 comments. Ms. Land?

16 MS. LAND: No, sir.

17 THE COURT: Mr. Deas?

18 MR. DEAS: No, sir, Your Honor.

19 THE COURT: All right. Mr. Deas, don't leave the
20 building. Ms. Land, don't leave the building.

21 All right.

22 (Court's Exhibit No. 4, note from
23 jury was marked and entered.)

24 (Court at recess awaiting jury verdict at 4:35 p.m.)

25 (Court in session for verdict at 5:11 p.m.)

State v. Garris September 2-5, 2008

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1 THE COURT: All right. Do we have a verdict?

2 THE BAILIFF: Yes, sir.

3 THE COURT: All right. Ms. Land, are you ready?\

4 MS. LAND: I think so, Judge.

5 MR. DEAS: Yes, sir, Your Honor.

6 THE COURT: All right. My specific instructions,

7 I know the lawyers know this. I know law enforcement knows

8 this. But I want to make sure that anybody has any type of

9 reaction to the verdict at all, whether it's happy or

10 disappointed, please do not voice that audibly.

11 That's understood, Ms. Land?

12 MS. LAND: It is, Judge.

13 THE COURT: Mr. Deas?

14 MR. DEAS: Yes, sir.

15 THE COURT: All right. Bring in the jury.

16 (Jury in at 5:17 p.m.)

17 THE COURT: All right. All right, Madam Forelady,

18 I'll ask you -- and I think Ms. Roberts just did. Did you

19 reach a verdict?

20 JURY FORELADY: Yes, sir.

21 THE COURT: All 12 of you agree?

22 JURY FORELADY: Yes, sir.

23 THE COURT: All right. Mr. Garris, will you

24 please stand, sir.

25 THE CLERK: On Indictment Number 2008-GS-14-265,

1 State verses Brian Garris, as to the charge of assault and
2 battery with intent to kill, we the jury unanimously find
3 the defendant guilty. As to the charge of armed robbery,
4 we the jury unanimously find the defendant guilty. As to
5 the charge of possession of a weapon during the commission
6 of a violent crime, we unanimously find the defendant
7 guilty. Signed: Angela V. McFadden, Foreperson.

8 THE COURT: All right, ladies and gentlemen of the
9 jury if this is your verdict and is still your verdict
10 please indicate so by raising your right hands.
11 (Jury complies.)

12 THE COURT: All right. Let the record show that
13 all members of the jury raised their hands.

14 Mr. Deas, would you like the jury polled?

15 MR. DEAS: Yes, sir, Your Honor.

16 THE COURT: Ms. Roberts.

17 THE CLERK: Yes, sir. Ladies and gentlemen, when
18 I call your name, please stand and I will ask you some
19 questions.

20 THE CLERK: Thank you.

21 (Jury is polled.)

22 THE COURT: All right. Mr. Deas, anything else
23 before the jury is discharged?

24 MR. DEAS: No, sir.

25 THE COURT: All right. Ms. Land, anything before

State v. Garris September 2-5, 2008

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1 the jury is discharged?

2 MS. LAND: No, sir.

3 THE COURT: All right. Ladies and gentlemen of
4 the jury that concludes your service to the court in this
5 case.

6 Obviously, since it's Friday afternoon, that concludes
7 your service this week. As I told you before no one can
8 fault you for what your verdict is. I want to thank you
9 very much for your service. I will tell you this, you can
10 now discuss this case with anyone that you want to discuss
11 it with, however, this maybe the last thing on this earth
12 that you want to talk about. If anyone wants to speak to
13 you about this case or your verdict and you don't want to
14 do that simply tell that person. If the person persists
15 even slightly, get that person's name and let Ms. Roberts
16 know. She will let me know and I will deal with that.

17 I am making this request. That you not discuss it as
18 you are leaving the courthouse or on the courthouse
19 grounds. Should anyone approach your and want to talk to
20 you about it.

21 Thank you very much for your time and effort that you
22 have devoted to this case. You are free to go. And please
23 leave your badges with the bailiff and thank you very much
24 again for your time.

25 (Jury exists courtroom at 5:23 p.m.)

1 THE COURT: All right.

2 MS. LAND: Judge, it's just extremely rare to meet
3 a family like this. You got to hear from them as far as
4 their testimony, but Laura, who is 17, goes to work to help
5 pay the bills. I don't think that we realize how fortunate
6 we are until we meet people like that. They are trying to
7 pay their light bills, their electricity bills, things like
8 that. This was so senseless, and over \$40. And you heard
9 Ms. Santiago say that those are what she faces now. She
10 can't work as hard because here head hurts because there's
11 a bullet in it. She is working hard to pay these bills,
12 and he can never repay her for that. He can never take
13 away that memory that her family will have. But the main
14 reason why I say you just don't meet people like this is
15 because regardless of all these hardships they're
16 supportive or one another, they're loving, they're caring.
17 They -- you saw them, I think, behind my table where they
18 just literally leaned on each other for support. They are
19 a wonderful family and I believe that he should be
20 sentenced to all 55 years that he's facing for making them
21 go through that and Your Honor you have met two of the
22 children. You have not met the youngest, but he is darling
23 little child. He is in first grade at the Early Childhood
24 Center and he just always has a smile on his face. One
25 time when we were talking in negotiations I asked Ms.

State v. Garris September 2-5, 2008

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1 Santiago what kind of sentence she felt would be
2 reasonable, and I've had people who've had their car stolen
3 and they want the max or victims of shoplifting and they
4 want the max, and she said, he just needs to be punished he
5 did. Whatever you think is fair. They just want nothing
6 from anyone and expect nothing from anybody. And they are
7 the last people that this should have happened to. It was
8 a horrible crime, needless, senseless, over \$40.

9 I think that this is an individual who has no
10 conscious, who has no regard for human life, no regard for
11 other people's property, other people's personal happiness.
12 He has a juvenile adjudication from 2004 for assault and
13 battery of a high and aggravated nature. And he's
14 currently incarcerated for a burglary 2nd.

15 THE COURT: Is that a pending charge?

16 MS. LAND: That's a pending charge. He is
17 somebody who needs to be removed from our society for as
18 long as possible.

19 THE COURT: All right, Ms. Land. Does Ms.
20 Santiago want to be heard or does her daughter want to be
21 heard?

22 MS. BATISTA: No, thank you very much.

23 THE COURT: All right. Mr. Deas, is there
24 anything you'd like to say?

25 MR. DEAS: Thank Your Honor. May it please the

1 Court.

2 Your Honor, this is a young man standing next to me,
3 19 years of age, date of birth, January 1, 1989. Went to
4 school here in Manning through the 11th grade. He's worked
5 in the past at IGA and done some construction work. This
6 situation that he finds himself in today, I think, probably
7 is the result of just bad decisions, bad choices. Not
8 using good judgment in his young life. You know, this
9 stage of the game he's now facing -- and having to hold
10 himself accountable for what occurred to this family. I
11 can only hope, because I can't speak for him with respect
12 to this, but I can only hope that he has some remorse and
13 sorrow for this family, Ms. Santiago and her children. I'm
14 going to give him an opportunity to speak to that in a
15 moment. Again, I think it would be not appropriate for me
16 to address that. I think that's something that he needs to
17 search his heart and mind about and speak for himself.

18 Your Honor, this is a case where the factual scenarios
19 were hotly contested and it's my view, and Mr. Garris can
20 correct me if I'm wrong, but he is of the view that he was
21 not the person that committed this crime, and I believe
22 even though the jury has decided otherwise, I believe that
23 is still his view. Again, he will have an opportunity to
24 speak and if his view is different than what I just said he
25 will have an opportunity to communicate that to the Court.

State v. Garris September 2-5, 2008

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1 He has a family that is here today. A grandmother,
2 Ms. Marie Garris, of course, you've had a chance to see her
3 through the course of the proceeding of the trial. She is
4 a life-long resident of Manning. Did her best to work and
5 to provide a home life for Brian and his younger brothers
6 and sister. And she was married to Brian's grandfather --
7 they were basically the parental figures in his life. His
8 grandfather passed away this summer, this past May. You
9 know you have young children and sometimes you do the best
10 you can, but for whatever reason they still go astray. For
11 whatever reason, obviously, Brian has gone astray. And
12 he's got to be man enough now to deal with the
13 consequences. Of course, we know that the consequences of
14 a guilty verdict from the jury in this -- with the serious
15 nature of these charges the consequences are severe.

16 Your Honor, I would ask that you take a look at a
17 couple of issues. Look -- please consider the youthful age
18 of Mr. Garris. When this incident occurred he was 17 years
19 old. That doesn't in any way begin to justify it or excuse
20 it, but when you're young and you don't have proper
21 guidance or you don't have significant guidance I should
22 say, you make decisions and you engage in acts that can
23 lead you exactly where he is today.

24 Also, Judge, I would ask that you consider that if Mr.
25 Garris is going to stand before you today and show some

1 remorse and sorrow and accept responsibility, I would ask
2 that you take that into consideration as you begin to
3 determine what type of a sentence to fashion. He's facing
4 up to 55 years on these three charges. My understanding is
5 up to 20 years on the assault and battery with intent to
6 kill, between 10 to 30 on the armed robbery, and up to five
7 on the possession of a weapon during a violent crime. We
8 understand that that's what he's looking at. I'm not going
9 to even begin to make any assertions on my part or his part
10 as to how the Court needs to deal with that. I would just
11 the Court to, in its infinite wisdom, to fashion a sentence
12 that you feel is appropriate. I believe that's all we ask.

13 THE COURT: Mr. Garris.

14 MR. GARRIS: Yes, sir. I still stand firmly on my
15 foundation maintaining my innocence. But my heart does go
16 out to the Santiago family, but I still maintain my
17 innocence on the charge. I do apologize to the Santiago
18 family, but I had nothing to do -- I still stand firm on my
19 foundation that I had nothing to do with that shooting. I
20 have to go through the motions, but like I said, I still
21 stand firmly that I had nothing to do with no shooting.
22 And I hope that they find in their heart to forgive me, but
23 I had nothing to do with no shooting.

24 MR. DEAS: Ms. Garris, would you like to speak.

25 THE COURT: Ms. Garris.

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1 MS. GARRIS: I still say about this Chinese
2 restaurant, I know he didn't do that. I know that for a
3 fact. And I know the routine I went through with, running
4 backwards and forwards around trying to find out what's
5 happening, talking to the officers and things. I know he
6 didn't do it. And I come back and all the jury said he did
7 it. I know he didn't do it. And I pray to God something
8 to be done about it, because I know he didn't do it.

9 THE COURT: Mr. Deas, anything else?

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

11 THE COURT: All right. I'll be right back.

12 (A short break was taken.)

13 (Court in session after break.)

14 THE COURT: All right, Mr. Garris.

15 Ms. Land, Mr. Deas, statute 1623-490, Ms. Land, do you
16 see any requirement in that statute that that sentence run
17 consecutively? Doesn't have to be consecutive, does it?

18 MS. LAND: Your Honor, I did not understand that,
19 but if that is your interpretation.

20 THE COURT: All right. Mr. Garris, I meant to say
21 this earlier today, it is not an enjoyable thing to do to
22 sentence anybody because it impacts your life and it
23 impacts your family. It is not a pleasant thing to do. I
24 understand you maintain your innocence. I frankly -- Ms.
25 Land does not agree. But I don't hold that against you.

State v. Garris September 2-5, 2008

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1 This jury had a three days trial. I've got to sentence you
2 according to how the jury -- so having said that it's still
3 not an easy thing to do. This jury has devoted a lot of
4 time and I want to say that your lawyer's closing argument
5 in this case should give everybody pause to consider the
6 verdict, but the jury has returned a verdict of guilty.

7 The sentence of the Court, Mr. Garris, is on that
8 guilty verdict for assault and battery with intent to kill
9 you are committed to the State Department of Corrections
10 for a term of 20 years. Running consecutively to that it
11 is the sentence of the Court on the armed robbery charge
12 for a term of 20 years. Running concurrent to both of
13 those possession of a weapon during the commission of a
14 violent crime 5 years.

15 I'm sure your lawyer will be making a motion.

16 All right, anything further, Mr. Deas?

17 MR. DEAS: Nothing further, Your Honor.

18 THE COURT: Ms. Land?

19 MS. LAND: No, sir.

20 THE COURT: All right.

21 (This proceeding was concluded.)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)

INDICTMENT FOR
 ARMED ROBBERY,
 ASSAULT AND BATTERY WITH INTENT
 TO KILL AND POSSESSION OF A FIREARM
 DURING THE COMMISSION OF A CRIME
 OF VIOLENCE

At a Court of General Sessions, convened on October 5, 2006, the Grand Jurors
 of CLARENDON County present upon their oath:

COUNT ONE – ARMED ROBBERY

That BRIAN RASHARD SYLVESTER GARRIS did in Clarendon County on or about April 15, 2006, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a .22 caliber revolver, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, did feloniously take from Martha Santiago in the presence of Martha Santiago, by means of force or intimidation goods or monies of the said Martha Santiago, such goods or monies being described: good and lawful monies in the approximate amount of Forty (\$40.00) Dollars.

