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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

VASHAWN RAVENEL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001051

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2008-GS-10-09734
2008-GS-10-02081
2008-GS-10-09736

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -vs-)
) July 27-28, 2009
 VASHAUN RAVENEL,)
) Charleston, South Carolina
 Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Michael Simmons	36 89	42 109	-- --	-- --
Darin Cobb	51 134	58 148	199 --	-- --
Arthur Douglas Armstead	122	129	--	--
Ginger Cass	168	174	--	--
Brian Keith Sommerfeldt	176	184	--	--

	E X H I B I T S			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	State's 1	Gun	102	102
4	State's 2	Bullets	102	102
5	State's 3	Ski Mask	102	102
6	State's 4	Surveillance Video	28	28
7	State's 5	Photograph	28	28
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1 (Monday, July 27, 2009.)

2 THE COURT: Do you guys have a witness list
3 or any voir dire?

4 MR. HARRIS: No.

5 THE COURT: Are you waiving arraignment? You
6 want him to plead guilty or not guilty in front of the
7 jury?

8 MR. HARRIS: No, Your Honor.

9 MR. HOLTON: Not in front of the jury.

10 THE COURT: All right. This is Mr. Vashaun
11 Ravenel? Is that you? Am I pronouncing that right,
12 Vashaun?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. All right. Let the record
15 reflect the defendant is present in the courtroom. We're
16 getting ready to draw a jury. Wanted to make sure you
17 are who you are.

18 All right. Let's bring the jury in.

19 (In open court, jury present.)

20 THE COURT: All right. We have all the
21 jurors in now? All right.

22 Well, welcome, folks. My name is Roger
23 Young. I am one of the other resident judges here for
24 the Ninth Circuit. You met Judge Jefferson earlier
25 during the qualification part, and congratulations.

1 y'all are qualified to be jurors now. As she probably
2 told you, I'm doing criminal court this week. General
3 sessions court is our big fancy name for that, and we're
4 getting ready to draw a jury now for the first case,
5 which we will start tomorrow morning.

6 I have some hearings after lunch on another
7 case that I have to take care of this afternoon, but
8 we're going to draw this panel today while you're here so
9 that we don't have to have everybody come back tomorrow
10 and wait around and waste the rest of this afternoon.

11 So we're going to just draw a jury this
12 morning, and then everybody will be gone for the rest of
13 the day, and you can either go to lunch or go back to
14 work or go home whatever you want to do, but the folks
15 that get picked for the jury will report back tomorrow
16 morning, and we'll begin this trial in the morning.

17 Now, the case that we're getting ready to
18 draw is a case, I'll introduce the folks involved with it
19 in a few minutes. We're getting ready to ask you a
20 series of questions, none of which are designed to pry
21 into your personal affairs. We're not trying to, you
22 know, get inordinately personal or anything like that.

23 If there is something that is asked of you
24 that you think is too personal, you don't want to answer
25 it in front of a big group, you're welcome to come up

1 here and talk to me about it in front of the court
2 reporter. As Judge Jefferson probably explained, this is
3 a court of record, so everything that is said gets said
4 on the record, so we have to come up in front of the
5 court reporter and the lawyers will be allowed to come
6 down and hear your answers as well, but you won't have to
7 stand up in front of a big group of people.

8 The case that we're getting ready to draw a
9 jury for is the State of South Carolina versus Vashaun J.
10 Ravenel, this gentleman right here. Would you stand up
11 and face the jury panel?

12 This is Mr. Vashaun Ravenel. The State of
13 South Carolina has charged him with assault with intent
14 to kill, attempted armed robbery, and pointing and
15 presenting a firearm. These are charges against him to
16 which he has pled not guilty, and he is presumed to be in
17 front of you right now not guilty of these charges, and I
18 say that to you because that is an important and
19 fundamental right. It will not be the last time that you
20 hear that from me. The State of South Carolina, upon his
21 plea of not guilty, must now provide him with a trial and
22 prove his guilt on each of these charges beyond a
23 reasonable doubt.

24 You, the jury of his peers, will be called.
25 You will hear the evidence. I'll instruct the law to you

1 that applies to these charges, and after you hear the
2 evidence and what the law is, then you will go back and
3 deliberate and consider the evidence and law and return
4 your verdict.

5 He is standing beside his attorneys, and I'll
6 have them introduce themselves to you right now. Mr.
7 Harris?

8 MR. HARRIS: I'm Steven Harris. I am with
9 the law office of Steven Harris, and I'll be trying the
10 case today with Mr. Holton.

11 MR. HOLTON: My name is David Holton, and I
12 also operate my own practice of law.

13 MR. HARRIS: This is Chris Romeo. He is with
14 my office. He's a clerk with my office.

15 THE COURT: Is there any member of the jury
16 panel who is related by blood or marriage or acquainted
17 in any way with either the defendant or any of his
18 lawyers or their representatives that are standing in
19 front of you? And by that, I mean, perhaps you have been
20 represented by them or a member of their law firm as
21 well.

22 So if you're related by blood or marriage or
23 acquainted in any way with the defendant or either of his
24 lawyers or perhaps you've been represented by them in
25 some manner, would you please stand at this point. Okay.

1 I find none. Thank you. You may be seated.

2 Now, the State of South Carolina is
3 prosecuting the case. The prosecutor in this case is
4 known as the solicitor, and the solicitor's office for
5 the Ninth Judicial Circuit which is in our circuit, the
6 circuit comprises Charleston and Berkeley Counties. The
7 Charleston office, we have these two gentlemen who will
8 now stand and introduce themselves to you. They are
9 prosecuting this case on behalf of solicitor's office, so
10 if you would stand and introduce yourselves.

11 MR. RIESEN: My name is Trip Riesen. As the
12 judge said, I'm an assistant solicitor here in
13 Charleston. I'll be trying this case with my co-counsel,
14 who is also trip, Trip Lawton.

15 MR. LAWTON: Good afternoon.

16 THE COURT: Is there any member of the jury
17 panel who is related by blood or marriage or acquainted
18 with either of these two gentlemen in either way? If so,
19 please stand. Okay.

20 Is there any member of the jury panel who has
21 been either employed with or has had some connection with
22 the solicitor's office for the Ninth Circuit in the past?
23 If so, please stand.

24 Is there any member of the jury panel or an
25 immediate family member ever worked for the solicitor's

1 office or law enforcement at any agency level in this
2 state or outside of this state? If you would, please
3 stand.

4 Okay. We'll start over here, and anybody who
5 stands, we'll just ask you to state your name, your
6 number, whether it was you or a family member and what
7 their position was. Okay? Starting with you.

8 A PROSPECTIVE JUROR: Sara Greenberg, juror
9 264. My husband is a retired police chief, city of
10 Charleston.

11 THE COURT: Would that affect your ability to
12 be fair and impartial in this case, either for or against
13 any of the parties, the state or the defense?

14 A PROSPECTIVE JUROR: No, it would not.

15 THE COURT: All right. Thank you. Yes, sir,
16 your name and number?

17 A PROSPECTIVE JUROR: Rick Fleming, 81, and
18 my grandfather is a retired police officer in Honea Path,
19 in the upstate.

20 THE COURT: Would that affect your ability to
21 be fair or impartial for either side?

22 A PROSPECTIVE JUROR: No, sir.

23 THE COURT: All right. Thank you. Yes,
24 ma'am?

25 A PROSPECTIVE JUROR: My name is Laura

1 Vardell. My number is 230, and my sister is a clinical
2 psychologist in a prison.

3 THE COURT: Would that affect your ability to
4 be fair or impartial either for or against either side?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: Thank you. Yes, ma'am?

7 A PROSPECTIVE JUROR: My name is Sharon Cruz,
8 and I'm juror number 259, and my first cousin retired,
9 Eugene Frasier. He was a detective.

10 THE COURT: Okay. And would that affect your
11 ability to be fair and impartial either for or against
12 either side?

13 A PROSPECTIVE JUROR: No.

14 THE COURT: All right. Thank you. Yes, sir,
15 your name and number?

16 A PROSPECTIVE JUROR: I'm Mike Hance, number
17 267, and I know the assistant solicitor.

18 THE COURT: You know him? How is that?

19 A PROSPECTIVE JUROR: Several years.

20 THE COURT: Would that affect your ability to
21 be fair or impartial either for or against the state or
22 for or against the defense?

23 A PROSPECTIVE JUROR: Probably.

24 THE COURT: Well, I can't go with probably.

25 A PROSPECTIVE JUROR: No.

1 THE COURT: Thank you. Anyone else? Yes,
2 sir?

3 A PROSPECTIVE JUROR: Steve Hamontree, 98.
4 My dad was a corrections officer in southern Missouri.

5 THE COURT: Okay. Would that affect your
6 ability to be fair and impartial for or against either
7 side in this case?

8 A PROSPECTIVE JUROR: No.

9 THE COURT: All right. Thank you. Anyone
10 else? I'm going to read you the names of some people who
11 may or may not be called. They're listed on the witness
12 list here. If you know any of these folks, or are
13 related to them or acquainted with them in any manner
14 whatsoever, I want you to stand when I call out the name.
15 Michael Simmons, S-i-m-m-o-n-s? I find none. Ginger
16 Cass, C-a-s-s? I find none. Doug Armstead with North
17 Charleston police? I find none.

18 Darin Cobb, D-a-r-i-n, Cobb, C-o-b-b, North
19 Charleston? I find none. Scott Wyant with North
20 Charleston, W-y-a-n-t, North Charleston? And B.K.
21 Sommerfeldt with Charleston County's sheriff's office.
22 Is B.K. man or woman?

23 MR. RIESEN: Man, Brian I believe.

24 THE COURT: S-o-m-m-e-r-f-e-l-d-t. I find
25 none. Any member of the jury panel or an immediate

1 family member or close personal friend ever been the
2 victim of a violent crime? If so, please stand.

3 Okay. Let's start over here with you, if you
4 would give me your name and number and what can you tell
5 me.

6 A PROSPECTIVE JUROR: Jennifer Pearson, my
7 juror number is 282. I had a family member killed, an
8 argument at a club, a guy shot him in the face.

9 THE COURT: Would that affect your ability to
10 be fair or impartial in this case, either for or against
11 the state or for or against the defendant?

12 A PROSPECTIVE JUROR: No.

13 THE COURT: All right. Thank you. Yes, sir,
14 your name and number?

15 A PROSPECTIVE JUROR: Stephen Zakos, 294.
16 Back in the '70s, my home was broken in while my family
17 occupied it.

18 THE COURT: Okay. Do you think that would be
19 affect your ability to be fair and impartial in this
20 case?

21 A PROSPECTIVE JUROR: I'm fair.

22 THE COURT: Okay. Thank you. Yes, ma'am, in
23 the pink?

24 A PROSPECTIVE JUROR: Kierra Simmons, I'm
25 210, and my cousin, he was killed recently, this summer.

1 THE COURT: Do you think that would affect
2 your ability to be fair and impartial in this case?

3 A PROSPECTIVE JUROR: No.

4 THE COURT: All right. Yes, ma'am?

5 A PROSPECTIVE JUROR: Rhonda Smalls, 286, my
6 cousin was killed in '06.

7 THE COURT: All right. Do you think that
8 would affect your ability to be fair and impartial in
9 this case?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: All right. Thank you. Yes,
12 ma'am?

13 A PROSPECTIVE JUROR: Sharon Cruz, and my
14 brother was killed.

15 THE COURT: All right. Do you think that
16 would affect your ability to be fair and impartial in
17 this case?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: All right. Thank you. Yes, sir?
20 Either one of you.

21 A PROSPECTIVE JUROR: Gerald Toler, juror
22 228. My daughter, a year and a half ago, she had a
23 shooting in her house, and it involved my grandson.

24 THE COURT: Okay.

25 A PROSPECTIVE JUROR: And that is it. A

1 bunch of teenagers and got in a fight and had a shooting.

2 THE COURT: Do you think that would affect
3 your ability to be fair and impartial in this case?

4 A PROSPECTIVE JUROR: No, sir.

5 THE COURT: All right. Thank you. Yes, sir?

6 A PROSPECTIVE JUROR: Craig Solem, juror 218.

7 My son was a victim of an armed burglary.

8 THE COURT: All right. Do you think that
9 would affect your ability to be fair and impartial in
10 this case?

11 A PROSPECTIVE JUROR: No, sir.

12 THE COURT: Yes, sir?

13 A PROSPECTIVE JUROR: Ian Meskimen, 279. As
14 a child, we had somebody break into our home and assault
15 my mother.

16 THE COURT: Do you think that would affect
17 your ability to be fair and impartial in this case?

18 A PROSPECTIVE JUROR: No.

19 THE COURT: Is there any member of the jury
20 panel or a close family member or close personal friend
21 ever been accused of a violent crime? If so, please
22 stand. Okay. I find none.

23 Is there any member of the jury panel who's
24 ever been a witness in either a civil or a criminal case?
25 If so, please stand. Yes, sir your name and number?

1 A PROSPECTIVE JUROR: David Paggi, number
2 174. I've been a witness in a couple of civil
3 proceedings.

4 THE COURT: Okay. All right. And how long
5 ago was that?

6 A PROSPECTIVE JUROR: Last year and about 15
7 years ago.

8 THE COURT: All right. Thank you. Yes, sir?

9 A PROSPECTIVE JUROR: Steve Zakos, 294. Back
10 in the '80s, I was a fire marshall in the state of
11 Connecticut, and I was involved in testifying in court.

12 THE COURT: Okay. Thank you. Anyone else?
13 All right.

14 Is there any member of the jury panel or any
15 family member ever had any criminal charges adjudicated
16 by or currently pending with the Charleston County
17 solicitor's office? If so, please stand. I find none.

18 A PROSPECTIVE JUROR: Repeat it one more
19 time?

20 THE COURT: Have you or any of your family
21 members ever had any criminal charges adjudicated by or
22 are they currently pending with the Charleston County
23 solicitor's office? In other words, has the solicitor's
24 office ever prosecuted either you or any of your family
25 members?

1 A PROSPECTIVE JUROR: My brother.

2 THE COURT: And how long was this?

3 THE DEFENDANT: That was 2007.

4 THE COURT: Okay. Do you think that would
5 affect your ability to be fair and impartial?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: What is your name and number
8 letter?

9 A PROSPECTIVE JUROR: Kierra Simmons, juror
10 210.

11 THE COURT: Thank you. Yes, ma'am?

12 A PROSPECTIVE JUROR: Paula Dawson, number
13 66, my husband in 2007.

14 THE COURT: He what?

15 A PROSPECTIVE JUROR: My husband was tried in
16 2007.

17 THE COURT: Is that over with?

18 A PROSPECTIVE JUROR: Yes.

19 THE COURT: Would that affect your ability to
20 be fair and impartial in this case?

21 A PROSPECTIVE JUROR: No.

22 THE COURT: Thank you. Yes, sir, your name
23 and again?

24 A PROSPECTIVE JUROR: Gerald Toler, 228.
25 I've got a grandson that charges are pending against him.

1 THE COURT: Okay. And this office is
2 prosecuting it?

3 A PROSPECTIVE JUROR: I have no idea. He's
4 got to come here to court.

5 THE COURT: Okay. Would that affect your
6 ability to be fair and impartial in this case, do you
7 think?

8 A PROSPECTIVE JUROR: No, sir.

9 THE COURT: All right. Thank you. Anyone
10 else? All right.

11 Does any member of the jury panel believe
12 that they have any problem following the law as I cite it
13 to you, even if you believe that the law is unfair or
14 inappropriate or doesn't apply?

15 All right. I find none. Does any member of
16 the jury panel have any personal, political, or religious
17 beliefs or convictions that would make it difficult for
18 you to sit in judgment of another person? If so, please
19 stand.

20 Okay. I find none. Does any member of the
21 jury panel know of any reason why you could not give a
22 fair trial to either the state or the defendant in this
23 case? If so, please stand.

24 All right. Anything else from the state?

25 MR. RIESEN: Nothing from the state, Your

1 Honor.

2 THE COURT: Anything from the defense?

3 MR. HARRIS: Nothing, Your Honor.

4 THE COURT: All right. We're now going to
5 draw a jury. And what we're going to do is the clerk
6 will pull a name out, and he'll call the name, and if you
7 would, get your belongings, come to the front, up here in
8 front of the podium, come up here, stand in front of this
9 podium, turn around and face the jury panel, and then the
10 state will first have the opportunity to say, Seat the
11 juror or strike the juror, and then the defense will.

12 If you get chosen, you come over here in the
13 jury panel. If not, you go set back. Don't take it
14 personally if you get struck. There are a lot of reasons
15 why people get struck. They don't have to say any
16 reasons why, and if you get chosen just come over here to
17 the jury panel.

18 All right. Five for the state, ten for the
19 defense.

20 MR. RIESEN: Your Honor, may we approach,
21 briefly?

22 THE COURT: Yes.

23 (Discussion held at sidebar.)

24 THE COURT: Okay. Five and five. Mr. Clerk,
25 whenever you're ready, go ahead.

1 THE CLERK: Yes, Your Honor.

2 Juror 188, David Ray. What say you for the
3 state?

4 MR. RIESEN: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 MR. HARRIS: Please excuse this juror.

7 THE CLERK: You've been excused from this
8 case. Please have a seat back in the audience.

9 Juror number 264, Sara Greenberg. What say
10 you for the state?

11 MR. RIESEN: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. HARRIS: Please excuse the juror.

14 THE CLERK: You've been excused from the
15 trial of this case. Please have a seat back in the
16 audience. Juror number 178, Dawn Pearson. What say you
17 for the state?

18 MR. RIESEN: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. HARRIS: Please seat the juror.

21 THE CLERK: You've been selected for this
22 case. Please have a seat in the jury box.

23 Juror number 23, Carrie Bradley. What say
24 you for the state?

25 MR. RIESEN: Please present this juror.

1 THE COURT: What say you for the defendant?

2 MR. HARRIS: Please seat the juror.

3 THE CLERK: Ma'am, you've been selected for
4 this case. Please have a seat in the jury box.

5 Juror number 248, Stephen Wright. What say
6 you for the state?

7 MR. RIESEN: Please present this juror.

8 THE COURT: What say you for the defendant?

9 MR. HARRIS: Please seat the juror.

10 THE CLERK: Sir, you've been selected for the
11 trial of this case. Please have a seat in the jury box.

12 Juror number 14, Steven Barry. What say you for the
13 state?

14 MR. RIESEN: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. HARRIS: Please seat the juror.

17 THE CLERK: Sir, you've been selected for the
18 trial of this case. Please have a seat in the jury box.

19 Juror number 218, Craig Solem. What say you for the
20 state?

21 MR. RIESEN: Please present this juror.

22 THE COURT: What say you for the defendant?

23 MR. HARRIS: Please excuse the juror.

24 THE CLERK: Sir, you've been excused from the
25 trial of this case. Please have a seat back in the

1 audience.

2 Juror 81, Richard Fleming, Jr. What say you
3 for the state?

4 MR. HARRIS: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 MR. HARRIS: Please excuse the juror.

7 THE CLERK: Sir, you've been excused from the
8 trial of this case. Please have a seat back in the
9 audience. Defendant has one strike left.

10 Juror number 210, Kierra Simmons. What say
11 you for the state?

12 MR. RIESEN: Please excuse this juror.

13 THE CLERK: You've been excused from the
14 trial of this case. Please have a seat back in the
15 audience.

16 Juror number 111, Marcus Hunter. What say
17 you for the state?

18 MR. RIESEN: Court's indulgence. Please
19 present this juror.

20 THE COURT: What say you for the defendant?

21 MR. HARRIS: Please seat the juror.

22 THE CLERK: Sir, you've been selected for the
23 trial of this case. Please have a seat in the jury box.

24 Juror number 98, Steven Hamontree. What say you for the
25 state?

1 MR. RIESEN: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. HARRIS: Court's indulgence. Please seat
4 the juror.

5 THE CLERK: You've been selected for the
6 trial of this case. Please have a seat in the jury box.

7 Juror number 282, Jennifer Pearson. What say
8 you for the state?

9 MR. RIESEN: Please present this juror.

10 THE COURT: What say you for the defendant?

11 MR. HARRIS: Please excuse the juror.

12 THE CLERK: Ma'am, you've been excused from
13 the trial of this case. Please have a seat back in the
14 audience. Defendant has exhausted all his strikes.

15 Juror number 273, Alissa Keller. What say
16 you for the state?

17 MR. RIESEN: Court's indulgence, please.
18 Please present this juror.

19 THE CLERK: Any challenge from the defendant?

20 MR. HARRIS: No.

21 THE CLERK: Ma'am, you've been selected for
22 the trial of this case. Please have a seat in the jury
23 box.

24 Juror 144, William McCready. What say you
25 for the state?

1 MR. RIESEN: Please present this juror.

2 THE COURT: Any challenge from the defendant?

3 MR. HARRIS: Without challenge.

4 THE CLERK: Sir, you've been selected for the
5 trial of this case. Please have a seat in the jury box.

6 Juror number 58, Arthur Conrad. What say you
7 for the state?

8 MR. RIESEN: Please present this juror.

9 THE COURT: Any challenge from the defendant?

10 THE CLERK: No.

11 MR. HARRIS: No challenge.

12 THE CLERK: You've been seconded for the
13 trial of this case. Please have a seat in the jury box.

14 Juror number 269, Peggy Harris. What say you
15 for the state?

16 MR. HARRIS: Please seat this juror.

17 THE CLERK: Any challenge from the defendant?

18 MR. HARRIS: No challenge.

19 THE CLERK: You've been selected for the
20 trial of this case. Please have a seat in the jury box.

21 Juror number 278, Rosetta Matthews. What say you for the
22 state?

23 MR. RIESEN: Please present this juror.

24 THE CLERK: Any challenge from the defendant?

25 MR. HARRIS: No challenge.

1 THE CLERK: Ma'am, you've been selected for
2 the trial of this case. Please have a seat in the jury
3 position. Juror number 230, Laura Vardell. What say you
4 for the state?

5 MR. RIESEN: Please present this juror.

6 THE CLERK: Any challenge for the defendant?

7 MR. HARRIS: No challenge.

8 THE CLERK: Have a seat in the jury box.
9 You've been selected for the trial in this case. The
10 jury has been selected.

11 THE COURT: One alternate.

12 THE CLERK: Juror 289, Ronald Straub. What
13 say you for the state?

14 MR. RIESEN: Please present this juror.

15 THE COURT: What say you for the defendant?

16 MR. HARRIS: Please seat the juror.

17 THE CLERK: Sir, you've been selected for the
18 trial of this case. Please have a seat in the jury box.

19 Your Honor, our jury has been selected.

20 THE COURT: All right. Anything from the
21 state?

22 MR. RIESEN: Nothing, Your Honor.

23 THE COURT: From the defense?

24 MR. HARRIS: No, Your Honor.

25 THE COURT: All right. Well, folks, you are

1 the jury then for our case that we're going to start, as
2 I said, tomorrow morning. What I'm going to do is send
3 you back with the bailiffs right now. They'll show you
4 where the jury room is. You'll report back to there in
5 the morning. Don't come back here, go back there, and
6 they'll show you how to get back and forth.

7 Now, it's important you don't go home and
8 discuss the case or talk with anybody about the case, try
9 to find out anything about the case. These days we have
10 to tell people don't go on the Internet and all this
11 other stuff. If anybody tries to contact you about the
12 case or anything like that, please report that to me
13 immediately tomorrow.

14 You probably won't have any problem with any
15 of this, but anything you need to know about this case
16 we're going to tell you about in this courtroom, so you
17 don't need to go trying to find out anything about it. I
18 don't know if there has been any press reports or
19 anything like that, but you can find out anything on the
20 Internet these days. Just come back tomorrow. If you
21 live with somebody, they'll, of course, want to know, did
22 you get picked and they'll say yes, I got picked, but the
23 judge told me not only can I not talk to you about the
24 case, I don't know anything about the case at this point,
25 you really don't.

1 So just go home and enjoy your afternoon or
2 evening, report back to this jury room about 9:25
3 tomorrow, and we'll get started in the morning. Good
4 luck. Thank you for your patience today.

5 Okay. Now, let of you folks, you are free
6 for the rest of the day. There is a telephone number for
7 you to call, and I want you to go ahead and call it
8 tonight after 6:00. I don't believe there is any need
9 for you at this point to come back tomorrow, but just in
10 case something falls through with either this case or
11 Judge Jefferson's case, they may tell you to report back
12 tomorrow. More than likely, the message is either going
13 to say either call back tomorrow after six o'clock, or
14 you know, you may even to come back on Wednesday.

15 We anticipate this case will only take one
16 day, so more than likely, you'll be back, you know,
17 before me on Wednesday, or perhaps Judge Jefferson, so in
18 the meantime, you're free for the rest of the day.
19 You're free to go home and do whatever you want to. We
20 appreciate your patience for today.

21 Remember, call the telephone number after
22 6:00. They change the message usually about a minute
23 before so we'll see you later. Thanks for your patience.

24 (Whereupon, the jury panel was recessed.)

25 Anything we need to talk about before

1 tomorrow? All right.

2 MR. RIESEN: I guess the only thing we're
3 going to have tomorrow morning is one Biggers hearing,
4 and it will be fairly quick.

5 THE COURT: All right. We'll see you all
6 about 9:15. All right. See you then.

7 (Whereupon, the proceedings were recessed.)

8 (Tuesday, July 28, 2009.)

9 THE COURT: The jury is all here. I told
10 them to pick a jury foreman. You got some stuff you want
11 to put on the record?

12 MR. RIESEN: Yes, Your Honor.

13 THE COURT: Go ahead. Let the record reflect
14 the defendant is in the courtroom.

15 MR. RIESEN: Your Honor, I think the defense
16 and the state have agreed, stipulated, to certain
17 exhibits that are going to be admitted without objection
18 and entered into evidence. They're going to be Exhibit
19 No. 1, which is the gun; Exhibit No. 2 are going to be
20 bullets; Exhibit No. 3 is a ski mask; Exhibit No. 4 is
21 going to be surveillance video from Ryan's Steakhouse;
22 and then Exhibits 5, 6, 7, 8, and 9 are photographs taken
23 at Ryan's Steakhouse. That would be all the exhibits in
24 the case, and we ask they be admitted, Your Honor.

25 THE COURT: Those are without objection?

1 MR. HARRIS: We needed to do a hearing.
2 There is something I was talking to the officer outside
3 that we actually need to do a motion. When they come in
4 for the motion on Biggers, we need to do a motion on the
5 gun, on the stop itself, actually, because of something
6 the officer told me outside that wasn't apparent in the
7 police report --

8 THE COURT: Is this something that just came
9 up in the last five minutes? Just a half hour ago, I
10 asked if there was anything we needed to do before the
11 jury came in.

12 MR. HARRIS: This is just a motion, a
13 suppression motion, on the evidence.

14 MR. HOLTON: It's going to be very brief,
15 Judge, and it's going to be used with the same testimony
16 in Neil vs. Biggers. Exhibits 1, 2, and 3, the gun,
17 bullets, and mask, we may have a motion to suppress those
18 depending on the testimony we hear on the record. As to
19 the exhibits beyond that, they would be admitted without
20 objection.

21 (Surveillance video and four photographs were
22 marked for identification and admitted into evidence as
23 State's Exhibit Nos. 4, 5, 6, 7, 8, and 9.)

24 THE COURT: Anything else? Okay.

25 MR. RIESEN: Not from the state, Your Honor.

1 THE COURT: All right.

2 MR. HOLTON: David Holt for the defense.
3 I'll be brief. A few brief housekeeping matters.

4 Normally at this time we would ask for the
5 prior record of any lay witnesses, any offenses that
6 might be impeachable under Rule 609. The solicitor's
7 office has represented to us that the victim, Michael
8 Simmons, and their witness Ginger Cass do not have a
9 prior record that they're aware of. We ask that you
10 affirm that on the record.

11 MR. RIESEN: That is correct, Your Honor.

12 THE COURT: Okay. Anything else?

13 MR. HOLTON: Judge, we would make a motion to
14 enforce Brady Rule 5. Original attorney in this case,
15 Martha Dicus, filed an appropriate motion. We believe we
16 have been given the opportunity with respect to all the
17 evidence and the reports in this case, don't believe the
18 solicitor has anything additional. The one concern we
19 would have is to make sure that we have been given the
20 substance of any oral statements by the defendant that
21 the state may intend to use at trial.

22 We're aware of three potential ones, one that
23 the victim may have heard the defendant say the word hey,
24 and in the course of taking the defendant into custody,
25 the officers may have heard the defendant admit to,

1 first, having the ski mask, and then to having a gun.
2 Those are the only oral statements of the defendant that
3 we are aware of, but we would move to enforce Rule 5 as
4 to any additional statements or evidence.

5 THE COURT: Anything else you're hiding?

6 MR. RIESEN: No, Your Honor, that's it, and
7 the only statement that is going to be made is the "hey".

8 THE COURT: Okay.

9 MR. HOLTON: As the Court may recall from
10 yesterday, there were more indictments in this case that
11 are actually going to trial. We believe the state is
12 going to trial on three indictments, one for AWIK, one
13 for pointing and presenting, one for attempted armed
14 robbery. Both sides have agreed that we will not
15 question or make statements or references to other
16 charges that are not going forward that will be null
17 proessed. We would make a motion in limine at this time
18 that the witnesses not to make reference to any charges
19 that this defendant is not on trial for.

20 THE COURT: Okay. You don't want to go and
21 try to put anything else in about other charges; is that
22 correct?

23 MR. RIESEN: That's correct, Your Honor.

24 THE COURT: Instruct your witnesses not to
25 talk about that either.

1 MR. RIESEN: I have instructed them, and I
2 anticipate they'll abide by my instructions.

3 THE COURT: Okay. Anything else?

4 MR. HOLTON: Judge, we would move that the
5 state's witnesses be sequestered so that the testimony of
6 one witness is not influenced by the testimony of
7 another. I understand that the victim in this case,
8 Mr. Simmons, may testify first, and, of course, if he did
9 and thereafter wished to remain in the courtroom, that
10 would be appropriate.

11 THE COURT: The victim can stay in and the
12 lead detective can stay in. Any other witnesses you
13 have --

14 MR. RIESEN: Those are the only two that we
15 ask remain in, Your Honor.

16 THE COURT: All right.

17 MR. HOLTON: Thank you, Judge. At this
18 point, Judge, I would move -- I would have a motion that
19 would require some brief testimony. In the case of Neil
20 vs. Biggers, I would move to suppress the out-of-court
21 identification in this case by the victim, Michael
22 Simmons. He was brought to see the defendant while he
23 was in custody, and I believe that we should probably
24 have a testimonial hearing on that.

25 I think there is some concern on the part of

1 the defense that this show of identification, which may
2 have been suggested which is the first prong of Neil vs.
3 Biggers. There is case law in South Carolina that one
4 person's show ups can, under certain circumstances, been
5 inherently suggested. Even if this Court were to find
6 it's not inherently suggested that may take us to the
7 second prong in Neil vs. Biggers as to some factors be
8 considered as to whether the out-of-court identification
9 should be admissible.

10 This is going to be a brief hearing. The
11 state has said they may not necessarily make use of the
12 out-of-court identification, but they might make some
13 indirect references to it, so out of an abundance of
14 caution, I believe we need to put this on the record.

15 MR. RIESEN: Your Honor, just briefly to
16 explain the situation, it's a little convoluted, but what
17 we have here is an attempted armed robbery and a
18 carjacking at Ryan's. Fifteen minutes later the suspect
19 was caught, and the victim was transported there. It was
20 less than 200 yards away from where it happened. He gave
21 a description.

22 What is unique is that the guy had a face
23 mask on, but he was able to see his eyes, his build, the
24 clothes he was wearing, as well as a camouflage ski mask,
25 which he identified, and a rusty revolver, so based on

1 the unique nature and how specific everything was, we
2 want to be able to get that information. I don't know
3 that the victim is actually going to point him out in the
4 courtroom because he did have a face mask on, but we do
5 want to talk about that show-up and talk about how it fit
6 his description and how it matched the original dispatch,
7 Your Honor.

8 THE COURT: That's not an ID, so I don't
9 know --

10 MR. HOLTON: Judge, my concern is it may go
11 to an ID, and there is some information that the
12 solicitor is representing to the Court. The police
13 reports don't say it, and the witnesses' statement don't
14 say it quite that way. For example, when the witness is
15 shown the defendant, or at the time the victim is robbed,
16 he describes his robber as a person wearing dark jeans, a
17 white hoody, and a ski mask.

18 The defendant, Mr. Ravenel, was taken into
19 custody. He is a person with no hoody, bare-chested, and
20 he has a black T-shirt with a white T-shirt inside draped
21 over his shoulder. The ski mask and the gun were not
22 shown to the victim, Mr. Simmons. At the time of the
23 show-up, as I read the reports, they were shown to him
24 later, after he had been shown this defendant.

25 So he looks at a person who has no ski mask

1 and no hoody on and says, That is the guy that did it,
2 but that doesn't match the description that he gave as
3 the person who did it because of the clothes being
4 missing.

5 THE COURT: Wouldn't that be something that
6 you go into on cross-examination and then argue before
7 the jury? I don't understand how that becomes a Biggers
8 ID motion.

9 MR. HOLTON: Judge, as an alternative, I can,
10 if necessary, make a contemporaneous objection. If
11 something should slip out from a witness, the only
12 problem with that is then the jury has heard it, but we
13 can save it for later.

14 In other words, if I hear something from a
15 witness that I think gives rise to a Neil vs. Biggers
16 issue, if I Court doesn't think I have one now, I can
17 stand up and make an objection at that time and attempt
18 to suppress what the witness is trying to say. I can do
19 it that way.

20 THE COURT: At what point in time did he
21 ID the defendant? That is what I'm trying to get to.

22 MR. RIESEN: Within 15 minutes after the
23 armed robbery takes place, less than 200 yards away, he
24 makes an ID. Mr. Holton is correct. He initially didn't
25 see the gun and the face mask in his pocket at the time.

1 He made the ID based upon he said it was a black male,
2 over 6 feet, probably 250 pounds, wearing dark pants.

3 He did have a white hoody on, which had been
4 removed, and he saw the whites of his eyes, basically
5 because this guy had a gun to his head less than a foot
6 away. Okay?

7 Later, after making the arrest, he said, Did
8 you guys find the gun and the face mask?

9 And they said, Yeah, we'll show you what we
10 found.

11 And he said, That's it. That's that same
12 rusty revolver, and is the camouflage mask he was
13 wearing. So he initially -- he gave dispatch -- he told
14 police about the rusty gun and the mask before they ever
15 arrested him, but they didn't show it to him at the
16 initial show-up. He based it on how close in time it
17 was, how far away it was. He was a big guy. He was less
18 than a foot away from him. He had the same dark jeans
19 on. It was based on all of that.

20 THE COURT: I understand you're saying he
21 identified the stuff, not the guy.

22 MR. RIESEN: He identified the guy initially.
23 They took him into the show-up, and he said yes, that is
24 the guy who robbed me, okay? And then after they took
25 him into custody, he said, Did you guys ever find the

1 stuff? They said yeah, we'll show you the stuff we
2 found, and he said that's exactly what he had on as well.

3 He gave a personal identification within ten
4 minutes to fifteen minutes of the ID based upon height,
5 size, weight, dark jeans, and basically seeing his eyes,
6 pointing a gun at him, and then he made an ID of the gun
7 and the face mask, which was a camo face mask and a rusty
8 revolver.

9 THE COURT: If you feel like you want to have
10 a hearing, let's go ahead and have it now.

11 MR. HOLTON: Judge, the other thing that is
12 going to come out of this hearing, Mr. Harris is going to
13 have a brief motion, and it can all be done with the same
14 witnesses.

15 THE COURT: Okay. Let's bring him up.

16 MR. RIESEN: State calls Mike Simmons.

17 MICHAEL SIMMONS,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RIESEN:

22 Q. Can you just briefly give an overview of what
23 happened on the night of December 29th, 2007.

24 A. At 11:45, I proceeded to close the Ryan's
25 restaurant, as I do just about every night. I then set

1 the alarm, walked outside, locked the door, and a few
2 people were standing on the front pad, which is directly
3 in front of the restaurant. I then walked towards my
4 vehicle, walked in front of it, and I heard a gentleman
5 with a white hoody, a camouflage ski mask, dark pants,
6 yell hey at me.

7 I then turned around, saw he had a gun pointed at
8 me. I then proceeded to jump in my car real quick, and
9 as I was trying to get the car started, I looked up and
10 he had a gun pointed at me, and he pulled the trigger one
11 time. The gun did not go off. He then hit it on his
12 hand. He then pulled the trigger again.

13 At this time, the gun was not going off. I was
14 trying to get my car started and put it in reverse. He
15 then tried to open my car door with my left hand. I was
16 holding on to my door and putting it in reverse at the
17 same time, trying to get away from the situation.

18 Then I backed up and he followed me and he then
19 tried to pull me door open one more time, and I then put
20 it in first gear and went up to the front pad. When he
21 saw the people standing on the front pad, he ran towards
22 the back property.

23 Q. Okay. Now, how far was this suspect from you when
24 he put the gun and pulled the trigger?

25 A. When he was outside my car window?

1 Q. Yeah.

2 A. Approximately about six inches.

3 Q. Okay. Were you able to get a good look at him?

4 A. I was.

5 Q. And what about prior -- you said prior to him
6 putting the gun in the window, he was coming at you and
7 he said the word hey. How far away was he then when you
8 first saw him?

9 A. Approximately six feet.

10 Q. Okay. Did you end up making an identification
11 after this situation took place?

12 A. After we called 911, a cop come up. He then --
13 the first initial cop stayed there with me for a few
14 minutes and then another cop come up. I think his name
15 was Officer Wagner. He instructed that they might have a
16 suspect in custody and wanted to know if I would ride in
17 and identify him.

18 Q. Were you taken to the suspect?

19 A. I was.

20 Q. And where were you taken?

21 A. I think it was Summit Place Apartments.

22 Q. Where is that in relation to the Ryan's Steakhouse
23 where the incident took place?

24 A. It's directly behind Ryan's. It's divided by a
25 wooden fence.

1 Q. Where were you at the time of the ID?

2 A. I was sitting in the front seat of the cop car,
3 Mr. Wagner's car.

4 Q. And was anyone else in the car?

5 A. No, sir.

6 Q. Was Officer Wagner in the car?

7 A. He was.

8 Q. Where was the defendant when you made this ID?

9 A. He was standing at the back of another cop car.
10 It was about a car length and a half away from us.

11 Q. Okay. So a car length and a half away. How was
12 the lighting?

13 A. The officer put the spot light into the
14 gentleman's face.

15 Q. Okay. And were you able to make an
16 identification?

17 A. I was. He had the same black pants on. That
18 night, I couldn't forget his eyes. I mean, he was right
19 there next to me, trying to kill me, so I based it upon
20 that, and plus he had the dark jeans on him.

21 Q. What about the height and the weight?

22 A. He was approximately 250 pounds and a little over
23 6 foot, I thought.

24 Q. And is that what you had told officers prior to
25 this?

1 A. That is what I told them, yes.

2 Q. And did the police in any way influence you to
3 make an identification on this individual?

4 A. No, sir.

5 Q. Did they say anything to you after the
6 identification?

7 A. He took my statement. I then asked him if he
8 retrieved the gun or the ski mask or anything, because I
9 was kind of curious why the gun didn't go off, because I
10 saw him pull the trigger. He did show me gun, and, as I
11 said, it was a black rusty revolver.

12 Q. Were you able to positively identify the gun and
13 face mask?

14 A. Yeah.

15 Q. This was after he had already been detained, after
16 you already made the show-up ID?

17 A. Right.

18 Q. Just so I'm clear, did you -- when you did the
19 show-up you said it was about a car length and a half
20 away?

21 A. Right.

22 Q. And there was a light on?

23 A. Correct.

24 Q. And you were in one cop car and he was in the
25 outside the other cop car?

1 A. Correct.

2 Q. What was his -- you described his appearance. Did
3 he have anything on? Was he wearing anything on the top?

4 A. No, he was not wearing anything on top. He was
5 very sweaty.

6 Q. Okay.

7 A. He had the black dark pants on. That, I do
8 remember.

9 Q. Okay. So you recognized those. And then you said
10 earlier you recognized his eyes.

11 A. Right.

12 Q. And you said his height and weight were what you
13 had seen before.

14 A. Correct.

15 Q. Okay. Was the defendant asked to do anything at
16 the show-up, walk around or anything or say anything?

17 A. No, sir.

18 Q. How certain were you of the identification at the
19 time?

20 A. At the time I was 100 percent sure.

21 Q. How long did it take you to make this
22 identification?

23 A. As soon as the spot light was put on him I could
24 tell.

25 Q. Now, are you sure it was the same face mask?

1 A. Yes, sir.

2 Q. And you're sure it's the same gun?

3 A. Yes, sir.

4 MR. RIESEN: Court's indulgence. No further
5 questions. Please answer any questions Mr. Holton may
6 have.

7 CROSS-EXAMINATION

8 BY MR. HOLTON:

9 Q. Good morning, Mr. Simmons.

10 A. Good morning, sir.

11 Q. How far away is the door that you locked at Ryan's
12 to your car?

13 A. Car lengths? It was probably eight car lengths
14 away.

15 Q. Okay. How long would it take you, under normal
16 circumstances, to walk from that door to your car?

17 A. A minute, at the max, maybe less.

18 Q. Maybe a lot less to walk eight car lengths, maybe
19 just a few seconds, right, okay? Eight car lengths,
20 being about the distance from this wall to that wall?

21 A. It might have been a little bit further, but just
22 about, yes, sir.

23 Q. How far out the door were you when you noticed
24 what you described in your statement as a black male
25 wearing a white hoody?

1 A. I was completely out the door and all the way to
2 the side of the restaurant. There is a gated fence to
3 the back, so I cannot see anything behind the fence until
4 I come completely around my car, so I did not see the
5 defendant until I walked to the side of my car.

6 Q. Okay. So you're looking towards your car when you
7 are walking, right?

8 A. Yes, sir.

9 Q. And as I understand it, the person in the black
10 jeans and white hoody came up behind you; is that
11 correct?

12 A. Yes, sir.

13 Q. And he yelled hey, right?

14 A. He came up to the side of me.

15 Q. He came up to the side of you. Which side?

16 A. It would be my left side.

17 Q. Comes up to your left side and yells hey, okay?

18 A. Right.

19 Q. And how far away is he when he yells hey?

20 A. I'd say about six feet.

21 Q. About six feet.

22 A. Yes, sir.

23 Q. Okay. And your head rotates to the left and looks
24 at the guy that yells hey, right?

25 A. Correct.

1 Q. And you see a ski mask and a gun, right?

2 A. And a white hoody.

3 Q. And a white hoody. Don't you immediately turn
4 away from him to go towards your car?

5 A. Well, I grabbed my car door with my right hand and
6 opened my car door. So that kind of put my body facing
7 towards him to jump in my car.

8 Q. So he doesn't approach you until you're right at
9 your car?

10 A. Right.

11 Q. Okay. So you walked all the way to your car
12 before you see the person in the white hoody and the dark
13 jeans?

14 A. Correct.

15 Q. You're about to open your car door, right?

16 A. Correct.

17 Q. You hear the hey off your left shoulder, correct?

18 A. Yes.

19 Q. You turn and look. You see a ski mask and a gun,
20 right?

21 A. Correct.

22 Q. Just so I understand, don't you immediately, with
23 the other hand then grab the car door and try to get in
24 the car?

25 A. Yes.

1 Q. And you got to immediately get keys and get them
2 in the ignition, right?

3 A. Correct.

4 Q. And you got to immediately get that car started
5 and get it in reverse and get away from him, right?

6 A. Correct.

7 Q. So while you're paying attention to all of that is
8 when you become aware that this person in the white hoody
9 and the dark jeans has come up to the driver's side
10 window, correct?