COUNT TWO – ASSAULT AND BATTERY WITH INTENTN TO KILL

That BRIAN RASHARD SYLVESTER GARRIS did in Clarendon County on or about April 15, 2006, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that he did commit an unlawful act of a violent nature to the person of another, to-wit: Martha Santiago, with malice aforethought, either express or implied, by shooting the said Martha Santiago in the face and arm with a revolver.

COUNT THREE – POSSESSION OF A FIREARM DURING THE
 COMMISSION OF A CRIME OF VIOLENCE

That BRIAN RASHARD SYLVESTER GARRIS in Clarendon County on or about April 15, 2006, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: a .22 caliber revolver, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE

DATE 10/11/2013

Brenda H. Roberts

CLERK OF COURT
 CLARENDON COUNTY, SC

P. Kelly Jackson
 SOLICITOR

WITNESSES

MANNING PD

Shaffer

DOCKET NO. 2006-GS-14- 245

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

OCTOBER TERM 2006

THE STATE
vs.

BRIAN RASHARD SYLVESTER GARRIS

J100387 (1); J100388 (2)

J100389 (3)

D/A: 5/26/06

ACTION OF GRAND JURY

USE Bill

Foreperson of Grand Jury
Date: Oct 5, 2006

VERDICT

Indictment for

ARMED ROBBERY,
ASSAULT AND BATTERY WITH INTENT
TO KILL AND POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A CRIME OF VIOLENCE

C. KELLY JACKSON, SOLICITOR

Foreperson of Petit Jury

Date:

CLARENDON COUNTY, SC
CLERK OF COURT
[Signature]
DATE _____
CL ORIGINAL FILED IN THIS OFFICE
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE

VS.

BRIAN RASHARD SYLVESTER GARRIS

AKA:

Race: Black

Sex: Male

DOB: January 01, 1989

SS#: 249-77-0352

Address: 42 N. Church Street Manning, SC 29102

DL#

SID#

CERTIFIED TRUE COPY IN THE COURT OF GENERAL SESSIONS
OF ORIGINAL FILED IN THIS OFFICE

DATE 10/1/2013

INDICTMENT/CASE#: 2006-GS-14-0265

Brenda M. Roberts J100387

CLERK OF COURT Date of Offense: April 15, 2006

CLARENDON COUNTY, SC Code §: 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Assault and Battery with intent to kill

in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 1, 4

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____ PTUP

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$	
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$100.00
\$56-5-2995 (DUI Assessment)	\$100	\$
\$35.13 (Public Def/Prob)	\$12	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$500	\$
\$33.7, 1B TP (Drug Court Surcharge)	\$25	\$25.00
\$50-21-114 (BUI Breath Test Fee)	\$100	\$
\$56-5-2942(J) (Vehicle Assessment)	\$50	\$
3% to County (if paid in installments)	\$40/ea	\$
\$90.11 TP (SCCJA Surcharge)	\$	\$3.90
TOTAL	\$5	\$5.40
		\$133.90

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

Other: _____ paid to Public Defender Fund

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

B. Roberts
Clerk of Court/Deputy ClerkCourt Reporter: Winfred

SCCA/217 (10/2007)

PRESIDING JUDGE

Judge Code: 2010-1-413Sentence Date: 10/5/08

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STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE

VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006-GS-14-0265

BRIAN RASHARD SYLVESTER GARRIS

AKA:

Race: Black

Sex: Male

DOB: January 01, 1989

SS#: 249-77-0352

Age: 19

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN Code 16-11-0330(A)
DATE 11/1/2013
CDR Code #: 0139

AW#: J100387

Date of Offense: April 15, 2006

Address: 42 N. Church Street Manning, SC 29102

DL#

SID#

CLERK OF COURT
CLARENDON COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Armed Robbery

in violation of 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 011319

☐ NON-VIOLENT

☒ VIOLENT

☒ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

SPECIAL CONDITIONS:

PTUP

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$90.11 TP (SCCJA Surcharge)

TOTAL

\$	\$
\$	\$
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$3.90
\$5	\$5.00
\$	\$133.90

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Court Reporter:

Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (10/2007)

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE

VS.

BRIAN RASHARD SYLVESTER GARRIS

AKA:

Race: Black

Sex: Male

Age: 19

DOB: January 01, 1989

SS#: 249-77-0352

Address: 42 N. Church Street Manning, SC 29102

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006-GS-14-0265

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

AW#: J100387

Date of Offense: April 18, 2006 10/1/2013

S.C. Code §: 16-23-0490

CDR Code #: 0549

CLERK OF COURT
CLARENDON COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME
in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0151419☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus
costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$	
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$100.00
\$56-5-2995 (DUI Assessment)	\$100	
\$35.13 (Public Def/Prob)	\$12	
\$73.3, 1B TP (Law Enforce. Funding)	\$500	
\$33.7, 1B TP (Drug Court Surcharge)	\$25	\$25.00
\$50-21-114(BUI Breath Test Fee)	\$100	
\$56-5-2942(J) (Vehicle Assessment)	\$50	
3% to County (if paid in installments)	\$40/ea	
\$90.11 TP (SCCJA Surcharge)	\$	\$3.90
TOTAL	\$5	\$133.90

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.B. Roberts
Clerk of Court/Deputy ClerkCourt Reporter: Winfred

SCCA/217 (10/2007)

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 9/5/08

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF ClarendonBrian Garbis 330406

Full name and prison number (if any) of Applicant.

IN THE COURT OF COMMON PLEAS

2013-CP-14-393BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

OCT - 1 PM 12:11

v.

State of South Carolina

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE APPLICATION FOR
DATE 10/1/2013 POST-CONVICTION RELIEFBeulah B. RobertsCLERK OF COURT
CLARENDON COUNTY, SCINSTRUCTIONS - 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 Northland Correctional Institution / NCI
2. Name and location of Court which imposed sentence Clarendon County / Court House 3 rd
3. Name(s) of co-defendant(s) (if any) Kerr St. Manning SC
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) CG-65-14-0265
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept 5, 2008, consecutive terms of 20 years imprisonment for armed
 - (b) robbery and ABWI Krait: 5 years concurrent imprisonment for possession

- (c) of a firearm during the commission of a violent crime
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Convictions Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 10, 2011
- ii. September 2, 2011
- iii. May 15, 2013
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 4354
- 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) Issues provided on extra paper
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Issues provided on extra paper
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? yes

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. Petition for writ of Certiorari to the SC Courts of appeals
 ii. Motion for new trial to Clarendon County Court of General sessions
 iii. Petition for Relieving to the SC Court of appeals
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. SC Court of appeals, P.O. Box 11629, Columbia, SC 29211
 ii. Clarendon County Courthouse, 3 W. McIff St., Manning, SC
 iii. SC Court of appeals, P.O. Box 11629, Columbia, SC 29211
 iv. _____
 (c) the disposition thereof:
 i. Conviction Affirmed
 ii. Denied
 iii. Denied

- iv. _____
- (d) the date of each such disposition:
- i. August 10, 2011
- ii. August 24, 2011
- iii. September 22, 2011
- iv. May 15, 2013
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Opinion No. 4859
- 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?
- N/A
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) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- Harry Dove, Esquire, 3 W. H. St. Manning SC
 - Garry L. Doss Esquire, 201 N. Main St. P.O. Box 1211 Sumter SC 29151
 - Lanette Cantel Durant, Appellate Defender, P.O. Box 11589, Columbia SC 29221
- (b) the proceedings at which each such attorney represented you:
- arraignment
 - Trial, Sentencing and motion for New trial
 - appeal, petition for rehearing

19. State clearly the relief you seek in filing this application:

Conviction overturned

20. Are you now under sentence from any other court that you have not challenged?

No

REVIEWED

FILED

MAILED

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, , 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.

Brian A. Ains

SWORN to and subscribed before me this 17TH
day of September, 2013

Shirley A. Rhea (L.S.)
Notary Public

My Commission Expires:

April 12, 2023

REVISED

N. C. C.

N. C. C. WA. C. C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Bulon Davis

Applicant

SWORN or affirmed to and subscribed before me this

17th day of September, 2013

Deborah Shee-Tyler
Notary Public

My Commission Expires: April 12, 2023

RECEIVED

SEP 17 2013

CLERK OF COURT

The Constitutionally deficient performance prejudiced the applicant and denied him a fair trial, Trial Counsel didn't object to the testimony of State's witness Elms regarding the finger print analysis Trial Counsel was incompetent in his duty to secure the finger print evidence before trial applicant wasn't aware that there were any dusting of finger prints or any finger print analysis done until day of trial trial Counsel could have hired an investigator to possibly learn who the fingerprints belonged to which could have raised the potential of identifying someone else as the assailant at least to the point of creating a reasonable doubt for the jurors and competent Counsel knows the importance of thoroughly investigating and presenting mitigating evidence dereliction of this duty is constitutionally impermissible Trial Counsel ineffectiveness prejudiced applicant for there is a reasonable probability that but for Counsel's unprofessional errors the results of the proceedings would have been different. The South Carolina Court of appeals refused to rule on this matter due to trial Counsel's failure to make a contemporaneous objection. Therefore, this matter is one for this Court under application for post conviction relief.

on April 15, 2006 M. Santiago went to the China Cuisine restaurant in Manning to pick up her fourteen year old daughter who worked there Her eleven year old son was with her as the family was leaving the restaurant in their van. A man pointed a gun at Ms. Santiago and demanded money This man shot her first in the face and then in the arm, but she survived on cross examination, investigator Elms testified that some partial hand prints were found at the scene on Ms. Santiago's van whereas if there had been any dusting of the hand print or finger print by SLE and any comparison to applicant's prints, investigator Elms responded there had been he said he had documentation to that in his case file which he did present he said he submitted the prints to SLED on June 4, 2006 and they had been part of the case file since April 15, 2006 He reported that the results showed that the prints did not match Brian Garvis so there was no match when asked investigator Elms admitted that the evidence was just coming out for the first time in the trial that day applicant was denied the effective assistance of counsel in violation of South Carolina law and the sixth and fourteenth amendments to the United States Constitution as a result to trial counsel's failure to make a contemporaneous objection Contemporaneous objection is required to properly preserve an error for appellate review State v. Burton 326 SC 605, 609, 486 S.E.2d 762 764, 1997) failure to object when the evidence is offered constitute a waiver of the right to object trial counsel duty fell below professional norms when he fell to investigate see Mossaro v. US, 538 US 500 505, 2003 During cross trial counsel learned that finger prints were taken Also see Strickland v. Washington

The Constitutionally deficient performance prejudiced the applicant and denied him a fair trial trial Counsel fail to object to SLED agent John Roberts analysis report being absent from discovery when he made objection he said prejudicial and not relevant and he should call his own expert to rebut The south Carolina Court of appeals didn't rule on this matter due to Counsel's failure to preserve the matter through objection Therefore this matter is one for this Court under application for post-Conviction relief.

The gun found in the trash can at the jail was a .22 revolver/pistol applicant testified that he did not handle a gun on April 28th and did not own a gun however he said he had fired a gun in the past He fired on April 27th which he remembered because it was two days before the stripes boss Festival in manning at the close of the defense case, the state called in reply John Roberts, who performed GSR analysis for SLED in proffered testimony/ agent Roberts who testified that he analyzed the GSR kit taken on applicant. This test indicated that GSR was found on applicant's right or left hands at the second level of testing he found no GSR on the back of his right hand none on the back of his left. The Court asked Roberts if he had an opinion as to whether the weapon that was fired was a Pistol or a Rifle Roberts stated that in his opinion, not with any reasonable degree of certainty it was a Pistol Trial Counsel fail to object to the fact that agent Roberts report was absent from Discovery, his objection was prejudicial and not relevant Trial Counsel fail to carry out his duties see Strickland v. Washington 466 US 668, 685-98 it was his duty to make sure I had competent counsel he fail to object on time a contemporaneous objection is required to properly preserve an error for review State v. Burton 326 SC 609, 486 SE2d 764 failure to object when evidence is offered constitutes a waiver of the right to object Trial Counsel was in violation of applicant 6th and 14th amendments to the US Constitution when he fail to carry out his duties as the Law requires

Further evidence of ineffective Counsel occurred when Counsel fail to object to the testimony of States witness Elms about the photographic line up shown to M. Santiago and her daughter lineups were not provided to the defense in discovery and he made no objection when the issue came before him due to Counsel's failure to preserve the matter through objection this matter is one for this Court under application for post-conviction relief.