11 A. Correct.

12 Q. So you would have turned your head to the left to
13 look at that person, correct?

14 A. Correct.

15 Q. You're still trying to operate the car while
16 you're doing this, right?

17 A. Right.

18 Q. And as I understand your testimony on direct, you
19 see the gun, the ski mask, and you say you see the whites
20 of the eyes through the ski mask; is that correct?

21 A. He had the ski mask, just showed his eyes.

22 Q. Just showed his eyes. Just to be fair, I'm not
23 trying to be flippant and waste the Court's time, but I
24 have white eyes too, don't I?

25 A. Yes.

1 Q. And the solicitor that just asked you questions,
2 he has whites of his eyes too, doesn't he?

3 A. Correct.

4 Q. I don't want to put the words in your mouth, but
5 can you tell how long did you look at the guy with the
6 ski mask pointing the gun at you while you're trying to
7 get away?

8 A. I would say it was roughly eight to ten seconds.

9 Q. During that ten to fifteen seconds, aren't you
10 also trying to drive and steer a car and get away?

11 A. Yes, sir.

12 Q. So you're also having to also look forward and in
13 your rear-view mirror, right?

14 A. At that point I didn't really care what was behind
15 me. I was just trying to get by.

16 Q. So your attention is divided between driving the
17 car and the guy with the gun, just to be fair, right?

18 A. Correct.

19 MR. HOLTON: A moment of the Court's
20 indulgence.

21 BY MR. HOLTON:

22 Q. How long after the attempted assault on you did it
23 take for the police officer to get there and start the
24 interview?

25 A. To get to Ryan's?

1 Q. Yes.

2 A. I would say no more than ten minutes.

3 Q. Okay. And how long before you're placed in
4 Officer Wagner's car? How much time has passed?

5 A. I would say probably another five or ten, five to
6 ten minutes.

7 Q. Okay. So we're somewhere between 15 and 20
8 minutes after the assault when you were placed in
9 Wagner's car; is that fair?

10 A. Correct.

11 Q. Okay. And because the fence that separates the
12 Summit Apartments and Ryan's, they had to drive you
13 around the fence to get you there?

14 A. You have to get on Rivers Avenue and drive, yes,
15 sir.

16 Q. And when Officer Wagner drives you up, he drives
17 you up to where another police car is parked; is that
18 correct?

19 A. Correct.

20 Q. And there is an officer and a man who is wearing
21 dark jeans and no shirt and no ski mask standing next to
22 the officer; is that correct?

23 A. Right.

24 Q. And you indicated that you were a car length and a
25 half away?

1 A. Right.

2 Q. Okay. When you say a car length, you mean the
3 length of the car, like ten or twelve feet, right?

4 A. Correct.

5 Q. So another half car length, so is it fair to say
6 you're 20 feet away from the person you're looking at?

7 A. Correct, around about.

8 Q. All right. A spot light is shined on the face of
9 the person?

10 A. Correct.

11 Q. And you had been instructed, or asked, whether you
12 could identify that person; is that correct?

13 A. Correct.

14 Q. And from 20 feet away, you indicate that you
15 recognized the whites of his eyes; is that correct?

16 A. I recognized his eye structure, yes, sir.

17 Q. His eye structure. Okay. Now, you gave a
18 statement after this; is that correct?

19 A. Correct.

20 Q. Okay. And I don't want to put words in your
21 mouth, but I assume a police officer would have told you,
22 or you would have thought it was important to get all the
23 details you could in your statement; is that correct?

24 A. Correct.

25 Q. Have you had a chance to review your statement

1 before coming to court today?

2 A. I have.

3 Q. Anywhere in your statement did you make a
4 reference to the whites of the person's eyes?

5 A. No, sir.

6 Q. So that wasn't in the statement that you gave at
7 the time, but that is part of your testimony in court
8 today?

9 A. Yes, sir.

10 Q. And it's been since December of 2007, right?

11 A. Yes, sir.

12 Q. At the time they showed you the person next to the
13 police car, that's not when they showed you the gun or
14 the ski mask, is it?

15 A. No, sir.

16 Q. You make a reference in your statement that the
17 gun was there, but, really, you didn't know about that
18 until later when you were giving your statement to the
19 officer; isn't that correct?

20 A. I didn't know they had got the gun until after my
21 statement. When the officer talked to me I, I did tell
22 him the gentleman had a gun, and I told a person when
23 they were calling 911 to instruct him that he had a gun.

24 Q. But in your statement, and -- Your Honor, may I
25 approach the witness?

1 THE COURT: Sure.

2 BY MR. HOLTON:

3 Q. I want to show you the second page of your
4 statement. You wrote, A little while later the police
5 brought me to Summit Place Apartments; is that correct?

6 A. Right.

7 Q. And then you wrote, They had the guy that tried to
8 shoot me there; is that correct?

9 A. Correct.

10 Q. Okay. I could tell without a doubt it was him; is
11 that correct?

12 A. Right.

13 Q. Back at Ryan's, an officer showed me the mask and
14 a gun?

15 A. That's correct.

16 Q. Okay.

17 A. The officer, when he took my statement, at the end
18 of my statement, I asked him, like I said, if they had
19 retrieved the gun because I wanted to know why it didn't
20 go off.

21 Q. But at the time they're showing you the person
22 next to the car, you didn't know they had the gun and the
23 mask there?

24 A. Correct, I did not know at the time.

25 Q. That was not part of your identification?

1 A. No, sir.

2 Q. So when you're pointing at someone and saying,
3 That's him without, a doubt, you weren't seeing a mask,
4 were you?

5 A. No, sir.

6 Q. When you're pointing at someone saying, That is
7 him without a gun, you weren't seeing a gun, were you?

8 A. No, sir.

9 MR. HOLTON: Moment of the Court's
10 indulgence. Judge, that's all the questions I have for
11 this witness. Thank you, Mr. Simmons.

12 MR. RIESEN: Nothing further. State would
13 call Darin Cobb, Officer Darin Cobb.

14 DARIN COBB,

15 having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. RIESEN:

19 Q. Officer Cobb, were you involved with the arrest of
20 the defendant on December 29 2007.

21 A. I was.

22 Q. At some point was there an identification made by
23 the victim, Mike Simmons?

24 A. Yes.

25 Q. And where did the identification take place?

1 A. At the Summit Place Apartments.

2 Q. Okay. And did the ID take place at the same place
3 where the defendant was originally detained?

4 A. Yes.

5 Q. How far from Ryan's Steakhouse, which is where the
6 initial incident took place, was it that the defendant
7 was apprehended?

8 A. Probably about 200 yards or so.

9 Q. And do you know how the victim got to the show-up
10 ID?

11 A. Officer Wagner drove him home.

12 Q. Do you know where he is today?

13 A. He's on vacation somewhere out of state. I don't
14 know exactly where, though.

15 Q. Did the victim get out of the car that evening?

16 A. At the Summit Place Apartments, no.

17 Q. And where was the defendant when the ID took
18 place?

19 A. The defendant was standing towards the rear of my
20 patrol car.

21 Q. And how far was your car from the defendant --
22 excuse me. Let me restate that.

23 How far was the defendant from your car from where
24 the victim was making the ID?

25 A. About a patrol car and a half. There was a patrol

1 car that was between my car and where the victim was
2 sitting in Officer Wagner's patrol car and I had the
3 defendant step off to the side of my patrol car so he
4 could see him.

5 Q. Would it be fair to say 10 to 15 yards or so, 10
6 yards?

7 A. I don't think 10 yards, 30 feet.

8 Q. Ten to fifteen feet then?

9 A. Patrol car is probably 16 or 17 feet long, little
10 bit longer than that, 20 feet roughly.

11 Q. What was the defendant wearing?

12 A. Dark pants, and I honestly don't remember the
13 shoes, but he had on a black T-shirt that had a white
14 T-shirt draped over his shoulder.

15 Q. So he was shirtless?

16 A. That's correct.

17 Q. This was December 29th. This was in winter?

18 A. Yes.

19 Q. How did he appear?

20 A. He was sweaty. It appeared he had been running.

21 Q. Was the defendant handcuffed?

22 A. Yes, he was.

23 Q. Why was he handcuffed?

24 A. For my safety, for officer safety.

25 Q. Was he in the same clothing that he was

1 apprehended in?

2 A. Yes.

3 Q. Did you at any time influence or suggest to the
4 victim to make a positive identification of this person?

5 A. No. I never even spoke to the victim on the
6 scene.

7 Q. To your knowledge did anyone influence him to make
8 an identification of the defendant?

9 A. No. That wouldn't be standard procedure for us.

10 Q. Now, do you know where the defendant lives in
11 relation to where he was apprehended?

12 A.

13 Q. How far away was that from where this incident
14 took place?

15 A. Roughly four miles.

16 Q. Okay. Did you confiscate any evidence from the
17 defendant?

18 A. I did.

19 Q. What did you confiscate?

20 A. Camouflage ski mask, old black and rusty 38
21 caliber revolver that was load with two bullets.

22 Q. Where did you recover those from?

23 A. From the defendant's left front pant pocket.

24 Q. Let's talk about that for a second. Are you the
25 officer that actually arrested the defendant that

1 evening?

2 A. Yes, I am.

3 Q. Could you briefly tell us how the arrest took
4 place.

5 A. In reference to the incident that we were
6 responding to, I knew that other officers were closer, so
7 the closest one should go to the incident location of the
8 restaurant.

9 Q. Okay.

10 A. My understanding was the direction of flight was
11 towards the apartments behind the restaurant, so I drove
12 to the Summit Place Apartments, got out on foot, started
13 walking in the apartment complex. I walked to the far
14 side of one building, and then I heard Officer Armstead,
15 Officer Armstead yelling at somebody on the other side of
16 the building, Show me your hands, show me your hands,
17 show me your hands, something to that effect.

18 I ran around to that side of the building where I
19 saw Officer Armstead holding the defendant at gunpoint.

20 Q. Okay.

21 A. I, of course, drew my weapon and moved in. At
22 that point, I could see that the defendant, at that
23 point, was complying with what the officer was telling
24 him to do so, I secured my weapon and moved in to detain
25 the defendant. And as I moved in to detain the

1 defendant, I grabbed his right arm, and then I grabbed
2 his left arm to bring it behind his back, and as I am
3 cuffing, I could see a camouflage material, which I
4 believed to be the ski mask, sticking -- actually
5 protruding from the left front pant pocket.

6 Q. Did you see anything else in his pocket?

7 A. I didn't see anything else in his pocket other
8 than there was a bulge still there.

9 Q. Okay. And is that the pocket that you stated
10 earlier you confiscated a ski mask and a gun from?

11 A. That's correct.

12 Q. And so he was under arrest at that point?

13 A. Yes. He was under arrest regardless at that point
14 for unlawful carrying of a pistol, at least.

15 Q. But you didn't know that he had a pistol until you
16 arrested him?

17 A. That's correct.

18 Q. But you -- earlier, you had detained him; is that
19 correct?

20 A. That's correct.

21 Q. And that was for -- why were you detaining him?

22 A. Well, he matched the description of the suspect
23 involved.

24 Q. Okay.

25 A. And as I came around the building, and I had

1 already heard Officer Armstead yelling, Show me your
2 hands, show me your hands, something to that effect, as I
3 came around the corner, I could see Officer Armstead has
4 him at gunpoint. I assume, at this point, most likely
5 this is our defendant. I don't know if he has a gun or
6 not, so I'm going to move in and detain him.

7 Q. From dispatch, what was the description you were
8 given?

9 A. Initial description, tall black male, roughly six
10 foot tall, heavy set, probably around 250 pounds, dark
11 pants. He had a white hoody, camouflage ski mask, and
12 that was the initial part, and as I was actually in the
13 apartment complex searching, they added -- before we
14 found the defendant, they added further information it
15 was going to be an old black and rusty revolver.

16 Q. Now, let's go through those really quick. Did the
17 person you detained have dark pants on?

18 A. Yes.

19 Q. Was he approximately six foot?

20 A. Yes.

21 Q. Was he approximately 250 pounds?

22 A. Yes.

23 Q. He did not have a white hoody on, did he?

24 A. No.

25 Q. Did he have a shirt on at all?

1 A. No.

2 Q. Was this odd?

3 A. Considering it was December, yes.

4 Q. Okay. And what else? You said he was sweating
5 profusely?

6 A. Actually, he was sweating. It appeared he had
7 been running.

8 Q. One other thing: You said you had been given
9 information that there was a camouflage ski mask?

10 A. Yes.

11 Q. And you saw that ski mask in his pocket before you
12 actually cuffed him?

13 A. Actually, as I moved in to cuff him, I could see
14 him, because I come around -- I get right on top of him.

15 Q. All right. Court's indulgence.

16 MR. RIESEN: Nothing further. Please answer
17 any questions Mr. Holton may have.

18 MR. HOLTON: Thank you, Your Honor, may it
19 please the Court.

20 CROSS-EXAMINATION

21 BY MR. HOLTON:

22 Q. We want to talk about the identification process
23 first and focus a little bit more on the process of
24 detaining and arresting the suspect.

25 With regards to the identification process, I just

1 want to make sure I got the details correct. You are at
2 a patrol car with the defendant when Wagner brings
3 Mr. Simmons up in his vehicle; is that correct?

4 A. That is correct.

5 Q. And Ravenel is standing; is that correct?

6 A. That is correct.

7 Q. And he is cuffed; is that correct?

8 A. Yes, he was.

9 Q. Are his hands cuffed in front of him or behind
10 him?

11 A. Behind him.

12 Q. And you're standing right next to Ravenel; is that
13 correct?

14 A. That is correct.

15 Q. Do you have your arm on him to hold him and detain
16 him?

17 A. I honestly don't remember. I know I was standing
18 next to him, but I don't know if I was actually holding
19 on to his arm.

20 Q. I'll ask a different question. Would it be your
21 normal procedure when you have a suspect in handcuffs for
22 you to hold on to that person to prevent them from trying
23 to sprint or run away?

24 A. Sometimes yes, sometimes no. It depends on the
25 defendant. If I think that the person could possibly get

1 away from me, then normally I do. When I'm quite sure
2 the person cannot, then I don't.

3 Q. In this case, we've got a six foot guy who is
4 allegedly sweating from running; is that correct?

5 A. Yes.

6 Q. So that is potentially a guy that could have run
7 away from you?

8 A. I don't think he could get away from me, but to
9 answer your question, I honestly don't remember.

10 Q. That's your answer, you don't remember. Where did
11 the spot light come from that was shined on him?

12 A. From Officer Wagner's patrol car.

13 Q. Wagner's patrol car shined a light, and it would
14 have shined on you and on the suspect; is that correct?

15 A. Right, which in all likelihood I probably would
16 have stepped -- I don't remember exactly. I probably
17 would have stepped off a little bit.

18 Q. How far away were you all from the police car?
19 Were you all standing right in front of it?

20 A. It was the length of a standard patrol car.

21 Q. One length away?

22 A. That's what it was, so you have that length and
23 then you have however long it is to get past the hood of
24 Officer Wagner's vehicle.

25 Q. Okay. But if I were sitting in Officer Wagner's

1 vehicle, I could have seen you and the police car as well
2 as the suspect; is that correct?

3 A. Yes.

4 Q. And you were not a part of any conversation that
5 Mr. Simmons had with Officer Wagner, were you?

6 A. No.

7 Q. So you did not hear Mr. Simmons make an
8 identification, did you?

9 A. No, I did not.

10 Q. I'm going to back up now and talk about taking the
11 suspect into custody.

12 When you approached the scene, the first officer
13 is standing with his service revolver pointed at the
14 suspect?

15 A. When we made contact with the defendant? Yes.

16 Q. Okay. And how far apart are they?

17 A. At the point I made contact with the defendant,
18 where I actually moved in to handcuff him, I would
19 estimate six to ten feet, probably.

20 Q. Okay. Did you ever hear the first officer say,
21 You're under arrest?

22 A. No.

23 Q. But you had heard everything called in over the
24 radio that you testified to, the description of the
25 suspect and things like that; is that correct?

1 A. Yes.

2 Q. Are you the officer that made the decision to make
3 the arrest?

4 A. Yes.

5 Q. Okay. When did you make the decision that
6 Mr. Ravenel was under arrest?

7 A. Well, when I detained the defendant, the -- I
8 could see a ski mask protruding from his pocket, and, of
9 course, I asked him, which is pretty standard, Do you
10 have anything on you because I'm concerned about needles
11 or anything else that may stick me. I'm just trying to
12 survive the career.

13 The defendant stated that he had a ski mask, which
14 I could already see protruding from his pocket. I asked
15 him if he had anything else on him because there was
16 still a bulge in his pocket, and he said, I got my gun.
17 I asked him, Where is it? He said it was underneath the
18 ski mask. I recovered the gun.

19 At that point, he was under arrest for, at
20 minimum, unlawful carrying of a pistol. I did not have
21 an identification. Even though I believed he was our
22 suspect, I didn't have an identification at that point,
23 but in either case, he was under arrest at that point.

24 Q. So in your mind, before you take the gun, he's not
25 under arrest, in your mind?

1 A. He's detained.

2 Q. He's detained, okay. Let's talk about detained.

3 Is it normal procedure to detain someone by
4 placing them in handcuffs behind their back?

5 A. Yes.

6 Q. Even when they're not under arrest?

7 A. In certain circumstances, yes.

8 Q. What are the circumstances when it's okay to place
9 handcuffs behind someone when they're not under arrest?

10 A. Sometimes you may go to a heated domestic and
11 you're worrying about somebody being injured or so forth.
12 You may be responding to any number of crimes in progress
13 where it's critical to detain the suspect until you can
14 determine whether or not that person is involved in the
15 incident and whether or not they pose a risk or a danger
16 to someone.

17 Q. Could you have detained Mr. Ravenel without the
18 use of handcuffs?

19 A. Could I have?

20 Q. Yeah.

21 A. Could I have? Yes. Would it have been prudent or
22 smart? No.

23 Q. Why not?

24 A. Because you're looking at someone who is possibly
25 armed. I believe he's a suspect in an attempted armed

1 robbery where purportedly he had pulled the trigger
2 several times. That is someone I'm going to be careful
3 with. As I stated, I'm actually trying to survive this
4 career.

5 Q. But the first officer, Officer Armstead, already
6 has a gun pulled on him, right?

7 A. That's correct.

8 Q. And you've got a gun pulled on him too?

9 A. That's correct. Somebody has to holster -- to
10 handcuff, because to handcuff them, you're going to have
11 to secure the weapon, which opens you up to a possible
12 assault.

13 Q. Isn't it fair to say that once you put handcuffs
14 on him he's not free to go, right?

15 A. That's correct.

16 Q. But, in fact, even before that, with guns pointed
17 at him, he's not free to go, is he?

18 A. That's correct.

19 MR. HOLTON: Moment of the Court's
20 indulgence.

21 Judge, that's all the questions we have for
22 this witness.

23 THE COURT: Do you have any redirect?

24 MR. RIESEN: Nothing further, Your Honor.

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

1 Anything further?

2 MR. HOLTON: Just for purposes of the record,
3 with regard to the out-of-court identification based on
4 the testimony we have heard from Mr. Simmons and Officer
5 Cobb, I would move to suppress the out-of-court
6 identification under the first prong as being unduly
7 suggestive. The testimony of the facts I would ask the
8 Court to look at would be, number one, the person that
9 was shown was not wearing a white hoody, which is a
10 significant part of the description in this case; two,
11 that the person they were shown was in handcuffs; three,
12 that he had a police officer next to him; four, that he
13 had a police car in close proximity; and, five, it
14 appears this is just a one person show-up.

15 The victim, Mr. Simmons, wasn't given the
16 opportunity to consider any of the possibilities. Our
17 Courts have said that the older cases are stronger on
18 this language than the newer cases, that one person
19 show-ups can be inherently suggestive. Even if the Court
20 were to find that this particular show-up was not
21 inherently suggestive, there are a number of factors that
22 can still be considered by the Court as to whether or not
23 the identification should be admitted, and while in this
24 case we may not have any direct in-court identification
25 based on the out-of-court, we may have an indirect.

1 This is a very unusual case, and I'm trying
2 to protect Mr. Ravenel's due process and constitutional
3 rights with regard to that. Particular factors that
4 would be of concern is that, number one, during the
5 testimony they're giving us facts that were not part of
6 the original investigation, specifically the whites of
7 the eyes; and, number two, the distance that is testified
8 to, in all likelihood, the whites of the eyes could
9 probably not be seen; number three, the actual initial
10 time the victim had to view the suspect was extremely
11 brief, plus he's doing a bunch of other things while he's
12 trying to look at this guy.

13 I would concede that the time is very close.
14 We don't have that argument that it's several hours
15 later, so that would not be a factor. We just ask you to
16 take all this into consideration and, under the totality
17 of the circumstances, I believe it's clear from this
18 evidence standard and would ask the Court to suppress any
19 out-of-court identification in this case.

20 THE COURT: Mr. Riesen?

21 MR. RIESEN: Thank you, Your Honor. We would
22 argue that although it is somewhat suggestive, it's
23 definitely not unduly suggestive. Case law provides in
24 this state that there are several things you look at.
25 Number one is, did this occur shortly after the crime?

1 We have testimony that within 15 minutes this person was
2 apprehended and identified; number two, we have testimony
3 it was less than 200 yards away from where the incident
4 took place; number three, we have a physical description,
5 which was a black male, over six feet tall, approximately
6 250 pounds. That is what this individual was.

7 He also had -- although he didn't have the
8 white hoody on, he didn't have any hoody on. All of a
9 sudden, this guy is completely walking around in the
10 middle of winter without a shirt on. He was sweaty; he
11 had been running. He was sweaty. I think the testimony
12 was he was literally right outside of the car window and
13 he saw the whites of his eyes.

14 Additionally, a camouflage and ski mask and
15 gun were located after the fact, so I think under the
16 totality of the circumstances, it wasn't unduly
17 suggestive. I didn't find any case law on point about a
18 face mask in the state, but I have a case law from
19 Georgia where there was a face mask, the shirt was
20 missing, same exact facts that came in. It's up to you,
21 Your Honor.

22 THE COURT: Well, I don't think there is
23 really much question that it's the process that he used
24 was -- to take a suspect, put him in the back of the
25 police car, bring the victim over and shine a spot light

1 on him with handcuffs on the guy and say, By the way, we
2 got a guy you think he might be it, is this the guy, and
3 he identifies him. That, I think, has a certain inherent
4 suggestiveness to it, but that is not the end of the
5 process, because you have to then look at what are the
6 other factors? To say, even if it was unduly suggestive,
7 was there other factors that make it -- that would cause
8 the identification to be reliable so that there is no
9 substantial likelihood of misidentification? And in this
10 case, you have the witness. Victim had the opportunity
11 to identify the defendant at the time of the crime. He
12 was anywhere from six inches to six feet away, maximum.

13 He was totally focussed on the guy because he
14 had a gun pointed at his head. He said he saw the whites
15 of his eyes, looked him in the eyes, didn't forget that.
16 Despite the fact that wasn't in his statement originally,
17 he testified about it, the statement, at this hearing.

18 If you want to bring that out to the jury, I
19 suppose that would go to whether or not the jury finds
20 the identification reliable, but it clearly shows he was
21 focussed in on the defendant. The accuracy of the
22 witness's prior description of the criminal matched up
23 height, weight, clothing. He was absolutely certain of
24 the identity of the defendant at the time of the show-up,
25 and there was a very, very short period of time between

1 the time the crime was committed and the confrontation.

2 So I think that the factors that we look at,
3 if it was an unduly suggestive lineup, overcome the fact
4 that it was an unduly suggestive or highly suggestive
5 process where they had the identification, so I will not
6 suppress the identification.

7 So we'll move on. Is there anything else?

8 MR. RIESEN: Nothing from the state, Your
9 Honor.

10 THE COURT: All right. Anything else from
11 the defense?

12 MR. HARRIS: Briefly, Your Honor, on the
13 suppression of the evidence found, the gun, the bullets
14 and the ski mask, if I may?

15 THE COURT: Yeah.

16 MR. HARRIS: Okay. Your Honor, the officer
17 testified that Mr. Ravenel was not under arrest at the
18 time, so I'm assuming that they were doing a Terry stop
19 for officer safety because they were not arresting him
20 for a crime at the point when they have a gun pointed at
21 him and when he put handcuffs on him.

22 So I'm assuming they're using Terry versus
23 Ohio to stop him and do a Terry frisk. My question is,
24 at the point they put handcuffs on him and detain him,
25 they didn't see the gun or the ski mask. He testified

1 that, I didn't see the ski mask until I pulled his left
2 arm behind his back. I could see a ski mask protruding
3 from his pocket.

4 My question is, at that point it would seem
5 he would be under arrest because he could not leave. He
6 has handcuffs and guns pointed at him. He doesn't have
7 the free will to leave, so he's detained, more than what
8 is technically allowed under Terry. I'm just arguing
9 that under Terry is -- you know, a temporary detaining is
10 not a problem but I think holding somebody at gunpoint
11 and putting handcuffs on them is a bit more than a Terry
12 detainer, so I would ask that the evidence during this
13 alleged Terry stop, that searching someone's person,
14 asking them questions about what they have on them while
15 they're in handcuffs and at gunpoint would constitute a
16 search during arrest, which the officer testified he was
17 not lawfully arrested at that point.

18 THE COURT: Mr. Riesen?

19 MR. RIESEN: Thank you, Your Honor. First of
20 all, they had reasonable suspicion to detain this person
21 based upon the ID, the size, the weight, the fact there
22 was a gun. They did it for officer safety. They saw a
23 face mask hanging out of his pocket. When they did that,
24 that is when he located the gun. They would have found
25 the gun anyway right after detaining him. There was a

1 bulge in his pocket.

2 Under the totality of the circumstances, they
3 had every right for officer safety to stop this person,
4 detain him. He fit the description. Then the evidence
5 should not be suppressed.

6 THE COURT: Well, I think under the
7 circumstances, they certainly had the right to stop and
8 ask him to identify himself, and it appears to me that
9 they had the right to pat him down, you know. They were
10 responding to a call of a carjacking and firearm
11 involved, so I think they probably had the right to stop
12 him.

13 He fit the description, and since there was a
14 gun involved, you know, I don't know that it was
15 unreasonable to handcuff him, and that was a result of
16 how they found the ski mask that was clearly visible at
17 that point once they got his arms behind him.

18 So I'm going to deny that motion as well.
19 Anything else we need to deal with?

20 MR. RIESEN: No, sir.

21 MR. HOLTON: That's all the matters we have,
22 Judge.

23 THE COURT: All right. Let's take a
24 five-minute break so y'all can use the rest room if you
25 need to, and then we will get started with the jury.

1 (Recess taken.)

2 THE COURT: Defendant's in the courtroom.
3 Everybody is here. You all ready? Bring the jury in.

4 (In open court, jury present.)

5 THE COURT: Welcome back. Before we get
6 started, I need you to take an oath as jurors, so I'm
7 going to have you stand, raise your right hand, and the
8 clerk will administer the oath.

9 (Jury duly sworn.)

10 Well, I understand that you all have met, and
11 Mr. McCready has been elected the foreperson; is that
12 correct, Mr. McCready? Congratulations. You don't get
13 any extra pay. You do handle the verdicts at the end.
14 Let me ask you a question here: This says we have gone
15 over instructions. What instructions have you gone over?

16 THE FOREMAN: The foreperson instructions
17 that sheet you left in there for us.

18 THE COURT: Okay. All right. Nothing -- you
19 haven't talked about the case?

20 THE FOREMAN: No.

21 THE COURT: Just wanted to clarify that.

22 Again, my name is Roger Young. You asked
23 what our names were. The two solicitors over here, the
24 tall one there, that's Mr. Riesen. Of course the other
25 one, the shorter one, is Mr. Lawton, and then over here,

1 we've got Mr. Harris and then Mr. Holton are the two
2 defense lawyers. So you wanted the names of everybody.

3 I also said it was okay to take notes. Don't
4 let your note taking detract from listening to the
5 testimony. We collect those before you go back and begin
6 deliberations, because if you stop and think about it,
7 everybody's memories sometimes vary, and if one person
8 says, Well, I wrote this down and another person says, I
9 wrote this down and you have a conflict, then you start
10 getting into arguments over what you had. If you get to
11 the end of the trial and you need to hear some testimony
12 again, well, we can play it back for you, but you're
13 welcome to take notes at the time and jot things down, if
14 that helps you, but don't let it distract from anything
15 that you are listening to or seeing.

16 Now, I'm going to go over what the process is
17 that we'll be going over for the next day. This trial
18 is, again, the state of South Carolina versus Vashaun
19 Jamal Ravenel. Mr. Ravenel is sitting over at the
20 defense table in the white shirt. The State of South
21 Carolina indicted Mr. Ravenel for three charges: Assault
22 with intent to kill, attempted armed robbery, and
23 pointing and presenting a firearm.

24 Basically, they have alleged that on the
25 assault with the intent to kill charge that on or about

1 December 29, 2007, Mr. Ravenel pointed a gun at the
2 victim's, in this case, Mr. Michael Simmons' head and
3 pulled the trigger twice. The gun malfunctioned, did not
4 fire, in violation of the common law of South Carolina.

5 The indictment for attempted armed robbery is
6 that on that same date, December 29, 2007, Mr. Ravenel
7 used a deadly weapon while in the commission of an
8 attempted armed robbery, again, against Mr. Michael
9 Simmons, and, finally, the indictment for pointing and
10 presenting a firearm, again, on that date, December 29,
11 2007, Mr. Ravenel pointed and presented a firearm at
12 Mr. Simmons.

13 These are the charges against Mr. Ravenel,
14 and he has pled not guilty. Charges are contained in the
15 indictment. These indictments are the instruments by
16 which this Court gets jurisdiction over the crime and
17 over the defendant. They are not evidence in this case
18 and aren't to be considered evidence. They are simply
19 the documents that charge or put Mr. Ravenel on notice of
20 what he is being charged with and what he is to defend
21 himself against.

22 They are not evidence, and when they go back
23 to the jury room with you when you deliberate, again,
24 they're not to be considered by you as evidence. They
25 simply put him on notice as to what he is to stand trial

1 for.

2 He has pled not guilty to each of these
3 charges, and therefore it is incumbent upon the State of
4 South Carolina to prove his guilt beyond a reasonable
5 doubt to each of these charges. He doesn't have to prove
6 he's not guilty. He doesn't have to do a thing except
7 show up. All right? He doesn't have to call witnesses,
8 he doesn't have to testify, he doesn't have to do a
9 thing, again, except show up, which he's done.

10 The State of South Carolina, once he pleads
11 not guilty, has the burden of proving these charges to
12 your satisfaction, all 12 of you, beyond a reasonable
13 doubt. What is a reasonable doubt? The highest burden
14 we have in a trial. Some of you may have served as
15 jurors in civil cases. The burden of proof in a civil
16 case is much lower than it is in a criminal case. It's
17 called the preponderance of the evidence, or the greater
18 weight of the evidence.

19 If you imagine a set of scales in a civil
20 trial, the scales are even, and the party trying to sue
21 the other side only has to tip the scale slightly in
22 their favor, the greater weight of the evidence, if you
23 will, and they've met their burden of proof in a civil
24 case. In a criminal case, it is much, much higher. The
25 state has to tip the scale much higher in their favor in

1 order to meet that burden of proof. We call that beyond
2 a reasonable doubt.

3 It is evidence which leaves you, the jury,
4 firmly convinced of the defendant's guilt, and if the
5 state has not met that burden of proof, it is incumbent
6 upon you to find the defendant not guilty. Again, he
7 does not have to prove that he's not guilty, the state
8 has to prove that he is guilty. All right? He, again,
9 sets there right now in the eyes of the law and in your
10 eyes as an innocent man. He has done nothing except been
11 arrested or indicted on these charges.

12 The grand jury, which is a jury of 18 folks,
13 they simply met, heard a little bit of evidence in this
14 case, determined that it was likely that a crime was
15 committed, and felt that it is likely that he did it.
16 That is all that they had to prove in order to get an
17 indictment against him. So these are not to be
18 considered by you as any evidence at all, and the fact
19 that he has been charged is not to be considered by you
20 as evidence.

21 You're going to hear evidence over the next
22 few hours in the form of people getting up and
23 testifying. You might see some photographs; you might
24 see some actual evidence. Sometimes we have things that
25 they put up on the screen. I don't know whether or not

1 you'll see any of that stuff. You might see a movie or
2 video or something like that, but that is evidence. All
3 right? These indictments aren't evidence.

4 This is also important: We have a process.
5 It's called an adversarial system. The State of South
6 Carolina, again, has to prove Mr. Ravenel's guilt. So
7 they get to go first. They put up their evidence first,
8 and in a few minutes, we'll have opening statements
9 whereby the parties will have the opportunity to get up
10 and review with you briefly the evidence that they feel
11 is likely to come in over the course of the next few
12 hours. All right?

13 When the lawyers get up and talk to you,
14 that's not evidence. That's not testimony. The lawyers
15 are not witnesses in the case. They're only going to
16 talk to you about that, so whatever the lawyers say
17 you're not to consider that as evidence. When they ask a
18 question, that's not evidence. The answer to the
19 question by the witness, that's evidence. Okay? So
20 their statements when they get up in a few minutes to
21 talk, that is not evidence. Evidence is what you'll hear
22 from the witness stand or photographs or anything like
23 that that comes in.

24 Now, this is important. Because of our
25 adversarial system, somebody has to go first. It's been

1 my experience, and it's been your experience, as you've
2 gotten through life, there's usually two sides to every
3 story, so you're going to hear something first. You're
4 going to hear from the state first. You're going to hear
5 their opening statement first, and then the defense, if
6 they decide they want to, will make an opening statement.
7 They're not required to, but they usually do, but, again,
8 they're not required to.

9 So you're going to hear one side and then
10 you're going to hear the other. You're going to hear
11 some witnesses first and then you're going to hear
12 questions to that witness from the state first, and then
13 you're going to hear from the defense to cross-examine
14 any witnesses that they want. So you're going to hear
15 things first, but what's important, and I'll repeat this,
16 every time I send you out of the room, don't begin your
17 deliberations. Don't begin your discussions.

18 Why? Because you haven't heard all the
19 evidence, so it's not proper for you to begin your
20 deliberations and considering whether or not the state
21 has met its burden of proof against Mr. Ravenel until
22 you've heard all of the evidence in the trial. So you
23 keep an open mind.

24 Sounds simple, but I'm telling you, it's a
25 hard thing to get your head around sometimes because you

1 sometimes hear stuff and go, Oh, well, that absolutely
2 nails it down. And then later on in the case, you might
3 hear something that causes you to change your mind or see
4 it in a different light.

5 So keep an open mind. We've got plenty of
6 time. You guys can take all the time in the world you
7 want to consider your verdict when the case is over with,
8 but don't begin to do that until you've heard all the
9 evidence.

10 All right? Now, you have roles in this case.
11 I have roles in this case. Everybody in this courtroom
12 has roles in this case. The bailiffs over there, their
13 job is to make your life easier, to make my life easier.
14 If you need anything, you let them know. All right? The
15 court reporter here, her job is to take all the stuff
16 down that's being said.

17 My job is to make sure that both sides get a
18 fair trial. All right? You know how we question y'all
19 to make sure you didn't know anything about the case,
20 didn't know any of the parties, didn't know any of the
21 witnesses such that would affect your ability to be fair
22 and impartial, same thing with me. If I knew these folks
23 such that it affected me and I couldn't be fair and
24 impartial, they would get another judge.

25 I hardly know anything more about this case

1 than you do, but I don't decide the guilt or innocence of
2 the defendant. You do. My job is to make sure the state
3 of South Carolina gets a fair trial and Mr. Ravenel gets
4 a fair trial. Sometimes that means I have to rule on
5 evidence, and I have to make sure that you hear things
6 that you're supposed to hear and not hear things that
7 you're not supposed to hear, and so sometimes I have to
8 send you out and make a ruling on an objection.

9 Sometimes when people stand up and say
10 objection, I can rule right away, based on the context of
11 whatever the question is. Sometimes I'm going to have to
12 say, Come up here a minute and tell me out of earshot of
13 the jury what your problem is.

14 Sometimes I have to send you out to make sure
15 that I can hear what the answer to the question is going
16 to be, or hear some more argument for the simple reason
17 that if I do my job properly, whatever your verdict is,
18 we're bound by it, because you are the finders of the
19 fact, the judges of the fact, if you will.

20 I'm the judge of the trial, so my job is to
21 make sure they get a fair trial and to make sure that the
22 law is applied properly. So if one side or the other
23 doesn't like the verdict at the end of the trial, the
24 only thing that can be appealed is, basically, did I do
25 my job properly? Because if I did my job properly, we're

1 bound by whatever your verdict is. All right? So that's
2 why we just -- I only want to do this one time, so
3 sometimes I might just have to send you out. If somebody
4 is objecting, it's not because we're trying to keep
5 something from you, we're just trying to do this one time
6 and we want to do it right. So don't try to think
7 somebody is hiding something from you.

8 So when we have the opening statements here
9 in a minute, then we'll get into the presentation of the
10 case, where the witnesses get called and that sort of
11 thing. After the witnesses are all finished, then both
12 sides will get up and we'll have closing arguments.
13 They'll then review the evidence that actually got heard
14 and said, and you will then -- they'll probably go over a
15 little bit of the preview of the law that I'm going to
16 instruct you on.

17 After they finish with their closing
18 arguments, then I will tell you what the law is that you
19 are to apply to the facts as you find them, and then you
20 go back and retire and come up with a verdict. All
21 right?

22 Now, this could go on all day long. I love
23 to hear myself talk, but that doesn't get us anywhere.
24 We're going to turn it over now to the lawyers for the
25 presence of their cases so Mr. Riesen, if you're ready,

1 you may begin.

2 MR. RIESEN: December 29, 2007 is a night
3 Mike Simmons will never forget. On that evening, his
4 life passed before his eyes when the defendant tried to
5 kill him and rob him. Call it faith, call it fate,
6 guardian Angel or luck. For some reason, he's alive
7 today to tell his story.

8 On that evening, Mr. Simmons was the manager
9 of Ryan's Steakhouse which is on Rivers Avenue in North
10 Charleston, by Ashley Phosphate. He was doing what he
11 does every night, closing up shop, setting up the alarm,
12 counting the money, making sure the lights are off,
13 making sure the place is clean. It was about 11:5 and he
14 was closing up, and a couple employees had moved outside
15 to wait on their rides.

16 Mike walked around to the side of building,
17 and you're going to see photographs of this, so it will
18 be a lot clearer. He walked around to the side of the
19 building where he always parked his car. As he was
20 getting into his Honda Element, he heard someone behind
21 him say, Hey, and he turned around and, to his disbelief,
22 he saw someone walking. This person had a camouflage
23 face mask on, a white hoody, and in his right hand was a
24 gun pointed right at him.

25 Mike immediately jumped into his car. Panic

1 set in. Fear swept across him. As he got to his car,
2 the defendant put the gun to the window and pulled the
3 trigger. For some reason, the gun failed to fire, and
4 the defendant grabbed the gun, looked at it in disbelief,
5 and started rapping it with his hand. At this point, he
6 put the gun to the window and pulled a second time. It
7 failed to fire. At this point, Mike, who was trying to
8 start the car, put his car in reverse, and the defendant
9 is trying to open the door. He actually gets it open
10 partway, and Mike slams it shut. What you'll see next is
11 going to be surveillance videos from Ryan's Steakhouse,
12 and they're on the top of the building, and you can only
13 get half of the car. So you only see him backing up, but
14 what you will see when he backs up is a large male in a
15 white hoody, pointing a gun at the car.

16 He then chases the car and tries to open the
17 door again. At this point Mike drives forward, and the
18 defendant, who sees people standing outside, flees. You
19 will next hear from Ginger Cass, who was one of the
20 employees that was waiting, and she will testify that she
21 heard tires spinning, which drew her attention over to
22 where the vehicle was. And, again, to her disbelief, she
23 sees a man with a gun, pointing it at the car. She
24 immediately gets on the phone when Mike gets up and calls
25 911.

1 Both Mike and Ginger and will testify that
2 behind the building is this cell phone tower. The
3 defendant realized he couldn't get through that way, so
4 he went through the back of the gate which had been
5 nailed shut. He couldn't get through it, so he backs up
6 and takes a running start and actually crashes through
7 the gate.

8 Approximately two minutes after the assault,
9 the NCPD gets a report of an incident, and you're going
10 to hear from Officer Doug Armstead who is first one to
11 respond. He responds within approximately five minutes
12 and goes directly to Summit Place Apartments behind
13 Ryan's, which is where he was told the defendant fled.
14 He starts his surveillance. The description he is given
15 is of a tall black man with a gun, a face mask, a white
16 hoody, dark pants.

17 He immediately sees someone who fits this
18 description, but oddly enough this person doesn't have a
19 white hoody on. He is completely shirtless, and it's in
20 the middle of December. He's sweaty, he's steamy, and,
21 actually, steam is rising off his body. He'll testify to
22 that. He immediately told the individual to stop, but
23 the individual made a move in towards his pocket, where
24 he saw a bulge. He then drew his weapon and ordered him
25 to comply.

1 Next you'll hear from Darin Cobb, the
2 investigating officer, who was also en route and heard
3 Officer Armstead ordering the person to put his hands in
4 the air. He came from behind and was able to detain the
5 person, and as he was detaining him, he saw, hanging out
6 of his left pocket, a camouflage ski mask, and what else
7 was in his pocket? A rusty 38 revolver.

8 Now, Darin Cobb will testify that the victim
9 was then brought to the scene to make an identification
10 as to whether or not this was the person. He was
11 positively identified. He then went back to the Ryan's
12 and made a written statement, and the defendant was
13 charged with what the judge had told you earlier.

14 Now, I'm going to give you a brief review of
15 the law in closing, but what I want y'all to do today and
16 I'll come back to this in my closing, common sense. Use
17 your common sense. Listen to the credibility of the
18 witnesses in this case. Look at them and see if they're
19 telling the truth. See if what they're saying makes
20 sense.

21 This defendant was caught less than 200 yards
22 away from where the incident occurred at. Someone pulled
23 a gun on him with a face mask on him, a shirt missing in
24 December, and a loaded firearm. One other point: That
25 firearm was sent for testing, and you're going to hear

1 from officer Brian Sommerfeldt, who tested the gun, and
2 it was able to fire.

3 It appears that the bullets had
4 malfunctioned. You'll see the bullets and the gun, and
5 you'll see on the bullets' indentation where it had been
6 struck, so I want you to listen to all the evidence, and
7 at the end of the case, we believe, beyond a reasonable
8 doubt, you'll find the defendant guilty on all counts.
9 Thank you.

10 THE COURT: Mr. Harris?

11 MR. HARRIS: Thank you, Your Honor, may it
12 please the Court.

13 There are two words I want you to focus on
14 over the next couple hours today. First one is
15 individual; second one is list. I'm going to explain to
16 you why those are two words you don't normally focus on.

17 First of all, individual. Each one of you is
18 an individual here. This isn't a team. You're
19 individual jurors, and, actually, once you took the oath
20 as a juror, I your still says juror, but you're a judge
21 now. You're 13 judges, 14 here, so we have 14 judges in
22 this room today. You are judges of the facts. You are
23 the judges of what is going to come in here today. Judge
24 Young is the judge of the law, so each one of you is an
25 individual, a unique individual, a unique judge here

1 today.

2 Secondly, each of these witnesses, you're
3 going to see four witnesses, maybe five, each of them are
4 individuals. They're unique individuals. They have
5 different ways they see things. The way we are created,
6 we see things different ways. We may hear something and
7 it means something to one of us and it may mean something
8 to someone else. They may tell stories today or give
9 testimony today that differs in ways because they're
10 individuals. They're unique from each other. We're not
11 all made the. Third, police officers are individuals.
12 They are going to have their police reports that come in,
13 narratives, and we're going to go through all that today.
14 Each of those are individuals in the way they saw things
15 happen.

16 Finally, each of these charges are
17 individual. Assault with the intent to kill, pointing
18 and presenting a firearm, attempted armed robbery: Each
19 of those are individual. They all have individual facts.
20 They all have individual things you're going to hear at
21 the end, individual elements that prove those. They are
22 not supportive of each other. You don't have to have one
23 to have another. They're individuals. They can survive
24 by themselves.

25 Secondly, listen. We human beings are given.

1 a great gift, the ability to listen, take what we hear,
2 analyze it, rationalize it, draw from that a conclusion.
3 What I want you to do today is listen. I don't want you
4 to analyze, rationalize, or draw a conclusion until the
5 end of the day, but today we need to listen to what every
6 person says, the witnesses. They're going to have
7 answers they're going to give you, and what we want you
8 to do today is listen and make sure you listen to what
9 they say, listen to what they saw, listen to what they
10 heard, what was said, any witness statements to that
11 matter.

12 And when we're done, that is when that second
13 part comes in, when we're finished with our closing
14 arguments, like the judge said. When you go back into
15 that room today at the end of the day today, take what
16 you heard and so on, but listen, most importantly, and
17 that is when you will rationale, analyze, and conclude.
18 Not until then. But at the end of this, those two words,
19 individual and listen. Everything you're going to hear
20 today is rotation around those two words, so at the end
21 of the day, I'm hoping that after what you've heard and
22 what you've seen that you will find and acquit
23 Mr. Ravenel of these three charges.

24 Thank you.

25 THE COURT: All right. Call your first

1 witness.

2 MR. RIESEN: Thank you, Your Honor. State
3 calls Michael Simmons.

4 MICHAEL SIMMONS,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. RIESEN:

9 Q. Good morning, Mr. Simmons. How are you?

10 A. Good. Yourself?

11 Q. I'm good. How old are you?

12 A. Twenty-eight.

13 Q. And where do you live?

14 A. I live in North Charleston.

15 Q. And how long have you lived in North Charleston?

16 A. For approximately six months.

17 Q. And where did you live prior to North Charleston?

18 A. Charleston.

19 Q. Where are you from originally?

20 A. I was born and raised in West Virginia.

21 Q. Married?

22 A. No.

23 Q. No children?

24 A. No.

25 Q. Where did you go to high school?

1 A. Pendelton County High School.

2 Q. And where is that?

3 A. In West Virginia.

4 Q. And did you go to college?

5 A. I did.

6 Q. Where did you go to college?

7 A. I got an associate of arts degree from Johnson &
8 Wales University.

9 Q. Where do you currently work?

10 A. I currently work at Sbarro's Pizza Italian
11 Restaurant.

12 Q. Is that at Citadel Mall?

13 A. It is.

14 Q. Where did you work previously?

15 A. Ryan's Family Steakhouse.

16 Q. Where is that located?

17 A. Rivers Avenue in North Charleston.

18 Q. Is that Charleston County?

19 A. It is.

20 Q. How long did you work there?

21 A. I was with Ryan's for approximately almost four
22 years.

23 Q. And what was your job title?

24 A. I was the assistant general manager.

25 Q. Would you describe what your duties are as

1 assistant general manager.

2 A. Everything from making sure the flow of the
3 restaurant is where it should be, guest satisfaction,
4 money management, where we took care of all the money in
5 the place. I had three other managers below me that I
6 had to manage and make sure they were doing their job
7 properly too.

8 Q. Okay. Let's go back to December 29, 2007. Were
9 you working at Ryan's that evening?

10 A. I did. I closed that night.

11 Q. What time does Ryan's normally stop serving
12 customers?

13 A. From 9:30 to 10:30.

14 Q. What time do you normally -- if it stops serving,
15 what time do you normally close up shop?

16 A. I usually get out anywhere between 11:00 and
17 12:30; if it's real busy, 1:00 in the morning.

18 Q. And did you close that evening, on December 29th
19 of '07?

20 A. That's correct, yes, sir.

21 Q. And approximately what time was this that you were
22 closing up?

23 A. Anywhere between 11:30 and 12:00, so I would say
24 it was probably about 11:45.

25 Q. Were there any other employees there when were you

1 closing up?

2 A. Yes, sir.

3 Q. Do you remember any names?

4 A. I know Ginger Cass was there, she is the one that
5 made the 911 call, and a lady by the name of Kathy Smith,
6 I think.

7 Q. And why don't you briefly tell us what after you
8 closed up shop that evening.

9 MR. HOLTON: Objection. Calls for a
10 narrative, Your Honor. May we approach?

11 (Discussion held at sidebar.)

12 BY MR. RIESEN:

13 Q. You said you closed up around 11:45?

14 A. Closed up around 11:45. I did what I always do.
15 By that time, all the money was secured in the office,
16 walked through the office, flipped the three breakers
17 that flipped all the lights in the front of the house
18 off, except one strip we kept illuminated 24 hours a day.
19 I walked to front door, set the alarm pad, walked out,
20 and I locked the front door. And at that time I was
21 going to my car to pull my car up front to make sure
22 everyone had a ride home. I didn't want to leave anyone
23 by themselves.

24 Q. Where was your character parked?

25 A. My door was parked -- if you're looking at the

1 restaurant, to the left of the building.

2 Q. Did you normally park there?

3 A. I parked there every day, every time.

4 Q. And as you were walking to your car, what happened
5 next?

6 A. I was walking to my car, and I come -- my car was
7 parked here, so I come to the right side and I had to
8 walk all the way around to the front of my car, and when
9 I got to the corner of my car, I saw a gentleman in a
10 white hoody and a ski mask and he had a gun pointed at
11 me, and at that time I tried to jump in my car and he
12 yelled Hey.

13 And I jumped in my car, and at that time he come
14 up to my driver's side window with a gun, pulled the
15 trigger, right in my face. The gun did not go off, so he
16 then rapped it with his hand, put it back into my face,
17 tried to shoot me again, and the gun evidently wasn't
18 going to go off for some reason.

19 And then he tried to pull my door open, and he got
20 the door open, so I put my hand on the door and pulled it
21 shut, and then I put the car in reverse and I started to
22 pull off.

23 Q. Okay. Let's take a step back and kind of talk
24 about briefly what he said. How tall was this
25 individual?

1 A. He was probably a little over six foot tall.

2 Q. And about how much did you think he weighed back
3 then?

4 A. Probably 250 pounds.

5 Q. When he said hey and was coming towards you, how
6 far away was he when you first saw him?

7 A. Approximately six feet.

8 Q. And you said he had -- what was he wearing?

9 A. He was wearing a white hoody, a camouflage ski
10 mask, and dark pants, and he had a black rusty looking
11 revolver pointed at me.

12 Q. Okay. Now, you said he put it to the window --
13 was your window up?

14 A. It was up.

15 Q. And he put the gun towards to the window, and you
16 say he pulled the trigger?

17 A. He did.

18 Q. And how far away was your head from this window?

19 A. About six inches.

20 Q. Were you able to get a good look at this person?

21 A. Yes, sir.

22 Q. Now you said he had a face mask. What did you
23 see?

24 A. I saw his eyes. The face mask covered his nose
25 and all around his eyes, but he was right there with a

1 gun in my face.

2 Q. Okay. Now, you said he tried to open the car
3 door?

4 A. He did. My car handle is not one of the lift up.
5 You have to actually reach in and rap the handle and pull
6 it open to get the door open, so when he started to pull
7 my door open and I saw the door was coming open, by that
8 time I'm pretty sure I had the car already started, so I
9 put my hand on my door handle and was pulling the door
10 shut, to try to keep him out of my car, and I put it in
11 reverse and was backing up.

12 Q. So it's a stick shift?

13 A. It was.

14 Q. Now, how many times -- can you explain this? You
15 say he rapped.

16 A. After the initial time he put the gun and the gun
17 hit my window, he did pull the trigger. The gun didn't
18 go off, and then he hit the gun again with his palm and
19 put the gun right back up and pulled the trigger again.

20 Q. You said you backed away?

21 A. I did.

22 Q. What happened as were you backing away?

23 A. As I was backing away, I took him for a little bit
24 and then he let go of my car, and he then proceeded to
25 follow me as I was still in reverse and pointed the gun

1 at me, and then he tried to get in the car again when I
2 tried to put it in first gear to go forward.

3 Q. And then what happened?

4 A. He saw the people standing in front of the
5 restaurant, and he then proceeded to run away.

6 Q. Okay. Did you see where he ran?

7 A. I did.

8 Q. Where did he run?

9 A. He ran to -- at Ryan's, we have two cell towers in
10 the back that are completely fenced in with tall chain
11 link fence. He ran toward the back cell tower, and, of
12 course, he couldn't go anywhere because the fence was
13 there.

14 So then he ran around to where -- the wooden
15 divider fence between Summit Place Apartments and Ryan's.
16 There was a gate there, but it had been nailed shut. So
17 he tried to go through the gate. The gate wasn't open so
18 then he plummeted through the gate and broke the gate
19 down, and after that, I didn't see him anymore.

20 Q. Did you call the police?

21 A. No. I had Ginger Cass, she was one of my servers,
22 had her call the police.

23 Q. And did the police arrive?

24 A. Police did arrive.

25 Q. Approximately how long?

1 A. I would say no more than ten minutes.

2 Q. Okay. And did you at some point make an
3 identification?

4 A. I did. Officer Wagner was the copy, I think, at
5 the restaurant at the time. I think he told me.

6 MR. HARRIS: Objection. He told me.

7 THE COURT: Overruled.

8 THE WITNESS: Officer Wagner wanted me to go
9 identify the suspect. He said there was somebody in
10 custody, wanted to know if it was the right guy.

11 BY MR. RIESEN:

12 Q. Did you go see this guy?

13 A. I did.

14 Q. Where in relationship to Ryan's did you go?

15 A. To the apartment complex, right behind Ryan's,
16 Summit Place.

17 Q. Is this where you observed the defendant bust
18 through the gate?

19 A. Yes, sir.

20 Q. When you got there, why don't you tell the jury
21 what happened.

22 A. When I got there, I was sitting there in the
23 driver's side of the police car. They pulled a gentleman
24 out of the car, and Officer Wagner asked me, Is that the
25 guy?

1 And he then put a spotlight on his face, and I
2 could see his face, and I was 100 percent sure that was
3 the guy.

4 Q. Now, let's take a couple steps back. What was
5 this person wearing?

6 A. He was wearing dark pants. He did not have a
7 shirt on.

8 Q. Now, were these the same dark pants that you saw
9 earlier?

10 A. Yes, sir.

11 Q. And you say he didn't have a shirt on.

12 A. No, sir. He was completely shirtless.

13 Q. Did you notice anything else about him?

14 A. He was sweating pretty bad. He was pretty
15 drenched, actually.

16 Q. You said earlier he was wearing a face mask. How
17 did you know this was the person if he had a face mask
18 on?

19 A. When someone has got a gun in your face and
20 they're looking in your eyes trying to kill you, you kind
21 of remember that.

22 Q. How long after this identification -- how long was
23 it between the time that this person assaulted you at
24 Ryan's Steakhouse and the identification? How much time
25 was it between the two?

1 A. I would say anywhere between 15 and 20 minutes.

2 Q. Did the police at any time tell you to identify
3 this person?

4 A. No, sir.

5 Q. Did they in any way influence you to identify this
6 person?

7 A. No, sir.

8 Q. Okay. How far away was the defendant from where
9 you made -- you said you were in the police car, correct?

10 A. Correct.

11 Q. And they pulled him out of a police car and shined
12 a light in that area. How far away was he from you? If
13 I were to walk back, you tell me how far?

14 A. Probably about right there (indicating).

15 Q. So this is about how far away when you made the
16 identification?

17 A. Maybe a little bit more, but I think that is about
18 right.

19 Q. This general area?

20 A. Yes.

21 Q. All right. Now, were you able to later make any
22 other type of identification?

23 A. As Officer Wagner was taking my statement, at the
24 end of the statement, I asked him, pretty much, if they
25 found the gun on the gentleman.

1 Q. Okay.

2 A. And I then was told that they did, and I asked to
3 see it, and they brought me the gun. It was the old
4 rusty black revolver and the ski mask that was
5 camouflage.

6 Q. How did you know this was the same gun?

7 A. I grew up in West Virginia. I did a lot of
8 hunting in my life. I'm not an expert in guns, but I
9 have shot a lot of guns, so I knew it was a handgun. I
10 knew it was the revolver style, and I could see it was
11 black and rusty.

12 Q. Okay. And how about the ski mask?

13 A. The ski mask, of course, it was camouflage and it
14 only -- you could only see his eyes. You couldn't see
15 anything else but his eyes.

16 MR. RIESEN: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MR. RIESEN:

19 Q. I'm showing you what has been previously marked as
20 State's Exhibit No. 1. Do you recognize this?

21 A. Yes, sir.

22 Q. What is this?

23 A. That is the gun that was pointed at my face that
24 night.

25 Q. How do you know it's the gun?

1 A. It's, actually a pretty unique gun. And when you
2 look at that and you see him pulling the trigger, you
3 kind of remember it.

4 Q. Okay. I'm showing you also state's Exhibit No. 2.
5 Do you recognize this?

6 A. That is the face mask.

7 Q. Do you recognize this?

8 A. Yes, sir.

9 Q. And what is this right here?

10 A. That is the opening where his eyes were.

11 Q. Are you sure this is the same face mask you saw
12 the defendant wearing that evening?

13 A. Yes, sir.

14 MR. RIESEN: At this time the state would
15 introduce State's Exhibit 1 and 3 into evidence, the gun
16 and the face mask, as well as, actually, the bullets. I
17 think we had already agreed.

18 MR. HOLTON: Objection on two grounds. May
19 we approach?

20 (Discussion held at sidebar.)

21 THE COURT: He's making his contemporaneous
22 objection to his prior identification, so that is on the
23 record. It is also denied. The exhibits are admitted.

24 MR. HOLTON: And, also, I'll renew my
25 objection to the admission of gun, the mask, and the

1 bullets based on our prior motion of an illegal arrest.

2 THE COURT: And that is also denied.

3 MR. HOLTON: Thank you, Judge.

4 (End of sidebar.)

5 (Gun, face mask, and bullets were marked for
6 identification and admitted into evidence as State's
7 Exhibit Nos. 1, 2, and 3.)

8 MR. RIESEN: Thank you, Your Honor. May I
9 approach?

10 THE COURT: Yes, sir.

11 BY MR. RIESEN:

12 Q. I'm showing you what has been previously marked as
13 State's Exhibit No. 4, and I think it's already been
14 introduced into evidence by stipulation. It is Ryan's
15 surveillance videotape. Do you recognize this?

16 A. I do.

17 Q. Are those your initials right there?

18 A. They are.

19 Q. Have you watched this video before?

20 A. I have.

21 MR. RIESEN: Your Honor, I ask that we
22 publish this for the jury.

23 THE COURT: You may.

24 BY MR. RIESEN:

25 Q. Now, it's short. I'm going to play it. It's

1 about 25 seconds. I'll play it once through and then
2 we're going to take you through it.

3 It looks like that whole video is about 30 seconds
4 long. Was this incident only 30 seconds long?

5 A. The Ryan's camera is in time frame, so it's
6 basically taking pictures and putting it together, so it
7 actually is longer than it actually seems to be because
8 it's not an actual constant feed. As you can see in the
9 picture, it looks like he's kind of jumping. It's
10 because it's a picture frame put together.

11 Q. So it's actually -- how long would you say the
12 entire incident happened?

13 A. I would say possibly 30, 40 seconds, a little
14 longer.

15 Q. Okay. Let's play it one more time, and I want you
16 to just describe for the jury kind of what's going on
17 here. Now, is this your car?

18 A. It is. At the beginning of video you can't see
19 anything that is going on in the front as I walk around.

20 Q. Now, you testified earlier someone came from some
21 Dumpsters and said hey and tried to open your door?

22 A. Yes, sir.

23 Q. Now, this is happening prior to what we're seeing
24 right here?

25 A. Right.

1 Q. This is cut off why? Why can't we see the whole
2 car?

3 A. Because this is where the camera is positioned on
4 the side of the building.

5 Q. Okay. So this is your vehicle, and go ahead and
6 take them through it as it's playing.

7 A. Before you see it, I'm walking in front, which is
8 the sidewalk here, walking in front, and my team members
9 are over here on the front pad.

10 Q. Do you know who this person is right here?

11 A. I think that is one of my team members that was
12 smoking at the time, and then I go around and right about
13 now --

14 Q. That is something in the window. What is that?

15 A. That is me opening my car door and jumping in.

16 Q. Okay. So prior to this, you had already -- what
17 had happened?

18 A. I had already walked around. The gentleman had
19 already said hey to me and was pointing the gun at me,
20 and this is when I jumped into my car.

21 Q. Okay. Go ahead.

22 A. When I jumped in my car, this is when the gun is
23 being put in my face and the trigger is being pulled and
24 I'm trying to get it in reverse at the same time.

25 Q. Okay.

1 A. And then he is trying to pull the door open, and I
2 pull it shut and then I pull it back.

3 Q. Stop right there. You didn't even turn your
4 lights on, did you?

5 A. No. I was trying to get away from the situation
6 at the time.

7 Q. What is he doing right there?

8 A. Right there, he's pointing the gun at me, and once
9 I get there and try to go forward to go up to the front,
10 which is right over here, he then tries to get in my car
11 again.

12 Q. Go ahead. Pause. Now, what is he doing right
13 there?

14 A. He's reaching for my door handle, trying to get in
15 my car.

16 Q. So he's trying to get in your car. And you said
17 earlier he was actually able to open your door?

18 A. Yeah. After the gun wouldn't go off, he then
19 pulled on my door, opened it, and I pulled it back shut.

20 Q. Okay. That's good. I'm going to show you a
21 series of photographs.

22 This is State's Exhibits No. 5 through 9, which
23 have already been entered into evidence. If you could
24 just take a quick look at these and make sure you
25 recognize them, and then we're going to put them on the

1 screen and go through them. Do you recognize those
2 photos?

3 A. Yes, I do.

4 Q. What are they of, basically?

5 A. Couple photos are in front of Ryan's. The other
6 one is the cell tower, and the next two are the fence and
7 the gate.

8 Q. Okay. And do these photographs fairly and
9 accurately represent the area around Ryan's?

10 A. They do.

11 Q. Let's go through them briefly. I'm showing you
12 State's Exhibit No. -- if you could just point out for
13 the jury, first of all, where your car -- first of all,
14 up here, what is this right up there?

15 A. That's the cameras on the side of the building.

16 Q. Okay. And is that the surveillance cameras that
17 took the incident that we just looked at?

18 A. Yes, sir.

19 Q. Where would you have been parked in relation to
20 that?

21 A. Can I stand up?

22 Q. You may.

23 A. I usually always parked right here because it's
24 not actually a parking spot, so other than the
25 maintenance men that were there that day, the managers

1 usually park right here because it's close to the front
2 door.

3 Q. I'm showing you what is State's Exhibit No. 6.
4 Please describe for the jury what that picture is of.

5 A. This is where I would have been parked. This is
6 the gated fence that has the Dumpsters in it, and the
7 gentleman would have been in probably this area behind
8 the fence, because when I walked around, when I was in
9 front of my car, I couldn't see him at that time until I
10 got to the corner of my car, which would have been here.

11 Q. Okay. All right. Now, I'm showing you what has
12 been marked as State's Exhibit No. 7. What is that?

13 A. That's the cell towers at the back of the
14 restaurant.

15 Q. And could you -- one second. Now, where did
16 the --

17 A. Right over here.

18 Q. -- defendant go? Here, I'll give you this. Just
19 point it out for the jury. Use the top red one. Show
20 the jury where the defendant initially ran.

21 A. He ran down through here, through this gated fence
22 right here, which is this cell tower here, and the fence
23 is tall, so you can't really get through there, so then
24 he ran back around this way and right here somewhere,
25 which you can't really see --

1 Q. I've got a picture of that.

2 A. -- is the gate and the wooden fence.

3 Q. So let's look at a close-up of that area. I'm
4 showing you what has been marked as State's Exhibit
5 No. 8. What is that?

6 A. This is the wooden fence that runs behind Ryan's.

7 Q. Okay. And what is that hole from?

8 A. This is where he ran back around and he plummeted
9 through the fence there because he couldn't get the gate
10 open.

11 Q. And that is part of the gate?

12 A. This is the gate laying on the ground.

13 Q. I've got just a couple more questions.

14 You stated earlier that this individual put a gun
15 to the window next to your head and pulled the trigger
16 twice.

17 A. Yes, sir.

18 Q. What were you thinking?

19 A. There was a lot of things, I think. One, I was
20 try to get away so I don't get killed; and, two, was this
21 guy is trying to kill me. I thought -- I couldn't get
22 the fact of why the gun didn't go off, because I saw him
23 pulling the trigger.

24 Q. Were you in fear of your life?

25 A. I was. That is why I was trying to get away from

1 the situation.

2 Q. And what did you think he was doing when he
3 grabbed your car door?

4 A. I thought he was trying to either, one, get in to
5 kill me, or two, take my car --

6 Q. Okay.

7 A. -- after he killed me.

8 MR. RIESEN: Court's indulgence. No further
9 questions at this time. Please answer any questions Mr.
10 Harris or Mr. Holton has at this time.

11 MR. HOLTON: Thank you, Your Honor, may it
12 please the Court.

13 CROSS-EXAMINATION

14 BY MR. HOLTON:

15 Q. Good morning, Mr. Simmons. You were the last
16 person out of restaurant this evening; is that correct?

17 A. Correct.

18 Q. You had already set the alarm and locked the door;
19 is that correct?

20 A. Correct.

21 Q. And no one approached you when you were trying to
22 lock the door, did they?

23 A. No, sir.

24 Q. And there were at least a couple of other
25 employees outside when you were trying to lock the door;

1 is that correct?

2 A. That's correct.

3 Q. You mentioned a Ms. Ginger Cass being out there,
4 is that correct?

5 A. That's correct.

6 Q. And when we saw the video, we also saw someone
7 else out there?

8 A. Yes, sir.

9 Q. In addition to those two people, was there
10 possibly -- was there a third person?

11 A. I can't really remember. I think there might have
12 been.

13 Q. Okay. So there is at least three or four people
14 out there at the scene; is that fair?

15 A. Correct.

16 Q. When you locked the door to the restaurant, you
17 had keys for the restaurant, right?

18 A. I do.

19 Q. You put those keys in your pocket, do you not?

20 A. I do not.

21 Q. Do you keep them in your hand?

22 A. Actually, I have a clip, and I can show you if you
23 like.

24 Q. You can just describe it.

25 A. It it's a clip that you clip on your belt loop.

1 Q. So you got your restaurant keys clipped to the
2 outside.

3 A. And it's got my car keys on the outside.

4 Q. And the car keys are on that too. So you clipped
5 all your keys on to your side?

6 A. I would have probably had them in my hand because
7 I have the automatic door lock, so I was probably
8 unlocking the door as I was walking up.

9 Q. That was my original question. After you locked
10 the door, you would have had the keys in your hand?

11 A. Yes, sir.

12 Q. And you would have started the process of walking
13 to your car?

14 A. Yes, sir.

15 Q. And, in fact, you got almost all the way to your
16 car before the person in the white hoody and the black
17 jeans appears; is that correct?

18 A. Correct.

19 Q. And you are now a number of feet away from the
20 door; is that correct?

21 A. Correct.

22 Q. And there is other people out there; is that
23 correct?

24 A. Right.

25 Q. But this person in the white hoody and the dark

1 pants only approaches you, right?

2 A. Correct.

3 Q. Doesn't approach any of the other people?

4 A. Correct.

5 Q. Doesn't approach the business; is that correct?

6 A. Correct.

7 Q. Okay. And as you are about to get to your car,
8 you hear hey; is that correct?

9 A. Correct.

10 Q. And you turn towards your left?

11 A. Correct.

12 Q. And you look and you see a person in a white hoody
13 with dark pants. Now, let's not assume the jury knows
14 what a hoody is, okay? A hoody is a sweat shirt that
15 also has a big hood and pulls down over the face. Isn't
16 that correct?

17 A. It wasn't over his face, it was over the top of
18 his hairline.

19 Q. So in this case, the hoody is a sweat shirt with a
20 hat that is attached to it and it's covering over the
21 hairline; is that correct?

22 A. I mean, I don't think it was a hat. It was just a
23 pull-over hoody.

24 Q. That covers the head like a hat; is that correct?

25 A. Correct.

1 Q. And that is to the hairline in this case; is that
2 correct?

3 A. Correct.

4 Q. And it has a mask pulled down over it, the person
5 that you see; is that correct?

6 A. That's correct.

7 Q. And you immediately start to get the door of your
8 car open; is that correct?

9 A. Correct.

10 Q. And you immediately try to start to get inside
11 your car; is that correct?

12 A. Correct.

13 Q. And you've got to get the keys to your ignition
14 inside the car to start the car, don't you?

15 A. Correct.

16 Q. And you've got to get the car in gear; is that
17 correct?

18 A. Correct.

19 Q. And you've got to concentrate and do all those
20 things, correct?

21 A. Correct.

22 Q. And then you become aware that the person with the
23 hoody and the dark pants and the mask is at your window;
24 is that correct?

25 A. I mean, I was aware of the whole time of him

1 walking up to my car.

2 Q. So it's your testimony that you were aware of him
3 the whole time walking up to your car while you're doing
4 all the things to get away?

5 A. Correct.

6 Q. And you get in your car, and you start to get
7 away. Do you have lights on inside the car?

8 A. The light automatically comes on when I open the
9 door and automatically shuts off when I shut the door.

10 Q. So you're in the dark inside the car. Were any of
11 the lights from the restaurant shining in your car?

12 A. The parking lot is completely illuminated with
13 light.

14 Q. Was the video we saw a fair and accurate
15 representation of the lighting in the parking lot?

16 A. I would say close, yes.

17 Q. And you testified today that the person who pulled
18 the gun on you, you could see his eyes; is that correct?

19 A. Right.

20 Q. What about his eyes?

21 A. You know a person's eye structure when you see it.
22 Everyone has different types of eyebrows, you know. I
23 just kind of remember them. It was the only thing I
24 could really see.

25 Q. So you're saying you do see eyebrows; is that

1 correct?

2 A. Well, I could see a circle around the eye because
3 the face mask covered everything but the eyes.

4 Q. So you're saying you could see the circle around
5 the eye and you just used the word eyebrows; is that
6 correct?

7 A. Yes.

8 Q. And you indicated as you were trying to get away
9 that he tried to get in the car and you pulled car door
10 shut; is that correct?

11 A. That's correct.

12 Q. And you said he tried a second time to get in the
13 car door; is that correct?

14 A. When I got back to where I was putting it into
15 first gear, I still had my hand on it. I could feel the
16 door start to open, and you could see in the video he was
17 reaching for my door handle.

18 Q. And at that point as you're trying to get away the
19 person in the white hoody and dark pants runs away; is
20 that correct?

21 A. That's correct.

22 Q. And how much time passes before an officer comes
23 to the scene? Did you say probably ten minutes?

24 A. Approximately.

25 Q. And after an officer comes to the scene, you are

1 then taken to the location in Summit Apartments?

2 A. Yeah, the apartment complex right behind Ryan's.

3 Q. And another five minutes passes; is that correct?

4 A. That's correct.

5 Q. You're inside the police car, and while you're
6 inside the police car, another person is brought out of a
7 police car; is that correct?

8 A. Correct.

9 Q. So the person that you see is inside a police car
10 and taken out; is that correct?

11 A. Correct.

12 Q. Okay. And he's handcuffed; is that correct?

13 A. Correct.

14 Q. And there is a police officer right with him; is
15 that correct?

16 A. I don't remember the police officer being there.
17 My attention was directed right on him.

18 Q. Was someone telling you to direct your attention
19 right on him?

20 A. No.

21 Q. Your attention was directed by -- would it be fair
22 to say there was probably a police officer with him
23 helping him get out of the car?

24 A. I would say that is probably fair.

25 Q. And the officer that you're with shines a

1 spotlight on that person; is that correct?

2 A. Correct.

3 Q. Okay. Now, the person that you're looking at does
4 not have on a white hoody, does he?

5 A. Correct.

6 Q. And, in fact, he doesn't have on any kind of a
7 shirt, does he?

8 A. Not to my knowledge.

9 Q. Do you recall a black T-shirt being draped over
10 his shoulder, or is his shoulder bare?

11 A. I don't think so.

12 Q. And the person that you're looking at is not
13 wearing a mask?

14 A. Correct.

15 Q. So you're seeing a person that's wearing dark
16 pants, no shirt, and no mask, in handcuffs, with a
17 spotlight on him next to a police car and maybe next to a
18 police officer; is that correct?

19 A. Correct.

20 Q. And this is right after you had just had a person
21 in a white hoody point a gun at you.

22 A. Correct.

23 Q. Okay. And you have stated in this courtroom that
24 you are 100 percent sure that the person the police
25 officer showed to you is the same person that pointed the

1 gun at you; is that correct?

2 A. Correct.

3 Q. Okay. And one of the features that you're
4 emphasizing is the eyes; is that correct?

5 A. And the body structure, the pants. He's the same
6 height, the same weight.

7 Q. Okay. You had, at the most, between the time you
8 went out your door and the time you got in your car,
9 based on your own testimony, you said the whole incident
10 was about 30, 40 seconds; is that correct?

11 A. Correct.

12 Q. But for part of that 30 or 40 seconds, you're
13 locking up the door and walking out to your car; is that
14 correct?

15 A. Correct.

16 Q. So it was less time than that that you had to
17 observe a person in the white hoody and the dark jeans;
18 is that correct?

19 A. Well, actually, that is the time I got to observe
20 the eyes. As he was running back to the cell tower, of
21 course, we watched him run back to the cell towers when
22 we were in front of the restaurant.

23 Q. So you're looking at the back of a person running
24 away from you in the dark in a lit parking lot?

25 A. Right.

1 Q. But you feel very confident about six feet, 250
2 pounds?

3 A. Right.

4 Q. At the time they showed you the person who got out
5 of the police car, no one showed you a mask or a gun; is
6 that correct?

7 A. No, sir.

8 Q. So it wasn't until after you had told the police
9 officer that you were sure that was the person that you
10 were shown the mask and the gun; is that correct?

11 A. Correct.

12 Q. And how much time had passed, another few minutes?

13 A. I would say -- I know it was towards the latter
14 end of Officer Wagner writing my statement that I had
15 asked him about it, so it was probably ten minutes,
16 fifteen minutes.

17 Q. So probably 30 minutes total after this incident
18 happened is when you were with Officer Wagner giving a
19 statement; is that correct?

20 A. Around about, yes, sir.

21 Q. Let's just talk briefly about the giving of the
22 statement in this case. You had just had someone point a
23 gun at you; is that correct?

24 A. Correct.

25 Q. And you just told the officer you were in fear of

1 your life; is that correct?

2 A. Yes, sir.

3 Q. And you had been given the chance to talk to
4 police officers about what happened to you; is that
5 correct?

6 A. Correct.

7 Q. And this incident is as fresh in your mind as it
8 could possibly be; is that correct? Much fresher than
9 than it is today because now some time has passed,
10 correct?

11 A. Correct.

12 Q. And during the passage of time -- well, strike
13 that.

14 All right. So you're talking to an officer, and
15 you give him a statement. You would agree with me that
16 it is important to give a police officer as much
17 information as you can, right?

18 A. Correct.

19 Q. Okay. You would agree with me that if you had
20 someone point a gun at your head, you really want to get
21 the guy that did it, correct?

22 A. Correct.

23 Q. And you don't want to be wrong about it, do you?

24 A. Correct.

25 Q. You want to get the right guy?

1 A. Correct.

2 Q. Okay. When you gave a statement in this case,
3 therefore, you would have tried to be as accurate as you
4 could, right?

5 A. Of course.

6 Q. Because you wanted to get the guy that pointed the
7 gun at you, right?

8 A. Yes, sir.

9 Q. When you gave your statement in this case, you
10 didn't make any mention of eyes, did you?

11 A. No, sir.

12 Q. You didn't make any mention in your statement that
13 you gave of eye structure, did you?

14 A. No, sir.

15 Q. You didn't make any mention in your statement of
16 eyebrows, did you?

17 A. No, sir.

18 Q. Okay. Now, also, when you gave your statement,
19 you didn't say anything about a second attempt at
20 grabbing your door and getting in, did you?

21 A. No, sir.

22 Q. Okay. So you didn't say any of these things at
23 the time you give your statement, which is right after
24 this incident happened, but here we are in July of 2009,
25 and all of these facts are now part of your testimony

1 today; is that correct?

2 A. Correct.

3 MR. HOLTON: A moment of the Court's
4 indulgence. Thank you, Mr. Simmons. Thank you, Your
5 Honor. No further questions.

6 THE COURT: Redirect?

7 MR. RIESEN: Nothing further, Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: I'm done.

10 MR. RIESEN: State calls officer Doug
11 Armstead.

12 ARTHUR DOUGLAS ARMSTEAD,
13 having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. RIESEN:

17 Q. Officer Armstead, what law enforcement agency are
18 you employed by?

19 A. North Charleston police department.

20 Q. How long have you been with them?

21 A. Going on six years.

22 Q. Okay. And just briefly for the jury, can you
23 describe what your education and background is.

24 A. I was a fireman. I graduated from high school. I
25 was a fireman for five years then I came into law

1 enforcement.

2 Q. And you said you had been with them about five
3 years?

4 A. Yeah, going on six. Yes, sir.

5 Q. Now, are you assigned to any specific team or unit
6 with NCPD?

7 A. Back out on patrol.

8 Q. Were you formally with NCPD speed team?

9 A. Yes, sir.

10 Q. And just briefly, what is the speed team?

11 A. Speed team goes and handles community-based
12 problems. We go in, handles narcotics complaints,
13 prostitution, stuff of that nature.

14 Q. Now, back on December 29 of '07, were you employed
15 by the North Charleston Police Department?

16 A. Yes, sir.

17 Q. And did you respond to an incident at Ryan's
18 Steakhouse, 7321 Rivers Avenue?

19 A. Yes, sir.

20 Q. Is that Charleston County?

21 A. Yes.

22 Q. And what time of day or night did you respond,
23 approximately?

24 A. Just before midnight, approximately 11:50.

25 Q. Did you get a description of the suspect from

1 dispatch that evening?

2 A. Yes, sir, I did.

3 Q. And what was the description you received?

4 A. Approximately six foot, wearing dark pants, a
5 hoody, ski mask, armed with a black revolver style
6 handgun.

7 Q. Where did you go after receiving this information
8 from dispatch?

9 A. I'm familiar with the area, so I went to Summit
10 Place Apartments, which is directly behind the Ryan's
11 Steakhouse.

12 Q. Just kind of take us to what happened when you
13 arrived at Summit Place Apartments. What did you do?

14 A. When I went to Summit Place Apartments, I went in,
15 went to the right side of the apartments. When I was
16 checking the area, I observed the subject matching the
17 description that was given, black male, six foot. He had
18 dark pants, but he wasn't wearing any shirt at the time.

19 Q. Okay.

20 A. He was carrying some shirts in his hand. He was
21 sweating profusely and had steam rising off of him, which
22 I saw as kind of suspicious due to the time of year it
23 was.

24 Q. This was in December, right?

25 A. Yes, sir.

1 Q. And you said you said he had no shirt on?

2 A. No shirt at all.

3 Q. Okay. And you said he fit the description based
4 upon height and weight?

5 A. Yes, sir.

6 Q. Color of his pants?

7 A. Yes, sir.

8 Q. And the fact that he wasn't wearing any shirt,
9 correct?

10 A. Yes, sir.

11 Q. And what did you do when you saw this person?

12 A. I exited my vehicle and contacted him.

13 Q. What did he do?

14 A. When I made contact with him, I was explaining to
15 him while I was stepping out of the vehicle, and he went
16 to reach into his left front pants pocket, and I stopped
17 him at that point and started giving him verbal commands.
18 I observed a bulge in his pants pocket.

19 Q. What did you do when you saw him reaching for his
20 pocket?

21 A. Due to the incident, I drew my handgun and started
22 giving him verbal commands not to reach into his pockets
23 and told him why I was getting out with him and I didn't
24 want to pull any guns or anything out on him.

25 Q. Did he comply at this point when you had your

1 weapon?

2 A. Yes, put his hands up.

3 Q. What happened next?

4 A. While I was giving him verbal commands, Officer
5 Cobb come from around the building and detained the
6 subject for our safety.

7 Q. Okay. And are you aware of anything that was
8 recovered from the suspect?

9 A. In his left front pants pocket, both officers
10 asked him if he had anything that we needed to know
11 about, and he had a ski mask and a revolver in his
12 pocket.

13 Q. Okay. And were you -- was this ski mask in plain
14 view?

15 A. It was protruding out of his pocket, yes, sir.

16 Q. Can you describe what the ski mask looked like?

17 A. It was camouflage, thick material.

18 Q. And what about this gun, anything in particular?
19 What did it look like?

20 A. It was a black revolver style handgun that was
21 rusty.

22 Q. And, again, both were located where?

23 A. Left front pants pocket.

24 Q. And is that where the bulge was?

25 A. Yes.

1 Q. And you said Officer Cobb was the one who
2 retrieved the gun and the ski mask?

3 A. Yes, sir.

4 Q. What did you do next?

5 A. I began looking for the hoody that was described.

6 Q. And you said earlier in dispatch that was part of
7 the description, was a white hoody?

8 A. Yes, sir.

9 Q. But it wasn't on the defendant when you detained
10 him, correct?

11 A. No, sir.

12 Q. In fact, he had no shirt on at all?

13 A. No, sir.

14 Q. And this was, you said, in late December?

15 A. Yes, sir.

16 Q. Were you able to locate this hoody?

17 A. No, sir, I was not.

18 Q. Couple more questions. How much time was it
19 between -- well, strike that.

20 Do you know whether or not the victim came and
21 made an identification?

22 A. I know that he came to the scene, but I wasn't
23 present for that.

24 Q. Okay. And where were you during the
25 identification?

1 A. I was looking for the hoody.

2 Q. Okay. Now, how far from Ryan's Steakhouse where
3 this incident took place was it that you detained the
4 suspect?

5 A. Just a couple hundred yards.

6 Q. Did you move him from there during the show-up or
7 anything? Is that where everything took place, to your
8 knowledge to?

9 A. My knowledge, where I made contact with him, that
10 is where everything occurred.

11 Q. How much time was it between the time you got --
12 strike that.

13 What time did you receive a dispatch of the
14 incident?

15 A. I believe the dispatch time was 11:44.

16 Q. And approximately how much time was it between
17 then and when you detained the defendant?

18 A. He was detained at 12:01.

19 Q. So what is that, 15, 16 minutes if I did my math
20 right?

21 A. Yes, sir.

22 MR. RIESEN: Court's indulgence. Nothing
23 further. Please answer any questions Mr. Holton and
24 Mr. Harris may have for you.

25 MR. HARRIS: May it please the Court.

CROSS-EXAMINATION

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BY MR. HARRIS:

Q. Mr. Ravenel didn't live in those apartments, did he?

A. To my knowledge, no.

Q. You say you did not find that hoody?

A. No, sir. I did not find it.

Q. He was about 200 yards away from where the incident happened?

A. Yes, sir.

Q. So from between that hole in the fence to here, 200 yards, you searched there and didn't find a hoody?

A. No, sir.

Q. Did you look in trash cans?

A. I looked everywhere I could.

Q. Everywhere you could. Okay. You say in your report that you pulled up and saw a six foot black male with no shirt, sweating, I believe it was.

A. Yes, sir.

Q. Okay. You exited your vehicle, and you stopped him and told him the reason you were stopping him.

A. Yes, sir.

Q. What was the reason you were stopping him?

A. Due to the incident that we just had.

Q. Okay. Because he fit a description?

1 A. Yes, sir.

2 Q. And the parts of the description that he fit are
3 six foot and black, right, black male?

4 A. Yes, sir.

5 Q. Okay. And black or dark pants?

6 A. Yes, sir.

7 Q. So other than that, he didn't fit any other
8 description. He didn't have a white hoody on?

9 A. No, sir. He didn't have a white hoody.

10 Q. He had two shirts on him?

11 A. He was holding two shirts.

12 Q. What color were those shirts?

13 A. To the best of my knowledge, they were black and
14 white.

15 Q. So then it was a black shirt with a white T-shirt
16 inside of it, like somebody would wear a undershirt?

17 A. To the best of my knowledge, yeah.

18 Q. And tell me if I have this straight. You pull
19 your car up and stop him?

20 A. Yes, sir.

21 Q. You tell him why you're stopping him. He has his
22 hands -- he reaches into his pocket?

23 A. He goes to reach into his pocket.

24 Q. You pull out your service revolver?

25 A. Yes, sir.

1 Q. Which is a Glock, service revolver?

2 A. Yes.

3 Q. And you at that point tell him, Put your hands up?

4 A. Yeah. Keep your hands up. Don't reach in your
5 pockets.

6 Q. And he puts his hands up?

7 A. Yes.

8 Q. And complies, is what you guys referred to.

9 A. Yes.

10 Q. Complies with you, doesn't dive back into his
11 pockets, right? Okay. And is he under arrest at that
12 point?

13 A. No, sir.

14 Q. Okay. He's just being detained because he fits
15 the description?

16 A. Yes, sir.

17 Q. Okay.

18 A. And for safety reasons.

19 Q. For safety reasons?

20 A. Yes, sir.

21 Q. So for officer safety, you detained him?

22 A. Yes.

23 Q. Okay. So at this point, you're holding him at
24 gunpoint from six feet away, you said, six to eight?

25 A. Six to eight.

1 Q. You got a gun pointed. Officer Cobb comes behind,
2 draws his revolver also, so you got two people on him.

3 He comes around back and cuffs him?

4 A. Yes, sir.

5 Q. Behind?

6 A. Yes, sir.

7 Q. Double locked? Is that still -- Officer Cobb will
8 be able to explain that later.

9 Okay. At that point, is he under arrest?

10 A. No, sir.

11 Q. Okay. But he wasn't free to leave.

12 A. He was just detained.

13 Q. And -- I know about them, you know about them, but
14 for the jury, what are Miranda warnings?

15 A. They're the rights that everyone has when they're
16 placed under arrest.

17 Q. Do you have a card? Do you carry a card you read
18 off of?

19 A. Yes, sir.

20 Q. Okay. You have the right to remain silent,
21 anything you can say will be used in a court of law. You
22 have the right to have an attorney. Can you explain to
23 the jury what that is?

24 A. That is their rights that they have so you do not
25 incriminate yourself. It's just the rights they have

1 when they're placed under arrest.

2 Q. Okay. And at the point when you got him
3 handcuffed there, he's not under arrest, but he has not
4 been Mirandized either; is that right?

5 A. No, sir.

6 Q. Okay. And you asked him at that point, do you
7 have anything on you that -- for officer safety, do you
8 have anything on you that -- do you have it in your
9 pockets? Is that what you asked him?

10 A. Do you have anything on you that -- most of the
11 time, I say do you have anything in your pockets that
12 could hurt me, poke me, stick me, anything like that.

13 Q. He's handcuffed, and do you reach in his pockets?

14 A. No.

15 Q. Officer Cobb does?

16 A. Yes.

17 Q. Okay. Beg the Court's indulgence, Your Honor.

18 MR. HARRIS: I've got nothing further.

19 MR. RIESEN: Nothing from the state.

20 THE COURT: You can step down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: All right. Folks, what we're
23 going to do now is we've got a few more witnesses that
24 we're going to call, but it's close to the lunch hour so
25 I'm going to go ahead -- they might a little bit more

1 time. We're going to break for lunch now. You can go
2 together or wherever you want to for lunch or go
3 separately, but don't talk about the case, not any of the
4 testimony, don't review it, talk about it in any way,
5 shape, or form, or if anyone talks to you or approaches
6 you about the case, let me know about it immediately.