At approximately 10 p.m. on April 15, 2006, M. Santiago picked up her teenage daughter from a restaurant where her daughter was employed immediately after her daughter entered the passenger side of Santiago van. A man opened Santiago's door pointed a gun at her, and demanded money. He shot her when she told him she had no money. Santiago tried to shut the van door but the man opened the door and shot her again. Santiago daughter gave the man money she earned from work that evening and he fled. Moreover applicant asserts that he did not receive a copy of the photographic lineup shown to Santiago and if he had known about the lineup he could have used the info in his pre-trial motion to exclude the lineup that was shown to Santiago's daughter. However Trial Counsel fail to investigate. See Messora v US 538 US 500 505, 2003 if he had ~~known~~ he would have found out that she selected me from lineup. Moreover Trial Counsel did not make a contemporaneous objection to Elms testimony about the lineup that was shown to Santiago. Trial Counsel did not make his objection to the testimony on the ground that he had not previously been given the lineup evidence until the state rested its case. Thus the issue was not preserved for applicant. See Hoffman, 312 SC 393, 440 SE2d 873. A contemporaneous objection is required to properly preserve an error for review. Burton, 326 SC 609, 486 SE2d 764. Failure to object when the evidence is offered constitutes a waiver of the right to object also. See Strickland v. Washington. Trial Counsel was in violation of applicant 6th and 14th amendment to the U.S. Constitution when he fail to carry out his duties as the law requires. He did not provide applicant with a complete defense.

Further evidence of incompetent and ineffective Counsel Come by failure of Counsel to object to the sufficiency of the limiting instructions as the Court gave prejudicial instructions to jurors about applicant's April 20 arrest it was trial Counsel's duty to object and when he failed to do so applicant was prejudiced applicant was arrested and was found not guilty by jury the Jurors had no right to hear about applicant's unrelated arrest trial Counsel Performance was elementary the applicant contends that such a reference to the jury would significantly prejudice the applicant furthermore the impact established in the conscious of the jury by being advised that the applicant had prior Criminal Charges pending in Court and that he was acquitted gives a reasonable probability that the jury or at least some of the jury would believe applicant had a propensity to commit crimes and therefore must be guilty of this one Therefore this matter is one for this Court under application for post-conviction relief.

on April 23, 2006 Applicant was arrested on an un-related charge of burglary, but he was eventually found not guilty on that charge he was caught coming out of some woods near the scene, and his hands were swabbed to check for gun shot residue (GSR) He was searched by police while he was detained there Trial Counsel made a pre-trial motion to suppress the gun found at the jail which allegedly fell from Applicant's back tray when it was emptied into trash The premise of his motion was that in order to have the gun admitted the state would have to reference applicant's arrest for an un-related charge for which he was found not guilty Trial Counsel argued that under 403, S.C.R. it would be more prejudicial to applicant than probative for the jury to know he had been arrested a second time The Judge ruled that under 403 the probative value was not substantially out weighed by the prejudicial impact he said he would instruct the jury that applicant was in jail for charges that were dismissed and that the jury was not to consider this against applicant Trial Counsel objected when the gun was admitted into evidence but he did not object to the Court's limiting instruction see State v. Davis 504 S.C. 422 SE 2d 133. 145 Trial Counsel fail to properly object to trial Judge's failure to properly charge the jury citing State v. King 158 S.C. 251, 155 SE 409 Trial Counsel was also in violation of applicant's 6th and 14th amendments to the US Constitution when he fail to provide the applicant with a complete defense

Applicant Garri's right to due process and equal protection of Law was violated denying him a fair trial when Rule 5 and Brady disclosure was withheld. Prosecutor for the state withheld photo line up until that day during the trial applicant was not provided with a copy of the lineup shown to her in response to Rule 5 and Brady requests. Investigator Elm's testified on Cross that he had shown a photo line up which included applicant Garri's picture to Ms. Santiago and her daughter about a month after the incident. Ms. Santiago was not able to identify applicant although the assailant was in close proximity to her side of the car. The discovery violation was prejudicial to applicant if trial Counsel had known about the photo lineup shown to Ms. Santiago from which she was not able to identify applicant. He could have used this in the pretrial Neil v. Biggers hearings. The fourteen year old girl of Ms. Santiago only identified applicant from the photo lineup when she was shown the lineup the second time May 24, 2006. She was previously shown the lineup on April 22, 2006 but was not able to identify applicant from the lineup at that time. Trial Counsel made pretrial motion to exclude the photolineup identification by the daughter. A hearing was held where the daughter testified. Ms. Santiago didn't testify applicant didn't learn of the photo lineup shown to Ms. Santiago until trial Counsel Cross on investigator Elm's. The prosecutor didn't play fair and had a duty to provide exculpatory evidence and all of discovery to applicant. Therefore this matter is one for this Court under application for Post-Conviction Relief.

On April 15, 2006 Martha Santiago went to the China Cuisine restaurant in Manning to pick up her fourteen year old daughter who worked there. Her eleven year old son was with her. As the family was leaving the restaurant in their van, a man pointed a gun at Ms. Santiago and demanded money. This man shot her first in the face then in the arm but she survived. Investigator Rick Elms with the Sheriff's Department testified about Case Trial Counsel motion for a mistrial and based it on rule 5 and Brady violations by the state he argued to the Court that he was not provided the photos in discovery he argued at the time they were admitted that they were more prejudicial than probative which the judge overruled. Counsel argued that he did not know that a photo lineup was shown to the actual victim, Ms. M. Santiago until ~~after~~ during trial he was not provided with a copy of the lineup shown to her. Investigator Elms testified on cross that he had shown a photo lineup which included applicant's picture, to Ms. Santiago and her daughter about a month after the incident. Ms. Santiago was not able to identify applicant although the assailant was in close proximity to her side of van. Rule 5, SCRCrimP, provides that the prosecution shall permit the defendant, upon request, to inspect and copy any documents, examinations tests which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial. A Rule 5 violation is not reversible unless prejudice is shown. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663, 2006. An individual asserting a Brady violation must demonstrate the evidence: 1) is favorable to the accused; 2) in the possession of or known by the prosecution; 3) was suppressed by the state; 4) and was material to the accused's guilt or innocence or was impeaching. Kyles v. Whitley, 514 U.S. 419, 1995. Gibson v. State, 334 S.C. 515, 514 S.E.2d 32 (1999). The South Carolina Supreme Court applied this standard in Riddle v. Ozni

369 SC 39, 631 SE2d 70 2006 where the Court ruled that if a Brady violation occurred, post conviction relief must be granted. The Brady disclosure rule is grounded in the defendant's fundamental right to a fair trial mandated by the Due Process Clause of the Fifth and Fourteenth Amendments, and it requires the prosecution to disclose evidence that is 1) in its possession; 2) favorable to the accused; 3) and material to guilt or innocence. State v. Kennerly, 331 SC 442, 503 SE2d 214, 1998. The burden is on the solicitor to disclose material under Brady if there is a reasonable probability that the results of the proceeding would have been different had the information been disclosed in State v. Osborne, 291 SC 265, 353 SE2d 276. The Supreme Court ruled that the prosecution's nondisclosure of contradictory statements made by a key state's witness in prosecution of defendants for conspiracy, armed robbery, kidnapping and murder deprived defendants of fair trial requiring new trial. Here the prosecution had no respect for applicant's rights state did not disclose the photoline. Therefore denied me the right to have a fair trial in Brady v. Maryland. The United States Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the prosecution - State v. Harvey Jones & Melissa Jones, 325 SC 310, 479 SE2d 517, 1996 citing - Brady v. Maryland. The overriding theme of Brady case is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play. Riddle v. Ozmin citing Kyles v. Whitley. The trial judge abused his discretion also denying applicant Due Process and equal protection of law when over objections allowed highly prejudicial photoline to be shown to the jury. State v. Culbreath, 377 SC 326, 659 SE2d 268. A mistrial should be granted only when absolutely necessary. State v. Council, 335 SC 1, 13, 515 SE2d 508, 514. To receive a mistrial a defendant must show both error

Applicant Garris right to due process and equal protection of law was violated denying him a fair trial when Rule 5 and Brady disclosure was withheld. Prosecutor withheld photos of victims injuries applicant was denied photo evidence through pre-trial discovery. The SC Court of appeals argued that photos of Santiago injuries was not material because nothing indicates applicant was unaware of the extent of Santiago's injuries. Applicant was prejudiced by this action. Applicant had a right to know as required under the Due Process Clause rather the photos was material to the accused guilt or innocence or impeaching additionally applicant's not guilty plea was his denial of knowledge of Santiago injuries. Therefore this issue is one for this Court under application for Post Conviction Relief.

On April 15 2006 Martha Santiago went to the China Cuisine restaurant in Manning to pick up her fourteen year old daughter who worked there Her eleven year old son was with her As the family was leaving the restaurant in their van a man pointed a gun at Ms. Santiago and demanded money This man shot her first in the face than in the arm but she survived During trial prosecution submitted photos of the victims injuries to the court trial counsel objected arguing the photographs were not relevant and the prejudicial effect outweighed any probative value The court overruled trial counsel objected and The state admitted the photographs into evidence trial counsel then motion for a mistrial based on the fact that rule 5 and Brady violations by the state occurred he argued to the court that he was not provided in discovery the photos of the victims injuries Photos was not material because nothing indicates applicant was unaware of the extent of Santiago injuries The trial judge abused his discretion denying applicant Due process and equal protection of Law when over objection allowed highly prejudicial photographic evidence to be shown to the jury trial court has discretion to grant or deny a motion for a mistrial and the courts decision will not be disturbed on appeal Absent an abuse of discretion amounting to an error of Law State v. Culbreath, 377 SC 326, 659 SE2d 268, 271, 2008) A mistrial should be granted only when absolutely necessary State v. Council, 335 SC 1, 13, 515 SE 2d 508, 514, 1999) To receive a mistrial a defendant must show both error and resulting prejudice Moreover Rule 5, SCLCrmp provides that the prosecution shall permit the defendant, upon request to inspect and copy any documents examinations test which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial A rule 5 violation is not reversible unless prejudice is shown State v. Landon, 370 SC 103, 108, 634 SE2d 666, 663, 2006) An individual asserting a Brady violation must demonstrate that evidence; 1) is favorable to

the accused; 2) in the possession of or known by the prosecution; 3) was suppressed by the state; 4) and was material to the accused's guilt or innocence or was impeaching Kyles v. Whitley 514 US 419, 1995 Gibson v. State 334 SC 515, 514 SE2d 320, 1999) The South Carolina Supreme Court applied this standard in Riddle v. Ozmint 369 SC 39, 631 SE2d 70, 2006) where the court ruled that if a Brady violation occurred, post conviction relief must be granted. The Brady disclosure rule is grounded in the defendant's fundamental right to a fair trial mandated by the Due Process Clause of the fifth and fourteenth amendments and it requires the prosecution to disclose evidence that is; 1) in its possession; 2) favorable to the accused; 3) and material to guilt or innocence State v. Kernerly 331 SC 442, 503 SE2d 214, 1998) The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching Riddle v. Ozmint Evidence is material under Brady if there is a reasonable probability that the result of the proceeding would have been different had the information been disclosed in State v. Osborne 291 SC 265, 353 SE2d 276, 1987) the Supreme Court ruled that the prosecution's nondisclosure of contradictory statements made by a key state's witness in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants ~~of~~ of fair trial requiring new trial. Here the trial judge abused his discretion based on an error of law by not granting a mistrial when the state did not disclose the photos of victims injuries this action prejudiced the applicant in Brady v. Maryland the United States Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment irrespective of the good faith or bad faith of the prosecution Sta. v. Harvey Jones & Melissa Jones 325 SC 310, 479 SE2d 517 1996 citing

Brady v. Maryland The overriding theme of the Brady cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play Riddle v. Ozmint citing Lyles v. White.

Applicant Garris right to due process and equal protection of Law was violated denying him a fair trial when Rule (5) and Brady disclosures was withheld prosecutor for the state withheld a finger print analysis which was material and favorable to the accused the prosecution knowingly suppressed this report because there was reasonable probability that the results of the proceeding would have gone in applicants favor if this analysis was produce early on applicant was prejudice for if evidence was turned over trial counsel could have raise the potential of indentifying someone else as the assailant at least to the point of creating a reasonable doubt for the jurors applicant was denied this right Therefore this matter is one for this Court under application for post-conviction relief

On April 15, 2006 Martha Santiago went to the China Cuisine restaurant in Manning to pick up her fourteen year old daughter who worked there. Her eleven year old son was with her as the family was leaving the restaurant. Their van driver pointed a gun at Ms. Santiago and demanded money. The man shot her twice but she survived investigator Nick Elms with the Sheriff's Department, testified about the case on cross investigator Elms testified that some partial hand prints were found at the scene on Mrs. Santiago's van. When asked if there had been any dusting of the hand prints by SLED and a comparison to applicants' prints, investigator Elms responded there had been. He said he had documentation to that in his case file which he did press. He said he submitted the prints to SLED on June 1, 2006 and they had been part of the case file since April 15, 2006. He reported that the results show that the prints did not match applicants so there was no match. When asked investigator Elms admitted that the evidence was just coming out for the first time in the trial that day. Trial Counsel made a motion to dismiss the case based on Rule 5 and Brady violations regarding the fingerprint analysis because he did not know about the results of the fingerprint analysis until he questioned investigator Elms during cross. He argued that the evidence was exculpatory and should have been provided to him. He told the court that a public defender was first appointed to applicants' case, but that he was subsequently retained. He said that the public defender Mr. Devoe filed a Rule 5 and Brady motion but that the same information should have been provided to him. The solicitor stated that she gave discovery information to Mr. Devoe but that she did not have to provide for substitution of counsel. She did not say specifically that she had provided the fingerprint analysis to attorney Devoe. She claimed she had given everything to Mr. Deas that she had given to Mr. Devoe.

Defense Counsel was told the Court that the information was not in the discovery he received and he did not become aware of it until they were in the midst of the trial applicant was prejudiced by the fact that his attorney belatedly learned that the prints found on the car did not match applicant if he had known this prior to trial, he could have had the opportunity to develop questions for cross examination or hired his own expert to develop this issue He could have hired an investigator to possibly learn who the finger prints belonged to which could have raised the potential of identifying someone else as the assailant at least to the point of creating reasonable doubt for the jurors in Holmes v. State, 547 U.S. 319, 2006 the U.S. Supreme Court ruled that exclusion of defense evidence of third-party denied defendant of a fair trial. At the close of the states reply testimony defense Counsel renewed his motion for a mistrial which the judge denied the trial Court has discretion to grant or deny a motion for a mistrial and the Courts decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law State v. Culbreath, 377 SC 326, 659 SE 2d 268, 271, 2008 a mistrial should be granted only when absolutely necessary State v. Courcel, 335 SC 1, 13, 515 SE 2d 508, 514, 1999. To receive a mistrial, a defendant must show both error and resulting prejudice. Rule 5, SCRIMP, provides that the prosecution shall permit the defendant, upon request to inspect and copy any documents, examinations, test which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial A Rule 5 violation is not reversible unless prejudice is shown State v. Landon, 370 SC 103, 108, 634 SE 2d 660, 663, 2006 All individual asserting a Brady violation must demonstrate that evidence 1) is favorable to the accused; 2) in the possession of or known by the

prosecution; 3) was suppressed by the state; 4) and was material to the accused's guilt or innocence or was impeaching Kyles v. Whitley 514 US 419, 1995) Gibson v. State 334 SC 515, 514 SE 2d 320, 1999 The South Carolina Supreme Court applied this standard in Riddle v. Ozmin 309 SC 39 631 SE 2d 70, 2006) where the court ruled that if Brady violation occurred, post-conviction relief must be granted. The Brady disclosure rule is grounded in the defendant's fundamental right to a fair trial mandated by the Due Process Clause of the fifth and fourteenth amendments, and it requires the prosecutor to disclose evidence that is; 1) in its possession; 2) favorable to the accused; and material to guilt or innocence. State v. Kennerly 331 SC 442, 503 SE 2d 214, 1998) The burden is on the solicitor to disclose material evidence which is exculpatory or impeaching Riddle v. Ozmin Evidence is material under Brady if there is a reasonable probability that the results of the proceeding would have been different had the information been disclosed in State v. Ashby 291 SC 265, 353 SE 2d 276, 1987) The Supreme Court ruled that the prosecution's nondisclosure of contradictory statements made by a key state's witness in prosecution defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial here the trial judge abused his discretion based on an error of law by not granting a mistrial when the state did not disclose the fingerprint analysis showing that the prints on the car did not match applicant in Brady v. Maryland the US Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v. Harvey Jones & Melissa Jones 325 SC 310, 479 SE 2d 517, 1996 Citing Brady v. Maryland The overriding theme of the Brady cases is the emphasis the Supreme Court has placed on the prosecutor's responsibility for fair play Riddle v. Ozmin Citing Kyles v. Whitley

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

)
)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Brian Rashard Garris, #330406

)
)

2013-CP-14-393

Applicant,

)
)

v.

)
)

RETURN

State of South Carolina,

)
)

Respondent.

)
)

The Respondent, making its Return to the application for post-conviction relief filed October 1, 2013, 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 Clarendon County Clerk of Court. The Applicant was indicted at the October 2006 term of the Clarendon County Grand Jury Armed Robbery, Assault and Battery with Intent to Kill, Possession of a Firearm During the Commission of a Crime of Violence (2006-GS-14-265). Garryl Deas, Esquire, represented Applicant. The Applicant proceeded to a jury trial and was found guilty as indicted to all counts on September 5, 2008. The Honorable George C. James, Jr., sentenced applicant to twenty years for Assault and Battery with Intent to Kill to run consecutive to twenty years for Armed Robbery. Additionally, Judge James sentenced Applicant to five years for Possession of a Weapon During a Crime of Violence to run concurrently.

Applicant filed a timely Notice of Appeal on September 9, 2008. Assistant Appellate Defender LaNelle DuRant of the South Carolina Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed his sentence and conviction. State v. Garris, Op. No

4859 (S.C. Ct. App. filed August 10, 2011). A petition for rehearing was submitted on August 24, 2011. An Order denying the Petition for Rehearing was filed September 22, 2011. A Petition for Writ of Certiorari was filed October 24, 2011. The State made its Return to Petition for Writ of Certiorari on June 7, 2012. By Order Dated and filed on May 15, 2013, the South Carolina Supreme Court of denied the petition for writ of certiorari. The Remittitur was issued on May 20, 2013

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and appellate records,. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel failed to object to the testimony of states witness regarding finger print analysis..."
 - b. Failure to object to Brady violation because the fingerprint report was not disclosed in the discovery material.
 - c. Failure to object to Agent Robert's report dealing with Gun Shot Residue.
 - d. Failure to object to the photo lineup shown to Ms. Santiago because it was not provided in the discovery.
 - e. Failure to object to jury instructions.
2. Due Process violation

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, SCRCP.

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.

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.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

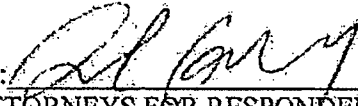
Respectfully submitted,

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By: 
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February 28, 2014

STATE OF SOUTH CAROLINA))
COUNTY OF CLARENDON)) COURT OF COMMON PLEAS

BRIAN R. GARRIS)
330406)
PETITIONER,)

v.) TRANSCRIPT OF RECORD
13-CP-14-393

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

October 02, 2014
Sumter, South Carolina

B E F O R E :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

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

CHARLES T. BROOKS, III, ESQ.
Attorney for the Petitioner

DANIEL GOURLEY, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MR. GOURLEY: May it please the Court,
2 Your Honor, this is Brian Garris versus the State of
3 South Carolina, docket number 2013-CP-14-393. He's
4 presently confined in the South Carolina Department
5 of Corrections pursuant to orders of commitment of
6 Clarendon County by the Clerk of Court, indicted in
7 2006 by the Clarendon County grand jury for armed
8 robbery, assault and battery with intent to kill,
9 possession of a firearm during the commission of a
10 crime of violence. Mr. Deas represented him. The
11 applicant proceeded to jury trial, was found guilty
12 as indicted to all counts on September 5th, 2008.
13 The Honorable George C. James, Jr., sentenced the
14 applicant to 20 years for the assault and battery
15 with intent to kill to run consecutive to a 20 year
16 sentence for armed robbery. Additionally, Judge
17 James sentenced the applicant to five years for
18 possession of a weapon during the crime of violence
19 which was to run concurrently. He filed a timely
20 notice of appeal on September 9th, 2008. The South
21 Carolina Court of Appeals confirmed his conviction.
22 A petition for rehearing was submitted August 4th,
23 2011. An order denying petition for rehearing was
24 filed September 22nd, 2011. Petition for writ
25 certiorari was filed October 24, 2011, and the State

1 made its return writ certiorari June 7th, 2012, by
2 order dated and filed May 15th, 2013. South
3 Carolina Supreme Court denied petition for writ
4 cert. Remittitur was issued May 20th, 2013. He
5 filed a timely application for post-conviction
6 relief on October 1st, 2013 alleging ineffective
7 assistance of counsel and due process violation.
8 The State made its return on February 28th, 2014,
9 and he is represented in this matter by Mr. Charles
10 Brooks.

11 THE COURT: All right, Mr. Brooks.

12 MR. BROOKS: May it please the Court,
13 Judge, we call Mr. Garris to the stand.

14 THE COURT: All right, Mr. Garris, if you
15 will come forward.

16 THE BAILIFF: Place your left hand on the
17 Bible, raise your right hand. State your name.

18 THE WITNESS: Brian Garris.

19 WHEREUPON,

20 **BRIAN GARRIS,**

21 having been duly sworn by the Bailiff, testified as
22 follows:

23 THE BAILIFF: Have a seat up here. Please
24 state your name, spell your last name for the
25 record.

PW - B. GARRIS - DIRECT

1 THE WITNESS: Brian Garris, G-A-R-R-I-S.

2 THE COURT: Yes, sir.

3 MR. BROOKS: May it please the Court,
4 Judge.

5 **DIRECT EXAMINATION**

6 BY MR. BROOKS:

7 Q Mr. Garris.

8 A Yes, sir.

9 Q How are you doing?

10 A I'm all right.

11 Q I know you don't come to court very often so you
12 go ahead and try to relax yourself as much as you can
13 considering your circumstances. Take a deep breath.
14 And you understand you're here for post-connection
15 relief?

16 A Yes, sir.

17 Q And you understand what you're asking for and the
18 only thing that we can get from Judge Newman?

19 A Yes, sir.

20 Q The only thing you want, the only thing he can
21 give you is the right to get a new trial?

22 A Yes, sir.

23 Q We talked about that extensively. And it's your
24 desire to ask, to try to get that new trial; is that
25 correct?

PW - B. GARRIS - DIRECT

1 A Yes, sir.

2 Q Okay. Now you had Mr. Garryl Deas representing
3 you in this matter?

4 A Yes, sir.

5 Q Okay. He was a paid lawyer; is that right?

6 A Yes, sir.

7 Q Okay. Now, and in your application you talked
8 about ineffective assistance of counsel Mr. Deas,
9 and said that there was some issues about some
10 discovery. You remember that?

11 A Yes, sir.

12 Q Tell the Court, can you elaborate on that for
13 Judge Newman, what you mean about those discovery
14 issues.

15 A Well, on -- I was originally represented by Harry
16 Devoe. My family then retained Mr. Garryl Deas. In
17 the process of Mr. Deas getting my case, Harry Devoe
18 turned everything over to Mr. Deas. In the process
19 of all this going on, during trial some evidence
20 came about that wasn't in discovery, wasn't in
21 original discovery. Fingerprints was found at the
22 scene of the crime which didn't belong to me or
23 pictures of the vic-- pictures of the victim or
24 pictures of the photo lineup that wasn't provided to
25 me. The victim stated that the person was 6'1",

PW - B. GARRIS - DIRECT

1 6'3", dark complected with dreads; it wasn't me.

2 And that wasn't provided to me. None of that was in
3 my original discovery in my original discovery.

4 Q Anything else?

5 A The photo lineup, the fingerprint violation, and
6 the photos of the victim's injury.

7 Q Okay. And did you talk to Mr. Deas about that?

8 A Yes, sir. Yes, sir, at the trial while the trial
9 was in process.

10 Q Okay.

11 A I wasn't aware of none of these things until
12 trial was under way.

13 Q Okay. How long did you have Mr. Deas on your
14 case before you went to trial?

15 A Mr. Deas was hired at the last minute before
16 trial. Once I see how things was going with the
17 public defender that I had, my family then retained
18 Mr. Deas. And originally I was, originally he was
19 retained for a first degree burglary and for the
20 armed robbery. I went to trial for my first trial.

21 Q What happened with the first trial?

22 A I was found not guilty.

23 Q He got you acquittal?

24 A Yes, sir.

25 Q Okay.

PW - B. GARRIS - DIRECT

1 A I was arrested April 28th, 2006. A GSR kit was
2 performed on my hand, and a month later I was
3 charged with armed robbery, assault and battery, and
4 possession. During the process of that trial the
5 courts allow, the courts allow them to use that
6 April 28th GSR kit. The gunshot residue found on my
7 hand on the 28th, they allowed them to use it in
8 court stating that the GSR that they found on my
9 hand came from the April 15th shooting, when it
10 didn't. It came from the April 28th shooting. I
11 was trying to explain that to him but ---

12 Q The April 28th incident, that's the one you were
13 acquitted on?

14 A Yes, sir.

15 Q So really your issue is the State used evidence
16 from the case that you were acquitted on?

17 A Yes, sir.

18 Q And then using it in the case on the April 15th
19 incident?

20 A Yes, sir.

21 Q Okay. Did Mr. Deas, were there any objections
22 raised during that?

23 A He object. He stated, he said relevance and
24 prejudicial, relevance and prejudicial value but ---

25 Q Did he say it was, it was irrelevant and it was

PW - B. GARRIS - DIRECT

1 very prejudicial to your case?