7 It's quarter to 12:00 right now. If y'all
8 would be back in the room by 1:15, we'll get started
9 right then. Okay? We'll see you in a little bit. Thank
10 you.

11 (Recess taken.)

12 THE COURT: All right. We ready?

13 MR. RIESEN: Yes, sir, we are.

14 THE COURT: Let the record reflect the
15 defendant is in the courtroom. Bring the jury back.

16 A F T E R N O O N S E S S I O N

17 THE COURT: Okay, folks. We're going to lead
18 off with the state calling the next witness.

19 MR. RIESEN: State calls Officer Darin Cobb.

20 DARIN COBB,

21 having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RIESEN:

25 Q. What is your occupation?

1 A. I'm an officer with the North Charleston police
2 department.

3 Q. How long have you been with the North Charleston
4 police department?

5 A. A little more than ten years.

6 Q. Could you briefly give us your educational
7 background.

8 A. High school graduate, Wando High School, earned a
9 degree from Trident Technical College in law enforcement.

10 Q. What about law enforcement training?

11 A. Worked for Dorchester County sheriff's office and
12 then I came to North Charleston.

13 Q. How long have you been with North Charleston
14 police department?

15 A. April was ten years.

16 Q. And what did you do prior to your employment with
17 the North Charleston police department?

18 A. Deputy sheriff, Dorchester County sheriff's
19 office, and before that I worked for UPS.

20 Q. What are your duties with the North Charleston
21 police department?

22 A. My current duties are primarily I answer 911 and
23 911 emergency and other service calls, and when not doing
24 that, I'm expected to be proactive in criminal and
25 traffic enforcement.

1 Q. Okay. Let's go back to December 29, 2007. Did
2 you respond to an incident at Ryan's on 7321 Rivers
3 Avenue in North Charleston?

4 A. I did.

5 Q. I assume you were with the NCPD at that time?

6 A. I was a patrol officer on the night shift.

7 Q. When you responded were you given a description of
8 the suspect?

9 A. Yes, I was.

10 Q. What was that description?

11 A. Initial description, black male, roughly six feet
12 tall, heavysset, dark pants, light hoody, camouflage mask.

13 Q. Anything else?

14 A. Well, once I got on scene, I got on foot in the
15 apartment complex and I learned that the suspect was
16 reported to have an old black and rusty revolver that he
17 had tried to discharge several times.

18 Q. Now, where did you respond when you got that call?

19 A. When the call initially came out, I was on Rivers
20 Avenue near the Super K-Mart, if you know North
21 Charleston. There were other officers closer, and
22 primarily the first officer on the scene is going to go
23 to the actual restaurant.

24 I went to the apartment complex behind there
25 because dispatch advised that the suspect had run in that

1 direction, Summit Place Apartments.

2 Q. And that is directly behind?

3 A. It's directly behind Ryan's, only separated by the
4 parking lot and a wooden privacy fence.

5 Q. What did you do when you got to Summit Place
6 Apartments?

7 A. I pulled into the apartment complex. I got out on
8 foot, and I walked behind the first building that I got
9 to and tried to wait quietly to see if I heard anybody
10 running, essentially trying to locate the suspect.

11 Q. Okay. And what happened?

12 A. I heard Officer Armstead yelling at someone on the
13 other side of the building to show your hands or
14 something to that effect. I immediately ran to that side
15 of the building where I observed Officer Armstead holding
16 the defendant at gunpoint.

17 Q. Okay. And what did you do?

18 A. Initially, I drew my weapon, not knowing exactly
19 what Officer Armstead had seen, as a matter of safety,
20 because I was coming -- I was actually coming from behind
21 the defendant. And as I approached, I could see at this
22 point the defendant was complying with Officer Armstead's
23 instructions, so I secured my weapon, and I moved in to
24 detain the defendant.

25 Q. Why don't you tell us how you detained -- what you

1 did in detaining him.

2 A. Well, I was carrying my weapon. As I walked up
3 behind the defendant, I pulled the handcuffs from my
4 right handcuff pouch, and I grabbed his right arm,
5 brought it to his back, and applied the first handcuff,
6 and then I reached for and grabbed his left arm, because
7 I'm standing at his back. As I pulled that arm back to
8 handcuff him, I could see the camouflage ski mask
9 sticking out of his left front pants pocket.

10 Q. And so then I'm assuming you cuffed him?

11 A. I did. I secured him with handcuffs which I
12 double locked.

13 Q. And what happened next?

14 A. I asked the defendant if he had anything on him
15 that I needed to be aware of.

16 Q. And did you recover anything from the defendant?

17 A. I did.

18 Q. What did you recover and where?

19 A. Front left pants pocket, I recovered a ski mask
20 which was actually protruding out, you could see it, and
21 underneath that there was an old black and rusty 38
22 caliber revolver.

23 MR. RIESEN: May I approach, Your Honor?

24 THE COURT: You may.

25 BY MR. RIESEN:

1 Q. I'm showing you what has been marked as State's
2 Exhibit No. 1. Do you recognize that?

3 A. Yes. This is the weapon that I recovered from the
4 defendant that night.

5 Q. What is the model and make on that?

6 A. It's 38 caliber. The make, I had trouble
7 identifying that night as I was reading the distributor
8 information on it. I would actually have to look -- I
9 still have trouble reading the actual make.

10 Q. That's okay.

11 A. The serial number is the same.

12 Q. The serial number is the same. When you recovered
13 that, did you check and see if it was loaded?

14 A. Yes, I did.

15 Q. And was it loaded?

16 A. Yes, it was.

17 Q. And how many bullets were in the chamber?

18 A. This is --

19 Q. Or the cylinder, I should say.

20 A. The revolver, unlike an automatic, has a cylinder,
21 and although it has six slots, there were only two
22 bullets in the weapon.

23 Q. So six slots, that means it holds six bullets; is
24 that correct?

25 A. That's correct.

1 Q. Where were the bullets located?

2 A. Could I demonstrate as I --

3 Q. Sure.

4 A. The cylinder is actually inside the weapon where
5 it would be when you fire the weapon. There was one
6 bullet at 12:00 position, 12 o'clock high, which is where
7 the firing pin would strike, and there was another bullet
8 at the 1:00 position, just to the right of that.

9 Q. Could you tell whether or not the bullet had been
10 struck?

11 A. Yes.

12 Q. Which bullet had been struck?

13 A. The bullet that was at the 12 clock position,
14 which is directly in front of the hammer of the firing
15 pin, had an indent in the primary bullet, which is what
16 the firing pin strikes, and there was an indent in the
17 bullet.

18 Q. Could you explain how that gun, the revolving
19 action of that versus other guns and how that is
20 relevant?

21 A. Sure. Most American revolvers, from a shooter's
22 point of view, when you pull the hammer back or you pull
23 the trigger, the cylinder rotates clockwise, just like a
24 clock; however, this gun is opposite, actually rotates
25 counter clockwise, so from a shooter's point of view

1 every time you pull the trigger, it rotates to the left.

2 Q. And in looking at that and the location of the
3 bullets and the firing pin, what did that lead you to
4 conclude?

5 A. Well, with the understanding that the defendant
6 had pulled the trigger twice, that would mean that the
7 first time that the trigger was pulled the firing pin hit
8 an empty cylinder and the second time it was pulled was
9 when the top one rotated into there and where the primer
10 was struck by the firing pin. Essentially the first time
11 the trigger was pulled the firing pin hit an empty
12 cylinder.

13 Q. And the second time?

14 A. The second time the trigger was pulled, the firing
15 pin actually struck the primer of the bullet. Why it
16 didn't go off, I can't say. It just didn't go off.

17 Q. And did you take this into evidence, the gun and
18 the bullets?

19 A. Yes, I did.

20 Q. It's already been introduced into evidence, but
21 just for the jury's sake, could you explain how you
22 confiscated it and what you did after the chain of
23 custody.

24 A. As far as the chain of custody goes, the way it
25 works, in the middle of the night there is no evidence

1 clerk in the evidence room, but there is a process where
2 we fill out our paperwork, along with a chain of custody,
3 saying the weapon is going from this person to this
4 person to this person.

5 When you go into the North Charleston police
6 department evidence room, there is a slot in the door.
7 It's a heavy metal door, and you put this into an -- I
8 don't know if you can see -- into a cardboard box along
9 with a copy of the police report, booking report, if you
10 have made an arrest, criminal history, so forth.

11 And you put all of that into the slot. Once it
12 goes in, nobody has access to that except for the
13 evidence technicians. Once I put it in, I can't get it
14 out, and that is what I did with that.

15 Q. Okay. Just to be certain, is there any question
16 in your mind that that is not -- is there any question in
17 your mind that is the same gun that you recovered from
18 the defendant that evening?

19 A. I have no doubt. This is the same weapon that I
20 recovered from the defendant's pocket.

21 Q. One other thing. We talked about some bullets.
22 I'm showing you what is State's Exhibit No. 2. Could you
23 take a look at those bullets? You're free to open the
24 package and see if you recognize them.

25 A. I don't need to. I can see straight through here.

1 Q. Is there anything unique about any of those
2 bullets based on your testimony earlier?

3 A. As I testified, when the firing pin of a weapon
4 strikes the center part, when the firing pin strikes, it
5 ignites the powder. In one of those two rounds, which is
6 going to be this one here, which you'll have an
7 opportunity to examine later, you're going to see an
8 indent from the firing pin, so the firing pin hit the
9 bullet, hit the primer. It was just a bad bullet, I
10 guess.

11 Q. I'm showing you what has also been marked as
12 State's Exhibit No. 3. Do you recognize this?

13 A. Yes.

14 Q. How do you recognize it?

15 A. This was the ski mask that was hanging out of the
16 defendant's left front pant pocket that night.

17 Q. Any question in your mind that it's not?

18 A. Yeah, it's the same mask.

19 Q. I just have a couple more questions.

20 MR. RIESEN: Your Honor, I'm not sure if we
21 entered the bullets, State's Exhibit No. 2, into
22 evidence. I'm not sure if they are or not. The state
23 would move State's Exhibit 2 into evidence.

24 THE COURT: Subject to the defense's earlier
25 objection, they're admitted.

1 BY MR. RIESEN:

2 Q. Now, at some point, was there an identification of
3 the defendant by the victim?

4 A. Yes.

5 Q. And where did this identification take place?

6 A. This occurred in Summit Place Apartments in Dunlap
7 Street, directly behind the restaurant where I detained
8 the defendant.

9 Q. And where was the victim?

10 A. Officer Wagner originally had been at -- the
11 victim had been at Ryan's restaurant. Officer Wagner
12 drove him over to the Summit Place Apartments where I had
13 the defendant.

14 Q. Okay. And do you know why Officer Wagner is not
15 here today?

16 A. My understanding, he's on vacation. He's not in
17 the state right now.

18 Q. But you were there when the identification took
19 place, correct?

20 A. Yes.

21 Q. And was -- you said the victim was in a police
22 car; is that correct?

23 A. That's correct.

24 Q. Now, where was the defendant?

25 A. The defendant was standing towards the rear of my

1 patrol car, not far from the back left door.

2 Q. How far was that from the victim?

3 A. Just over a car length away, because the victim
4 was sitting inside Officer Wagner's car, so, at most, a
5 car length and a half.

6 Q. And what was the defendant wearing?

7 A. Dark pants, no shirt -- he wasn't wearing a shirt.
8 At the time we detained him he had a black T-shirt. When
9 I saw him it was draped over his shoulder and inside was
10 white T-shirt, but he wasn't wearing a shirt.

11 Q. And how was he -- what was his appearance?

12 A. Sweaty, like he had been running.

13 Q. You said dark pants, correct?

14 A. Yes.

15 Q. What was his height?

16 A. Tall, six foot, maybe a little bit taller.

17 Q. What was his weight probably?

18 A. Heavysset, around 250.

19 Q. Was the defendant handcuffed during
20 identification?

21 A. I had handcuffed him prior so he was handcuffed at
22 that time, yes.

23 Q. Why was he handcuffed?

24 A. Safety.

25 Q. Did you at any time influence the victim to

1 identify the defendant?

2 A. No, I did not.

3 Q. To your knowledge did anybody?

4 A. No.

5 Q. Do you know if the defendant lived in the Summit
6 Place Apartments where you found him?

7 A. He did not live there.

8 Q. Where did he live?

9 A. He lived in the

10 Q. How far away is that?

11 A. About four miles.

12 Q. Where is that in relation to where you were?

13 A. Well, you would have to walk to Ashley Phosphate
14 Road, cross over I-26.

15 Q. So it's on the other side of I-26?

16 A. Oh, yes, way on the other side of I-26.

17 Q. Now, are you aware whether or not the gun was sent
18 off to IBIS for testing?

19 A. Yes.

20 Q. And did you learn whether or not the gun was
21 capable of firing?

22 A. Yes. I spoke with the individual who performed
23 the test, and I have the test results. It was a
24 functional weapon. The weapon did fire.

25 Q. Did you later, after the identification of the

1 defendant, have an opportunity to discuss with the victim
2 the gun or the face mask?

3 A. I did. After the showup identification, Officer
4 Wagner took the victim back to Ryan's Steakhouse where he
5 was obtaining a written statement. Once I had everything
6 I needed from the apartment complex, I drove the
7 defendant in the back seat of my patrol car over to
8 Ryan's Steakhouse to try to determine what would be the
9 appropriate charges.

10 Q. And as for the identification, how -- did he make
11 an identification? And, if so, can you explain how that
12 went down.

13 A. After the identification on the scene, as far as
14 the statement goes, I went back to the steakhouse, and
15 the victim was just finishing his statement with Officer
16 Wagner for the identification, and he asked if we had
17 recovered a gun and, if we did, could he see it.

18 So I showed him the gun, which he identified as
19 the one which had been pointed at him, which he had
20 already described as a revolver, black and rusty, and he
21 also identified the mask that I recovered from the
22 defendant's pocket.

23 Q. Was there any hesitation at all in making that
24 identification by the victim?

25 A. No. It was like, That's it, that's it, that type

1 of identification.

2 MR. RIESEN: Okay. Court's indulgence.
3 Nothing further at this time, Your Honor. Please answer
4 any questions Mr. Holton may have.

5 MR. HOLTON: Thank you, Your Honor, may it
6 please the Court.

7 CROSS-EXAMINATION

8 BY MR. HOLTON:

9 Q. Good afternoon, Officer.

10 A. Good afternoon.

11 Q. Is it correct you have a total of ten years
12 experience in law enforcement?

13 A. I have more than that.

14 Q. Ten years with North Charleston?

15 A. Over ten years with North Charleston.

16 Q. How much more than ten?

17 A. Couple years with Dorchester County sheriff's
18 office.

19 Q. So ten years in law enforcement?

20 A. Prior to that I was a reserve officer.

21 Q. Even longer?

22 A. Even longer.

23 Q. And during your more than 12 years of law
24 enforcement, you've made hundreds, if not thousands, of
25 arrests, correct?

1 A. A lot.

2 Q. A lot?

3 A. A lot. I couldn't even guess.

4 Q. Lost track at this point, haven't you?

5 A. Yes. I couldn't even guess how many people I've
6 arrested.

7 Q. The things you do today as a police officer come
8 from A, your training; and, B, the experience you gained
9 on-the-job; is that correct?

10 A. That, and common sense.

11 Q. And common sense, all right. So you bring three
12 things to the table as a police officer: You bring
13 training, you bring experience, and you bring common
14 sense; is that correct?

15 A. Yes.

16 Q. Let's talk about your training. You made a
17 reference to -- I want to get the name right, the justice
18 academy; is that correct?

19 A. South Carolina Criminal Justice Academy.

20 Q. What is that?

21 A. That the police academy in Columbia that certified
22 law enforcement officers have to go through to become
23 certified, and in South Carolina, they changed it
24 somewhat. There was a time when you could work as a
25 police officer for so long and then go to the academy,

1 but at least with the North Charleston police department,
2 you have to go to get certified first.

3 Q. You have to go to the academy first to become a
4 North Charleston police officer, right?

5 A. Yes.

6 Q. What year did you go, more than ten years ago?

7 A. Yes, sir. I think I graduated in '97.

8 Q. Graduated in '97. And how long was that program?

9 A. I'm sorry?

10 Q. How long was the program?

11 A. I think it was eight weeks back then.

12 Q. It's an eight-week program, right?

13 A. I think it might be nine, but I believe it was
14 eight back then.

15 Q. And as part of your training, you are taught how
16 to investigate cases; is that correct?

17 A. Somewhat. They teach a lot of things at the
18 academy.

19 Q. A lot of things. Well, every other police officer
20 I've ever talked to says that they are taught how to
21 investigate cases, so wouldn't you agree with that?

22 A. At the South Carolina Criminal Justice Academy,
23 there was actually limited -- they were teaching the
24 basics. That is why they call it a basic class.

25 Q. Okay. Did you gain any training or experience in

1 gathering information about a case?

2 A. At the academy?

3 Q. Uh-huh.

4 A. I'm sure that I did, but that was a long time ago.

5 Q. Did you have any instruction about writing a
6 report at the academy?

7 A. Yes.

8 Q. Okay. So at least you learned how to write a
9 report at the academy?

10 A. Yes.

11 Q. And other things you have learned about being a
12 police officer have come from your common sense and
13 on-the-job experience; is that correct?

14 A. Mostly and, some from service training.

15 Q. So you've had additional training over the course
16 of your time as a police officer?

17 A. Yes.

18 Q. It's fair to say that you're an experienced and
19 well-trained police officer, isn't it?

20 A. Yes.

21 Q. North Charleston is lucky to have you on the
22 force? You've got 10, 12, 14 years of experience, right?

23 A. Well, if I say no, that's not good, but the answer
24 to that is -- the answer to the question is yes, I'm a
25 very good police officer.

1 Q. You're very experienced, you're a very good
2 officer?

3 A. Yes, sir.

4 Q. And you have learned over now these many years how
5 to document a case and how to gather evidence; is that
6 correct?

7 A. Yes, sir.

8 Q. All right. And one of the most important things
9 that a police officer does at the time he's dealing with
10 a case is take items into evidence. Wouldn't you agree
11 with that?

12 A. Yes, sir.

13 Q. Okay. It's important to gather evidence while
14 it's fresh, right?

15 A. Yes, sir.

16 Q. And you want to preserve it in the event you have
17 to go to court; isn't that right?

18 A. Yes, sir.

19 Q. Isn't it also true that it's very important for an
20 officer to document a case at the time he's
21 investigating? Wouldn't you agree with me?

22 A. As much as you can remember at the time, yes, sir.

23 Q. And you want to do it at the time while it's fresh
24 and while the witnesses are there and while the evidence
25 is present; is that correct?

1 A. Yes, sir.

2 Q. And there is a lot of reasons. One reason is
3 sometimes a substantial amount of time passes before a
4 case comes to court; is that correct?

5 A. Yes, quite often.

6 Q. And, in fact, you might not remember the details
7 of a case unless you have your report to refer to; is
8 that correct?

9 A. Quite often, if you're asking about a case, I'll
10 have trouble remembering, and if I read the report, it
11 helps it to recall.

12 Q. You use your report to help recall the case,
13 right?

14 A. Yes. It's a refresher.

15 Q. And you would also agree that reports are useful
16 because you're not the only person that reads them; is
17 that correct?

18 A. That's correct. Defense attorneys have years to
19 pick them apart.

20 Q. That's right. And prosecutors get a chance to
21 read your reports too, and that is how they learn about
22 the case?

23 A. Yes, sir.

24 Q. And sometimes supervisors read reports, and that
25 is how they know about the case and that is how they sign

1 off on them; is that right?

2 A. Yes.

3 Q. And in this case, you prepared a written report,
4 right?

5 A. Yes, sir, I did.

6 Q. And would it be fair to say that your report is as
7 complete and as accurate as it could have been made at
8 the time?

9 A. It was a very complete report. Look, when I write
10 reports and I have an incident like this, I put in
11 everything that is important that I can think of at the
12 time, but what he doesn't tell you is he has six months
13 to a year to pick it apart, but I put in there that night
14 what I thought was important.

15 Q. Those are your words. I thought you wrote a great
16 report, okay? So what I'm asking you is at the time, you
17 put in all the details that you can of those
18 circumstances; is that correct?

19 A. Yes.

20 Q. Okay. And you put in your report the information
21 that you personally know about the case; is that correct?

22 A. Yes.

23 Q. Okay. All right. Now, let's talk about your work
24 on this case. You received a dispatch call that started
25 your involvement with this particular case; is that

1 correct?

2 A. Yes, it is.

3 Q. That means you're on patrol when something comes
4 over the radio?

5 A. Yes.

6 Q. And even though you weren't the closest officer,
7 you responded because that's what a good police officer
8 does, right?

9 A. Yes.

10 Q. Were you under specific instructions to respond to
11 this case or you chose to respond to it?

12 A. I honestly don't remember.

13 Q. Okay.

14 A. This type of incident is something that every
15 officer in the area should respond to. I don't remember
16 if they specifically called my badge number.

17 Q. But when you hear about this kind of case, you're
18 going?

19 A. Yes.

20 Q. Not only to work the case, but to protect your
21 fellow officers, right?

22 A. Yes.

23 Q. When you arrived at the vicinity of the scene, you
24 must have been aware that Officer Wagner was already on
25 the scene, correct?

1 A. I was aware that somebody was on the scene at
2 Ryan's.

3 Q. So you made a decision not to go to Ryan's
4 initially, right?

5 A. That's correct.

6 Q. And you made a decision to go to the area of the
7 Summit Apartments because you had some information that
8 was the direction the suspect had run; is that correct?

9 A. That's correct.

10 Q. And from your experience with North Charleston,
11 you're obviously very familiar with this area, correct?

12 A. Yes.

13 Q. And when you get back to the Summit Apartments,
14 you get out of the police car; is that right?

15 A. Yes, sir.

16 Q. You do not have your weapon drawn when you get out
17 of the police car, do you?

18 A. No, sir. I didn't see a bad guy.

19 Q. The question is, you did not have your weapon
20 drawn when you got out of the police car, did you?

21 A. No, I did not.

22 Q. It's a yes or no question.

23 A. I'm sorry.

24 Q. You did not have your hands on your handcuffs when
25 you got out of the police car, did you?

1 A. No, I did not.

2 Q. Okay. And your initial activity, when you get out
3 of the police car, is to be still and quiet; is that
4 correct?

5 A. Actually, I walked behind a building initially to
6 look for a defendant, or a suspect, but I heard that
7 there was a K-9 officer coming, but I was in the K-9 unit
8 for five years and you don't want to mess up their track.
9 So I stopped, remained still, listened to see if anybody
10 was coming my way. That is when I heard Officer
11 Armstead.

12 Q. That's when you heard Officer Armstead?

13 A. Yes.

14 Q. Now, it's fair to say when you hear an officer,
15 your response is immediate; isn't that correct?

16 A. Yes.

17 Q. It's based on your training, your experience, and
18 your common sense. You hear an officer, and you respond
19 immediately; is that correct?

20 A. Yes, sir.

21 Q. And in this case from where you were located, it's
22 my understanding that you actually came upon the scene
23 with Officer Armstead and another person from behind; is
24 that correct?

25 A. That's correct.

1 Q. And I think you testified on direct that when you
2 come up on that scene initially, you didn't know what it
3 was?

4 A. Correct.

5 Q. Is that correct?

6 A. Well, I knew that Officer Armstead at that point
7 was -- I had heard him yelling for this person to show
8 his hands, and I came around the corner and I see Officer
9 Armstead holding this person at gunpoint. So I acted
10 appropriately in regards to that.

11 Q. And by acted appropriately, that means at this
12 point you also drew your gun; is that correct?

13 A. Yes, until I could determine what the level of
14 threat was.

15 Q. Now, when you drew your gun, you pointed it at the
16 same person that Officer Armstead had a gun pointed at;
17 is that correct?

18 A. Yes, I did.

19 Q. At this point, the person that you're pointing the
20 gun at is not charged with a crime, is he?

21 A. No, no, not at that point.

22 Q. But you would agree with me that a person has a
23 gun pointed at them is not free to walk away and leave
24 the scene; is that right?

25 A. I would agree with that.

1 Q. The person you're pointing your gun at did not
2 have any kind of shirt, sweat shirt or hoody, covering
3 the top of his body, did he?

4 A. I approached from his rear. The only thing I saw,
5 at that point he had his pants on and he had the two
6 shirts draped over his shoulder, but he was not wearing a
7 shirt.

8 Q. And the two shirts draped over his shoulder you
9 later learned were a black T-shirt with a white shirt on
10 the inside, correct?

11 A. Correct.

12 Q. And the person you're pointing your gun at does
13 not have at the time a mask covering the face; is that
14 correct?

15 A. Correct.

16 Q. The person you're pointing your gun at at the time
17 you draw your gun, you don't see a weapon on that person,
18 do you?

19 A. No, not at that point.

20 Q. Okay. You then approach the suspect with your
21 weapon drawn, correct?

22 A. Actually, to advance, then I could see that the
23 defendant was complying with Officer Armstead's
24 instructions. At that point, I secured my weapon and I
25 moved in to detain the defendant.

1 Q. You secured your weapon?

2 A. I put it back in the holster.

3 Q. But Armstead still has a gun pointed at him,
4 right?

5 A. Yes.

6 Q. So you've now got both hands free?

7 A. That is correct.

8 Q. And you come up on this suspect from behind; is
9 that correct?

10 A. That's correct.

11 Q. And first you take one arm and put it in a
12 handcuff?

13 A. Yes.

14 Q. And then you take another arm and put it into a
15 handcuff?

16 A. Yes, sir.

17 Q. And you're behind this person, right?

18 A. Well, sort of kind of off set, when you move to do
19 the left hand, but initially behind him, yes.

20 Q. And you mentioned a couple of times and even
21 documented there in your report that you double locked
22 your handcuff; is that correct?

23 A. Yes, sir.

24 Q. Could you explain to the jury what double locking
25 means.

1 A. I can demonstrate as well --

2 Q. If you would explain it first.

3 A. Double locking, when I place someone in handcuffs,
4 when you close the handcuff around someone's wrist, it
5 locks. Double locking refers to -- there is a little
6 thing we push in there that prevents the handcuff from
7 tightening any more, so if they lean against the car or
8 they sit in a car, it doesn't ratchet and cause them
9 pain, and because that's in the report, it's North
10 Charleston police department policy to put that in the
11 report. Not only do it, but put it in the report.

12 But if I can -- imagine this is coming back around
13 somebody's wrist. As it closes, it's locked. It can't
14 come this way, it can't come back out, but it can still
15 tighten and we don't want that when we put that on
16 somebody because it could really cause somebody pain.

17 So that is what we refer to as double locking, so
18 not only will it not loosen, but it won't tighten any
19 more.

20 Q. One you double lock somebody in the handcuffs,
21 their arms are secure; is that correct?

22 A. That's correct.

23 Q. They're not going to get out of double-locked
24 handcuffs, are they?

25 A. I have seen somebody run and, while running, jump,

1 move the handcuffs to the front, and then jump over a
2 four foot fence.

3 Q. But my question is, somebody who is in
4 double-locked handcuffs, and I'll ask it differently,
5 with you standing right next to him in double-locked
6 handcuffs, he's not going to be able to get his hands out
7 of those cuffs, is he?

8 A. I wouldn't think so.

9 Q. But you would agree a suspect with double-locked
10 handcuffs could run away, right?

11 A. Yes, or try to.

12 Q. Would you possibly hold on to that suspect with an
13 arm to help detain him?

14 A. It depends on the situation. It depends on the
15 defendant, his demeanor, how many officers are all
16 present, how controlled is the scene. So sometimes yes,
17 sometimes no.

18 Q. Let's talk about this case. In this case, you
19 already said the suspect you're dealing with is
20 compliant; is that correct?

21 A. At this point.

22 Q. You're standing right next to him; is that
23 correct?

24 A. Yes.

25 Q. Now, clearly, he's not free to leave the scene; is

1 that correct?

2 A. That's correct.

3 Q. But you don't know yet what this person that
4 you're dealing with has done for sure, do you, if
5 anything?

6 A. Well, observing the camouflage ski mask hanging
7 out of a pocket, I know what I thought he did.

8 Q. You're speculating what might have happened, but
9 you don't know yet, right?

10 A. Not without the identification.

11 Q. You're still conducting an investigation; is that
12 correct?

13 A. That is correct.

14 Q. Okay. Now, let's talk about the identification
15 process. Were you present in the courtroom, I believe
16 you were, when Mr. Simmons testified?

17 A. Yes, I was.

18 Q. Okay. And Mr. Simmons indicated that when he came
19 on the scene, the suspect, he saw the suspect coming out
20 of your police car. Do you recall that testimony?

21 A. I don't remember exactly what he said, but I don't
22 have it.

23 Q. Okay. Would you have placed the suspect in your
24 police car while you were waiting on an identification
25 process?

1 A. That, I know I did.

2 Q. So you placed your suspect in the police car and
3 he's in handcuffs, right?

4 A. Yes.

5 Q. So when Officer Wagner comes up with Mr. Simmons
6 for the identification process, you take a suspect in
7 handcuffs out of the vehicle; is that correct?

8 A. That's correct.

9 Q. And you move him into a position that is about a
10 car length away from where Officer Wagner is parked; is
11 that correct?

12 A. Maybe a little bit more than a car length, but
13 roughly.

14 Q. Maybe more than a car length?

15 A. A little bit more.

16 Q. And you are maybe about a car length away from the
17 patrol car you just took him out of; is that correct?

18 A. No, sir, that's not correct. Essentially --

19 Q. How far are you from your own vehicle?

20 A. Very close, like really, really close.

21 Essentially, I had the defendant step out of the back
22 seat of the patrol car on the driver's side, my car, and
23 walk just slightly back towards the trunk of my car, and
24 just over a car length away was where Mr. Simmons was
25 sitting in the police car with Officer Wagner to do the

1 identification.

2 Q. So you and the suspect do not separate yourselves
3 from your car, but you're right by your car?

4 A. Yes, sir.

5 Q. Okay. And Officer Wagner's car shines a spotlight
6 on the suspect, correct?

7 A. Yes.

8 Q. And the suspect does not have on any kind of a
9 shirt?

10 A. Correct.

11 Q. During the identification process, he did not have
12 the black T-shirt?

13 A. I honestly don't remember if that fell over in the
14 back seat of the car or he still had it draped over.

15 Q. You didn't take it into evidence, did you?

16 A. No.

17 Q. Okay. So the suspect doesn't have a shirt on; he
18 doesn't have a mask on. He's standing next to you. He's
19 standing next to a police car and has a light shining on
20 him; is that correct?

21 A. That's correct.

22 Q. You're not actually present with Officer Wagner
23 during this identification process, are you?

24 A. No. I couldn't hear anything that was said. I
25 just learned after the fact it was a positive

1 identification.

2 Q. So not only are you not with Mr. Wagner, you're
3 not with Mr. Simmons either, are you?

4 A. No, sir.

5 Q. And, in fact, after the identification process,
6 that car would have drive away; is that correct?

7 A. It did.

8 Q. Okay. And then during that identification
9 process, you did not show either the mask or the gun, as
10 far as that process, did you?

11 A. No, I did not.

12 Q. You then go back to Ryan's where Mr. Simmons is
13 with Officer Wagner; is that correct?

14 A. That's correct.

15 Q. And at that point you received an inquiry about
16 the gun and mask; is that correct?

17 A. That's correct.

18 Q. So it's after Mr. Simmons has had a chance to look
19 at the person that y'all have got locked up that you show
20 him the mask and the gun, correct?

21 A. Correct, two different locations.

22 Q. And time in between?

23 A. Some time, yes.

24 Q. The initial description that you received was of a
25 person in a mask, camouflage mask, white hoody and dark

1 jeans; is that correct?

2 A. Dark jeans, camouflage mask, white hoody, and
3 armed with a revolver. That came out actually when I was
4 walking on foot in the apartment complex, but prior to
5 actually locating the defendant --

6 Q. Initial description, we've got three facts: Dark
7 pants or jeans, white hoody, camouflage mask, just those
8 three facts, correct?

9 A. I believe it was going to be black male and
10 heavysset.

11 Q. So you've got those five facts initially, okay?

12 A. I didn't learn about him having the gun until I
13 was actually in the apartment complex.

14 Q. So then you get that additional piece of
15 information; is that correct?

16 A. Yes, sir.

17 Q. Okay. And at no time did you ever see or locate a
18 white hoody, did you?

19 A. No, sir. Officers tried, but it's a big apartment
20 complex. They tried. I couldn't try at that point
21 because I had the defendant. I couldn't leave.

22 Q. You had a suspect in custody?

23 A. Yes.

24 Q. But you know, just from learning about this case,
25 that people tried, I'm sure very hard with great

1 diligence, to locate that hoody?

2 A. Yes. Sometimes you can't find things.

3 Q. And in this case, no white hoody was ever located?

4 A. No white hoody was ever located.

5 Q. And the person that was apprehended had a black
6 T-shirt with a white T-shirt on the inside; is that
7 correct?

8 A. That's correct.

9 MR. HOLTON: Moment for the Court's
10 indulgence.

11 Thank you, Officer. No further questions.

12 THE COURT: Any redirect?

13 MR. RIESEN: Nothing further, Your Honor.

14 THE COURT: You can step down. Thank you.

15 GINGER CASS,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LAWTON:

20 Q. May it please the Court, how are you doing
21 Ms. Cass?

22 A. I'm great. How are you?

23 Q. Are you a little nervous today?

24 A. Sure.

25 Q. Been to court often to testify?

1 A. No.

2 Q. Everybody is nervous. Don't worry about it.

3 You'll be just fine. Could you tell the jury your age.

4 A. I am 34.

5 Q. Are you married?

6 A. No, I'm not at this time.

7 Q. Are you engaged?

8 A. Uh-huh.

9 Q. How many children do you have?

10 A. I have five.

11 Q. Where are you currently employed?

12 A. At Ryan's Family Steakhouse on Rivers Avenue.

13 Q. Is that North Charleston?

14 A. Uh-huh.

15 Q. Okay. And how long have you been working there?

16 A. Two and a half years.

17 Q. Two and a half years. What are your current
18 duties now?

19 A. I am a server with the restaurant.

20 Q. Okay. And back in December of '07, you were
21 working at the Ryan's as well?

22 A. Correct.

23 Q. And I'm going to bring you to December 29th, 2007.
24 Do you remember that night?

25 A. Yes, I do.

1 Q. Okay. Tell the jury what all you did at work that
2 night.

3 A. It was a Saturday night. We were busy so I did my
4 normal, waited on tables and all, and cleaning, busing,
5 keeping everybody happy, closing the restaurant down. I
6 was the closing server.

7 Q. About what time did you get off that night?

8 A. Between 11:00 and 11:30.

9 Q. Okay. And what did you do once you got off?

10 A. I went out front to smoke a cigarette and wait on
11 my ride.

12 Q. And who was coming to pick you up?

13 A. My brother.

14 Q. All right. Did you -- do you know Michael
15 Simmons?

16 A. Yes, I do.

17 Q. How do you know him?

18 A. He is, or was at the time, my boss.

19 Q. Okay. And he's not your boss anymore?

20 A. Not at the current time, no.

21 Q. Did you ever see him lock up?

22 A. Sure did.

23 Q. Okay. And what happened after that when he came
24 out?

25 A. Mike locked up. He continued on to his vehicle,

1 and I waited in front to wait on my ride.

2 Q. To smoke.

3 A. Uh-huh.

4 Q. And did you hear anything that alerted you?

5 A. Just the squealing of Michael's tires.

6 Q. What did you see? Did that get your attention?

7 A. Yes, sure did.

8 Q. What did you see?

9 A. I seen a male wearing a very white hoody holding
10 on to the side of Michael's car.

11 Q. Okay. And could you tell his race?

12 A. I could tell it was an emergency. Something was
13 very wrong.

14 Q. Was the male outside, was he white, was he black?

15 A. He was a black male, and he was holding on to
16 Michael's car door.

17 Q. And was he able to get the door open?

18 A. He was able to get the door open. It was cracked
19 very briefly.

20 Q. Did you see a weapon?

21 A. Yes, I did.

22 Q. What was it?

23 A. I can't tell you directly what it was, but I do
24 know that it was a gun.

25 Q. Okay. So you're not sure what -- kind. Okay. So

1 he was holding on to the car. What happens after that?

2 What is Michael doing?

3 A. Mike is trying for his life to get away.

4 Q. And is he able to get away?

5 A. Yes, he is.

6 Q. And what does -- you said earlier the guy had a --
7 you said a white hoody on.

8 A. A bright white hoody.

9 Q. What did that guy do once Mike was able to back
10 out?

11 A. He was still holding on to the driver's side door
12 with the gun, and he was, like, rapping the gun a little
13 bit on to the car, and Michael just was still trying to
14 go forward.

15 Q. Okay. And then what did the defendant do? Did he
16 stay there? Did he go somewhere?

17 A. He stood there for a second, turned, faced me, and
18 took off running towards our cell towers, which is at the
19 back of our property.

20 Q. And were you able to watch him run?

21 A. Yes.

22 Q. Did you step off the -- at this point?

23 A. Yes.

24 Q. And what does he do when he gets to the cell
25 tower?

1 A. He evidently either tries to climb it or
2 something, but when he got to the cell tower, he just
3 fell to the ground.

4 Q. Okay. And what did he do once he fell to the
5 ground?

6 A. Once he fell to the ground, he regained himself
7 and got up and took off running straight through the
8 wooden fences toward the opposite site of our cell phone
9 towers.

10 Q. Did he jump the wooden fence?

11 A. No.

12 Q. What did he do?

13 A. He got down in a football position and took off
14 running through it, crashed right into it, took the whole
15 fence down.

16 Q. Did you have the opportunity to notify the police
17 at any time?

18 A. The whole time that he was holding on to the door
19 and he was rapping his gun, I was already on the phone
20 with 911.

21 Q. Okay.

22 MR. LAWTON: Please answer any questions Mr.
23 Harris has for you.

24 MR. HARRIS: Thank you, Your Honor, may it
25 please the Court.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. HARRIS:

4 Q. You spoke to the police that night, right?

5 A. Correct.

6 Q. You gave them a statement and they wrote it for
7 you?

8 A. Correct.

9 Q. And you mentioned twice in this that he was
10 rapping a gun. What do you mean, rapping a gun?

11 A. He was holding on to Mike's handle, trying to
12 still get the door open, and at the same time he was
13 tapping the gun, kind of sort of like -- it was dark, so
14 I couldn't tell if it was his hand or Mike's car, but he
15 was still --

16 Q. Okay. But you didn't tell the police that -- did
17 you tell the police that he was rapping his gun on his
18 hand or --

19 A. I told them that he had opened the door. I don't
20 know if I spoke of the gun.

21 Q. Okay. So the rapping the gun on his hand, you
22 couldn't tell if it was on the door or on his hand?

23 A. No. I couldn't tell. It was dark.

24 Q. And this is as he's -- I've seen the video of
25 this, so Mike is parked over here. You can't see Mike's

1 car when it's parked, right? He's around the corner. Is
2 that right?

3 A. Well, I walked to the side and seen what was going
4 on.

5 Q. When you heard the squealing, you saw -- okay.
6 When Mike backs out and goes forward like this, you're
7 talking about when he backed out, you could see the
8 guy -- he's, like, over here. Let's say Mike's car
9 started here, okay, and then he backs out and goes this
10 way, squealed his wheels, and that is what alerted you to
11 him, right?

12 A. Right.

13 Q. So he squeals going backwards, and he does go
14 forward, and that's when you see the man walk over, grab
15 the door, and then rap the gun on his hand?

16 A. Right.

17 Q. So you didn't see the initial -- when he was at
18 the door over here, you didn't see him rap the gun on his
19 hands there?

20 A. Not when it was parked, no.

21 Q. Okay. Beg the Court's indulgence, Your Honor.

22 MR. HARRIS: I have nothing further.

23 THE COURT: You can step down. Thank you.

24 MR. LAWTON: Brian Sommerfeldt.

25

1 BRIAN KEITH SOMMERFELDT,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LAWTON:

6 Q. How are you doing, Mr. Sommerfeldt? Would you
7 tell the jury where you're working right now.

8 A. I work at the integrated ballistics identification
9 system, which is IBIS, for the Charleston County
10 sheriff's office.

11 Q. How long have you worked there?

12 A. Just over six yours.

13 Q. Let's talk about your educational background
14 starting with high school. Where did you go to high
15 school?

16 A. In Columbia, South Carolina.

17 Q. Which high school?

18 A. Eu Claire High School.

19 Q. What year did you graduate?

20 A. 1981.

21 Q. What did you do once you graduated high school?

22 A. I went into the Air Force.

23 Q. How long were you in the Air Force?

24 A. For 20 years.

25 Q. And did you have the opportunity when you were in

1 the Air Force to deal with firearms?

2 A. Yes, the whole 20 years.

3 Q. Explain to the jury, as far as the type of things
4 you would do, your duties.

5 A. Basically one of five people assigned to different
6 Air Force bases who -- we instructed firearms, maintained
7 them, repaired them, gauged them, just a whole gamut of
8 things to ensure the weapons worked properly.

9 Q. Did they give you some training as far as learning
10 how to --

11 A. Yes, it's pretty much constant. Went to initial
12 school for six months, and then you have these, like,
13 on-the-job training that you have to go through
14 periodically when they have updates.

15 Q. Okay. And you told the jury that for 20 years you
16 were in the Air Force, correct?

17 A. Yes, sir.

18 Q. And what did you do when you got out of the Air
19 Force?

20 A. Once I retired and took a year off, I went to --
21 applied for the Charleston County job, and since I have
22 firearms experience, they hired me to be the ballistics
23 person.

24 Q. And you mentioned IBIS. Explain to them what IBIS
25 is.

1 A. IBIS is basically -- what I do is I take firearms
2 and/or shell casings or projectiles that's been collected
3 as evidence and from -- pretty much my coverage area is
4 from Savannah to Wilmington, North Carolina. Everybody
5 inside I-95, they bring all these weapons and evidence to
6 me.

7 The way the system is set up is we take it, and
8 there is digital imagery that is taken along with a
9 microscope and takes pictures of the markings that are
10 either in the projectile or on the back of the shell
11 casing to identify it with certain firearms.

12 Q. Okay. And did you have to take a class to become
13 certified in IBIS?

14 A. Yes. Took a week-long class, and then I came
15 back --

16 Q. Where did you take the class?

17 A. It was in Largo, Florida.

18 Q. And you said it was a week long?

19 A. Yes.

20 Q. And what year did you start with the county again?

21 A. It was August of 2003.

22 Q. And you've been working there continuously?

23 A. Yes, sir.

24 MR. LAWTON: At this time I offer him as an
25 expert in firearms, Your Honor.

1 THE COURT: Do you wish to voir dire or do
2 you object?

3 MR. HARRIS: Without objection.

4 THE COURT: This witness is now qualified as
5 an expert in the field of firearms.

6 Normally, when a witness testifies, they're
7 only allowed to testify in the form of their
8 observations, that is, things that they saw, they
9 touched, they heard, they felt, they smelt, that sort of
10 thing. They're not allowed to give you their opinions
11 about whatever it is they're testifying to.

12 The law makes an exception for certain
13 witnesses because of education or experience or training,
14 if they reach a level of expertise, they are allowed to
15 not only testify to you as to their observations, but
16 they're also then allowed to testify to you as to their
17 opinion, and they can state the basis for their opinion.

18 This witness will, having been qualified as
19 an expert, be allowed to give you his testimony in the
20 form of an opinion. The fact that he has been qualified
21 as an expert does not mean that you necessarily have to
22 give his testimony any greater weight than you do any
23 other witness's testimony. You give his testimony
24 whatever weight that you feel it deserves, based on all
25 of the evidence that you have heard and will hear

1 throughout the trial. All right? Go ahead.

2 BY MR. LAWTON:

3 Q. I show you State's No. 1, see if you recognize
4 that.

5 A. Yes.

6 Q. Okay. And what is it?

7 A. It's a revolver. It's like a Smith & Wesson, but
8 it's -- for lack of a better term, it's a dummed down
9 version of a Smith & Wesson. It's cheap, made from
10 Spain. They made thousands and thousands of these in the
11 mid '50's.

12 Q. When you got the weapon that came in that box --

13 A. Yes, sir.

14 Q. -- did it have loaded bullets?

15 A. It came with two complete bullets in the box with
16 the gun.

17 Q. And what did you do with the weapon when you got
18 it?

19 A. Well, first thing I do is I check it over
20 thoroughly. Obviously, I don't have all the gauges to
21 check every gun, but I'm able to check it, look at it,
22 look for cracks, make sure the gun is basically not going
23 to blow up on me when I fire it, and this passed all the
24 tests. There was nothing lodged in the barrel or any of
25 the chambers. It was fully functional once I inspected

1 it and ran through the functionality of how it fires.

2 Q. And what did you do next once you did the
3 preliminary?

4 A. Once I did that, I have a shoot tank room that I
5 shoot into water. Took the firearm in there, loaded it
6 with a 38 special bullet, and fired the round.

7 Q. Okay. And did you have the opportunity to glance
8 at the bullets that were in the box?

9 A. Yes. I noticed they were in there. They were the
10 same type and caliber that would go into this weapon, and
11 I also noticed one of the primers had been dented, as if
12 that bullet had fired, or had attempted to fire that
13 bullet.

14 Q. What is the primer?

15 A. The primer is like a -- if you're familiar with a
16 cap pistol, a primer is similar to that, but it's a small
17 area inside the whole shell casing that causes a spark to
18 let the powder ignite to send the bullet forward.

19 Q. Okay. And obviously you noted that the gun is not
20 of the highest quality. Can you tell the age of it? Is
21 it a brand new gun?

22 A. It's not a brand new gun. These guns, most of the
23 time I'll look them up in a database and, for instance, I
24 see several of these. They come in periodically, used in
25 different crimes. But just based on the serial number,

1 it's not a brand new gun, by a long shot.

2 Q. But it did work, correct?

3 A. Yes. It functioned correctly.

4 Q. Can you tell the jury some of the reasons why a
5 gun can misfire.

6 A. It could be any number of reasons, and a lot of
7 ones I come across are they will function properly, but
8 the firing pin, which is the part that actually hits the
9 primer to make the weapon go off, it may be broke. That
10 happens periodically. On a revolver such as this that
11 has a firing pin, it's attached to the hammer. That
12 could be broke off. It could be ammunition. If the
13 ammunition got wet somehow, it may not go off when it's
14 supposed to when it gets hit.

15 You get what's called a hardened primer. Some
16 manufacturers make a real hard primer, and it takes
17 several times to shoot that round off.

18 Q. And what happens -- I guess, looking at the
19 cylinder, how many spots for a bullet for that cylinder?

20 A. There's six.

21 Q. And at the noon position, where the pin is, what
22 happens if there is no bullet in there and the gun is
23 fired? What happens?

24 A. Well, in this case, if the bullet is put right at
25 the 12:00 position, when you pull the trigger or cock it

1 back, it's going to rotate to where the round that is up
2 at 12:00 is going to rotate out of the way into, let's
3 say, the 11:00 or 10:00 position.

4 Q. If there is no bullet in the chamber, what
5 happens? It can't fire, right?

6 A. There is nothing for it to fire.

7 Q. So since 2003, how many guns have you dealt with
8 as far as testing them, entering them into IBIS, roughly?

9 A. Right now, we're -- in between test fires and
10 bullets and shell casings just over 7,000 entries into
11 the system.

12 Q. There is no way to test that bullet, correct?

13 A. I have no way of testing it.

14 Q. So you don't know why this thing misfired?

15 A. No, I don't.

16 Q. You stated reasons why a gun may misfire.

17 A. Correct, yes.

18 Q. Faulty ammo, correct?

19 A. Yes.

20 MR. LAWTON: No further questions. Please
21 answer any Mr. Harris may have.

22 MR. HARRIS: May it please the Court, Your
23 Honor.

24 CROSS-EXAMINATION

25 BY MR. HARRIS:

1 Q. You said these were made -- was this one made back
2 in the '50's?

3 A. Not that specific one.

4 Q. Okay. But they started making these -- I guess it
5 would be kind of like a knock-off of what brand did you
6 say?

7 A. Smith & Wesson.

8 Q. This is kind of an imitation Smith & Wesson?

9 A. Yes.

10 Q. That's the Smith & Wesson you buy at the dollar
11 store.

12 A. Okay.

13 Q. That gun you mentioned, you make sure there is
14 nothing in the barrel, nothing blocked, no obstructions,
15 nothing like that, because, obviously, it might blow back
16 up on you, right?

17 A. Yes, sir.

18 Q. And this gun, you did that. When you did, that
19 did you clean anything out of this gun, or was it in the
20 original format?

21 A. Original format. I don't clean or repair them. I
22 do them the way they come to me.

23 Q. Okay. So you get that gun, you take it, you put a
24 bullet into it, and shoot it into water. I see that on
25 CSI sometimes.

1 A. Yes.

2 Q. I've never seen it done live, just on television.

3 A. Yes.

4 MR. HARRIS: I have no further questions.
5 Thank you.

6 THE COURT: Anything further?

7 MR. LAWTON: Nothing further, Your Honor.

8 THE COURT: You can step down. Thank you.
9 Do you have any other witnesses?

10 MR. RIESEN: Nothing from the state, Your
11 Honor.

12 THE COURT: I'm going to send you back to the
13 jury room while we take a break and get ready for the
14 next phase of the trial.

15 Don't begin deliberations or discussions. If
16 anybody needs to take a cigarette break and go downstairs
17 and smoke or go downstairs and breathe fresh air, you can
18 do that, but don't talk about the case, don't deliberate,
19 and we'll see you back in a few minutes. All right?

20 (Jury recessed.)

21 THE COURT: All right. Any motions?

22 MR. HARRIS: Yes, Your Honor.

23 THE COURT: What would that be?

24 MR. HARRIS: One would be motion for directed
25 verdict on the attempted armed robbery charge, the reason

1 being suspicion of him cannot be -- you can't say it's
2 armed robbery just because they suspect that may have
3 been what he's doing. There is no evidence, either
4 verbal or with actions.

5 I know the case that they brought up, I saw
6 that, there is actions in there that show that's an armed
7 robbery. They go into the store. They instruct the
8 people to get down on the ground. They have them down.
9 We don't have the transcript from that case, but they
10 instruct them to get down on the ground. One of them
11 tries to get up and run away and they shoot and kill him.

12 In our case, they're saying he walks up, says
13 hey, pulls the trigger, and then pulls the trigger again,
14 and then testimony came from another witness that he's
15 hitting the gun, still trying to pull the trigger, trying
16 to kill somebody. I mean, grabbing the door, even the
17 victim said, looking at your face, trying to kill you.
18 This guy was trying to kill me. He was trying to get the
19 door open to kill me.

20 There is nothing said, there is no
21 relationship, so there is no assumption that he knew this
22 guy was coming out with money. There is already five or
23 six people out there. There is actually a person
24 standing next to the car when this happened that walks
25 off.

1 So to assume that there is -- or to take this
2 evidence that they presented and make an assumption that
3 he was trying to rob them is like saying somebody is
4 swerving, it's DUI, well, let's charge him with attempted
5 manslaughter because they're driving. They could have
6 killed someone.

7 We're saying, well, that might have happened,
8 or that might have been what they were doing. There is
9 no evidence to show that he was trying to rob this
10 person, that they were trying to do anything but kill
11 this person.

12 THE COURT: Okay. Mr. Solicitor?

13 MR. LAWTON: Your Honor, Trip Lawton for the
14 state. Certainly, you know, listening to the defense,
15 and, of course, we know there is a standard, any evidence
16 that we've had two witnesses that say that the door was
17 open.

18 Now, I know we've indicated through the
19 defense that there was no -- didn't hear any verbal
20 command from the defendant, and, certainly, you got to
21 look at our facts, Your Honor. You've heard the victim
22 say his window was up. His car is on, the defendant's
23 mouth is covered. He's not going to be able to read his
24 lips, so at the best, it's muffled. He's got the window
25 up. We don't know what he's saying at the time.

1 Also under the theory of the defense, his
2 theory is that anybody that is ever mute or speaks a
3 different language that the victim wouldn't understand is
4 immune from attempted armed robbery, because the victim
5 is never going to understand --

6 THE COURT: What is your theory that there
7 was evidence of a robbery? That is what I'm interested
8 in.

9 MR. LAWTON: Clearly the one eyewitness and
10 one victim saying the door was open.

11 THE COURT: And what does that indicate to
12 you, that the door was open?

13 MR. LAWTON: That he's trying to take the
14 car, Your Honor. That is all, in the light most
15 favorable to the state, Your Honor. If he had gotten
16 there a little bit early, Your Honor, and that victim had
17 not gotten into that car, then he wouldn't have to -- at
18 that point, he's four miles away from his house. We
19 don't know what he's just done, Your Honor. He's trying
20 to get a car to do whatever he wants.

21 He knows he has got to get that guy out of
22 the car, and if he's got to shoot him, he's got to shoot
23 him at that point, but he's already got him out of the
24 car, but he's trying to open the door, trying to get him
25 out of there, trying to do that, twice.

1 I think that is plenty of evidence. All we
2 need is a little bit of evidence to show. Now, clearly,
3 Your Honor, if he hadn't have grabbed the door and hadn't
4 opened it, we would have problems. They could make some
5 argument that he's either a hit man and is trying to take
6 out this Ryan's manager --

7 THE COURT: I don't think the standard is any
8 evidence on circumstantial evidence, it's substantial
9 circumstantial evidence. It's any direct and substantial
10 circumstantial evidence is a standard to survive directed
11 verdict.

12 So give me what the circumstantial evidence
13 is and tie it together to me. You got opening the door.
14 Give me some indication that that is an attempt to rob
15 somebody, other than just opening the door to get a
16 better shot at the guy, or to get a shot at the guy.

17 MR. LAWTON: It clearly didn't stop him at
18 the very beginning. He was willing to shoot right
19 through the window. He was trying to get in that car,
20 and he wanted to stop the victim from backing up or doing
21 anything, whether it kills him, harms him, whatever, to
22 get in that car. Once he realizes the gun is not
23 working, he's trying to get in, and at that point he's
24 trying to open the door, either pistol whipped him or
25 pulled him out of the car, but, luckily, he's getting the

1 benefit of the doubt of the victim being on his feet, not
2 standing there like an idiot and just saying, I'm just
3 going to hand over my keys, and he got out of the car and
4 did the best he could. He shouldn't get the benefit of
5 that. And also having a mask on, but the door is shut,
6 the car is on. I know there is no evidence whether the
7 heater was on, but, clearly, in December the heater is
8 probably going to be rolling, and he probably can't
9 understand the demands of what the defendant is making,
10 but clearly after he said, if this guy spoke, Russian he
11 wouldn't know what, Give me your van means.

12 In this case, the window is up. His mouth is
13 covered. If anything, it's going to be muffled so he
14 doesn't hear anything. He's in fear. He's doing the
15 best to save his life, and, I mean, there is --

16 THE COURT: Do you wish to reply?

17 MR. HARRIS: This is all speculation that
18 maybe the window was up and maybe he was saying
19 something, maybe it was muffled. Maybe this was going
20 on. The facts are the facts. The facts are, he said
21 hey, pulled the trigger. In you're trying to steal a car
22 and drive it away, you don't want brains all over the car
23 and bullet holes in it. When you pull the trigger on
24 somebody, you do it to kill him. It's like stealing, you
25 know, money -- if we're going to make speculation, it's

1 like stealing from the bank and taking only the dye pack
2 and let it blow up on everything. If we're going to go
3 with speculation, and, well, maybe this, maybe that,
4 maybe the radio was on, maybe the heater was on. The
5 window is up. Maybe he speaks Russian.

6 I mean, there is nothing in evidence that
7 shows that this is anything but circumstantial at best,
8 that maybe he was trying to take the car. I mean, I
9 guess it was shoot first, get the body out of the car
10 with six people standing out there, clean the car out,
11 and then take the car, it doesn't make sense.

12 I mean, at best, like I said, it's
13 circumstantial piece of evidence that there is -- they
14 don't have a murder charge here, so they want something
15 that has got a higher penalty, so they've added a charge
16 on that.

17 MR. LAWTON: Your Honor, may I respond
18 briefly?

19 THE COURT: Yes.

20 MR. LAWTON: One thing he said, maybe about
21 the window, he clearly asked the victim if the window was
22 up. He clearly said the window was up.

23 Second point is he's talking about, you know,
24 whether it's a murder or armed robbery. Clearly, he told
25 the victim, hey, and it wasn't one of those happy heys,

1 obviously. He's got a ski mask and a gun. Just like
2 happens every time, Your Honor, armed robbery, if the
3 victim would have sat there and thrown him the keys, just
4 like he was expecting him to do, you know, clearly we
5 wouldn't be arguing that, but the victim didn't
6 cooperate, and that is what happens every time when an
7 armed robbery goes bad. The victim doesn't cooperate,
8 and, luckily, this victim, the gun didn't work.

9 THE COURT: All right. Well, it's troubling,
10 I'll be honest with you, the facts of this, the way it's
11 played out, but I will find that -- I'll deny the motion.

12 I find there is substantial circumstantial
13 evidence in that the defendant was allegedly wearing a
14 ski mask, holding a gun, pulling it on the defendant,
15 grabbing the car door, opening the car door. I will
16 allow argument that that was an attempt to rob.

17 Now, what I will not allow you to argue is
18 things that are not in evidence, and there was no
19 evidence that there was mumbling, there was no evidence
20 the radio was on, there was no evidence the heater was
21 on. So you can't speculate to things that are not in
22 evidence. You can argue inferences from evidence. All
23 right?

24 So I don't want to hear anything about, well,
25 he had a mask on so we couldn't hear him. There was no

1 evidence he was mumbling anything. The only evidence
2 that I heard that was said was hey, and he said that, but
3 the victim did not argue -- or did not testify, that I
4 heard, that he heard the defendant mumble anything so I'm
5 going to let you say, well, he might have heard. He
6 might not have been able to hear it because the radio was
7 on.

8 There is no evidence the radio was on. I
9 will not let you argue he might not have been able to
10 hear the mumbling because the car heater was on loud.
11 There was no evidence the car heater was on loud, so you
12 cannot speculate about things that are not in evidence,
13 but what is in evidence is that he had a ski mask, he was
14 holding a gun on him, and he was pulling a door open and
15 from that, I will allow you to argue.

16 MR. LAWTON: That's fine, and we're clear
17 that the window was up.

18 THE COURT: And apparently the window was up,
19 so from that I will allow you to argue there was an
20 attempted armed robbery. So motion for directed verdict
21 is denied. Do you have any other motions?

22 MR. HOLTON: Judge, we have an additional
23 separate motion for directed verdict based on an issue
24 that occurred to me as a result of the testimony. If I
25 have listened to the testimony correctly, none of the

1 witnesses that testified ever testified about Vashaun
2 Ravenel, and none of the witnesses that testified ever
3 said that the person sitting next to us, Vashaun Ravenel,
4 is the person that they were talking about at the scene
5 at Ryan's.

6 Not only does the state have to prove that a
7 crime occurred, they have to prove that the person that
8 is sitting next to us on trial is the person that did it,
9 and, you know, we had a Neil v. Biggers hearing at the
10 beginning of this case, so identification was an issues
11 that was on everybody's mind. I would expect that the
12 arresting officers would have pointed at Mr. Ravenel,
13 saying that is Vashaun Ravenel, that is the man we took
14 in custody.

15 So nobody has ever done that, Judge, so I
16 move for a directed verdict on all three charges because
17 not one of the state's witnesses has ever identified the
18 person sitting next to us as the person that committed
19 the crime.

20 MR. LAWTON: Your Honor, I respectfully
21 disagree. Clearly, Mr. Cobb pointed out the defendant
22 when he put the handcuffs on him. We can look at that in
23 the transcript.

24 THE COURT: All right. Let's go back and
25 take a look. It was Cobb?

1 MR. HARRIS: He used the word defendant, but
2 I don't believe he ever identified Vashaun Ravenel and
3 pointed him out to the jury, but he did use the word
4 defendant in his testimony, but he never related the
5 person named as the defendant with the person sitting
6 next to us at trial.

7 THE COURT: Are you going to call any
8 witnesses?

9 MR. HARRIS: No, Your Honor.

10 THE COURT: Okay. All right. I'm going to
11 give you the jury charges. I'm going to ask you to -- if
12 she can't find it, I'm going to let you put him back on
13 the stand.

14 MR. RIESEN: The victim is here as well.

15 THE COURT: Whoever you got that could
16 identify him.

17 MR. LAWTON: I don't know if she put it, but
18 clearly, Cobb pointed over there to the defendant.

19 THE COURT: Let's see what she's got, and if
20 it's not clear, I'll let you recall the witness for that
21 reason.

22 MR. RIESEN: I'm assuming it's not sufficient
23 with the victim stating that he identified the defendant
24 at the showup and made that identification? That's not
25 sufficient? You need an in-court identification? Is

1 that the argument?

2 THE COURT: I don't know that he made an
3 in-court identification.

4 MR. RIESEN: He didn't, but what I'm saying
5 is he identified the defendant at the scene of the crime.

6 THE COURT: It might be a better practice to
7 say that is that guy sitting over there.

8 MR. HOLTON: All we need is for Cobb to point
9 at Vashaun Ravenel.

10 THE COURT: We got the police officer here.
11 This is easily cured.

12 MR. HOLTON: As a final matter, we would
13 renew our previous motions and objections.

14 THE COURT: They're all again denied. All
15 right.

16 I'll give you a few minutes to look at those
17 charges, see if you have any problems with that. Since
18 the defense did not put up any testimony, you have to
19 open and close, and so they have the right to close, so
20 you have to make your argument in full and then have the
21 right to close. So let's take a couple minutes and see
22 what we can find.

23 (Recess taken.)

24 (In open court, jury not present.)

25 THE COURT: We're at that point in the trial

1 where the state is getting ready to finish their case,
2 all right? You have the right to present a defense, if
3 you want to, but as I told the jury, you don't have to
4 prove that you're not guilty. You don't have to prove
5 your innocence, in other words. You don't have to do a
6 thing but show up. The state has to prove you're guilty
7 of this charge beyond a reasonable doubt.

8 You have the right to not testify, and if you
9 don't testify, I will tell the jury that they're not to
10 hold that against you, but you can testify, if you want
11 to. Of course, if you testify and you have a criminal
12 record, that may or may not come in, depending on what
13 your criminal record is, but you do have the right to get
14 up on the stand and, under oath, tell your side of the
15 story.

16 You get to go up first. Your lawyer will ask
17 you questions, and then the state will have the right to
18 cross-examine you and bring in whatever criminal record
19 you have within certain limitations. Do you understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, I'm told at this point by
23 your lawyer that you don't want to testify and you don't
24 want to call any witnesses; is that correct?

25 THE WITNESS: Yes, sir.

1 not testify?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. And this is your
4 decision and your decision alone to not testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And it's your decision and your
7 decision alone to not call any witnesses or put up any
8 defense?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: I find your decision is freely,
11 voluntarily and intelligently made. Just need to put
12 that on the record.

13 (In open court jury present.)

14 THE COURT: All right. Be seated.

15 Okay, folks. We're going to have the state
16 call a witness here real quick. Go ahead.

17 MR. RIESEN: The state recalls Officer Darin
18 Cobb briefly.

19 DARIN COBB,

20 having been previously duly sworn,

21 was examined and testified as follows:

22 REDIRECT EXAMINATION

23 BY MR. RIESEN:

24 Q. Earlier you gave testimony you arrested the
25 defendant on December 29, 2007; is that correct?

1 A. Yes, sir.

2 Q. And where did you -- and did you arrest the
3 defendant at Summit Place Apartments in Charleston
4 County?

5 A. Yes, sir, I did.

6 Q. And do you see the defendant that you arrested
7 that evening in this courtroom today?

8 A. Yes, sir, at the defense table, Vashaun Ravenel,
9 sitting over there.

10 Q. Could you describe what he's wearing.

11 A. It appears to be khaki pants and a white shirt.

12 Q. And was that in Charleston County?

13 A. Yes.

14 MR. RIESEN: Nothing further, Your Honor.

15 THE COURT: Do you have any questions you
16 want to ask him? Okay.

17 You can step down. All right. Anything
18 further from the state?

19 MR. RIESEN: No, Your Honor, the state rests.

20 THE COURT: Anything from the defense?

21 MR. HARRIS: No, sir, no questions.

22 THE COURT: Okay. Folks, now you've heard
23 all of the evidence that you're going to hear in this
24 case, and we're now going to proceed to the part where we
25 have the closing arguments.

1 The lawyers will get up and speak to you,
2 review the evidence you've heard, give you a little
3 preview of the law I'm going to charge you, and when
4 they're finished, I will charge you on the law that you
5 are to apply to the facts as you find them, you'll retire
6 to the jury room to consider your verdict.

7 Remember that the lawyers are now reviewing
8 the evidence. They are not testifying, and what they say
9 is not to be considered by you as evidence. The state
10 has the burden of proof, and so they go first. The
11 defense did not call any witnesses or present any
12 evidence, so they have the right to close. So you'll
13 hear from the state first and then from the defense
14 lawyers, and after that you'll hear from me. All right?

15 So are you ready, Mr. Riesen?

16 MR. RIESEN: Thank you, Your Honor. May it
17 please the Court.

18 First off, ladies and gentlemen, thank you
19 for your service today. Most people complain about jury
20 service, and sometimes have a good reason why. I know
21 you have busy schedules and lots of thing going on in
22 your life. Sometimes the last thing you want to do is
23 spend the day here, but you're vitally important, and
24 you're the reason why we have such a great judicial
25 system, so on behalf of state and Mr. Lawton, I thank you

1 for your service today.

2 As the judge has indicated, he is the master
3 of the law. He's going to read the law to you, and what
4 I want to do is go over briefly the law and the facts
5 that you've heard as to why the state believes and is
6 actually confident that the charges, attempted armed
7 robbery, assault with intent to kill, and pointing and
8 presenting were proven and the defendant should be
9 convicted of those.

10 Could we dim the lights a little bit and put
11 on the power point presentation? First, I want to talk
12 about attempted armed robbery. The first thing the state
13 is required to prove -- and, again, the Judge is going to
14 instruct you further on attempt. Now, an attempt
15 includes a specific intent to do a particular criminal
16 act which falls short of the act intended. In this case,
17 it's the state's position it was the armed robbery. It
18 fell short because he didn't actually complete the crime
19 and he got away.

20 The state must also show that there is more
21 than mere preparation and intent. There must be some
22 overt act. Let me give you an example. If I'm sitting
23 around here talking about an armed robbery and just
24 discussing it, there needs to be more than that. There
25 needs to be some affirmative overt act. In this case, I

1 submit to you it's clear we got an overt act. We have
2 the defendant. He was laying in wait at Ryan's, behind
3 the Dumpsters.

4 We have him concealing his identity with a
5 face mask. We have him pulling the trigger and a gun
6 twice, and we have him grabbing the door handle of the
7 car twice. Okay? Clearly, we have a specific intent, A,
8 to kill him, because he put the gun to his head and
9 pulled the trigger twice on a loaded weapon and steal his
10 car, which fell short of the act intended, thus we have
11 attempt. He tried to open the door not once but twice.
12 We have an attempted armed robbery.

13 Let's go to the armed robbery, what is
14 required to prove the armed robbery portion of this
15 attempted armed robbery. To convict the defendant, the
16 state must prove that the defendant attempted to carry
17 away property intending to permanently deprive, it was
18 done with violence, and while armed with a pistol or
19 other deadly weapon. Let's talk about some of the facts.

20 We have a gun that was recovered in the
21 defendant's pocket less than 200 yards from the incident.
22 Okay? It doesn't even matter if the gun was loaded or
23 not. You could still have attempted armed robbery with a
24 fake gun as long as the victim believes it was real, is
25 in fear of his life, okay? We obviously have that.

1 You've heard testimony if someone puts a gun to the
2 window and pulls the trigger twice, there is a fear,
3 okay?

4 We also know he's permanently depriving.
5 He's trying to kill him. Of course he's trying to
6 permanently deprive him of that vehicle, and we have IBIS
7 confirming that the gun does, in fact, fire, so we have a
8 deadly weapon, it was done with violence, and he did
9 attempt to carry away and permanently deprive by opening
10 the car door handle twice. Okay?

11 These are some of the facts that we were just
12 talking about. Mike's car, both Mike's car and the
13 money, would be personal property. What is he trying to
14 take in this case? It was the car. We can't get into
15 his head, but he obviously tried to open the car door
16 twice. Again, as we said, permanently deprive him of the
17 property. Mike is in the vehicle when he grabs the door
18 handle. We also saw video of him grabbing the door
19 handle a second time, and as for attempted taking or
20 intimidation or fear, let's think about that for a
21 second.

22 You've got a large man approaching from a
23 Dumpster, wearing a face mask and carrying a gun. He
24 points a gun at his head and pulls the trigger the first
25 time, but the gun doesn't discharge. He raps the gun

1 with his hand, puts the gun to the window a second time,
2 pulls the trigger again, like trying to kill him.

3 He's trying to deprive him of his personal
4 property. So attempt, plus armed robbery, is attempted
5 armed robbery. As I stated earlier, we have intent,
6 which was the specific intent to commit the crime, which
7 is a robbery of the car, followed by an overt act, laying
8 in wait at Ryan's, wearing a face mask, arming himself
9 with a loaded gun, which falls short of the completed
10 crime. We've met the elements of attempted armed
11 robbery. That is the first charge, attempted armed
12 robbery.

13 Second charge, assault with the intent to
14 kill, this gets a little confusing. First you have to
15 show an assault, which is an intentional creation of
16 reasonable fear of immediate bodily harm. The harm
17 doesn't actually have to take place, so my example is if
18 I swing at someone and I miss them, that's still assault.
19 If I actually hit you, then it becomes a battery, so what
20 we're talking about is an assault. Let's look at the
21 facts.

22 This was a night, the defendant was wearing a
23 face mask, points a gun to the car window, pulls the
24 trigger twice, grabs the door handle, thus reasonable
25 fear of immediate bodily harm. I think any reasonable

1 person would be afraid, would feel assaulted in that
2 instance. We don't need -- he doesn't need to be shot to
3 have an assault. That would be a battery. It would
4 actually be physically an assault and battery.

5 So the elements of assault with the intent to
6 kill, all right, we have to have an unlawful intent,
7 which means there is no lawful purpose, like self-defense
8 or something, to commit a violent injury to another, in
9 this situation he tried to shoot Mike twice, with
10 malicious intent, we'll get to that next, that is kind of
11 the confusing part, accompanied by the present ability to
12 complete the act. We have a loaded firearm. All of that
13 is self-explanatory.

14 Remember I said earlier use your common
15 sense? That's self-explanatory. Let's talk about number
16 four there, malicious intent. Malice is hatred, ill
17 will, or hostility towards another. It's also an
18 intentional wrong act without just cause with the intent
19 to inflict injury. Malice aforethought can be shown two
20 ways. We've got express, which would be prepared
21 beforehand to do the act, which is when he was lying in
22 wait behind the Dumpsters, or we have inferred, which is
23 conduct showing a disregard for human life.

24 Inferred malice may arise when a deed is done
25 with a deadly weapon. Right there, that is the important

1 thing. We have the deed done with a loaded deadly
2 weapon, a loaded 38 capable of firing.

3 Malice, intentional wrong act without just
4 cause with the intent to inflict injury. Malice
5 aforethought could be shown two ways, lying in wait. He
6 intentionally tried to shoot Mike to take his personal
7 property, which was the car and/or money. In this
8 situation, the car. That is why he tried to open the
9 door twice.

10 There is no just cause for this. He was
11 lying in wait. Again, I know this is redundant, we got
12 to go over the facts, and he used a deadly weapon. We
13 have a clear-cut case of malice aforethought. There is
14 no question the defendant's action was assault with the
15 intent to kill.

16 How do we know the defendant wanted to rob
17 Mike instead of simply kill him? Remember, I said in the
18 opening, use your common sense? That is what we're doing
19 here. Okay? It's like putting a puzzle together. What
20 are your motives to kill someone? Normally, it's a crime
21 of passion, revenge, drugs, or maybe something like
22 robbery. Okay?

23 Mike did not know the defendant. There is no
24 testimony of that. This wasn't testimony of crime of
25 passion or drugs or anything. What is your process of

1 elimination here?

2 He's waiting until Mike closes up shop. Mike
3 is the manager. He's lying behind the Dumpsters, waiting
4 for him to get to his car, okay? And then he tries to
5 open the car door, not once, but twice.

6 Why would he try to open the car door if he
7 just wanted to kill this person? He wanted to kill and
8 take his car. Use your common sense.

9 Pointing and presenting, self-explanatory.
10 You must prove the defendant presented or pointed at
11 another person a loaded or unloaded firearm. You already
12 heard the testimony from Mike Simmons, saw the video. I
13 don't need to restate that.

14 Lastly, you heard about reasonable doubt in
15 the beginning and the judge, is going to instruct you
16 again on that. The state must prove all elements beyond
17 a reasonable doubt. You're not looking for reasonable
18 doubt. Very few things we know with absolute certainty.
19 As the judge said, if you're firmly convinced of the
20 defendant's guilt, you must find him not guilty. We're
21 not required to overcome every possible doubt. There is
22 doubt in just about everything and the question is, is it
23 reasonable?

24 These are the last facts I really want you to
25 think about. Is there really any quote, unquote,

1 reasonable doubt in this case?

2 Number one: NCPD dispatch, we have a black
3 male, positionally six foot, wearing dark pants, a hoody,
4 ski mask, armed with a black revolver style handgun.
5 Okay? Suspect, turns out to the defendant, is big and
6 strong enough to literally take a running start and
7 breaks through a fence behind Ryan's leading to Summit
8 Place Apartments.

9 He's caught less than 20 minutes after the
10 robbery. He's caught in the Summit Place Apartments
11 directly behind Ryan's, where he crashed through the
12 fence. He's caught less than 200 yards from the fence,
13 and the defendant is basically about six three and he's
14 wearing dark pants.

15 The defendant is not wearing a white hoody,
16 but for some reason he decides to go shirtless on a rainy
17 December 29th evening. He's breathing heavily and
18 appeared to be hot with steam rising from his person.
19 That was the testimony from the officers. I don't think
20 he's going for a job. He has a camo ski mask in his left
21 pocket. He has a rusty loaded 38 in his front pocket.

22 Y'all have seen that. That is unique.
23 That's been identified by every single person in this
24 courtroom -- excuse me, by Officer Cobb and the victim,
25 okay? He doesn't live in Summit Place Apartments. His

1 address is in Peppercorn Lane, four miles away.

2 Ladies and gentlemen: As I stated earlier,
3 if you do use your common sense, you don't have to be a
4 lawyer to figure this stuff out. If you look at what was
5 reasonable, if you look at what happened, you connect the
6 dots, there is no question this defendant tried to kill
7 Mike Simmons and steal his car. I ask that you convict
8 him of guilt of all three charges.

9 Thank you.

10 THE COURT: All right. Mr. Harris?

11 MR. HARRIS: Thank you, Your Honor, may it
12 please the Court.

13 You remember from a couple hours back -- oh,
14 again, we thank you too for being here. I know jury duty
15 is the one thing that nobody enjoys doing, but it's an
16 integral part of our system, and it's so important and
17 our entire side is very thankful for you being here and
18 being the judges today that you are and listening.
19 Remember, listen. That was the one word I used earlier.
20 Let's see what happened with listen.

21 All right. We had the victim in the case
22 testify to remembering the eyes. The big deal he talked
23 about was the eyes, but one issue that I kept -- we kept
24 coming into was nowhere in the statement that was fresh
25 on his mind, or fresh in anybody's mind or written by the

1 police to remember this case, was there any mention of
2 eyes, eyebrows, eyes, eye shape. I'll never forget those
3 eyes because I'm looking at his face while he's trying to
4 kill me, is what he said.

5 Those didn't come out in the police report.
6 They didn't come out in the statements. That's just one
7 small thing to listen to. If you listen to them talk
8 about the white hoody. You listened to police officer
9 talk and searching the area. Did you search the lot?
10 Oh, yeah. I wanted to find the white hoody. This is 20
11 minutes later. This is an area the speed team knows
12 because they patrol that area. I guess it's what you
13 could consider a high crime area.

14 No white hoody. He lives four miles away, so
15 I'm assuming -- they didn't say he knew somebody. He
16 could have said, Here's is my white hoody. Take it from
17 me.

18 If you're going to lose a white hoody, why
19 wouldn't you take a gun out of your pocket? Another
20 question. But some statements made by the victim in
21 this, another thing about listening. Hey, or hey, we
22 don't know how it's said. I'm assuming it was yelled,
23 hey. The only word said by the defendant -- or by the
24 person, suspect. Hey, and then pulled the trigger,
25 smacked the gun, not, Hey, give me all your money, or,

1 Hey, I like that Honda, let me take your car, or, Hey,
2 nothing to the effect of, Hey, hold still, you know, give
3 me everything you got.

4 Just, Hey, bam, doesn't go off, let's smack
5 it again, bam, doesn't go off again, guy peels out and
6 pulls off. And the person in question here sprints off
7 and runs through the fence. Other statements made, when
8 asked, What were you thinking at the time? This guy is
9 trying to kill me. Okay? Let's go to the individual
10 part of this.

11 This is important. This is the important
12 part. This is why I brought forward the individual
13 earlier, and I know it's kind of a weird word to talk
14 about during a trial, but these are individual cases.
15 Each of them, each of them is an individual charge. The
16 pointing and presenting a firearm, okay, assault with the
17 intent to kill, and attempted armed robbery.

18 Let's look at pointing and presenting a
19 firearm. We're going to put that here. You saw and the
20 solicitor showed you on there what the elements of
21 pointing and presenting a firearm are. To get beyond a
22 reasonable doubt on this, is really not that hard,
23 according to what the testimony was. I mean, I'm not
24 saying find him guilty, but I'm saying there was
25 testimony that person came up with a gun, two people saw

1 a person with a gun, pointing and presenting, it's like
2 if you get in a fight with somebody and do this. They
3 don't have to pull it out and do this, they can just do
4 this, like I'm presenting, I've got a gun.

5 So I'm not going to waste anybody's time
6 talking about pointing and presenting a firearm. That is
7 a question you can ask yourselves when you get back
8 there. Ask yourself as individuals, and this is the
9 analyze part, analyze, rationalize, and then conclude
10 part. Assault with the intent to kill. Include that one
11 over here. To make the jump from pointing and presenting
12 to assault with the intent to kill, there is testimony
13 that a trigger was pulled twice, okay? With intent to
14 kill, somebody is pulling a trigger. I can understand
15 how can you see, yes, they pulled the trigger with a
16 loaded weapon twice, they might have been trying to kill
17 someone.

18 We did see the gun. It looks like an
19 antique. I don't know if the person that had that gun or
20 pulled that trigger knew the gun wasn't going to work.
21 We don't know what was going on in their head, but
22 assault with the intent to kill, it is basically they're
23 assaulting him. They're saying, Okay, I'm going to try
24 to kill the person. They don't touch him. It wouldn't
25 be assault and battery, or shooting at somebody and

1 missing is assault with intent to kill.

2 We'll put that there because the jump from
3 here, where we're kind of in that beyond a reasonable
4 doubt range to here, is a step, okay? That's a step
5 going there, and I can see it being there. Then we got
6 this one that is just hanging out here, this attempted
7 armed robbery. I'm going to put this one over here,
8 because here, you know, you're following along. You're
9 watching a show, and you're, like, yeah that is starting
10 to make sense, two triggers were pulled.

11 I can see somebody was trying to kill
12 somebody, but there was nothing said that can get us over
13 this giant leap of faith from here to here that says he
14 was trying to rob him. I mean, okay. He grabbed the
15 handle of his car. He said -- why did you think he was
16 trying to open the door? Because he was trying to kill
17 me. He pulled the trigger once, he pulled the trigger
18 again. He was chasing me around. If you were trying to
19 steal a car, why would you shoot the person driving it?
20 You got blood all over the car, you got a bullet hole in
21 it, now you got six people that you've seen standing out
22 front. You got to take a body out of a car and move it,
23 so rob him of his car? I just don't see that person was
24 trying to rob him.

25 There is a lot of reasons. There is a lot of

1 stuff that has to go on other than circumstances, like
2 putting your hand on the door and trying to open it that
3 says oh, he's definitely trying to steal his car. He
4 didn't say anything. He said hey, and from hey, they're
5 inferring that hey, give me your car. Not hey, I'm going
6 to kill you. We don't have any idea why this went on. I
7 mean, it could be a thousand things.

8 He could have had a bad meal at Ryan's. I'm
9 not saying that is what happened, but I'm saying there
10 could be a thousand things that could get us here, but to
11 get us from there to there is just way too far.

12 Attempted armed robbery? I mean, okay, there
13 is nothing in the evidence that shows that he was trying
14 to steal anything from him. There is just nothing, no
15 statements, no, Give me your money. He didn't hold him
16 at gunpoint and say get out of your car, leave the keys
17 in it. Pulled the trigger twice, trying to put two
18 bullets into somebody, according to the solicitor, trying
19 to kill him.

20 Again, just the stuff that takes us from here
21 to there is just -- there is way too much in there, way
22 too much what we like to call reasonable doubt. You
23 know, when we sat in the jury room yesterday, y'all stood
24 up and they make you yell it, like, What is your age,
25 occupation, spouse's occupation? I did not hear anybody,

1 and maybe I wasn't paying any attention, saying that they
2 were a mind reader or a psychic or anything like that.
3 What they're asking you to be right here is a mind
4 reader, to determine what was going on inside the
5 shooter's mind. Was he trying to steal something? What
6 was he trying to do? Was he trying to just kill him?

7 They're asking you to make a -- actually, use
8 your common sense to connect the dots. That is not what
9 beyond a reasonable doubt is about. We're not supposed
10 to say, Well, maybe if this one is here and this one is
11 here, well, yeah, that could connect. It might work,
12 maybe. But beyond a reasonable doubt, reasonable doubt,
13 beyond a reasonable doubt is what makes you hesitate to
14 act, okay? That is the definition of beyond a reasonable
15 doubt.

16 If you think of something and you hesitate to
17 act, say, maybe, that is not beyond a reasonable doubt.
18 Okay? That little hesitation says, well, was he trying
19 to kill him? Maybe. Or if you say, yeah, was he trying
20 to rob him? That's a stretch. That's a big stretch.
21 That is a long way from there to there. You know, there
22 is a lot of hesitation. There is a lot of things that
23 can happen over this. You're jumping over a river here.
24 You're stepping over a sidewalk here.

25 So this is the time when you take the facts

1 that you've heard today, take the testimony, take
2 everything, you take it back there. The judge is going
3 to inform you when to start, but then you analyze it.
4 You think about what really went on? You rationalize.
5 You say, Would somebody try to steal a car by killing the
6 driver, or would they hold him at gunpoint and grab him
7 and pull him out, especially if the person is twice the
8 other person's size?

9 Okay. That's the part where you got to
10 rationalize. Okay. I can understand these too. Then
11 you go over here and say, Is it really rationale? I
12 mean, beyond a reasonable doubt. Beyond -- not any
13 hesitation, but beyond that hesitate to act. I don't
14 think so. So when you go back there, as your 13
15 individual judges, which you can go home and say you were
16 a judge today, a judge of the facts, this is an
17 individual thing. This isn't a team. This isn't the
18 time to go and say, What do you think? I want to vote
19 the way you vote. This is your vote. It's the beauty of
20 the system.

21 If you hesitate to act jumping -- I can't
22 jump that far, I'm sorry, I'm too old now, but if you
23 jump -- I couldn't do it when I was young -- but if you
24 can make that jump from here to here without hesitating,
25 fine, but there is a lot of hesitation going on between

1 here to create reasonable doubt. So I would ask you to
2 acquit Mr. Ravenel of these charges, one, based on the
3 fact that he didn't fit the description, other than he
4 was a fix foot black male; and, two, that other than this
5 one, there is too much reasonable doubt in this case. So
6 I would ask you to go back and deliberate and come back
7 with a not guilty for Mr. Ravenel today. Thank you.

8 THE COURT: All right, folks. It's now my
9 duty to charge you on the law that you're to apply to the
10 facts as you find them under the oath that you took at
11 the beginning of the trial. This is the law that you are
12 to apply to the facts as you find them, even if it's not
13 the law that you think it should be or that you think
14 that it is or that you wish it would be, but it is the
15 law that you are now duty bound to apply to the facts as
16 you find them.

17 Now, I told you at the beginning of the trial
18 that under our constitution and our laws, you, the jury,
19 are the finders of fact. You make findings of fact in
20 this case, and I'm not permitted to indicate to you how I
21 feel about the facts, so if I've said anything or done
22 anything in this case which indicates to you that you
23 think I have an opinion about the facts in this case,
24 then you should disregard that. You misread any body
25 signals or anything that you might have picked up on,

1 you, the jury, must independently weigh the evidence that
2 is presented in the trial, and you must render a verdict
3 that is based solely on that evidence.

4 Now, the same constitution and laws that
5 designate you the finders of fact make me the instructor
6 of the law, and if you have some idea, again, as to what
7 the law is or what the law ought to be and it doesn't
8 agree with what I tell you now, you are obligated to,
9 under the oath that you took, abandon this misconception
10 on your part and accept and apply only the law as I
11 precisely now state it to you.

12 I remind you again as we get into the trial
13 that the fact that the defendant was arrested, charged,
14 and indicted in this case is not evidence in this case
15 and cannot be considered by you as evidence of his guilt
16 in this case, nor does it create any presumptions or
17 inferences of guilt. The document that I showed you, the
18 indictments which will go back into the jury room with
19 you, are simply the formal written instruments by which
20 the charges are made against the defendant. It is the
21 formal document by which this case is brought into court.
22 It lets him know what he's charged with.

23 Now, the indictments in this case allege
24 three different crimes, or offenses against the defendant
25 that is indictment one 2008-GS-10-9734, the charge is

1 attempted armed robbery; indictment number two,
2 2008-GS-10-2081, is for assault with the intent to kill;
3 and indictment number three, which is 2008-GS-10-9736 is
4 pointing and presenting a firearm.

5 Each indictment charges a separate and a
6 distinct offense. You must decide each indictment
7 separately on the evidence and on the applicable law
8 uninfluenced by your decision as to any other indictment.
9 The defendant may be convicted or acquitted on any or all
10 of the offenses charged. You will be asked to write a
11 separate verdict of guilty or not guilty on each
12 indictment.

13 Now, as to these charges that the defendant
14 has pleaded not guilty to each indictment, and that plea,
15 therefore, casts the burden on the state to prove the
16 defendant guilty beyond a reasonable doubt. A person
17 charged with committing the crime in South Carolina is
18 never required to prove himself innocent. It is an
19 important rule of law in this country that the defendant
20 in a criminal trial will always be presumed to be
21 innocent of the crime of which he is indicted unless and
22 until his guilt has been proven by evidence satisfying
23 you of that guilt beyond a reasonable doubt.