2 A Yes, sir.

3 Q He said something like that?

4 A Yes, sir.

5 Q Okay.

6 A But the issue wasn't preserved because of
7 contemporaneous [sic] objection wasn't made and ---

8 Q A contemporaneous objection?

9 A And timely objection, yeah.

10 Q Okay.

11 A So it wasn't preserved for me on appeal because
12 it wasn't timely objected to so.

13 Q Okay, all right.

14 A Also, when the gun -- in regards to the gun, when
15 the courts gave the jury instructions he didn't
16 object to the limited instruction. He should have
17 object to the fact that at...

18 Q He should have objected to?

19 A The limited instructions.

20 Q He ---

21 A The judge allowed the Court to hear testimony in
22 regards to the April 28th burglary.

23 Q Okay.

24 A And the Court said he didn't find, he didn't
25 find it, he didn't find it all prejudicial towards

PW - B. GARRIS - DIRECT

1 me if the court hear anything about the April 28th
2 burglary. But he said he would give the jury a
3 limited instruction, but he didn't object. My trial
4 attorney didn't object to the fact that, he didn't,
5 he didn't, you know, he basically, that says I had
6 propensity to commit violent crime and that just
7 tainted the jury right there.

8 Q Okay. So you're saying Mr. Deas didn't object or
9 he did object?

10 A He didn't, he didn't, he didn't -- the charge,
11 the limiting the jury, he just, I'm not sure but.

12 Q Are you saying that he didn't make a timely
13 objection on that?

14 A He didn't make timely objection also; but the
15 charge, limited instructions, when the judge gave
16 the jury the limited instructions he didn't object
17 to the fact of what he was saying. He just allowed
18 the judge to go on and go on and go on in regards to
19 the second degree to the first degree burglary.

20 Q Okay. So what you're saying is he should have
21 objected to the limited jury instructions?

22 A Instructions, yes, sir.

23 Q And that dealt with that testimony?

24 A Yes, sir.

25 Q Okay. All right. Is there anything else that

PW - B. GARRIS - DIRECT

1 you think Mr. Deas made some mistake other than
2 these things we covered? This is the day to tell
3 Judge Newman that we're trying to get you a new
4 trial.

5 A What's really wrong is that those are -- that GSR
6 kit, that what killed me. I don't know how that
7 happened. That GSR kit, that what knocked the jury
8 to think that I was the one that pulled the trigger.
9 That GSR, that just killed me right there. That
10 just killed my whole trial, right.

11 Q Is that something Mr. Deas objected to them
12 using?

13 A He said I object, but go ahead. He just waited
14 till the State rested their case and then object and
15 then the judge denied his objection.

16 Q Okay.

17 A He made a motion.

18 Q Okay.

19 A And I -- messed up too that my attorney made a
20 motion at the beginning of the trial for with the,
21 in regards to suppression of gun.

22 Q Okay.

23 A And that's when the limited instruction came
24 about.

25 Q Okay. And that was the gun they found trash at

PW - B. GARRIS - DIRECT

1 the jail?

2 A Yes, sir.

3 Q Okay. That was used against you in this trial
4 here?

5 A Yes, sir.

6 Q And Mr. Deas raised, he raised the issue?

7 A And pretrial motions he made, he made a motion to
8 suppress the firearm. That was basically what his
9 whole case was based on, trying to get the gun.
10 That was basically his whole case getting the gun
11 suppressed and let them know who actually was at the
12 scene of the crime.

13 Q Okay.

14 A But when the gun, when the judge denied his
15 motion the whole case just went up in smoke.

16 Q Okay, all right. Anything else you want to tell
17 him about why you should get a new trial other than
18 what we covered?

19 A I know this probably -- I was 17 years old, and
20 me not wanting to be a snitch I got that, not
21 wanting to be a snitch I got 40 years.

22 Q Did -- so are you saying that the State offered
23 you a deal?

24 A Yeah, but I didn't want to take it.

25 Q Okay. What kind of deal did they offer you back

PW - B. GARRIS - CROSS

1 then?

2 A 10 to 15 years.

3 Q Okay. You were like 16, 17 years old at the
4 time?

5 A Yeah.

6 Q How old are you now?

7 A 25.

8 Q So if you had your wish it would be to have this
9 overturned and go back and take that deal, right?

10 A Yeah.

11 Q Okay. Is there anything else you want to tell
12 the Court?

13 A Huh-uh.

14 Q You sure?

15 A I'm positive.

16 Q All right. Answer any questions from
17 Mr. Gourley.

18 **CROSS-EXAMINATION**

19 BY MR. GOURLEY:

20 Q Hi, Mr. Garris. You remember how many times you
21 met with Mr. Deas prior to your trial?

22 A Probable about, probably about once or twice
23 before.

24 Q Once or twice?

25 A Once or twice. I had -- he represent me on two

PW - B. GARRIS - CROSS

1 charges so on my second trial he came to see me
2 about two, two times to maybe three, I'm not sure.

3 Q And so your first trial, let's just get this
4 clarified. Your first trial Mr. Deas got you
5 acquitted on, that had no relation whatsoever to the
6 underlying charges that you were found guilty on?

7 A Might as well say with the GSR kit that they
8 used, that GSR kit from April 28th. You might as
9 well said they did.

10 Q Right. Well the GSR kit, during the course of
11 trial you stated that you never handled firearms at
12 all, correct?

13 A No, I stated I didn't held firearms on that day.
14 I said I handled a rifle ---

15 Q Okay.

16 A ---the day ---

17 Q You said that you don't own any firearms. Do you
18 recall that?

19 A Yes.

20 Q So during the course of trial you told during
21 cross-examination that you don't own any firearms

22 ---

23 A Yes.

24 Q ---right? Okay. That you actually only owned a
25 bee bee gun?

PW - B. GARRIS - CROSS

1 A Yes.

2 Q Okay. Let's talk about your defense at trial.

3 What was your defense? That you just weren't there?

4 A Yeah.

5 Q Okay. As a matter of fact, you attempted to
6 establish an alibi defense, right, with one of your
7 witnesses? He had picked you up from the gas
8 station, y'all went to McDonalds, and then he was
9 dropping you off at your grandmother's house; is
10 that right?

11 A Yes, sir.

12 Q And then he saw the police on the corner so he
13 had to drop you off because he didn't have his kids
14 and the safety belts and then left, right? And at
15 that point you walked back to your grandma's house?

16 A Yes, sir.

17 Q So you were trying to establish an alibi defense
18 during your trial to show that you weren't the
19 person that committed this crime, right?

20 A Yeah.

21 Q Okay. In regards to the fingerprint report, your
22 fingerprints were never found on this car, right?

23 A No, sir.

24 Q Okay, and then the State alleges you touched it
25 twice, right?

PW - B. GARRIS - CROSS

1 A Yes, sir.

2 Q And but yet, your fingerprints weren't on there?

3 A No, sir.

4 Q And that came out during trial, right?

5 A Yes, sir.

6 Q Okay. The photo lineup, the victim -- the police
7 showed the victim the photo lineup, right?

8 A Yes.

9 Q That photo lineup included a picture of you,
10 right?

11 A Yes, sir.

12 Q And the victim could not identify you out of the
13 photo lineup, right?

14 A No, sir.

15 Q And during the trial she even had trouble
16 identifying whoever it was that committed this
17 assault on her, right?

18 A Yes, sir.

19 Q It was very speculative at best who did this
20 according to her?

21 A Yes, sir.

22 Q Okay. And your attorney did object to the
23 fingerprints and GSR and the pictures, right?

24 A But it wasn't preserved for appeal because it
25 wasn't ---

PW - B. GARRIS - CROSS

1 Q Right. And he also made a motion for a new trial
2 based on the violation of the Brady violation or
3 Rule 5 violation, right?

4 A Say it again.

5 Q He made a motion for a new -- for a mistrial, not
6 a new trial, right?

7 A Yes, sir.

8 Q And he made that after his directed verdict
9 motion?

10 A Yes, sir, and the judge said he'll hold the
11 motion in abeyance.

12 Q Right.

13 A And he came back and stated that he was denying
14 not, denying the motion.

15 Q So after all the evidence was presented and the
16 State -- you rested and then the State rested in
17 rebuttal, Mr. Deas renewed his motion for a mistrial
18 and Judge James denied that, right?

19 A Yes, sir.

20 Q Okay. And just so I'm clear, your issue with the
21 limiting instruction was that Mr. Deas should have
22 objected or made a timely objection in regard to
23 Judge James continuing on about the gun?

24 A Yes, sir.

25 Q Okay.

RW - G. DEAS - DIRECT

1 A And my arrest for April 28th.

2 Q Okay. Just so I'm clear, your defense was you
3 were never there?

4 A Yes, sir.

5 Q Period?

6 A Period.

7 Q Okay. Thank you, Mr. Garris.

8 MR. GOURLEY: No further questions, Your
9 Honor.

10 THE COURT: Mr. Brooks.

11 MR. BROOKS: No questions, Judge.

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

13 MR. BROOKS: Judge, that's the Applicant's
14 case.

15 THE COURT: All right. All right,
16 Mr. Gourley.

17 MR. GOURLEY: We would call Mr. Deas to
18 the stand, Your Honor.

19 THE COURT: Mr. Deas.

20 THE BAILIFF: Place your left hand on the
21 Bible, raise your right hand. State your name
22 please.

23 THE WITNESS: Garryl Lenard Deas.

24 WHEREUPON,

25 **GARRYL L. DEAS,**

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1 having been duly sworn by the Bailiff, testified as
2 follows:

3 THE BAILIFF: Thank you. Please state
4 full your name, spell your last name for the record.

5 MR. GOURLEY: Garryl Lenard Deas, D-E-A-S.

6 **DIRECT EXAMINATION**

7 BY MR. GOURLEY:

8 Q Mr. Deas, how long you been practicing law?

9 A About 18 years.

10 Q And you were retained in this case?

11 A Yes, I was.

12 Q Do you recall approximately how long before the
13 trial started?

14 A I can. I don't recall right offhand, but I can
15 tell you by looking in my file.

16 Q All right.

17 A As was previously stated I had already
18 represented Mr. Garris on a burglary first charge
19 where he was found not guilty at trial. But then I
20 was retained on the armed robbery and assault and
21 battery with intent to kill and the possession of
22 weapon during violent crime charge. I was retained
23 on those charges, it looks like, about July 7th of
24 '08.

25 Q Okay. And the burg first charge had nothing to

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1 do with the underlying charges?

2 A It -- they were two separate incidents so they
3 didn't have anything to do with each other so far as
4 the facts surrounding each incident. But what made
5 them link took some extent was that according to the
6 theory of law enforcement and prosecution, they
7 believed that the burglary accident which happened
8 on April 28th, '06, when he was arrested on that
9 incident they believed that the gun that was used in
10 the April 15th, '06 armed robbery offense, they
11 believed that gun was brought into the jail by
12 Mr. Garris when he was arrested on the burglary
13 first charge.

14 Q Okay.

15 A So that's the way they're linked.

16 Q And talking about the gun, it was alleged by the
17 State that Mr. Garris smuggled the gun in, got into
18 his cell, put it on the food tray, covered it up
19 with food, and then the inmates took it out the foot
20 tray and dumped it down in the trash can, right?

21 A That's correct.

22 Q And that it was alleged by the State that
23 Mr. Garris was the only person in that cell?

24 A That's correct.

25 Q Okay. And then the forensics or ballistics test

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1 was done on the gun, the bullet that was found in
2 Ms. Santiago, the victim in the case, matched the
3 ballistics found used matched the gun, correct?

4 A That's correct.

5 Q Okay. And of course you argued that the gun was
6 not Mr. Garris', that there may have been other
7 inmates in the cell, so on and so forth, correct?

8 A Right. And of course, at the beginning of the
9 trial I made a motion in limine to suppress any
10 evidence relating to the gun or to suppress the gun
11 itself being admitted into evidence. Those motions
12 were denied. Also during the trial I made numerous
13 objections to referencing the April 28th, '06
14 burglary first offense. Essentially what the
15 judge's ruling was, it was a limited instruction
16 essentially throughout trial to not discuss the
17 details of the burglary first incident, but that it
18 would be noted that he was arrested ---

19 Q Right.

20 A ---for the burglary first on April 28th, '06,
21 that that is the day allegedly he brought the gun
22 from the April 15th incident into the jail.