24 The presumption of innocent is not a mere
25 legal theory. It's not just a legal phrase. This is a

1 substantial, constitutional right to which every
2 defendant is entitled. This presumption of innocence
3 accompanies the defendant from the time he is charged
4 throughout the trial until you reach a verdict of guilt,
5 based on evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 Now, ladies and gentlemen: I instruct you
8 now, and I emphasize to you, the fact that the defendant
9 did not testify in this trial must not be considered by
10 you in any way during your deliberations. The defendant
11 has a constitutional right to remain silent, and the
12 exercise of that constitutional right cannot and must not
13 be held against the defendant. Under your oath as
14 jurors, you are to draw no inference and draw no
15 conclusion whatsoever from the fact that the defendant in
16 this case did not testify.

17 Do not even discuss this fact in the jury
18 room. The defendant is not required to prove anything.
19 The burden of proof remains upon the state to prove the
20 defendant's guilt beyond a reasonable doubt.

21 Now, I want to talk to you a little bit about
22 reasonable doubt. The state has the burden of proving
23 the defendant's guilt beyond a reasonable doubt, and as I
24 told you at the beginning of the trial, some of you may
25 have served as jurors in civil cases where it's only

1 necessary to prove that a fact is more likely true than
2 not true. That's called a greater weight or
3 preponderance of the evidence. In criminal cases, the
4 state's burden of proof is much more powerful than that.
5 Must be beyond a reasonable doubt.

6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.
8 There are very few things that we know with absolute
9 certainty. In criminal cases the law does not require
10 proof of every possible doubt. If based on your
11 consideration of the evidence you are firmly convinced
12 that the defendant is guilty of the crime charged, then
13 you must find the defendant guilty. If, on the other
14 hand, you think there is a real possibility that the
15 defendant is not guilty, then you must give the defendant
16 the benefit of the doubt and find him not guilty.

17 Now, we'll talk a little bit about evidence.
18 There are two types of evidence that are generally
19 presented during the trial. There is direct evidence and
20 there is circumstantial evidence. There is direct
21 evidence and there is circumstantial evidence. Direct
22 evidence is testimony of a person who claims to have
23 actual knowledge of a fact, such as an eyewitness. It's
24 evidence that immediately establishes the main fact that
25 is sought to be proved.

1 Circumstantial evidence, on the other hand,
2 is proof of a chain of facts or circumstances indicating
3 the existence of a fact. It's evidence that immediately
4 establishes collateral facts from which the main fact may
5 be inferred.

6 Circumstantial evidence is based on inference
7 and is not based on personal knowledge or observation.
8 The law makes absolutely no distinction between the
9 weight or value to be given either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence than that
12 of direct evidence. You should weigh all of the evidence
13 in this case, and, after weighing all of the evidence, if
14 you are not convinced of the guilt of the defendant
15 beyond a reasonable doubt, you must find the defendant
16 not guilty.

17 As jurors, you must necessarily determine the
18 credibility of witnesses who have testified in this case.
19 Credibility simply means believability, and it becomes
20 your duty as jurors to analyze and evaluate the evidence
21 and determine which evidence convinces you of its truth.
22 In determining the believability of witnesses who have
23 testified in this case, you may believe one witness over
24 several witnesses or several witnesses over one witness.
25 You may believe a part of the testimony of a witness and

1 reject the remaining part of the testimony of that same
2 witness. You can believe the testimony of a witness in
3 its entirety, and you can reject the testimony of a
4 witness in its entirety, and you may consider whether any
5 witness has exhibited to you any interest, bias,
6 prejudice, or other motive in this case, and you may also
7 consider the appearance and manner of a witness while on
8 the witness stand.

9 Now, I also told you during the trial that
10 the rules of evidence don't normally allow witnesses to
11 talk about or testify as to their opinions or their
12 conclusions. We would make an exception for witnesses
13 who we call expert witnesses, and those are witnesses who
14 because of education or experience they have become
15 experts in some art, science, profession, or calling and
16 they may state an opinion as to relevant and material
17 matters in which the witness claims to be an expert, and
18 they also state the reasons for that opinion.

19 You should consider an expert opinion
20 received in evidence in this case and, like any other
21 evidence, give it the weight that you feel it deserves.
22 If you decide that the opinion of an expert witness is
23 not based on sufficient education or experience or if you
24 conclude that the reasons given in support of the
25 evidence are not sound or that the opinions is outweighed

1 by other evidence, you can disregard the opinion
2 entirely. An expert witness's testimony is to be given
3 no greater weight than that of other witnesses simply
4 because the witness is an expert. Further, you're not
5 required to accept an expert's witness even if it's not
6 contradicted. I'm going to talk to you about the
7 different charges that are contained in the different
8 indictments.

9 The first indictment is for attempted armed
10 robbery. An attempt is an effort to accomplish a crime
11 which does not succeed. An attempt includes a specific
12 intent to do a particular criminal act, along with an act
13 falling short of the act committed. The state must show
14 more than mere preparation and intent. There must be
15 some overt act committed in the effort to commit the
16 crime. Intent means intending the result or to actually
17 occurs, not accidentally or involuntarily. Intent may be
18 shown by acts and conduct of the defendant or other
19 circumstances from which you may naturally and reasonably
20 infer intent.

21 In order to prove this intent, or this
22 offense, the state must first prove beyond a reasonable
23 doubt that the defendant attempted to take personal
24 property from the person or presence of another person.
25 Property is the presence of a person if -- the property

1 is in the presence of a person if it within the person's
2 reach, inspection, observation, or control so that the
3 person could, if not overcome with violence or prevented
4 by fear, keep possession of the property.

5 The state must also prove beyond a reasonable
6 doubt that the defendant attempted to carry away the
7 property, intending to permanently deprive the owner of
8 the property, and to keep the property for the
9 defendant's own use. The attempt of even the slightest
10 removal of the property or the complete possession of the
11 property, even if for an instant, by the defendant, is
12 sufficient to show the taking and carrying away of the
13 property.

14 The attempted taking and carrying away of the
15 property must have been done with violence or by putting
16 the owner of the property in fear of violence. Finally,
17 the state must prove beyond a reasonable doubt that the
18 defendant was armed with a deadly weapon during the
19 attempted robbery. A deadly weapon is any article,
20 instrument, or substance which is likely to cause death
21 or great bodily harm.

22 Whether an instrument has been used as a
23 deadly weapon depends on the facts and circumstances of
24 each case. Following are examples which may be used as
25 deadly weapons, of instruments which may be used as

1 deadly weapons: A pistol, a shotgun, a rifle, a dirk, a
2 dagger, a knife, a slingshot, metal knuckles or a razor.
3 A gun may be a deadly weapon even if it's not operating.

4 Now, the next charge, or the second
5 indictment, is for assault with the intent to kill. In
6 order to prove assault with the intent to kill, the state
7 must prove beyond a reasonable doubt that the defendant,
8 with malice aforethought, unlawfully attempted or offered
9 to commit a violent injury upon another and had the
10 present ability to complete the attempted injury. An
11 assault is the intentional creation of a reasonable fear
12 of immediate bodily harm. It's not necessary that the
13 attempted injury or harm actually take place.

14 For example, if I walk up to you and when we
15 are within arm's reach I draw back to hit you, that is an
16 assault. Malice is hatred, ill will, or hostility
17 towards another. It's the intentional doing of a
18 wrongful act without just cause or excuse and with intent
19 to inflict injury and other circumstances which the law
20 will infer an evil intent. Malice aforethought does not
21 require malice exist for any particular time before the
22 act is committed, but malice must exist in the mind of
23 the defendant just before and at the time the act is
24 committed. Therefore, there must be a combination of
25 previous evil intent and the act.

1 Malice aforethought may be expressed or
2 inferred. The terms express and infer do not mean
3 different kinds of malice, but merely the manner in which
4 the malice may be shown to exist. It's either by direct
5 evidence or by inference from the facts and circumstances
6 which are proved. Express malice is shown when a person
7 speaks words which express hatred or ill will for another
8 or when the person prepared beforehand to do the act
9 which was later accomplished; for example, lying in wait
10 for a person or other acts of preparation going to show
11 that the deed was within the defendant's mind would be
12 expressed malice.

13 Malice may be inferred from showing a total
14 disregard for human life. Inferred malice may also arise
15 when the deed is done with a deadly weapon. A deadly
16 weapon, again, is any article, instrument, or substance
17 which is likely to cause death or great bodily harm.
18 Whether an instrument has been used as a deadly weapon,
19 again, depends on the facts and circumstances of each
20 case, and, again, examples of that, of a deadly weapon,
21 are a pistol, a shotgun, a rifle, a dirk, a knife,
22 slingshot, metal knuckles, a razor, gasoline, fire bomb,
23 Molotov cocktail, lighter fluid, and a gun may be a
24 deadly weapon even if it's not operating.

25 If the facts are proven beyond a reasonable

1 doubt sufficient to raise an inference of malice to your
2 satisfaction, this inference would simply be an
3 evidentiary fact to be considered by you, the jury, along
4 with other evidence in this case, and you may give it the
5 weight you decide it should receive.

6 A specific intent to kill is not an element
7 of assault with intent to kill, but there must be a
8 general intent to commit serious bodily injury. Intent
9 means intending the result which actually occurs, not
10 accidentally or involuntarily. Intent may be shown by
11 acts or conduct of the defendant or other circumstances
12 from which you may naturally and reasonably infer intent.

13 Evidence of the character of the assault, the
14 character of the instrument used, the manner in which it
15 was used, the purpose to be accomplished, and the
16 resulting wounds or injuries may be considered in
17 determining the intent with which the assault was
18 committed. Intent may also be inferred when it is
19 demonstrated that the defendant voluntarily and willfully
20 commits an act, the natural tendency of which is to
21 destroy another's life.

22 Finally, the third indictment is for pointing
23 and presenting a firearm. In order to convict the
24 defendant of this crime, the defendant must prove that
25 the defendant pointed and presented a firearm at another

1 person. In considering what it means to point or
2 present, you may use the common usage of the word point.
3 The word presented, on the other hand, requires the
4 presence of that firearm be done in a threatening manner.
5 It does not matter that the firearm is loaded or
6 unloaded.

7 Now, in determining the guilt or innocence of
8 the defendant, you may not -- you cannot, consider any
9 possible penalty for any particular crime. The
10 punishment for the crime is a matter for me to determine
11 and should never be considered by you whatsoever in
12 arriving at a fair and impartial verdict as to the guilt
13 or innocence of the defendant. And, finally, your
14 verdict must be unanimous.

15 Now, Mr. Foreman, so you get to earn your
16 money, you'll see on the indictments there is a front and
17 a back, all right? The front simply contains the charge.
18 The back part here where it's marked with the red stamp,
19 true bill where the grand jury acted on it, you'll see
20 below that is a little blank where it says verdict. If
21 the jury unanimously finds that the defendant committed
22 the crime beyond a reasonable doubt, you mark guilty, or
23 you write guilty.

24 If, on the other hand, you find that the
25 state did not meet its burden of proof, then you must

1 write not guilty. You sign it, date it, and go on to the
2 next indictment, and you'll see again the same choices.
3 You consider whether the state has met its burden of
4 proof. If you find that it has, you write guilty, sign
5 it, and date it. If you find the state has not met its
6 burden of proof, again, you write not guilty, sign it,
7 date it, and then the same thing with the third
8 indictment, place for guilty, not guilty, sign it, and
9 date it.

10 Now, once you have reached a verdict as to
11 all three, you let the bailiffs know that you've reached
12 a verdict, and then we'll bring you back in here to
13 receive that verdict. Now, before I send you back to
14 consider your verdict, I'm going to have the alternate go
15 with the bailiffs, but he'll go into a separate room.
16 Once we send it to you, there will be just the 12 of you
17 to consider, but you'll hang around just in case
18 something happens to one of you while you're considering
19 that verdict.

20 Also, before you begin your deliberations
21 when I send you back there, wait until the bailiffs come
22 back with the indictments and with the evidence because I
23 have to give the lawyers the opportunity to say, Judge,
24 you misspoke on something you said you were going to say
25 or vice versa. We have to get the evidence together,

1 which is all down here. This just takes a couple
2 minutes, but it's a formality that we have to go through.

3 Also, there is a weapon in this case, the
4 gun. People get very nervous around the gun. You'll see
5 the pistol in this case is incapable of being fired, and
6 the cylinder has one of those plastic things through it;
7 however, just as a precaution, because it does make
8 people nervous, we'll leave the gun and the bullet here
9 in this room.

10 If you want to see it, you can see it, but
11 we'll send the gun back, and if you want to see the
12 bullets, we send the bullets back, but we don't send the
13 gun and bullets back so that gives everybody a little
14 comfort zone. So the guns and the bullets will stay in
15 here. If you want to see it, just let me know. We'll
16 send them back separately.

17 So go back with the bailiffs now. When they
18 send word back with the indictments and say the judge
19 says you can begin your deliberations, you begin your
20 deliberations. Just hold off now until I send word back.

21 Okay? Thank you.

22 (In open court, jury not present.)

23 THE COURT: Okay. Anything from the state?

24 MR. RIESEN: Nothing.

25 THE COURT: From the defense?

1 MR. HARRIS: Nothing.

2 THE COURT: Y'all want to double-check, make
3 sure the evidence is in order.

4 (Jury retires to deliberate at 3:42 p.m.)

5 THE COURT: Okay. Let the record reflect the
6 defendant is in the courtroom. Bring the jury on in.

7 (At 4:13 p.m., the jury returns with the
8 verdict.)

9 THE COURT: All right. Mr. Foreman, I
10 understand the jury has reached a verdict; is that
11 correct?

12 THE FOREMAN: Yes, sir.

13 THE COURT: All right. Defendant rise. All
14 right. As to the attempted armed robbery, what is your
15 verdict, guilty or not guilty?

16 THE FOREMAN: Guilty.

17 THE COURT: All right. As to the charge of
18 assault with intent to kill, what is the verdict, guilty
19 or not guilty?

20 THE FOREMAN: Guilty.

21 THE COURT: And as to the charge of pointing
22 and presenting a firearm, what is the verdict, guilty or
23 not guilty?

24 THE FOREMAN: Guilty.

25 THE COURT: All right. Would you hand those

1 to the bailiff, please. All right. The indictments
2 appear to be in order with the verdict. Do you wish to
3 have the jury polled?

4 MR. HARRIS: No, Your Honor.

5 THE COURT: All right. If that is, in fact,
6 the verdict of all of the jurors on each of the charges,
7 would you indicate that by raising your right hand. All
8 right. Let the record reflect each of jurors has
9 indicated that is your verdict.

10 All right. Thank you, ladies and gentlemen,
11 for your service on this case. I'm going to be
12 sentencing the gentleman in a few minutes after having
13 given him the opportunity and his lawyers to see if he
14 wishes to speak at the time.

15 You're not required to hang around any
16 longer, but you are free to stay for the sentencing if
17 you want. We will be starting another case in the
18 morning, so I will have to have the entire jury panel
19 back. So if you want to go now, you're free to go now.
20 Please report back to the jury room on the second floor
21 tomorrow morning by 9:30 room and we'll be drawing
22 another jury to be starting another case at that time.

23 Anyone that wishes to stay is free to stay
24 now, but I'll give a second for anybody that wishes to
25 go. Okay. Well, looks like you want to stay.

1 So before I sentence, is there anything the
2 defense wishes to say?

3 MR. HARRIS: Thank you, Your Honor. May it
4 please the Court, his family is here in the courtroom
5 with him. You're talking about as to sentencing? The
6 family is here in the courtroom with him today.

7 He is a young man, and this is three serious
8 offenses he's been convicted of. I would ask you to
9 consider, from what we talked about earlier, the fact
10 that he was willing to accept that, that there was no
11 offer on that, but he was aware of the consequences, he
12 was not being, I guess, defiant in saying I'm going
13 forward, it was just not an option.

14 As for what we talked about earlier, I
15 understand Your Honor was going to impose a large
16 sentence. I would ask only that that may change and that
17 it be concurrent, as opposed to consecutive, if possible.
18 If the sentences are going to be large, I would ask that
19 they be concurrent and not consecutive.

20 THE COURT: All right. Mr. Holton, do you
21 want to say anything?

22 MR. HOLTON: No, Your Honor, nothing further.

23 THE COURT: All right. Mr. Ravenel, do you
24 want to say anything?

25 UNIDENTIFIED SPEAKER: Only thing we can do

1 is ask that you have mercy.

2 THE COURT: Mr. Vashaun Ravenel, do you want
3 to say anything before I impose sentence?

4 THE DEFENDANT: No, sir.

5 THE COURT: Mr. Ravenel, I sat here and
6 listened to the testimony just like the jury did, and
7 they made their decision, and I find that there was ample
8 evidence in the testimony to support their verdict.

9 No question about whether or not it was you
10 or anybody else. What you did, under the facts of the
11 case, it's remarkable that we're not here on a murder
12 charge. You know, the only reason why we're not here on
13 a murder charge is that the gun apparently misfired or
14 the bullets were bad or some unknown reason, but
15 Mr. Simmons must just be living a charmed life because
16 the evidence is clear you went up and were intent on
17 shooting him with every reason to believe the intent was
18 to kill him.

19 That was undeniable, that there was just a
20 bad set of facts here, and you are lucky that we're not
21 here on a murder charge. The sentences, because of the
22 facts of these cases, I think warrant consecutive
23 sentences. We have a problem with crime in this country,
24 and in this state, and in this community, and folks like
25 you that go out and prey on innocent victims don't

1 deserve to walk amongst us. This crime was obviously
2 planned and premeditated and but for the fact that the
3 gun misfired, we would be here on a murder charge, but
4 this stuff is just -- you know, I hate to put a young man
5 in jail. I believe in second chances, but this was well
6 thought out. This wasn't something that was done on a
7 spur of the moment, and it appears that you intended to
8 kill this man, and that certainly supports the verdict of
9 guilty on assault with the intent to kill.

10 So I find sentence on the attempted armed
11 robbery is 20 years. After you finish that, you can
12 start on your sentence with assault with intent to kill,
13 which will be ten years, and after you finish that, you
14 can begin your sentence on pointing and presenting a
15 firearm, which is five years, so it will all run
16 consecutive. Good luck to you. All right?

17 Folks, let me again commend you for your
18 service. I'm really not going to be able to comment a
19 whole lot more because you have additional jury service
20 this week. But on behalf of the citizens of the State of
21 South Carolina and Charleston County, I want to thank you
22 for showing up, doing your duty, listening to the
23 evidence, considering the verdict, and doing what your
24 duty requires under the law. And so perhaps I'll see you
25 on another jury later this week. I'll certainly see you

1 tomorrow morning in the jury panel, but thank you for
2 your service today and for your patience with us.

3 All right? Thank you. You're free to go.
4 You don't need to call the number back after 6:00, just
5 plan on showing up because we're telling the rest of them
6 to show up after 6:00.

7 - - -

8 (Whereupon, the proceedings were concluded.)

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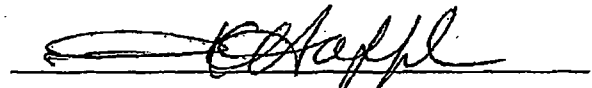
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 27th and 28th of July 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 28, 2009



Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VASHAUN RAVENEL,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in denying appellant's motion for a directed verdict of acquittal on the attempted armed robbery charge because there was no proof of any attempt to take any goods from the victim where the gunman simply pointed a firearm at the victim, pulled the trigger, and fled.

STATEMENT OF THE CASE

Appellant Vashaun Ravenel was convicted of attempted armed robbery, assault with intent to kill, and pointing and presenting a firearm during the July 2009 term of the Charleston County General Sessions Court before the Honorable Roger M. Young, Sr., Judge. Appellant was sentenced to imprisonment for a period of thirty-five years.

Appellant appealed. This brief follows.

ARGUMENT

The lower court erred in denying appellant's motion for a directed verdict of acquittal on the attempted armed robbery charge because there was no proof of any attempt to take any goods from the victim where the gunman pointed a gun at the victim pulled the trigger and fled.

At trial, Michael Simmons testified that he was leaving his job at Ryan's Steak House around 11:45 p.m. on December 29, 2007, headed toward his car when a black male wearing a white hoody and ski mask approached him in the parking lot. As Simmons jumped in his car, the perpetrator came closer, held a gun to Simmons' face, and pulled the trigger twice, but the gun did not go off. The perpetrator spoke one word (that word being "hey") during the incident. At the end of a tug of war between Simmons and the perpetrator over the car door via opening and shutting it, Simmons managed to escape by driving off. Later, police officers found a suspect in the Summit Place Apartments nearby and conducted a show up identification. Simmons positively identified the suspect, i.e. appellant, as the perpetrator in the incident. R. p. 10, line 4 – p. 30, line 7. Fellow employer Ginger Cass witnessed this event and testified that she saw the perpetrator "rapping the gun a little bit into the car [as Simmons] was still trying to go forward" and that the perpetrator fled when Simmons drove off. R. p. 89, line 15 – p. 94, line 21. The remainder of the case included the testimony of the two police officers who described how appellant was apprehended, and a ballistics expert who attempted to explain why the gun (old gun) did not fire on that night. R. p. 97, line 1 – p. 106, line 3.

At the close of the state's case, the defense moved for a directed verdict on the attempted armed robbery charge on the ground that there was no evidence verbally or non

verbally in support of the attempted armed robbery charge. The facts of the case included a perpetrator who grabbed Simmons' car door, said "hey," and then pointed a gun and pulled the trigger. At best, the facts revealed that a gunman was trying to assault or shoot Simmons. R. p. 106, line 24 – p. 107, line 11; R. p. 111, line 17 – p. 112, line 16. The state argued that the perpetrator was trying to get in Simmons' car and take the car. R. p. 109, line 13 – p. 111, line 11. The court denied the motion. R. p. 114, lines 18 – 21.

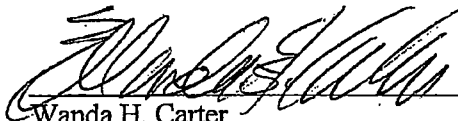
Robbery is larceny by force, i.e., larceny from the person or immediate presence of another by violence or intimidation. Dukes v. State, 248 S.C. 227, 149 S.E.2d 598 (1966). Armed robbery is robbery while armed. S.C. Code Ann. § 16-11-350-370 (2003). Larceny is the felonious taking and carrying away of the goods of another which must be accomplished against the will or without the consent of the victim. State v. Brown, 274 S.C. 48, 260 S.E.2d 719 (1979). The element of taking the goods with the intent to steal, or in this case, the attempt to take the goods with the intent to steal, was not present per these facts. See State v. Brown, supra. Here, the perpetrator never verbally ordered Simmons to surrender his wallet, car, or any item whatsoever. Furthermore, the word "hey" uttered by the perpetrator cannot be translated as a verbal command for the surrender of goods. Also, the perpetrator's non verbal cues or actions were not tantamount to a request for goods, money, or the car. Rather, the perpetrator's actions via pointing the gun and pulling the trigger indicated that he was trying to assault or shoot Simmons. The fact that the perpetrator tried to open the door and continued to pull on the door also indicated he was trying to get to get good gun aim at Simmons. It is untenable to contend that the perpetrators pull on the car and saying "hey" meant that he was attempting to steal the car. Had that been the case, the state would have charged him with carjacking.

A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Also, a judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, supra. Here, there was insufficient evidence presented on the attempted armed robbery charge. The state failed to prove every element of the offense of attempted armed robbery beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307 (1979).

CONCLUSION

The lower court erred in denying appellant's motion for a directed verdict of acquittal on this charge in violation of the Fourteenth Amendment to the United States Constitution and article 1, §3 of the South Carolina State Constitution.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender


ATTORNEY FOR APPELLANT.

May 25, 2010

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 25, 2010



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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Vashaun Ravenel, Appellant.

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Unpublished Opinion No. 2011-UP-425
Submitted September 1, 2011 – Filed September 20, 2011

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Harold M. Coombs, Jr.,

all of Columbia; and Solicitor Scarlett Anne Wilson,
of Charleston, for Respondent.

PER CURIAM: Vashaun Ravenel appeals his conviction for attempted armed robbery, arguing the circuit court erred in denying his motion for a directed verdict because the State failed to present sufficient evidence he intended to rob his victim. We affirm.

An appellate court reviews the denial of a directed verdict by viewing the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If any direct evidence or substantial circumstantial evidence reasonably tends to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. Id. at 292-93, 625 S.E.2d at 648. The circuit court may not consider the weight of the evidence. Id. at 292, 625 S.E.2d at 648. "Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime." State v. Nesbitt, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001). "Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred." State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971).

Here, Ravenel's victim testified that Ravenel wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the victim's car door twice. We find this testimony was substantial circumstantial evidence when, in a light most favorable to the State, the jury could reasonably infer that Ravenel was guilty of attempted armed robbery. Accordingly, the decision of the circuit court is

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

VASHAUN RAVENEL,

APPELLANT

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

Opinion No. 2011-UP-425

PETITION FOR REHEARING

Pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, the undersigned counsel would petition for rehearing in the above titled case on the ground that the Court of Appeals may have overlooked two significant and important facts before finding that there was substantial circumstantial evidence reasonably tending to prove attempted armed robbery in the case. The two significant and important facts are that appellant pointed a gun and twice pulled the trigger at the witness during the incident, and that appellant issued no command, neither verbally nor nonverbally, ordering the surrender of goods or money during the incident; both of which were facts that when added to the entire circumstances of the case did not establish substantial

circumstantial evidence establishing proof of the charge of attempted armed robbery. In support of this motion, appellant presents the following information:

- 1.) At trial, the witness testified as follows:

I was walking to my car, and I come - - my car was parked here, so I come to the right side and I had to wall [sic] all the way around to the front of my car, and when I got to the corner of my car, I saw a gentleman in a white hoody and a ski mask and he had a gun pointed at me, and at that time I tried to jump in my car and he yelled Hey.

And I jumped in my car, and at that time he come up to my driver's side window with a gun, pulled the trigger, right in my face. The gun did not go off, so he then rapped it with his hand, put it back into my face, tried to shoot me again, and the gun evidently wasn't going to go off for some reason.

And then he tried to pull my door open, and he got the door open, so I put my hand on the door and pulled it shut, and then I put the car in reverse and I started to pull off.

R. 14, lines 6-22.

- 2.) The Court of Appeals held that because appellant "wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the car door twice...[then]...this was substantial circumstantial evidence when in a light most favorable to the state, the jury could reasonably infer that [appellant] was guilty of attempted armed robbery."
- 3.) First, the Court of Appeals may have overlooked the fact that appellant approached and pointed a gun at the witness and then twice pulled the trigger of the gun. Intent is proved by the circumstances (State v. Tuckness¹), and based on this fact, as reviewed in conjunction with the other facts of the case, it was clear that appellant approached the witness not with the intent to rob, but with the intent to kill.² Note that the witness himself interpreted appellant's

¹ 257 S.C. 295, 185 S.E.2d 607 (1971)

² At trial, appellant was convicted of attempted armed robbery, assault with intent to kill, and pointing and presenting a firearm.

actions as an intent to kill via his testimony regarding the reliability of his identification as follows:

Q. You said earlier he was wearing a face mask. How did you know this was the person if he had a face mask on?

A. When someone has got a gun in your face and they're looking in your eyes trying to kill you, you kind of remember that.

R. 19, lines 16-21.

Also, the witness gave the following testimony regarding an interpretation of appellant's actions in the case as follows:

Q. You stated earlier that this individual put a gun to the window next to your head and pulled the trigger twice.

A. Yes, sir.

Q. What were you thinking?

A. There was a lot of things, I think. One, I was try [sic] to get away so I don't get killed; and, two, was this guy is trying to kill me. I thought - - I couldn't get the fact of why the gun didn't go off, because I saw him pulling the trigger.

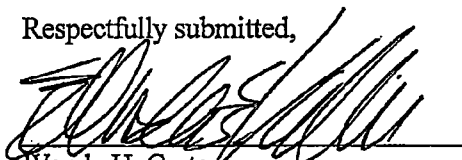
R. 29, lines 14-23.

- 4.) Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime. State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (S.C. Ct. App. 2001). Clearly, there was no intent here based on the circumstances establishing that appellant intended to commit armed robbery.
- 5.) Second, the word "hey" uttered to the witness cannot be translated as a verbal command or order for the surrender of goods. Additionally, there were no non verbal actions coming from appellant that were tantamount to a request for goods, money, or the car. Rather, appellant's actions via the pointing of the gun and the pulling of the trigger indicated that he was trying to assault or shoot the witness.

6.) Additionally, the fact that the perpetrator tried to open the witness' car door also indicated his intent to get a good aim at the witness in order to shoot him. It is untenable to contend that appellant's pull on the car door and saying "hey" meant only that he was attempting to steal the witness' car. Had that been true, then the state would have charged appellant with the offense of carjacking in the case. A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Also, a judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, supra. At best, there was only suspicion of attempted armed robbery in this case. In conclusion, there was insufficient evidence presented in support of the attempted armed robbery charge, and there was no substantial circumstantial evidence in the case establishing sufficient proof on the offense of attempted armed robbery in this case.

WHEREFORE, since this Court may have overlooked these two significant and important facts in the case (as outlined above) in assessing the existence or nonexistence of substantial circumstantial evidence of attempted armed robbery, then counsel would request a rehearing in the case in order to revisit the question of whether there was any substantial circumstantial evidence on the charge of attempted armed robbery presented against appellant at trial.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

This 5th day of October, 2011.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Roger M. Young, Circuit Court Judge

Opinion No. 2011-UP-425 (S.C. Ct. App. filed 9/20/2011)

08-GS-10-2081, 9734, 9736

THE STATE,

RESPONDENT,

V.

VASHAUN RAVENEL,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

WANDA H. CARTER
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Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on February 14, 2012.

QUESTION PRESENTED

The Court of Appeals erred in holding that the trial court properly denied petitioner's motion for a directed verdict of acquittal on the attempted armed robbery charge where the gunman simply pointed a firearm at the car driver, pulled the trigger (gun did not fire), and then fled because these actions did not constitute substantial circumstantial evidence reasonably tending to prove guilt in the case

STATEMENT OF THE CASE

Petitioner Vashaun Ravenel was convicted of attempted armed robbery, assault with intent to kill and pointing and presenting a firearm during the July 2009 term of the Charleston County General Sessions Court before Judge Roger M. Young. Petitioner was sentenced to imprisonment for a period of thirty-five years.

Petitioner appealed his convictions and sentences, and on February 1, 2011, pursuant to an oral argument held on September 1, 2011, the Court of Appeals issued an opinion affirming petitioner's convictions and sentences. App. 1-2. See State v. Ravenel, Unpublished Opinion No. 2011-UP-425 (Ct. App. September 30, 2011). App. 1-2. A petition for rehearing was filed on October 5, 2011. App. 3-7. The petition for rehearing was denied on February 14, 2012. App. 8-9. This is the petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in holding that the trial court properly denied petitioner's motion for a directed verdict of acquittal on the attempted armed robbery charge where the gunman simply pointed a firearm at the car driver, pulled the trigger (gun did not fire), and then fled because these actions did not constitute substantial circumstantial evidence reasonably tending to prove guilt in the case.

At trial, Michael Simmons testified that he was leaving his job at Ryan's Steak House around 11:45 p.m. on December 29, 2007, headed toward his car when a black male wearing a white hoody and ski mask approached him in the parking lot. As Simmons jumped in his car, the perpetrator came closer, held a gun to Simmons' face, and pulled the trigger twice, but the gun did not fire. The perpetrator spoke one word (that word being "hey") during the incident. At the end of a tug of war between Simmons and the perpetrator over the car door via opening and shutting it, Simmons managed to escape by driving off. Later, police officers found a suspect in the Summit Place Apartments nearby and conducted a show up identification. Simmons positively identified the suspect, i.e. petitioner, as the perpetrator from the incident. R. p. 10, line 4 – p. 30, line 7. Fellow employer Ginger Cass witnessed this event and testified that she saw the perpetrator "rapping the gun a little bit into the car [as Simmons] was still trying to go forward" and that the perpetrator fled when Simmons drove off. R. p. 89, line 15 – p. 94, line 21. The remainder of the case included the testimony of the two police officers who described how petitioner was apprehended, and a ballistics expert who attempted to explain why the gun (old gun) did not fire on that night. R. p. 97, line 1 – p. 106, line 3.

At the close of the state's case, the defense moved for a directed verdict on the attempted armed robbery charge on the ground that there was no evidence verbally or non-verbally in support

of the attempted armed robbery charge. The facts of the case included a perpetrator who grabbed Simmons' car door, said "hey," and then pointed a gun and pulled the trigger. At best, the facts revealed that a gunman was trying to assault or shoot to kill Simmons. R. p. 106, line 24 – p. 107, line 11; R. p. 111, line 17 – p. 112, line 16. The state argued that the perpetrator was trying to get in Simmons' car and take the car. R. p. 109, line 13 – p. 111, line 11. The court denied the motion. R. p. 114, lines 18 – 21.

Robbery is larceny by force, i.e., larceny from the person or immediate presence of another by violence or intimidation. Dukes v. State, 248 S.C. 227, 149 S.E.2d 598 (1966). Armed robbery is robbery while armed. S.C. Code Ann. § 16-11-350-370 (2003). Larceny is the felonious taking and carrying away of the goods of another which must be accomplished against the will or without the consent of the victim. State v. Brown, 274 S.C. 48, 260 S.E.2d 719 (1979): The element of taking the goods with the intent to steal, or in this case, the attempt to take the goods with the intent to steal, was not present per these facts. See State v. Brown, supra. Here, the perpetrator never verbally ordered Simmons to surrender his wallet, car, or any item whatsoever. Furthermore, the word "hey" uttered by the perpetrator cannot be translated as a verbal command for the surrender of goods. Also, the perpetrator's non-verbal cues or actions were not tantamount to a request for goods, money, or the car. Rather, the perpetrator's actions via pointing the gun and pulling the trigger indicated that he was trying to assault or shoot Simmons. The fact that the perpetrator tried to open the door and continued to pull on the door also indicated he was trying to get to get good gun aim at Simmons. It is untenable to contend that the perpetrators pull on the car and saying "hey" meant that he was attempting to steal the car. Had that been the case, the state would have charged him with carjacking.

On appeal, the Court of Appeals held that:

Here, Ravenel's victim testified that Ravenel wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the victim's car door twice. We find this testimony was substantial circumstantial evidence when, in a light most favorable to the State, the jury could reasonably infer that Ravenel was guilty of attempted armed robbery. Accordingly, the decision of the circuit court is AFFIRMED.

App. 2.

The Court of Appeals held that because petitioner "wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the car door twice...[then]...this was substantial circumstantial evidence when in a light most favorable to the state, the jury could reasonably infer that [petitioner] was guilty of attempted armed robbery." However, attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime. State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (S.C. Ct. App. 2001). Clearly, there was no intent here based on the circumstances establishing that petitioner intended to commit armed robbery. Petitioner pointed a gun and twice pulled the trigger at the car driver during the incident, and at that time petitioner issued no command, neither verbally nor nonverbally, ordering the surrender of goods or money during the incident. Intent is proved by the circumstances (State v. Tuckness¹), and based on this fact, as reviewed in conjunction with the other facts of the case, it was clear that petitioner approached the witness not with the intent to rob, but with the intent to kill.² Note that the witness himself interpreted petitioner's actions as an intent to kill via his testimony regarding the reliability of his identification as follows:

¹ 257 S.C. 295, 185 S.E.2d 607 (1971)

² At trial, petitioner was convicted of attempted armed robbery, assault with intent to kill, and pointing and presenting a firearm.

Q. You said earlier he was wearing a face mask. How did you know this was the person if he had a face mask on?

A. When someone has got a gun in your face and they're looking in your eyes trying to kill you, you kind of remember that.

R. 19, lines 16-21.

Also, the witness gave the following testimony regarding an interpretation of petitioner's actions in the case as follows:

Q. You stated earlier that this individual put a gun to the window next to your head and pulled the trigger twice.

A. Yes, sir.

Q. What were you thinking?

A. There was a lot of things, I think. One, I was try [sic] to get away so I don't get killed; and, two, was this guy is trying to kill me. I thought - - I couldn't get the fact of why the gun didn't go off, because I saw him pulling the trigger.

R. 29, lines 14-23.

Second, the word "hey" uttered to the witness cannot be translated as a verbal command or order for the surrender of goods. Additionally, there were no non-verbal actions coming from petitioner that were tantamount to a request for goods, money, or the car. Rather, petitioner's actions via the pointing of the gun and the pulling of the trigger indicated that he was trying to assault or shoot the witness.

Additionally, the fact that the perpetrator tried to open the witness' car door also indicated his intent to get a good aim at the witness in order to shoot him. It is untenable to contend that petitioner's pull on the car door and saying "hey" meant only that he was attempting to steal the witness' car. Had that been true, then the state would have charged petitioner with the offense of carjacking in the case.

A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt

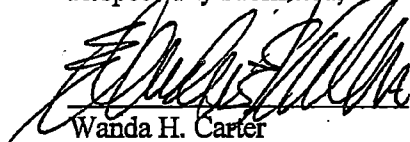
may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Also, a judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, supra. At best, there was only suspicion of attempted armed robbery in this case. In conclusion, there was insufficient evidence presented in support of the attempted armed robbery charge, and there was no substantial circumstantial evidence in the case establishing sufficient proof on the offense of attempted armed robbery in this case.

The Court of Appeals erred in holding that the trial court properly denied petitioner's motion for a directed verdict of acquittal on the charge of attempted armed robbery because there was no substantial circumstantial evidence reasonable tending to prove guilt on the charge.

CONCLUSION

Based on the foregoing argument, petitioner requests that the court grant the petition for writ of certiorari.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 16th day of May, 2012

The Supreme Court of South Carolina

The State, Respondent,

v.

Vashaun Ravenel, Petitioner.

Appellate Case No. 2012-209546


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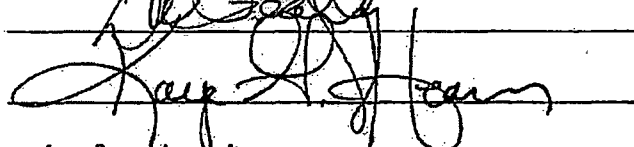
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COURT OF APPELLATE

ORDER

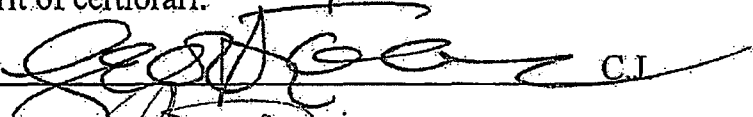
We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Ravenel*, Op. No. 2011-UP-425 (S.C. Ct. App. filed Sept. 30, 2011). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

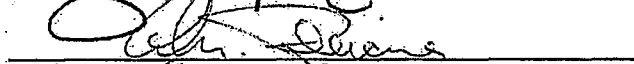



J.


J.

We would deny the petition for a writ of certiorari.



C.I.


J.


J.

Columbia, South Carolina

March 20, 2013

cc:

Harold M. Coombs, Jr., Esquire

Wanda H. Carter, Esquire

The Honorable Jenny Kitchings

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

VASHAUN RAVENEL,

PETITIONER

Appellate Case No. 2012-209546

BRIEF OF PETITIONER

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ATTORNEY FOR PETITIONER.

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The Court of Appeals erred in upholding petitioner’s attempted armed robbery conviction when petitioner simply pointed a firearm at the car driver, pulled the trigger (gun did not fire), and then fled without taking away goods because those actions did not constitute sufficient evidence of guilt, particularly in light of the facts in the case of State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991), where that appellate court vacated the defendant’s attempted armed robbery conviction because the defendant took no goods and made no statement indicating that he fired his weapon at the car driver for the purpose of committing armed robbery. 5

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ISSUE PRESENTED

The Court of Appeals erred in upholding petitioner's attempted armed robbery conviction when petitioner simply pointed a firearm at the car driver, pulled the trigger (gun did not fire), and then fled without taking away goods because those actions did not constitute sufficient evidence of guilt, particularly in light of the facts in the case of State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991), where that appellate court vacated the defendant's attempted armed robbery conviction because the defendant took no goods and made no statement indicating that he fired his weapon at the car driver for the purpose of committing armed robbery.

STATEMENT

Petitioner Vashaun Ravenel was convicted of attempted armed robbery, assault with intent to kill and pointing and presenting a firearm during the July 2009 term of the Charleston County General Sessions Court before Judge Roger M. Young. Petitioner was sentenced to imprisonment for a period of thirty-five years.

Petitioner appealed his convictions and sentences, and on February 1, 2011, pursuant to an oral argument held on September 1, 2011, the Court of Appeals issued an opinion affirming petitioner's convictions and sentences. App. 1-2. See State v. Ravenel, Unpublished Opinion No. 2011-UP-425 (Ct. App. September 30, 2011). App. 1-2. A petition for rehearing was filed on October 5, 2011. App. 3-7. The petition for rehearing was denied on February 14, 2012. App. 8-9.

On May 16, 2012, a petition for writ of certiorari requesting review of the Court of Appeals' decision in this case was filed in the Supreme Court. On March 20, 2013, this Court issued an order granting the petition for writ of certiorari. This brief of petitioner follows.

ARGUMENT

The Court of Appeals erred in upholding petitioner's attempted armed robbery conviction where petitioner simply pointed a firearm at the car driver, pulled the trigger (gun did not fire), and then fled without taking away goods because those actions did not constitute sufficient evidence of guilt, particularly in light of the facts in the case of State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991), where that appellate court vacated the defendant's attempted armed robbery conviction because the defendant took no goods and made no statement indicating that he fired his weapon at the car driver for the purpose of committing armed robbery

At trial, Michael Simmons testified that he was leaving his job at Ryan's Steak House around 11:45 p.m. on December 29, 2007, headed toward his car when a black male wearing a white hoody and ski mask approached him in the parking lot. As Simmons jumped in his car, the perpetrator came closer, held a gun to Simmons' face, and pulled the trigger twice, but the gun did not fire. The perpetrator spoke one word (that word being "hey") during the incident. At the end of a tug of war between Simmons and the perpetrator over the car door via opening and shutting it, Simmons managed to escape by driving off. Later, police officers found a suspect in the Summit Place Apartments nearby and conducted a show up identification. Simmons positively identified the suspect, i.e. petitioner, as the perpetrator from the incident. R. p. 10, line 4 – p. 30, line 7. Fellow employer Ginger Cass witnessed this event and testified that she saw the perpetrator "rapping the gun a little bit into the car [as Simmons] was still trying to go forward" and that the perpetrator fled when Simmons drove off. R. p. 89, line 15 – p. 94, line 21. The remainder of the case included the testimony of the two police officers who described how petitioner was apprehended, and a ballistics expert who attempted to explain why the gun (old gun) did not fire on that night. R. p. 97, line 1 – p. 106, line 3.

At the close of the state's case, the defense moved for a directed verdict on the attempted armed robbery charge on the ground that there was no evidence verbally or non-verbally in support of the attempted armed robbery charge. The facts of the case included a perpetrator who grabbed Simmons' car door, said "hey," and then pointed a gun and pulled the trigger and then fled without taking away any goods from the scene. At best, the facts revealed that a gunman was trying to assault or shoot to kill Simmons. R. p. 106, line 24 – p. 107, line 11; R. p. 111, line 17 – p. 112, line 16. The state argued that the perpetrator was trying to get in Simmons' car and take the car. R. p. 109, line 13 – p. 111, line 11. The court denied the motion. R. p. 114, lines 18 – 21.

On appeal, the Court of Appeals held that:

Here, Ravenel's victim testified that Ravenel wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the victim's car door twice. We find this testimony was substantial circumstantial evidence when, in a light most favorable to the State, the jury could reasonably infer that Ravenel was guilty of attempted armed robbery. Accordingly, the decision of the circuit court is AFFIRMED. App 2.

Robbery is larceny by force, i.e., larceny from the person or immediate presence of another by violence or intimidation. Dukes v. State, 248 S.C. 227, 149 S.E.2d 598 (1966). Armed robbery is robbery while armed. S.C. Code Ann. § 16-11-350-370 (2003). Larceny is the felonious taking and carrying away of the goods of another which must be accomplished against the will or without the consent of the victim. State v. Brown, 274 S.C. 48, 260 S.E.2d 719 (1979).

The Court of Appeals held that because petitioner "wore both a ski mask and a hooded sweatshirt at night, presented a firearm, and tried to open the car door twice...[then]...this was substantial circumstantial evidence when in a light most favorable to the state, the jury could reasonably infer that [petitioner] was guilty of attempted armed robbery." However, a closer inspection revealed that the jury could not reasonably have inferred that an attempted armed robbery

occurred in this case sans any verbal communications or actions (attempt to take away goods) establishing the same.

Here, the perpetrator never verbally ordered Simmons to surrender his wallet, car, or any item whatsoever and fled without taking or attempting to take away any goods from the scene. Furthermore, the word "hey" uttered by the perpetrator cannot be translated as a verbal command for the surrender of goods. Also, the perpetrator's non-verbal cues or actions were not tantamount to a request for goods, money, or the car. Rather, the perpetrator's actions via pointing the gun and pulling the trigger indicated that he was trying to assault or shoot Simmons. The fact that the perpetrator tried to open the door and continued to pull on the door also indicated he was trying to get to get good gun aim at Simmons. It is untenable to contend that the perpetrator's pull on the car and saying "hey" meant that he was attempting to steal the car. And finally, note that no goods were taken from the car driver and there was no actionable attempt to take away any goods from the car driver.

Compare the case of State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991) to this case. In McDowell, Doris Gillie was driving her car out of the church parking lot when the driver of the car ahead of her, heard the sound of gunshots being fired. Gillie was found inside the car wounded from gunshots and her car windows shattered. Gillie's pocketbook was unopened and her body rested between the purse and the shattered driver's window. The defendant in McDowell, who was charged with attempted armed robbery, told his friends that he had shot someone and had to kill them and previously stated that he was going to burn someone, but said nothing about a robbery. The McDowell court held that absent a statement made by the defendant regarding his intent to commit armed robbery coupled with Gillie's purse left undisturbed in her car, which showed no intent to commit robbery, there was no proof, other than a suspicion, that the defendant attempted to

commit armed robbery, and thus the evidence was “insufficient to support a reasonable inference of the defendant’s guilt of armed robbery.”

In conclusion, the McDowell court held that there was insufficient proof of intent to prove that the defendant in that case was guilty of attempt to commit armed robbery. The element of taking the goods with the intent to steal, or in this case, the attempt to take the goods with the intent to steal, was not present per these facts either. Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime, i.e., that the defendant must have consciously intended the completion of act compromising the choate offense (with the completion of such act being the defendant’s purpose). See, State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (S.C. Ct. App. 2001). Clearly, there was no intent here based on the circumstances establishing that petitioner’s purpose was the intent to commit armed robbery. Petitioner pointed a gun and twice pulled the trigger at the car driver during the incident. At that time, petitioner issued no command, neither verbally nor nonverbally, ordering the surrender of goods or money during the incident and lastly, did not take any goods or attempt to take any goods from the car driver. Intent is proved by the circumstances (State v. Tuckness¹), and based on this case, it was clear that petitioner did not approach the car driver with the intent to kill.

Note that the witness himself did not interpret petitioner’s actions as any intent to kill based on his following testimony:

Q. You said earlier he was wearing a face mask. How did you know this was the person if he had a face mask on?

A. When someone has got a gun in your face and they’re looking in your eyes trying to kill you, you kind of remember that.

R. 19; lines 16-21.

¹ 257 S.C. 295, 185 S.E.2d 607 (1971).

Also, the witness gave the following testimony regarding his interpretation

of petitioner's actions in the case as follows:

Q. You stated earlier that this individual put a gun to the window next to your head and pulled the trigger twice.

A. Yes, sir.

Q. What were you thinking?

A. There was a lot of things, I think. One, I was try [sic] to get away so I don't get killed; and, two, was this guy is trying to kill me. I thought - - I couldn't get the fact of why the gun didn't go off, because I saw him pulling the trigger.

R. 29, lines 14-23.

And again, the word "hey" uttered to the witness cannot be translated as a verbal command or order for the surrender of goods. Additionally, there were no non-verbal actions coming from petitioner that were tantamount to a request for goods, money, or the car.

Additionally, perpetrator's pull on the car door did not amount to evidence of attempted armed robbery.

Finally, the fact that petitioner neither reached for any goods in the car driver's possession nor attempted do so did constituted a lack of proof or inference that he was guilty as charged.

A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Also, a judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, supra. At best, there was only suspicion of attempted armed robbery in this case. In conclusion, there was insufficient evidence presented in support of the attempted armed robbery charge, and there was no substantial circumstantial

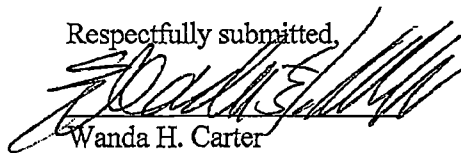
evidence in the case establishing sufficient proof on the offense of attempted armed robbery in this case.

The Court of Appeals erred in holding that the trial court properly denied petitioner's motion for a directed verdict of acquittal on the charge of attempted armed robbery because there was no substantial circumstantial evidence in this case that reasonably tended to prove guilt on the charge.

CONCLUSION

Based on the foregoing argument, petitioner would ask this Court to vacate his attempted armed robbery conviction in the case.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 20th day of May, 2013

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Clerk of Court
Honorable Roger M. Young, Circuit Court Judge
Appellate Case No. 2012-209546

THE STATE

Respondent

vs.

VASHAUN RAVENEL

Petitioner

BRIEF OF RESPONDENT

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<u>State v. Tuckness</u> , 257 S.C. 295, 185 S.E.2d 607 (1971).....	7, 8, 11
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006).....	6, 8, 11

Other State and Federal Cases

<u>McCormick v. United States</u> , 500 U.S. 257 (1991).....	7, 8, 11
<u>Morisette v. United States</u> , 342 U.S. 246 (1952).....	7, 8, 11
<u>New v. State</u> , 606 S.E.2d 865 (Ct. App. 2004).....	10
<u>People v. Terrell</u> , 443 N.E.2d 742 (Ill. App. Ct. 1982).....	10
<u>Rogers v. Commonwealth</u> , 683 S.E.2d 311 (Va. Ct. App. 2009).....	10

<u>State v. McDowell</u> , 329 N.C. 363, 407 S.E.2d 200 (1991)	6, 13, 14
<u>United States v. Johnson</u> , 962 F.2d 1308 (8th Cir. 1992).....	10
<u>United States v. Moore</u> , 921 F.2d 207 (9th Cir. 1990)	10
<u>United States v. Rodriguez</u> , 10 F.App'x. 378 (7th Cir. 2001).....	10
<u>Womack v. State</u> , 29 So.3d 58 (Miss. Ct. App. 2009),.....	10

Statutes

S.C. Code Ann. § 16-11-330 (2003).....	7, 8
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STATEMENT OF ISSUE ON APPEAL

DID THE COURT OF APPEALS PROPERLY AFFIRM THE TRIAL COURT'S DENIAL OF PETITIONER'S MOTION FOR DIRECTED VERDICT WHERE THE STATE PRESENTED SUFFICIENT EVIDENCE THAT PETITIONER IS GUILTY OF ATTEMPTED ARMED ROBBERY?

STATEMENT OF THE CASE

In 2009, Petitioner Vashaun Ravenel was convicted of attempted armed robbery, assault with intent to kill, and pointing and presenting a firearm. The case was tried before Judge Roger M. Young of the Charleston County General Sessions Court, and Petitioner was sentenced to thirty-five years in prison.

Petitioner appealed his conviction of attempted armed robbery. On February 1, 2011, the Court of Appeals affirmed his conviction. App. 1-2. State v. Ravenel, Unpublished Opinion No. 2011-UP-425 (Ct. App. September 30, 2011). On October 5, 2011, Petitioner filed a petition for rehearing. App. 3-7. The petition was denied on February 14, 2012. App. 8-9.

On May 16, 2012, Petitioner filed a petition for writ of certiorari with the South Carolina Supreme Court. On May 18, 2012, the State filed a return to the petition for writ of certiorari. On March 20, 2013, this Court granted the petition for writ of certiorari. On May 20, 2013, Petitioner filed his initial brief with this Court.

This brief in response follows.

STATEMENT OF FACTS

On December 29, 2007 at around 11:45 PM, Mike Simmons, the assistant general manager and money manager of Ryan's Steakhouse in Charleston, closed up for the night and headed to his car. R. 11- 12. His car was parked to the left of the building where he always parks it. R. 14. The parking lot was very illuminated. R. 35. After walking next to his car and unlocking the car door with the automatic door lock feature on his key as he approached the car, Simmons noticed Petitioner approximately six feet away, wearing a white hoodie and a camouflage ski mask and holding a rusty revolver. R. 14-17, R. 32. Petitioner came from behind dumpsters. R. 24; 28. Simmons tried to jump into his car. R. 14. Petitioner called out "Hey" to Simmons and confronted him. R. 14-17; 24; 33.

Simmons immediately jumped in his car as Petitioner came up to the side window. R. 14; 24. As he did so, Petitioner put the revolver up toward the window near Simmons' face, approximately six inches from the glass. R. 14-15. Petitioner pulled the trigger, but the gun did not fire. R. 14. Petitioner rapped the gun with his hand, put it back into Simmons' face, and attempted to fire again. The gun still did not fire. R. 14.

Petitioner tried to force open the car door and enter the car, but Simmons pulled the door shut. R. 14; 24; 26. Simmons threw the car into reverse and backed away taking Petitioner with him until Petitioner "let go" of Simmons' car. R. 14. Petitioner followed still pointing the gun at Simmons, and attempted to get into the car again. R. 16; 26. Simmons shifted into first gear to drive away while Petitioner attempted to enter the car for a second time. R. 16-17; 36. Simmons testified that when Petitioner's gun was pointed at him, Simmons thought a lot of things," including that Petitioner was trying to kill him. R. 29-30. When Petitioner pulled on the door handle of the car, Simmons

thought Petitioner wanted to either kill him or take the car. R. 30. When Petitioner noticed that there were a number of people standing in front of the restaurant he ran from the scene, towards a cell phone tower. R. 17, R. 93. The entire incident lasted thirty to forty seconds. R. 24.

A co-worker saw the struggle and telephoned the police before Petitioner fled the scene. R. 89-94. About fifteen minutes after dispatch, police found Petitioner in a nearby apartment complex¹. Petitioner had removed the white hoodie, but the police discovered him with the revolver in his pocket and the ski mask in his hand². R. 47, R. 59. Even though it was midnight in December, Petitioner was shirtless when he was arrested. Also, Petitioner was "sweating profusely and had steam rising off of him". R. 19, R. 45. Simmons identified Petitioner as the robber fifteen to twenty minutes after the incident. He also identified the camouflage ski mask and the revolver. R. 17-22. There was no uncertainty in his identification. R. 20-22, R. 68-69.

At trial, The State presented Mr. Simmons' testimony, along with testimony from the responding officers, an employee who called the police and a ballistics expert who analyzed the gun. The State also presented the revolver, the bullets, the ski mask, several photos of the parking lot and surrounding area, and a surveillance video of the incident. R. 22-27.

As to the revolver and Petitioner's actions with the revolver, responding Officer Darin Cobb testified that while the revolver could hold up to six bullets, it was only loaded with two. R. 60. The two bullets were in the 12:00 position (the firing position) and the 1:00 position in the cylinder of the revolver. R. 61. The bullet at the 12:00

¹ Petitioner did not live in that apartment complex; he lived four miles away. R. 67.

² The white hoodie was never recovered. R. 48.

position had been struck by the gun's firing pin, and there was a dent in the primer—the part of the ammunition that the firing pin strikes to create a spark to let the powder ignite and send the bullet forward. R. 61, R. 102. As Petitioner pulled the trigger, the cylinder rotated to the left. R. 61-62. Knowing that Petitioner had shot twice, Cobb deduced that the first time the trigger was pulled, the firing pin came down in an empty slot on the cylinder. R. 62. Cobb also deduced that the second time the trigger was pulled, the firing pin actually struck the primer of the bullet, but the revolver still did not fire. R. 62. Also, the ballistics expert testified that the gun itself functioned fine. R. 101-103. He had no explanation for why the gun did not fire, but theorized that the primer was faulty. R. 104.

At the close of the State's case, Petitioner moved for a directed verdict on the attempted armed robbery charge, alleging there was no evidence of either verbal or physical acts committed by Petitioner that demonstrated an attempt to rob Simmons, that the facts do not fit the characteristics of an attempted armed robbery, and that the facts only raised a "mere suspicion" of attempted armed robbery R. 106-107. The State responded that Petitioner attempted to steal the car, and that once Petitioner realized the gun was not working, he attempted to remove Simmons from the car. Significantly, the State further noted that Petitioner approached the victim and his car while wearing a camouflage ski mask, a white hoodie, and armed with a pistol. R. 112-113. After considering the arguments of counsel, the trial judge denied the motion for directed verdict, but noted that it was "troubling." R. 113.

Petitioner did not present any witnesses. R. 118-119. In closing argument, defense counsel asserted that intent to steal was not proven beyond a reasonable doubt,

and that a person trying to steal the car would hold the driver at gunpoint and try to get him out of the car. R. 138. The jury found Petitioner guilty of all three charges. R. 154.

ARGUMENT

The Court of Appeals properly affirmed the trial court's denial of Petitioner's motion for directed verdict where the State presented sufficient evidence that Petitioner is guilty of attempted armed robbery.

Petitioner alleges that the State failed to present evidence of attempted armed robbery, and offers State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991), as support. Cert Pet. 3 and 7-8. The State submits that sufficient evidence was presented to withstand the directed verdict motion and that the North Carolina decision upon which Petitioner relies is not controlling and is distinguishable.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 362-63 (2006). "On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State." State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 478 (2004).

"Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct.

App. 2007). Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or the representation of a deadly weapon. State v. Mitchell, 382 S.C.1, 675 S.E.2d 435 (2009); State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 614 (2010); S.C. Code §16-3-330 (2003). “Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime. In the context of an ‘attempt’ crime, specific intent means that the defendant consciously intended the completion of acts comprising the Choate offense. In other words, the completion of such acts is the defendant’s purpose.” State v. Nesbitt, 346 S.C. 226, 230, 550 S.E.2d 864, 866 (Ct. App. 2001) citing State v. Sutton, 340 S.C. 393, 396 n. 3, 532 S.E.2d 283, 285 n. 3 (2000)). “A person is guilty of attempted armed robbery if the person has the specific intent to commit armed robbery.” State v. Thompson, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct. App. 2007). The State must also prove that “the defendant’s specific intent was accompanied by some overt act, beyond mere preparation, in furtherance of the intent, and there must be an actual or present ability to complete the crime. Id. The attempt or overt act is defined as “the direct movement toward the commission, after preparations are made.” Id. To find Petitioner guilty of the common law crime of attempted armed robbery, the State needed to prove specific intent, use or representation of a deadly weapon and overt act. See State v. Reid, 383 S.C. at 285, 679 S.E.2d at 198.

It is well-established that matters of intent are for the jury to consider. McCormick v. United States, 500 U.S. 257 (1991); Morisette v. United States, 342 U.S. 246 (1952) (where intent of accused is ingredient of crime charges, its existence is a question of fact which must be submitted to the jury); State v. Tuckness, 257 S.C. 295,

299, 185 S.E.2d 607, 608 (1971) (the question of criminal intent is one of fact and is ordinarily for jury determination except in extreme cases). The issue of whether a defendant possessed the requisite intent at the time a crime was committed is typically a question for jury determination because, without a statement of intent by an actor, proof of intent must be determined by inferences from conduct. State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971); State v. Tuckness, 257 S.C. at 299, 185 S.E.2d at 608 (intent is seldom susceptible to proof by direct evidence and must be proven by facts and circumstances from which intent may be inferred.).

In support of his motion for directed verdict, Petitioner argued that there was no evidence of verbal or physical acts committed to demonstrate his intent to commit armed robbery but that the evidence raised only a "mere suspicion" of armed robbery. The State disagrees. The evidence taken in the light most favorable to the State was sufficient to withstand the motion for directed verdict and that the Court of Appeals properly affirmed the trial court's denial of the motion.

First, the evidence reflects that the victim, the money manager of the restaurant, locked the restaurant for the night and walked around to the left of the building where he always parks his vehicle. The evidence shows Petitioner was hidden from the victim behind nearby dumpsters and was disguised in a hoodie and mask. Petitioner was also armed with a revolver. Petitioner remained hidden as the victim approached his vehicle and unlocked the vehicle door using the remote control device on his key. Petitioner stepped out from behind the dumpsters but did not immediately shoot at the victim. Instead, Petitioner called out to the victim to direct the victim's attention to Petitioner. Petitioner displayed the revolver to the victim and Petitioner's appearance was disguised.

The victim resisted Petitioner by escaping into his vehicle. The evidence shows that Petitioner pointed the revolver near the victim's face and pulled the trigger twice as the victim resisted but the weapon did not fire. Petitioner also struggled with the victim more than once to gain entry into or to open the door of the victim's vehicle but the victim continued to resist Petitioner's efforts.

The State submits that Petitioner engaged in overt acts toward armed robbery, either of taking the victim's car or other possessions, thus unlawfully attempting to take personal property by force. When a person approaches a car, a home, or a bank with a covered face and with gun in hand, an overt step towards armed robbery has clearly occurred. See, e.g., United States v. Moore, 921 F.2d 207, 209 (9th Cir. 1990) (Evidence was sufficient to deny a motion for directed verdict on attempted bank robbery where defendant was arrested walking toward the bank, wearing a ski mask and carrying a concealed, loaded gun.); United States v. Johnson, 962 F.2d 1308, 1312 (8th Cir. 1992) ("By driving to the bank with disguises and weapons, slowly circling the bank three times, and stopping once to open the doors of the vehicle, the three crossed the 'shadowy line' from mere preparation to attempt."); United States v. Rodriguez, 10 F.App'x. 378, 379-380 (7th Cir. 2001) (Evidence was sufficient where defendant entered the bank on the Fourth of July wearing a mask over his face, wore gloves, and carried a revolver); New v. State, 606 S.E.2d 865, 867-68 (Ga. Ct.App. 2004) (Evidence of intent was sufficient where defendant was discovered by police outside McDonalds with a mask and with a BB gun in his pocket); People v. Terrell, 443 N.E.2d 742, 743 (Ill. App. Ct. 1982) (Evidence sufficient where two men found near gas station ran away from police officers, black stockings were discovered in their pockets, and a handgun was discovered nearby);

Womack v. State, 29 So.3d 58, 60, 64 (Miss. Ct. App. 2009) (Evidence sufficient where police officer discovered defendants wearing masks, carrying a shotgun and about to enter a truck stop); Rogers v. Commonwealth, 683 S.E.2d 311, 314 (Va. Ct. App. 2009) (Evidence was sufficient where victims in their apartment noticed through the door peephole that several men were at their door with bandanas over their faces, and one had a gun.) Here, Petitioner clearly approached the car with a gun and a ski mask covering his face, which showed Petitioner's intent to commit an armed robbery without revealing his identity to the victim. R. 14-17. Second, Petitioner approached the victim but not until the victim was unlocking the vehicle door. R. 14, 32. It was only after the victim began to resist that Petitioner attempted to shoot. See R. 14-17. Clearly, an inference was created for the jury that Petitioner used the weapon to intimidate the victim to increase the success of the robbery. Finally, Petitioner attempted to open the car door twice in an effort to remove or gain access to the vehicle and/or its contents. R. 14-17. As defense counsel correctly argued in closing, a person trying to steal a car would hold the driver at gunpoint and try to get him out. R. 138. These acts constitute evidence of an attempt to deprive the victim of the vehicle or other goods by unlawful force and deadly weapon.

Additionally, the victim testified that he believed Petitioner was trying to either get in to kill him or take his car. R. 30. The State submits that the evidence shows that Petitioner waited until the victim unlocked the door to the vehicle before approaching. R. 14, 32. It may be inferred from the evidence that Petitioner did so because he wished to steal the vehicle and/or its contents and items in the victim's possession and did not want to risk losing access. Furthermore, Petitioner attempted to open the car door twice. It is

inferable from these actions that he wished to gain control of the vehicle, what was inside the vehicle or in the victim's possession. This is not the "mere suspicion" that Petitioner claims. As the State presented sufficient evidence of attempted armed robbery, the Court of Appeals properly affirmed the denial of the directed verdict motion.

Not only did the State present sufficient evidence of the necessary elements, it also presented evidence that refutes Petitioner's theory that he only wanted to kill the victim. First, Petitioner waited for Simmons to unlock the car door before approaching.

Simmons: I was probably unlocking my door as I was walking up.

Defense: And, in fact, you got almost all the way to your car before the person in the white hoody and the black jeans appears; is that correct?

Simmons: Correct.

R. 32. If Petitioner wished to murder the victim, it would have been far simpler to shoot the victim before he reached his vehicle. The wait only makes sense if Petitioner had another goal instead of killing the victim: stealing his car or items in the victim's possession. Petitioner only shot at the victim after the victim resisted the robbery. Also, Petitioner only loaded two bullets into his gun, and the firing pin was not over a live round when Petitioner fired it the first time. R. 60-62. If Petitioner had wished to only murder the victim, he would have loaded six rounds, or at least positioned the firing pin over one of the bullets. As defense counsel correctly argued in closing, a person trying to steal a car would hold the driver at gunpoint and try to get him out. R. 138. That is precisely what Petitioner attempted to do, but the victim resisted.

Taken in the light most favorable to the State, the sufficient evidence supports the inference that Petitioner intended to deprive the victim of the victim of the vehicle, the

vehicle contents or other possessions by gaining control of the vehicle and the victim and that he used a deadly weapon to do so. While there is sufficient evidence to support the State's theory that Petitioner attempted to murder the victim and take the victim's vehicle, the theory that Petitioner wished to kill Simmons for no known reason is less convincing. The question of intent was a question for the jury and sufficient evidence was presented from which intent to commit armed robbery could be inferred.

State v. McDowell, 329 N.C. 363, 407 S.E.2d 200 (1991) is distinguishable. In McDowell, the defendant's intent was shown through his conversations with his friends. The court in McDowell specifically cited his intent to "burn" somebody, noting that he did not mention robbery. McDowell at 390, 407 S.E.2d at 215. No such conversations exist in this case, and thus there is no evidence supporting Petitioner's theory. Also, in McDowell, the victim's purse and valuables were left behind in the car after the murder when the defendant had free access to the items, which disproved the theory of robbery. Id. Here, there is evidence that Petitioner attempted to steal the victim's vehicle. Petitioner attempted to open the car door and force his way in twice. R. 14-17. There is evidence Petitioner held onto the vehicle and was actually pulled along with it before releasing the door. Also, Petitioner waited until after the victim unlocked the vehicle door before attacking. R. 14, 32. This is very different from the scenario in McDowell. McDowell at 390, 407 S.E.2d 214-215. Here, Petitioner committed overt acts in an attempt to steal the car or its contents. The two cases are distinct and should not be analogized, because of the evidentiary differences between the two.

The motion for directed verdict was properly denied. The State asks this Court to affirm the Court of Appeals.

CONCLUSION

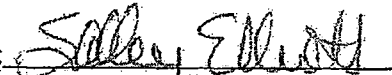
For the reasons stated, this Court should affirm the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

BY:



Salley W. Elliott
S.C. Bar No: 1871

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ATTORNEYS FOR RESPONDENT

July 19, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Vashaun Ravenel, Petitioner.

Appellate Case No. 2012-209546

Appeal from Charleston County
Roger M. Young, Sr., Circuit Court Judge

Memorandum Opinion No. 2014-MO-005
Heard January 8, 2014 – Filed February 26, 2014

DISMISSED AS IMPROVIDENTLY GRANTED

Appellate Defender ~~Wanda H. Carter~~, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: After careful consideration of the Appendix, Record, and briefs,
the writ of certiorari is

RECEIVED

FEB 26 2014

SC OFFICE OF
APPELLATE COUNSEL

DISMISSED AS IMPROVIDENTLY GRANTED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ.,
concur.**

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Charleston)

2014-CP-10-4586
IN THE COURT OF COMMON PLEAS

Vashawn Ravenel #336866)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

FILED
2014 JUL 25 PM 12:53
JULIE Y. ARMSTRONG
CLERK OF COURT

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution, 136 Wilborn Avenue
Ridgeville, South Carolina 29472
2. Name and location of Court which imposed sentence Charleston County General
Sessions, 100 Broad Street, Suite 106, Charleston, S.C. 29401
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-10-09734, Attempted Armed Robbery

(b) 2008-GS-10-02081, assault with the intent to Kill

(c) 2008-GS-10-09736, pointing and presenting a firearm

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 28, 2009 - 20 years

(b) July 28, 2009 - 10 years - Consecutive

(c) July 28, 2009 - 5 years - Consecutive

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. Conviction affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

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) Applicant deprived of effective assistance of Counsel at Trial and on Appeal.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attachment

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____ N/A _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ N/A _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____ N/A _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

_____ No _____

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) Because PCR is the appropriate Avenue for Relief
 (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:
- i. Steven Harris, Esquire
I cannot recall the address
 - ii. David M. Holton, Esquire
I cannot recall the address
 - iii. Wanda H. Carter, Deputy Chief Appellate Defender
Division of Appellate Defense P.O. Box 11589, Columbia S.C. 29211
- (b) the proceedings at which each such attorney represented you:
- i. arraignment, trial, sentencing, appeal, pre-trial, post-trial
Motions
 - ii. arraignment, trial, sentencing, appeal, pre-trial post-trial
Motions
 - iii. Appeals

19. State clearly the relief you seek in filing this application:

New Trial; New Appeal

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Charleston)

VERIFICATION

I, Vashawn Ravenel # 336066, 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.

Vashawn Ravenel

SWORN to and subscribed before me this 16th day of June, 2014.

Mittie Blome (L.S.)
Notary Public

My Commission Expires: 8/20/2016

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Vashawn Ravenel # 336066, 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.

Vashawn Ravenel
Applicant

SWORN or affirmed to and subscribed before me this

16 day of June, 2014.

[Signature]
Notary Public

My Commission Expires: 8/20/2016

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL -

1. Trial Counsel rendered deficient performance inasmuch as he failed to object and moved for a Mistrial when the Solicitor and State witnesses referred to the Attempted Car Jacking which had been previously Nolle Prossed

Prior to the Trial of this Case, Trial Counsel David M. Holton Esq. made a motion in limine that the States witnesses not be questioned, make statements or references to other charges that the defendant was not on Trial for. Tr.p. 30 lines 9-19. The Court thereafter Ordered the Solicitor to instruct his witnesses not to about other Charges that are not being tried Tr.p. 30 lines 24-25. The Solicitor told the Court that he did instruct them and anticipate that they'll abide by his instructions. Tr.p. 31 lines 1-3. One of the Charges that was not being tried was the Charge of Attempted Car Jacking. This indictment which was nolle prossed prior to trial stated the following:

"That in Charleston County, South Carolina, on or about December 29, 2007, the defendant Vashaun Jamal Ravenel did take or attempt to take a motor vehicle from Micheal Simmons by forced, violence or intimidation while Micheal Simmons was operating the vehicle or inside of the vehicle in violation of Section 16-3-1075 of the Code of laws of South Carolina (1976) as amended."

Thus any statements, references or questions about applicant attempting to take a motor vehicle from Micheal Simmons by force, while Micheal Simmons was operating the vehicle or inside the vehicle, would not be allowed per the Order of the Trial Court because it relates to another charge that applicant was not on trial for.

However despite the Trial Courts pre-trial ruling on this issue witnesses was allowed to testify that he was in fear for his life thats why he tried to get away from the situation and that he thought applicant was attempting to kill him and take his Car " Tr.p. 108-109. The witness also was allowed to testify to the fact that he was in his Car operating it when applicant tried to take it. Tr.p. 95-96. These statements taken as a whole clearly involves the charge and all elements of attempted Car Jacking. Trial Counsel should have objected to these statements made by the States Witnesses and moved for a Mistrial based on the the Trial Courts earlier Ruling. Trial Counsel was ineffective in failing to move for a Mistrial.

2. Trial Counsel rendered deficient performance inasmuch he failed make a motion to quash the attempted Armed Robbery Indictment when the Attempted Car Jacking Indictment was Nolle Prossed.

Prior to the Trial in this case, Trial Counsel made a motion in limine that the witnesses not make statements or references to any charge that the applicant is not on trial for. Tr.p. 30 lines 9-19. Trial Counsel was aware a day ahead time that the Attempted Car Jacking Indictment would be Nolle Prossed. Trial Counsel knew at that time, he would make a motion in limine to exclude any statement or references to the Nolle Prossed Charge. Because of this Trial Counsel should have moved to Quash the Attempted Armed Robbery Indictment because it contains the same elements of Attempted Car Jacking. Therefore it would be practically impossible for the State to Prove Attempted Armed Robbery without referring to the Attempted Car Jacking. In order to not refer to the Attempted Car-

Jacking, it was necessary for the Court to quash the Attempted Armed Robbery Indictment. The applicant's Armed Robbery Indictment required the State to prove beyond a reasonable doubt that applicant attempted to take and carry away property, intending to permanently deprive the owner of the property. The State had to further prove beyond a reasonable doubt that applicant attempted to take and carry away the property with violence or by putting the owner of the property in fear of violence. The property that the State alleged applicant attempted to take was the "motor vehicle". The State alleged that applicant attempted to take this vehicle while the victim was inside of the vehicle and that it was attempted by using force. Clearly in order for the State to prove Attempted Armed Robbery, it was forced to prove and make statements concerning Attempted Car Jacking. For this reason Trial Counsel should have moved to quash the Attempted Armed Robbery Indictment. Applicant was prejudiced by Trial Counsel's error inasmuch as he was convicted upon inadmissible evidence relating to the Nolle prosequi charge of Attempted Car Jacking. Applicant is entitled to a New Trial.

3. Appellate Defender rendered ineffective assistance on appeal inasmuch as she failed to raise in applicant's appellate Brief the issue that Trial Court erred in failing to suppress the evidence that stemmed from an illegal arrest.

The testimony at the Suppression Motion and Trial establishes the following facts:

Officer Douglas Armstead responded to an incident at Ryan's Steakhouse on 7821 Rivers Avenue in Charleston County before midnight at approximately 11:50 p.m. Tr.p. 123 lines 14-24. He was given a description of a suspect which was approximately six foot, wearing dark pants, a hoodie, ski mask and armed with a black revolver. Style handgun Tr.p. 124 lines 3-6. After he received this information from dispatch, he went to Summit Place Apartments which is directly behind Ryan's Steakhouse, he went toward the right side of the apartments checking the area he observed a subject partially matching the description that was given, black male, six foot, he had dark pants but he wasn't wearing a shirt, he was carrying some shirts in his hand. The officer noticed that he was sweating profusely and had steam rising off of him which he saw kind of suspicious due to the time of year. Tr.p. 12 lines 9-25. The officer then exited his vehicle and made contact with him, while this officer was stepping out the vehicle, applicant went to reach in his pocket at which point Officer Armstead started giving verbal commands. He also claimed to observe a bulge in applicant's pants pocket, but this was after he had drawn his handgun and started giving verbal commands Tr.p. 125 lines 11-24. At this point Officer Darin Cobb drew his weapon also pointing it at the applicant as he crept up behind him, seeing that applicant was complying with Officer Armstead's instructions, Officer Cobb secured his weapon, pulled the handcuffs from his right handcuff pouch, grabbed the applicant's right arm, brought it to his back and applied the first handcuff and then Officer Cobb reached for and grabbed his left arm and pulled that arm back to handcuff him and then the officer noticed the camouflage ski mask sticking out of his left pocket. Tr.p. 138 lines 2-9. The officer then asked him did applicant have anything on him, the applicant stated that he had a ski mask. The officer asked was there anything else on him. Applicant said "I got a gun. The officer asked where it was, and applicant said it is underneath the ski mask. Officer Cobb then recovered the gun and at that time did he make the decision to arrest the applicant. Tr.p. 62 lines 2-23.

Applicant's Trial Counsel moved to suppress the evidence found based on the following grounds:

rial Counsel argued that at the time the officers put handcuffs on him and detain him they did not see a gun or ski mask. Tr.p. 69 lines 16-25. Counsel further argued that at that point when the officers pointed guns at him and placed handcuffs on applicant he was under arrest because he didn't have the free will to leave. Counsel argued that the officers did more than what was technically allowed under Terry a temporary detaining is not a problem but when you hold someone at gun point and handcuff them, that exceeds the limits of a Terry Stop. Based on these grounds Trial Counsel asked that the evidence seized during the allege Terry Stop be suppressed as the fruit of an illegal search and seizure, since applicant wasn't lawfully under arrest until after the search. Tr.p. 69-70

Applicant alleges that this fourth Amendment claim had merits and was no way near Frivolous. see McLean v. United States 566 F.3d 391, 399 (4th Cir. 2009). Appellate Defender was ineffective for failing to controvert the Trial Courts ruling on this in applicants appellate brief. Applicant is entitled to a New Appeal and be afforded the opportunity to have this meritorious claim heard on appeal.

For all of the foregoing reasons applicant is entitled to Post-Conviction Relief.

Respectfully Submitted,

Vashaun Ravenel

Vashaun Ravenel
Lieber Correctional Inst.
136 Wilborn Avenue
Ridgeville, S.C. 29472

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	
)	
)	2014-CP-10-4586
)	
Vashawn Ravenel, #336866,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 25, 2014, 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 Charleston County Clerk of Court. The Applicant was indicted at the December 2008 term of the Charleston County Grand Jury for attempted armed robbery (2008-GS-10-9734), assault with intent to kill (AWIK) (2008-GS-10-2081), and pointing and presenting a firearm (2008-GS-10-9736). The Applicant was represented by Steven Harris, Esquire, and David Holton, Esquire.

On July 28, 2009, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Roger Young, Sr., to confinement for a period of twenty years for attempted armed robbery, ten years for AWIK, and five years for pointing and presenting a firearm. The Applicant's convictions are to be served consecutively.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Wanda Carter, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences

were affirmed by the Court of Appeals. State v. Ravenel, No. 2011-UP-425 (S.C. Ct. App. September 20, 2011). The Applicant filed a Petition for Rehearing which was denied on February 14, 2012. The Supreme Court denied his Petition for Writ of Certiorari on February 26, 2014. The Remittitur was issued on March 14, 2014.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object and move for a mistrial when the solicitor and State witness referred to the attempted carjacking which was previously *nolle prossed*.
 - b. Counsel failed to make a motion to quash the attempted armed robbery indictment when the attempted carjacking indictment was *nolle prossed*.
2. Ineffective assistance of appellate counsel.
 - a. Counsel failed to raise the issue that trial counsel erred in failing to suppress evidence that stemmed from an illegal arrest.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their 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 also alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by

the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). “For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy...” Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. *See* Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). 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).

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

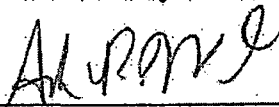
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 14, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
)
 VASHAWN RAVENEL, #336066,)
)
)
)
)
 Applicant,)
)
)
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 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2014-CP-10-4586

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Bush Law Group, P.C.
3 Broad Street, Suite 450
Charleston, South Carolina 29401

DATED this the 14th day of April, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

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1 THE COURT: This is Vashawn Ravenel
2 versus the State of South Carolina,
3 2014-CP-10-4586. It's an application for
4 post-conviction relief. He was indicted for
5 attempted armed robbery, 2008-GS-10-9734, assault
6 with intent to kill, 2008-GS-10-2081, pointing and
7 presenting a firearm, 2008-GS-10-9736.
8 He was represented by Stephen Harris. Second chair
9 was David Holton.

10 On July 28th he proceeded to trial, was
11 found guilty. He was sentenced by Judge Young to a
12 period of 20 years for attempted armed robbery, ten
13 years for the AWIK and five years for pointing and
14 presenting. And he also ordered that those
15 sentences be served consecutively. He filed a
16 notice of appeal which Ms. Carter handled for the
17 office of appellate defense. And that conviction
18 was affirmed in an unpublished opinion,
19 2011-UP-425, September 20th of 2011 by the Court of
20 Appeals. Petition for rehearing was denied on
21 February 14th of 2012 and the Supreme Court denied
22 his petition for a writ of certiorari on
23 February 26th, 2014.

24 The matter was remitted to this Court
25 on March 14th of 2014. He alleges that his counsel

1 was ineffective for failing to object and move for
2 a mistrial when the solicitor and state witnesses
3 referred to the attempted carjacking which was
4 previously dismissed or nolle prossed. Counsel
5 failed to make a motion to quash the attempted
6 armed robbery indictment when the attempted
7 carjacking indictment was nolle prossed. And
8 counsel failed to raise the issue that trial
9 counsel erred, this is more on the appellate issue,
10 counsel failed to raise the issue that trial
11 counsel erred in failing to suppress evidence that
12 stemmed from an illegal arrest. Mr. Falk, are you
13 ready to proceed?

14 MR. FALK: We are, Your Honor.

15 THE COURT: And, Mr. Johnson, are you
16 ready to proceed?

17 MR. JOHNSON: Yes, Your Honor.

18 THE COURT: Do we want to do Ms. Carter
19 first so we can get her on the phone?

20 MR. JOHNSON: I just sent her a text
21 letting her know.

22 THE COURT: Whose witness is she?

23 MR. FALK: She would be mine, I guess.

24 THE COURT: Why don't we go ahead and
25 get Ms. Carter on the telephone so that she is not

1 sitting around her office waiting on us to call
2 her.

3 (Brief pause.)

4 (Telephone call initiated.)

5 MR. JOHNSON: Wanda, hey, it's
6 Rutledge, how are you?

7 MS. CARTER: Great, I'm fine. How are
8 you?

9 MR. JOHNSON: Good. We are here with
10 Judge Jefferson in the case of Vashawn Ravenel and
11 Jim Falk as PCR counsel is going to ask you a few
12 questions.

13 MS. CARTER: Hold on just one moment.
14 Let me close my door. Hold on.

15 WANDA CARTER
16 who after being first duly sworn, testified as
17 follows:

18 THE COURT: Ma'am, state your name for
19 the record.

20 THE WITNESS: Wanda, W-A-N-D-A, H.
21 Carter, C-A-R-T-E-R.

22 DIRECT EXAMINATION

23 BY MR. FALK:

24 Q. Ms. Carter, this is James Falk. Can
25 you hear me?

1 A. Yes, I can hear you.

2 Q. Should I get closer? Can you hear me
3 better now?

4 A. I can hear you a little better now,
5 thank you.

6 Q. You represented Vashawn Ravenel in his
7 appeal; is that correct?

8 A. Yes, I did. I did.

9 Q. And looking at your -- the issues you
10 presented it was basically that there was
11 insufficient evidence?

12 A. That's correct. It was a sufficiency
13 of the evidence issue that I raised on appeal with
14 respect to the attempted armed robbery charge. My
15 concern was that there was insufficient proof to
16 show that there was any intent to rob.

17 Q. And you obviously reviewed the trial
18 transcript?

19 A. I haven't reviewed the trial
20 transcript, but I remember --

21 Q. I am sorry?

22 A. -- I remember the case.

23 Q. Let me rephrase my question.

24 A. Because there was oral argument
25 scheduled at the Court of Appeals and we lost at

1 | the Court of Appeals and I petitioned for cert to
2 | the state Supreme Court and that was granted. So
3 | there was a second oral argument in our state
4 | Supreme Court. So it's been some time, but I'm
5 | familiar with the case.

6 | Q. I should have been clearer with my
7 | question. I guess I was just asking the obvious,
8 | that you reviewed the entire transcript when you
9 | were picking up the issues to raise on appeal; is
10 | that correct?

11 | A. That's correct. A reading of the
12 | transcript and taking notes simultaneously and then
13 | going back as a reread to see what issues are the
14 | best issues in the case, yes.

15 | Q. Mr. Ravenel is asserting that the
16 | appellate defender rendered ineffective assistance
17 | on appeal inasmuch as she failed to raise in
18 | applicant's appellate brief the issue that trial
19 | court erred in failing to suppress the evidence
20 | that stems from an illegal arrest. Did you
21 | remember seeing those issues when you made a review
22 | of the transcript?

23 | A. I don't recall that issue. I don't
24 | know if there were any objections to that issue.
25 | If I thought that there had been merit in that

1 instance, then I would have raised that issue on
2 appeal; so obviously the fact that I did not
3 address that issue on appeal means that I must not
4 have found any merit with that particular issue.

5 Q. Had you been convinced that there was
6 an illegal arrest in this case would that have been
7 an issue that you would have raised?

8 A. Had I been --

9 Q. Had you been convinced that there was
10 an illegal arrest in this case and that the issue
11 was properly preserved, would you have raised that
12 on appeal?

13 A. If the issue had been objected to and
14 if I thought the issue had any merit I would have
15 raised it. But the fact that I did not, that tells
16 me that I was not convinced that this was an issue
17 for appeal.

18 Q. No, I appreciate your response. I'm
19 just trying to say if that did, in fact, occur and
20 if that issue was properly preserved that would be
21 an issue to raise on appeal, would it not?

22 A. I'm not being difficult, but of course,
23 it would depend on the facts of the case and I'm
24 assuming you're referring to the legal arrest and
25 then the suppression of whatever goods were found

1 | pursuant to that arrest. Every case is different.
2 | So I can't tell you generally that every illegal
3 | arrest objection has merit. Some may and some may
4 | not. In this case I did not raise that issue so I
5 | can only tell you that obviously that was not an
6 | issue that had merit in this particular case. I
7 | can't give you a blanket answer about every illegal
8 | arrest objection or issue in a case. I can only
9 | speak to this case.

10 | MR. FALK: No further questions.

11 | THE COURT: Any questions for the
12 | witness?

13 | MR. JOHNSON: Ms. Carter, I have no
14 | questions for you. Thank you so much.

15 | THE WITNESS: Thank you very much.

16 | MR. JOHNSON: Have a great day.

17 | (Phone call terminated.)

18 | THE COURT: You may proceed, Mr. Falk.

19 | MR. FALK: Mr. Harris. We call Mr.
20 | Harris to the stand.

21 | THE COURT: Yes, sir. Mr. Harris, if
22 | you would come forward to be sworn.

23 | STEPHEN HARRIS

24 | who, after being first duly sworn, testified as
25 | follows:

1 THE CLERK: If you could state your
2 first and last name and spell your last name.

3 THE WITNESS: William Stephen Harris.
4 Last name is spelled H-A-R-R-I-S.

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MR. FALK:

8 Q. You represented Mr. Ravenel at the
9 trial?

10 A. Myself and Mr. David Holton, yes.

11 Q. Thank you. Did you see when you were
12 reviewing the evidence in this case was there --
13 did you have cause for concern that there was an
14 illegal arrest and an illegal search?

15 A. An illegal -- we had an issue and I
16 believe we bought up pretrial about was it a Terry
17 frisk, was he under arrest. At the time -- again,
18 this is a seven or eight year old case. I'm going
19 by what I am reading here, and what I remember from
20 it. I know that we argued that anything further
21 than just a Terry frisk needed to be done while
22 under arrest. And they did have him handcuffed at
23 the time. We argued that. I believe the judge
24 denied our motion at that point. I think Mr.
25 Holton had a pretrial motion to have the bullets,

1 | the gun, the mask, excluded from evidence and I
2 | think he made that motion and it was denied
3 | pretrial.

4 | Q. Do you recall whether or not he renewed
5 | that motion?

6 | A. I know at the end of the trial we
7 | renewed all the motions and the judge told us that
8 | was...

9 | Q. Mr. Harris, when I reviewed the trial
10 | transcript seems to have been a bench conference in
11 | there around the introduction of the evidence of
12 | the guns and the bullets and somebody objected
13 | subject to my prior objections. Does that sound
14 | familiar to you?