23 Q And also the burg first came into play through
24 Mr. Garris' testimony when he denied that he ever
25 handled weapons, correct?

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1 A That's correct.

2 Q GSR kit that was done that day?

3 A That's correct.

4 Q That's how the State would bring in the fact that
5 gunshot residue was found on his hand ---

6 A From the April 28th.

7 Q From April 28th, that Mr. Garris was denying the
8 fact he owned weapons essentially?

9 A Right. He essentially denied that he had handled
10 weapons.

11 Q Okay. Regarding the -- let's just start with the
12 Brady stuff. The photographs that were introduced,
13 you made a motion for mistrial based off the fact
14 you weren't aware of these photographs, correct?

15 A Right. Essentially, of course I wasn't his
16 original attorney. He was represented by Harry
17 Devoe; I think he was public defender. Mr. Devoe
18 filed rule 5 and Brady motions and so did I. Mr.
19 Devoe turned over everything he had in his file to
20 me. And then during the trial these photos were
21 introduced from the photo lineup which were not in
22 Mr. Devoe's discovery package, and they were never
23 given to me. The first time I was made, you know,
24 the first time I saw them was in the midst of trial.

25 Q Right.

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1 A So, of course I objected Rule 5 and also objected
2 as to the prejudicial effect and the relevance of
3 them. I think it was actually, I think, brought out
4 during trial that I think the victim didn't pick him
5 out from any of the photo lineups anyway.

6 Q Right.

7 A But the objection was made, but the court ruled
8 to allow the photo lineup but the objection was
9 made.

10 Q Okay. So you objected to the photo lineup; but
11 again, your defense at trial was that Mr. Garris was
12 never there?

13 A Yeah. Essentially based on what he had discussed
14 with me during our numerous meetings was that he was
15 not there, that he was, you know, in the vicinity
16 but not at the scene.

17 Q Okay. So the fact that the victim was not able
18 to identify Mr. Garris in photo lineup helped your
19 case, correct?

20 A Correct.

21 Q And there was no -- and the victim in this case
22 throughout the course of trial had a hard time
23 identifying any, the perpetrator period, whether it
24 was Mr. Garris or not?

25 A Yeah, I think at some point testimony was

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1 provided by the victim, and I think another
2 individual that was in the vehicle.

3 Q The daughter.

4 A That the person that committed the crime had
5 looked like they had dreads or braids, and of
6 course, Mr. Garris did not. So their identification
7 of the assailant wouldn't, didn't come close to
8 matching Mr. Garris' appearance.

9 Q Right. This is something you harped on at trial?

10 A Correct.

11 Q And Ms. Santiago, the victim, never did in-court
12 identification of Mr. Garris or anything like that,
13 right?

14 A No.

15 Q There was another Brady violation that was
16 objected to, and that was actually photos of the
17 victim herself, the shots fired into her head.
18 During the course at trial it came up that you were
19 not made aware of those photographs, right?

20 A That's correct.

21 Q And again, it was never in dispute that
22 Ms. Santiago was shot, right?

23 A No.

24 Q So that wasn't some kind of new occurrence that
25 developed during the course of trial?

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1 A No.

2 Q Okay.

3 MR. GOURLEY: Beg the Court's indulgence,
4 Your Honor.

5 BY MR. GOURLEY:

6 Q Regarding the fingerprint report, again, this was
7 another issue Brady violation that you objected to,
8 there was an objection to Brady violation. It was
9 alleged during the course of trial that Mr. Garris
10 touched the car, pulled open the door twice trying
11 to access the car to get Ms. Santiago, correct?

12 A That's correct.

13 Q And his fingerprints were never found on the car,
14 right?

15 A That's correct.

16 Q Again, that would support your theory that
17 Mr. Garris was never there, never involved, right?

18 A That's correct.

19 Q Okay.

20 A But an objection was made regarding it because it
21 was not included in ---

22 Q Right.

23 A ---discovery that either Mr. Devoe had which he
24 gave to me and it was not presented to me until the
25 time of trial.

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1 Q But you were able to adequately cross-examine the
2 fingerprint analysis reports, the investigator who
3 had the report done, correct?

4 A That's correct, and it was confirmed that his
5 fingerprints weren't discovered.

6 Q So --

7 A Mr. Garris, yes, sir.

8 Q So again, just for the record, you were able to
9 explore all these issues that you objected to under
10 Brady, right?

11 A That's correct.

12 Q Okay. Regarding ---

13 A Even though this evidence to some extent was
14 allowed in, it really wasn't detrimental to him ---

15 Q That's right?

16 A ---because it showed him he wasn't -- it showed
17 his fingerprints weren't on the vehicle, and it
18 showed that the victim couldn't identify him.

19 Q Right. Regarding the limiting instruction about
20 the burg first charge, can you just kind of
21 elaborate on your thought process on that.

22 A Well, I guess my thought process was, is that if
23 the, you know, I didn't want the jury hearing that
24 he had been arrested for burglary first on
25 April 28th because it could cause the jury to

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1 believe that he had a propensity to commit crimes or
2 that he was, that if he had been previously arrested
3 for a crime that perhaps he has a tendency to engage
4 in this kind of criminal activity. So I, clearly I
5 did not want that information being shared with the
6 jury so of course I -- that's why I made my motion,
7 made my pretrial motion to essentially suppress any
8 evidence or information regarding that. What the
9 judge ruled was that there would be a limited
10 reference to the fact that he was arrested on
11 April 28th, '06 for an unrelated charge but --

12 Q Right.

13 A --the prosecution would not be able to go into
14 the details of the incident or that charge.

15 Q Okay. And you objected to that, correct?

16 A Yes, on more than one occasion.

17 Q Okay. Let's just talk about the evidence in the
18 case, Mr. Deas. Mr. Garris was picked out of the
19 photo lineup by the daughter of the victim, correct?

20 A Right.

21 Q She was actually in the car at the time that
22 they, or attempted armed robbery or robbery
23 occurred, right?

24 A Right.

25 Q And it was alleged by the State that Mr. Garris

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1 got 40-dollars from Ms. Santiago, correct?

2 A That's correct.

3 Q The denominations were two 20-dollar bills. The
4 State produced witnesses that had Mr. Garris show up
5 the next day having the same denominations, correct?

6 A Right, that's correct.

7 Q And then Mr. Garris was seen shortly after the
8 incident wearing the same shirt that was given in
9 the description, correct, or it was a mechanic
10 shirt?

11 A Right.

12 Q That later came out that the police officer
13 misunderstood what a mechanic shirt was, and that it
14 was later came out that the description of the shirt
15 matched what Mr. Garris was wearing at the time?

16 A That's correct. But I think the State's case,
17 they relied heavily on the fact that they believed
18 that the gun that was found in the jail ---

19 Q Right.

20 A ---by another inmate, was the gun that was used
21 in the armed robbery, they believed that it was
22 Mr. Garris that brought that gun into the jail when
23 he was arrested on April 28th of '06. And even
24 though he was searched three or four times, strip
25 searched, pat down searches conducted, and no gun

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1 was found, the State's theory was that the only way
2 that gun that was used in the armed robbery incident
3 got into the jail was because Mr. Garris brought it
4 in when he was arrested on April 28th on the
5 unrelated burglary charge.

6 Q And you explored all this at trial?

7 A Correct.

8 MR. GOURLEY: And Your Honor, I have no
9 other questions.

10 Thank you, Mr. Deas.

11 THE COURT: Mr. Brooks.

12 **CROSS-EXAMINATION**

13 BY MR. BROOKS:

14 Q Mr. Deas, what was the other evidence that the
15 State relied on in the prosecution of Mr. Garris?

16 A Well, as I probably pointed out during my closing
17 argument and throughout trial, there really was no
18 evidence to link him to the actual armed robbery
19 crime other than the, I guess, the photo, the
20 identification made by the daughter. But so far as
21 fingerprints or eyewitnesses or -- well, I guess
22 other than there were no fingerprint evidence
23 established to show that he was the person that
24 opened the door to the car. The weapon that was
25 used in the armed robbery crime, there was really no

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1 way to link him to that weapon. From my perspective
2 there was no way to establish that he was the person
3 that brought it into the jail. I mean, you know, my
4 recollection is that the gun, when the gun was found
5 it wasn't reported to the police that the gun was
6 found in the jail until nine days later.

7 Q Was there an inmate that testified against him?

8 A Yeah. There was an inmate that testified that
9 said that one of the inmates that found the gun
10 testified. But my position was that a gun that
11 shows up in the jail and the gun -- and evidence I
12 guess, the fact that the gun was found was
13 immediately reported by the inmate that found it and
14 it was reported to the director of the jail that
15 same day that the gun was there. But unfortunately
16 for whatever reason, that the fact that gun was
17 found in the jail it was never reported to law
18 enforcement until nine days later. So my position
19 was, is that anyone in that, you know, anyone could
20 have had that contact with that gun during that nine
21 day period. There was nothing specifically
22 establishing that it was Mr. Garris that brought the
23 gun in the jail. And of course countless people
24 come in and come out of jail all, you know,
25 regularly so there was no way to pinpoint that it

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1 was exactly, it was specifically him that brought
2 the gun into the jail. So there was no way to, from
3 my perspective, to link that gun to him because it
4 could have, that gun could have been brought in by
5 anyone.

6 Q Was there ever an issue about that victim's
7 daughter and her ability to pick him out?

8 A I don't, I don't really recall, but I mean, she,
9 my recollection is -- again, this was, this trial
10 was in '08 so you're talking six years ago. But my
11 recollection is that she said she could identify
12 him, or that she did identify him from a photo.

13 Q Yeah.

14 MR. BROOKS: Beg the Court's indulgence
15 Your Honor.

16 BY MR. BROOKS:

17 Q Mr. Deas, do you recall the victim's daughter
18 being asked to try to identify him on one occasion
19 and being unable to identify him, and then sometime
20 thereafter the investigator coming back to her and
21 then she was able to identify him? Do you recall
22 any of that?

23 A I mean, I don't recall that sitting here today.
24 I mean, again, we're talking six years ago, but I
25 know that the daughter at some point made some

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1 identification of him.

2 Q Okay. She ---

3 A Whether she initially denied being able to
4 identify him and maybe later did so, I don't recall.
5 I wouldn't, I mean, I could probably look back in
6 the transcript to see, but I don't know that just
7 right offhand. I don't remember.

8 Q Okay.

9 MR. BROOKS: No other questions, Judge.

10 THE COURT: Anything further?

11 MR. GOURLEY: I have nothing further, Your
12 Honor.

13 THE COURT: All right, you may step down.

14 THE WITNESS: Thank you, Judge.

15 THE COURT: Any other witnesses?

16 MR. GOURLEY: Judge, I had Amy Land
17 coming. She's down in drug court. She said she was
18 going to be here at 1 when I last spoke to her.

19 THE COURT: All right.

20 MR. GOURLEY: Maybe she got held up. I
21 don't know if you would prefer to do motions
22 hearings or if you'd allow me to call her or?

23 THE COURT: No, we need to go to lunch I
24 believe.

25 MR. GOURLEY: Go to lunch, okay. I have

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1 no objection to letting Mr. Deas go if Mr. Brooks
2 doesn't.

3 MR. BROOKS: That's fine with me, Judge.

4 THE COURT: All right. We'll go get
5 something to eat.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: Yes, sir.

8 MR. GOURLEY: Your Honor, we call Ms. Amy
9 Land to the stand.

10 THE BAILIFF: Left hand on the Bible,
11 state your name please.

12 THE WITNESS: Amy Land.

13 WHEREUPON,

14 **AMY LAND,**

15 having been duly sworn by the Bailiff, testified as
16 follows:

17 THE BAILIFF: Please state your name,
18 spell your last name for the record.

19 THE WITNESS: Amy Ander Land, L-A-N-D.

20 **DIRECT EXAMINATION**

21 BY MR. GOURLEY:

22 Q Solicitor Land, you prosecuted this case?

23 A That's correct.

24 Q I'm just going to get right to the point. There
25 have been some allegations that there were various

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1 Brady violations, specifically regarding photos of
2 the victim, testimony analysis was not turned over,
3 and also -- I'm drawing a blank, there was one more.
4 Photo lineup that was shown to the victim, she was
5 wasn't able to identify him. What is your procedure
6 with regards Brady material and Rule 5 material?

7 A As far as Rule 5 material as you know,
8 particularly in a small town when we're getting
9 things to SLED and trying to get things back, we
10 make every effort, or I made every effort when I was
11 there to make sure that the defense attorney
12 received everything that existed. In doing that,
13 what I would do is give them any receipts where law
14 enforcement handed everything over to SLED. SLED
15 often took some time getting things back so I would
16 hand it over as I got it. And I always had an open
17 file policy so that they could come any time, look
18 through my file. I would take them to the Sheriff's
19 Office any time that they wanted to go there, and we
20 would go through the file together to make sure that
21 I didn't miss anything and that the defense attorney
22 didn't miss anything.