15 | A. Yes, that would have been the objection
16 | we made to those coming in early because we said
17 | that this was not -- I believe the way that they
18 | had obtained the evidence we were arguing was
19 | illegal in that it went further than just a simple
20 | Terry frisk for officer safety. It was a person
21 | with a handcuff on behind their back that the
22 | officer even said was technically not under arrest
23 | at that point. That's the part we kept trying to
24 | belabor was, if he's not under arrest why are you
25 | digging in his pockets? And that's where they

1 found the gun and the mask.

2 So that was -- we made that argument
3 early I believe and then we renewed it at the end
4 of the trial. Mr. Holton stood up and as I do in
5 every trial whoever is giving the end of his last
6 witness when we rest our case we renewed all
7 objections that we had brought up previously.

8 Q. And I'm just saying that there was a
9 contemporaneous objection made when the gun and
10 bullets were coming in?

11 A. Yes.

12 Q. So was it your opinion that you think
13 you properly preserved the objection?

14 A. I thought we did. That would be my
15 opinion, yes.

16 Q. Okay. That was your attempt to
17 preserve that issue?

18 A. Yes. Different judges do different
19 things different ways. When are you preserving
20 objections some judges want you to renew it at the
21 end of every witness, at the end of everything.
22 The judge in front of us today does not require
23 that I know because I have had trials in front of
24 her too. Where I renew it at the end and say I
25 want to renew every objection I have and the

1 response usually from the judge is either thank you
2 or you don't need to do that every time. And I
3 believe on this one I think we renewed it at the
4 end of their case and we renewed it at the end of
5 our case so I assumed as usual that's going to be
6 preserved in the objection for appeal.

7 Q. Thank you. Did you have a conversation
8 with my client regarding quashing the indictment
9 for the attempted armed robbery?

10 A. Did I have a conversation -- if I did
11 -- it wouldn't surprise me if I did. Do I recall
12 it? It's seven years ago.

13 Q. Let me back up. Do you recall moving
14 to -- do you recall when you made a motion to
15 suppress or maybe there was a stipulation, you made
16 a stipulation and it's in the trial transcript,
17 that there would be no reference to any non-charged
18 offenses?

19 A. Yes, specifically the carjacking.

20 Q. Exactly. And what was the purpose of
21 that stipulation from your point? What was your
22 benefit? What was your trial strategy stipulating
23 to that or trying to keep that evidence away from
24 the jury?

25 A. Because they had dismissed the

1 | carjacking charge because they wanted the more
2 | generic in my opinion attempted armed robbery
3 | charge. Carjacking charge is easier to prove in a
4 | case like this. And I didn't want the jury
5 | thinking that -- because when he walked up to a
6 | car, allegedly walked up to a car, puts a gun in
7 | the guy's face and says hey, pulls the trigger, so
8 | I don't want the jury thinking that he was there to
9 | steal the car. We were making the argument that if
10 | anything he was there to kill the guy if you are to
11 | believe it because he didn't make anything that
12 | would seem like a robbery.

13 | So we didn't want them bringing up
14 | carjacking. Also carjacking was a -- carries much
15 | more time than armed robbery. I think it does. I
16 | haven't had a carjacking in so long. But the point
17 | of not bringing up carjacking was for a jury that's
18 | not legal experts, they look at this case and go
19 | this is carjacking. There's a car. There's a
20 | person trying to jack the car. It's kind of --
21 | took away a lot of our momentum and it also was
22 | going to take away we didn't want the jury asking
23 | later on or having them bring back up why wasn't
24 | the charge carjacking or anything like that and
25 | have the judge try to include it in the charge.

1 That's the best of my memory right there as to why
2 it was a trial strategy I think.

3 Q. You can't prove -- we agree that an
4 element of proof of armed robbery is intent to
5 deprive somebody else of their personal property;
6 is that correct?

7 A. Right. That was -- again, I have read
8 this transcript. I didn't have as much time as I
9 would like to go through everything, just had a
10 hectic couple weeks, but if I recall correctly, our
11 argument was that if there was any intention in
12 this case the intent was to kill somebody or to
13 attempt to kill somebody. It wasn't attempt to
14 steal something because I know I made an argument
15 of why would you try to steal a car after you just
16 shot somebody in it, because you've kind of ruined
17 the car at that point. You hold somebody up, tell
18 them to get out of the car, then take the car. You
19 don't just start firing because you've got their
20 brain and blood everywhere and you're a little
21 conspicuous driving around town with that all over
22 your car. It was one of the arguments we made
23 where to show there wasn't an intent to commit a
24 robbery in this case.

25 Q. If the State couldn't talk about the

1 | carjacking did the State have any evidence to show
2 | that there was a personal property that there was
3 | an intent to deprive him of?

4 | A. If the --

5 | Q. I think my argument would be that we
6 | are not going to talk about the car being stolen?

7 | A. Right.

8 | Q. Or an attempt to steal the car. And if
9 | we are not going to talk about the intent to steal
10 | the car, being the property, you still needed some
11 | proof that there was an attempt to steal some other
12 | property, would you not?

13 | A. Right. And that's -- again if I recall
14 | correctly, we sat in with Judge Young for a long
15 | period of time before this trial having a pretrial
16 | conference. Judge Young agreed with us that there
17 | was some areas of this case that were going to be
18 | more difficult to prove than others. One of them
19 | is the one we are talking about here. That's when
20 | I believe the major argument about the carjacking
21 | charge came along and that's when we discussed that
22 | again when you are talking about in that same
23 | aspect, then you should get rid of the attempted
24 | armed robbery, this should be attempted murder and
25 | pointing and presenting and possession of firearm,

1 | but we were making argument to get rid of one of
2 | that too.

3 | Q. Thank you. So safe to say that the
4 | reason why -- so you didn't want the jury to hear
5 | information about that it was an attempt to steal a
6 | car; is that correct?

7 | A. Right.

8 | Q. Okay. If I could, do you have the
9 | transcript with you?

10 | A. I do.

11 | Q. If you could look at page 30 of the
12 | transcript and then lines 23, carries over onto the
13 | next page.

14 | A. Okay.

15 | Q. So the Court made -- directed you all
16 | not to talk about the charge?

17 | A. Yes.

18 | Q. So it was clear we weren't going to
19 | talk about the carjacking?

20 | A. Right. We made it clear at pretrial
21 | and made it clear on the record; yes.

22 | Q. If you could look at page 95, this is
23 | the direct examination of the victim, Mr. Simmons?

24 | A. Okay.

25 | Q. And starting at line 23?

1 A. Okay.

2 Q. Carrying on over onto page 96 to
3 line two.

4 A. Okay.

5 Q. Your Honor, the record -- it's in
6 the --

7 THE COURT: I have the record. I read
8 them well in advance.

9 MR. FALK: Right. So I'm not going to
10 ask him to read it in.

11 BY MR. FALK:

12 Q. There was a reference in there he was
13 trying to steal my car, tried to get the car again?

14 A. Let's see. You said, I'm sorry, 23?

15 Q. If you look at his answer which starts
16 on page 95, line 23, then it carries over onto the
17 next page.

18 A. Yeah, he said to get in the car again.

19 Q. Okay.

20 A. Yes.

21 Q. Did you feel that was a reference to
22 the attempted carjacking at the time?

23 A. Personally no, that just -- no, because
24 I mean I guess the armed robbery part, you know, if
25 -- because there's other -- I remember them saying

1 | that the judge told them they had to specifically
2 | prove that he had intent to steal something, you
3 | know, and this is again where we said no mention of
4 | carjacking. And the reason was because the
5 | carjacking itself is a crime and that's a specific
6 | thing and makes it in my opinion a lot easier to
7 | say oh, he was obviously trying to steal the car
8 | because the person is in the car and he did this.

9 | I'm not going to make something up and
10 | tell you exactly what I was thinking here, but if I
11 | am looking at it right now where it says get in the
12 | car again which he may be -- I don't see it as
13 | saying -- if he said he was trying to steal my car
14 | again then I would have said yeah, this is -- they
15 | are mentioning the carjacking. But it says get in
16 | the car. Trying to get in the car to throw him out
17 | and kill him, to do whatever. Says get in the car
18 | again, so no.

19 | Q. And then if you could turn your
20 | attention to page 109 of the transcript. The
21 | question starts on line two, then his answer starts
22 | on line four.

23 | A. I see that, yeah, that does say take my
24 | car.

25 | Q. That's more of a direct reference to a

1 carjacking, is it not?

2 A. Yes.

3 Q. Did you -- was there a trial strategy
4 behind you're not objecting to that testimony
5 coming in?

6 A. You know, that's Mr. Holton on these is
7 my understanding; is that right? Mr. Holton would
8 have been objecting to that. I can only do what --
9 you know, the rules of the court are the person
10 objecting is the person that's examining the
11 witness. So I can only suggest to him or do what
12 everybody does when you are starting out as a
13 public defender is grab your pants. I can only do
14 that kind of stuff at this point. I don't know why
15 he didn't object there. I don't know if I nudged
16 him and said hey, we should object.

17 Sometimes for strategy reasons if it's
18 something small, I don't know that he considered
19 that small, but if it's something small that I
20 think is going to upset the jury or make me look
21 like I'm desperate, I may not do it. I don't know
22 why he wouldn't have objected there. I can't say
23 that I pushed him to or that I asked him to or
24 anything like that. But I mean the rules of the
25 court are if you are not the one talking you're not

1 the one objecting either especially in front of
2 certain judges.

3 Q. This was on direct examination. This
4 was Mr. Simmons' direct examination?

5 A. Right. This is Mr. Holton's witness is
6 what I'm saying. Mr. Holton is handling this
7 witness and he was going to handle him going
8 forward because I have had judges do that to me.
9 Where I object to what a witness says and then my
10 co-counsel stands up and starts to do the cross and
11 I have had judges say you sit down, Mr. Harris is
12 doing this witness. So that just again comes down
13 to Judge Young. I can't remember what he would
14 have said. But I know Judge Nicholson would have
15 made me sit down -- made me stand up and question
16 him if I would have objected right there.

17 Certain judges do it different ways.
18 So no, I don't know why he didn't object there. I
19 mean again, I don't know if I have scratched
20 something on a notepad to say object or if I tugged
21 my pants and tapped him or just let it go.

22 Q. If you could look at the closing
23 argument, specifically I am referring to the
24 state's closing argument at page 203.

25 A. Okay.

1 Q. Lines four through seven. Does that
2 appear to you there is a reference to a carjacking
3 in that?

4 A. Four through seven?

5 Q. Specifically grabbing the door handle
6 twice?

7 A. I don't know about that one as much the
8 next one.

9 Q. Well, that's where I was going.

10 A. And steal his car.

11 Q. Yes.

12 A. Then they refer to it as an attempted
13 armed robbery, yeah. So, yeah, the door handle
14 again is -- I didn't see that as this is a person
15 trying to argue that he was carjacking somebody.
16 Door handle, I see that as the same as somebody
17 grabbing somebody's front door when they are trying
18 to burglarize the place.

19 Q. But steal a car certainly is?

20 A. Yeah.

21 Q. Now, whose job would it have been to
22 object to the --

23 A. That would have been mine.

24 Q. Was there a trial strategy behind not
25 objecting?

1 A. Of course. I don't like objecting
2 during closing argument. Closing arguments are not
3 evidence. I don't -- when somebody -- unless it's
4 egregious during the closing argument, because A, I
5 was going next, and I can't stand it when
6 prosecutors object to me ten times during the
7 closing argument. I have had it happen. I won the
8 case because of it because the jury was so mad at
9 the prosecutor. I think that that really caused
10 that extra push over the edge.

11 For strategy reasons unless I hear
12 something egregious in closing argument or opening
13 statement, same as opening statement, I'm not going
14 to object because it's not evidence. It's their
15 opinion of what the case is, mentioning because --
16 if you look at it later it says that's an attempted
17 armed robbery. If he would have said then he tried
18 to steal car, that's carjacking folks, then I would
19 have objected. But you know, like I said, I have
20 had a lot of trials, I have had success in a lot of
21 them, I have always chosen unless it's something
22 really bad in the closing argument I'm really not
23 going to object.

24 Q. Did you think that discussing
25 carjacking in a nolle prossed charge during the

1 closing argument was covered by the stipulation?

2 A. Yeah. But --

3 Q. I understand your answer.

4 A. Okay. Of course I anticipated that was
5 part of the stipulation we made pretrial.

6 Q. Exactly. And then just for a
7 discussion here, there's a paragraph on page 204,
8 lines four through ten?

9 THE COURT: I'm sorry, could you repeat
10 that?

11 MR. FALK: Page 204 lines four
12 through ten.

13 THE WITNESS: Yes.

14 BY MR. FALK:

15 Q. Permanently deprive him of his vehicle?

16 A. Yeah. He did attempt to carry away and
17 permanently deprive. Like I said, I don't -- again
18 it's not -- I don't recall if we -- because I feel
19 like for some reason we talked to the judge about
20 this a couple times during the case at sidebar.

21 And the reason I say that is because
22 Judge Young said to us at one point well, the car
23 is part of the armed robbery but don't focus on the
24 car, but if you -- it kind of got to a point where
25 it was like -- if I remember -- again, this is

1 seven years ago, it kind of got boiled down to
2 don't say carjacking. Don't bring that up.
3 Because I think Mr. Reasoner said, I don't remember
4 his co-counsel in this case, but said well, if the
5 car is something he was trying to steal during the
6 armed robbery that's why I think I made the
7 argument later that, you know, about damaging the
8 car and if you are going to say anything it must
9 have been muddy or something like that. But again,
10 that does seem like a mention of the factors of the
11 carjacking. They are very similar to armed robbery
12 except one of them deals with just specifically car
13 and the other one deals with property so, yes.

14 Q. I appreciate your answer. Might be the
15 same. But on page 205, line seven, is a robbery of
16 the car?

17 A. Yes. Yes, sir. I would say the same
18 thing as before.

19 Q. And on page 207, line seven, which was
20 intentionally tried to shoot Mike and to take his
21 personal property which was his car and his money?

22 A. And/or money. Yes, I'd say in this
23 situation the car, yeah.

24 Q. And then go to page 208, look at lines
25 six through eight.

1 A. I see those.

2 Q. Again, he wanted to kill and take his
3 car?

4 A. Yes.

5 Q. If you go to page 210, line seven.

6 A. Steal his car, yes, sir.

7 Q. I think you may have already answered
8 this, but was there a different trial strategy for
9 not objecting to those?

10 A. No, no. Like I said, the trial
11 strategy on that part in my trying cases is
12 something that's not evidence -- because if I
13 object it's just me as a trial lawyer. If I object
14 to something that I know what a judge, their answer
15 is going to be: A, this isn't evidence, B, we are
16 going to go up here and we are going to talk about
17 it four or five times while the jury is sitting
18 over here going why is -- this guy is losing and he
19 is being desperate is what in my opinion they think
20 when you are objecting during closing arguments.
21 And a judge is going to say well, they're trying to
22 prove that he was going to steal his property in
23 this case, happened to be his car.

24 He did mention car. At some point in
25 time he mentions more money, but in this case his

1 | car. So we were making the argument during this
2 | trial that he wasn't trying to steal anything. And
3 | I don't know if that was the fault, we were
4 | basically trying to say he wasn't even trying to
5 | rob this guy. He was trying to kill him, that was
6 | it. He didn't succeed. And the evidence in our
7 | opinion in our legal strategy pointed to that -- I
8 | guess that was our whole thing. We didn't want to
9 | belabor that he was trying to steal the car. We
10 | wanted to belabor or to put the fact forward that
11 | you don't murder somebody in a car that you are
12 | trying to steal. You don't kill them before you
13 | steal something from them. You steal something
14 | from them, then you hide the evidence, you kill
15 | them.

16 | But why would you open the door and
17 | start firing if your intention was to take that
18 | car. You have got a body in the car. You have got
19 | witnesses going to see you take the body out of the
20 | car. So our argument was clearly he was just
21 | trying to kill the guy. If it was him at all. I'm
22 | not saying that that man was doing it. I am saying
23 | our argument was this evidence doesn't support
24 | attempted armed robbery, it only supports I think
25 | AWIK and pointing and presenting, the other things.

1 But that's why again I didn't object to them
2 bringing up the car because they had been arguing
3 that he was trying to steal something including and
4 but not limited to the car the whole time.

5 Q. Since you didn't object then you would
6 have had no basis -- you would have had no
7 opportunity to move for a mistrial based on --

8 A. Since I did not object?

9 Q. Yes. I guess I am stating the obvious.
10 You didn't move for a mistrial because of the
11 references to the carjacking?

12 A. Right. We renewed our objections to --
13 I think we objected early to them -- again in the
14 conference we had that they don't bring up the term
15 carjacking, or refer to the carjacking, renewed
16 that objection. I think the judge denied it -- I
17 don't remember exactly what happened in that part
18 in that conference or not, but just renewed those
19 objections at the end.

20 But, no, I don't remember what we moved
21 for at the end of this one. I don't think we moved
22 for a mistrial based on them referring to him
23 trying to steal the car. I don't believe I did.

24 Q. Would it have been a trial strategy?
25 Did you think you were doing well in the trial?

1 BY MR. JOHNSON:

2 Q. Good afternoon, Mr. Harris.

3 A. Good afternoon.

4 Q. We have been talking a lot about the
5 carjacking and you have reviewed this transcript.
6 Can you point me to anywhere where the term
7 carjacking is used throughout the trial?

8 A. No. I have reviewed -- I looked for it
9 because I was reading the PCR application. And I
10 looked for the term carjacking. I think the only
11 place I see it is in our -- when we were talking
12 about it earlier about the charges that were
13 dismissed.

14 Q. Pretrial?

15 A. Yes.

16 Q. And can you -- the Court knows, but for
17 the record, can you please give the definition of
18 armed robbery, the legal definition?

19 A. Armed robbery is the -- well, the
20 taking of property from another using I believe
21 deadly force is armed robbery. But threat of or
22 using deadly force to take the property of another.

23 Q. The property of another, right?

24 A. Yes.

25 Q. Would you consider a car personal

1 | property?

2 | A. Yes.

3 | Q. As well as money, correct?

4 | A. Yes.

5 | Q. And so when the State is referring to
6 | stealing of the car, that would satisfy one of the
7 | elements of armed robbery, correct?

8 | A. Right.

9 | Q. Without using the term carjacking?

10 | A. Right.

11 | Q. They must satisfy the element to prove
12 | the attempted armed robbery in this case?

13 | A. That a property was stolen or the
14 | attempt to steal property? Yes, that was our
15 | argument the whole time, they couldn't satisfy
16 | that.

17 | Q. If you will -- well, do you agree with
18 | me that the facts of this case are that there's a
19 | manager in a Ryan's Steakhouse, correct?

20 | A. Yes.

21 | Q. And two other witnesses out in the
22 | parking lot?

23 | A. Yes.

24 | Q. And the manager is going to his car to
25 | go home for the night. He has locked up and he is

1 going home for the night, correct?

2 A. Um-hmm.

3 Q. And then as the State would put it the
4 Defendant walked up to the manager whose trying to
5 get in his car and puts a gun in his face and pulls
6 the trigger, correct?

7 A. Yes.

8 Q. And the evidence also shows that there
9 bullets found that have the hammer mark on them,
10 but it never went off?

11 A. Yeah, there was an -- I think they had
12 an expert that said something about the -- yeah,
13 about the -- the pin hit -- the bullets were
14 waterlogged I believe.

15 Q. Right. And that the victim was lucky
16 that it was a pretty crappy gun and the fact the
17 bullets were waterlogged or it would be a murder
18 scene, correct?

19 A. Yes. And that's why the judge
20 sentenced the way he did.

21 Q. And then the applicant as in the trial
22 transcript runs through a wooden wall or wooden
23 fence at the back of the property, correct?

24 A. Um-hmm.

25 Q. And then police find him -- description

1 is that he has a white hoodie on, a camouflaged
2 mask and a gun, correct?

3 A. Yes.

4 Q. And that when they found him it's --
5 this happened in December, cold night, correct?

6 A. Yes.

7 Q. And then when they find him he is
8 shirtless, steaming and sweating profusely,
9 correct?

10 A. That was their description.

11 Q. And then once he is detained they then
12 see the camouflaged mask in his pocket, correct?

13 A. Again, that's what they said, yes.

14 Q. And then they found the gun in the
15 pocket?

16 A. That's their testimony, yes.

17 Q. Right. But that's what you tried to
18 get excluded?

19 A. Yes.

20 Q. But that's basically the facts as
21 presented by the State in this trial, right?

22 A. Yes. That was the facts that they
23 presented.

24 Q. And they catch Mr. Ravenel less than
25 200 yards from the incident scene?

1 A. Yeah, behind the fence down towards the
2 apartment complex back there.

3 Q. Thank you.

4 MR. JOHNSON: That's all I have at this
5 time, Your Honor.

6 THE COURT: Any redirect?

7 MR. FALK: No, Your Honor.

8 THE COURT: Any objection to the
9 witness being excused from the State?

10 MR. JOHNSON: None, Your Honor.

11 THE COURT: From the applicant?

12 MR. FALK: None, Your Honor.

13 THE COURT: Mr. Harris, you are
14 excused. You may proceed.

15 MR. FALK: We have no further
16 witnesses.

17 THE COURT: Any witnesses from the
18 State?

19 MR. JOHNSON: None, Your Honor.

20 THE COURT: Is there any need for
21 closing argument or can that be waived?

22 MR. JOHNSON: I would like to just
23 state one thing on the record. I will allow Mr.
24 Falk.

25 THE COURT: Absolutely. Mr. Falk, do

1 | you want to make closing argument or do you want to
2 | waive it?

3 | MR. FALK: I would like to make an
4 | argument.

5 | THE COURT: You may proceed.

6 | MR. FALK: Your Honor, counsel thought
7 | it was important enough to keep the carjacking
8 | information away from the jury and was the basis
9 | for the motion in limine at the beginning of the
10 | case. However, even though he made that effort to
11 | keep the carjacking away from the jury he still
12 | allowed the State's witnesses on numerous occasions
13 | to identify here and let the prosecutor itself
14 | refer to theft of a car throughout the transcript
15 | -- I mean throughout the trial and we believe that
16 | his failure to make a timely objection to the
17 | State's witnesses violated the stipulation
18 | regarding the carjacking and then the prosecutor
19 | himself discussing theft of a car throughout the
20 | closing argument is something that amounts to
21 | ineffective assistance of counsel and that more
22 | appropriate would have been to object to the
23 | improper closing argument, then to move for a
24 | mistrial.

25 | MR. JOHNSON: May it please the Court,

1 Your Honor, State's position is that there is no
2 ineffective assistance of counsel here. Yes, they
3 did stipulate to the term carjacking. It was never
4 used. I asked counsel Harris where in the
5 transcript was the term carjacking ever used
6 outside of the stipulation. Just doesn't exist,
7 Your Honor.

8 And as you heard the -- as you also
9 know, the definition of armed robbery, the State
10 has to prove in the element thereof is the taking
11 of personal property, and a car being personal
12 property. The State has to meet that element and
13 so using the term or talking about stealing cars is
14 completely proper in this context.

15 Further, the reason I didn't call Mr.
16 Holton is I don't think I need him because where
17 there is overwhelming evidence of guilt in the case
18 deficiency by trial counsel will not be
19 prejudicial.

20 There's a case Ford v State, 314 South
21 Carolina 245, it's a 1994 case which states what I
22 just stated. Once you review or if you have
23 already reviewed the transcript, Your Honor, there
24 is overwhelming evidence of Mr. Ravenel's guilt in
25 this case. We have three eyewitnesses, especially

1 the victim who was alive to tell -- luckily alive
2 to tell the story. Had those bullets been
3 functional, we may be here on a murder case. But
4 he is found in the middle of December sweating
5 profusely, he had a hoodie, a white hoodie that he
6 had apparently just discarded, it was found with
7 the camouflaged mask that the victim describes, as
8 well as the gun which matched up to the water
9 soaked bullets.

10 Once upon review of the record, the
11 State's position is there is overwhelming evidence
12 and as such applicant has proved no resulting
13 prejudice. Thank you.

14 THE COURT: You're welcome. The
15 applicable standard as we know is Strickland. And
16 first the applicant must in order to satisfy and
17 meet his burden of proof that he had has an
18 ineffective assistance of counsel, he has to prove
19 one, that his counsel was defective and as a result
20 of that deficient performance falling below
21 professional norms that he was prejudiced in some
22 way.

23 And the prejudice that our courts
24 contemplate is that counsel's conduct so undermine
25 the adversarial process that the result of the

1 trial cannot be relied upon as having produced a
2 just result.

3 I find that the applicant has failed to
4 meet that burden of proof by a preponderance of the
5 evidence. And I have reviewed the transcript. I
6 reviewed it prior to the hearing. And I have
7 listened intently to the testimony. I find Mr.
8 Harris' testimony to be credible.

9 But this is really largely a legal
10 issue. Before we had a carjacking statute when
11 folks tried to steal folk's cars they were charged
12 with armed robbery because the car is personal
13 property. The legislature in its providence
14 decided with the reflection of the change in times
15 we had people's cars being snatched, they then
16 passed a statute specifically for carjacking.

17 And the elements of carjacking at
18 16-3-1075 is really the State doesn't have to prove
19 much. They just have to prove beyond a reasonable
20 doubt that the Defendant took or attempted to take
21 a motor vehicle from another person by force and
22 violence or by intimidation while the person was
23 operating the vehicle or while the person was in
24 the vehicle.

25 Then there's a subsection that deals

1 with great bodily injury which would not be
2 applicable to this case. The elements of armed
3 robbery are 16-11-330. And in order to prove armed
4 robbery the State must prove beyond a reasonable
5 doubt that the Defendant took personal property
6 from the person or presence of another person, that
7 means the property was within the person's reach,
8 inspection, observation or control so that if the
9 person were not so overcome with violence or
10 prevented by fear to keep possession of the
11 property and then they have to prove that the
12 person took it away or carried it away with the
13 intent to permanently deprive the owner of the use
14 no matter how slight the removal of the property.

15 Then you introduce the evidence of the
16 attempt because as we know from the facts the armed
17 robbery was not completed. And an attempt is an
18 effort to accomplish a crime which does not
19 succeed. An attempt includes a specific intent to
20 do a particular crime along with an act falling
21 short of the act intended.

22 The State must show more than mere
23 preparation and intent. There must be some overt
24 act committed in the effort to commit the crime.
25 Intent means intending the result which actually

1 occurs, not accidentally or involuntarily and
2 intent may be shown by act and conduct of the
3 Defendant and other circumstances from which a jury
4 may naturally reasonably infer intent.

5 The State nolle prossed the carjacking
6 indictment which is their prerogative. They could
7 have gone forward on either one of the indictments.
8 They could have done an attempted carjacking or
9 they could have done an attempted armed robbery.
10 They didn't have to do one -- they didn't have to
11 do both. They did not have to choose the
12 carjacking. They could do one or the other and
13 that's within their discretion. They chose to
14 proceed on the attempted armed robbery, the AWIK,
15 which is the assault with intent to kill and the
16 pointing and presenting which again was within
17 their prosecutorial discretion.

18 Starting in the order that the issues
19 were raised, the applicant says that there was a
20 reference -- first there was a stipulation and that
21 was dealt with. And there was to be no reference
22 to the carjacking. And the record reflects there
23 never was a reference to carjacking. And the
24 purpose of that is a prior charged offense which is
25 not the subject of the conviction which basically

1 | implicates the character of the person. It also
2 | then compounds the situation which says basically
3 | if he tried to do that, then they're guilty of
4 | this.

5 | So there's a dual purpose so to speak
6 | in it not being mentioned, that being an uncharged
7 | act -- a charged act which is not the subject of a
8 | conviction. So they appropriately moved in limine
9 | for that not to be mentioned. They did a
10 | stipulation which was noticed -- which was in the
11 | record and the State honored that stipulation.
12 | They did not make reference to the other
13 | indictment.

14 | They did not mention a carjacking. The
15 | State is not precluded in proving their case from
16 | making reference to what amounts to res gestae and
17 | that's what it was. They can't parcel out these
18 | events and only talk about him using the gun but
19 | leave out the car. It makes no sense. You have to
20 | look at an event in its totality. You can't
21 | subtract the car out of that equation. It would
22 | make absolutely no sense. They would then be
23 | acting in thin air. You would then be lying and
24 | misrepresenting to the jury that this man was
25 | standing in a parking lot and in his car was not

1 | involved. And it just would not make sense. It
2 | would be totally out of context.

3 | So the State is more than free to argue
4 | it. They are more than free to have argued it as
5 | an element of the offense because a car is personal
6 | because we pay taxes on them and that's what they
7 | call it, a personal property tax. A car is called
8 | personal to you. It is your personal property.
9 | And a car is personal property and they certainly
10 | could make reference and did. They argued within
11 | the evidence that he tried to take his personal
12 | property. That he made an attempt to take it which
13 | was not completed.

14 | But they also argued it was in the
15 | context of the entirety of this event which they
16 | were more than able to do. And I have looked at
17 | the more specific references that were raised by
18 | the applicant. So really whether Mr. Holton or Mr.
19 | Harris would have objected really is not of any
20 | import because there really would not have been any
21 | basis to object. And I'm referring to page 95 and
22 | 96, that's not a reference to carjacking. That's
23 | just res gestae, just them telling about the event
24 | in the context that it occurred. An attempted
25 | armed robbery could have been at the car.

1 | Page 203, lines four through seven, that's not
2 | reference to carjacking. Even alternatively I
3 | think it is a valid strategic observation on Mr.
4 | Harris' part that does give a jury the impression
5 | that you are trying to hide something when you --
6 | depends on the objection. Sometimes objections
7 | legitimately are made and they rise to the level of
8 | something that does need to be done. But in this
9 | instance there wouldn't have been any basis for an
10 | objection and it would have been denied.

11 | So then it would have come across as
12 | him trying to hide something from the jury or
13 | something that he felt was critically damaging to
14 | his client, therefore bringing more attention to
15 | it. So he had a valid strategic reason in not
16 | objecting because what was excluded was the
17 | reference to a carjacking, not a reference to the
18 | elements of the crime which is the attempted theft
19 | of personal property which was this gentleman's
20 | car.

21 | In addition to that, I can find in the
22 | record no reference to the nolle prossed charge.
23 | Page 204 lines two through ten, that's res gestae
24 | because it is an element of the offense. The State
25 | cannot be restricted from arguing the evidence. As

1 well as page 205, 207 and 210. There was another
2 page that Mr. -- Mr. Falk, what was that other page
3 you were referring to before 210? It was your
4 fourth reference.

5 MR. FALK: 208.

6 THE COURT: 208. All of those are
7 references and completely within the evidence and
8 appropriate for the State to have argued. It's not
9 a reference to carjacking. It's a reference to
10 what actually happened in this incident and it is
11 an element arguably of attempted armed robbery.
12 And it is also an appropriate strategic decision,
13 and Mr. Harris articulated that they had a theory
14 and so to them that really wasn't germane in terms
15 of the theory because they didn't want to bring
16 attention or heightened attention to this issue.
17 There would have been no basis for a mistrial even
18 if he had made one. The remedy would have been a
19 curative instruction, not a mistrial. No judge
20 would have granted a mistrial under those
21 circumstances. That would have been a waste of
22 almost a week of court time, something that trivial
23 you would never grant a mistrial. And a mistrial
24 is always your last remedy that you resort to. You
25 could always try to do a curative instruction. But

1 | either way there was no basis for either. There
2 | was no basis for him to object and if he had he
3 | would not have prevailed on it. So it just would
4 | have drawn heightened attention to what the State
5 | was arguing which was within the evidence.

6 | So based on what has been presented to
7 | the Court there's no evidence in this record that
8 | counsel fell below the standard and that the
9 | applicant can meet his burden of proof. And the
10 | application for post-conviction relief is denied.

11 | And that goes part and parcel with Ms.
12 | Hale's -- I want to call her Hale, I went to law
13 | school with Ms. Carter. Her former name was Hale.
14 | I always want to call her that instead of Carter.
15 | But there would have been nothing in the record for
16 | her to appeal other than the sufficiency of the
17 | evidence. There would have been no basis for her
18 | to have appealed anything else after looking at
19 | this record that would have amounted to anything
20 | that was appealable or viable. And she has a duty,
21 | she has a good faith duty only to bring those
22 | matters before the Court that are viable and that
23 | upon which there's some reasonable theory of
24 | prevailing on. And certainly that would not have
25 | been one of them.

1 The applicant's motion is denied. The
2 attorney general is directed to provide the Court
3 with a proposed order within 20 days, incorporating
4 any findings of fact and conclusions of law to
5 support the Court's ruling. Please provide Mr.
6 Falk with a copy.

7 (These proceedings were concluded at
8 3:05 p.m., December 15, 2015, Charleston County,
9 South Carolina.)

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1 CERTIFICATE OF REPORTER
2

3 I, Ruth C. Weese, Registered Diplomate
4 Reporter for the State of South Carolina at Large,
5 do hereby certify that the foregoing transcript is
6 a true, accurate, and complete record.

7 I further certify that I am neither related
8 to nor counsel for any party to the cause pending
9 or interested in the events thereof.

10 Witness my hand, I have hereunto affixed my
11 official seal this 6th day of June, 2016 at
12 Charleston, Charleston County, South Carolina.
13

14 *Ruth C. Weese*
15

16 Ruth C. Weese
17 Registered Diplomate
18 Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Vashawn Ravenel, #336066,

2014-CP-10-4586

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2015 MAY -9 AM 11:02
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:	Hon. Deadra L. Jefferson
Applicant's Attorney:	James K. Falk, Esquire
Respondent's Attorney:	J. Rutledge Johnson, Esquire
Trial Counsel:	W. Stephen Harris, Esquire
Appellate Counsel:	Wanda C. Carter, Esquire
Date of Hearing:	December 15, 2015
Court Reporter:	Ruth Weese

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed July 25, 2014. The Respondent made its Return on April 14, 2015 and filed on April 15, 2015. An evidentiary hearing into the matter was convened on December 15, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by James K. Falk, Esquire. J. Rutledge Johnson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

At the hearing, Wanda H. Carter, Esquire, and Steve Harris, Esquire, testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South

Carolina Department of Corrections, the Applicant's PCR Application, the State's return, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the December 2008 term of the Charleston County Grand Jury for Attempted Armed Robbery¹ (2008-GS-10-9734), Assault with Intent to Kill (AWIK)² (2008-GS-10-2081), and Pointing and Presenting a Firearm³ (2008-GS-10-9736). The Applicant was represented by W. Steven Harris, Esquire, sitting first chair and David M. Holton, Esquire sitting second chair.

On July 28, 2009, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Roger M. Young, Sr., to confinement for a period of twenty (20) years for attempted armed robbery, ten (10) years for AWIK, and five (5) years for pointing and presenting a firearm. The Applicant's convictions are to be served consecutively.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Wanda H. Carter, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Ravenel, No. 2011-UP-425 (S.C. Ct. App. September 20, 2011). The Applicant filed a Petition for Rehearing, which was denied on February

¹ Attempted Armed Robbery is a violent, most serious felony punishable by twenty (20) years' imprisonment. See S.C. CODE ANN. § 16-11-330(B) (2012); S.C. CODE ANN. § 16-1-60 (2012); S.C. CODE ANN. § 17-25-45 (2012).

² The crime of Assault and Battery with Intent to Kill shall be a most serious, violent felony in this State and any person convicted of such crime shall be punished by imprisonment not to exceed twenty (20) years. S.C. CODE ANN. § 16-3-620 (2007); S.C. CODE ANN. § 17-25-45 (2007); S.C. CODE ANN. § 16-1-60 (2007).

14, 2012. The Supreme Court denied his Petition for Writ of Certiorari on February 26, 2014. The Remittitur was issued on March 14, 2014.

ALLEGATIONS

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object and move for a mistrial when the solicitor and State witness referred to the attempted carjacking which was previously *nolle prossed*.
 - b. Counsel failed to make a motion to quash the attempted armed robbery indictment when the attempted carjacking indictment was *nolle prossed*.
2. Ineffective assistance of appellate counsel.
 - a. Counsel failed to raise the issue that trial counsel erred in failing to suppress evidence that stemmed from an illegal arrest.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Appellate Counsel testified the issue that she briefed was the sufficiency of the evidence as to withstand a directed verdict. She stated she had an oral argument in the Court of Appeals. Counsel stated she prepared this case by reading the transcript and taking notes. She then reviewed her notes and reread the transcript to pick the best issues to present to the appellate court. Counsel stated she did not raise the issue of the trial counsel's failure to suppress the evidence of an illegal arrest. She then testified that she would have raised the issue if she thought it

³ Pointing and Presenting a Firearm is a felony punishable by five (5) years imprisonment. S.C. CODE ANN. § 16-23-410 (2008).

was a viable one. She articulated that if the arrest was illegal, she would have raised it; but she was not convinced that this issue had merit.

Trial Counsel, W. Stephen Harris, testified that one of the main issues in this case was whether or not law enforcement conducted an illegal search or a Terry⁴ frisk. Counsel stated he argued that any further action other than Terry needed to be done while Applicant was under arrest. Counsel stated he moved to exclude the evidence and also made contemporaneous objections, including renewing all prior objections at the end of the State's case.

Counsel further testified that there was a stipulation between the State and Counsel that there would be no mentioning of "carjacking," as the State dismissed that charge which, in his opinion, would be easier to prove. Counsel stated he wanted to keep the word "carjacking" away from the ears of jury. Counsel stated he discussed with Judge Young that the attempted armed robbery should also be dismissed and once again did not want the jury hearing about "carjacking."

Counsel then testified to several instances throughout the transcript where he tried to make sure the word "carjacking" was not used by a witness. When the victim testified about the incident, he stated "tried to get in the car again." (Tr. 95-96). Counsel testified this was not a reference to carjacking and that Applicant was charged with attempted armed robbery. As such, the State had to prove that Applicant attempted to deprive victim of some piece of personal property. On page 109 of the trial transcript, the victim stated "take my car." Counsel testified that he did not object because as a matter of trial strategy, he did not want to upset the jury or "re-ring the bell."

⁴Terry v. Ohio, 392 U.S. 1 (1968).

Counsel, when presented with the State's closing argument and the Solicitor's references to the car, testified he does not like to object during closing argument unless it is something egregious as it draws more attention to an argument which is not evidence. Counsel also testified he would have objected had he heard the term "carjacking." The references by the Solicitor came from pages 203, 204, 205, 207, 208, and 210 of the trial transcript. Counsel then articulated that, as per trial strategy, if he had objected, he would be acknowledging something that is not evidence (Solicitor's closing argument), and the jury could think he expected to lose the case or the Court could say Defendant was trying to take personal property. Counsel also stated there was a sidebar conference, in which the Court reminded both attorneys not to use the term "carjacking." Counsel lastly stated that the Court denied his directed verdict specifically on the attempted armed robbery charge (Tr. 193: 18-21).

On cross-examination, Counsel agreed that the term "carjacking" was not used whatsoever throughout the trial. Counsel also agreed that the definition of armed robbery includes the taking of personal property, an element which the State has to prove in this case.

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 and arguments presented at the PCR hearing. The Court also has read the trial transcript and the appellate records, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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AKG

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 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, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006). 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.

This Court had the opportunity to observe the witnesses on the witness stand and hear their testimony. This Court has also read the trial transcript, all of which assists the Court in judging the witnesses' credibility. This Court finds Trial Counsel's testimony persuasive and very credible.

This Court further finds Trial Counsel diligently represented his client. Counsel meticulously ensured that the term "carjacking" was not used throughout the trial. Counsel also explained that the State made reference to the Victim's car as part of the definition or elements of an attempted armed robbery. "A person is guilty of attempted armed robbery if the person has a specific intent to commit armed robbery. Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." State v. Thompson, 374 S.C. 257, 262, 647 S.E.2d 702, 705 (Ct. App. 2007) (internal citations omitted). As the State charged Applicant with attempted armed robbery, it must prove every element of the crime. One of the main elements of robbery is the taking of personal property of any value of another person. In this case, the victim's car was the personal property in question. Based on the *res gestae* of this case, it was permissible for the State to mention that Applicant was trying to take the victim's car. As there was no reference to the term "carjacking," Counsel had no legal basis to object during the testimony or the State's closing argument. Furthermore, Counsel testified that he made the strategic decision not to object because he did not want to bring any more attention to the mention of "carjacking" in front of the jury. As such, this Court finds Applicant has failed to meet his burden of proving that Counsel was deficient in this manner or that there was any resulting prejudice.

This Court further finds overwhelming evidence of Applicant's guilt in this case. Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial.

Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the applicant's guilt in Ford was overwhelming and the South Carolina Supreme Court held that the Applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation.

Even assuming *arguendo* Counsel performed deficiently, Applicant can prove no resulting prejudice. In considering the totality of the record if there were any errors the record reflects overwhelming evidence of guilt of the Applicant. There were three credible eyewitnesses to the crime including the Victim who identified the Defendant, the camouflage face mask the Defendant was wearing, and the gun the Defendant used. The police also found the mask, gun, and bullets on the Defendant's person. Based on the entirety of the trial transcript, there is overwhelming evidence of Applicant's guilt in this case. Thus, this allegation is denied.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. See Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 749, 103 S. Ct. 3308, 3311 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

This Court finds Appellate Counsel's representation of Applicant in this case well above the professional norms. Counsel fully investigated potential preserved issues on appeal and assisted Applicant in his defense. Counsel testified she reviewed the entire record and briefed the most meritorious issue, giving her client the best chance of prevailing. Further, Counsel testified that if she thought the illegal arrest issue was viable, then she would have raised it. This Court finds Appellate Counsel's testimony persuasive and very credible. Therefore, this Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

CONCLUSION

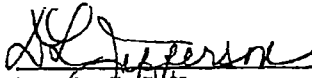
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) 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, 454, 409 S.E.2d 395, 396 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

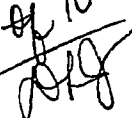
IT IS THEREFORE ORDERED:

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!


Deandra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

May 5, 2016
Charleston, South Carolina

10-11-10


FWR20080100037

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2007054678.

ARREST WARRANT NUMBER

DIRIND0419

DATE OF ARREST

November 13, 2008

ACTION OF GRAND JURY

TRUE BILL

[Signature]

For person of Grand Jury
Date: DEC 09 2008

VERDICT

For person of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1009736

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

December Term 2008

THE STATE

vs.

VASHAUN J RAVENEL
DOB: B/M

Indictment for

Pointing and Presenting a Firearm

FILED
2008 DEC 12 PM 3: 25
BY JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on December 8, 2008 the Grand Jurors of Charleston County present upon their oath:

Pointing and Presenting a Firearm

That in Charleston County, South Carolina, on or about December 29, 2007, the Defendant, VASHAUN J RAVENEL, did point or present a firearm at Michael Simmons; in violation of Section 16-23-410 of the 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.



TRIP RIESEN
ASSISTANT SOLICITOR

FWR20080100037

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2007054678

ARREST WARRANT NUMBER

DIRIND0418

DATE OF ARREST

November 13, 2008

ACTION OF GRAND JURY

TRIP: 211

Foreperson of Grand Jury
Date: DEC 09 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1009734

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

December Term 2008

THE STATE

vs.

VASHAUN J RAVENEL
DOB: B/M

Indictment for
Attempted Armed Robbery

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2008 DEC 12 PM 3:25

FILED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on December 8, 2008 the Grand Jurors of Charleston County present upon their oath:

Attempted Armed Robbery

That on or about December 29, 2007, in Charleston County, South Carolina, while at 7321 Rivers Avenue, North Charleston, South Carolina, the Defendant, VASHAUN J RAVENEL, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods or monies from the person or immediate presence of Michael Simmons with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



 TRIP RIESEN
 ASSISTANT SOLICITOR