23 Q And to the best of your recollection did you do
24 that in this case with Mr. Deas?

25 A Absolutely.

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1 Q It's also been an allegation of failure to turn
2 over the gunshot residue report. Do you have any
3 kind of recollection about that?

4 A The only thing I recollect about that is that
5 there was some confusion because he had one
6 attorney, Harry Devoe, for quite a while and then
7 Garryl Deas came up. So I believe that some of the
8 things were turned over to Harry Devoe and then just
9 simple human error. I recalled turning it over and
10 then it didn't get to the second attorney. I think
11 that at some point during the trial it came to
12 everybody's knowledge that it had not been turned
13 over, that for some reason the defense attorney
14 didn't happen and, of course, we corrected that as
15 quickly as possible.

16 Q Okay. Thank you, Ms. Land.

17 MR. GOURLEY: That's all the questions I
18 have, Judge.

19 THE COURT: Mr. Brooks.

20 **CROSS-EXAMINATION**

21 BY MR. BROOKS:

22 Q Ms. Land, how are you doing today?

23 A Doing good, how about you?

24 Q You said once you became aware that perhaps the
25 information not gotten to the second lawyer and we

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1 corrected it as soon as possible, what do you mean
2 by that? What happened in this case?

3 A Honestly, I cannot remember. That was a long
4 time ago. What I think happened was that somebody
5 mentioned something about the GSR. We realized that
6 that particular defense attorney did not have it.
7 We broke, gave him the time to get that information
8 and to become familiar with it.

9 Q How much time are we talking about between the
10 time he got it to get familiar and then be ready for
11 trial?

12 A That was up to Judge James, not me, and I don't
13 recall amount of time.

14 Q I know it's up to the judge. I'm just trying to
15 get an idea, time frame, how much time is that, was
16 that? As I've heard one judge tell me, is that
17 minutes and hours or weeks and days?

18 A Whatever it was I do remember Mr. Deas being
19 satisfied with the amount of time that was given to
20 him.

21 Q Okay, all right.

22 MR. BROOKS: Beg the Court's indulgence,
23 Your Honor.

24 THE COURT: All right.

25 MR. BROOKS: No other questions, Judge.

1 MR. GOURLEY: I have no further questions,
2 Your Honor.

3 THE COURT: All right, thank you.

4 MR. GOURLEY: That would be the State's
5 case, Your Honor.

6 THE COURT: All right. Any further
7 testimony?

8 MR. BROOKS: Judge, we don't have any
9 other testimony to offer, but we do have an
10 argument.

11 THE COURT: All right, happy to hear it.

12 MR. BROOKS: May it please the Court,
13 Judge, you heard the testimony of Mr. Garris that's
14 been presented to the Court. We submit that through
15 his testimony we have established grounds of
16 ineffective assistance of counsel. We've
17 established grounds in regards to his allegations of
18 discovery violations; and as such, we would ask the
19 Court grant him his post-conviction relief and grant
20 him a new trial.

21 THE COURT: All right. Mr. Gourley.

22 MR. GOURLEY: Your Honor, I don't believe
23 Mr. Garris has met his burden of proof in regards to
24 this. As you know, it's -- requires two prong
25 analysis. A, he has to show that Mr. Garris,

1 Mr. Deas was somehow deficient. B, he has to
2 overcome the prejudice analysis or show that
3 Mr. Deas' alleged deficiency resulted in prejudice.
4 Your Honor, in regards to the Brady violation
5 Ms. Deas did object. I would submit to the Court
6 that the violations, failure to turn over the
7 evidence or the alleged violations, in no way
8 prejudiced Mr. Garris. Mr. Garris' defense at trial
9 was that he was nowhere around the scene of the
10 crime. The fact that the victim could not I.D. him,
11 the fact his fingerprints weren't found on the car
12 only go to support his defense. Mr. Deas had the
13 opportunity to adequately cross-examine all
14 witnesses in regards to those issues, and I will
15 submit to the Court that those pieces of evidence
16 were not material to Mr. Garris' case. In regards
17 to GSR, Your Honor, I would submit to the Court the
18 same reasons. Thank you.

19 THE COURT: Mr. Brooks, the -- as I recall
20 this testimony in the transcript seems as if
21 Mr. Garris charged with these crimes and he was
22 picked out in a lineup by a child who is a junior in
23 high school. I think she said, who said the first
24 time she couldn't be certain it was him; but she was
25 showed the lineup the second time, was shown the

1 lineup and she was convinced that it was him and she
2 testified it was him. So he is then arrested for
3 something else and brought into jail, and they found
4 a gun that they tried to trace evidence to this
5 crime?

6 MR. BROOKS: That's my understanding,
7 Judge. He -- there was an incident, the incident
8 that he was convicted of occurred on April 15th.

9 THE COURT: Right.

10 MR. BROOKS: Then there was another
11 incident, totally unrelated incident, totally
12 different set of charges, on April 28th in which he
13 was arrested.

14 THE COURT: Right.

15 MR. BROOKS: And that incident would have
16 been, as Mr. Deas indicated, was the first trial.

17 THE COURT: They tried the second case
18 first?

19 MR. BROOKS: Right, and he was acquitted
20 of that. So that's where you heard Mr. Deas talk
21 about the limited ability for the Solicitor to talk
22 about he was arrested.

23 THE COURT: Right.

24 MR. BROOKS: And that's where that whole
25 gun incident would have come. That's when he was

1 arrested and transported to the jail. But the
2 solicitor, I think Mr. Gourley would agree, I think
3 the solicitor's position was that that gun that was
4 found in him being processed in the jail, that was
5 back used during the April 15th incident which was
6 the incident he was convicted of.

7 THE COURT: And they determined there was
8 a bullet in the victim, the lady?

9 MR. BROOKS: That's right.

10 THE COURT: That they believe or there's
11 some testimony that it was ---

12 MR. BROOKS: This was actually his gun.
13 The issue was that Mr. Deas talked about was whether
14 or not this was actually his gun.

15 THE COURT: All right.

16 MR. BROOKS: Because they didn't find it
17 on him. They found it in the trash.

18 THE COURT: Well, circumstantially based
19 on, you know, they can narrow it down pretty good
20 when they find a gun in a jail, you know, in close
21 proximity to someone's jail cell or in their trash
22 or whatever. So they narrowed it down and
23 circumstantially showed it was his?

24 MR. BROOKS: Right, and then I think there
25 was an inmate ---

1 THE COURT: Then the trustee McCray
2 explained it all and tried to nail him with the gun?

3 MR. BROOKS: Correct.

4 THE COURT: Who was not getting anything
5 from testimony. He had gotten sentenced and he was
6 no longer in the county; he was in SCDC.

7 MR. BROOKS: Or so we will believe.

8 THE COURT: Okay, so he testified. But
9 that's the evidence and, you know, of course
10 Mr. Deas is always pretty loquacious, you know, and
11 he has volume -- he's got two volumes up here that
12 he's been looking through. It seems as if he
13 challenged any and everything that Ms. Land put up.
14 And then Mr. Grimes' -- Mr. Garris' testimony here,
15 the things that he was complaining of seem to be
16 issues that Mr. Deas addressed during the trial.

17 MR. BROOKS: That may be the case, Judge.

18 THE COURT: So, as is the case with some
19 of these PCR's, you know, they of course, almost
20 everyone seemingly files a PCR, or a great
21 percentage of them, and it's hard to decipher
22 whether they're filing it because they're mad at
23 what the judge did, or like the one we had today who
24 Judge Cothran gave fifty years, could have given
25 life, he was mad at the sentence. Then another one

1 was mad with Judge King saying that Judge King
2 should not have submitted attempted burglary to the
3 jury because he was only charged with burglary. So
4 you got one complaining of that, then that's the
5 second one. And then Mr. Garris here it seems as if
6 his primary complaint should be with the jury, that
7 he should have won this case since he won the first
8 case because Mr. Deas, he jumped on everything. He
9 wasn't satisfied with Larry Devoe and he got
10 Mr. Deas who is batting fifty percent. The only
11 problem is when you're facing all this time on all
12 these charges you can't bat fifty percent, you got
13 to bat one hundred percent. If you bat fifty
14 percent, then you end up with 20 years.

15 MR. BROOKS: He got 44, 45.

16 THE COURT: 45 years, yeah. Of course,
17 the lady was shot in the face or she's -- in the
18 eye, is that what the testimony said?

19 MR. BROOKS: Was it the eye?

20 MR. GOURLEY: I believe so, Your Honor.

21 THE COURT: She's a Hispanic lady.

22 MR. BROOKS: Yes.

23 THE COURT: And a daughter, you know, so
24 there's seemingly some cultural issues there,
25 communication wise. But the jury was convinced that

1 she was a strong enough witness and they believed
2 beyond a reasonable doubt that Mr. Garris committed
3 the crime. He did testify; didn't he?

4 MR. GOURLEY: Yes, Your Honor.

5 MR. BROOKS: Correct.

6 THE COURT: So if even if he were to be
7 given a PCR, new trial, what other evidence would be
8 presented that wasn't presented the first time
9 around, and what else would the jury be given by
10 Mr. Deas?

11 MR. BROOKS: It's not so much what was
12 given by Mr. Deas; it's what would not be given by
13 Ms. Land or the prosecutor who is concerned.

14 THE COURT: He tried. And it's always
15 tough for the judge to figure out, well, you know,
16 this guy has -- he's charged with a crime, burglary,
17 he goes to jail for burglary, there's a gun found in
18 or near his cell that we think was the gun in a
19 shooting case. And so that's the judge's call. Of
20 course Mr. Deas says, no, judge, that's too
21 prejudicial, I mean, there's no proof. I mean, come
22 on, you can't, we don't want the jury to know about
23 this second burglary, he was found not guilty of
24 that. And the judge says, well, we agree, we won't
25 tell them anything about burglary but we have to

1 explain why he was in jail or something, you know,
2 so and so. That was the judge's call.

3 Mr. Deas objected to everything, and I'm
4 trying to think of what else Mr. Deas could have
5 done that he didn't do except convince the jury that
6 there is not enough. Evidence identification wasn't
7 strong enough, wasn't clear enough evidence that it
8 was his gun. The identification about the dreads
9 wasn't, the durag versus the dreads, versus his
10 appearance wasn't solid. You know, because he is
11 black and the victim was Hispanic they couldn't do a
12 cross identification, if that applies to that
13 situation. I mean, I'm not sure what else you want
14 Mr. Deas to do that he didn't do in these two books
15 here to try to win that case for him.

16 MR. BROOKS: I understand, Judge.

17 THE COURT: Anything else you know that he
18 could have done, Mr. Gourley?

19 MR. GOURLEY: No, Your Honor.

20 THE COURT: Now we have the prosecutor
21 come testify at PCR. Is that typical?

22 MR. GOURLEY: It is now, Judge. I lost
23 one with Mr. Brooks last term on Brady violation. I
24 weren't aware of Brady violation beforehand, kind of
25 got surprised with it, and did not have the

1 solicitor here to rebut the allegations so from here
2 on, any time I see the word Brady I will have the
3 solicitor here.

4 THE COURT: So that the lawyer doesn't
5 raise it then there's a violation, then that's
6 effective, I mean, ineffective.

7 MR. BROOKS: In that case he's talking
8 about I was actually the witness.

9 MR. GOURLEY: He was the defense attorney.

10 MR. BROOKS: And my client in that case
11 had sent the victim and email prior to the case
12 going to trial. I was totally unaware of it. His
13 PCR counsel Tommy Thomas had said, hey, Rule 5 still
14 is ongoing, it's a statement by the defendant. And
15 it should have given it to you so that I wouldn't
16 have been surprised when my client got on the stand
17 and says I never had any contact with the victim,
18 and then Solicitor Meadors whips out this email and
19 obviously my case went down hill right after that
20 and my client didn't think enough to tell me that
21 he'd done that. So that's kind of a little small
22 background on that case. Of course, when Mr.
23 Gourley didn't like that one so he says out of
24 abundance of caution Mr. Brooks telling me about
25 Brady violation, I'm gonna make sure I have the

1 prosecutor here.

2 MR. GOURLEY: To make a complete record,
3 Your Honor.

4 THE COURT: Good. Of course, you have
5 additional factor in this case of credibility in Mr.
6 Garris, you know, through his testimony about
7 weapons, or lack of involvement with weapons and
8 all, and then that might have made that whole issue
9 with the judge more, admitting in evidence more
10 probative or less prejudicial by some in court. But
11 as far as the sitting as PCR judge, someone had a
12 trial hard fought for all those days down there in
13 Manning in 2006 when everyone is there to explain it
14 all to the jury and the jury decided it and
15 everything was given to you that a judge of the
16 jury. Then we come here seven years later, eight,
17 yeah, well goodness, he was indicted in 2006. The
18 trial was in 2008. So we come these years later and
19 I'm supposed to say, well, I don't, like, Mr. Deas
20 should have asked different questions differently,
21 should have argued differently, he shouldn't have,
22 he should have convinced Mr. Garris not to take the
23 stand. You know, there are all kinds of things we
24 can speculate about, but which you can't get a PCR
25 granted that easily because he's had a trial so.

1 I want to be certain in my ruling so I want to
2 be able to not -- thumb through these two volumes
3 here and want to read them in greater detail, and so
4 I'll take it under advisement. But that's where I'm
5 leaning with denying it.

6

7 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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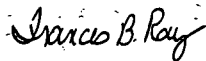
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 27th day of March, 2015.



FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Brian Rashard Garris, #330406

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-14-393

ORDER OF DISMISSAL

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
DEC 22 AM 11:05

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 1, 2013. Respondent made its return on February 28, 2014. An evidentiary hearing in to the matter was convened on October 2, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, 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 the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the October 2006 term of the Clarendon County Grand Jury Armed Robbery, Assault and Battery with Intent to Kill, Possession of a Firearm During the Commission of a Crime of Violence (2006-GS-14-265). Garryl Deas, Esquire, represented Applicant. The Applicant proceeded to a jury trial and was found guilty as indicted to all counts on September 5, 2008. The Honorable George C. James, Jr., sentenced applicant to twenty years for Assault and Battery with Intent to Kill to run consecutive to twenty

years for Armed Robbery. Additionally, Judge James sentenced Applicant to five years for Possession of a Weapon During a Crime of Violence to run concurrently.

Applicant filed a timely Notice of Appeal on September 9, 2008. Assistant Appellate Defender LaNelle DuRant of the South Carolina Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed his sentence and conviction. State v. Garris, Op. No 4859 (S.C. Ct. App. filed August 10, 2011). A petition for rehearing was submitted on August 24, 2011. An Order denying the Petition for Rehearing was filed September 22, 2011. A Petition for Writ of Certiorari was filed October 24, 2011. The State made its Return to Petition for Writ of Certiorari on June 7, 2012. By Order Dated and filed on May 15, 2013, the South Carolina Supreme Court denied the Petition for Writ of Certiorari. The Remittitur was issued on May 20, 2013

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel failed to object to the testimony of states witness regarding finger print analysis..."
 - b. Failure to object to Brady violation because the fingerprint report was not disclosed in the discovery material.
 - c. Failure to object to Agent Robert's report dealing with Gun Shot Residue.
 - d. Failure to object to the photo lineup shown to Ms. Santiago because it was not provided in the discovery.
 - e. Failure to object to jury instructions.
2. Due Process violation

This Court notes Applicant failed to present any specific argument as to how his Due Process rights were violated.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Garryl Deas, Esquire (hereinafter "Trial Counsel") and Amy Land, Esquire (hereinafter "Solicitor Land"). This Court also had before it a copy of the trial transcript, the Clarendon County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant stated he filed a PCR application and was seeking a new trial. Applicant stated he retained Trial Counsel right before trial. Applicant explained that Trial Counsel had represented him on some unrelated charge. Applicant stated he met with Trial Counsel once or twice prior to trial. Applicant stated he received ineffective assistance of counsel because Trial Counsel failed to object to various discovery violations. Specifically, Applicant explained that he was first appointed Harry Devoe, Esquire through the Third Circuit Public Defender's office. Applicant explained Mr. Devoe filed a discovery motion on his behalf and received discovery from the Solicitor. Applicant explained that Mr. Devoe turned all discovery material over to Trial Counsel. Applicant stated Trial Counsel failed to object to Brady/Rule 5 violations when the Solicitor failed to turnover pictures of the Victim, the results of finger print analysis, and a photo lineup shown to victim.

Applicant further argued that Trial Counsel was ineffective for failing to object to the court allowing the Solicitor to introduce the results of the Gun Shot Residue (hereinafter "GSR") test. Applicant further stated Trial Counsel should have objected to the limiting instructions given by the judge to the jury in regards to Applicant's prior burglary—first degree charge. Specifically, Applicant stated the trial judge went into too much detail about the first degree

burglary charge. Applicant further stated that he received a plea offer of ten to fifteen years. However, Applicant stated that he was seventeen years old and decided not to take the offer.

Following Applicant's testimony, the State called Trial Counsel to testify. Trial Counsel stated that he has been practicing law for eighteen years. Trial Counsel stated he was retained to represent Applicant. Trial Counsel stated he represented Applicant on some unrelated charges that Applicant was acquitted. Trial Counsel explained Applicant was arrested on April 28, 2006, and charged with armed robbery and assault and battery with intent to kill. Trial Counsel stated the police swabbed Applicant's hands for GSR. Applicant was searched, processed through county jail, and housed in Clarendon county jail. Trial Counsel stated while being housed in Clarendon county jail, an inmate helper, Johnny McCrea (hereinafter "McCrea") picked up and dumped Applicant's food tray. McCrea stated that when he dumped the food tray a pistol fell off of the tray and into the trash can. (Tr. t. p. 298 line 8—p. 300 line 22). The pistol was ultimately collected, processed, tested by SLED and found to be a match the gun used in the shooting of victim. (Tr. t. p. 321 line 7—p. 323 line 13; p. 338 line 19—p. 342 line 10; p. 349 line 9—p. 350 line 20; p. 385 line 3—p. 386 line 8; p. 390 line 13—p. 393 line 12; p. 410 line 15—p. 413 line 20; p. 427 line 16—p. 428 line 7; p. 484 line 18—p. 489 line 10). Trial Counsel stated he made a motion to suppress the gun itself, but the motion was ultimately denied. Trial Counsel stated he further objected to the guns introduction during the trial.

Trial Counsel stated that he objected and moved for a mistrial on the basis that certain pieces of evidence were not turned over prior to trial. Specifically, Trial Counsel stated that several photos of the victim, a photo lineup shown to the victim, and a finger print analysis were not turned over prior to trial. Trial Counsel stated that he objected on the basis of a Brady violation and requested a mistrial. However, Trial Counsel stated the judge did not grant a

mistrial. Trial Counsel stated the introduction of the evidence was helpful to the Applicant. Specifically, Trial Counsel stated the photos were not harmful because they were already aware that the victim had been shot. Trial Counsel stated the victim was not able to identify the Applicant from the photo lineup, thereby helping Applicant's case. Trial Counsel stated Applicant's fingerprints did not match the fingerprint analysis conducted on the victim's car. Trial Counsel further stated he was able to thoroughly cross-examine all witnesses on the photos, photo lineup, and fingerprint analysis. Trial Counsel stated that the fingerprint analysis, photos of victim, and photo lineup would not have changed their defense at trial. Trial Counsel further stated he had no basis to object to the trial judge's jury instruction in regards to Applicant's prior charge of burglary—first degree.

Following Trial Counsel testimony, Solicitor Land was called to testify by the State. Solicitor Land testified that she prosecuted Applicant. Solicitor Land stated she turned over all Brady and Rule 5 material. Solicitor Land stated Clarendon is a particularly small town and she made every effort to make sure everything was turned over. Solicitor Land stated she had an "open file policy" with all attorneys. Solicitor Land said the representing attorney could come in and go through her file. Solicitor Land stated that there may have been some material lost in the switch from Applicant's first attorney, Harry Devoe to Trial Counsel.

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 Trial Counsel's and Solicitor Land's testimony credible and Applicant's testimony not 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), SCRPC; 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, (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). The 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.

Ineffective Assistance of Counsel for failing to object to the testimony of state's witness and Brady violation regarding fingerprint analysis.¹

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to witness testifying to the fingerprint analysis and Brady violation is without merit. Trial Counsel testified that he objected and moved for a mistrial based on a Brady/Rule 5 violation for failing to turn over the fingerprint analysis conducted on the victim's car. (Tr. t. p. 501 line 13—p. 502 line 21). Trial Counsel specifically stated in his motion for a mistrial that "I would certainly think that...the fingerprint analysis is certainly exculpatory evidence and should have been provided to me under Rule 5..." (Tr. t. p. 502 lines 12-20). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency. Applicant must show that counsel's deficient performance prejudiced him 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. Trial Counsel stated the results of the fingerprint analysis did not change Applicant's defense. To the contrary, Trial Counsel stated the fact that Applicant's fingerprints were not found on the victim's car supported Applicant's defense of mistaken identity. This Court further notes, Trial Counsel was able to thoroughly cross-examine Investigator Rick Elms on the fingerprint analysis. (Tr. t. p. 429 line 23—p. 431 line 24). Specifically, this Court finds that Investigator Elms testimony that the handprints/fingerprints found on the victim's car did not match Applicant's handprint/fingerprints is not prejudicial to Applicant. Furthermore, this

¹ This Court addresses allegations (a) and (b) as one allegation of ineffective assistance of counsel for failing to object to the introduction of the fingerprint analysis as a violation of Brady/Rule 5.

Court finds Applicant failed to present any additional evidence as to how his defense would have changed if he had the finger print analysis prior to the start of trial. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

Ineffective assistance of counsel for failing to object to Agent Robert's report dealing with Gun Shot Residue.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to object to Agent Robert's report dealing with gunshot residue to be without merit. Initially, this Court notes the issue of whether the Trial Court erred in denying his motion to suppress the gunshot residue was briefed, argued, and ruled upon by the South Carolina Court of Appeals. State v. Garris, Op. No 4859 (S.C. Ct. App. filed August 10, 2011). This Court notes Trial Counsel objected to testimony regarding the Gun Shot Residue. (Tr. t. p. 682 line 7-10; p. 699 line 4—p. 703 line 17)). The testimony was proffered by the trial court and ruled admissible over Trial Counsel's objection. (Tr. t. p. 703 line 17-22). This Court notes Trial Counsel continually objected to the testimony of both Investigator Lin Ham and Agent John Roberts. (Tr. t. p. 706 lines 8-14; p. 711 lines 18-22; p. 717 lines 5-16; 727 lines 9-11; p. 728 line 9-21). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court notes Applicant can show no prejudice as this issue was properly objected to by Trial Counsel during the course of trial and preserved for appellate review. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

Ineffective Assistance of Counsel for failing to object to the photo lineup shown to Ms. Santiago because it was not provided in the discovery.

This Court notes Applicant's allegation that Trial Counsel was ineffective for failing to object to the photo lineup shown to victim is without merit. Trial Counsel stated and the record reveals that Trial Counsel moved for a mistrial on the basis of a Rule 5/Brady violation for failing to disclose the photo lineup prior trial. (Tr. t. p. 502 lines 7-10). This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency. Applicant must show that counsel's deficient performance prejudiced him 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. This Court notes Victim readily admitted that she was unable to identify Applicant. A review of the record reveals that Trial Counsel was able to thoroughly cross-examine Victim on her physical description and composite drawing of her assailant. Trial Counsel stated the fact that victim was shown a photo lineup and was not able to identify victim did not have an impact on Applicant's defense. To the contrary, Trial Counsel stated the fact that victim was unable to pick Applicant out of the photo lineup only bolstered Applicant's defense that he was innocent. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

Ineffective assistance of counsel for failing to object to the trial court's jury instruction regarding Applicant's prior charge of burglary—first degree.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the trial court's jury instructions regarding his prior burglary-first degree charge is meritless. Trial Counsel testified that he had no basis to object to the trial court's instructions to the jury. This Court agrees with Trial Counsel assessment of the jury instructions. The trial court instructed the jury as follows:

I want to specifically tell you, ladies and gentlemen, in this case you have heard testimony that on April 28, 2006, the defendant was arrested on a charge that is completely unrelated to this case. The defendant, as you know, was found not guilty on that unrelated charge. I charge you and I emphasize to you that you are not to consider the mere existence of those other charges in any way in determining the guilt or non-guilt in this case.

(Tr. t. p. 789 line 20—p. 790 line 2). This Court finds that the trial court's jury instruction instructing the jury not to consider Applicant's prior burglary—first degree charge proper. As such, this Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to provide sufficient evidence as to how he was prejudiced by the trial court's instructions to the jury. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

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 the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

BENJAMIN G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

2014 DEC 22 AM 11:05

CONCLUSION

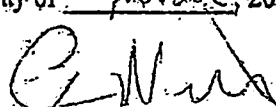
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that 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.

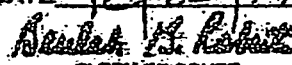
AND IT IS SO ORDERED this 31st day of November, 2014.


CLIFTON NEWMAN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

CERTIFIED COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 12/22/14


BENJAMIN G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC