

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2016-001132
Lower Court Case No. 2015-CP-43-2810

RECEIVED

OCT 18 2016

S.C. SUPREME COURT

DEVAN DWYER, #302693

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) 2006-GS-43-553

State of SC,)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD)
)
Devan Dwyer,)
) DEFENDANT)

April 13-14, 2009
Sumter, South Carolina

B E F O R E :

THE HONORABLE R FERRELL COTHRAN, JR., JUDGE; and
a jury.

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

CATHERINE FANT, ASSISTANT SOLICITOR
Attorney for the Plaintiff

LAUREN STEVENS, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

Kathleen Richardson, RPR, CRR
Official Court Reporter

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1 MS. FANT: May it please the Court. Your Honor,
2 at this time the State would call the State of South
3 Carolina versus Devan Javon Dwyer, indictment number
4 2006-553.

5 Mr. Dwyer has been indicted by the Grand Jury of
6 Sumter County for burglary in the first degree, armed
7 robbery, assault and battery with intent to kill two
8 counts, and possession of a firearm during the
9 commission of a violent crime.

10 THE COURT: All right. Ladies and gentlemen, if
11 you would give me your attention. We are about to
12 begin the case of the State versus Devan Dwyer or
13 Dryer. Dryer? Dwyer?

14 Is anyone connected by blood or marriage or
15 close personal friends or social relations with
16 Mr. Dwyer; if so, please stand. Excuse me. Okay.

17 I'm going to read you a list of potential
18 witnesses, and I will -- I need to know if you are
19 connected by blood or marriage, close personal
20 friends or social relations with any of the potential
21 witnesses in this case.

22 William Lyons, Angie Rabon, Irene Culick, Ken
23 Nesbitt, Robbie Richburg, Jim Alsbrooks, Ryan Ross,
24 John Stanford -- Jon Stanford, I guess, Tracy
25 Thrower, Tuomey Hospital records custodian, Sarah

1 McKenzie Williams, Rick Vanburen, and Cassandra
2 McCray. Anybody -- yes, sir.

3 JUROR: I attend church with Jim Alsbrook.

4 THE COURT: And what's your name and number?

5 JUROR: My name is Linda Ridgeway. I did not
6 connect my number...

7 THE COURT: Okay. Mrs. Ridgeway, the fact that
8 you attend church with Mr. Alsbrook and he may be a
9 potential witness in this case, would that affect
10 your ability to give both the State and this
11 defendant a fair and impartial trial?

12 JUROR: No, sir.

13 THE COURT: All right. Thank you, ma'am. Yes,
14 sir.

15 JUROR: Personal friends with Mr. Lyons.

16 THE COURT: Excuse me. And the fact that you're
17 personal friends with Mr. Lyons, who may testify in
18 this case, will that affect your ability to give both
19 the State and this defendant a fair and impartial
20 trial?

21 JUROR: No, sir.

22 THE COURT: What is your name and number?

23 JUROR: James Bateman, number seven.

24 THE COURT: All right, sir. Thank you. All
25 right. The attorneys in this case, the State is

1 being represented by Catherine Fant. The defense by
2 Lauren Stevens -- Stevens.

3 Is any member of the jury panel connected by
4 blood or marriage, close personal friends, social
5 relations or represented by either one of these two
6 attorneys; if so, please stand.

7 Is there any member of the jury panel formed or
8 expressed an opinion about any of the matters or
9 issues involved in this case; if so, please stand.
10 This case allegedly occurred August the third of
11 2005.

12 Any member of the jury panel aware of any bias
13 or prejudice either toward the State of South
14 Carolina or this defendant; if so, please stand.

15 Any member of the jury panel served on the Grand
16 Jury here in Sumter County that heard this case; if
17 so, please stand.

18 Any member of the jury panel due to religious or
19 moral reasons unable to judge your fellow man; if so,
20 please stand.

21 Any member of the jury panel know any reason
22 whatsoever they can't give both the State of South
23 Carolina and this defendant a fair and impartial
24 trial; if so, please stand. Any further questions
25 from the State?

1 MS. FANT: Nothing from the State, Your Honor.

2 THE COURT: The defense?

3 MRS. STEVENS: No, sir, Your Honor.

4 THE COURT: All right. Mr. Clerk, if you will
5 give us a jury.

6 THE CLERK: Yes, sir.

7 THE COURT: Five and 10.

8 BAILIFF: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 BAILIFF: Ladies and gentlemen, when your name
11 is called, please come forward, stand here in front
12 of the rail, face the back of the courtroom and bring
13 with you any personal belongings you may have.

14 Juror number 24, Linda Conklin (white female).
15 What says the State?

16 MS. FANT: Please present the juror.

17 BAILIFF: What says the defendant?

18 MRS. STEVENS: Please seat Mrs. Conklin.

19 BAILIFF: Have a seat in the jury box, please
20 ma'am. Juror number 112, Kimberly Scott (white
21 female). What says the State?

22 MS. FANT: Please present the juror.

23 BAILIFF: What says the defendant?

24 MRS. STEVENS: Please excuse Mrs. Scott from
25 this trial.

1 BAILIFF: Have a seat back with the panel. You
2 have been excused from this trial, please ma'am.
3 Juror number 47, Nora Gaymon (white female). What
4 says the State?

5 MS. FANT: Please present the juror.

6 BAILIFF: What says the defendant?

7 MRS. STEVENS: Please excuse Mrs. Gaymon from
8 the trial of this case.

9 BAILIFF: Have a seat back with the panel. You
10 have been excused from this trial, please ma'am.
11 Juror number 39, Brenda Ditty (white female). What
12 says the State?

13 MS. FANT: Please present the juror.

14 BAILIFF: What says the defendant?

15 MRS. STEVENS: Please excuse the juror.

16 BAILIFF: Have a seat back with the panel. You
17 have been excused from the trial, please ma'am.
18 Juror number 133, Earthlyn Taylor (black female).
19 What says the State?

20 MRS. STEVENS: Could you repeat that number,
21 please?

22 BAILIFF: 133.

23 MS. FANT: Please present the juror.

24 BAILIFF: What says the defendant?

25 MRS. STEVENS: Please excuse Mrs. Taylor.

1 *BAILIFF:* Have a seat back with the panel. You
2 have been excused from this trial, please ma'am.
3 Juror number 53, Tiffany Gregg (black female). What
4 says the State?

5 *MS. FANT:* Please excuse the juror.

6 *BAILIFF:* Have a seat back with the panel. You
7 have been excused from the trial, please ma'am.
8 Juror number 28, Wavelyn Cotten McLean (black
9 female). What says the State?

10 *MS. FANT:* Please present the juror.

11 *BAILIFF:* What says the defendant?

12 *MRS. STEVENS:* Please excuse her.

13 *BAILIFF:* Have a seat back with the panel. You
14 have been excused from this trial, please ma'am.
15 Juror number 144, Sharon Williams (black female).
16 What says the State?

17 *MS. FANT:* Please present the juror.

18 *BAILIFF:* What says the defendant?

19 *MRS. STEVENS:* Please seat Mrs. Williams.

20 *BAILIFF:* Have a seat in the jury box, please
21 ma'am. Juror number 82, Casey McCoy (white female).
22 What says the State?

23 *MS. FANT:* Please present the juror.

24 *BAILIFF:* What says the defendant?

25 *MRS. STEVENS:* Beg the Court's indulgence.

1 Please seat Mrs. McCoy.

2 BAILIFF: Have a seat in the jury box, please
3 ma'am. Juror number 30, Edith Davis (black female.)
4 (Juror McCoy speaking to Judge at bench.)

5 BAILIFF: What says the State?

6 MS. FANT: Please present the juror.

7 BAILIFF: What says the defendant?

8 MRS. STEVENS: Please excuse Mrs. Davis.

9 BAILIFF: Have a seat back with the panel. You
10 have been excused from this trial, please ma'am.

11 THE COURT: Can counsel approach?

12 (Whereupon a bench conference was held.)

13 THE COURT: Mrs. McCoy, I'm going to stand you
14 aside for the trial of this case.

15 BAILIFF: Juror number 25, Joanne Conyers (black
16 female). What says the State?

17 MS. FANT: Please present the juror.

18 BAILIFF: What says the defendant?

19 MRS. STEVENS: Please excuse Mrs. Conyers.

20 BAILIFF: Have a seat back with the panel. You
21 have been excused for this trial, please ma'am.

22 Juror number 68, Herbert Lee Johnson (black male).
23 What says the State?

24 MS. FANT: Please excuse the juror.

25 BAILIFF: Have a seat back with the jury panel.

1 You have been excused from this trial, please sir.
2 Juror number 111, Julius Scott (white male). What
3 says the State?

4 *MS. FANT:* Please present the juror.

5 *BAILIFF:* What says the defendant?

6 *MRS. STEVENS:* Beg the Court's indulgence.
7 Please seat Mr. Scott.

8 *BAILIFF:* Have a seat in the jury box, please
9 sir. Juror number 120, Keyon Simon (black male).
10 What says the State?

11 *MS. FANT:* Please excuse the juror.

12 *BAILIFF:* Have a seat back with the jury panel.
13 You have been excused from this trial, please sir.
14 Juror number 65, Charles Jackson (white male). What
15 says the State?

16 *MS. FANT:* Please present the juror.

17 *BAILIFF:* What says the defendant?

18 *MRS. STEVENS:* Beg the Court's indulgence.
19 Please seat Mr. Jackson.

20 *BAILIFF:* Have a seat in the jury box, please
21 sir. Juror number 88, Alan Mitchell (black male).
22 What says the State?

23 *MS. FANT:* Please present the juror.

24 *BAILIFF:* What says the defendant?

25 *MRS. STEVENS:* Beg the Court's indulgence.

1 Please seat Mr. Mitchell.

2 BAILIFF: Have a seat in the jury box, please
3 sir. Juror number 96, Jeanne Orvin (white female).
4 What says the State?

5 MS. FANT: Please present the juror.

6 BAILIFF: What says the defendant?

7 MRS. STEVENS: Please seat Mrs. Orvin.

8 BAILIFF: Have a seat in the jury box, please
9 ma'am. Juror number 13, Georganna Boulware (black
10 female). What says the State?

11 MS. FANT: Please present the juror.

12 BAILIFF: What says the defendant?

13 MRS. STEVENS: Please seat Mrs. Boulware.

14 BAILIFF: Have a seat in the jury box, please
15 ma'am. Juror number 129, Gary Steven (white male).
16 What says the State?

17 MS. FANT: Please present the juror.

18 BAILIFF: What says the defendant?

19 MRS. STEVENS: Please seat Mr. Steven.

20 BAILIFF: Have a seat in the jury box, please
21 sir. Juror number 17, Michael Brown (white male).
22 What says the State?

23 MS. FANT: Please present the juror.

24 BAILIFF: What says the defendant?

25 MRS. STEVENS: Please excuse Mr. Brown.

1 *BAILIFF:* Have a seat back with the jury panel.
2 You have been excused from this trial, please sir.
3 Juror number 41, John Dubose (white male). What says
4 the State?

5 *MS. FANT:* Please present the juror.

6 *BAILIFF:* What says the defendant?

7 *MRS. STEVENS:* Please excuse Mr. Dubose.

8 *BAILIFF:* Have a seat back in the jury panel.
9 You have been excused from this trial, please sir.
10 Juror number 124, Carla Smith (white female). What
11 says the State?

12 *MS. FANT:* Please present the juror.

13 *BAILIFF:* What says the defendant?

14 *MRS. STEVENS:* Please excuse the juror.

15 *BAILIFF:* Have a seat back with the panel. You
16 have been excused from the trial, please ma'am.
17 Juror number seven, James Bateman (white male). What
18 says the State?

19 *MS. FANT:* Please present the juror.

20 *BAILIFF:* What says the defendant?

21 *MRS. STEVENS:* Please seat the juror.

22 *BAILIFF:* Have a seat in the jury box, please
23 sir. Juror number 20, Johnny Burgess (black male).
24 What says the State?

25 *MS. FANT:* Please present the juror.

1 BAILIFF: What says the defendant?

2 MRS. STEVENS: Please seat Mr. Burgess.

3 BAILIFF: Have a seat in the jury box, please

4 sir. Juror number 40, Robin Downs (black female).

5 What says the State?

6 MS. FANT: Please present the juror.

7 BAILIFF: What says the defendant?

8 MRS. STEVENS: Please seat Mrs. Downs.

9 BAILIFF: Have a seat in the jury box, please

10 ma'am. Juror number 93, Shirley Nero (black female).

11 What says the State?

12 MS. FANT: Please excuse the juror.

13 BAILIFF: Have a seat back in the jury panel.

14 You have been excused from this trial, please ma'am.

15 Juror number 84, Johnnie McDuffie (black female).

16 What says the State?

17 MS. FANT: Please present the juror.

18 BAILIFF: What says the defendant?

19 MRS. STEVENS: Please seat Mrs. McDuffie.

20 BAILIFF: Have a seat in the jury box, please

21 ma'am. Alternate juror, number 135, Angela Trimnal

22 (white female). What says the State?

23 MS. FANT: Please present the juror.

24 BAILIFF: What says the defendant?

25 MRS. STEVENS: Please seat Mrs. Trimnal.

1 *BAILIFF:* Have a seat in the jury box, please
2 ma'am.

3 *THE COURT:* Are there any matters of law
4 pertaining to the selection of the jury on behalf of
5 the State?

6 *MS. FANT:* No, Your Honor.

7 *THE COURT:* Defense?

8 *MRS. STEVENS:* No, sir, Your Honor.

9 *THE COURT:* Okay. Mr. Solicitor, what you want
10 me to do with the panel?

11 *MR. JACKSON:* Your Honor, probably be
12 appropriate to excuse them and let them call back
13 after six.

14 *THE COURT:* Okay.

15 (Remaining panel excused to call back after 6
16 pm.)

17 *THE COURT:* Anything before we swear the jury?

18 *MS. FANT:* Nothing from the State, Your Honor.

19 *THE COURT:* Defense?

20 *MRS. STEVENS:* Nothing from the defense, Your
21 Honor.

22 *THE COURT:* Okay. You may swear the jury.

23 (Whereupon the jury was sworn.)

24 *THE COURT:* Ladies and gentlemen of the jury, we
25 are about to begin the trial of the State versus

1 Devan Dwyer. And what I'm going to tell you is just
2 some preliminary remarks to kind of give you an idea
3 of what to expect in this case.

4 Now, this indictment has been brought by the
5 State of South Carolina. And to this indictment
6 Mr. Dwyer has entered a plea of not guilty.
7 Therefore it becomes the burden of the State to prove
8 them on each and every element beyond a reasonable
9 doubt -- to prove his guilt.

10 Your job is simply to listen to the facts in
11 this case and determine what the true facts are.
12 This indictment is not evidence in this case. It's
13 simply a formal charge that gets this case into
14 court.

15 You will -- the evidence that will come to you
16 in this case will basically be in three forms. First
17 of all, through the sworn testimony from this witness
18 stand. Witnesses will get up under oath and give you
19 their testimony.

20 The other form of evidence you may receive is
21 exhibits that are introduced into evidence by either
22 party or stipulations made by the attorneys.

23 Those -- that's the evidence that you will hear.
24 The indictment is not evidence. The questions that
25 the lawyers ask are not evidence. Their opening

1 statements and their closing statements aren't
2 evidence. But the evidence will come to you through
3 sworn testimony.

4 Your job is to pay close attention to the
5 evidence in this case and determine what the true
6 facts are.

7 My job is to rule upon the admissibility of
8 evidence throughout this trial which means -- simply
9 means under our rule of law, what evidence you should
10 and should not hear. And I will also at the end of
11 the trial charge you on the law.

12 Your job is to determine what the true facts
13 are. And you're to use your common sense and your
14 every day experience to reach that. And that's why
15 we have twelve of you, because no one of us is as
16 smart as all of us.

17 And it's an -- important. So I need you to pay
18 close attention throughout this trial. If at any
19 time during the trial you need a break, simply raise
20 your hand and we'll take that break because I need
21 you to be paying attention. If you're uncomfortable,
22 you can't pay attention.

23 Now, in just a few minutes the attorneys are
24 going to get up and give you an opening statement,
25 and that's simply a roadmap as to where they think

1 the evidence is going to take you in this case.

2 After each side gives you an opening statement,
3 the State goes first because they have the burden of
4 proof. Then the defense has the right to give you an
5 opening statement.

6 They don't have to because they don't have to
7 prove anything. But most of the times defense
8 attorneys do make an opening statement to a jury.
9 After the opening statement, we will proceed with the
10 evidence from this witness stand.

11 After you have heard all of the evidence in this
12 case, I will charge -- that you will have the closing
13 arguments of the attorneys which they will argue to
14 you what they think the evidence shows you, and then
15 I will charge you on the law and give you this case
16 to decide.

17 The reason it's important for you to pay close
18 attention is because if you make a mistake, it's very
19 hard to correct that mistake. If I make a mistake on
20 the law, then at some other time and some other place
21 it will be reviewed and corrected if necessary.

22 That's why it's important for you to pay
23 attention throughout this trial and to reach a
24 verdict that is -- that is based on the truth of the
25 evidence in this case.

1 Now, we are going to take a lunch break probably
2 as close to one as we can get you out of here. And
3 I'm going to -- and throughout this trial we're going
4 to take a break, but I -- I will tell you when you go
5 to the jury room, don't discuss this case yet.

6 And you're going to say, well, we heard from
7 this witness, why can't we go back there and talk
8 about what this witness said?

9 And the reason you can't do that is because some
10 of you voice an opinion as to what you think that
11 witness said or what that witness -- to, and then
12 later at the end of the trial you're going to want to
13 defend that opinion you had early on in the trial,
14 and that wouldn't be proper.

15 I don't want you to start forming opinions till
16 you have heard all of the case, till you have heard
17 all of the evidence that will come into this record
18 as well as the law, and then and only then will it be
19 proper for you to start forming your opinion.

20 That's why I'm going to tell you you can't talk
21 about the case. You can't talk about the case till
22 the very end of the case because it's not right for
23 you to start forming opinions till you have heard it
24 all.

25 If you will pay close attention to the

1 attorneys, they will give you their opening
2 statements. And then if you will give her a drink of
3 water.

4 MR. JACKSON: Judge, may I approach while she's
5 getting that water?

6 THE COURT: Yes.

7 (Whereupon a bench conference was held with
8 Solicitor Jackson.)

9 THE COURT: Okay. All right. Counsel, y'all
10 approach?

11 (Whereupon a bench conference was held.)

12 THE COURT: Ladies and gentlemen, I have just
13 been informed by the attorneys there's certain
14 matters of law that I need to deal with in this case
15 before we start hearing the evidence.

16 So instead of having you sit back in the jury
17 room, I'm going to send you -- I don't have any idea
18 how long this is going to take. But I'm erring on
19 the side of being at least inconvenient to you as
20 possible.

21 So I'm going to send you to lunch now and ask
22 you to be back in the jury room at 3:00 this
23 afternoon. Hopefully by then I will have dealt with
24 all the matters that I need to deal with.

25 I remind you, you don't know anything about this

1 case yet. Don't discuss it and don't allow anybody
2 to discuss it with you. Have a nice lunch. And if
3 you will come straight to the jury room at 3:00, I'll
4 get you back out just as quick as I can.

5 *BAILIFF:* Ladies and gentlemen, go with
6 Mrs. Bagwell. She will show you where the jury room
7 is so you know where to come back.

8 (Jury left the courtroom at 12:20 pm.)

9 *THE COURT:* Yes, ma'am.

10 *MS. FANT:* Your Honor, the State has several
11 pretrial motions. In addition, I believe there may
12 be a couple of hearings that we will need to do
13 pretrial. The State's first motion is a motion in
14 limine concerning third party guilt.

15 The defendant gave a statement to law
16 enforcement -- excuse me -- after he had been
17 Mirandised. And at the bottom of that statement he
18 indicated that he -- the word on the street or he had
19 heard that someone named little John or Little D
20 had -- had committed this crime against the victim.
21 Excuse me.

22 We would move to exclude any mention of other
23 persons involved in this crime other than the
24 co-defendant, Rick Vanburen who has pled guilty,
25 because there is absolutely no evidence that anyone

1 other than these two people committed the crime.

2 Any mention of Little John, that he did the
3 shooting or Little D would not comply with the rule
4 in Gregory, and that is that any evidence offered by
5 the accused as to the commission of a crime by
6 another must be limited to such facts which base a
7 reasonable inference or presumption to -- innocence,
8 evidence which may have no effect than to cast the
9 mere suspicion on another or to raise a conjectural
10 inference is not admissible, and before such
11 testimony could be received, there must be proof of a
12 connection with the crime in a train of factual
13 circumstances that tend to clearly point out that
14 third party as the person.

15 We would submit that his mentioning someone
16 named Little D -- he goes by D, Your Honor, and he
17 does say that in his statement, that he goes by D for
18 Devan, but he says he's not Little D, and that Little
19 John also committed this crime should be excluded
20 based upon the case law on third party guilt.

21 THE COURT: Okay. What says the defense?

22 MRS. STEVENS: One of the witnesses that Ms.
23 Fant plans on calling is Cassandra McCray, also
24 mentions in her statement that the word on the street
25 is that Jonathan Williams committed this, so it's not

1 just my client bringing it up out of the middle of
2 nowhere, Your Honor.

3 If you are going to prevent my bringing Jonathan
4 Williams up, then we need to talk about some of the
5 things that her victim, her witness cannot say
6 concerning Jonathan Williams as well.

7 THE COURT: All right. Well, she didn't say
8 anything to me about Jonathan Williams. Who is :
9 Jonathan Williams? She is talking about somebody
10 named Little D. Is that the same person?

11 MRS. STEVENS: No, she's talking about Little
12 John.

13 MS. FANT: He mentions, Your Honor, both a
14 Little D and a Little John. Little John would be, as
15 far as we know, Jonathan Williams.

16 THE COURT: So what...

17 MS. FANT: Your Honor, my witness -- I certainly
18 believe that it would be excluded as to her testimony
19 as well. Basically she just repeated the same thing,
20 yeah, this is what we heard, and she is the
21 girlfriend of Devan Dwyer.

22 Obviously she had a motive to help him out by
23 saying that. But there's no evidence whatsoever
24 other than word on the street that anybody named
25 Little D or Little John was -- committed -- part of

1 the crime, so I would move to exclude any reference
2 to it on either side.

3 THE COURT: Okay. And what's your position on
4 that?

5 MRS. STEVENS: I have no objection, Your Honor.

6 THE COURT: All right. Then it's excluded
7 without objection.

8 MS. FANT: Your Honor, the State's second motion
9 is a motion in limine to exclude photographs that
10 were taken at the scene. Not all photographs. There
11 were just three or four that were extremely
12 prejudicial and we think not relevant to this
13 offense.

14 And that was when law enforcement arrived at the
15 scene of the crime and attended to Ms. Williams, the
16 victim, and another victim Rohan Anderson. There was
17 a picture taken of what they believed to be marijuana
18 and believed to be a rock of cocaine base.

19 Those were collected as evidence -- or excuse
20 me -- were collected. They were not put in evidence.
21 They were not tested and they were just simply listed
22 as found property.

23 So we would move to exclude any mention of those
24 items being found at the crime scene and also the
25 pictures that we depicted in such items.

1 MRS. STEVENS: Your Honor, I'm almost positive
2 that Ms. McKenzie pled guilty to the drugs that were
3 in the house because she does have a drug conviction
4 that is dated the same day as this incident.

5 MS. FANT: No. No, Your Honor, she did not.
6 And in fact, those drugs were never analyzed. She
7 couldn't have pled guilty to that. But that would go
8 into my next motion regarding her -- her conviction.

9 MRS. STEVENS: Your Honor, her -- her contention
10 is that my client and Rick Vanburen came in and asked
11 for drugs and money. The fact that she had drugs
12 there is important to our defense because she did
13 have drugs there. It could have been anybody who
14 wanted those drugs.

15 So to say that it's prejudicial to her, well I'm
16 sorry, she did have drugs in her house. It is
17 marijuana and it is crack.

18 MS. FANT: Your Honor, it has not been tested.
19 There is no evidence whatsoever that it is marijuana
20 or it is cocaine base.

21 And our contention is not that she had drugs in
22 the house. We have never said that. That might be
23 her contention as to why her client went in, but we
24 certainly don't intend to produce evidence that --
25 that says that.

1 Because these items were listed as found
2 property, never tested, and in fact never connected
3 to the victim, they -- there were two victims here.
4 They could well belong to Mr. Anderson. We would
5 move that they be excluded as irrelevant and
6 prejudicial.

7 MRS. STEVENS: Your Honor, in Ms. McKenzie's
8 statement, she said that whoever came into her house
9 said, give me the dope. There was dope in the house.
10 If someone came in and said, give me the dope, don't
11 you think they would have taken it with them?

12 That is crucial to our defense is that my client
13 did not do this because the story doesn't connect.

14 MS. FANT: Your Honor--

15 MRS. STEVENS: Can I finish please? If someone
16 came in and said, where's the dope and where's the
17 money, as she contends, there was alleged crack on
18 the bed right next to her. Why is it still there
19 when this person leaves?

20 Why is this marijuana that's sitting on the
21 dresser still there when this person who came to get
22 the dope according to her own victim leave the dope
23 there.

24 It's crucial to my defense that we be allowed to
25 say that there were drugs or even if she wants to

1 call them alleged drugs, that there were alleged
2 drugs left in plain sight when this person who came
3 in to rob her of drugs and money just left them
4 there.

5 THE COURT: Okay.

6 MS. FANT: Your Honor, first of all, they
7 weren't in plain sight. If she actually read the
8 discovery, she would know that the reported rock of
9 cocaine base was found under the bed when they were
10 searching for the bullet and the bullet casing, the
11 shell casings.

12 And what was reported to be marijuana is, you
13 know, a green leafy thing that could be tea. They
14 were never tested. My -- I would like to hand up a
15 copy of my victim's statement. Nowhere in it does it
16 mention drugs whatsoever.

17 She says that they came in and demanded money
18 and they took her money and her cellphone. At no
19 point does she mention that whatsoever.

20 MRS. STEVENS: Well, then Mr. Rohan said or
21 Mr. Anderson said they said -- the guy stated to
22 Sarah, and I quote, give me the money, give me all
23 you got, where the dope at.

24 Now, this is the eye witness, the other victim,
25 was right there.

1 MS. FANT: Your Honor, Mr. Anderson is not being
2 called as a witness. In fact, we cannot locate him.
3 So absolutely nothing that he says will be admitted
4 into evidence.

5 MRS. STEVENS: Then I have a motion based on
6 that, Your Honor.

7 THE COURT: Okay.

8 MRS. STEVENS: One of the charges is assault and
9 battery with intent to kill of a Rohan Anderson. My
10 client has a right to confront his accuser.
11 Mr. Anderson, as she just said, isn't going to
12 testify.

13 MS. FANT: Your Honor, there is a flaw in this.
14 We can present evidence of Mr. Rohan shooting by the
15 defendant through our victim -- excuse me -- and
16 through statements that he made immediately at the
17 scene and also the medical records of Mr. Anderson.

18 There's absolutely no right to confront
19 someone -- excuse me -- unless their statement is
20 coming in. We don't anticipate anything other than
21 the initial excited utterance that he got shot along
22 with his medical records proving that he got shot
23 along with Ms. Williams' testimony that he got shot.

24 I could not find the case. Mr. Miller, he was
25 our intern, was supposed be looking for that for me.

1 I know there is a case in which the charge was
2 against two people that were injured and only one of
3 them testified and the Court upheld it, so that is
4 not an issue because we can prove -- the State is
5 allowed to prove its case through any method. It
6 doesn't have to call the victim.

7 And in this case we will present testimony that
8 we tried very hard to locate Mr. Anderson and could
9 not do so.

10 THE COURT: Okay. Yes, ma'am.

11 MRS. STEVENS: Your Honor, the statements
12 between Ms. McKenzie and Mr. Anderson are very
13 different, and that was part of the -- what we were
14 going to base our defense on.

15 The fact that he's not here and they are not
16 going to use the statement prejudices my client a
17 great deal.

18 I mean, their statements are very different
19 about what was said, what was worn, what happened,
20 who did what, where they came in. And if we're not
21 going to be able to try to get the inconsistent
22 statement in, it prejudices us as far as the -- I
23 mean, I can't ask her what this man said.

24 I can't ask her, did he say that the guy was
25 wearing a black shirt instead of a white shirt.

1 That's a big difference. That the gun was gray or
2 the gun was black. That's a big difference.

3 So we were basing our defense partly on the idea
4 that we would be able to cross-examine Mr. Rohan
5 Anderson and then we would be able to cause
6 reasonable doubt in the discrepancies between the
7 two -- the two ways the event was portrayed.

8 THE COURT: I understand. But she's telling me
9 now they can't find him, they are not planning on
10 calling him to trial. And under rule 804, unless you
11 can fit it into one of these hearsay exceptions, how
12 are you going to get it in?

13 MRS. STEVENS: Well Your Honor, I'm a little
14 confused why she can't find it considering she has
15 been giving me a trial list since August 30th of 2007
16 telling me that she's ready to go.

17 THE COURT: Well--

18 MRS. STEVENS: Your Honor, last term I was ready
19 to go.

20 THE COURT: I understand. I -- if you -- did
21 you subpoena him?

22 MS. FANT: Your Honor, we have never been able
23 to find him and I never told her that we had him.
24 Every time I said we were ready to go, we were ready
25 to go then with the same case that we're ready to go

1 with now.

2 MRS. STEVENS: Your Honor, she just admitted
3 he's not under subpoena, so there's nothing to make
4 him come here.

5 THE COURT: Did you subpoena him?

6 MS. FANT: Your Honor, we did not find him to
7 subpoena him. Detective Rabon will be testifying
8 during the trial about the extreme efforts we went to
9 to try to locate Mr. Anderson.

10 THE COURT: Okay. Then the only motion before
11 me right now is whether these pictures come in. And
12 who has the pictures? Any -- your -- you want them
13 excluded because they are not relevant.

14 MS. FANT: Well, because they are not relevant
15 and because it was never proven to be drugs. They
16 were never tested. It was--

17 THE COURT: Well, I understand that --

18 MRS. STEVENS: They could have tested them, Your
19 Honor.

20 THE COURT: -- but the fact they never were
21 tested doesn't necessarily make the pictures
22 inadmissible.

23 MS. FANT: Well, except that obviously she's
24 going to argue that they are what they -- what she
25 thinks is in the -- which is marijuana and cocaine

1 base, but we can't refute that because they weren't
2 tested.

3 Also the fact that Mr. Rohan Anderson was there
4 in the bed with Ms. Williams at the time, there
5 can't -- no indication whatsoever as to whose drugs
6 that they were, which is why no one was ever charged.

7 MRS. STEVENS: Your Honor, I don't have any
8 problem if she suggests they were Mr. Anderson's
9 drugs, but there were drugs in the house. It's not
10 my fault or Mr. Dwyer's fault that they didn't take
11 the time to analyze the -- don't know why they
12 didn't.

13 They love drug cases around here in Sumter, so I
14 have no idea why they did not have the drugs
15 analyzed. She wants to pretend that they weren't
16 marijuana and they weren't crack because they weren't
17 tested.

18 Your Honor, they were marijuana, they were
19 crack.

20 MS. FANT: So -- will testify--

21 MRS. STEVENS: The State allegedly -- she can.
22 But I don't think we should be denied the ability
23 to -- and so I'm guessing if I want those pictures in
24 now, I'm going to have to put them in.

25 THE COURT: Well, that's--

1 *MRS. STEVENS:* And that's not -- that makes me
2 have to put up a defense.

3 *THE COURT:* I understand that, but that's the
4 way in every case. She can pick and choose what
5 pictures she wants to put in.

6 In any case if there's pictures the State has
7 that's potentially exculpatory to your client, you
8 still have to put those pictures in, don't you? I
9 mean, I can't make her put in something that she
10 doesn't want to put in.

11 *MS. FANT:* Your Honor, I guess I would ask
12 Mrs. Stevens to place on the record what relevancy
13 these pictures have other than to try to impugn the
14 victims in this case with some alleged drug activity.

15 They are totally irrelevant other than that.
16 And I believe for that reason they should be
17 excluded.

18 *MRS. STEVENS:* Your Honor, this would not be the
19 first time that someone has threatened Ms. McKenzie,
20 and it is allegedly because there is drug activity
21 going on in this house.

22 *MS. FANT:* None of which will come into
23 evidence, Your Honor.

24 *MRS. STEVENS:* I have a right to cross-examine
25 anybody I want to.

1 MS. FANT: And if you open the door, things will
2 be coming in. Your Honor, if these photos come in,
3 it will be our contention that Ms. McKenzie also be
4 allowed to testify that Devan Dwyer, the defendant,
5 was a drug dealer and that was the beef that they had
6 between each other.

7 I think what's good for the goose is what's good
8 for the gander. If the drugs come in, it should cut
9 both ways.

10 MRS. STEVENS: Your Honor, my client is not on
11 trial for being a drug dealer. He's on trial for
12 allegedly shooting Ms. McKenzie.

13 MS. FANT: And my victim is not on trial at all.

14 MRS. STEVENS: But the drugs were in the house.
15 The bottom line is they were in the house and they
16 could have been tested and they chose not to. So I
17 should be able to bring them up.

18 She can try to wiggle her way out of why they
19 never tested them. But it's not my job to make her
20 test them. It's their job to test them.

21 MS. FANT: But that's actually the lesser
22 reason. My major reason is that they're not relevant
23 other than to try to cast a negative light on the
24 victims in this case. They have absolutely nothing
25 else to do with anything. And I don't see how--

1 MRS. STEVENS: But Your Honor, if they are
2 contesting that someone came in to rob them of money
3 and drugs, we--

4 MS. FANT: Your Honor, that is not what we're
5 saying. You saw her statement, that they came in to
6 rob her of money, and that they did.

7 THE COURT: Does the other victim,
8 Mr. Anderson's statement say that they came to rob
9 him of drugs and money?

10 MRS. STEVENS: Yes, sir.

11 MS. FANT: He says that they say, where's the
12 dope.

13 THE COURT: Okay.

14 MS. FANT: But Your Honor, there are things in
15 his statement that obviously are extremely helpful to
16 us. And we would argue that if that's coming in, he
17 says that Sarah clearly knew the defendant and they
18 knew that she knew who they were. I mean--

19 MRS. STEVENS: He says it appeared that he knew
20 who the person was, but he doesn't mention the name.

21 MS. FANT: No, there were other statements made
22 to Detective Ross--

23 THE COURT: One at a time.

24 MRS. STEVENS: That I don't have notice of.

25 MS. FANT: You don't have to. He's a witness,

1 not a criminal defendant.

2 MRS. STEVENS: But you can't get in his
3 statement, even excited utterance if he's not here.

4 MS. FANT: Right -- yes, you can. You can get
5 in excited utterance.

6 MRS. STEVENS: You have to prove it's an excited
7 utterance.

8 MS. FANT: And I think getting shot and then
9 saying that, that it is right at the time that he was
10 shot. My point is, his statement to law enforcement
11 about the drugs, where the dope at, is clearly
12 hearsay because that was a statement taken at the law
13 enforcement center after he had been released from
14 the hospital.

15 MRS. STEVENS: So he says, where's the dope,
16 because he heard it and it's hearsay?

17 MS. FANT: How is it not hearsay?

18 MRS. STEVENS: Because he was there and he heard
19 it. It's not -- he's not saying somebody--

20 THE COURT: He's got to testify.

21 MS. FANT: Exactly.

22 THE COURT: Well, it's hard -- I mean, it's kind
23 of hard for me to rule right now whether these
24 pictures are relevant. If -- they may not be
25 relevant at all. It depends on what comes in to, you

1 know, the trial in this case.

2 MS. FANT: Well, I guess I would ask that there
3 just be no reference to them in the opening
4 statement.

5 MRS. STEVENS: I don't discuss facts in my
6 opening statements, Your Honor.

7 THE COURT: Okay. Well then, I certainly --
8 y'all cannot mention those. And then in -- they
9 don't appear to be relevant unless something happens
10 in this trial that makes them relevant. And if
11 something happens in this trial that makes them
12 relevant, they may come in.

13 Motion in limine doesn't go throughout the trial
14 any way. If -- if, you know, your client takes the
15 stand or you offer witnesses that have something to
16 do which makes it relevant, then they certainly would
17 come in.

18 Or maybe, you know, if it's something they
19 can -- but I don't know right now without hearing
20 some of the facts whether they are going to be
21 relevant or not. Okay.

22 MS. FANT: Your Honor, the State's next motion
23 is -- goes hand in hand with I guess their apparent
24 fear, and that is Ms. Williams' prior criminal
25 record.

1 She has a prior conviction for possession of
2 cocaine base and that would fall within the
3 impeachment rules. However, we would move that it be
4 excluded under the 404, 403 balancing test.

5 Using the case law that drug convictions in
6 general are not probative of truthfulness, the
7 question here is did she know who shot her and did
8 she get shot.

9 The fact that she has a prior conviction for
10 possession of cocaine base we would believe is
11 exactly what Mrs. Stevens is trying to do with the
12 pictures and just to show that she is a bad person,
13 that she's a drug user, not anything about her
14 truthfulness, and for that reason we would ask that
15 that be excluded.

16 MRS. STEVENS: Your Honor, she has a prior drug
17 conviction. Our whole defense is based on the fact
18 that the person who went in there was looking for
19 drugs and tried to rob her of drugs and then left
20 what apparently -- allegedly is drugs in plain sight.

21 THE COURT: Okay.

22 MRS. STEVENS: You can't have it both ways.
23 She's not an angel. She can't claim she was an
24 angel. She has prior conviction, and it is essential
25 to our defense that we be allowed to probe that.

1 THE COURT: Okay. And I'm entitled to agree
2 with her. I mean, it's -- if the shoe was on the
3 other foot, you'd be screaming and hollering that
4 it's admissible.

5 MS. FANT: And well, if that's the case, Your
6 Honor, then we believe that she be allowed to go into
7 404B evidence of Mr. Dwyer's. He knew that there
8 were drugs in there because he in fact was a drug
9 dealer and they had argued over the customers on the
10 street. They lived across the street from each
11 other.

12 THE COURT: Well, that -- I mean, I don't know
13 whether that door gets opened or not. It doesn't get
14 opened at this point in the game.

15 I mean, the fact that she's got a prior record,
16 if it's within the statute and it goes -- she can be
17 impeached on it especially because there's at least
18 undertones that the drugs had something to do with
19 this crime.

20 And that, you know, as the trial progresses,
21 that may change, but the prejudicial value outweighs
22 the probative. But at this point...

23 MS. FANT: Well, she'll be the first witness,
24 Your Honor, so there really won't be any other
25 testimony before her. Well then, I would just ask

1 that--

2 *THE COURT:* At this time that she gets on the
3 stand, she's subject to that record coming out.

4 *MS. FANT:* Apparently Mrs. Stevens has indicated
5 she plans to ask her about other drug activity and
6 drugs in the house, and I would argue that your
7 ruling on the conviction is for that only, for --

8 *THE COURT:* Yeah, she can't go into--

9 *MS. FANT:* -- impeachment on prior conviction.

10 *THE COURT:* She can't go there, now, unless
11 she's got -- unless the evidence carries us there,
12 but she can't just ask her that unless, you know, her
13 client takes the stand. She can call them back up.

14 *MS. FANT:* Your Honor, the next motion on behalf
15 of the State would be -- this is just a housekeeping
16 matter. The intent to introduce both Ms. Williams'
17 and Mr. Anderson's medical records as a knowledge
18 documents pursuant to South Carolina rule of evidence
19 902A self-authenticating to eliminate the need for
20 having to call the custodian.

21 We do have them on standby if you so rule, but I
22 do believe that the rules allow -- since we do have a
23 certificate of acknowledgment that they are
24 self-authenticating and that we would not need to
25 call anyone from Tuomey.

1 THE COURT: What says the defense?

2 MRS. STEVENS: I have no objection, Your Honor.

3 THE COURT: Okay. So the medical records are in
4 without objection.

5 MS. FANT: Your Honor, at this time we have I
6 believe a -- I assume that Mrs. Stevens would ask for
7 them, she may not, Jackson v Deno on the statement
8 that the defendant made and a Neal v Biggers hearing
9 on the photo line-ups.

10 THE COURT: Okay.

11 MRS. STEVENS: Beg the Court's indulgence. Have
12 the original six photo line-up?

13 THE COURT: I don't know.

14 MS. FANT: Your Honor, I believe we do.

15 MRS. STEVENS: I would need to see it before I
16 would decide whether...

17 THE COURT: Okay. While you're looking at that,
18 we can run through the Jackson v Deno?

19 MRS. STEVENS: We don't need the Jackson v Deno
20 hearing, Your Honor. We don't need that.

21 THE COURT: Is his statement...

22 MS. FANT: Your Honor, I guess the only thing we
23 would -- if she has no objection to the statement,
24 the only thing we would ask is that in light of your
25 ruling on third party guilt, that the part be taken

1 out where he refers to a Little D and a Little John.

2 THE COURT: Is this -- the statement he gave, is
3 there any question it's in-custodial?

4 MS. FANT: Yes. Yes, he is -- well, he showed
5 up at the law enforcement center and said he wanted
6 to clear things up. He was Mirandised and he was
7 immediately arrested after the statement.

8 THE COURT: Okay.

9 MS. FANT: So I'm not sure whether she's
10 challenging the in-custody. We would admit that it
11 most likely is, even though he showed up.

12 MRS. STEVENS: Your Honor, I don't need a
13 Jackson v Deno hearing.

14 THE COURT: Well then, for the record, he's --
15 he -- if he was in custody, you agree that his proper
16 warnings were given?

17 MRS. STEVENS: Yes, sir.

18 THE COURT: Okay. And that he understood his
19 rights?

20 MRS. STEVENS: Yes, sir.

21 THE COURT: And that it was a voluntary
22 statement?

23 MRS. STEVENS: Yes, sir.

24 THE COURT: Okay. Is that right, Mr. Dwyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: So you don't think that you need me
2 to determine whether that statement was voluntarily
3 given, that you agree that the statement was
4 voluntarily given?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did you feel like you were in
7 custody at the time you gave the statement?

8 THE DEFENDANT: No, sir.

9 THE COURT: So you felt like you could leave at
10 any time if you wanted to?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And they explained your rights to
13 you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understood those rights?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understood you had a right to
18 remain silent?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you gave up that right, anything
21 you said could and would be used against you in
22 court?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you understand you had a right
25 to have an attorney present?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And that you -- you chose not to
3 have one present?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. You got any questions you
6 want to ask me about your rights?

7 THE DEFENDANT: No, sir.

8 THE COURT: Raise your right hand, please sir.
9 Do you solemnly swear what you just told me is the
10 truth, the whole truth, and nothing but the truth so
11 help you God?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Thank you. All right.

14 MS. FANT: Your Honor, the question becomes -- I
15 will hand up a copy of his statement. The last
16 sentence before the last sentence of the actual
17 statement indicates...

18 THE COURT: Well, I have already ruled on that.
19 My understanding is she's agreed without objection
20 that this will be excluded. Is that right?

21 MS. FANT: Well, I guess the question is going
22 to be how to redact this out. My suggestion would be
23 to take out the statement, I heard from people in the
24 street that someone named Little D and Little John
25 did the shooting.

1 The next sentence, however, part of it is his
2 statement. My nickname is D, which stands for Devan.
3 He says it's not Little D, it's just D which stands
4 for Devan.

5 And so we would argue that the sentence before
6 that gets taken out entirely and that the sentence,
7 my nickname is D which stands for Devan, remain in
8 the statement.

9 *THE COURT:* What says the defense?

10 *MRS. STEVENS:* Your Honor, the last sentence
11 doesn't -- may be taken out of context if the
12 sentence right before it was redacted only. Because
13 the only reason that he said, my nickname is not
14 Little D, it's just D, is because he was telling them
15 that he heard Little D did it, and he was saying, I'm
16 not little D.

17 But if they don't know that -- that he thought
18 someone named Little D did it, they wouldn't
19 understand why he was -- he was saying that his name
20 was D.

21 *THE COURT:* What do you say about that?

22 *MS. FANT:* Your Honor, multiple witnesses will
23 testify that he goes by the name of D, that that is
24 his nickname, and that is in fact the name that the
25 victim first told law enforcement.

1 We think it is important that -- and he -- he
2 said he -- it's a statement of his own that he
3 voluntarily says, my nickname is D which stands for
4 Devan.

5 I think we handle it like we would any other
6 type of problem when part of it needs to be redacted
7 to conform with the ruling, I don't see how him
8 saying, I never had any problems with her, I don't
9 know who did it, my nickname is D which stands for
10 Devan takes anything out of context. It would just
11 be him admitting that that's his nickname.

12 THE COURT: And I agree with you if it's in fact
13 evidence coming in this record that the victim or
14 somebody said D did it. But if this is the only
15 reference to it--

16 MS. FANT: No, there will be -- in fact, the
17 incident report says that D was the person that did
18 that.

19 THE COURT: What do you say about that,
20 Mrs. Stevens?

21 MRS. STEVENS: Your Honor, the incident report
22 does say D. I just still believe that it's taken out
23 of context like he was bragging that his nickname was
24 D whereas he wasn't necessarily bragging that his
25 nickname was D, he was merely trying to suggest that

1 he was not the Little D that he had heard on the
2 street did it.

3 *THE COURT:* But the last line says, my nickname
4 is not Little D, it's just D that stands for Devan.
5 That's what she wants to leave in and take out the
6 sentence before that.

7 *MRS. STEVENS:* Well, there will be no evidence
8 that a Little D might have done this because we have
9 already stricken the fact that Little D did it.

10 *MS. FANT:* Your Honor, I did want to take out
11 part of the last sentence and the -- to the Little D
12 reference, again which should not be in there, and
13 just his admission that my nickname -- if you take
14 out, is not Little D, it's just, and have it read, my
15 nickname is D which stands for Devan, that that's
16 just a statement of his own free will that confirms
17 his nickname.

18 *THE COURT:* What about that?

19 *MRS. STEVENS:* Well, Your Honor, did they ask
20 him what his nickname was and that's why they told
21 them? He only he said, my nickname was D is because
22 he was trying to explain to them that he was not
23 Little D, that that is not what he was called.

24 This makes it sound like he just volunteered,
25 hey, my nickname is D, just thought y'all might want

1 to know that.

2 MS. FANT: How is that prejudicial? That is his
3 nickname. I mean, all it would say would be, I never
4 had any problem, I don't know who did it, my nickname
5 is D which stands for Devan. That doesn't imply
6 anything other than that that's his nickname.

7 THE COURT: All right. What do you say about
8 that?

9 MRS. STEVENS: Your Honor, you know, I still
10 think that it is -- it's going to be taken out of
11 context and it's going to be prejudicial.

12 THE COURT: Yeah. But you agreed that the
13 sentence before that can be taken out. You know,
14 I -- I heard from my people on the street that
15 someone named Little D and Little John did the
16 shooting. You agreed for that to come out.

17 MRS. STEVENS: Because she already made a motion
18 to have it stricken.

19 THE COURT: Right.

20 MRS. STEVENS: I thought you already ruled on
21 it.

22 THE COURT: No. No. You -- that was the third
23 part of that first motion she made. I didn't rule on
24 it. I asked you and you said you agreed with it. I
25 never ruled on it. I ruled on it simply because it

1 was without objection.

2 The third part -- her first motion to me dealt
3 with third party guilt. And I asked you about that
4 and you agreed, so I didn't rule on it. I didn't
5 look up the law. I didn't rule on it because you
6 consented that she was correct and that was the law.

7 So now we are trying to redact the statement to
8 comply with what you have ruled -- agreed with on the
9 first motion. So...

10 MRS. STEVENS: Well, Your Honor, I thought that
11 everything she said, the last part of the statement
12 which would be both those sentences.

13 THE COURT: Okay. So...

14 MS. FANT: Your Honor, she's taking what I said
15 out of context. I said the part about Little D and
16 Little John being third party guilt. I never said I
17 was agreeing to take out the part where he admits
18 that his nickname is Devan.

19 I was just referring you to be able to look at
20 it and see what I was talking about.

21 THE COURT: I understand.

22 MRS. STEVENS: Then she's going to -- then they
23 are going to cut the sentence so it says, my nickname
24 is D just so that she can take out the reference to a
25 Little D who is third party guilt.

1 It's like she wants her cake and she wants to
2 eat it, too. She wants everything about Little D to
3 be taken out, but it's in the middle of the
4 statement, and I would argue that both sentences
5 should be redacted.

6 *THE COURT:* Okay.

7 *MS. FANT:* Your Honor, I think should be handled
8 that -- the same as any other question. When you
9 have problems with Bruton issues, often times things
10 are redacted and a part of the sentence is taken out
11 to comport with that.

12 I think this is the same issue here, that there
13 is nothing wrong with the statement, my nickname is D
14 which stands for Devan and that we just take out the
15 offending part about Little D.

16 *THE COURT:* Okay. Then I need to go read this
17 case. All right. I'll -- what other motions do you
18 have?

19 *MS. FANT:* She's looking actually at the photo
20 line-up right now, Your Honor, the originals. I
21 guess my last motion would just be in light of what
22 Mrs. Stevens said about possible questions to the
23 victim about other threats and other people wanted
24 the drugs in her house, I would just rule -- ask for
25 a ruling in limine that absolutely nothing of the

1 sort should come into evidence.

2 I mean, she'll be impeached by her one prior
3 conviction for that possession of cocaine base, and
4 anything else related to this case certainly she can
5 ask about, but I believe that there is absolutely no
6 basis for her to try to say that other people have
7 made threats.

8 Again, Your Honor, that goes to third party
9 guilt, and there's absolutely no basis for it.

10 *MRS. STEVENS:* Your Honor, a young man named
11 Christopher Stewart was convicted on -- about two
12 terms ago for allegedly shooting at Ms. McKenzie.
13 So...

14 *MS. FANT:* Has absolutely nothing to do with
15 this case, Your Honor. Totally separate incidents.

16 *MRS. STEVENS:* I would argue, Your Honor, that
17 if someone shot her and someone else shot her in
18 November, it could have been that someone else who
19 shot her in August.

20 *MS. FANT:* Your Honor, that does not meet the
21 Gregory test in any, way, shape or form. And in
22 fact, he was convicted of shooting her on that day.
23 Shooting at her. Didn't hit her.

24 But that does not indicate animas between the
25 parties is not what Gregory is about. There has to

1 be some clear link between this alleged person and --

2 THE COURT: Yeah. I mean--

3 MS. FANT: -- and committing this crime, and
4 there's not that here.

5 THE COURT: I think in the Gregory case she's
6 right, you just can't come back and pull up a name...

7 MRS. STEVENS: So I can't ask her if she has
8 ever been shot at before? Not mentioning any
9 witnesses--

10 THE COURT: How is -- how is that relevant in
11 this case?

12 MRS. STEVENS: Because, Your Honor, my client or
13 whoever did this would not be the only one who might
14 have a beef with her. But I am not mentioning any
15 specific names.

16 THE COURT: I understand that. But it -- just
17 the fact that she's at -- unless there's some
18 evidence that some hit has been put out on her, I
19 mean, how is that relevant in the case, the fact that
20 she got shot at before have anything to do with this
21 crime?

22 MRS. STEVENS: Your Honor, we would argue that
23 maybe perhaps that person is the one that shot her
24 that time, too.

25 THE COURT: You have got to have more evidence

1 that that. You can't just say that the fact that --
2 you know, you have got to have some connection.

3 *MRS. STEVENS:* Someone before this incident set
4 her house on fire.

5 *MS. FANT:* Again, Your Honor, absolutely no
6 relevance.

7 *THE COURT:* I understand. But you have got to
8 have some -- I mean, it's up -- it's the other way
9 around, if the State wanted to claim that somebody
10 set her house on fire, it was your client, somebody
11 shot at her, your client, I wouldn't let that in
12 either if they didn't have some evidence that tied it
13 together. It's pure speculation.

14 There's got to be some tie together. You know,
15 she -- now, she may open that door on direct
16 examination that allows you to go in it, but right
17 now it doesn't appear that you can unless you have
18 got some connection that she can tie it together.
19 Okay.

20 *MS. FANT:* And I just want to point out--

21 *THE COURT:* What about the photo line-up?

22 *MS. FANT:* That was the reason for the motion in
23 limine because obviously once that question is asked
24 in any form like that, that bell has been rung and it
25 would be very difficult for us to unring it in that

1 regard, and I think it's improper character evidence
2 as well.

3 *THE COURT:* Okay. What about the photo line-up?

4 *MRS. STEVENS:* Your Honor, we obviously have no
5 standing to object to Rick Vanburen's if they plan on
6 putting it in since he's not my client. If you would
7 give us a moment, Your Honor.

8 *THE COURT:* Sure.

9 *MRS. STEVENS:* May I ask one question, Your
10 Honor, before we may consent?

11 *THE COURT:* Yeah.

12 *MRS. STEVENS:* Were there names on the pictures?

13 *THE COURT:* Well--

14 *MS. FANT:* Are there any names on that? No.
15 No.

16 *THE COURT:* If there were, it wouldn't go in in
17 the first place.

18 *MRS. STEVENS:* The reason I ask is because I
19 have had a case where the pictures actually had the
20 names on the back of them, and that's...

21 *MS. FANT:* They tried to hoo doo you?

22 *MRS. STEVENS:* The case was thrown out, believe
23 it or not.

24 *MS. FANT:* That is exactly what was shown to
25 her.

1 THE COURT: Okay. All right. Anything else?

2 MS. FANT: Your Honor, I guess other than the
3 photos and then just direction on the statement,
4 photo line-ups I should say.

5 Your Honor, you still have the statement of
6 McKenzie up there? That -- apparently that's an
7 original. I just wanted to make sure.

8 THE COURT: All right. You can come get it.

9 MRS. STEVENS: We would like to have a hearing,
10 Your Honor.

11 THE COURT: Okay. She wants a hearing.

12 MS. FANT: At this time the State would call
13 Ryan Ross.

14 RYAN ROSS, after being duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. FANT:

18 Q Mr. Ross, could you tell us where you work?

19 A Currently?

20 Q Yes.

21 A Safe Federal Credit Union.

22 Q And how long have you worked there?

23 A I started in September this last year.

24 Q Did you previously work for the Sumter Police
25 Department?

1 A I did.

2 Q How did you become involved in this case?

3 A I was in investigations in the violent crime unit. I
4 was partnered up with Detective Culick. We came in that
5 morning, 8:30, we were briefed on the situation that
6 happened that night, and we were assigned the case. Well,
7 I was assigned the case.

8 Q Now, did you have an occasion to conduct photographic
9 displays in this case?

10 A We did.

11 Q Who did you show them to?

12 A We showed them to the victim.

13 Q And who is that?

14 A That is Ms. McKenzie behind you.

15 Q And what date did you show these photo line-ups to
16 the victim?

17 A August 4, 2005.

18 Q Were they shown at the same time or did you show them
19 separately?

20 A To Ms. McKenzie?

21 Q Yes.

22 A We showed them separately.

23 Q Okay. Do you recall when the one involving the
24 defendant, Mr. Devan Dwyer, was conducted?

25 A We spoke to her. When we were briefed about the

1 situation, went out to the scene, went to the hospital to
2 interview her, at that time she was in the ICU and we
3 weren't able to actually speak to her too much because I
4 believe she had a breathing tube in her -- in her mouth,
5 so she wasn't able -- she communicated to us a little bit,
6 gave us some information about a D subject.

7 We were able to collect some intel on that through
8 our internal department, what we had on the streets, and
9 through the neighborhood to come up with a name of Devan
10 Dwyer.

11 Along with that, myself and Detective Culick
12 contacted SLED to prepare a photo line-up through a
13 driver's license picture, and we produced a six person
14 photo line-up.

15 Q And do you recall when you conducted the photo
16 line-up that included the defendant's picture, Devan
17 Dwyer?

18 A I have to look through the notes. It's been a couple
19 of years since I was on this case. It wasn't the same
20 day. I believe it was the next day after we actually
21 interviewed or when they removed the breathing apparatus
22 that was in her mouth.

23 Q Would that have been the fourth of August?

24 A Yes, the fourth. That seems correct.

25 Q Excuse me. Where was the line-up conducted?

1 A At the ICU, at the hospital.

2 Q Which hospital?

3 A Tuomey Hospital. I'm sorry.

4 Q And how long after the crime were the line-ups
5 conducted?

6 A Well, the crime happened -- I don't exactly have the
7 day, but we interviewed her. It was early that night, the
8 date of the incident, so I'd say 24 hours, somewhere
9 around there. Within 24 hours.

10 Q And excuse me -- and what if anything did you tell
11 the victim, Sarah McKenzie, before you showed her the
12 line-ups?

13 A Well, our protocol with the Police Department with
14 any victim, you know, that we show a photo line-up is that
15 we produce a six person line-up. All the people in the
16 line-up are going to be the same, you know, gender, sex,
17 you know, you know, look similar I guess because you don't
18 want anybody to stand out.

19 There would be no names on anything and they'd all be
20 numbered. And we put it in front of them. We don't -- we
21 don't lead them anywhere. We just say, look, if it's
22 somebody that you know that did it, you know, please pick
23 it out. Take your time, you know.

24 And in this case, I handed it to her and she went
25 immediately to the defendant in this case, which is Devan

1 Dwyer.

2 Q So how many photographs were actually in the line-up?

3 A There's six, and again that's protocol.

4 Q And how were the photographs displayed in the
5 line-up?

6 A They're all -- SLED puts it together using driver's
7 license pictures, so they are all in a square. I mean,
8 they are all the same size the way they line it up and
9 just in random order, you know, no specific -- just one
10 through six, three on top, three on the bottom.

11 Q Now, what about the photo array for the other
12 defendant, Rick Vanburen?

13 A Again, we try to follow protocol by going through
14 SLED, but if there is nothing for a driver's license
15 photos, sometimes we have to make them on our own. And in
16 that order, we still try to follow the same guidelines
17 as -- we will try to find six people that look alike, you
18 know, same -- same sex, same race, and we'll put them in
19 the same order as far -- well, you know, random orders,
20 but we will put them in three on top, three on the bottom.

21 And with Mr. Vanburen, we had to actually put one
22 together because we didn't have the capability. He didn't
23 have an ID photo with the State of South Carolina.

24 Q Did you or anyone else influence or suggest to Ms.
25 McKenzie which photo to select?

1 A Not at all.

2 Q Did you show her any other photos, either group or
3 individual, of the suspects prior to showing her the array
4 that you showed her?

5 A No, ma'am.

6 Q Did she select the photograph from each display?

7 A She did.

8 Q Did she indicate that these were the people
9 responsible for the crimes in question?

10 A Yes, ma'am, she did.

11 Q Whose photographs did she select?

12 A She picked out Devan Dwyer in one line-up and she
13 picked out Rick Vanburen in another.

14 Q Did she hesitate at all in picking out either
15 suspect?

16 A She did not.

17 (Whereupon, Court's Exhibits Nos. 1, 2, 3 and 4
18 were marked for identification only.)

19 BY MS. FANT:

20 Q Detective Ross, I will show you what's been marked as
21 Court's Exhibits one and two. Do you recognize those
22 documents?

23 A Yes, ma'am. The first one that you handed me was
24 actually the line-up identification form where we just ask
25 the witness to, you know, print her name and to sign and

1 just affirm that what she's stating is what she, you know,
2 what she saw on there as far as the -- has the boxes on
3 here, one through six, and it affirms the same that she
4 picked on the line-up itself on the second page so the
5 number correlates with what's on the line-up.

6 Q And are the exhibits that I have just showed you in
7 the same condition substantially as when you had showed
8 them to the victim?

9 A They are, yes, ma'am.

10 Q Have there been any alterations or deletions since
11 those copies were made?

12 A No, ma'am.

13 MS. FANT: Your Honor, I would ask that Court's
14 one and two be entered as Court's exhibits.

15 MRS. STEVENS: No objection.

16 THE COURT: Okay. They are in without
17 objection.

18 (Whereupon, Court's Exhibits 1, 2 were admitted
19 into evidence.)

20 BY MS. FANT:

21 Q Now I will show you what's been marked for
22 identification for the Court as exhibits three and four.
23 Do you recognize those?

24 A I do.

25 Q And how do you recognize them?

1 A This is another line-up that we showed her which was
2 of Rick Vanburen, and again it's the sheet that she signs
3 that just correlates with the fact that the number that
4 she signed, number five with Mr. Vanburen in there, that
5 she picked out goes together.

6 MS. FANT: Your Honor, I would offer three and
7 four as Court's exhibits.

8 THE COURT: What says the defense?

9 MRS. STEVENS: No objection, Your Honor.

10 THE COURT: Okay. They are in without
11 objection.

12 (WHEREUPON, Court's Exhibits 3, 4 were admitted
13 into evidence.)

14 BY MS. FANT:

15 Q And Mr. Ross, at any time during the process of
16 showing these line-ups to the victim, Ms. McKenzie, did
17 she select any other person or a photo of any other person
18 other than the two defendants in this case, Devan Dwyer
19 and Rick Vanburen?

20 A No, she didn't.

21 Q Please answer any questions Mrs. Stevens might have.

22 CROSS-EXAMINATION

23 BY MRS. STEVENS:

24 Q What time did you interview Devan Dwyer? What time
25 of day?

1 A It was in the daytime. I mean, I couldn't tell you
2 exact. It was working hours.

3 MS. FANT: Your Honor--

4 MRS. STEVENS: It is relevant because, Your
5 Honor, the statement we have says 11:20 pm.

6 I'm just trying to establish that he was in
7 custody before Ms. McKenzie made her identification
8 and I was going to ask him why he didn't use the
9 arrest picture of -- the police picture of him.

10 THE COURT: Okay.

11 THE WITNESS: Again, Your Honor, I mean, what we
12 try to do is follow protocol. What I have been
13 taught if they have a driver's license photo, we ask
14 for SLED to prepare it because it looks a lot more
15 professional than something I have to put together.

16 I mean, you know, you can look at the line-ups
17 themselves. Obviously the one that SLED sent is in a
18 better format than the one that I had to actually put
19 together plus we also look at it now, if the photo
20 doesn't look nothing like Mr. Dwyer, you can take
21 the, you know, the photo, whatever the jail took.

22 To me they look pretty accurate. I mean,
23 that's, you know, if it doesn't look like him, then
24 obviously I wouldn't use it, but I thought it looked
25 pretty much on the money from my part.

1 BY MRS. STEVENS:

2 Q Okay. Did look exactly like he looked on the day
3 that you arrested him?

4 A It looked pretty accurate. I mean, you know, he may
5 have had a little bit more facial -- all the facial
6 features looked the same to me. He hadn't aged that much
7 since he had taken that picture, so...

8 Q What time of day did Ms. McKenzie pick him out?

9 A It was I -- you know, I don't want to guess anything..
10 I was morning time or whenever I was interviewing her at
11 the Tuomey Hospital.

12 Q How many times did you interview her at Tuomey
13 Hospital?

14 A Well, you know, initially we went up there to talk to
15 her when we were briefed the day of the incident. But
16 again, she had that breathing apparatus in her mouth, so
17 it wasn't much that we could communicate with her other
18 than just, you know, asking her a couple of questions.
19 She'd nod her head.

20 The next day the tube was out, that's when we were
21 actually able to get more of a formal interview, if you
22 can call it that, being in ICU with a bullet in your body.
23 I mean, it's pretty tough to get an interview.

24 Q Doesn't your form say that the date and time are
25 supposed to be filled out?

1 A It should be.

2 Q Is there any particular reason why the time on
3 Mr. Dwyer's was not filled in?

4 A I couldn't tell you.

5 Q But it is filled in on Mr. Vanburen's?

6 A I don't know. I'd have to look at it again.

7 Q And you said you did them at different times? Do you
8 remember which one you did first?

9 A We did Mr. Dwyer's first.

10 Q Do you remember whether it was before or after you
11 interviewed him at the law enforcement center?

12 A I'd have to look at my records on that. I -- I mean,
13 if we did the line-up before we did...

14 Q Yes.

15 A Before we interviewed him?

16 Q Yes.

17 A I don't know, not off-hand. I'd have to look at what
18 times. We're talking about four years from here. I'd
19 have to look at the incident report and everything.

20 Q What kind of medication was Ms. McKenzie on, do you
21 know? If you know.

22 A Like I said, four years, I wouldn't know. I'm sure
23 we were briefed on it, but I don't have it right in front
24 of me.

25 Q So you wouldn't know if perhaps she was under the

1 influence of some sort of drug that might impair her
2 ability to...

3 A Not that second day, no, ma'am. She was very
4 coherent. She had the breathing apparatus out of her
5 mouth. The first day, you know, she had the breathing
6 apparatus. That's why we didn't initially do anything.

7 That's -- I do remember the doctor, you know, telling
8 us what, you know, how she was doing and -- but the second
9 day, she was coherent to me. She was speaking to both of
10 us, myself and Detective Culick fine.

11 I mean, other than being in pain in her back around
12 her -- wherever she was shot at. I can't remember how the
13 bullet traveled, but it was in there pretty good.

14 Q So as far as you knew, she was lucid?

15 A She was very coherent in my mind, you know. I mean,
16 to wait -- to answer the questions that we had, to put a
17 line-up in front of her, I mean, you know...

18 MRS. STEVENS: I don't have anything further
19 Your Honor.

20 THE COURT: All right.

21 MS. FANT: Your Honor, I think I can clarify
22 what Mrs. Stevens was indicating was a time issue.

23 (Whereupon, Court's Exhibits Nos. 5, 6 were
24 marked for identification only.)

25 REDIRECT EXAMINATION

1 BY MS. FANT:

2 Q Detective Ross, let's -- to get back to the
3 timeframe.

4 A Uh-huh.

5 Q What day was Sarah McKenzie and Rohan Anderson shot?

6 A The third.

7 Q That would be August 3rd, 2005?

8 A Try to look at this right quick. Yeah, 2005, that's
9 right. 4:21 am.

10 Q Okay. And other than -- you indicated earlier that
11 you talked to Sarah briefly that afternoon, but she had a
12 tube in her throat.

13 A Yeah. I don't remember exactly what times, but we
14 were briefed. We went out to the scene. And then myself
15 and Culick went to the hospital, Tuomey Hospital to talk
16 to her.

17 Q And that would have been the same day, August the
18 third.

19 A Yeah, same day as the incident, correct.

20 Q Okay. But you waited until the next day, the fourth,
21 is that when you showed her the line-up?

22 A We showed her the line-up the next day when the tube
23 was removed. We got -- you know, we wanted for the nurses
24 and the doctors to call us. We left our card to make sure
25 when she was able to be, you know, when we could speak to

1 her.

2 Q And do you recall what time that was when y'all went
3 to talk with her?

4 A I believe it was morning time. I don't know exactly
5 what time. I know it was during the day, and I'm pretty
6 sure it was morning, first thing that morning. I couldn't
7 exactly tell you what time.

8 Q Now, I show you what's been marked Defendant's
9 Exhibit -- or actually as a -- for identification as
10 Court's Exhibit 6. Do you recognize that document?

11 A I do.

12 Q And how do you recognize it?

13 A That's a miranda.

14 Q And by miranda, what do you mean?

15 A It's a waiver of rights that we give anybody that
16 we're about to question that's -- may be implicated in a
17 crime.

18 Q And is -- excuse me -- is that miranda waiver
19 relevant to this case?

20 A Yes. Yes. I'm sorry.

21 Q How do you recognize that form?

22 A I'm trying to read the signature on the bottom of it.
23 It looks like the one that I gave Mr. Dwyer where he
24 scratched it out and tried to sign again his name because
25 I can see the Dwyer on the end of it.

1 Q Would that be before or after he gave you his
2 statement?

3 A This would be before he gave us his statement.

4 Q And what time is reflected on that?

5 A 10:50.

6 Q 10:50?

7 A Or 10:48 am. I'm sorry.

8 Q And is that consistent with what you remember?

9 A Yes, ma'am.

10 Q Now, let me show you what's been marked for --

11 MS. FANT: Your Honor, I would offer this as a
12 Court's Exhibit 6.

13 THE COURT: What says the defense?

14 MRS. STEVENS: No objection, Your Honor.

15 THE COURT: Okay.

16 (Whereupon, Court's Exhibit 6 was admitted into
17 evidence.)

18 BY MS. FANT:

19 Q What's been marked for identification as Court's
20 Exhibit number 5, do you recognize that?

21 A Yes, ma'am. This is the statement that he gave us
22 after we questioned him and Mirandised him.

23 Q And does it indicate on there what time that
24 statement was given?

25 A At 11:20 pm.

1 Q Is that correct?

2 A No.

3 Q What's wrong with that?

4 A It's the pm part is on there. This is a -- when we
5 interviewed him on this incident, we were kind of
6 short-staffed a little bit, so we -- myself with our
7 secretary helped type this up, and apparently she made a
8 mistake on that time.

9 But it should have been 11:20 am because if you look
10 at the miranda -- I mean, 10:50, it was -- it was about
11 10, 15 minute time when we took, you know, notes and we
12 talked about it and we got a more formal statement typed
13 up.

14 MS. FANT: Nothing further.

15 THE COURT: Anything further?

16 MRS. STEVENS: No, sir, your Honor.

17 THE COURT: Any arguments?

18 MS. FANT: Your Honor, I have one other witness
19 who was there.

20 THE COURT: I understand.

21 MS. FANT: I have never actually done one of
22 these, so I'm not sure whether I put them both up or
23 not.

24 THE COURT: Well, do you have any more questions
25 or any more issues? I mean, it appears to me that

1 this is a line-up. I mean...

2 *MRS. STEVENS:* Yes, sir.

3 *THE COURT:* Unless you have any evidence to the
4 contrary, they appeared to do everything -- that they
5 didn't suggest any, you know, that the pictures seem
6 to be a fair and accurate representation that you
7 have, you know, same race, same basic age, same
8 issue, no suggestions were made to...

9 *MRS. STEVENS:* Well, Your Honor, my point was
10 just to suggest that they could have used a much more
11 recent picture of him than his driver's license
12 picture.

13 *THE COURT:* I understand that. But normally
14 that's usually the other end, use one from the jail
15 versus the driver's license, and the driver's license
16 is more neutral than one taken down at the jail
17 because usually the one at the jail, it has those
18 numbers behind you and everybody knows that's a jail
19 photo.

20 All right. Then I -- I have heard enough. I'm
21 ruling the photo line-up is admissible, and I -- you
22 can -- I'm going to allow the State to redact the
23 statement and take out the nickname Little D and just
24 use D.

25 I have researched the law. I am going to allow

1 the State to redact the statement, and my nickname is
2 just D which stands for Devan, okay, and take out
3 Little D. ~

4 MRS. STEVENS: Yes, sir.

5 THE COURT: Unless that door gets opened at
6 trial.

7 MRS. STEVENS: Okay.

8 MS. FANT: Your Honor, this is the first time I
9 have actually done this. You have any advice on how
10 we go about doing this? Should I just--

11 THE COURT: Redact the statement?

12 MS. FANT: Have somebody do it, show it to
13 Mrs. Stevens?

14 THE COURT: Yeah. And y'all need to do that
15 because that will be the other issue. As long as it
16 won't confuse the jury. You redact it if both of you
17 can decide. If not, I will be back a few minutes
18 early and we will look at it and see.

19 MS. FANT: And this is just a question--

20 THE COURT: You going to blot it out, you got to
21 be sure they can't turn it on the back side and read
22 it.

23 MS. FANT: And we have obviously the original
24 which we normally put in, but I'm hesitant to touch
25 the original. Don't want to. Is it sufficient to do

1 a photostatic copy?

2 THE COURT: Yeah, redact -- any problem
3 redacting a photocopy?

4 MRS. STEVENS: No, sir. Your Honor.

5 THE COURT: Okay. That way we will have the
6 original and the photocopy to go into the court
7 record to determine where we can prove what was in
8 fact redacted.

9 MS. FANT: Thank you, Your Honor.

10 THE COURT: Okay. Anything else?

11 MS. FANT: No, Your Honor, not from the State.

12 THE COURT: Anything from the defense?

13 MRS. STEVENS: No, sir, Your Honor. Thank you.

14 THE COURT: All right. We are going to lunch.
15 We will see y'all at 3:00.

16 (Court in recess for lunch.)

17 THE COURT: State ready?

18 MS. FANT: Yes, Your Honor.

19 THE COURT: Defense ready?

20 MRS. STEVENS: Yes, Your Honor.

21 (Jury entered the courtroom at 3:08 pm.)

22 THE COURT: Ladies and gentlemen, now we are
23 ready for the opening statements of the attorneys, so
24 if you will pay attention to them, and after the
25 opening statements, we will begin with the testimony.

1 Madam Solicitor?

2 MS. FANT: May it please the Court.

3 THE COURT: Yes, ma'am.

4 OPENING STATEMENT

5 MS. FANT: Mrs. Stevens, ladies and gentlemen of
6 the jury, the early morning hours of August the
7 third, 2005, the defendant, Devan Dwyer, came in to
8 the victim's house unannounced, was about 4:30, 4:15,
9 4:30 in the morning, robbed her, and ended up
10 shooting both her and her boyfriend. That's
11 essentially this case.

12 We're going to present the evidence to you over
13 the next day or so to show you exactly what happened
14 and let you know how we developed the suspects in
15 this case and how we came to be here today.

16 You will hear first of all from the victim in
17 this case, Sarah Victoria Williams McKenzie. She
18 will explain to you that her name is Sarah, her given
19 name was Sarah Victoria Williams, she was married to
20 Mr. McKenzie, and she will tell you that she goes by
21 both Sarah and Victoria.

22 Her close friends know her as Vickie or
23 Victoria. Most of her dealings with us as her
24 hospital paperwork will say Sarah, but it's one in
25 the same person.

23 And in fact, she even dated the defendant Rick
24 Vanburen. So despite their attempts, she'll tell you
25 that she recognized them immediately and she wasn't

1 even that scared at first. She's like, what is this?

2 Well, then that man pulled out a handgun,
3 demanded her money. She still wasn't sure, and she
4 will tell you this. Gosh, what -- you know, she goes
5 over, she gets all the money she has, she turns it
6 over to him.

7 At that point he says, give me your cellphone.
8 She goes over to her nightstand, cellphone, gives
9 that to him. And she'll tell you that at that point
10 she makes the fatal mistake of telling him, I know
11 who you are, you're D, and you go with my cousin, you
12 live right across the street.

13 And as a result of her saying that, the
14 defendant turned around and shot both her and her
15 boyfriend at the time, Rohan Anderson.

16 The evidence will show that Mr. Anderson's wound
17 was a through and through -- excuse me -- was a
18 through and through meaning it went into his left
19 shoulder and came out of the same arm, and there will
20 be a bullet projectile that was found at the scene.

21 But the evidence, the medical evidence will show
22 that Sarah suffered a far, far more serious wound.
23 And he shot her in the right upper shoulder, but the
24 bullet traveled down at a downward trajectory and
25 ended up shipping (sic) two of her spinal vertebrae

1 and lodging them where the bullet remains today.

2 Because of that, both she and the doctors will
3 tell you she couldn't breathe, she was having a hard
4 time breathing. And in fact, when she went to the
5 hospital, she was intubated for a while before they
6 could get everything under control.

7 There was no question but for the immediate
8 medical intervention, Sarah McKenzie would be dead as
9 a result of this shooting.

10 And she'll tell you that she told law
11 enforcement as soon as they got there, it's D, he
12 lives across the street. He's the one that shot me.
13 And law enforcement will corroborate that with their
14 testimony about what was said at the scene.

15 And she'll show you the photographs of the
16 trailer where she was and of the trailer where her
17 cousin, Cassandra McCray, known to her as Poopie,
18 lives right across the street, just a stone throw
19 away.

20 And all of those photographs will be before you.
21 And she will tell you that she never wavered from who
22 she said did this. She picked out both defendants in
23 a line-up, Devan Dwyer, otherwise known as D, and
24 Rick Vanburen, and she was able to tell law
25 enforcement without question, without hesitation that

1 those were the two that broke in that night and that
2 Devan, D, was the person that shot her.

3 And you'll find out from his own testimony that
4 the co-defendant in this case, Rick Vanburen, has
5 already pled guilty for his role in this crime. And
6 we will ask him some questions about what happened
7 that night.

8 He's a friend of the defendant's. I ask that
9 you just keep that in mind. But he's the defendant's
10 friend.

11 And in fact, Ms. McCray who we will also call as
12 a witness is the defendant's girlfriend. And ask you
13 to keep that in mind as we go along and as you decide
14 what's more truthful than not.

15 Law enforcement did pretty much everything they
16 could in this case. And you'll find that mistakes
17 were made and that that is real life, that
18 unfortunately CSI isn't. And real life is that some
19 mistakes were made. And we'll point those out to
20 you. We are not trying to hide them.

21 But we believe that the truth will show what
22 Ms. McKenzie has said all along without question and
23 without fail, that in the early morning hours of
24 August the third, 2005, the defendant, who she knows
25 as D, Devan Dwyer, broke into her home, robbed her,

1 shot her and her boyfriend, Rohan Anderson.

2 We ask that you just pay close attention and
3 listen to everything before you make up your mind.
4 Thank you.

5 THE COURT: Mrs. Stevens?

6 MRS. STEVENS: May it please the Court.

7 THE COURT: Yes, ma'am.

8 OPENING STATEMENT

9 MRS. STEVENS: Good afternoon, ladies and
10 gentlemen. As the Judge said earlier when he was
11 looking out at you, could tell by the look on your
12 face that you wanted to be here today.

13 It's a good Monday. A lot of you would rather
14 be somewhere else than be here today. And I wanted
15 to thank you for being here. It's because of people
16 like you who do their civic duty and serve on jury
17 duty that we have the wonderful system of justice
18 that we have.

19 Imagine, we get to be judged by a jury of our
20 peers, people just like us. Devan, if you will stand
21 up, please. This is my client, Devan Dwyer. Today
22 is his day in court.

23 He has pled not guilty to these charges -- these
24 charges, and he has a right to a trial by jury of his
25 peers, you ladies and gentlemen. He has a right to

1 be innocent until proven guilty, and not only proven
2 guilty, but proven guilty beyond a reasonable doubt.

3 I'm not going to try to explain what a
4 reasonable doubt is to you. That's what the Judge is
5 going to do after all of the evidence has been
6 submitted to you guys.

7 You will be able to take evidence back into the
8 jury room with you, some physical, some writing,
9 things like that. What I'd like for you to do
10 because I know you're going to pay attention because
11 this is going to be -- but I want you to pay
12 attention because you're going to hear some things
13 that make you go hmm, and you're going to hear some
14 things that make you go, wait a minute.

15 And then there are going to be things that you
16 don't hear that might have connected the dots for you
17 and you're wondering why you don't hear them or why
18 you don't have it.

19 So what I'd like for you to do, ladies and
20 gentlemen, is to pay very close attention and listen
21 to not only what you do hear, but what you don't,
22 what you do see, and what you don't.

23 And I submit to you that after we're done that,
24 that you will find my client not guilty. Thank you.

25 THE COURT: Madam Solicitor, you may call your

1 first witness.

2 MS. FANT: Your Honor, the State calls Sarah
3 Victoria Williams McKenzie.

4 THE COURT: Come around, please ma'am, and place
5 your left hand on the Bible, raise your right.

6 SARAH MCKENZIE, after being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. FANT:

10 Q Sarah, could you tell us where you live?

11 A I live at in Sumter.

12 Q And how long have you lived in Sumter?

13 A Oh, I lived in Sumter all my life.

14 Q Excuse me. What kind of work do you do?

15 A I do hair. I do braids.

16 Q And in the past did you live at :

17 or -- excuse me -- in Sumter?

18 A Yes, ma'am.

19 Q And could you tell us where the address

20 comes from? How did it be -- let me back up a
21 second. Were you living there on Wednesday, August the
22 third of 2005?

23 A Yes, ma'am.

24 Q And what type of housing was it?

25 A It's a mobile home.

1 Q And was it your home?

2 A Yes, ma'am.

3 Q Excuse me. Who lived there with you?

4 A Me and my ex-boyfriend, Rohan Anderson.

5 Q And the mobile home has an address of

6 . Could you explain that, how it -- how is it --
7 it's not an apartment; is it?

8 A No, ma'am. What the reason why it's an because I
9 bought some property and it had a house that face
10 which was . When I purchased the
11 mobile home and moved it in the back, they gave that
12 address,

13 Q Okay. So your house was not on the immediate corner
14 of ?

15 A Yes, ma'am. It was -- no, it was not.

16 Q Trailer I should say.

17 A Oh, no, ma'am. It wasn't.

18 Q Now, do you recall an incident that occurred early on
19 that Wednesday morning August 3rd, 2005?

20 A Yes, ma'am.

21 Q And can you tell us what happened that day that
22 causes that memory to be so vivid?

23 A I was sitting in the house. I think I was -- I
24 probably was dozing off and on. But at one point I got up
25 and I started messing with the braids in my hair. I

1 started taking my microbraids out. And...

2 Q About what time would that have been?

3 A At that time it was like one something, 12 something,
4 I'm not sure. I didn't even catch -- I didn't even keep
5 up with that time, so I'm not sure, but I know it was --
6 it had to been after 12. I remember that.

7 Q And what happened?

8 A I was sitting in the house taking some microbraids
9 out of my house -- out of my hair, and I heard the screen
10 door open. And normally if somebody open the screen door,
11 they will yell in and call my name or something, but I
12 never heard anything.

13 I just heard the screen door squeak. I started to
14 get up and go to the door, but I already had a bad feeling
15 because no one ever called my name. Nobody ever said
16 anything.

17 Q Where were you at the time?

18 A I was sitting on the bed. I was sitting on the bed.
19 I can't do this.

20 (witness was crying).

21 I never thought he would shoot me.

22 Q Was there anybody else in the room with you?

23 A Mr. Anderson was in the room with me.

24 Q And after you heard that screen door open, what did
25 you hear?

1 A I hear two steps, two sets of footsteps. I started
2 to get up and meet them, but I knew something was going to
3 happen, and the first thing came to my mind, well, if I
4 get up and meet them at the door, I probably -- because I
5 knew it was something wrong. I had a feeling.

6 I said now, I know it was somebody that's not
7 supposed to be in there. And what stopped me from meeting
8 them at the door was because I was thinking if they come
9 in and rob me or do something to me, they will probably
10 shoot me in my chest or something.

11 So I just laid there and let them walk on in the
12 house. I wasn't going to meet them at the door because I
13 didn't know who it was. So I sat at the end of the bed --
14 well, not at the end, at the middle part of the bed and
15 just started taking the microbraids out my hair.

16 Then I heard the footsteps come in. And they got to
17 my bedroom door, which it don't have a door. And I looked
18 back, I saw D, Devan Dwyer. He was standing in the door,
19 which he walked through the door and stood in the front of
20 me with the gun.

21 His friend stood up in the door, Mr. Vanburen, with
22 his hands like this I guess for nobody to leave out, but
23 he didn't have a gun. D had the gun. And--

24 Q Now, how do you know D?

25 A I have known him for years. He hung at the same

1 place -- my mother-in-law had a house. He used to be over
2 there also, so I known them for years.

3 Q Okay. And what happened when he came in?

4 A When he came in, he was like, give me everything you
5 got. And I told him -- I said, okay. So I gave him the
6 money and I sat back down on the bed. And he must have
7 look on the nightstand and saw the cellphone.

8 But he never touched the jewelry. He just -- he
9 wanted the cellphone. So I handed him the cellphone.
10 When I did that, I told him, I said, okay, I'm going to
11 get you everything I got, but I know who you are, D. I
12 told him I know who he was and he know. He know he did
13 it.

14 Q And what happened after you said that to him?

15 A After I said -- after I said that to him, he started
16 backing out. His friend went outside or was backing up
17 outside, but he started backing up.

18 And when he started backing up, and next thing I know
19 I saw fire come out the gun. He shot me. And I was still
20 looking at him because the whole time I'm praying, God,
21 don't let this boy shoot me in my head.

22 He turns around and he shoot at Mr. Anderson. And
23 this boy just came there and that wasn't fair for, you
24 know, to put him in something like that. Now, he shot
25 both of us and they ran out the back door.

1 Q Okay. Now, when they -- when they first came in or
2 you heard the footsteps and they came to the door, were
3 you scared?

4 A Not really. I mean, when I heard the footsteps,
5 yeah, because in my mind I'm trying to figure out who in
6 the world going to be walking in here like that. And then
7 the only -- the part where I really got scared -- when I
8 saw him, I wasn't really worried, but when I saw the gun,
9 that's when I got scared. I wasn't scared of them. I was
10 just looking at the gun.

11 Q And how did you know it was them?

12 A D, the day before that he had on a pair of white Air
13 Force Ones, a pair of blue jeans. I never forget this. A
14 pair of blue jeans and a white T-shirt. His hair is a lot
15 longer than what it is now.

16 He would wear a T-shirt all the time wrapped around
17 his head and tied in a knot like to the side. He just
18 stop doing that, but that's how he used to wear it. And
19 he had the same clothes on, the same thing on.

20 I know his voice. I know him. How can you rob
21 somebody that know you, been in the same place with you,
22 you know. It's no way you can get away with that.

23 Q Now, did he have anything trying to cover up his
24 face?

25 A Only thing he had was a white T-shirt wrapped around

1 his mouth and a white T-shirt wrapped around a head. And
2 I'm saying to myself, this boy is really dumb. You going
3 to just wrap a T-shirt around your mouth and not your
4 whole body, not your whole face, then that was -- I just
5 thought that was really crazy.

6 But he knew I knew who he was and he wasn't really
7 caring. I don't think he even cared about that. He
8 didn't like me and I think that was a way for him to get
9 at me because we had had some arguments.

10 Q Okay. Now, the other person that was with him, how
11 did you know it was Rick Vanburen?

12 A I know Rick. Me and him used to date. As a matter
13 of fact, a couple days before this happened, Rick came --
14 no, it was the day before this happened. Rick came to my
15 house because a couple days before that I had let him use
16 my Explorer.

17 And this day he came to my house and me and
18 Mr. Anderson was standing up in the kitchen talking, and
19 he just walked straight on in the house, and that kind of
20 shocked me. Told him to come outside, so I went outside
21 and I talked to him.

22 Mr. Dwyer was standing across the street. Rick came
23 to my house and he wanted to talk to me, and I push him
24 off me and went back in the house. I mean, I know Rick.
25 I know both of them.

1 Q How was -- was there anything covering Rick
2 Vanburen's face?

3 A I guess they -- only thing they really cover was
4 their mouth, you know, as far as him, but...

5 Q So Rick Vanburen also had a T-shirt?

6 A Around his mouth.

7 Q But you were still able to recognize him?

8 A Yes, ma'am.

9 Q Now, you indicated that D or the defendant was across
10 the street. Why would he have been across the street?

11 A Him and my cousin was dating, I guess. Well, I know
12 they was dating. Ain't no I guess. They was going
13 together. So a lot of times he would hang over there or
14 whatever, stand up, so I already -- I saw him across the
15 street.

16 Q Okay. Now, on the day before this happened that
17 Tuesday, did you see the defendant?

18 A Yes, ma'am.

19 Q And what did you notice that was unusual that
20 happened?

21 A The day before that happened, I noticed him walking,
22 talking on his cellphone back and forth in front of the
23 door, but I never put in my mind something like that was
24 going to happen, but I know it was unusual that the day
25 before that happened that he was--

1 Q When you say, in front of the door, what do you mean?

2 A He would walk like from . . . to Lafayette,
3 from Lafayette to . . . , I guess just peeping
4 things out. He just kept walking that day, just kept
5 walking that day.

6 Q Where would that have been in relation to your house,
7 your trailer?

8 A Oh, that's right in front of my house.

9 Q So he was walking back --

10 A Right in front of my house.

11 Q -- front of your house?

12 A Uh-huh.

13 Q And why was that unusual?

14 A Because he never did that. And he have never walked
15 like that in front of my house period. Now that I think
16 about things, and if I knew now -- if I knew then what I
17 knew now, I'd have prevent all of this.

18 Q Now, late the night before this happened that Tuesday
19 night, did you see the defendant and Mr. Vanburen
20 together?

21 A Yes, ma'am.

22 Q Where did you see them?

23 A They was standing up under the light. It's like on
24 the corner of . . . like on a side. God, I can't
25 explain it. Well, it's like on a corner. If I look out

1 my door, I can see everybody that's standing up.

2 Even if they have the light on, if they are standing
3 outside, you could see everybody that's standing up up
4 under that light, so when I saw them standing up under
5 that light.

6 Q And was there anything particular about Rick's
7 clothes that you noticed when he came in?

8 A What do you mean? I don't understand that question.

9 Q Well, how was he dressed the day before?

10 A Oh, I know the day before Rick had on a dark color
11 shirt and a pair of jeans and some white shoes. That was
12 the day before.

13 Q And how was he dressed when he came in the house?

14 A He had on I think it was a white shirt, white shirt
15 wrapped around his mouth. I ain't pay no attention to the
16 pants because my focus was really on Devan because he had
17 the gun, and that was my -- my focus.

18 I saw who both of them was. And after I see -- saw
19 who both of them was, my focus became on Devan. I watched
20 him the whole time because he had a gun.

21 Q Now, what was Rick Vanburen's hair like at that time?

22 A Well, it look like it was twists or plaid (sic), but
23 I -- I don't know, it was just pieces from not combing it
24 or what, but that's how it looked at that time.

25 (Whereupon, State's Exhibit No. 1 was marked for

1 identification only.)

2 BY MS. FANT:

3 Q Now Sarah, I will show you what's been marked for
4 identification as State's Exhibit one. Do you recognize
5 this?

6 A Yes, ma'am.

7 Q And how do you recognize it?

8 A It's a printout of my house.

9 Q And does it show the layout of your trailer as it was
10 on the day that this incident occurred?

11 A Yes, ma'am.

12 Q And this would be the house at what address?

13 A

14 Q Okay. Could you write that just across the top there
15 so we would know?

16 A (Complied.)

17 Q Now, did your trailer face : or did it
18 face ?

19 A It faced .

20 Q Okay.

21 MS. FANT: Your Honor, at this point I would
22 offer State's Exhibit one into evidence.

23 THE COURT: What says the defense?

24 MRS. STEVENS: No objection, Your Honor.

25 THE COURT: Okay. State's Exhibit one is in

1 without objection.

2 (Whereupon, State's Exhibit 1 was admitted into
3 evidence.)

4 BY MS. FANT:

5 Q All right. Sarah, I'm going to ask you to step down
6 and take a look here. You can use this. Can you show us
7 on this depiction of your trailer where the front door is?

8 A My front door is right up in here.

9 Q Just so you know, these are windows, doors?

10 A Okay. This is the door right here. That's my
11 kitchen. This is my bedroom next to the bathroom. This
12 is the bedroom that I slept in.

13 Q Okay. So when you heard the screen door that you're
14 talking about creak open, which door was that?

15 A It was this door right here.

16 Q Okay. And what is the direction that they would have
17 come that you heard the footsteps coming?

18 A From the living room.

19 Q And is there a hall in there? Can you show us where
20 that is?

21 MR. GREENAN: Ms. Fant, if you can get her to
22 move to the side. The folks can't see.

23 THE COURT: Ms. McKenzie, you need to keep your
24 voice up because the jury has got to hear and my
25 Court Reporter has got to hear.

1 THE WITNESS: Okay.

2 THE COURT: Thank you.

3 BY MS. FANT:

4 Q So the front door is -- is here as you have just
5 pointed out. And where were you?

6 A I was here.

7 Q And who else was in that bedroom with you?

8 A Rohan Anderson.

9 Q Okay. And the back door that they fled from after
10 the shooting, where is that on here?

11 A That would be this right here.

12 Q Okay.

13 (Whereupon, State's Exhibit No. 2 was marked for
14 identification only.)

15 BY MS. FANT:

16 Q Sarah, I will show you what's been marked for
17 identification as State's Exhibit two. Do you recognize
18 this diagram?

19 A Yes, ma'am.

20 Q And how do you recognize it?

21 A It's a diagram of my bedroom, my bathroom, and it --
22 see the windows. My bedroom had two sets of windows on
23 the side.

24 Q Okay.

25 A And it had the main window right here.

1 Q And this is still the trailer at 502A Silver?

2 A Yes, ma'am, it is.

3 MS. FANT: Your Honor --

4 BY MS. FANT:

5 Q Tell you what. Let me hand you that. And I'm going
6 to ask you to come over -- just step over here for right
7 now.

8 A (Complied).

9 Q And draw just approximately -- this is obviously not
10 a map -- where your bed would have been.

11 A My bed would have been up in here. Well, as a matter
12 of fact, my bed was open the -- face the doorway.

13 Q Okay. Well, draw it all the way down there.

14 A All the way down there.

15 Q If it fits. Even though that looks ridiculous,
16 that's -- that's your bed?

17 A Yes.

18 Q Now, where was your dresser at?

19 A My dresser was over here.

20 Q Okay. And then your nightstand?

21 A Is right here in the middle of the window, between
22 the window.

23 MS. FANT: Your Honor, I would offer State's two
24 into evidence.

25 THE COURT: What says the defense?

1 MRS. STEVENS: No objection, Your Honor.

2 THE COURT: State's number two is in without
3 objection.

4 (Whereupon, State's Exhibit 2 was admitted into
5 evidence.)

6 BY MS. FANT:

7 Q Now, I ask you to step down again, Sarah.

8 A Yes, ma'am. (Complied).

9 Q And point out again for the jury where your bed was.

10 A My bedroom -- my bed was right here. It's like --
11 and like under this window is -- is all the way down to
12 the door. Like you could walk in it. It's all the way
13 down here. But it's on the left hand side.

14 As soon as you walk in my house, it's on my left hand
15 side. Well, my bedroom, it's on the left hand side.

16 Q Okay. And what did you indicate this was right here?

17 A Oh, that's my nightstand.

18 Q Okay. And what was on the nightstand that they took
19 from you?

20 A On that nightstand was my cellphone. My jewelry was
21 on it, but they didn't take the jewelry. He just got the
22 cellphone.

23 Q Okay. And what is this right here?

24 A That's my dresser.

25 Q And was there anything that they took from your

1 dresser there?

2 A I -- yes, the money. The money came off the dresser
3 and my cellphone came off the nightstand.

4 Q Okay. Now, showing us here if -- you indicated there
5 was actually not a door on your bedroom?

6 A No, ma'am. It's not a door.

7 Q Show us where they came in at.

8 A They came in I guess through the door to my bedroom
9 door --

10 Q Okay.

11 A -- from the living room.

12 Q And where were you sitting? Where were you sitting?

13 A I was sitting right here. Also it was another table
14 with my television on.

15 Q Okay. And where was Rohan Anderson?

16 A He was lying like he was down at the bottom of the
17 bed. His body was like almost in the middle.

18 Q Okay. So you both were actually on the bed?

19 A Yes, ma'am.

20 Q Okay. And you indicated that D or Devan Dwyer came
21 into the room?

22 A Yes.

23 Q How far did he come into the room? Did he come all
24 the way over to...

25 A Oh, that had walked in. He stood there. Like I

1 said, it was another stand right here that hold -- held my
2 TV. He stood in front of the TV.

3 Q Okay. And what about Rick Vanburen?

4 A He just stood in the doorway like this, make sure
5 nobody get out of it.

6 Q And he actually never came into the room?

7 A Huh-uh.

8 Q You can sit back down.

9 A (Complied.)

10 Q Now, since this was early in the morning, did you
11 have any lights on?

12 A Yes, ma'am.

13 Q How well could you see in the bedroom?

14 A My lights were on in the bedroom. I could see real
15 well because the light was on. As a matter of fact, my
16 wall light was on, I had a lamp on, and my television was
17 on.

18 Q Now, I'm going to show you some photographs using our
19 magic Elmo machine here if Mr. Greenan will oblige me.

20 (Whereupon, State's Exhibits Nos 3-12 were
21 marked for identification only.)

22 BY MS. FANT:

23 Q Ms. Sarah, let me show you what has been marked for
24 identification as State's Exhibits 3 through 12. Could
25 you just briefly look through those, please?

1 A Yes, ma'am.

2 Q Now, without indicating what those pictures show, do
3 you recognize what's in those photographs?

4 A Yes, ma'am.

5 Q And do they depict fairly and accurately what it
6 shows on the time that this incident occurred?

7 A Yes, ma'am.

8 MS. FANT: Your Honor, I would offer State's
9 three through 12.

10 THE COURT: What says the defense?

11 MRS. STEVENS: No objection, Your Honor.

12 THE COURT: Okay. Three through 12 in without
13 objection.

14 (Whereupon, State's Exhibits 3-12 were admitted
15 into evidence.)

16 MS. FANT: Your Honor, we would like to publish
17 them on the Elmo.

18 THE COURT: All right.

19 BY MS. FANT:

20 Q And I am going to ask you to step down again, Sarah.

21 A Okay. (Complied).

22 Q And using this if you need to, I'd just like for you
23 to describe what we're looking at.

24 A This is a picture of the front of my mobile home,
25 steps go to my door.

1 Q So that would have been the front door there?

2 A Yes, ma'am, by the living room and kitchen.

3 Q Okay. The next one. Can you tell what that
4 photograph is?

5 A It's a picture of the living room, got shot.

6 Q Is that the floor of the bedroom or what floor is
7 that?

8 A That's the hallway by my bedroom.

9 Q Okay. Next. What is that a picture of?

10 A This is a picture of the air duct that was in the
11 hallway.

12 Q Okay. So going down looking down toward that, would
13 that be the hallway?

14 A Yes, ma'am. That's the hallway. It's leading from
15 my bedroom to the kitchen. There's a kitchen right there.

16 Q Okay. And what does this show?

17 A This show -- I used to put like a little -- well,
18 this actually looks like a spread I had I would put up
19 because, like I said, I didn't have a door. I would just
20 put that up there.

21 Q So is that the door frame right there? Is that why
22 that's there?

23 A Yes, ma'am. Yes, ma'am. That's the door frame right
24 there to my bedroom. And since I don't have a door, I
25 didn't have a door, I would put up like a sheet or

1 whatever because, you know, for nobody would be able to
2 look straight into the bedroom.

3 Q Okay. Next one. And what is this a picture of?

4 A This is picture -- that's my bed right here. That's
5 where the TV at, the TV on the nightstand. And this is
6 the electrical box right there by the door like as you
7 walk in my bedroom. It's a wall that the electrical box
8 is on.

9 Q Okay. And can you see your dresser in that picture?

10 A Yes, ma'am.

11 Q Where is it?

12 A. My dresser is right there. I had the lamp on.

13 Q Okay. And what does this show?

14 A This shows hair. I love doing hair. It just show a
15 picture of my bed with the hair on it where I was about to
16 take microbraids out and do my hair over. Like I said,
17 this is a picture of my bedroom.

18 Q Okay. When you say the nightstand, can you show us
19 where that is?

20 A This is the nightstand. That's where my current
21 phone sit.

22 Q Okay. And what is at the end of the bed, at the very
23 end?

24 A That's the window. That's one of the windows, and
25 it's another one going here by the dresser.

1 Q And the foot of the bed here, where would that be?

2 Is that near the window or the door?

3 A No, that's the door. Like soon as you walk in my
4 bedroom, what's left of the bed and everything is right
5 there.

6 Q Okay. This might be a little bit hard to make out,
7 but can you tell what the spotlight is on in that
8 photograph?

9 A Oh, okay. That's -- that's the weave that I use.
10 It's a little thing that I have weaves in right here and a
11 shoe.

12 Q Okay. But this right here, what is that right there?

13 A That's my hair container.

14 Q Is that what your hair was in?

15 A Yes, ma'am, the hair I was going to put in my head
16 was in that container.

17 Q Okay. And what is this picture showing?

18 A Blood, weave, and must have been one of my bracelets
19 or a chain or something.

20 Q Can you point out where you are showing the bracelet?

21 A This is my bracelet right here.

22 Q Okay. And the rest of that is all your hair weaves?

23 A Yes, ma'am. All of this my hair, and that's my
24 blood.

25 Q Okay. And what is this showing a picture of?

1 A This shows a picture of the stairs that lead out the
2 back door. These are the steps that lead to my back door
3 as you go in. Soon as you walk in, my room is on the
4 right and the bathroom is right here.

5 Q Okay. And is this the door that the defendants left
6 through?

7 A That's the one they left through.

8 Q Okay. And that's in the back of your trailer?

9 A Right next to my bedroom.

10 Q Okay. And this is the bigger shot. Can you just
11 tell us where that is?

12 A This is the back yard and the picture of the back
13 yard, my bathroom.

14 Q And what direction would you have been looking --
15 living in Cassandra's house? Do you know where her house
16 is looking at that? Was it directly in front of yours or
17 more caticorner?

18 A It's more caticorner.

19 Q Okay.

20 (Whereupon, State's Exhibits Nos. 13-16 were
21 marked for identification only.)

22 BY MS. FANT:

23 Q Sarah, I'm going to show these to you again. Could
24 you just flip through. This would be State's 13 through
25 16 for identification. Do you recognize those items?

1 A Yes, ma'am.

2 Q And without saying what is depicted there, does it
3 fairly and accurately show what you would have seen that
4 day?

5 A Yes, ma'am.

6 Q Okay.

7 MS. FANT: Your Honor, at this time we would
8 offer State's 13 through 16 in evidence.

9 THE COURT: What says the defense?

10 MRS. STEVENS: No objection, Your Honor.

11 THE COURT: Okay.

12 MS. FANT: And permission to publish these, Your
13 Honor.

14 THE COURT: Granted.

15 (Whereupon, State's Exhibits 13-16 were admitted
16 into evidence.)

17 BY MS. FANT:

18 Q And can you tell us whose house this is?

19 A That's his girlfriend house. That's Cassandra Davis'
20 house.

21 Q And that is -- is she also related to you?

22 A Yes, ma'am.

23 Q Okay. And what -- excuse me. Could we go back to
24 that one? What street does that trailer face?

25 A

1 Q That's right in front of that?

2 A Yes.

3 Q Okay. The next one. And what does this picture

4 show?

5 A A picture of the corner that they hang out on.

6 Q Okay. And show us what you mean by that.

7 A Well, they always stand up on the corner. On this

8 pole right here is a spotlight, a bright light at night

9 time. You could see everybody that stands over there. I

10 mean, everything you could see. As long as they are under

11 this light, you could see them, so that's where they stood

12 at a lot.

13 Q And is that also the same trailer there?

14 A Yes, ma'am. It's Cassandra trailer right here.

15 Q Okay. And do you recognize what this is, just what

16 is depicted in there?

17 A Yes, ma'am. That's her house and mailbox.

18 Q Okay. And that would be ?

19 A Yes, ma'am,

20 Q Okay. And finally here on this one do you recognize

21 the object depicted there?

22 A Yes, ma'am.

23 Q Show us what that is.

24 A The picture?

25 Q Yeah. What's in there?

1 A What's in this picture? This is the picture of my
2 yard. This is -- my window is by this light pole right
3 here where this meter base is at. This is the Cassandra's
4 house right here, but this is where I live at and this is
5 where she lives at and the wire.

6 Q Okay. So even though it's not on there, your trailer
7 is right here?

8 A Uh-huh.

9 Q Okay. Would that have been the view you would have
10 had looking out from your trailer?

11 A Yes, ma'am, because it's -- like I said, it's a light
12 that shines right up here. They have a light somewhere up
13 on one of these poles up in here.

14 Q Okay.

15 A So many trees. And when somebody is standing up
16 on -- under here at night time, you can see where it is.

17 Q Okay.

18 (Whereupon, State's Exhibits Nos. 17-20 were
19 marked for identification only.)

20 BY MS. FANT:

21 Q Now Sarah, once again I will show you what's been
22 marked as State's Exhibits 17 through 20 for
23 identification. Do you recognize these photographs?

24 A (Nodded.)

25 Q Do they fairly and accurately depict what is shown in

1 them on that day?

2 A Yes, ma'am.

3 MS. FANT: Your Honor, I would offer State's 16
4 or 17 through 20 into evidence.

5 THE COURT: What says the defense?

6 MRS. STEVENS: No objection, Your Honor.

7 THE COURT: Okay. They are in without
8 objection.

9 (Whereupon, State's Exhibits 17-20 were admitted
10 into evidence.)

11 MS. FANT: Your Honor, we would like to publish
12 these on the Elmo.

13 THE COURT: Okay.

14 BY MS. FANT:

15 Q Could you tell us who that is in the photograph?

16 A Mr. Anderson, Rohan Anderson.

17 Q Okay. And was that the person that was with you that
18 night?

19 A Yes, ma'am.

20 Q Okay. And I'm just going to show these in a row. I
21 know they might be hard for you to look at. If you could
22 just tell me if you recognize those and how you do so.

23 A That's my ex-boyfriend. That's where he was shot.

24 Q The next one.

25 A That's him. That's where he was shot.

1 Q The last one. Thank you.

2 (Whereupon, State's Exhibits Nos. 21, 22 were
3 marked for identification only.)

4 BY MS. FANT:

5 Q Sarah, I will show you State's 21 and 22. Without
6 saying what's in them, do you recognize those photographs?

7 A Yes, ma'am.

8 Q And do they accurately depict the events as they were
9 that day?

10 A Yes, ma'am.

11 MS. FANT: Your Honor, I would offer State's 22
12 and -- 21 and 22 into evidence at this time.

13 THE COURT: What says the defense?

14 MRS. STEVENS: I have no objection, Your Honor.

15 THE COURT: All right. They're in without
16 objection.

17 MS. FANT: Your Honor, we'd like to publish
18 these as well.

19 THE COURT: Okay.

20 (Whereupon, State's Exhibits 21, 22 were
21 admitted into evidence.)

22 BY MS. FANT:

23 Q Can you tell us what that photograph is showing?

24 A A picture of me when I got shot.

25 Q Okay.

1 A I almost died.

2 Q And the next one?

3 A That's when the bullet went in right here, hit my
4 lungs and hit my spine, but that's a picture where I been
5 shot.

6 Q Okay.

7 (Witness resumed the stand.)

8 BY MS. FANT:

9 Q Now, regarding the night or early morning I should
10 say that this happened, do you recall an officer coming to
11 your house that morning?

12 A Yes, ma'am.

13 Q And do you recall talking to him before the EMS
14 service took you to the hospital?

15 A Yes, ma'am.

16 Q Do you recall what you told him?

17 A Yes, ma'am.

18 Q What did you tell him?

19 A He asked me if I knew who shot me, and I told him,
20 yeah, I said, D. And I think he asked me do I know where
21 he -- if I know where he was or whatever. And I told him
22 that he lived in a trailer across the street.

23 And I told him, well, I said I believe it's

24 , but it's across from because at one

25 point I lived at . And I told him D did it and that he

1 live across the street with his girlfriend Poopie,
2 Cassandra.

3 Q Now, did you have an extended interview with the
4 police at that time, a long interview?

5 A Oh no, ma'am, nuh-uh, no, ma'am.

6 Q Were you having trouble breathing at the time?

7 A Yes, ma'am. I thought I was dying, actually.

8 Q Describe for us what you -- what happened after the
9 bullet hit you.

10 A After the bullet hit me, I went to stand up, and I
11 don't know what -- I didn't know what was wrong, but every
12 time I went to stand up, I would fall down. I didn't know
13 I had a spinal injury at the time.

14 And it was like my breath just kept getting shorter,
15 so I was telling Rohan, you know, yelling at him, you
16 know, I'm dying, call the ambulance. I just kept telling
17 him, you know, that I was dying and he need to hurry up
18 and call them.

19 Q And who actually did call the ambulance?

20 A Rohan called the ambulance.

21 Q Now speaking of Rohan, do you know where he is today?

22 A I hadn't since -- let's see. Two weeks after I got
23 shot, I hadn't seen Rohan or heard from Rohan since then.

24 Q Do you have any idea where he might be?

25 A No, ma'am. Tried to find him, but I couldn't.

1 Q Did law enforcement later talk to you again about who
2 had shot you at some point when you were in the hospital?

3 A Yes, ma'am.

4 Q And what were you able to tell them?

5 A I told Mr. Ross that D shot me.

6 Q And was he ultimately able to display a photographic
7 line-up to you?

8 A Yes, ma'am.

9 Q Did you have any trouble picking anyone out?

10 A No, ma'am.

11 Q And who did you pick out?

12 A The shooter, Devan Dwyer.

13 Q Did anyone suggest or tell you who to pick out?

14 A Oh, no, ma'am. That man shot me. I know exactly who
15 shot me and I was going to tell it.

16 Q What is Devan Dwyer's nickname?

17 A D.

18 Q Who calls him D?

19 A Everybody. Everybody. I even called him D.

20 Q Have you ever heard Rick Vanburen call Devan Dwyer,
21 D?

22 A Yes, ma'am, all the time. Always use -- everybody
23 calls him D.

24 Q Did -- you indicated that D was the person that had
25 the gun?

1 A Yes, ma'am.

2 Q Did he do all the talking?

3 A Yes, ma'am. He -- as a matter of fact, he did all
4 the talking.

5 Q Did Rick Vanburen ever say a word?

6 A No, ma'am. D did all the talking.

7 Q Did you ever see Rick Vanburen with a gun?

8 A I never saw him with a gun, no, ma'am.

9 Q And did you ever say anything to Devan as he was
10 robbing you?

11 A I told him I know who he was, and I think that's what
12 got me shot.

13 Q What happened right after you told him that?

14 A He shot me.

15 Q Please answer any questions Mrs. Stevens may have.

16 A Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MRS. STEVENS:

19 Q Good afternoon. Is it Ms. Williams now or
20 Ms. McKenzie?

21 A Either one. It's McKenzie.

22 Q Okay. And everyone calls you Victoria?

23 A Uh-huh, yes, ma'am.

24 Q Okay. You testified that you heard the screen door
25 open. Did you -- was it the front or the back?

1 A It's the front door.

2 Q Okay. And then you heard footsteps?

3 A Yes, ma'am.

4 Q Okay. Were you awake when the door opened or were

5 you asleep?

6 A I was awake when the door opened. If I dozed off, it

7 was the screen door that woke me up. That screen door is

8 real loud. If you pull on it or any -- in any type of

9 way, it's going to make a loud noise. The mobile home was

10 kind of raggedy, so...

11 Q Did you tell the police in your statement that you

12 were asleep?

13 A Did I tell them I was asleep?

14 Q Uh-huh.

15 A I probably was sleeping. I probably slept, woke up,

16 started doing my hair some more, slept, woke up, did my

17 hair some more.

18 Q And you said -- where was Mr. Anderson?

19 A He was laying behind me like at -- almost at the --

20 like at the foot of the bed but his body ended up in the

21 middle of the bed.

22 Q Was he asleep or awake?

23 A I think he was -- from what I thought, he was asleep.

24 Q Okay. Were these gentlemen wearing gloves?

25 A No, ma'am.

1 Q Okay. You described one of the people as having
2 small twists, and that was you said Rick Vanburen?

3 A Yes, ma'am.

4 Q Did the other person have any distinguishing features
5 that deal with his hair?

6 A A big afro up under a T-shirt.

7 Q Did you see this big afro?

8 A Always do every day.

9 Q That night did you see it?

10 A Yes, ma'am. That night, that -- earlier that day,
11 the day before that, day before that.

12 Q At 4:00 in the morning on August 3rd did you see a
13 big afro?

14 A Oh, no, ma'am. That was probably like one something
15 when I went to the door and I saw them standing up under
16 the light. I didn't see the afro. I just saw him
17 standing up under the light, the clothes he had on and the
18 white T-shirt wrapped around his head as usual.

19 Q Does anybody else you know wear a white T-shirt?

20 A Not around their head.

21 Q You don't mention that he was wearing anything on his
22 head in your statement. Why is that?

23 A Yes, I did.

24 Q Around his head or his mouth?

25 A He had it around his mouth and a white T-shirt around

1 his head.

2 Q And you told the police that?

3 A Yes, ma'am.

4 Q Okay. What color was the gun?

5 A I don't know. I don't know. Only thing I remember
6 is a fire coming from the -- now, I believe it was a dark
7 colored gun, but I'm not sure.

8 Q When Ms. Fant asked you to describe what Rick was
9 wearing, you said you couldn't tell him because all you
10 could look at was the gun. So what did the gun look like?

11 A Okay. Yeah. Before Rick had on a white T-shirt, a
12 pair of jeans and something wrapped around his mouth.

13 Q Was that before -- you said before. Before when?

14 A When they first walked in. When I was sitting on my
15 bed and they came to walk in my door, my bedroom door, I
16 looked back to see who it was. I noticed Rick, but my
17 main focus was on D because he had the gun. That's where
18 my focus went to.

19 Q Okay. And what was the conversation that you had?

20 A He just told me, give me everything. He said, give
21 me everything you got.

22 Q What do you think he was talking about?

23 A Must have been talking about money. I don't know
24 what he was talking about, but that's what he got, money
25 and the cellphone.

1 Q Okay. Did he ask for anything else?

2 A No, ma'am, he did not.

3 Q You said as soon as you said, I know who you are, he
4 shot you; is that correct?

5 A Yes, ma'am, as he was backing out.

6 Q So why in your statement did you tell the police you
7 had some more conversation?

8 A I did what?

9 Q Tell the police that you had more conversation.

10 A We had more conversation?

11 Q Yes.

12 A No, I didn't tell them that. I told them about the
13 conversation when he came in, what he said to me and what
14 I said to him, and he shot me.

15 Q So after you said, I know who you are, he didn't say,
16 do you have anything else?

17 A Oh, yeah. He did ask me if -- oh, yeah. He said, do
18 you have anything else? And I told him, I said no. He
19 said, are you sure? I said, yes.

20 Q But that's not the same thing as shooting you as soon
21 as you said, I know who you are.

22 A You are right, ma'am, but either way, he shot me.

23 Q In your opinion.

24 A Oh, he did it.

25 Q Do you have a prior record?

1 A Oh, yes, ma'am.

2 Q Do you have a conviction for drugs?

3 A Yes, ma'am.

4 Q What kind of drugs was it?

5 A Crack cocaine.

6 Q And what else?

7 A Marijuana.

8 MS. FANT: Objection, Your Honor. Can we
9 approach?

10 THE COURT: Yes, ma'am.

11 (Whereupon a bench conference was held.)

12 THE COURT: Ladies and gentlemen, I need to
13 discuss something outside of your presence. It's a
14 good time to take a break any way. And I will get
15 you back out just as quick as I can.

16 But I remind you to don't start discussing this
17 case yet.

18 (Jury left the courtroom at 4:17 pm.)

19 MS. FANT: Your Honor, she's got my only copy
20 now.

21 (Whereupon a bench conference was held.)

22 MRS. STEVENS: Not only on this record, but when
23 I looked up her name under both McKenzie and
24 Williams, It shows a conviction for crack cocaine and
25 the simple possession of marijuana and the

1 contributing to the delinquency of a minor.

2 It all occurred on -- in 9 of '07 if -- I
3 believe that they actually occurred earlier than
4 that. They occurred in 2005. She had other charges
5 that were dropped at that time.

6 THE COURT: Okay.

7 MS. FANT: The contributing is obviously not
8 impeachable. That does not carry more than one year.
9 Or actually it can carry up to three years, but I do
10 think that -- I don't have the date of that.

11 I'd like to see on the NCIC because I disagree
12 with what shows up on those records that she's
13 talking about. When I looked at this, the only thing
14 that I showed -- that showed up within the relevant
15 timeframe...

16 MRS. STEVENS: I promise you, Your Honor, if
17 they were trying to use it against my client, they
18 would be all over this record right here saying, oh
19 yeah, that's a conviction. They cannot have it both
20 ways.

21 MS. FANT: No. I can tell you right now, I do
22 not use locals and without it -- in pleas I do when I
23 ask the defendant to admit to it if that's his
24 record, but I never use them.

25 And you can question law enforcement on that.

1 That's a joke if they have to put stuff in there.
 2 And it's the same thing with that little public
 3 online index. I think NCIC is the most credible, but
 4 you can also ask Ms. Williams or Ms. McKenzie.

5 MRS. STEVENS: Asked her and she -- you jumped
 6 up.

7 MS. FANT: No. And interestingly, there's no
 8 conviction for contributing and there's no conviction
 9 for possession of marijuana fifth even if we go by
 10 her own--

11 MRS. STEVENS: This is her record, too. They
 12 are both hers. You gave me both of them.

13 MS. FANT: It's the same one.

14 MRS. STEVENS: No, it's not.

15 THE COURT: It will be in the Clerk's Office.
 16 The official records will be in the Clerk's Office --
 17 occurred in this county.

18 MRS. STEVENS: Which is where I looked on the
 19 computer, Your Honor, in the personal index search
 20 which is kept by the Clerk of Court's Office. And it
 21 said marijuana--

22 THE COURT: But you can pull the actual sheet.

23 MS. FANT: Which I would think we need to do
 24 because I think that is frequently incorrect what's
 25 on that public index search.

1 THE COURT: Well, then she should know.

2 Ms. McKenzie, did you have a conviction for
3 possession of marijuana and contributing to the
4 delinquency of a minor that same day?

5 THE WITNESS: I believe I did. I'm not going to
6 lie to you. I believe I did.

7 THE COURT: Then she's got that on the record
8 unless y'all can go downstairs and look it up in the
9 Clerk's Office real quick because if she denied it,
10 then we... then we'd be looking it up if you
11 couldn't -- see if it's on there. But she's telling
12 me it's on there. Are there any other--

13 MS. FANT: It doesn't say anything about it --
14 the possession of marijuana on the NCIC. It's got
15 the contributing and the cocaine.

16 MRS. STEVENS: May I just say, Your Honor, that
17 NCIC is not always reliable because I had Magistrate
18 Court clients who have a conviction for CDV on their
19 NCIC which is still showing pending in the Clerk's
20 Office and the Magistrate's Office, and I had to try
21 a case on someone saying they been convicted.

22 So they are not always exactly 100 percent
23 correct either.

24 THE COURT: I understand, and they are not going
25 to...

1 MS. FANT: I would agree none of them are all
2 the time correct. That's why it's so--

3 THE COURT: The official documentation signed in
4 the Clerk's Office is what -- I mean, that's what
5 you're going on the three strikes and everything
6 else, that's the only thing--

7 MRS. STEVENS: They have a room down here, Your
8 Honor, they keep all of that sort of stuff, copies of
9 the sentences, records and everything.

10 THE COURT: I understand that. That's what is
11 at issue. If they are official record keeper of
12 Court of General Sessions, if they certify that it's
13 an official record, it's an official record.

14 MS. FANT: That is true. Your Honor, when you
15 asked Ms. McKenzie, I wasn't paying attention. She
16 admitted?

17 THE COURT: That she had been convicted of both
18 of contributing to the delinquency and possession of
19 marijuana.

20 MRS. STEVENS: You mean in front of the jury?

21 MS. FANT: No, no, no. I mean just now. Just
22 now.

23 THE COURT: You know, she takes the position she
24 wasn't, then I was going to look up the actual
25 record. Record she has says she was. She told me

1 she was.

2 MS. FANT: Is that it?

3 MRS. STEVENS: Other than the contributing to
4 the delinquency of the minor, those were at the same
5 time.

6 MS. FANT: Well, she's admitted it, Your Honor,
7 and that's--

8 THE COURT: Possession of crack, possession of
9 marijuana, and contributing to the delinquency of a
10 minor. She has admitted -- she was forthright. The
11 jury wasn't in here. She was forthright with me.

12 MS. FANT: I just did not recall those on there.
13 That's my fault, Your Honor. I haven't looked at it
14 in a while.

15 THE COURT: Okay. Anything else before we bring
16 the jury back? I will keep them out now... all
17 right. Long as you -- you can't come back, think of
18 something else. I need to know right now.

19 MRS. STEVENS: I'm fine. I need to know where
20 the quickest potty is.

21 (Whereupon there was a pause.)

22 MS. FANT: Before the jury comes in, one thing.

23 THE COURT: Okay.

24 MS. FANT: Since you are allowing the
25 impeachment with the crack and the marijuana, we're

1 assuming that that is not opening the door to those
2 photographs and any discussion of drug paraphernalia
3 or whatever found at the scene. It is just for
4 impeachment purposes; is that correct?

5 *THE COURT:* That's my understanding. She's
6 asking about a prior record. And under the rules as
7 long as it's not more prejudicial than probative, I
8 have allowed it in.

9 I didn't know about that record. Initially
10 y'all told me the only thing she had was a possession
11 of crack, so that's what I ruled on. And now I found
12 out it's possession of marijuana which...

13 *MS. FANT:* But it's not related to this
14 incident, Your Honor.

15 *THE COURT:* Oh, I understand that. But she --
16 and she's just going to ask her that question and go
17 on.

18 *MS. FANT:* Okay.

19 *THE COURT:* She can't get into the background
20 and facts about it because it's not related to this
21 incident. She's just doing it solely for
22 impeachment. Anything else?

23 *MRS. STEVENS:* No, sir.

24 *THE COURT:* Okay. See if the jury -- they had
25 enough time. All right. If they are ready, I'm

1 ready. They need more time, that's fine.

2 (Jury entered the courtroom at 4:27 pm.)

3 THE COURT: Mrs. Stevens, you can continue your
4 cross-examination.

5 BY MRS. STEVENS:

6 Q And do you have a conviction for marijuana?

7 A Yes, ma'am.

8 Q And how about contributing to the delinquency of a
9 minor?

10 A Yes, ma'am.

11 Q Okay. You said that neither one of them was wearing
12 gloves; correct?

13 A Yes, ma'am.

14 Q Okay. The thing about your hair, explain that to me
15 again. . What were you doing to your hair?

16 A Taking microbraids out of my hair.

17 Q What are microbraids?

18 A Microbraids are these that I have in my hair now, and
19 they take hours to put in and take out. And I was just
20 sitting there taking the microbraids out of my hair.

21 Q Do you usually do that in the middle of the night?

22 A I do it all the time. Sometimes I change my hair two
23 and three times out of a week. That's what I do is my
24 hair, and I keep my hair fixed. I can microbraid my hair
25 one day and I can take it out that night. That's just me.

1 That's how I do my hair.

2 Q When do you sleep?

3 A I sleep when I get sleepy.

4 Q You said you do hair. Do people come to your house

5 or do you work out of a shop?

6 A I was working at Carolina Beauty Salon. Amy Walters

7 own it, which is my cousin. I was working there at one

8 point. Now since the booth rent is so high, I'm doing it

9 at my house, and I do have a license to do it.

10 Q Okay. Now, when were you working at the Carolina

11 Beauty...

12 A I work -- okay. I worked there for like a month

13 before I got locked up. And when I got home, I came home

14 in July. I worked there for like two months and I

15 stopped.

16 Q Okay. So you worked -- you were working there at the

17 time of this incident?

18 A Before I got shot? Yes, ma'am. Yes, ma'am.

19 Q At the time.

20 A Before I got shot.

21 Q Okay. And did you have a regular schedule?

22 A No, ma'am. I don't have a regular schedule. You can

23 go in -- if you have a client, you can go in. If you

24 don't have a client, you can still go in. You don't have

25 to go in.

1 Q How long have you and Rohan been living together?

2 A When we got shot, he was probably there about two or
3 three weeks.

4 Q How long had you known him?

5 A Probably about seven, eight months before that.

6 Q You said that you had a relationship with Rick
7 Vanburen. When was that?

8 A As a matter of fact, I -- when I started letting
9 Rohan come to my house, I stopped talking to Rick probably
10 about a month before that. I'm saying Mr. Rohan --
11 Mr. Rohan the whole time.

12 Q Okay. Did -- who ended the relationship between you
13 and Rick?

14 A I did.

15 Q Did he seem upset about it?

16 A I hadn't been seeing him until the day before I got
17 shot when he came to my house and tried to talk to me, so
18 I couldn't tell you if he was upset or not. I didn't
19 care.

20 Q Okay. Okay. Who got shot first?

21 A I did.

22 Q Okay. And -- okay. And how many shots were fired?

23 A Twice. It was two shots fired, one on me and one on
24 Rohan.

25 Q Okay. And who was sitting in front of whom?

1 A Who was sitting in front of who?

2 Q Uh-huh. Was he in front of you or behind you?

3 A He was behind me.

4 Q At any time did you get off the bed?

5 A Yeah, to get the money for him and to get my

6 cellphone off the nightstand.

7 Q So two times you got up off the bed?

8 A Yes, ma'am.

9 Q Did Rohan get up off the bed?

10 A No, ma'am, he never moved.

11 Q Did he say anything?

12 A He never said anything. Even when he was shot, he

13 never said anything. I think he was just scared. He

14 probably seen them in there and he was real scared. I'm

15 not sure, but he never said anything.

16 The only thing I remember when they left out my back

17 door, Rohan jumped up.

18 Q Okay. You said that the person with the gun walked

19 through the door and stood where?

20 A Oh, walk -- he walked through my bedroom door, my

21 foot -- the foot of my bed is right here, and this is my

22 bedroom door. He walked right there and he walked around

23 and stood up in front of the nightstand where my

24 television was at.

25 Q Okay. Do you think he could see where your cellphone

1 was from there?

2 A Yes, ma'am.

3 Q And the jewelry?

4 A Yes, ma'am.

5 Q Do you think he could see the top of your dresser?

6 A Yes, ma'am.

7 Q Where did the money come from?

8 A My dresser, the big dresser.

9 Q On top or in a drawer?

10 A I think I had it in a drawer. I'm not sure. I'm not
11 sure. I don't want to lie. I am not sure.

12 Q To your knowledge is Mr. Dwyer still dating
13 Cassandra?

14 A From what I heard, they off and on, call the police
15 on each other or whatever. I don't know what they doing.
16 I don't deal with Cassandra. I stay far away from her and
17 I definitely don't deal with him.

18 Q Is there some sort of problem between you and
19 Cassandra?

20 A Oh, me and her had problems way before. That's why I
21 think she had something to do with this. Yeah, she stole
22 some money from me. Yeah, we did have problems.

23 Q Okay. You said you saw Mr. Dwyer walking in front
24 of -- on the street talking on a cellphone.

25 A Yes, ma'am.

1 Q Was he just walking in front of your house or was he
2 walking...

3 A No, he was just walking back and forth like my
4 house -- my house is -- on that part of ., my
5 house is the only house that's on that street. So he
6 walked from the corner in front of my house to Lafayette.
7 He just kept doing that. The day before that, he just
8 kept doing it.

9 Q So you said that when you first talked to the police,
10 you told them what?

11 A What did I tell them?

12 Q Uh-huh.

13 A I told them who shot me. He asked me who shot me,
14 and I told him.

15 Q What exactly did you tell him?

16 A I told him D shot me. He asked me if I know who did
17 it, and I said D. He asked me if I know where he is. I
18 told him, I said, well, he live in a brown trailer on the
19 corner, I believe it's . He goes with
20 my -- well, he go with Cassandra, Poopie.

21 Q Would it surprise you to know that the officers
22 didn't put that in their incident report?

23 MS. FANT: Objection, Your Honor.

24 A That's not my problem.

25 THE COURT: Hold on a minute. Ma'am?

1 MS. FANT: Calls for a hearsay response. She
2 has no idea what an officer would put in a report.

3 THE COURT: Okay. I will sustain it.

4 BY MRS. STEVENS:

5 Q Okay. Did you in your statement to the police tell
6 them about where D lived?

7 A Yes, ma'am. In my statement?

8 Q Yes, ma'am.

9 A Only thing I told them was that he lived with
10 Cassandra, and he did, and he did at that time.

11 Q Did you tell them that or did you tell them you told
12 Mr. Dwyer that?

13 A I told the police that.

14 Q Okay. And you said that you told them that he lived
15 in a brown trailer across the street?

16 A Yes, ma'am.

17 Q Okay. Did you tell them anything about Rick?

18 A No. My focus at that point was on Devan. He was the
19 one that did the shooting. He asked me if I know who shot
20 him, and I told him who shot me, and that's who they was
21 supposed to been looking for.

22 I couldn't breathe. I could barely breathe because I
23 didn't know my lungs had collapsed, so it wasn't too much
24 I could say to them.

25 Q What kind of pain medication were you on, do you

1 know?

2 A When?

3 Q When you were in the hospital.

4 A No, I don't know. I don't know. No, ma'am.

5 Q But were you on pain medication?

6 A I don't know. I don't remember.

7 Q Okay.

8 MRS. STEVENS: Beg the Court's indulgence.

9 (Mrs. Stevens was conferring with defendant.)

10 BY MRS. STEVENS:

11 Q Did you meet with the Solicitor to discuss your
12 testimony beforehand?

13 A She asked me what happened, do I remember what
14 happened, and I told her what I could remember.

15 Q So would you say that what you remember say 10 days
16 after the incident and what you remember say today would
17 be the same?

18 A No, ma'am, because some things I probably forgot,
19 some things I remember. It's -- this has been '05. This
20 is '09. And when I got shot, I don't remember exactly
21 what I told them or what -- only thing I knows -- remember
22 telling them is who shot me, the two people that was
23 there, and then I don't care how much pain medication I
24 was on, that's something I do know, that your client shot
25 me.

1 Q So you keep saying.

2 A Oh, he did it.

3 MRS. STEVENS: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MS. FANT: Yes, Your Honor, just to clarify a
6 couple of things.

7 REDIRECT EXAMINATION

8 BY MS. FANT:

9 Q When he shot you, were you sitting or standing?

10 A I was sitting.

11 Q You were sitting on the bed?

12 A Yes, ma'am.

13 Q And was he sitting -- was he standing?

14 A Devan?

15 Q Yes, ma'am.

16 A Oh, yes, ma'am.

17 Q Okay. And what about Rohan, was he lying on the bed
18 or was he standing up?

19 A He was lying. He was lying down with his hands like
20 this, so I thought he was asleep the whole time because he
21 never moved.

22 Q And also just to clarify, you indicated you were
23 having trouble breathing?

24 A Yes, ma'am.

25 Q Did you ever think you were going to die?

1 A That's the whole -- the whole time when -- they
2 didn't think to check Rohan and his pocket to see if he
3 had a cellphone. And when he got his cellphone and
4 started calling, I kept telling him, you know, I'm dying,
5 hurry up, tell them to hurry up, because I actually -- I
6 didn't think I was going to make it. I thought I was
7 paralyzed and I thought I was about to die.

8 Q Did you still think that when you were in the
9 hospital?

10 A Yes, ma'am.

11 Q How long were you in the hospital?

12 A Oh goodness. I think I went in like the -- between
13 the second and the third. They didn't want me to leave,
14 but I asked to be discharged. And I believe I got out
15 like toward the end of that month. I stayed in for about
16 a month.

17 Q And during the time you were at Tuomey --

18 A Yes, ma'am.

19 Q -- is that the time that you felt like you were --
20 your life was in danger?

21 A Oh, yes, ma'am.

22 Q And just finally, even though this happened some
23 three and a half years ago, how is your memory regarding
24 the actual shooting that happened that night?

25 A That is something I will never forget it. I have

1 never -- you know, I have done my wrong. Nobody is
2 perfect. But it don't give nobody the right to come to
3 your house and try to kill you.

4 I remember -- I wish I didn't remember, but I think
5 about this every day. It's not a day that go by that I
6 don't think about this boy shooting me. He had no reason
7 to shoot me.

8 If he wanted something from me, only thing -- I don't
9 care who my enemy is, and anybody can tell you, if you ask
10 me for something and I got it, I will give you. Yeah, I
11 thought I was going to die, would never think he would
12 have done something like that.

13 Q Thank you.

14 MRS. STEVENS: I have nothing further, Your
15 Honor.

16 THE COURT: Okay. Thank you, ma'am. You may
17 step down.

18 THE WITNESS: I can step down?

19 THE COURT: You can step down. Watch your step.

20 THE WITNESS: Okay. Yes, sir.

21 (Witness left the stand).

22 THE COURT: Madam Solicitor, you got somebody
23 you can get up and down in 20 minutes?

24 MS. FANT: I think so, Your Honor. The State
25 would call detective William Lyons.

1 WILLIAM LYONS, after being duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. FANT:

5 Q Detective Lyons, can you tell us where you work?

6 A Employed with the Sumter City Police Department.

7 Q And how long have you worked there?

8 A Since 2004.

9 Q What are your current job duties?

10 A I am currently assigned as the gang detective for the
11 City of Sumter Police Department assigned to criminal
12 investigations division. I handle conducting
13 investigations regarding gang-related activity, doing
14 surveillance, serving arrest warrants, search warrants,
15 things of that nature, assisting other entities within our
16 division as well.

17 Q And how long have you been doing this?

18 A Been the gang detective since 2007.

19 Q And prior to that, were you also with the Sumter
20 Police Department?

21 A Yes. Began on patrol as many officers do in our
22 department, became a K9 officer, and then went to work on
23 our special enforcement team called the neighborhood
24 enforcement team. From there I transitioned into
25 investigations.

1 Q Now, back in 2005 how did you become involved in this
2 case?

3 A On August the third, 2005 our patrol shift was
4 dispatched to a shots fired call at in
5 the city of Sumter. I was actually the first officer to
6 arrive on the scene that morning.

7 Q And is that in Sumter County?

8 A Yes, ma'am, it's in Sumter County, but it actually
9 falls in the city's jurisdiction. That particular area,
10 the Sumter Police Department is the primary responding
11 agency to that area.

12 (Whereupon, State's Exhibit No. 23 was marked
13 for identification only.)

14 BY MS. FANT:

15 Q Detective Lyons, I will show you what has been marked
16 for identification as State's Exhibit 23. Do you
17 recognize what that depicts?

18 A Yes, ma'am. The two main thoroughfares there are
19 Highway 521 and US 15. The and
20 area actually sit in between the two. And the
21 area where the incident occurred is actually depicted on
22 there as well.

23 Q Is -- what in fact is this, the... is it a map?

24 A Yes, it's a generalized map of the streets within the
25 area.

1 Q And I assume it's -- is it to scale?

2 A No, ma'am, but it's a fairly good depiction of the
3 area.

4 Q And do you recognize those streets from your own
5 personal knowledge?

6 A Yes, ma'am, I do.

7 MS. FANT: Your Honor, at this time I would
8 offer State's Exhibit 23 into evidence.

9 THE COURT: What say the defense?

10 MRS. STEVENS: No objection, Your Honor, as long
11 as the jury is aware it's not to scale.

12 THE COURT: All right. State's Exhibit 23 is in
13 without objection.

14 (Whereupon, State's Exhibit 23 was admitted into
15 evidence.)

16 BY MS. FANT:

17 Q Detective Lyons, I will ask you to step down.

18 A (Complied).

19 Q And if you can show us on this map the area that
20 we're talking about where you responded, and I will hold
21 it so you can point so the jury can see.

22 A Okay. For directional purposes, this is US 15. This
23 would be northbound heading back into the city of Sumter.
24 Southbound heading out as well as on Highway 521 same
25 direction.

1 The call was dispatched and it's actually going to be
2 in this corner right here, , and
3 Trailer set with the front door facing , and
4 it ran long-ways on , actually a
5 address because the way the property was done.

6 Q And could you just put an X for her house there?

7 A (Complied).

8 Q And are you also familiar with the property on

9 . where the defendant was living with

10 Cassandra McCray?

11 A Yes, ma'am.

12 Q And where was that in relation to this?

13 A It's going to be caticorner across the street in this
14 area right here.

15 Q Okay. And is -- what is -- what is this down here?

16 A This street actually dead-ends now. This is the old
17 Korn Furniture industry, manufacturing facility that runs
18 pretty much this entire block from Fulton Street all the
19 way back to Northwestern Avenue over here.

20 Q Now, when you responded to the 'shots' fired call,
21 where did you go?

22 A .

23 Q And you recall what time it was when you got to the
24 residence?

25 A It was sometime between 4:20 and 4:30 in the morning.

1 It was early that Wednesday morning.

2 Q Would you estimate for us how long it took you to
3 respond from the call that you got till the time you got
4 there?

5 A Probably less than a minute.

6 Q And what did you do upon arrival at the
7 trailer?

8 A When I arrived on the scene, there was -- I believe
9 there was some county deputies that had arrived, too. I
10 think they were dispatched as well given the severity of
11 the call.

12 Got there, I think a few deputies had arrived. We
13 secured the scene, made initial entry into the residence
14 to check for injuries at which time we were met by the
15 male victim, Mr. Rohan Anderson, who had explained that he
16 along with Ms. Sarah McKenzie had been robbed and shot
17 within the residence, and we...

18 Q Now, did -- well, first of all, describe what you
19 mean by secured the residence.

20 A Basically we went inside to secure to make sure,
21 number one, check for injuries to determine, you know, how
22 severe, what else are we going to need, are we going to
23 need additional officers to respond, then we secured the
24 scene keeping anyone else from coming in and out of the
25 scene that's not necessary.

1 Q And how many people were inside the residence when
2 you got there?

3 A Just Mr. Anderson and Ms. McKenzie.

4 Q And who did you see first?

5 A Mr. Anderson was the first gentleman that we came in
6 contact with. He was actually standing in the front
7 almost as if he was waving us down when we arrived on the
8 scene.

9 Q And what was his condition?

10 A Mr. Anderson had suffered a gunshot wound to -- it
11 looked like to his left arm. He was obviously alert.
12 Conscious. He was talking with us standing up, very
13 frantic, very scared.

14 He kept saying that his girlfriend, Ms. McKenzie, had
15 been shot, get her some help, please get her some help.
16 She was in the back bedroom. She was obviously the more
17 serious of the two.

18 Q And was he able to tell you what had happened?

19 A Mr. Anderson said that he was actually in the back
20 bedroom asleep with Ms. McKenzie when two black males came
21 into the residence. They were robbed at gunpoint during
22 which the altercation, shots were fired.

23 He suffered a gunshot wound as well as Ms. McKenzie,
24 and the two gentlemen fled on foot.

25 Q Now -- excuse me. When you arrived at the trailer,

1 where was Sarah?

2 A She was still in the back bedroom.

3 Q And what condition was she in?

4 A She was on the bed. She had actually suffered a
5 gunshot wound which appeared to be up on the right area of
6 her arm. She -- her breathing was very labored. She was
7 in an extreme amount of pain.

8 She was conscious to the point where she could speak
9 to us a little, but she was in a lot of pain, somewhat
10 frantic as well.

11 Q Did you have any difficulty in understanding her?

12 A Yeah. Her breathing was labored, shortness of
13 breath. Obviously learning where the bullet traveled, the
14 injuries would definitely cause someone to have, you know,
15 shortness of breath.

16 Q And what was she able to tell you about the
17 assailants at that time?

18 A At the time when I was asking her could she tell us
19 who did it, the main thing she kept stressing was that D
20 did it, D did it, and that he lived in the area.

21 Q Excuse me. Did she mention a brown truck?

22 A That's what I heard. Like I said, her breathing was
23 extremely labored. She was having difficulty
24 communicating. She kept saying D.

25 I got, lived in the area, and I got the word brown,

1 but from what I was understanding from coming out of her
2 given that her breath was so labored, it sounded like
3 truck.

4 Q And is that what you wrote down in the initial
5 incident report?

6 A That is correct. That's what was in the -- in the
7 incident report.

8 Q And did you later learn that she actually was saying
9 something else?

10 A Yes, ma'am. I later learned that what she was trying
11 to say was brown trailer. She had gotten a, you know, D
12 did it, lived nearby, and she was actually saying brown
13 trailer and not brown truck.

14 Q And was there actually a brown trailer nearby?

15 A Yes. That's going to be Ms. Davis' residence
16 caticorner right across the street where Mr. Dwyer was
17 residing.

18 Q Now, the incident report indicated that I believe --
19 well, tell us first thing I guess what's the purpose of an
20 incident report? Are you the detective or are you just
21 the initial person?

22 A I'm the -- when a patrol officer takes the initial
23 incident report, it's getting the basics, the who, what,
24 where, when, why, gives the incident location, the time.
25 It's going to be a generalized description of the incident

1 that took place.

2 Obviously there's only so much room and there's only
3 so, you know, write so much in an incident report. It's
4 basically generalized. It gets the -- like I said, it
5 answers the who, what, where, when, and why if those
6 questions can be answered.

7 It's to give the detective something to go on for a
8 follow-up investigation.

9 Q Now, when you thought Sarah had said brown truck,
10 what did you do as a result?

11 A That information was given out to the patrol shift,
12 our city division, as well as Sumter County Sheriff's
13 Department. With that information, you know, we were told
14 that the assailants may be probably driving a brown
15 pick-up truck, a bolo, which is a be-on-the-lookout was
16 given out to both of our jurisdictions for officers to
17 keep their eyes open for a vehicle matching that
18 description, you know, to stop and identify anyone in the
19 vehicle, especially anyone that may have went by the
20 nickname of D.

21 Q And did you find out at that time that Sarah was
22 actually telling you that it was a brown trailer?

23 A No. It wasn't until later on in the investigation
24 that I actually learned after speaking with the detectives
25 that they clarified what she was saying.

1 Q Now, one of the things that you -- I believe you
2 wrote in your incident report was that the suspects were
3 wearing masks, in quotes. Could you explain why you put
4 that there and what you had actually learned about what
5 happened?

6 A The word mask, I put that in the report because that
7 was what was given to me by Mr. Rohan Anderson. He said
8 their faces were covered. Used the term mask as a way of
9 saying that their face is covered. It's a generalized
10 description of someone using something to cover their
11 face.

12 He wasn't extremely explicit as to what the mask was.
13 He said the face was covered. Ms. McKenzie at no point in
14 time ever told us anything about their faces being
15 covered.

16 It was later on in the investigation after speaking
17 with the detectives that it was -- the faces were covered
18 with a T-shirt from about the nose down, which would
19 have -- lead someone to believe it could be considered a
20 mask as far as somebody using something to attempt to
21 conceal their face.

22 Q Was there ever a time when you talked to Sarah that
23 she indicated that she didn't recognize them because of
24 these apparent face coverings?

25 A No, ma'am.

1 Q Did you have a long conversation with either
2 Mr. Anderson or Sarah?

3 A No, ma'am. It was mainly just trying to get the
4 quick gist of what had happened there that morning. Like
5 I said, she was able to tell me that D did it and that he
6 lived nearby.

7 Mr. Anderson was extremely panicky, and our
8 conversation was short. He didn't go into any great
9 details. They were both transported by EMS fairly quickly
10 upon their arrival.

11 Q And that would have been taken to the hospital?

12 A Yes, ma'am, by Sumter County EMS.

13 Q Now, did you remain at the scene or did you go to the
14 hospital with the victim?

15 A I remained on the scene waiting for the detectives
16 from the forensics division to get there in order to
17 process the scene, collect whatever evidence was in the
18 residence.

19 Q And during that process -- and was anything recovered
20 that was related to the shooting?

21 A Yes, ma'am. During the evidence processing, I
22 assisted along with former Detective Shane Lynes who was
23 processing the area and we recovered two .32 caliber shell
24 casings as well as a projectile from one of those casings.

25 Q And where is Detective Lynes now?

1 A Detective Lynes is currently assigned to the Bureau
2 of Alcohol, Tobacco and Firearms as a special agent in
3 Mississippi.

4 (Whereupon, State's Exhibits Nos. 24-26 were
5 marked for identification only.)

6 BY MS. FANT:

7 Q Detective Lyons, I'll -- and I guess so we can
8 clarify this, how do you spell your last name?

9 A L-y-o-n-s.

10 Q And Detective Shane Lynes, how do you spell his name?

11 A L-y-n-e-s.

12 Q So y'all aren't related?

13 A No, ma'am.

14 Q Let me show you for identification State's Exhibits
15 24, 25 and 26. Do you recognize those exhibits?

16 A Yes, ma'am.

17 Q And how do you recognize them?

18 A Exhibit 26 and 25 will be the .32 caliber shell
19 casings that were found inside the residence bedroom, and
20 Exhibit 24 would be the projectile that was found inside
21 the residence in the back bedroom as well.

22 Q Now, when you say projectile, is that just another
23 word for bullet or...

24 A Yes, ma'am.

25 MS. FANT: Your Honor, at this time I would

1 offer those items into evidence.

2 THE COURT: What says the defense?

3 MRS. STEVENS: No objection, Your Honor.

4 THE COURT: Twenty-four, 25 and 26 are in
5 without objection.

6 (Whereupon, State's Exhibits 24-26 were admitted
7 into evidence.)

8 BY MS. FANT:

9 Q After you left the crime scene that day after the
10 processing was done, did you do any follow-up work in this
11 case?

12 A No, ma'am. It was assigned to the investigation
13 divisions, and from there they took over the case.

14 Q So did you actually do any other processing or
15 anything further at all?

16 A No, ma'am.

17 Q And do you know the defendant?

18 A Yes, ma'am.

19 Q What do his friends call him?

20 A He's known as D on the streets.

21 (Whereupon, State's Exhibits Nos. 27-29 were
22 marked for identification only.)

23 BY MS. FANT:

24 Q Detective Lyons, I will show you what's been entered
25 as State's Exhibit nine and what's been marked for

1 identification as State's Exhibits 27, 28 and 29. Are
2 those letter three -- do you recognize those?

3 A Yes, ma'am.

4 Q And do they fairly and accurately depict the scene as
5 you saw it that day?

6 A Yes, ma'am.

7 MS. FANT: Your Honor, I would offer these last
8 three photos into evidence.

9 THE COURT: What says the defense?

10 MRS. STEVENS: I have no objection, Your Honor.

11 THE COURT: In without objection.

12 (Whereupon, State's Exhibits 27-29 were admitted
13 into evidence.)

14 BY MS. FANT:

15 Q Detective Lyons, let me ask you to step down and just
16 stand in front of the jury. This is State's Exhibit nine.
17 Could you just hold this up and tell them what's in that
18 photograph?

19 A It's going to be the entryway. If you could --
20 picture was a little wider, you'd be able to see the
21 entryway into the bedroom here. It's where you actually
22 enter the bedroom. It's going to be the corner of her bed
23 coming through there.

24 The bigger picture I believe can tell you a little
25 better, but I believe that's a pair of shoes, a pair of

1 black tennis shoes along with a can that's on the ground
2 as well as some sort of blue blanket there.

3 It's kind of hard to see with -- this picture is so
4 small, but I believe that's what it actually depicts.

5 MS. FANT: Your Honor, may we publish these to
6 the jury in person?

7 THE COURT: Yes, ma'am.

8 BY MS. FANT:

9 Q And State's 27?

10 A That's going to be a little bit more blown-up picture
11 of that picture there that's passed -- that's being passed
12 around. You can actually see the closer-up of the shoes.

13 If you look closely in this picture, you can see one
14 of the projectiles -- excuse me -- one of the shell
15 casings here as well as another shell casing on the side
16 of this shoe as well.

17 Q State's 28?

18 A This is going to be a blow-up of the second picture
19 that's coming around, and you can see very clearly in this
20 the shell casing that's beside that shoe.

21 Q And finally State's 29.

22 A And this as well is a blow-up of the shell casing.
23 It's actually going to be to the left of that shoe that's
24 in the first picture.

25 Q Thank you. You may take your seat.

1 A (Complied.)

2 Q Please answer any questions Mrs. Stevens may have.

3 CROSS-EXAMINATION

4 BY MRS. STEVENS:

5 Q You said it was a shots fired call. What does that
6 mean?

7 A We're dispatched to a call where -- obviously we
8 receive the call that shots had been fired and someone had
9 been injured.

10 Q Okay. So it wasn't just the shots fired, it was the
11 shots fired with an injury?

12 A Yes.

13 Q Okay. You said that you talked to both Ms. McKenzie
14 and Mr. Anderson briefly at the scene?

15 A That is correct.

16 Q And Ms. McKenzie didn't tell you that Mr -- that this
17 D person lived right across the street?

18 A From what I got from her during my initial speaking
19 with her was that D had done it and that he lived in the
20 area. And of course, during the labored breathing, I got
21 the, you know, the brown truck is what I understood her to
22 say.

23 Q Okay. But she never said he was right across the
24 street so that y'all could have rushed right over there
25 and got him?

1 A Not in those exact words, no, ma'am.

2 Q Thank you. What about Mr. Anderson? What did he
3 say?

4 A The generalized description, two black males entered
5 the residence, one brandished a handgun, demanded money,
6 after which they were -- both ended up being shot and the
7 two guys fled out the back door.

8 Q Okay. And you said he said they were wearing masks?

9 A He said mask.

10 Q Okay. Did he clarify that at any time exactly what
11 he meant?

12 A It wasn't clarified to me personally. It was
13 actually clarified during an interview with -- I believe
14 it was either Detective Culick or one of them.

15 Q Okay. So you didn't take the statement--

16 A No, ma'am, did not, just the initial on-scene report.

17 Q All right. You said that there were .32 caliber
18 shell casings and then one projectile.

19 A Correct.

20 Q Correct? So a shell casing is what?

21 A The spent round. When a weapon is fired, projectile
22 will come out of the end of it, the shell casing will be
23 what's left, the hollow shell more or less of a bullet.

24 Q Okay. And then what is a projectile?

25 A It's going to be the actual round, lead particle that

1 comes out of the -- off the end of the casing once it's
2 fired. The casing holds the gunpowder, the primer, it's
3 fired, the projectile comes out the end of it. That's
4 going to be the spent portion that's laying on the ground.

5 Q So it's not actually the bullet?

6 A Yes, it is a bullet. A projectile is just a fancy
7 word for bullet.

8 Q So you found two shell casings and one bullet?

9 A Correct. The other bullet was still in Ms. McKenzie.

10 Q Okay. Where was the other bullet? Where was the
11 projectile?

12 A On the floor in the bedroom as well closer to the
13 door area.

14 Q I thought it went through him.

15 A It did.

16 Q And landed in front of him?

17 A That's where it was recovered.

18 Q You're not a doctor; are you?

19 A I'm sorry?

20 Q You're not a doctor; are you?

21 A No, ma'am, by no means.

22 Q Okay. Nothing further. Thank you very much.

23 THE COURT: Okay. Anything further, Madam
24 Solicitor?

25 MS. FANT: No, Your Honor.

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

2 (Witness left the stand.)

3 THE COURT: Ladies and gentlemen, we are going
4 to quit for the day before I ask another question
5 about any more witnesses. I remind you that you
6 can't discuss this case yet.

7 When you go home, your family is going to want
8 to know what you have been doing all day, and you
9 can't tell them yet. When this case is over, you can
10 tell them all you want to.

11 But if you have a conversation with them now,
12 they are going to have an opinion, and they haven't
13 been here. You have got to decide this case based on
14 what you hear in this courtroom, so don't allow
15 anybody to talk to you, talk about it with you.

16 Don't read anything if it's anything in the
17 newspaper concerning this case or on TV or radio.
18 You have got to decide this case solely on what you
19 hear in this courtroom.

20 Have a nice evening. If you will be back at
21 9:30 in the morning and come straight to the jury
22 room. Thank you.

23 (Jury left the courtroom at 5:05 pm.)

24 THE COURT: Anything before we break for the
25 day?

1 MS. FANT: Nothing from the State.

2 THE COURT: If y'all will try to get together
3 either today or in the morning, and any other
4 evidence that hasn't been, you know, marked, at least
5 get it marked.

6 And if it's going to be stipulated to, it will
7 make things go a whole lot faster.

8 MS. FANT: I believe all that we have, Your
9 Honor, is the medical records. And as I indicated, I
10 intend to introduce those just based on the
11 self-authenticating attestation of the...

12 THE COURT: Okay. Well, I just...

13 MS. FANT: Custodian.

14 THE COURT: Had any other photographs or
15 anything else?

16 MS. FANT: Oh, the photo line-ups, but obviously
17 we have already...

18 THE COURT: Okay. So that's all the evidence
19 now that we have got. We don't have any more
20 photographs?

21 MS. FANT: At this moment, no, I don't think.

22 THE COURT: Okay. All right. Then I will see
23 y'all at 9:30 in the morning.

24 (Court in recess for the evening.)

25 ***** April 14, 2009 *****

1 THE COURT: All right. State ready?

2 MS. FANT: Yes, Your Honor.

3 THE COURT: Defense ready?

4 MRS. STEVENS: Yes, Your Honor.

5 THE COURT: If you will bring us the jury.

6 (Jury entered the courtroom at 9:39 am.)

7 THE COURT: Madam Solicitor, you may call your
8 next witness.

9 MS. FANT: Your Honor, at this time the State
10 would call Ryan Ross.

11 RYAN ROSS, after being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. FANT:

15 Q Mr. Ross, could you tell us where you work, please?

16 A Safe Federal Credit Union.

17 Q And how long have you worked there?

18 A I started September of last year.

19 Q What do you do at Safe?

20 A I'm the security manager.

21 Q Excuse me. Have you ever been employed by a law
22 enforcement agency?

23 A Yes, ma'am, I was.

24 Q Tell us about your law enforcement background.

25 A I started in 2001 for the City of Sumter Police

1 Department. I was on the patrol division for about three
2 years and then got promoted to investigations where I
3 worked as an investigator starting in property crimes I
4 believe for the first year.

5 And before I finished up, I believe I finished almost
6 a little over two years in violent crimes.

7 Q And as a detective in the violent crimes unit, what
8 were your duties and responsibilities?

9 A You know, we worked anything from criminal domestic
10 violence cases to murders, shooting cases, you know,
11 suicides, anything violent in nature.

12 Q As a detective, were you the initial person that
13 responded to a 911 call?

14 A No. No, patrol division--

15 Q Tell us how that works within the Police Department.

16 A Well, the patrol division, you know, they actually
17 get dispatched to a 911 call. They are the first
18 responders to a scene. From there they actually will, you
19 know, if it's needed, they'll call out an investigator.

20 They will usually call a lieutenant or a sergeant on
21 a shift, and then from there they make the decision to
22 call out one of us depending on what type of crime scene
23 they have.

24 Q And how did you become involved in this case?

25 A Normal working hours for investigators is 8:30 to

1 5:30. The day of this incident, we came in that morning,
2 they had an investigator that was on call that night that
3 got called out to the incident in this situation, and they
4 were out there.

5 We came in in the morning. We were briefly, you
6 know -- we were briefed that morning about the situation.
7 Myself along with Detective Culick. I was assigned the
8 case as the lead detective. We responded to the incident
9 location.

10 Q Now, did you actually go to the scene of the
11 shooting?

12 A We did. That was the -- after being briefed at the
13 station, we actually went out to the scene to get a visual
14 of -- as to what happened. That's what we do, is just
15 protocol to kind of get a walk-through with some of the
16 guys that have been out there at -- the crime scene unit.

17 Q And -- excuse me. Did you actually process the
18 scene, crime scene?

19 A I did not, no, ma'am.

20 Q Are you aware that there were some shell casings and
21 a bullet that were recovered there?

22 A I was, yes, ma'am.

23 Q And were those ever sent to SLED?

24 A They were.

25 Q And was there ever any match made with a handgun?

1 A No, ma'am, we never found a handgun. We sent them
2 off with, you know, obviously the theory that a handgun
3 can be recovered, but one was never recovered.

4 Q Now, did you go to the hospital?

5 A We did, yes, ma'am.

6 Q Excuse me. And when did you go there?

7 A We went there after the crime scene doing a
8 walk-through, and that's -- directly from there we went
9 straight to Tuomey Hospital to the ICU.

10 Q And what did you do when you got to the ICU unit?

11 A We spoke to the nurses that were, you know, that had
12 Ms. McKenzie under their care, as to what was going on,
13 how she was doing.

14 And at the time she had a breathing apparatus, a
15 ventilator in her throat, so he was able -- unable to
16 actually speak to us, and she was under heavy sedation at
17 the time.

18 Q Was she able to confirm who had shot her?

19 A She gave -- she gave some signals as to -- we asked
20 her some questions at the time because on the incident
21 report, the responding officer -- as she was being put on
22 the gurney, she kept stating that a fellow by the name of
23 D shot her.

24 And we -- myself and Detective Culick actually were
25 trying to ask her, you know, even though she had this

1 breathing apparatus -- we wanted to try to make an arrest
2 as quick as possible. That's the main thing. Guy out
3 there with a gun. I mean, we try to do what we can
4 quickly.

5 And even though she was, you know, had all this on
6 her, we tried to ask her. And she did nod. She did blink
7 when we said the name D. So we took it as, you know, the
8 initial officer actually had some good information, so we
9 tried to follow that up as quickly as possible.

10 Q Okay. Now, following that brief visit with Sarah,
11 did you show her a photographic line-up at the time?

12 A No, we didn't. We didn't have enough information to
13 actually produce anything at the time.

14 Q Other than D, did you have the defendant's full name
15 at that time?

16 A I did not, no, ma'am.

17 Q How did you later develop Devan Dwyer as a suspect in
18 this case?

19 A Well, with some of the information that we have
20 internally on some nicknames, you know, the fact that
21 she -- she stated at the time a brown truck, we were --
22 developed that the brown trailer in the area where she
23 lived, you know, was right there near her home. Obviously
24 her cousin, Cassandra Davis, lived right there.

25 We developed that a suspect by the name of Devan

1 Dwyer stayed with her cousin, Cassandra. And we got
2 information and sent it off to SLED to get a photo line-up
3 of a Devan Dwyer, and from there we actually produced a
4 photo line-up.

5 Q Now, why did you call SLED for the line-up?

6 A As protocol. It's what we do. If we can get
7 something with your driver's license, we try to get
8 something from them, they put it in a nice format for you
9 to produce to the victim.

10 Q And what did you do after you received the line-up
11 from SLED?

12 A That next day we actually went there because what --
13 we left our card with the nurses at the hospital. So as
14 soon as the ventilator was removed and she was able to
15 actually talk to us, you know, we wanted them to call us,
16 so they called us that morning.

17 We got the line-up from SLED. We went there,
18 produced it, and she was able to pick out Devan Dwyer.

19 Q Now, asking you a few questions about the line-up
20 when you showed it to her, who was with you when you
21 showed it to Sarah McKenzie?

22 A My partner, Detective Culick.

23 Q And what if anything did you tell Sarah before
24 showing her the line-up?

25 A Oh, you know, standard with anybody that we show a

1 line-up to, we just tell them what's, you know, what they
2 are about to look at, it's going to be, you know, six
3 males, you know, the same physical nature, gender, age,
4 and you know, we tell them take their time.

5 We hand -- you know, we produce it, hand it to them,
6 let them look at it. There's no rush, you know, to look
7 over everything and make sure, you know, to really just
8 take your time with it.

9 And when you feel comfortable, make a choice if you
10 can, or if you can't, you know, that's fine. We make sure
11 that they know that they don't have to.

12 Q And the line-up that you showed to Ms. McKenzie, what
13 was contained in that that SLED had prepared?

14 A Like I said, it was six photographs of six males, six
15 black males, you know, all of the same age, roughly around
16 the same age approximately, look the same and similar to
17 each other.

18 Q And how are they displayed on the -- on the paper?

19 A It's on a regular sheet of paper. It's just got like
20 three pictures on top, three pictures on the bottom, and
21 they're numbered one through six.

22 Q And why are they displayed in that format?

23 A It's just so nothing sticks out, everything looks,
24 you know, all general, and they actually have to pick out
25 somebody. You don't want anything to stand out at all.

1 Q Did you or anyone else influence Sarah as to which
2 photograph to select?

3 A Not at all, no, ma'am.

4 Q Did you show her any other photos of the defendant
5 prior to showing her the line-up?

6 A No, ma'am.

7 Q What is the photo ID line-up form that y'all use?

8 A We actually, you know, before we are -- when we
9 produce the line-up, we have another form that they sign.
10 It just -- it's a signature that they have to put on there
11 and it's also got a block right there with six numbers in
12 there, and they actually have to circle the number that
13 they picked on the actual line-up.

14 It just confirms what they picked on the line-up with
15 a signature on another page.

16 Q Now, did Sarah select a photograph from the display
17 that you showed her?

18 A Yes, ma'am, she did.

19 Q What did she tell you about the person that she
20 selected?

21 A She stated that was the shooter. She went straight
22 to Devan Dwyer.

23 Q And did she hesitate at all in picking him out?

24 A Not at all, no, ma'am.

25 Q Excuse me. Do you see the person that Sarah picked

1 out in the courtroom today?

2 A Yes, ma'am, I do.

3 Q Where is he sitting?

4 A Directly over there next to Mrs. Stevens I believe
5 with the yellow shirt.

6 MS. FANT: May the record reflect, Your Honor,
7 that he has just pointed out the defendant, Devan
8 Dwyer.

9 THE COURT: Okay.

10 BY MS. FANT:

11 Q Now...

12 (Whereupon, State's Exhibits Nos. 30, 31 were
13 marked for identification only.)

14 BY MS. FANT:

15 Q Now Detective Ross, I will show you what's been
16 marked for identification as State's Exhibit 30 and 31.
17 Do you recognize these items?

18 A I do.

19 Q How do you recognize them?

20 A This was the line-up that was produced for
21 Ms. McKenzie and the identification form that she signed.

22 Q Are those two items in substantially the same
23 condition as when you showed them to Sarah?

24 A Yes, ma'am, they are.

25 Q Have there been any altercations or deletions to

1 those two items since that time?

2 A No, ma'am.

3 MS. FANT: Your Honor, at this time I would
4 offer State's 30 and 31 into evidence.

5 MRS. STEVENS: No objection, Your Honor.

6 THE COURT: Okay. 30 and 31 are in without
7 objection.

8 (Whereupon, State's Exhibits 30, 31 were
9 admitted into evidence.)

10 BY MS. FANT:

11 Q Could I ask you to step down, please, in front of the
12 jury and just for them, holding this up, describe what
13 that is and what she picked out on there.

14 A Okay. This is the identification form right here.
15 Basically, like I said, this is something that confirms
16 the line-up that we showed them. They pick out the number
17 right there that just verifies the number on the line-up
18 itself.

19 She put her signature to confirm what she picked out.
20 It's protocol that we have that signature on there.

21 Q And also just on the actual line-up?

22 A The line-up right here is obviously what SLED
23 produces. It's your driver's license photo that you take
24 at any DMV. They actually -- they do all the configuring
25 of trying to find five other individuals to match the

1 individual that we asked put the picture in.

2 And you see that they are all similar in nature so
3 nothing really stands out. We don't want anything to --
4 to view them to go directly for who we think may be the
5 suspect, so they have to actually pick out.

6 Q Okay. Thank you. Now, after you showed that line-up
7 to Ms. McKenzie, what did you do that morning?

8 A After we showed her the line-up, we actually went on
9 back to the Police Department to go ahead and start
10 working on a warrant.

11 Q Were you able to talk to her at that time?

12 A Oh, we did. We -- we spoke to her briefly a little
13 bit about some more incident, you know, more of the
14 details as to actually what happened that morning. She
15 was able to give us a little bit more information on some
16 other things that had happened as far as who else was
17 involved possibly.

18 Q Was she able to tell you who had shot her?

19 A Yes. She was able to say that Mr. Dwyer, which she
20 knew as D, was the individual that actually shot her with
21 no doubt, but he was with an accomplice at the time, and
22 the name that she gave us was Rick, and that's what she
23 knew him by.

24 She stated that they also stayed over there at her
25 cousin Cassandra, which she called Poopie -- was her

1 cousin, and they stayed right there across from her which
2 was in a brown trailer.

3 Q And did you later get more details from Sarah about
4 the incident?

5 A I did.

6 Q Do you recall when that was?

7 A You talking about an actual --

8 Q Yeah.

9 A -- statement from her? It was -- I want to believe
10 it was another week or two later. I don't know the exact
11 date. Maybe August 15th or something. She -- she was in
12 such pain at the time, and I know I was pushing her, you
13 know, to -- to try to make an arrest.

14 She understood, you know, what we needed to do, the
15 fact that somebody was out there with a gun, we needed to
16 take them off the street so they wouldn't injure anybody
17 else.

18 And the pain that she was in, she was crying the
19 whole time. She even rolled over one time to show me what
20 they had inside of her attached to her back, and just -- I
21 mean, I think you guys seen the pictures.

22 I mean, she was -- she was in excruciating pain,
23 there's no doubt about that. That's why she was in ICU.
24 And at the time we just, you know, we really didn't know
25 how bad it was. They just, you know, they kept her in ICU

1 and we didn't know if she was going to make it.

2 She was talking to us, but it was -- it was tough.
3 And at the time I didn't think it was, you know, the right
4 time to actually take a formal statement. We were just
5 trying to get what we could to try to make a quick
6 apprehension.

7 Q Now -- excuse me. After Sarah identified the
8 defendant as the person who shot her, what did you do when
9 she identified him in the line-up that morning?

10 A That's when we went back to the station and started
11 working on a warrant for his arrest.

12 Q And were you -- did you talk to the defendant at any
13 time?

14 A We did. He actually came to the police department.
15 and wanted to speak to us, you know. We went ahead and
16 took him into custody at the time, Mirandised him, and
17 started to get a statement from him.

18 Q And after that, what did you do?

19 A Well, we got a statement from him. We went ahead and
20 booked him into the jail and charged him, formally charged
21 him.

22 Q Now, I believe initially you had arrested him on a
23 burglary first warrant?

24 A That's correct.

25 Q Was that the only warrant that you initially served?

1 A At the time, yes, ma'am.

2 Q And why is that?

3 A Well, you know, like I said, back to her condition,
4 you know, we didn't want to go ahead and charge him with
5 what he is charged with now because we didn't know whether
6 or not she was going to make it.

7 And through the nurses and doctors, a wound of that
8 nature, I mean, she could take a turn any time. So you
9 know, sitting there I guess and praying she was going to
10 make it, which she did, you know, we held off on the
11 charge at the time.

12 Q Now, after the defendant's arrest and he was taken
13 into booking, what did you do?

14 A After his arrest? We went ahead back and tried to
15 gather up information and speak to Ms. Davis, who was her
16 cousin.

17 Q Okay. Is that Cassandra Davis McCray that you're
18 referring to?

19 A That's correct, yes, ma'am.

20 Q And why did you interview Ms. McCray?

21 A We wanted to get her statement as to what happened.
22 Also we tried to find more information on this Rick
23 character that she's talking about, Ms. McKenzie, when we
24 interviewed her at the hospital.

25 Q And did you in fact have an opportunity to talk to

1 Ms. McCray?

2 A Yeah, we did. Yes, ma'am. We took a statement from
3 her at the law enforcement center.

4 Q Now, without saying specifically what she told you,
5 did her statement vary from what the defendant had told
6 you -- or the defendant had told you?

7 A It did. It did, yes, ma'am. There was a name
8 difference as far as this Rick individual.

9 Q And what did you do as a result of taking her
10 statement?

11 A As a result of taking her statement, we were able to
12 positively identify Rick Vanburen as the other assailant
13 in this -- in this shooting. We weren't able to actually
14 get SLED to produce a line-up because he didn't have a
15 photo with him.

16 If you don't have a photo, an identification card, or
17 driver's license through SLED, then we have to make a
18 photo line-up kind of similar in nature, so that's what we
19 did in this incident.

20 Q And who prepared that line-up?

21 A Myself and Detective Culick.

22 Q And -- excuse me -- what was contained in that
23 display?

24 A It's -- it's basically the same format, which is
25 protocol we try to follow. We don't make it any

1 different. You know, six people in there, six individuals
2 that look the same.

3 And in this incident it is another black male.
4 Mr. Vanburen is a black male, so we try to prepare five
5 other black males in the same, you know, same format.

6 Q And what was the reason for displaying them in that
7 format?

8 A Protocol.

9 Q Now, did you later show the line-up that you prepared
10 of Mr. Vanburen to Sarah?

11 A I did.

12 Q Do you recall when that was?

13 A Let me look at it. On the fourth.

14 Q So is that the same day that she actually picked out
15 Mr. Dwyer?

16 A That is, yes, ma'am.

17 Q Was it at the same time?

18 A No, ma'am.

19 Q And was anyone else with you when you showed that
20 line-up to Ms. McKenzie?

21 A Yeah. I believe Detective Culick was.

22 Q Excuse me. Now, did you or anyone else suggest to
23 Sarah which photograph to pick out that time?

24 A Not at all, no, ma'am.

25 Q Did you show her any other photos of Rick Vanburen

1 beforehand?

2 A No, ma'am, not at all.

3 Q Did she actually select a photo from the display?

4 A She did.

5 Q And what did she indicate to you about that
6 selection?

7 A She stated that was the Rick character that she was
8 speaking about. She didn't know his last name, but that
9 was the individual that came into her house.

10 Q And excuse me --

11 (Whereupon, State's Exhibits Nos. 32-33 were
12 marked for identification only.)

13 BY MS. FANT:

14 Q Now, Detective Ross, let me show you what's been
15 marked for identification as State's Exhibits 32 and 33.
16 Do you recognize these items?

17 A I do, yes, ma'am.

18 Q And how do you recognize them?

19 A This is the line-up that I actually constructed to
20 show Ms. McKenzie with Mr. Vanburen on it.

21 Q Are they in the same condition as when you showed
22 them to Ms. McKenzie?

23 A It is, yes, ma'am.

24 Q And since that time have there been any alterations
25 or deletions to them?

1 A No, ma'am.

2 MS. FANT: Your Honor, at this time I would
3 offer these items into evidence.

4 MRS. STEVENS: No objection, Your Honor.

5 THE COURT: What say -- I'm sorry. Okay. I
6 couldn't hear you, but I read it. They are in
7 without objection.

8 (Whereupon, State's Exhibits 32, 33 were
9 admitted into evidence.)

10 BY MS. FANT:

11 Q Detective Ross, I will ask you to step down again and
12 just show the jury these two items, what they reflect.

13 A Again, this is the same identification form as far as
14 format, and this is on -- this is a photo line-up. You
15 can see there's a different number that she signed on this
16 one that correlates with the line-up that I actually
17 produced for her.

18 This is in the same format, and this was protocol.
19 We don't have a line-up that SLED can produce, if we can
20 get a picture through anything as of jail record or
21 something like that, we'll -- we cut out the head and try
22 to match it up the best that we can.

23 And you can see that it's five other individuals that
24 match up, you know, black males, same age, you know, same
25 features that we try to kind of put in there, nothing

1 sticks out.

2 Q And does it show who she actually picked out?

3 A It does. It shows right here. This is Mr. Vanburen,
4 which she knew only as Rick at that time.

5 Q Now, did you ever obtain any search warrants in this
6 case?

7 A Yes, ma'am, we did.

8 Q And whose residence did you search as a result?

9 A Ms. Cassandra Davis McCray. Is that her last name?
10 I'm sorry.

11 Q It's McCray.

12 A Okay.

13 Q It's Cassandra Davis McCray.

14 A Okay. Yes, ma'am. On -- I believe it was on -- what
15 was the address --

16 Q And why did you search that residence?

17 A That was where Mr. Dwyer had been residing, and they
18 were boyfriend and girlfriend at the time. So we were
19 looking for a gun obviously to match up with the bullets
20 that we found at the incident location.

21 Q Did you also search Mr. Vanburen's residence?

22 A I believe we did. We did, yes, ma'am.

23 Q And do you know when you actually searched these two
24 residences?

25 A Let's see. Mr. Vanburen's residence was on August

1 the fifth and Ms. Davis' was on August the fourth.

2 Q And did you find any incriminating evidence at either
3 residence?

4 A No, ma'am, we did not.

5 Q Were you surprised that you didn't find anything?

6 A Not surprised. Generally when we work a case like
7 this, if we don't make an apprehension within the first
8 few hours, it -- it's tough to find a gun because they
9 have time to actually dispose of it, bury it, hide it
10 somewhere that we were -- normally can't find it.

11 Q And do you know what the reason was for the delay in
12 waiting until later on the fourth and then the fifth to
13 search these two residences?

14 A Well, with the nature, you know, being her in ICU,
15 she's, you know, one of my -- you know, the best witness
16 that we had, you know, the fact that we had to produce the
17 line-ups, actually make an arrest, it was just tough to
18 put it all together and finally find a location as to
19 where they were staying.

20 Q Now, in your discussions with Sarah, at any time did
21 she hesitate in picking out either of the suspects in this
22 case?

23 A No. No, ma'am.

24 Q Did she ever select a person -- a photograph of a
25 person other than the defendant Devan Dwyer or Rick

1 Vanburen?

2 A Not at all.

3 Q And did she ever waiver, express any doubt whatsoever
4 as to who shot her?

5 A No.

6 Q When Rick Vanburen was later arrested for the
7 burglary, he was given an opportunity -- was he given an
8 opportunity to make a statement?

9 A He was, he was Mirandised, yes, ma'am.

10 Q And did you ask him if he wanted to talk to you?

11 A Yeah, we did.

12 Q And did he ever give you a statement about the
13 incident?

14 A No, he didn't.

15 Q Either written or just talking to you.

16 A No.

17 Q Please answer any questions Mrs. Stevens may have for
18 you.

19 A Yes, ma'am.

20 CROSS-EXAMINATION

21 BY MRS. STEVENS:

22 Q Who was the investigator on call that night?

23 A I'm trying to look for it. I beg your pardon. I'm
24 sorry.

25 Q You don't remember it?

1 A Four years, I don't know the exact investigator who
2 was on call. I do know the officers that were out at the
3 scene.

4 Q Is that from your personal knowledge or from you and
5 your notes?

6 A From a personal knowledge. I'm pretty good friends
7 with Billy Lyons outside the force, so yeah, I remember he
8 was there.

9 Q So who else was there without looking at your notes?

10 A Billy Lyons. I remember he was the officer that was
11 there.

12 Q And nobody else?

13 A Crime Scene Unit, Detective Lyons.

14 Q I'm just trying to get at -- you seem to remember
15 everything like it was just yesterday. Is that because
16 you're remembering it from personal knowledge or because
17 you reviewed your notes?

18 A Well, I mean, I remember a lot that -- that happened,
19 but I mean, obviously four years I have to look at notes,
20 yes, ma'am.

21 Q Okay. You said that you talked to Ms. McKenzie --

22 A I did.

23 Q -- the -- that first day that she had the thing in
24 her mouth so she wasn't really communicating, correct?
25 She testified that she told you that day that Devan

1 Dwyer--

2 MS. FANT: Objection, Your Honor. She can't ask
3 him about her testimony to that. She can ask what
4 she -- what he's testified to that she said when he
5 talked to her, but not what she said earlier. He
6 wasn't even here for her entire testimony.

7 THE COURT: Okay. If you -- if you'll just ask
8 her base -- based on his knowledge.

9 BY MRS. STEVENS:

10 Q What did she tell you that first day that you talked
11 to her?

12 A When she had the breathing apparatus in her mouth?
13 We just asked her briefly because Patrolman Lyons was on
14 the scene and he -- as she was being put on the gurney.
15 In the incident report he stated that she -- she kept
16 saying a D is who shot me. So when we talked to her, we
17 asked her. I mean...

18 Q Did she tell you where he lived?

19 A Well, she couldn't speak. She just nodded. When we
20 asked her if it was D to confirm, she kept nodding to us.

21 Q Okay. And how did you come up with brown trailer
22 from brown truck?

23 A Well, that was on the incident report. And later in
24 our investigation after speaking to her when she had the
25 tube removed, she stated that it was a brown trailer, not

1 a truck.

2 Q Did she say it was right across the street?

3 A Pretty much, yeah.

4 Q So even though she told you it was right across the
5 street so you knew where Mr. Dwyer was living, it still
6 took you a day to get a search warrant for that house?

7 A Oh, yes, ma'am. We want to confirm. I mean, it's --
8 that's what we do. We do a total investigation. We don't
9 just go off a hunch. I mean, we need our facts.

10 Q To your knowledge were any fingerprints taken?

11 A I -- I can't recall. I know the crime scene unit was
12 there.

13 Q Okay. You said that the SLED line-up you -- that's
14 protocol?

15 A It is.

16 Q Do you know how old that picture of Mr. Dwyer is?

17 A I do not, no, ma'am.

18 Q So it could have been a week before you showed it to
19 her or it could have been two years before you showed it
20 to her.

21 A It could, but it looks pretty good right now.

22 Q Okay. Does he have an afro in that picture?

23 A His hair isn't much higher than it is now.

24 Q A big old afro in that picture?

25 A In that picture?

1 Q Uh-huh.

2 A No.

3 Q Is that how he looked when you spoke to him at the
4 police station, more like what's in that picture or
5 someone with a big afro?

6 A I can't recall what he looked like at the police
7 station four years ago. I mean, it looked pretty much
8 like that.

9 Q Explain how you can remember some things really well
10 and some things not at all from four years ago.

11 MS. FANT: Objection, Your Honor. That's not a
12 question.

13 THE COURT: Sustained.

14 BY MRS. STEVENS:

15 Q So she never said the word Devan to you. She only
16 said the word D?

17 A Correct.

18 Q And she never said Rick Vanburen, she just said Rick?

19 A She did.

20 Q Did she tell you that she had a relationship with
21 Mr. Vanburen before this incident?

22 MS. FANT: Objection, Your Honor. Hearsay.

23 THE COURT: I will allow her to ask the
24 question.

25 BY MRS. STEVENS:

1 Q Did she tell you that she had a relationship with
2 Rick Vanburen before this?

3 A I don't remember that, not -- I don't remember that
4 in our discussion--

5 MS. FANT: Same objection.

6 THE COURT: Okay.

7 MS. FANT: It's hearsay, Your Honor.

8 THE COURT: I understand and I overruled your
9 objection, so--

10 MS. FANT: Oh, I'm sorry. Because your computer
11 is there, I couldn't see your face.

12 THE COURT: I'm sorry.

13 MS. FANT: I apologize.

14 BY MRS. STEVENS:

15 Q So you don't remember her telling you that?

16 A No, ma'am. What I do remember is the fact that we
17 kept asking her who shot her. We didn't get into the
18 details of what kind of relationship she had if she had
19 any with these people. That's what I remember.

20 Q So you never asked her about a relationship with
21 either one of them?

22 A No, ma'am.

23 Q Okay. Can you tell me what the hand of one is the
24 hand of all means to you?

25 MS. FANT: Objection, Your Honor. Relevance and

1 he is not qualified to speak to the law.

2 MRS. STEVENS: I asked him what it meant to him,
3 Your Honor.

4 THE COURT: I will allow him to answer if he
5 knows what it means to him.

6 THE WITNESS: I don't know how to answer that.
7 Really I don't. I don't know what you're looking for
8 in that answer. I mean...

9 BY MRS. STEVENS:

10 Q Well, if two people are at a scene, do you consider
11 both of them equally guilty under the hand of one is the
12 hand of all?

13 A I wouldn't know how to answer that for you. I'm
14 sorry. I mean, that's not something that I normally hear.
15 I apologize. I don't know if you guys hear that on a
16 normal basis.

17 Q Did you get warrants for both people at the scene?

18 A I did.

19 Q Did you charge them with the same thing?

20 A I believe I did. Let me check my notes on that. I
21 did.

22 Q Okay. All the same charges?

23 A Well, I see a burglary first for Rick Vanburen, and
24 looks as though I only charged Rick Vanburen burglary
25 first, and I charged Devan Dwyer with three other separate

1 charges.

2 Well, a burglary first, possession -- minor in
3 possession of a handgun, and ABWIK, assault and battery
4 with intent to kill.

5 Q Okay. You didn't sign -- get a warrant for him for
6 armed robbery?

7 A No.

8 Q Okay. And you said one count of assault and battery?

9 A Assault and battery with intent to kill.

10 Q But one count?

11 A It's what it looks like, yes, ma'am.

12 Q Okay. You said that you went to the scene.

13 A I apologize. Looks like we did two. I'm sorry, two
14 counts.

15 Q Okay. You said that you went to the scene that day. .
16 Do you remember about what time of day that was? What
17 time did you come to work that morning?

18 A 8:30. So we were there probably 9:00. I don't know,
19 somewhere around there.

20 Q Okay. And then you said you went straight to the
21 hospital to see Ms. McCray -- I mean Ms...

22 A McKenzie.

23 Q McKenzie. Sorry.

24 A Yes.

25 Q And you couldn't really talk to her at that time, she

1 kept saying D, so that's when you went to get the photo
2 line-up?

3 A Correct. Well, we went to go back and work on that.
4 That's right.

5 Q Okay. Do you remember what time of day you showed
6 her the photo line-up?

7 A It was that morning, early morning next day.

8 Q So it was the -- still the morning of the third or
9 the morning of the fourth?

10 A Morning of the fourth.

11 Q Okay. So it was a little over 24 hours later?

12 A Yeah. We had to develop all the information and
13 facts.

14 Q Okay. And what time did you interview Mr. Dwyer?

15 A He came into the law enforcement center after we
16 produced the line-up to Ms. McKenzie as we worked on the
17 warrant, and I -- I couldn't tell you exact time. I'd
18 have to look, but it was after that.

19 It was before lunch I believe, 11:00, somewhere
20 around there.

21 Q Okay. You said that when you were trying to speak to
22 the victim, she was in pain. To your knowledge was she on
23 pain medication?

24 A I don't know what she was on. I'm sure she may have
25 been on something.

1 Q Okay. And you interviewed Cassandra McCray. Was she
2 cooperative?

3 A She gave us a statement, and to my recollection we
4 got a pretty good statement from her.

5 Q Okay. And when you served the search warrants, were
6 they cooperative?

7 A To my recollection, I -- I believe they -- you know,
8 I can't really -- well, I mean, we served the search
9 warrants. I don't remember arresting anybody at the
10 actual search warrant from when we conducted it.

11 Q Did you serve the search warrant before or after
12 Mr. Dwyer was arrested?

13 A That was after.

14 Q So he didn't have time to go home and hide anything
15 before you served the search warrant?

16 A Well, he showed up at the Police Department after we
17 already had a warrant drawn up on him that morning. I
18 don't know -- I mean, it happened -- what, the incident
19 happened on the third, he was arrested on the fourth.

20 I mean, he had 24 hours I would say to do whatever,
21 dispose of whatever evidence he had.

22 Q Okay. But you didn't find anything buried in the
23 yard or anything like that?

24 A No.

25 Q Did you see a fire pit?

1 A To my recollection I don't remember one.

2 Q Okay.

3 MRS. STEVENS: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 BY MRS. STEVENS:

6 Q When Mr. Dwyer came in on the fourth, did you do a
7 GSR test on him, gunshot residue test?

8 A Normally we don't do them when it's been that much
9 time. I don't recall the actual time because I have been
10 out of law enforcement since '06, but it's within a few
11 hours I believe is how much time you have for a GSR kit.

12 And by the time the incident happened, you're looking
13 at a 24 hour period, that stuff has done washed off your
14 hands. I mean, it's -- there's a set period in there
15 where you can actually get a GSR kit to work, which is the
16 gunshot residue. After that time, it's -- it's pointless.

17 Q Okay. Nothing further.

18 MS. FANT: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. FANT:

21 Q Detective Ross, regarding the search warrant and
22 Mrs. Stevens asking you about the cooperation, do the
23 people at the place to be searched have any choice in the
24 matter when you're executing a search warrant?

25 A No, ma'am. That's why I thought it was kind of an

1 awkward situation -- well, the question she asked because,
2 I mean, we have the Judge sign. We have all rights to
3 come in there.

4 So normally people don't want you coming in their
5 house anyways. I mean, I wouldn't.

6 Q But they don't have a right to refuse; do they?

7 A That's right. No, ma'am.

8 Q Thank you.

9 RE CROSS-EXAMINATION

10 BY MRS. STEVENS:

11 Q Did anybody run out the back door or scream and
12 holler or act like you didn't have a right to be there?

13 A I don't remember that.

14 Q Has that happened before when you go to serve a
15 search warrant, people are unruly and try to leave?

16 A It has happened, yeah.

17 Q Thank you.

18 THE COURT: You can step down.

19 (Witness left the stand.)

20 THE COURT: Y'all need a break? All right.

21 MS. FANT: Your Honor, at this time the State
22 would call Lieutenant Angela Rabon.

23 ANGELA RABON, after being duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. FANT:

2 Q Lieutenant Rabon, can you tell us where you work?

3 A For the Sumter Police Department.

4 Q And how long have you worked there?

5 A Right at 12 years now.

6 Q What are your job duties with the Police Department?

7 A I'm currently the lieutenant over the Investigative
8 Services Division, over the detectives. At the time of
9 this incident I was the sergeant over investigations.

10 Q And how did you become involved in this particular
11 case?

12 A As I was responding to work that morning -- I believe
13 I came in that morning about 7:30 -- I was informed of the
14 incident that had happened, and I just went straight to
15 the scene while crime scene was still there.

16 Q Did you actively work this case as a detective?

17 A As far as actively being involved and interviews and
18 processing, no. I responded to the scene and made calls
19 to the violent crime unit and informed them what we had,
20 so when they came to work to come on down to the scene.

21 Q And who would that have been in the violent crime
22 unit?

23 A Detective Ross and Detective Culick.

24 Q Now, because Detective Ross had left the Police
25 Department, did you assist in preparing this case or

1 certain aspects of it for trial?

2 A I did.

3 Q What particular thing did you do?

4 A I guess probably the most extensive thing was to
5 attempt to locate the other victim in the case who was
6 also shot, and that was a Mr. Rohan Anderson.

7 Q And can you tell us what actions you undertook in
8 order to try to locate Rohan Anderson?

9 A I guess the first part is I looked through our
10 databases and attempted to make contact with people at the
11 addresses that I had for him. I telephoned the phone
12 numbers, the contact numbers that I had for him, which I
13 was not able to locate him anywhere in Sumter.

14 So from that point I went on to -- I knew his
15 mother's name and where she had resided, and probably -- I
16 know for weeks I attempted to make contact with the
17 residents of that address which was on Nicholson Drive in
18 Dalzell, left cards on the door.

19 Could not get a response back. Finally just went to
20 the residence like at 11:00, almost midnight one night and
21 finally made contact with new residents, and they did not
22 know Rohan Anderson or his mother, Marsha Jones.

23 So from that point I continued to search databases
24 and located an address in Stone Mountain, Georgia for his
25 mother. Could not make contact with her. Telephone

1 number is disconnected.

2 And then also learned of addresses in Florida.
3 Finally had people at the telephone numbers from there
4 that I'd received from the address like, you know, when
5 you cross-reference an address, contacted those phone
6 numbers and finally someone contacted me back who had had
7 that phone number for quite sometime, did not know Rohan
8 Anderson, so I was just was not able to locate him.

9 Q Did you actually speak with someone in Sumter that
10 you found out had been a close friend of his?

11 A I did. He goes by the name of AP, lives on

12 I was finally -- I finally made contact with him,
13 went by his residence a few times. He was working in
14 Columbia.

15 Finally made contact with him by phone and said
16 that -- he stated that after the shooting, that Rohan had
17 left, just wasn't the same, kind of afraid and--

18 MRS. STEVENS: Your Honor--

19 A She just had -- he just hadn't seen--

20 MRS. STEVENS: Objection to hearsay.

21 THE COURT: Okay. Sustained.

22 BY MS. FANT:

23 Q Based on all of those things that you did, were you
24 ever able to locate Rohan Anderson?

25 A No, I was not.

1 Q Did you want to find Rohan Anderson?

2 A I did.

3 Q And why did you want to find him?

4 A So he could as a victim tell what had happened to him
5 and who had done it, and also to give him closure since he
6 was so at the time hysterical and afraid.

7 Q Did you actively do anything further in the case
8 other than the attempt to locate Rohan Anderson?

9 A No, did not.

10 Q And are you familiar with the defendant, Devan Dwyer?

11 A I am.

12 Q And what nickname do you know him to go by?

13 A D.

14 Q Please answer any questions Mrs. Stevens may have.

15 CROSS-EXAMINATION

16 BY MRS. STEVENS:

17 Q You never actually talked to Rohan Anderson yourself?

18 A No. As the supervisor, when interviews are being
19 done, the detectives that do the interviews inform me of
20 what -- what's going on.

21 Q Was he still on the scene when you got there?

22 A No, he was not.

23 Q Okay. I don't think I have anything else. Thank
24 you.

25 THE COURT: Anything else?

1 MS. FANT: No, Your Honor, not of this witness.

2 THE COURT: Thank you, ma'am.

3 THE WITNESS: Thank you.

4 (Witness left the stand.)

5 MS. FANT: Your Honor, at this time the State
6 would call Rick Vanburen.

7 RICK VANBUREN, after being duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. FANT:

11 Q Mr. Vanburen, where do you live?

12 A Currently at this time?

13 Q Pardon?

14 A Currently at this time or what you talking about?

15 Q Yeah, just where do you live?

16 A --

17 Q And whose address that is?

18 A That's my aunt.

19 Q And where do you work?

20 A Currently not at this time. I don't work like at
21 a -- at no business or nothing, but we do some land
22 service, some land work, construction work.

23 Q Okay. And who do you do that work with?

24 A My aunt and my uncle.

25 Q And where are some of the areas around town that

1 you've worked on recently?

2 A My grandmother's; my grandmother's house.

3 Q Did she pay you?

4 A (Shook head.)

5 Q Where did you work that you actually got paid?

6 A Not in Sumter. Not in Sumter area.

7 Q Okay. Where though?

8 A Like in Florence, you know what I'm saying, like
9 Columbia.

10 Q Do you just show up at people's house and ask them?
11 How did you find these jobs?

12 A I work with -- I work with my aunt and my uncle.

13 Q All right. Do they run a construction business?

14 A Yes, ma'am.

15 Q What's the name of it?

16 A Gregg, Greg -- I can't -- I can't remember..

17 Q But this is -- this is the place that you work--

18 A Yeah, I know. Yeah, I know. Yeah, I know.

19 Q Okay.

20 A Yeah.

21 Q But you don't know the name of it?

22 A Currently at this time I can't remember the name of
23 it.

24 Q But they're the people that pay you?

25 A Yeah.

1 Q How long -- excuse me -- do you know the defendant,
2 Devan Dwyer?

3 A Yeah.

4 Q And how long have you known him?

5 A I know him not too -- not that long.

6 Q What is -- what is not that long?

7 A Well, just know him, know him from being around.

8 Q Okay. How long have you known him?

9 A Not that long.

10 Q Years, months, days?

11 A I say like -- I can't say I know him like that
12 because when I see him, you know what I'm saying, I just
13 speak to him. That's how I know him.

14 Q I'm asking you how long have you known him. Over
15 what period of time have you known the defendant?

16 A You have to be specific.

17 Q Have you known him longer than one day?

18 A How -- understand this right here. Like I say, you
19 know what I'm saying, how can you know somebody if you
20 just -- when you see them around your area, you just say,
21 what's up.

22 Q If that's all you know him, fine. How long --

23 A That's--

24 Q -- have you known him, what's up?

25 A That's what I'm saying. I seen him in the streets,

1 I'm just speak.

2 Q Do you recall telling Detective Culick and Detective
3 Lyons that you had known him for five or six years?

4 A No, I don't recall that.

5 Q Do you deny that you told them that?

6 A I'm going to have to -- I'm going to have to deny it
7 because I don't recall. I can't remember.

8 Q And could you explain for the jury what your
9 relationship is with him. How do you know him?

10 A Just from seeing him in the neighborhood.

11 Q You hang out with him?

12 A Nah, not like that.

13 Q What is -- what is like that? I just asked did you
14 hang out with him. That's kind of a yes or no question.

15 A Yeah, I understand that, too. It's like I probably
16 like smoke, smoke something with him, but it ain't -- it
17 ain't like a -- an all day hang out thing. You feel me?
18 It ain't like that.

19 Q Have you ever been in the same car as him?

20 A No, ma'am.

21 Q Do you recall a traffic stop that occurred on
22 January 7th, 2008?

23 A Yes, ma'am.

24 Q Who were you in the car with at that time?

25 A Devan.

1 Q And what did you tell the officers that you were
2 doing there?

3 A Shit, getting a ride, getting a ride home.

4 Q In fact, didn't you tell them that you were picking
5 him up to give him a ride?

6 A No. No. No.

7 Q So you deny that you told Lynell Allen and Detective
8 Kim Coker that you were there to pick him up?

9 A No.

10 Q You deny it or you--

11 A Yeah, I'm denying that. I ain't admit nothing.

12 Q You didn't tell them that?

13 A No, I didn't tell them that.

14 Q But you admit that you were in the same car with him.

15 A Why I admit -- why I admit I was in the same car with
16 him because the other -- the other guy who was driving the
17 car, he was giving me a ride home, you know what I'm
18 saying. And then I ain't even know who else was in the
19 car at the time.

20 Q Where were you--

21 A And then -- and then another again, I don't even have
22 a driver's license, so how can I get somebody a ride home
23 and I don't have a driver's license?

24 Q So you're telling me if we were to survey people in
25 Sumter, they had never seen you driving?

1 A I don't know.

2 Q Because you drive sometimes; don't you?

3 A How you figure that?

4 Q All right. You admit though that you have hung out
5 with him sometimes?

6 A Yeah.

7 Q Smoking a little, whatever you did. So there's no
8 doubt you know him?

9 A That don't -- that don't say I know him.

10 Q What does that say?

11 A That just say I smoke with him.

12 Q Do you physically recognize him sitting there today?

13 A Yeah, yeah.

14 Q That person, do you know him as Devan Dwyer?

15 A Yes, I know him as Devan.

16 Q Okay. Now, you have been convicted of a crime
17 before; haven't you?

18 A Yes.

19 Q In fact, in 1999 you were convicted of assault and
20 battery of a high and aggravated nature?

21 A I can't remember, but I know I was convicted of -- I
22 know I was convicted of a crime of assault and battery.

23 Q Of a high and aggravated nature?

24 A Assault and battery.

25 Q Do you deny that you were convicted of assault and

1 battery of a high and aggravated nature in--

2 A No, I did not -- I do not -- no, I do not deny.

3 Q Okay.

4 A Only thing I'm saying, I remember being convicted of
5 assault and battery. I don't know was it a high and
6 aggravated nature or something with intent to kill or
7 what.

8 Q Okay. And in 2004 you were convicted of breaking and
9 entering an automobile and failing to stop for a blue
10 light or siren.

11 A Yeah.

12 Q Okay. And then in 2007 you were convicted of a
13 burglary second violent for this incident that we're
14 talking about today; weren't you?

15 A I can't remember the years, but I do remember the
16 charges.

17 Q Okay. And you do remember that you were convicted
18 because you pled guilty.

19 A Yes.

20 Q Now, do you know Cassandra McCray?

21 A No. You say Cassandra? No.

22 Q Cassandra Davis McCray also known as Poopie?

23 A Yeah.

24 Q You do know her?

25 A Yes.

1 Q And who is she?

2 A She Cassandra.

3 Q How long have you known her?

4 A Not long.

5 Q What does not long mean?

6 A Like -- I say like couple months, about a year.

7 Q Okay. So from what you have just told us, you have
8 known Devan Dwyer longer than you have known Cassandra.

9 A No.

10 Q Okay. Who did you know first?

11 A Cassandra.

12 Q Okay. And you're saying you have known her for a
13 couple of months?

14 A About a year.

15 Q Or...

16 A I say a couple of months or a year.

17 Q Okay. Well, what were you doing at her house in 2005
18 then at the trailer on --- ?

19 A You talking about?

20 Q On the -- on the early morning hours, late night,
21 August the third, 2005, what were you doing at the trailer
22 that belonged to Cassandra McCray at ?

23 A You say what was I doing at what now?

24 Q Back in 2005, you're just telling me right now that
25 you have only known Cassandra McCray for a couple of

1 months or maybe a year.

2 A Yeah.

3 Q But in 2005 you were at her trailer. How could you
4 have been there if you didn't know her?

5 A If I know a person like a couple of months in a year,
6 that give me consent, I can come knock -- at least knock
7 on your door. You know what I'm saying.

8 Q Okay. But this was 2005.

9 A Excuse me. No disrespect. It really don't matter
10 what year it is or how long you know a person. Like if --
11 I don't know you, but if I'm just meeting you, you know
12 what I'm saying, like a couple months, can I come to your
13 house and knock on your door and ask for you?

14 Q In general, would you stay at my house overnight if
15 we had only known each other a couple of months?

16 A I'm saying why not? But I ain't -- I ain't saying I
17 stay overnight. But I'm just saying why not could I stay
18 if I did stay.

19 Q What is the relationship between Cassandra or Poopie
20 as you know her and Devan Dwyer?

21 A I guess they boyfriend and girlfriend.

22 Q Okay. And back in 2005, did they live together?

23 A I guess. I don't know.

24 Q Did you ever go to the trailer that they were staying
25 in?

1 A Yes.

2 Q And that was the trailer at ?

3 A I don't know the address.

4 Q Okay. But it was on ?

5 A I think.

6 Q You think. But there was no question but the two
7 people who lived there were Cassandra Davis McCray and the
8 defendant?

9 A I don't...

10 Q Do you recall making a statement to Detective
11 Lyons -- Lyons and Detective Culick that you were there
12 that night that this incident occurred?

13 MRS. STEVENS: Objection, Your Honor.

14 A I don't remember. I -- I don't remember making no
15 statement, ma'am.

16 THE COURT: What's your objection?

17 MRS. STEVENS: There's testimony that he did not
18 give either an oral statement or a written statement.

19 MS. FANT: No, Your Honor. There has been no
20 testimony about -- he did not give a written
21 statement to -- what I asked Detective Ross was
22 whether he gave a statement at the time about what
23 happened at the crime.

24 THE WITNESS: I don't remember giving no
25 statement, ma'am.

1 BY MS. FANT:

2 Q We are talking recently. Did you tell Detective
3 Lyons and Detective Culick that you were there hanging out
4 with Devan at the trailer when this incident occurred?

5 A I don't remember giving no statement.

6 Q Do you deny that you told them that?

7 A I can't remember giving no statement.

8 Q So you didn't give that statement?

9 A If I can't remember giving no statement, how can I
10 remember giving a statement?

11 Q Do you know the victim in this case, Sarah McKenzie?

12 A Yes, ma'am.

13 Q Do you know what happened to her on the early morning
14 hours of August the third, 2005?

15 A No, ma'am.

16 Q You don't know anything that happened to her? Well,
17 weren't you with the defendant when he shot her?

18 A No, ma'am. Now, I -- I wasn't with no one because I
19 can't even say if he shot her or not.

20 Q Okay. Did you plead guilty to burglary second
21 violent on September 6th, 2007, the crime of breaking into
22 the dwelling of Sarah McKenzie?

23 A I pleaded guilty because I stated two and a half
24 years locked up in Sumter County Detention Center for
25 something I didn't do, and my grandmother had needed me,

1 she was sick, you know what I'm saying, so I pled guilty.

2 And y'all offered me a Alford plea, so I took the
3 Alford plea of burglary second, and y'all -- y'all granted
4 me probation with it.

5 Q You pled guilty; did you not?

6 A Yes.

7 Q Okay. And you were convicted of the crime.

8 A Yes.

9 Q And you have in fact 10 years hanging over your head;
10 don't you?

11 A No. It was like two years. It was five years
12 suspended to two years probation.

13 (Whereupon, State's Exhibit No. 34 was marked
14 for identification only.)

15 BY MS. FANT:

16 Q Mr. Vanburen, I will show you what's been marked for
17 identification as State's 34. Is that your signature on
18 that document?

19 A Can you show me?

20 Q Can you read?

21 A (Nodded.)

22 Q Okay. Can you read your own signature?

23 A You talking right there?

24 Q Yeah.

25 A Yes, ma'am.

1 Q Where it says, defendant?

2 A Yes, ma'am.

3 Q And can you -- does it refresh your memory about how
4 much time you got on your sentence?

5 A Probation for five -- five years.

6 Q And what was the actual sentence?

7 A Determine -- 10...

8 Q Say that again, please.

9 A Ten days, months or years.

10 Q What is circled on that form?

11 A Years.

12 Q Please. Years, correct.

13 A Years.

14 Q So in fact, you got 10 years suspended to the time
15 that you had served and five years probation; isn't that
16 correct?

17 A Yes, ma'am.

18 Q And that is all for a crime that you didn't commit?

19 A I spend two and a half years locked up and I been
20 ready to come home. Y'all offered me that plea of
21 probation, so I took it and -- because I been ready to
22 come home and then my grandmother had needed me.

23 Q And so is it just a coincidence that you happen to
24 hang with the defendant, Devan Dwyer?

25 A I tell you -- excuse me. What's your name?

1 Q I believe you know my name.

2 A Well, excuse me, Ms. Solicitor, I don't hang with
3 Mr. Dwyer. I just see him around. If I see him around
4 and I say -- I want to smoke something, I'll smoke.

5 Q Okay. So is it a coincidence that you pled guilty to
6 a crime that he was involved in when you know him?

7 A I--

8 Q Did that just magically happen?

9 A I don't understand what you trying to say.

10 Q Why do you think you were charged with the crime?

11 A I guess because she say I did it.

12 Q Okay. And then you pled guilty. Is it just
13 coincidental that the co-defendant, the other person that
14 she picked out, is Devan Dwyer, your friend?

15 A He's not my friend, and I don't know -- I mean, I
16 ain't, you know what I'm saying -- I been just ready to
17 come home because I did two and a half years locked up for
18 something, a crime I didn't commit.

19 Q Is it just a coincidence that you happened to be with
20 Devan Dwyer on the night that Sarah got shot?

21 A I don't believe I was with him the night she got
22 shot, and I didn't know where she get shot or not.

23 Q Please answer any questions Mrs. Stevens may have.

24 A Yes, ma'am.

25 CROSS-EXAMINATION

1 BY MRS. STEVENS:

2 Q I thought I heard you mention the word Alford. What
3 is that?

4 A I don't know. I know they just offer me a plea and I
5 took it.

6 Q Did you at any time while you were doing that plea
7 admit your guilt?

8 A No, ma'am.

9 Q Well, how can you plead guilty and not admit your
10 guilt?

11 A Well...

12 MS. FANT: Your Honor, I object. You're getting
13 into legal questions here. It's a guilty plea.

14 MRS. STEVENS: It's an Alford plea, Your Honor.

15 MS. FANT: Unless I'm going to be allowed to
16 call a witness to explain.

17 THE COURT: You can ask him the question you
18 just asked him about his guilt. I don't think you
19 can go any further than that.

20 BY MRS. STEVENS:

21 Q So did you -- when you pled guilty, did you admit
22 your guilt?

23 A No.

24 Q And you got out of jail any way?

25 A Yes, ma'am.

1 Q And you got to go home?

2 A Yes, ma'am.

3 Q What were you originally charged with?

4 A Burglary first.

5 Q Do you know how much time that carries?

6 THE COURT: Well...

7 MS. FANT: Objection, Your Honor.

8 THE COURT: You can't go there.

9 BY MRS. STEVENS:

10 Q Do you know if it carries more time than the sentence
11 that you -- the charge that you pled to?

12 A No.

13 MS. FANT: Objection, Your Honor.

14 A No, ma'am.

15 BY MRS. STEVENS:

16 Q Okay. So you got 10 years suspended to time served.

17 A Yes, ma'am.

18 Q Were you ever charged with anything other than the
19 burglary first to begin with?

20 A I can't remember. I don't think. I don't remember.

21 Q Okay. So you never admitted that you shot or you
22 were there when Sarah McKenzie was shot?

23 A No, ma'am.

24 Q Okay. I don't have anything further.

25 THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. FANT:

Q Regarding that plea, you're claiming that you did not admit that you actually committed the crime. Did you actually admit that the State has enough evidence or had enough evidence to prove you guilty of the crime?

MRS. STEVENS: Your Honor?

MS. FANT: Your Honor, she opened the door.

MRS. STEVENS: Which you closed. She's asking a legal question.

THE COURT: I will let her ask that one question in light of the question you asked. You can't go any further than that.

THE WITNESS: Can you repeat the question?

BY MS. FANT:

Q Yeah. On the day that you pled, you entered your plea, even though you didn't admit your guilt, did you admit or confirm to the Judge that the State had enough evidence to convict you if we went to trial?

A Can you -- can you break that down to me because I don't understand.

Q Okay. She asked you what an Alford plea is.

A Uh-huh.

Q And you're claiming that that's what you pled under. That's what I'd like you to explain.

1 A You still got to be specific. I ain't -- I got a --
2 I got a fifth grade level in school, I ain't pass, you
3 know what I'm saying. I ain't...

4 MRS. STEVENS: Correct. I made an objection.

5 THE COURT: Okay. And I sustained that
6 objection. You can't ask him what an Alford plea is.
7 You can ask him the question you asked him before.

8 BY MS. FANT:

9 Q All right. I will try to rephrase that so you can
10 understand it.

11 A Yes, ma'am.

12 Q You appeared in this courtroom here; is that right?

13 A Yes, ma'am.

14 Q Before a Judge.

15 A Yes, ma'am.

16 Q And you signed your name on a plea form to a charge
17 of burglary second violent.

18 A I ain't know violent or not violent, but I just -- I
19 know I plead to burglary second.

20 Q Let me show you State's Exhibit 34 for identification
21 again. Does that refresh your memory what it says on
22 there?

23 A Violent.

24 Q It does say violent; doesn't it?

25 A Yes, ma'am.

1 Q Okay. And that's your signature on there?

2 A Yes, ma'am.

3 Q So you stood before that Judge, and I was able to put
4 things on the record. I was able to tell the Judge
5 what -- what happened; wasn't I? Did I talk during that
6 hearing?

7 A I think.

8 Q Okay. You don't recall whether I said anything?

9 A Yeah, I -- you had to say something because you the
10 Solicitor.

11 Q That's right. And you had an attorney; didn't you?

12 A Yes, ma'am.

13 Q Who was your attorney?

14 A I can't remember.

15 Q Was it Mr. Murphy?

16 A I can't remember.

17 Q Okay. But he stood there with you that day; didn't
18 he?

19 A I know I had an attorney, but I just can't remember
20 who it was.

21 Q You don't remember whether he stood right beside you
22 as you entered your plea?

23 A I -- I remember having an attorney, but I just don't
24 remember who he was.

25 Q I'm not asking you who he was. I'm asking you if he

1 was here when you entered your plea.

2 A My attorney?

3 Q Yes.

4 A Yes, ma'am.

5 Q Okay. And when I gave my version of the facts, the
6 Judge advised you--

7 MRS. STEVENS: Your Honor, is she asking a
8 question?

9 THE COURT: Well, she hasn't finished the
10 sentence yet.

11 BY MS. FANT:

12 Q Trying to break it down for him. Did the Judge
13 advise you that I had -- that the State had enough
14 evidence to prove you guilty beyond a reasonable doubt and
15 that you acknowledged that, that you agreed with that?

16 A What you saying?

17 Q After I told the Judge what happened, did the Judge
18 ask you if you agreed that I -- that the State, the
19 Government had enough evidence to convict you on that
20 charge? Was that part of your plea agreement?

21 A Only thing I remember is, you know what I'm saying,
22 like y'all offered me the plea and I took it.

23 Q Well, you very specifically remembered from
24 Mrs. Stevens that you didn't admit your guilt. I'm asking
25 what you did admit. How are we convict you--

1 A That I took an Alford plea.

2 Q And as part of that--

3 A For burglary second.

4 Q As part of that, did the Judge ask you if you
5 acknowledged that the State had enough evidence to convict
6 you of the crime beyond a reasonable doubt?

7 A I still don't understand what you saying.

8 MRS. STEVENS: Your Honor, it's been asked and
9 answered four different ways.

10 THE COURT: I understand.

11 MS. FANT: Nothing further, Your Honor.

12 THE COURT: You can step down.

13 THE WITNESS: Thank you.

14 (Witness left the stand.)

15 THE COURT: Y'all need a break?

16 MS. FANT: Your Honor, could we take a short
17 restroom break?

18 THE COURT: Yes, ma'am. We'll take a 10 minute
19 break, ladies and gentlemen. I remind you, you can't
20 discuss the case.

21 (Jury left the courtroom at 10:54 am.)

22 THE COURT: All right. We'll be in recess 10
23 minutes.

24 (Whereupon a brief recess was had.)

25 THE COURT: State ready?

1 MS. FANT: Yes, Your Honor.

2 THE COURT: Defense ready?

3 MRS. STEVENS: Yes, Your Honor.

4 THE COURT: Bring the jury in.

5 (Jury entered the courtroom at 11:15 am.)

6 THE COURT: Madam Solicitor, you may call your
7 next witness.

8 MS. FANT: Your Honor, at this time the State
9 intends to introduce two items into evidence. One is
10 the medical records of Mr. Rohan Anderson. The other
11 the Tuomey medical records of Ms. Sarah McKenzie.

12 It is the State's contention that these records
13 are admissible as self-authenticating documents under
14 the acknowledged documents exception to hearsay and
15 to having to produce a records custodian.

16 Both of them have a certification as the front
17 page from the information clerk at Tuomey Healthcare
18 Systems, and both of them have been acknowledged by a
19 notary in the State of South Carolina.

20 THE COURT: Okay. What says the defense?

21 MRS. STEVENS: Your Honor, we have no objection.

22 THE COURT: Okay. They are in without
23 objection.

24 (Whereupon, State's Exhibits 35, 36 were
25 admitted into evidence.)

1 MS. FANT: Your Honor, at this time the State
2 would call Dr. Jonathan L Stanford.

3 DR. JON STANFORD, after being
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. FANT:

7 Q Dr. Stanford, could you tell us a little bit about
8 your medical background, please.

9 A My undergraduate degree is from Coronell University
10 in Ithaca, New York, attended 1988 to 1992. My medical
11 degree is from the Ohio State University in Columbus,
12 Ohio. I attended from 1992 to 1996.

13 My general surgery residency training is at the
14 Washington Hospital Center in Washington DC. Attended
15 1996 until 2003. Currently I work at Tuomey Hospital from
16 2003 until present. I am a member of Sumter Surgical
17 Associates where I'm a general surgeon.

18 Q And do you often consult on cases that are in the
19 emergency department at Tuomey Healthcare?

20 A Yes, I do.

21 Q And did you treat a patient named Sarah McKenzie at
22 Tuomey Hospital on the morning of August the third, 2005?

23 A Yes, I did.

24 Q And what did you see her for? How did you become
25 involved with her as a patient?

1 A I was contacted in regards to trauma, that she
2 sustained a gunshot wound to the chest. I was contacted
3 by the emergency room physician which is normal protocol.

4 Q And why would they do that? Why would they call you
5 as a surgeon?

6 A Because in the hospital where -- for trauma cases
7 usually of this magnitude, a general surgeon becomes
8 involved in terms of the management of the patient both
9 acutely and also for the disposition and possible
10 operative treatments.

11 Q And did -- let me see. Let me show you in
12 Ms. McKenzie's medical records, just beginning on that
13 page, could you tell us what -- or first of all, I guess,
14 are those your notes there?

15 A Yes, these are my notes.

16 Q And can you -- just beginning with the -- under
17 admitting diagnosis, the first paragraph?

18 A Okay. Admitting diagnosis, gunshot wound to the
19 chest. This is a 30 year old African-american female who
20 sustained a single gunshot wound to the right shoulder.
21 She was brought to the trauma bin, initially evaluated by
22 the ER physician, Dr. Garrett Clanton.

23 Patient had difficulty with breathing, complained of
24 back and right chest pain, had decreased breath sounds on
25 the right and a 40-French test tube was placed emergently

1 by Dr. Clanton. This yielded approximately 500 ccs of
2 blood.

3 Patient's further evaluation then included a chest
4 x-ray which demonstrated a right hemothorax with a bullet
5 traversing the mediastinum near the fifth and sixth
6 thoracic spine.

7 There was no evidence of a widened mediastinum. I
8 then arrived and assumed care of the patient. Patient was
9 breathing somewhat labored, complaining of pain. She was
10 initially hypotensive, but blood pressure improved with
11 volume infusion and pain control.

12 We decided, however, to electively intubate her to
13 control her airway as she was somewhat labored with her
14 breathing. This was--

15 Q Excuse me for interrupting, but let me just stop you
16 a minute there. Basically for us non-doctors, in English,
17 what was -- what were you treating her for?

18 A Essentially she sustained a gunshot wound to the
19 right shoulder and by her x-rays demonstrated the bullet
20 had gone across the -- towards the spine and was lodged in
21 the spine.

22 The additional injuries that you could see by the
23 x-rays and by our treatments was that she had significant
24 amount of blood in the chest suggesting that she had some
25 laceration of the blood vessels in the lungs or the chest

1 wall.

2 And additionally, knowing where the bullet was
3 lodged, we felt that she may have other life-threatening
4 injuries, and therefore we opted to go and put a breathing
5 tube into her both to protect her airway so she doesn't
6 have any problems such as a losing her airway, aspirating
7 vomiting, breathing in vomit that could cause a pneumonia,
8 and also so we could more easily facilitate her work-up to
9 go and see if she did have any other life-threatening
10 injuries.

11 Q Now, you indicated just then that she had a bullet, a
12 single bullet lodged in her vertebrae. Do you -- were you
13 able to remove the bullet?

14 A No. No, we did not.

15 Q Okay. Now, further on on that same page toward the
16 bottom of that paragraph where it talks about on my
17 initial survey?

18 A Yes.

19 Q Could you just read those couple of sentences there?

20 A Okay. On my initial survey, patient was laboring
21 with breathing, was mildly hypotensive and tachycardic,
22 but had evidence of adequate peripheral circulation. She
23 was neurologically intact, complained only of back pain,
24 right shoulder pain, and right chest pain.

25 She had no complaints of numbness or weakness in the

1 lower extremities. She complained of no abdominal pain.

2 Q And could you tell us what you meant by
3 neurologically intact there?

4 A Basically she did not show any signs of any nerve
5 injuries. Patients that have spine injuries will -- at
6 worst case could be paralyzed.

7 But other things that we're looking for is other
8 subtle findings that would suggest possible nerve
9 impingement, may have numbness to the lower extremities.

10 We're also looking at her in terms of her sensorium,
11 that is, is she aware of what's going on. If she's
12 neurologically intact, that means she's awake, she's able
13 to respond to questions.

14 Q Now, did you further treat Ms. McKenzie after that
15 initial consultation?

16 A Yes, I did. She was admitted to my service and
17 over -- I'm not quite sure about this because I have not
18 reviewed the chart in terms of how long she stayed, but
19 she stayed in -- on my service until we were able to
20 transfer her to a tertiary referral center, and I believe
21 that was Richland Memorial Hospital.

22 Q And why -- why were you looking to transfer her to
23 Palmetto Richland?

24 A At the time our hospital didn't have a designated
25 spine surgeon, and she required care that just could not

1 be administered at Tuomey.

2 Q And was she ultimately airlifted to Palmetto Health?

3 A Yes.

4 Q Okay. Now, regarding Mr. Anderson, Rohan Anderson,
5 who was also shot, did you actually treat him for his
6 gunshot wound?

7 A I don't have any recollection that I did treat him.

8 Q Can you tell by looking at that medical record at the
9 bottom who actually was the treating physician for
10 Mr. Anderson?

11 A It was -- it was Dr. Garrett, Garrett Clanton.

12 Q And who is he?

13 A He's a ER physician. He was also the physician that
14 assisted with the first patient.

15 Q And then -- get that back.

16 A Sure.

17 Q Get these out of order. And regarding Mr. Anderson's
18 injury, about midway down there where it talks about
19 the -- let me make sure I got the right part -- the upper
20 extremity, could you just tell us what Dr. Clanton's notes
21 reflect?

22 A What he writes here is no sinus clubbing or edema,
23 normal range of motion, two circular wounds, anterior left
24 shoulder consistent with gunshot wound by appearance,
25 appears to be through and through wound, but he--

1 Q And what would he mean by that?

2 A What he's documenting is that there's two wounds.

3 And whenever we assess somebody that has a penetrating
4 injury, we look -- if it's an odd number of holes in the
5 patient, then usually means there's a bullet somewhere and
6 you have to find out where that bullet is.

7 Usually if there's two bullet wounds, and if you look
8 at the mechanism of injury, it suggests that there was
9 only one shot there that went through and through.

10 If there's an x-ray -- and I haven't seen this -- but
11 if there's an x-ray that doesn't show any evidence of -- I
12 assume that there was one gunshot there that was a through
13 and through injury.

14 Q Okay. Could you answer any questions, please, that
15 Mrs. Stevens may have for you.

16 CROSS-EXAMINATION

17 BY MRS. STEVENS:

18 Q You said you did not remember Mr. Anderson, treating
19 Mr. Anderson.

20 A I have no recollection of treating him.

21 Q Are you aware that he was supposed to follow up with
22 you?

23 A I have--

24 MS. FANT: Objection, Your Honor. She can point
25 out and have him read something. If he didn't treat

1 him, he can't be aware of anything. And I don't
2 believe there's any evidence that he didn't follow
3 up. I would object to that line of questioning in
4 total.

5 MRS. STEVENS: He says he never treated him,
6 Your Honor.

7 THE WITNESS: I said I have no recollection.

8 THE COURT: Said he had no recollection of
9 treating him.

10 BY MRS. STEVENS:

11 Q You were not there when they first came in.

12 A No, I was not.

13 Q You were called in later?

14 A My recollection, yes.

15 Q Okay. So you don't know what happened to them other
16 than that they had gunshot wounds?

17 A That is true.

18 Q How many circular abrasions did Mr. Rohan Anderson
19 have according to these records?

20 A I would have to review the entire chart there, but
21 the part that I saw there was comment on two circular
22 wounds in the left shoulder.

23 Q Okay. And there wasn't any mention of any other sort
24 of wound?

25 A I would have to review the entire chart before I

1 could give you that answer.

2 Q Okay. You said the bullet would have had to travel
3 through and through. Does that mean there would be one on
4 the front and one on the back?

5 A There would be two holes usually, yeah.

6 Q Okay. I don't have anything further.

7 THE COURT: Anything further?

8 MS. FANT: Your Honor, may Dr. Stanford be
9 excused, please?

10 THE COURT: Any objection?

11 MRS. STEVENS: No, sir.

12 THE COURT: Thank you, sir. You can be excused.

13 THE WITNESS: Thank you.

14 (Witness left the stand.)

15 MS. FANT: At this time the State would call
16 Detective Irene Culick.

17 THE COURT: All right.

18 IRENE CULICK, after being duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. FANT:

22 Q Detective Culick, can you tell us where you work,
23 please?

24 A I work at the Sumter Police Department.

25 Q And how long have you worked there?

1 A Approximately 11 years now.

2 Q What type of work do you do with the department?

3 A Right now I'm currently assigned to investigations.
4 I have been there the last seven years, and I'm working
5 violent crimes.

6 Q And I hate to ask you more questions than necessary.
7 Your voice is a little weak. What type of things do you
8 do as an investigator for the department?

9 A Typically what we do is follow up on cases that are
10 assigned to us either by patrol or cases that we make
11 ourself. If an incident happens such as this, when we
12 come into work, we're assigned a report.

13 When we get that report, we start looking at what we
14 need to do to follow up on it, do we need to do
15 interviews, make arrests. If we do these things, do we
16 need to do searches, search warrants, things like that, go
17 to court, testify.

18 And there are several other hearings and processes
19 along the way that we have to follow up with that patrol
20 doesn't have time to do.

21 Q Now, how did you become involved in this particular
22 case?

23 A In this particular case when I came into work that
24 morning on August the third, 2005, we learned that there
25 was a burglary to a residence where the victims were shot.

1 There were two people in a home that were shot.

2 One was critically ill at Tuomey and we weren't sure
3 if she was going to make it, and so we immediately started
4 working this case that morning. That was our top
5 priority.

6 Q Who was the lead detective on the case?

7 A Detective Ryan Ross was -- received the case. He was
8 given the case that morning. I assisted him with it. He
9 was new to violent crimes. He had been a detective for a
10 little while, but he had worked property. So -- any type
11 of burglary or car break-in.

12 And so him switching over to violent crimes, that's
13 crimes against persons, and -- he was new, so I was
14 assisting him with it to help him with the case to make
15 sure in case he had any questions.

16 And any time you have a big case like this where
17 someone is shot and may lose their life, more than one
18 person helps with the case.

19 Q And what things did you do as a result of becoming
20 involved and assisting him, what types of things were you
21 active in?

22 A Well, first thing that morning, we had two victims at
23 the hospital. We had Ms. McKenzie, Sarah McKenzie, and we
24 also had her boyfriend, Mr. Rohan Anderson. He was
25 released shortly after us coming in and getting briefed,

1 and so we interviewed him to start with.

2 We knew she was in critical condition in ICU, and so
3 he was our best source of information to start with and to
4 give us any kind of leads to go on and follow up, so we
5 interviewed him to start with.

6 When we got through, we took him to our victims
7 advocate so she could work with him a little bit and the
8 trauma that he had had and what he had gone through and
9 help assist him in getting home.

10 Then we went to the crime scene which was Ms.
11 McKenzie's residence on . . . It actually faces
12 . . . A little confusing. But we went over there
13 to -- I like to look at a crime scene so I know pretty
14 much the layout of the -- the residence, what happened,
15 and talk to our forensics people that are there on scene,
16 do you have any more evidence for me, can you give me
17 anything to go on and work with in this case.

18 Q Did you later go to the hospital to speak with Ms.
19 McKenzie?

20 A I did. After we did all of this, we went to the
21 hospital. I wanted to check on Ms. McKenzie, check on her
22 condition, see how she was doing. Wanted to follow up
23 with the nurses also and let them know that we really
24 wanted to talk with her.

25 In talking to Mr. Anderson, Rohan Anderson, he let us

1 know that she had more information and could give us in
2 reference to this case in reference to knowing the
3 subjects that did this.

4 So I knew we needed to speak with her as soon as
5 possible, so myself and Detective Ross went to the
6 hospital. We went up to Ms. McKenzie's room in ICU to
7 speak with her.

8 And she had a lot of tubes. I call them tubes
9 because I don't know all the medical terms, but I know she
10 had a breathing tube. I guess they call it intubated at
11 the time to help her breathe. I know she had IVs and a
12 chest tube, things like that.

13 Q Was -- let me ask you first. Do you recall about
14 what time this was?

15 A This was around lunch time, shortly before lunch that
16 we went to see her.

17 Q And was that on the same day as the shooting?

18 A Yes, this -- I'm sorry. It was the same day,
19 August 3rd. This was after we had left the crime scene,
20 we headed over to the hospital to check on her, and we
21 did. She was in ICU.

22 Q Was she aware that you were there?

23 A She was. They did have her sedated somewhat because
24 when they intubate somebody, patients that are intubated
25 tend to pull them out is what we were explained, they tend

1 to try to pull the tubes out because it's not natural and
2 it's foreign to them. Even though it's helping them
3 breathe, they don't understand it.

4 So they did have her sedated a little bit to help
5 with that. But she was able to open her eyes and close
6 them. She wasn't able to speak with us at that time
7 because of the tube, but she was able to respond to our
8 voices when we talked to her.

9 Q Were you able to ask her who shot her?

10 A We had the initial report in reference to D, that she
11 had told patrol officers on scene that D was the one who
12 shot her. And so I basically just followed up with that
13 and made sure -- I wanted to hear from her -- well, not
14 hear, but tell her that we were there, who we were, we
15 were there to help her, we were going to follow up on her
16 case and find out who did this.

17 And I asked her if D was the one who did this, and
18 she was able to nod yes.

19 Q Now, did -- who was with you at the time when you
20 were in to see Sarah?

21 A Detective Ross who was assigned the case.

22 Q And did y'all show her a photo line-up of the
23 defendant at this time?

24 A No, ma'am. We couldn't do that. And of course, we
25 didn't know the defendant's name at that time. All I knew

1 was D did this.

2 So we went ahead and left out of the room. She had
3 all the monitors and stuff that go off when blood pressure
4 goes up, things like that. We didn't want to cause any
5 problems.

6 And we just left our number and name with the nurse
7 and asked them to please call when she was -- had the
8 breathing tube removed and she was able to talk to us
9 where we could show her line-ups and stuff.

10 Q Now, given that at this point you have the name or --
11 yeah, the name D, which she had confirmed, how did y'all
12 develop Devan Dwyer as a suspect?

13 A Well, we do a lot of things when we had D. First of
14 all we ask officers that we work with, have you heard of
15 anyone, D, anybody that goes by that nickname. We call
16 people that we know that talk to us regularly on the
17 streets that we have helped either as victims before or
18 CIs is what they are called to some people.

19 And we have a list of nicknames. And we also talk to
20 family members of the victim because a lot of times if
21 someone is associated or knows somebody by the name of D,
22 you ask family members, do you know who she is talking
23 about, when she says D did this, do you know who D may be?

24 And so from all of this we were able to develop the
25 name Devan Dwyer who went by the nickname D, and we sent

1 off a request through SLED to do a photo line-up for us.

2 Q And when did you show the photo line-up to Sarah?

3 A We were not able to show this line-up until the next
4 day, which would have been August the fourth. That
5 morning the hospital called and they were able to tell us
6 that her tube had been removed and that she was breathing
7 on her own and she was alert and could talk to us.

8 And so we said, great. And they also told us that
9 she was going to be transferred to Richland, and so we
10 went ahead that minute and went over that morning when we
11 came in and showed her the line-up and that was prepared
12 by SLED.

13 Q And if Sarah actually knew D, why did you show her a
14 photo line-up in addition to that?

15 A If someone doesn't know a name, they just know a
16 nickname -- and we see that a lot, it's common -- we have
17 to show them a photo line-up. We can't just show them a
18 picture and say, hey, is this D. That would be
19 suggestive.

20 We have to actually put who we think D is in a photo
21 line-up with several other people. We do at least six.
22 We have done more than that before, but at least six
23 photos of people that are non-suggestive and say, do you
24 see the person that you are referring to that shot you or
25 in this case, you know, that you know as D.

1 And we do this because D is not a real name, so you
2 can't go get a warrant with D on it. You need a name for
3 someone like Devan Dwyer.

4 Q Now, did you go with Detective Ross when he showed
5 the line-up to Sarah McKenzie?

6 A Yes, I did go with him that morning, and I was
7 present when she was shown the line-up and when she
8 immediately picked Devan Dwyer out that's sitting beside
9 his attorney, Lauren Stevens in the yellow.

10 Q Did you or Detective Ross or anyone else for that
11 matter say anything to her before showing her the line-up
12 as far as who to pick out?

13 A No, not as far as who to pick out. But any time we
14 show anybody a line-up, we always explain, look, I'm
15 showing you photographs, if you see the person, let us
16 know. If you don't, that's fine. We tell them to take
17 their time.

18 And we handed it to her and immediately she picked
19 him out.

20 Q Did you or anyone else influence her or suggest who
21 she should pick out?

22 A No. We want the person that did this, not who we
23 think. We want the person who did it.

24 Q And you indicated she immediately picked him out.
25 Did she hesitate at all?

1 A No, she immediately picked him out and started
2 crying.

3 Q I will show you what's been entered into evidence as
4 State's 30 and 31. Are these the line-up form and the
5 actual line-up that Detective Ross showed her that day?

6 A Yes, ma'am.

7 Q And do they indicate that she picked out Mr. Dwyer?

8 A Yes, they do. She picked him out as number three.
9 That is the defendant here. And we have -- we have all of
10 our victims or witnesses in a case pick the person out or
11 we have them write on this and initial and also on this
12 form so there's no question as to this is the exact
13 line-up shown to her and this is the form that was given
14 with her name and initials.

15 Q Now, after y'all showed the line-up to Sarah, did you
16 interview her at all? Were you able to talk to her at
17 that time?

18 A We did talk to her a little bit, pretty much limited
19 just still due to her serious condition. She was very
20 upset at the time. She was crying. She stated that she
21 knows -- she knew she had done some bad things but that
22 she didn't deserve that.

23 And I just pretty much held her hand and reaffirmed
24 that, no, she did not deserve that and nobody deserves to
25 be shot and face losing their life.

1 Q Did she indicate to you that she thought she might be
2 dying?

3 A Yes, she did. She was still very scared and
4 uncertain and being transferred to Richland, another
5 hospital because Tuomey can't treat you. Just she was
6 fearful of that. So I only asked her a few more
7 questions.

8 And what we were trying to get out of her is
9 basically where we could find Devan Dwyer that she had
10 just identified and, you know, did he drive a brown truck
11 because that was in our incident report, you know, because
12 I was going to bolo this out again to officers to, you
13 know, that we have an arrest warrant for Devan Dwyer, give
14 out his information and a possible vehicle that he's in so
15 patrol can help us look.

16 And she at that time stated, no. And I didn't
17 understand because the report said brown truck, and she
18 said, I didn't say brown truck. And I said, well, what
19 were you telling the officer?

20 And she said I was telling him brown trailer. And I
21 said, okay, so he lives with your cousin, Cassandra McCray
22 in the brown trailer that's by your house? And she said,
23 yes.

24 Then at that time I went to -- there was a second
25 suspect listed on the incident report. Well, at this time

1 all we had been focusing on was the main suspect.

2 And I also asked her a few questions about as far as
3 mask, what -- you know, because on the initial report it
4 said mask. And when we spoke to Rohan Anderson, he had
5 just stated something covering the bottom part, and I
6 wanted to check with her, you know, where did this come
7 from, how could she really ID him from that because we
8 want a good case.

9 I don't want somebody ID'd because you think. I want
10 them because you know. And she basically was able to tell
11 us that she knew him, it was only the bottom part, that
12 she could see him, she had seen him prior, and that she
13 had known him for a while, and that was him.

14 And so I felt confident and -- in that. So I'm
15 trying to move to the second suspect to see can she
16 identify that person or were they covered the same way or
17 fully covered, and she could identify the second.

18 She gave us the name at that time Ricky. We didn't
19 get enough -- then she got real upset again. At that time
20 I didn't know because there was a relationship before. I
21 just thought it was because of the trauma of everything.

22 And because of her blood pressure and the monitors
23 and stuff, we decided -- that were beeping -- we decided,
24 you know, that was enough, we had what we needed, we could
25 at least go out and look for Devan and start working on

1 who Ricky may be and the last name of that.

2 Q And how did you follow up on that information?

3 A Well, we went back to the department and we
4 immediately started to get an arrest warrant -- excuse
5 me -- for the defendant. Yeah, could I have some water?
6 Sorry. I got this cold, allergies that everyone has, I
7 think.

8 And when we went to the department, we were able to
9 get an arrest warrant, and then we -- before we had a
10 chance to go look for the defendant in this case,
11 Mr. Dwyer, he showed up at the Police Department.

12 Q Excuse me. Did you have the opportunity to talk to
13 him at that time, you and Detective Ross?

14 A Yes, we did. He had indicated to us that he came
15 down. I knew there was no way he knew yet, we had just
16 gotten a warrant, and -- but he stated that he had heard
17 that we were looking for him, people were saying on the
18 street that he had shot her, and he wanted to come down
19 and talk to us, and so we did talk to him at that time.

20 Q And what did you do after you talked to him?

21 A After we talked to him, he was taken to the jail and
22 immediately we went to interview his girlfriend, Cassandra
23 McCray.

24 Q And why was it so important to interview her right
25 then?

1 A Because we didn't want him to call her from the jail.
2 You're allowed to make phonecalls from the jail. And I
3 didn't want him to call her right away and say, this is
4 what I have told the police, I want you to give me the
5 same alibi, I want you to back this story up what I'm
6 telling you.

7 So with -- you know, within 15, 20 minutes of him
8 being taken to the jail, we went to interview her.

9 Q And why did you want to talk to -- to Ms. McCray?

10 A I wanted to talk to her because he was living with
11 her at the time. He stayed at her trailer. I felt like
12 she could tell us, you know, was he there, was he staying
13 with her, who else was there, was he with her, was he not,
14 things like that, just...

15 Q When you say --

16 A Yes.

17 Q -- he, who are you referring to?

18 A I'm sorry, Devan Dwyer.

19 Q And excuse me -- did -- what did you do after talking
20 to Ms. McCray?

21 A After we talked to Ms. McCray, she was able to give
22 us the name of Ricky Vanburen that is friends with her
23 boyfriend Devan Dwyer and was at her residence that night
24 before in the yard and that morning, and so we decided
25 based on the fact that Sarah McKenzie had told us the name

1 Ricky, that she gave us the name Ricky Vanburen, that we
2 would try to do a line-up on him and show the victim,
3 Sarah McKenzie, before she was transported to Richland.

4 Q Over the course of time since this incident occurred,
5 has Sarah ever wavered about who shot her?

6 A No, ma'am.

7 Q And one of the things that Mrs. Stevens asked
8 Detective Ross that I'd like you to address is--

9 MRS. STEVENS: Your Honor, I object.

10 THE COURT: You're -- you object to what?

11 MRS. STEVENS: She wants to have her compare
12 testimony with another witness.

13 MS. FANT: That was not my intention. I was
14 just transitioning, Your Honor.

15 THE COURT: All right. Well, ask the question.

16 BY MS. FANT:

17 Q Could you tell us what the theory of hand of one hand
18 of all means?

19 A Yes. Theory hand of one hand of all is basically if
20 I am with someone that commits a crime that -- say in this
21 case Devan Dwyer and Ricky Vanburen -- they entered Sarah
22 McKenzie's home, Devan Dwyer did all the talking, shot
23 Sarah McKenzie while Ricky Vanburen was standing there the
24 whole time, even though he didn't have a gun, didn't fire,
25 Devan Dwyer had the gun, did the shooting, he's just as

1 guilty because he was with the person at the time.

2 Hand of one hand of all means that you can charge two
3 people or more with the same crime that are involved in
4 the same incident together. Doesn't mean that you have
5 to -- we have had -- we go on a case by case basis like we
6 have had bank robberies before where someone goes in the
7 bank and holds it up and robs the bank.

8 Well, the get-away driver is outside in the car.
9 Technically, hand of one hand of all means you can charge
10 the person that's driving the car just as if he went in
11 with the gun and robbed the people in the bank at the
12 time, but you don't have to do that.

13 And we look at it case by case basis. Sometimes we
14 will charge the driver. Like we did in a recent case, we
15 charged them with accessory to this armed robbery, so to
16 me that's what it stands for, hand of one hand of all.

17 Q And would there be reasons to sometimes treat
18 suspects differently, charge one with something and not
19 the other?

20 A There are reasons. You need to look at all the facts
21 on a case by case basis, what did the person do, what was
22 their involvement, their prior knowledge ahead of time,
23 did they plan this, did they just kind of get involved at
24 the last minute, you know, who they're hanging with, just
25 pretty much what's going on with the incident.

1 Q And is your charging position based upon what you
2 think happened or what you can prove happened?

3 A What we can prove.

4 Q And what happens after that, you -- does the Police
5 Department or the detective make the ultimate decision as
6 to the charge, what charge the defendant will face?

7 A Well, we make initial charges and then follow up.
8 After we make a charge and somebody is arrested, then
9 it -- the case is sent over here to the courthouse and is
10 assigned to a solicitor like this case was assigned to Ms.
11 Fant.

12 And then at that time we talk with her about the
13 case. She reviews all the evidence and the facts, and
14 then she tells us -- sometimes Ms. Fant or other
15 solicitors tell us, why didn't you charge this or you can
16 charge this also or I think this is a better charge.

17 So sometimes charges are changed or added when it
18 comes over here to the Solicitor's Office because the
19 Solicitor's Office is the one who prosecutes and knows the
20 law in and out, went to law school, has a law degree, and
21 just assists us and helps us along in our case, and
22 they -- they ultimately help with charges.

23 Q Do you know why in some cases a plea bargain
24 agreement or an agreement with a defendant might be made?
25 What are some of the reasons why someone might do that?

1 A Plea bargains are made sometimes because, first of
2 all, there are so many cases that we have, there's just
3 not enough court time in a year to try every single case
4 that we have in Sumter County.

5 Also, plea bargains are made because one person may
6 have done more and is more responsible than the other, so
7 you might look at, okay, this person didn't say anything,
8 this person didn't -- and like in this case, did -- was
9 not the one who shot the victim, so you look at should we
10 offer them a deal.

11 We talk to victims, we ask them, you know, are you
12 okay with us offering somebody a deal because of this,
13 what do you think about this. And so we offer deals. And
14 sometimes defendants take those deals and say, you know
15 what, I want to take it because when I plead guilty and
16 there's a deal on the table, I know what I'm facing
17 versus, you know, just pleading straight up and I don't
18 know what I could get.

19 And also, some say, no, I'm going to take it to
20 court, you know, I'm going to try to get off the charges,
21 so there's just a lot of different reasons that -- that
22 pleas are given and they are taken.

23 Q In your experience, are you usually actively involved
24 with the Solicitor in negotiating pleas or in discussing
25 what a plea deal might be?

1 A Yes. Usually the Solicitors will ask us our opinion
2 as the victims and say, do you agree with this or do you
3 not agree with this.

4 Q Um--

5 A And normally I go with the victims, you know. If a
6 victim wants to, you know, it happened to them, not me,
7 and -- and go that way.

8 Q And are plea bargains offered sometimes just for
9 purely strategic reasons in a case?

10 A Sometimes they are, yeah. If someone -- if you have
11 a co-defendant that -- that pleads guilty to something,
12 like in this case Ricky Vanburen, he pled guilty in this
13 case, and the defendant -- the defendant on trial, Devan
14 Dwyer and Ricky Vanburen, they were both picked out in a
15 photo line-up by this victim, and because one of them pled
16 guilty, you know, that to me shows the victim knows who
17 did this.

18 He knew he did it. He pled guilty because of that.
19 I mean, I -- I wouldn't plead guilty to something that I
20 didn't do and I certainly wouldn't think other people
21 would and have to deal with probation and parole and, you
22 know, jail time and five years having to pay restitution
23 and visits and drug testing, just all this stuff that
24 probation and parole makes you do.

25 Q Please answer any questions Mrs. Stevens may have.

CROSS-EXAMINATION

BY MRS. STEVENS:

Q So if somebody said to you, you can go home today if you plead guilty, and you had say a child at home, you wouldn't consider it to get home to see your child?

A No, ma'am, not if I didn't do it.

Q Okay. You said y'all draw up the warrants and then the Solicitor makes the ultimate decision. Do they sometimes make decisions you don't agree with?

A Yes, ma'am.

Q Do they sometimes drop warrants that y'all have had drawn up?

A Yes, ma'am.

Q So basically it's just kind of a, you know, you decide somebody gets charged with this and somebody gets charged with that, and you look at every situation?

A Meaning -- I'm sorry?

Q Well, so you're telling me that the hand of one is the hand of all is not a -- a legal theory that your office follows.

A We look at every case on a case by case basis.

Q So sometimes people should be guilty of all the same things under hand of one is the hand of all, and other times they shouldn't?

A No. Hand of one hand of all means that -- that every

1 time somebody could be charged. Hand of one hand of all
2 doesn't mean that they are every time.

3 Q So this get-away driver who may or may not have known
4 what was going on in the bank, you could charge him under
5 hand of one is the hand of all with the armed robbery?

6 A Yes, ma'am.

7 Q Somebody gets killed in the robbery, you could charge
8 that same get-away driver with murder, but that's a choice
9 that you make.

10 A And the Solicitor's Office helps with that, yes,
11 because those are big trials, cases.

12 Q Who was the original Solicitor on this case?

13 A I'm not sure.

14 Q Well, you said it was assigned to Ms. Fant. Did you
15 not speak to the other Solicitor involved?

16 A I spoke with Ms. Fant who asked me about trial time.
17 I haven't spoke to anybody else about court or trial.

18 Q Okay. I don't have anything further.

19 MS. FANT: Nothing, Your Honor.

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

22 THE WITNESS: Thank you.

23 (Witness left the stand.)

24 MS. FANT: Your Honor, at this time the State
25 would like to recall Sarah McKenzie for brief

1 testimony on a couple of things I forgot to ask.

2 THE COURT: Okay.

3 SARAH MCKENZIE, after being duly
4 reminded of oath, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. FANT:

7 Q Sarah, just a couple of things that was my oversight
8 when you testified earlier. When this incident occurred
9 and the defendant and Rick Vanburen entered your residence
10 that morning, did they have consent to come into your
11 residence?

12 A No, ma'am.

13 Q And secondly, do you recognize the person that you
14 know as D in the courtroom today?

15 A Yes, ma'am.

16 Q Could you point him out for us?

17 A Yellow shirt sitting by his attorney.

18 MS. FANT: Your Honor, may the record reflect
19 she's just identified the defendant, Devan Dwyer.

20 THE COURT: It shall so reflect.

21 BY MS. FANT:

22 Q Please answer any questions Mrs. Stevens may have on
23 that.

24 CROSS-EXAMINATION

25 BY MRS. STEVENS:

1 Q You said that they did not have permission to enter
2 your house.

3 A Yes, ma'am. .

4 Q Were you concerned that someone had entered your
5 house?

6 A Yes, ma'am. That's why I didn't move from the spot I
7 was sitting in because I know something was going to
8 happen.

9 Q So you knew something was going to happen --

10 A Of course.

11 Q -- so you just sat right there.

12 A Uh-huh.

13 Q Didn't move, didn't grab your cellphone to call the
14 police, none of that?

15 A I didn't do anything.

16 Q Okay.

17 A Thank you.

18 MS. FANT: Your Honor, I'm sorry. We are done
19 with this witness.

20 THE COURT: Okay. Thank you, ma'am. You can
21 step down.

22 THE WITNESS: You're welcome.

23 (Witness left the stand.)

24 THE COURT: Okay. You may call your next
25 witness.

1 MS. FANT: Your Honor, at this time the State
2 would rest.

3 THE COURT: Okay. Can I see counsel then at the
4 bench?

5 (Whereupon a bench conference was held.)

6 THE COURT: Ladies and gentlemen, I was just
7 trying to get a scheduling issue. The State has
8 rested their case. So it's probably a good time -- I
9 have got to deal with certain legal matters, so
10 instead of having you locked up back there in the
11 jury room, I'm just going to send you to lunch.

12 I don't know how long it's going to take. So if
13 you can be back at 2:00, hopefully by then we will be
14 able to resolve this case. So I'm going to excuse
15 you now until 2:00, ask you to come straight to the
16 jury room.

17 Please do not discuss this case among
18 yourselves, allow anyone to discuss it with you, and
19 I will see you back at two.

20 (Jury left the courtroom at 12:05 pm.)

21 THE COURT: All right. Ladies, do you want me
22 to review your client's rights to testify at this
23 time or you want to do it after lunch?

24 MRS. STEVENS: After lunch, Your Honor. We will
25 use the lunch break to make sure that whatever we --

1 decision we make is the decision he wants to stay
2 with.

3 THE COURT: Okay. Anything further then from
4 the State?

5 MS. FANT: No, Your Honor.

6 THE COURT: Then if y'all will -- will be back
7 at least by a quarter to two. If you have any other
8 issues, maybe we need to -- well, let me ask you that
9 right now.

10 Are we going to have any other things beside him
11 testifying? I mean, if we don't have any other
12 matters we need to deal with, you think we can do in
13 15 minutes?

14 MRS. STEVENS: Yes, sir.

15 THE COURT: So we will be back at -- court will
16 reconvene at 1:45.

17 Now, charges. My standard charge, then charge
18 the crimes that are on the indictment. Are there any
19 other crimes besides what's on the indictment?

20 MS. FANT: No, Your Honor.

21 MRS. STEVENS: No, sir, Your Honor.

22 THE COURT: Okay. So -- and I have a possible
23 verdict form that y'all can look at over lunch.

24 MS. FANT: Your Honor, could you tell us
25 which -- what charge and language you use for beyond

1 a reasonable doubt? You use them all.

2 THE COURT: I use them both. I started out now,
3 you know, not using -- I didn't use the hesitate to
4 act, but I have kind of cleared it up enough, so I
5 use them both now. I don't -- so I'm going to use --
6 I'm going to try to cover both sides.

7 MS. FANT: Your Honor, the only specific thing
8 we would ask for in the charge if it's not included
9 in your general charge on assault and battery with
10 intent to kill is that a specific intent to kill is
11 not required, that malice is the intent element in
12 that crime.

13 THE COURT: Okay. And I think that's included
14 in...

15 MS. FANT: Some judges leave it out, so we would
16 just like that in.

17 THE COURT: Okay.

18 MRS. STEVENS: That's fine with me, Your Honor.

19 THE COURT: Okay. All right. Now...

20 (Court in recess for lunch.)

21 THE COURT: Okay. Mrs. Stevens, you ready for
22 me to question your client?

23 MRS. STEVENS: Yes, sir.

24 THE COURT: Okay.

25 MRS. STEVENS: Yes, sir.

1 THE COURT: Mr. Dwyer, stand up, please sir, and
2 raise your right hand.

3 DEVAN DWYER, after being duly
4 sworn, testified as follows:

5 THE COURT: We have reached this point in the
6 trial where you have a right to put up evidence if
7 you want to do so. You can put your hand down. And
8 you also have a right to testify. But you don't --
9 you're not required to do either one of them.

10 The State has the burden of proving you guilty
11 beyond a reasonable doubt and you do not have to
12 prove your innocence. But you certainly have a right
13 to put up evidence and you certainly have a right to
14 testify.

15 And you need to understand if you testify, you
16 will be treated like any other witness. You will be
17 subject to cross-examination by the State. If you
18 have a prior criminal record that qualifies under the
19 statute, then they may can bring that out against
20 you. I don't know if you do or not. But they may
21 can use that record to impeach you if you testify.

22 If you choose not to testify, I will instruct
23 the jury that they cannot hold that against you and
24 they can't even discuss that in the jury room because
25 the burden is upon the State to prove you guilty

1 beyond a reasonable doubt and you're not required to
2 prove anything. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you had an opportunity to talk
5 to your lawyer about your decision whether to testify
6 or not?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you had enough time to talk
9 with her?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Have you understood everything I
12 asked you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: You got anything you want to ask me?

15 THE DEFENDANT: No, sir.

16 THE COURT: So you have a constitutional right
17 to remain silent if you so choose. But if you give
18 up that right, you will be subject to
19 cross-examination as I have gone over with you. Do
20 you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you made the decision whether
23 you want to testify or not?

24 THE DEFENDANT: No, sir, I won't testify.

25 THE COURT: You are not going to testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. Then I will instruct the jury
3 that they can't consider that against you. Anything
4 else you want to ask me concerning your rights?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay.

7 MRS. STEVENS: Thank you, Your Honor.

8 THE COURT: Is the defense going to put up any
9 evidence whatsoever?

10 MRS. STEVENS: No, sir, Your Honor.

11 THE COURT: Okay. Are we -- we still probably
12 got a few minutes till all the jury is back.
13 Anything we need to address before I bring the jury
14 in?

15 MRS. STEVENS: No, sir.

16 THE COURT: So far as closing arguments is
17 concerned, the State's going to go first?

18 MRS. STEVENS: Yes, sir.

19 THE COURT: And you're going to close?

20 MRS. STEVENS: Yes, sir.

21 THE COURT: Okay.

22 (Whereupon there was a pause.)

23 THE COURT: All right. Are y'all ready to bring
24 in the jury?

25 MS. FANT: I just want to check the photos real

1 quick, Your Honor.

2 THE COURT: Okay.

3 (Whereupon there was a pause.)

4 MS. FANT: We are ready, Your Honor.

5 THE COURT: Okay. I'm sorry.

6 (Jury entered the courtroom at 2:00 pm.)

7 THE COURT: Ladies and gentlemen, as I told you,
8 you have heard all the evidence you're going to hear
9 from the State of South Carolina. And my
10 understanding is the defense rests as well; is that
11 correct?

12 MRS. STEVENS: The defense rests, Your Honor.

13 THE COURT: Okay. So you have heard all the
14 evidence you're going to hear in this case. So now
15 it's time for you to hear the closing arguments of
16 the attorneys.

17 The State will go first and then the defense
18 will proceed after which I will charge you with the
19 law and give you this case to decide.

20 So if you will please pay close attention to the
21 attorneys, they will give you their closing
22 arguments. Madam Solicitor?

23 MS. FANT: May it please the Court. Mrs.
24 Stevens.

25 CLOSING STATEMENT

1 MS. FANT: Ladies and gentlemen of the jury, the
2 only reason we are here today is because Sarah
3 McKenzie is a survivor. Had she died, the defendant
4 might have gotten away with her murder.

5 But even though he tried to silence her, she did
6 survive and she bravely told you what happened to her
7 on that day.

8 Now, you heard from Sarah and I wish you could
9 have heard from Rohan Anderson who was also shot in
10 this incident so he could tell you what happened to
11 him as well as what happened to Sarah.

12 But you heard Lieutenant Rabon tell you about
13 her exhaustive search, and try as they might, they
14 couldn't locate him, and so he is not here. But
15 Sarah and the evidence spoke for him about the injury
16 he had and about who did it to him.

17 One of the things that the Judge is going to
18 explain to you in this case -- and please be aware
19 that whatever the Judge tells you is the law.

20 If I misstate something or misspeak, please
21 excuse that. He will tell you what the law is. But
22 it is your job to decide what the facts are, what
23 actually happened.

24 And the Judge is going to tell you about
25 reasonable doubt, which I'm sure you have all heard

1 about. And the only thing I really want to say about
2 that is keep in mind that beyond a reasonable doubt
3 does not mean beyond all doubt.

4 There is no way that the State or anyone could
5 ever prove something beyond all doubt. So the
6 standard is beyond a reasonable doubt. And the Judge
7 will describe that to you.

8 And we acknowledge that that is our burden and
9 we welcome that burden because in our view the
10 evidence in this case is overwhelming that the
11 defendant is the person who committed this crime.

12 Based upon the evidence that you have heard, the
13 only conclusion to come to is that Rick Vanburen
14 already convicted of this crime and D or Devan Dwyer
15 broke into her house, robbed her, shot her, and left
16 her and Rohan for dead.

17 Now, the elements of the crime are one thing
18 that the Judge will tell you about. And he will
19 instruct you that the State of South Carolina is
20 required to prove each and every element of each
21 crime. And that's what we believe that we have done.

22 And just for purposes of demonstration, I'd just
23 like to go over you briefly -- with you briefly, the
24 charges in this indictment that he has been charged
25 with.

1 First of all, burglary in the first degree. The
2 Judge will tell you what it is, but just simply, if
3 somebody comes into your house without your consent
4 and at that time it is either in the nighttime, IE
5 it's dark outside, or they're carrying a weapon, the
6 Judge is going to tell you that that is a burglary
7 first. If you believe that man did that, then he's
8 guilty of burglary first.

9 Armed robbery. Pretty much self-explanatory.
10 Means you commit a robbery while armed with a pistol
11 or other deadly weapon. Here we know it was a
12 handgun. Excuse me.

13 What is robbery? Basically taking something
14 from the person or in their presence that doesn't
15 belong to you. I think everybody pretty much knows
16 the concept.

17 Possession of a firearm or knife during the
18 commission of a violent crime. The Judge will
19 instruct you that if you have a firearm or a knife,
20 but in this case a firearm, with you when you commit
21 a violent crime as defined in the law of South
22 Carolina, you are guilty of this offense.

23 And here he's going to tell you that for
24 purposes of the law in South Carolina, that these
25 three crimes, all of which the defendant is charged

1 with, would qualify him for being guilty for
2 possessing a firearm because assault and battery with
3 intent to kill, armed robbery and burglary in the
4 first degree are all violent crimes under South
5 Carolina law.

6 And then lastly the two counts of assault and
7 battery with intent to kill. There are two counts
8 because there were two victims, two people that were
9 shot, Sarah McKenzie and Rohan Anderson.

10 The Judge will basically tell you that ABIK or
11 assault and battery with intent to kill is an
12 unlawful act of a violent nature to another with
13 malice aforethought either express or implied.

14 And one -- probably the most important thing to
15 remember about this crime is that it does not require
16 the State to prove a specific intent to kill, that
17 the defendant went in there meaning to kill her or
18 Rohan Anderson for that matter.

19 But what it means -- and he'll define malice for
20 you. That's the intent element of this crime. And
21 malice is the wrongful intent to injure another. It
22 indicates a wicked or depraved spirit intent on doing
23 wrong, or a formed purpose and design to do a
24 wrongful act under circumstances that excludes the
25 right to do it.

1 The Judge will also tell you that malice can be
2 inferred from the use of a deadly weapon. In fact,
3 in South Carolina, a pistol is a deadly weapon for
4 the purpose of defining malice.

5 So the fact is if you believe that that man went
6 into her house with a pistol, shot her and that
7 malice was present during that time, IE, that he did
8 something wrong to injure another and that indicates
9 a wicked spirit intent on doing wrong or a wrongful
10 act under the circumstances that excludes a legal
11 right to do so, then he's guilty of assault and
12 battery with intent to kill whether or not he meant
13 to kill her, although I think the evidence speaks for
14 itself that he did.

15 And in addition, the same -- these four tenace
16 of assault and battery with intent to kill could be
17 the same law that would be applied to the victim,
18 Rohan Anderson, that he was shot, and that when he
19 was shot, the defendant acted with malice
20 aforethought.

21 Most of this case has revolved around the
22 testimony of the victim, the victim that we have
23 present, Sarah McKenzie. She got up there and she
24 told you that she would never, never forget what
25 happened to her that night, that she and Rohan

1 Anderson were in the bedroom, that she was sitting on
2 the bed taking out some hair extensions or her hair
3 weave.

4 And the photographs that we admitted into
5 evidence show that. The hair weaves, the braids are
6 on the bed. The containers where the hair weaves is
7 on the floor. That corroborates that that's what she
8 was doing at the time.

9 She said she heard a noise when the screen door
10 opened and heard two sets of footsteps coming down
11 the hall. The important thing to remember about that
12 is she doesn't sit there and think, hmm, I hear
13 something.

14 She thought, oh my God, somebody is coming. She
15 didn't have time to run or do anything. All she had
16 time to do was think, something is not right, this is
17 not good. And so unfortunately, she sat there and
18 those two showed up at the door.

19 But what is logical and what you need to
20 remember here is that this is Sarah's trailer and
21 this was the front door where they came in. They
22 came straight here down the hall to this door right
23 there.

24 And I would submit to you that they didn't come
25 in and have a cup of coffee or sit down in the living

1 room. They entered that door and they went straight
2 to the bedroom, and that was a matter of a few
3 seconds if anything.

4 Sarah told you that at first she -- that she
5 wasn't too afraid. And why was that? Because she
6 recognized them immediately despite their attempts to
7 disguise. She knew who they were.

8 She has known both D or Devan Dwyer and Rick
9 Vanburen for years. And she told you that Devan
10 Dwyer or D had the gun, that D did all the talking,
11 that D asked for the money and took it, that D made
12 her give her her cellphone so she couldn't call
13 anyone, and that D shot her and Rohan right after she
14 said, I know who you are, D.

15 Rohan Anderson called 911. And law enforcement
16 testified that they arrived, Billy Lyons, detective,
17 was the first on the scene. And knowing that she
18 might die, Sarah was still able to tell him that D
19 was the person who shot her.

20 She testified that everybody she knows calls
21 Devan Dwyer, D, and in fact the other witnesses on
22 the stand confirmed that, that that is his nickname.
23 She immediately picked both D or Devan Dwyer and Rick
24 Vanburen out of a photo line-up, and those are the
25 only two people that she has ever said committed this

1 crime.

2 The medical records. Dr. Stanford came. And
3 just briefly, they're there. Everything back here
4 that's been entered in evidence, you have as long as
5 you want to or need to look over it.

6 But the real important thing about putting those
7 in was, one, to show the severity of Sarah's injury
8 and to corroborate the testimony about the breathing
9 tube that she could have lost at first -- but also it
10 corroborates her testimony, that she was sitting on
11 the side of the bed.

12 When they came in, she's taking out her hair
13 weaves, and that Rohan was laying down this way. And
14 the medical testimony -- excuse me -- and evidence
15 would reveal that she was turned facing him, looking
16 at him, he shoots her, and the trajectory or path of
17 the bullet is in her right shoulder and down as if
18 someone is standing up and she is sitting down, and
19 it lodges in her back, and that bullet is never
20 recovered.

21 As to Mr. Rohan Anderson, he was lying down.
22 Both Sarah was shot once and he was shot once. And
23 the wound, according to the medical records, was a
24 through and through.

25 And in fact, I believe there is a diagram in

1 these medical records for Rohan Anderson that Dr.
2 Clanton drew that will show you right there, this is
3 his left arm, that there was an in and an out and a
4 clavicle, the shoulder blade, the clavicle, is up
5 there, and that there were two wounds consistent with
6 one bullet passing through them.

7 And the important thing is that was consistent
8 with the evidence that was found at the scene. One
9 bullet and two shell casings. Two shell casings for
10 each shot that was fired, one bullet that passed
11 through Rohan Anderson and ended up on the floor, and
12 one bullet that remained lodged in Sarah McKenzie's
13 back.

14 The only thing we're asking you to do here is
15 use your common sense from what you know about life
16 and what's logic.

17 Now, one of the things the Judge is going to
18 tell you about is credibility. And credibility
19 simply means the believability of a witness, whether
20 someone is believable in what they tell you.

21 And he's going to tell you that you can
22 determine credibility, which is your sole
23 determination, only you can decide who to believe and
24 who not to, but that you can determine that based not
25 only on what a witness says, but how they act, what

1 their demeanor is, how they come across to you.

2 And the only thing that I would say, which is
3 very easy in this case, is that on the one hand is
4 Sarah McKenzie and night and day on the other hand is
5 Rick Vanburen.

6 If that wasn't the epitome of credibility versus
7 non-credibility, someone who fidgets, someone who
8 says they don't remember all the time, someone who
9 says they don't know, someone who denies obvious
10 facts and only admits them when confronted with a
11 piece of paper. That's not credible.

12 But somebody who sits up there and tells you
13 just as it happened, like it was, and doesn't claim
14 to know things that they don't know and admits their
15 faults, that's credible witness testimony and that's
16 what we have in this case.

17 Sarah was forthcoming and open, and she told you
18 upfront what happened. Detective Lyons was the first
19 on the scene. He showed you where Sarah lived and he
20 pointed out where Cassandra McCray or Devan Dwyer's
21 girlfriend and he lived.

22 And when you're looking here on -- excuse me --
23 this is Lafayette coming down. That's south. If you
24 turn on , Sarah's trailer was right there
25 facing , and right across the street is the

1 defendant's trailer with Cassandra McCray, where he
2 was living.

3 And the photographs corroborate that as this one
4 right here. This is Sarah's trailer taken from the
5 porch. It is right across the street. And you can
6 see the street light, the stop sign, everything. We
7 are talking just a matter of feet away.

8 We also have the photo of the back of Sarah's
9 trailer. And putting that together with what we
10 know, they ran out the back -- we're talking again a
11 matter of feet until they're safe -- in Cassandra
12 McCray's trailer.

13 Excuse me. Detective Lyons told you that he was
14 able to talk to both victims, that he learned that
15 there were two black males, one had a gun, demanded
16 money, and then shot them, then they fled the scene.

17 He told you that Rohan was shot once, that he
18 was alert, so he was extremely scared about what had
19 happened. Sarah was in the back bedroom and had
20 labored breathing. She was somewhat difficult to
21 understand, but she clearly said D is the person that
22 shot him.

23 Sarah never said the suspects were wearing
24 masks. Everything she said was, I know them, that's
25 them, despite whatever they tried to do. I knew

1 them. And she told you that Devan Dwyer's street
2 name is D, and this was later confirmed by the
3 investigation and by Lieutenant Rabon.

4 Now, I'm not going to go over all of their
5 testimony. You sat here and you heard everything
6 that they had to say. But suffice it to say, they
7 followed the leads that they were given and they
8 arrested the people that were responsible for this
9 horrible crime.

10 One of the things that the Judge will tell you
11 is that you took an oath and you know, and you were
12 sworn in as jurors, that under the law it is your
13 duty to convict someone if you believe that the facts
14 support the crime beyond a reasonable doubt.

15 There is no question that the defendant is
16 entitled to his trial and to his day in court. But
17 so is Sarah McKenzie. And she's entitled to justice.

18 On August 3rd of 2005, wee hours of the morning,
19 that man along with Rick Vanburen entered her home,
20 robbed her, shot her and Rohan Anderson and left them
21 for dead.

22 In so doing, he is guilty of burglary in the
23 first degree, armed robbery, assault and battery with
24 intent to kill Sarah McKenzie, assault and battery
25 with intent to kill Rohan Anderson, and possession of

1 a firearm during the commission of a violent crime.

2 The most important thing if you remember
3 anything else from these remarks is that Sarah
4 McKenzie never wavered, never once, in saying who did
5 this to her.

6 She said that that man, D, was the one who came
7 into her home along with Rick Vanburen, that D was
8 the one that had the gun, that D did all the talking,
9 that D was the one that actually took the things from
10 her, and when she said, I know who you are, D is the
11 one that shot her and Rohan and left them for dead.

12 Because of that, on behalf of the State of South
13 Carolina I ask that you find him guilty on each and
14 every count as charged.

15 THE COURT: Mrs. Stevens?

16 MRS. STEVENS: May it please the Court. Ms.
17 Fant.

18 CLOSING STATEMENT

19 MRS. STEVENS: First of all I want to thank you
20 again for being here and thank you for all your
21 attentiveness. I was watching you as the witnesses
22 were up there and the evidence was being presented,
23 and I know some of you were paying attention and I
24 appreciate that.

25 Remember when I told you not only to listen to

1 what you did hear but also to listen to what you
2 don't hear. Okay.

3 When Ms. Fant made her opening argument, she
4 told you that you would hear testimony from Cassandra
5 McCray. She didn't. She told you that you would
6 hear testimony about the trajectory of the bullet,
7 but you didn't.

8 So let's talk about Sarah Victoria McKenzie.
9 What happened to her is horrible. And someone did
10 commit a burglary first and armed robbery and two
11 counts of assault and battery with intent to kill.

12 We're not denying that and we're not denying
13 that her injuries were severe. What we're denying is
14 that Devan Dwyer is the one who did it to her.

15 As far as Rick Vanburen is concerned, her
16 witness. She called him. You have to get the good
17 with the bad. But one thing he did know -- might
18 have said, I don't know a hundred times, explain it
19 to me again a lot of times, whatever.

20 The one thing he did know was that when he pled
21 guilty, he did not admit he was there. He never said
22 to anyone, I was there, and he didn't testify as he
23 stood on the stand whether -- he said he didn't know
24 whether Mr. Dwyer was there or not either because he
25 wasn't there. That's what he said.

1 You want to talk about credibility, you may
2 think, you know, he was a little off, didn't really
3 understand what in the world he was saying. But the
4 one thing he never wavered on was that he did not
5 admit his guilt and therefore could not put Mr. Dwyer
6 there at the scene.

7 I asked about hand of one is the hand of all.
8 And I think basically what Mrs. Culick was trying to
9 tell us was the statement -- I mean, the police get
10 to decide if they are going to charge somebody under
11 the hand of one is the hand of all. If it suits
12 their purposes, they're going to do it.

13 But if it doesn't, they can be nice to somebody,
14 offer them a great deal in hopes that they'll say
15 what they want them to say. They offered him a great
16 deal. He said, I took it because it was a great
17 deal. They told me I could go home.

18 Mrs. Culick said she would never, never plead to
19 something that she didn't do. But she wasn't in
20 Mr. Vanburen's situation.

21 There may have been a really good reason if he
22 needed to get out of jail. He told you that his
23 grandmother needed him. And he felt like that was
24 more important for getting out that day because if
25 you think about it, ladies and gentlemen, we're just

1 having this trial today, April of 2009.

2 He stayed in jail till August of 2007 before he
3 pled guilty. And if he hadn't pled guilty at that
4 time, he might still be in jail today. He might be
5 sitting there next to Mr. Dwyer.

6 His grandmother needed him, and he wanted to go
7 home, so he pled guilty to something he did not do.
8 He admitted that he had convictions for other crimes,
9 but yeah, I did that, yeah, I did that.

10 Why would he tell you that he did something that
11 he didn't do right after admitting that that's what
12 he did?

13 The search warrants. They did the search
14 warrant for Mr. Vanburen's residence and also for Ms.
15 McCray's residence. They didn't find anything. And
16 their excuse was, well, so much time had gone by,
17 they had plenty of time to hide it or burn it.

18 But I asked them, did you find any burn piles?
19 Did you find any evidence that they had destroyed
20 what you were looking for?

21 They said Mr. Dwyer came in on his own,
22 volunteered to come in, gave them a statement. Said
23 he wanted to clear things up. He wasn't in trouble.
24 He didn't cause them trouble.

25 When they did the search warrant for both

1 Mr. McCray's house and Mr. Vanburen's house -- they
2 thought it was a silly question for me to ask if they
3 cooperated. But my point was, if people have
4 something to hide, they usually don't cooperate.

5 If they don't have anything to hide, they
6 cooperate, they say, sure, come on in, search if you
7 don't have -- they don't have anything to hide, they
8 walk into the Police Department and they say, hey,
9 I'm here to talk to you, which is what Mr. Dwyer did.

10 He didn't run. They didn't have to chase him.
11 They didn't have to go find him. He came and found
12 them. And the testimony was there's no way he would
13 have known that the warrant was out for his arrest at
14 that time. It just wasn't possible. So he
15 voluntarily turned himself in, said, I didn't do it.

16 The scene. We talked a little bit about
17 processing the scene, but nobody that's testified was
18 the one that processed the scene, so we don't have
19 any fingerprints, whether there were any or not. We
20 don't have any evidence of whether the bullets were
21 fired from the same gun.

22 We just know there were two bullets -- well,
23 excuse me -- two shell casings and a projectile which
24 he explained to me -- guess if the bullet went like
25 this, but once it fired, the bullet part becomes

1 projectile.

2 And they found the projectile in front of
3 Mr. Rohan -- Mr. Anderson. But if you look at the
4 picture, person's supposed to be standing in front of
5 him and shoots him and it comes out the top but
6 somehow manages to come in front of him and be there
7 with the shell casing?

8 You would think that the shell casings would
9 have been right by the door because the testimony was
10 that whoever shot them backed up, stepped out the
11 door and then shot. But the bullets aren't in the
12 hall. They are in the bedroom. You will be able to
13 see in the pictures.

14 They made a big deal about interviewing Ms.
15 McKenzie -- I mean Ms. McCray. We had to make sure
16 that we talked to Ms. McCray before she has a chance
17 to talk to Mr. Dwyer, get over there really, really,
18 really quick.

19 Well, what does she tell them? We don't know.
20 They didn't call her. They told you you were going
21 to hear from her, but you didn't. Maybe what she
22 said wasn't what they wanted to hear. We don't know
23 because they didn't call her.

24 The photo line-up. That, you know, that's the
25 slam dunk so to speak because Ms. McKenzie identified

1 Mr. Dwyer and identified Mr. Vanburen right away.

2 I submit to you, ladies and gentlemen, she knew
3 who Devan Dwyer was. Lived across the street. She
4 knew who Rick Vanburen was. They had a relationship.
5 She claims that she's the one that ended it, but we
6 don't know.

7 She even picked out those two gentlemen from
8 those photo line-ups because those are the only
9 people she knew in the photo line-up. She knew them.
10 She tells you that she knew them.

11 She wasn't picking out some stranger that robbed
12 her. She recognized Mr. Dwyer and she recognized
13 Mr. Vanburen because she knew them, not because they
14 are the ones that shot her or were in her house but
15 because she knew them.

16 She changed her story. When she first talked to
17 the police she said she was asleep. And she
18 testified, no, I was awake, I was fixing my hair.
19 Then she testified, no, I was dozing and then I woke
20 up, fixed my hair, went back to sleep and fixed my
21 hair.

22 So she couldn't really tell us what she was
23 doing at the time. She said she heard a noise and
24 then heard some footsteps. And all of a sudden she
25 just knew something was wrong, something bad was

1 going to happen.

2 But yet she sat there, fiddling with her hair.
3 She didn't get off the bed. She didn't go lock
4 herself in the bathroom. She didn't get under the
5 bed. She didn't call 911.

6 Her own testimony is that the phone was right
7 there, right there on the nightstand for her la-di-da
8 for everybody to see, but she didn't go pick it up.
9 She didn't call the police.

10 She didn't wake Mr. Anderson up and say, dude,
11 there's somebody in the house, protect me. She just
12 sat there fiddling with her hair. Her own words,
13 just sat there playing with my hair.

14 But she's scared of something bad is going to
15 happen but does absolutely nothing to prevent it.
16 She also said originally that they were wearing a
17 mask over the face, both of them.

18 *MS. FANT:* Objection, Your Honor. That's not
19 the testimony in the record.

20 *MRS. STEVENS:* Okay. A shirt. So they were
21 wearing a shirt over their face. But never mentioned
22 three and a half years ago that Mr. Dwyer was
23 allegedly wearing a shirt on his head. That's a
24 pretty significant difference.

25 Because she said he had a big old afro. Wanted

1 her to tell me what an afro was, but she kept using
2 the words big old afro.

3 What -- Detective Ross testified that when he
4 met with Mr. Dwyer, he didn't have a big old afro.
5 He didn't have long hair.

6 I submit to you that Ms. McKenzie could not
7 identify the people that did this to her. But
8 somebody's got to pay, right? So she picked people
9 that she knew. She didn't necessarily get along
10 with.

11 I don't want you to think that I don't -- that I
12 don't feel sorry that this happened to Ms. McKenzie
13 because I do. And I cannot even imagine what this
14 was like for her.

15 But ladies and gentlemen, that doesn't mean that
16 the State has proved beyond a reasonable doubt that
17 Devan Dwyer did it just because she said so. She's
18 the only evidence they have that said he did it.

19 Mr. Anderson. Ms. Fant suggests that he could
20 back her story up. We don't know if he could or not
21 because he's not here. They told you that he was
22 scared, that he was anxious, you know, they wanted to
23 get him closure.

24 Well, he obviously didn't feel the need for
25 closure because he could have kept in touch with

1 them. If he really wanted to be here today, he would
2 be here today, but he's not.

3 So we don't know. Did it not mean enough for
4 him to come back? We don't know. So we don't know
5 what he would say if he were sitting up there. We
6 don't know if he would tell the same story Ms.
7 McKenzie told or if his story would be different. We
8 just don't know.

9 It's nobody's fault he is not here but his own,
10 because he does have the ability to be here if he
11 wanted to.

12 The Judge is going to explain reasonable doubt
13 to you. And as Ms. Fant said, it's not any doubt,
14 it's reasonable doubt, and he'll explain it to you.

15 And another thing that he will explain to you is
16 that Mr. Dwyer is innocent until proven guilty. He
17 does not have to prove his innocence to you.
18 Therefore, he does not have to put up a defense. And
19 the Judge will tell you that and tell you that you
20 can't say, hmm, he didn't testify, he must be guilty.
21 You can't do that.

22 You cannot even consider the fact that he didn't
23 testify because he doesn't have to. It's his right
24 not to. It's not our burden to prove to you he
25 didn't do it.

1 It is the State's burden to prove to you that he
2 did beyond a reasonable doubt. And I submit to you
3 they have not done so. Thank you.

4 *THE COURT:* Ladies and gentlemen, I need you to
5 go to the jury room for a moment and select a
6 foreperson.

7 Now, the foreperson has no greater vote than
8 anyone else. Your verdict must be unanimous. But
9 that person is simply to preside over the
10 deliberations and sign the verdict form that I'm
11 going to give you.

12 So I have found juries do a lot better when they
13 select their own person. It needs to be out of the
14 original 12 of you because everybody looks like we
15 are in good shape, we probably won't use the
16 alternate.

17 But if you will go to the jury room. And when
18 you have made that selection, when you come back out
19 I will charge you on the law and give you this case
20 to decide.

21 (Jury left the courtroom at 2:33 pm.)

22 (Jury entered the courtroom at 2:38 pm.)

23 JURY CHARGE

24 *THE COURT:* Ladies and gentlemen of the jury,
25 now that you have heard the evidence in this case as

1 well as the arguments of the attorneys, I'm going to
2 now explain to you the law that applies in this case.

3 And under our constitution and code of laws,
4 only the jury can make findings of fact in this case.
5 I am not permitted as Judge to make a finding of the
6 fact.

7 So if I have said anything or done anything
8 throughout this trial that you think I have an
9 opinion about the facts, you're to disregard that
10 because under our law I'm not allowed to have an
11 opinion. That is solely in your province.

12 You're the judge of the facts in this case.
13 Under that same law and constitution that makes you
14 the sole judges of the facts, it makes me the sole
15 judge of the law.

16 So if you have an idea of what you think the law
17 is or what the law ought to be and it differs from
18 what I now tell you the law is, under your oath
19 you're to disregard your idea and apply the law
20 exactly as I give it to you.

21 The fact that this defendant was arrested,
22 charged and indicted in this case is not evidence in
23 this case and cannot be considered by you as evidence
24 of guilt in this case nor does it create any
25 presumption or inference of guilt.

1 The indictment is simply the formal, written
2 instrument which contains the charges made against
3 this defendant and it serves as a formal document by
4 which this case is processed and brought to court.

5 Now, the defendant has pled not guilty in this
6 indictment and that plea casts the burden upon the
7 State of South Carolina to prove the defendant guilty
8 beyond a reasonable doubt.

9 A person charged with committing a criminal
10 offense in South Carolina is never required to prove
11 himself or herself innocent.

12 And I instruct you and emphasize to you the fact
13 that the defendant did not testify is not a factor to
14 be considered by you in any way in your deliberation
15 and in your consideration of the question of guilt or
16 innocence of the defendant.

17 It must not be considered by you in any manner
18 whatsoever. The defendant has a constitutional right
19 to remain silent. And the assertion of this right
20 must not be considered by you in your deliberation.

21 I repeat. Under our oath you're to draw no
22 conclusion whatsoever from the fact that the
23 defendant in this case did not testify. The fact
24 that this defendant did not testify should not even
25 be discussed in the jury room.

1 It is an important rule of law in this country
2 that the defendant in a criminal trial will always be
3 presumed to be innocent of the crime for which he or
4 she is indicted unless and until his guilt has been
5 proven by evidence that satisfies you of that guilt
6 beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal
8 theory. It is not just a legal phrase. It is a
9 substantial constitutional right to which every
10 defendant is entitled.

11 The presumption of innocence accompanies the
12 defendant from the time he is charged and throughout
13 the trial until you reach a verdict of guilt based
14 upon evidence that satisfies you of that guilt beyond
15 a reasonable doubt.

16 A reasonable doubt is a doubt which makes an
17 honest, sincere, conscientious juror in search of the
18 truth to hesitate to act.

19 Proof beyond a reasonable doubt must therefore
20 be proof of such a convincing character that a
21 reasonable person would not hesitate to rely and act
22 upon it in the most important of his or her own
23 affairs.

24 Proof beyond a reasonable doubt can also be
25 proven by -- is -- as proof that leaves you firmly

1 convinced of the defendant's guilt.

2 There are very few things in this world that we
3 know with absolute certainty. And in a criminal case
4 the law does not require proof that overcomes every
5 possible doubt.

6 If based on your consideration of the evidence
7 you're firmly convinced that the defendant is guilty
8 of the crime charged, you must find him guilty.

9 If on the other hand you think there's a real
10 possibility that he is not guilty, you must give him
11 the benefit of that doubt and find him not guilty.

12 Now, in determining what the facts are in this
13 case, you must necessarily pass upon the credibility
14 which simply means the believability of the witnesses
15 and the value or weight to be given to their
16 testimony.

17 You alone must decide the force and effect, the
18 truth of that testimony. And in making these
19 decisions, there are many things you may consider and
20 take into consideration such as the appearance and
21 manner of the witness on the stand, sometimes
22 referred to as the demeanor of the witness.

23 Was the witness forthright or hesitant. Was the
24 witness's testimony consistent or did it contain
25 discrepancies.

1 BAILIFF: Get this lady some water.

2 THE COURT: Get you a drink of water. What was
3 the ability of the witness to know the facts about
4 which he or she testified.

5 Did the witness have cause or reason to be
6 biased and prejudiced in favor of his or her
7 testimony. Was the testimony of a witness
8 corroborated or made stronger by other testimony and
9 evidence or was it made weaker or impeached by other
10 testimony and evidence.

11 As jurors you have the right to believe a small
12 portion of a witness's testimony and disregard the
13 larger or vice versa. You may believe all of a
14 witness's testimony or none. You may believe the
15 testimony of a single witness against that of many or
16 the other way around.

17 Now, there are two types of evidence which are
18 generally presented during a trial, direct evidence
19 and circumstantial evidence.

20 Direct evidence is testimony of a person who
21 asserts or claims to have actual knowledge of a fact
22 such as an eye witness.

23 Circumstantial evidence is proof of a chain of
24 facts and circumstances indicating the existence of a
25 fact.

1 And I -- to give you a definition, if I go to
2 bed tonight and my lawn is dry and my driveway is
3 dry, and I wake up in the morning, water, mud puddles
4 in my driveway.

5 I didn't see it rain last night; but I could
6 assume some time during the night it rained. That is
7 circumstantial evidence. If I had seen it rain, that
8 would be direct evidence.

9 And as I said, the law makes absolutely no
10 distinction between direct and circumstantial
11 evidence nor does it require any greater degree of
12 certainty than circumstantial evidence than that of
13 direct evidence.

14 You should weigh all of the evidence in this
15 case, and after weighing all of the evidence, if
16 you're not convinced of the guilt of the defendant
17 beyond a reasonable doubt, you must find him not
18 guilty.

19 Now, criminal intent is a necessary element of
20 each crime that must be proved by the State beyond a
21 reasonable doubt. Criminal intent is always a matter
22 that must be determined by the jury from the
23 circumstances surrounding the situation.

24 There is no way to prove intent to a
25 mathematical certainty. There is no way medical

1 science can dissect a person's brain and determine
2 what he or she had in mind.

3 So the law states criminal intent may be
4 inferred from the circumstances shown to have existed
5 both before and after the fact. This is how you the
6 jury make a determination of whether or not the
7 elements of intent were present.

8 Criminal intent is a state of mind that operates
9 jointly with an act or omission in the commission of
10 a crime. Criminal intent is a mental state of
11 conscious wrongdoing.

12 So it is up to you the jury to determine what
13 the defendant intended to do based on circumstances
14 shown to have existed.

15 I tell you that the State must prove criminal
16 intent beyond a reasonable doubt just like the State
17 must prove every element beyond a reasonable doubt.

18 Now, the defendant is charged in this case with
19 burglary in the first degree. And I'm going to
20 define to you the different charges.

21 Burglary in the first degree. The State must
22 prove beyond a reasonable doubt that the defendant
23 entered a dwelling without consent.

24 A dwelling is any building or portion of a
25 building in which a person ordinarily sleeps. A

1 building constructed as a dwelling that has never
2 been occupied cannot be considered a dwelling for the
3 purpose of burglary. But a building is a dwelling
4 even if the residents are temporarily absent from the
5 building.

6 In order to prove that the defendant entered the
7 dwelling, the State does not have to show that the
8 defendant's entire body entered the dwelling. The
9 smallest entry is sufficient.

10 It may be any part of the body such as a hand or
11 foot or even an instrument such as a hook or other
12 instrument.

13 In addition, the State does not have to prove
14 that force was used to gain entry. If a person
15 enters a building by using deception, trick or
16 misrepresentation to get consent to enter, this is
17 entry without consent.

18 Next the State must prove beyond a reasonable
19 doubt the defendant intended to commit a crime,
20 either a felony or a misdemeanor, at the time of the
21 entry.

22 The mere entry into a dwelling without consent
23 is not burglary. If the intent to commit a crime is
24 formed after the entry, it is not burglary.

25 On the other hand, if the defendant intended to

1 commit a crime at the time of the entry, it is
2 burglary even if the intent was abandoned after the
3 entry. It does not matter that the intended crime
4 was not completed.

5 Intent may be shown by acts and conducts of the
6 defendant and other circumstances which you may
7 naturally and reasonably infer.

8 Finally the State must prove beyond a reasonable
9 doubt one of these -- and I will give you basically
10 four or five, six -- four or five different
11 scenarios. The State must only prove one of these.

12 When entering -- while in the dwelling or when
13 fleeing, the defendant or an accomplice was armed
14 with a deadly weapon.

15 A deadly weapon is any article, instrument, or
16 substance which is likely to cause death or great
17 bodily injury. Whether an instrument has been used
18 as a deadly weapon depends on the facts and
19 circumstances of each case.

20 The following are examples of instruments which
21 may be deadly weapons. A pistol, a shotgun, a knife,
22 a dirk, a dagger, a slingshot, a rifle, metal
23 knuckle, razor, gasoline, fire bomb, Molotov
24 cocktail, liquid lighter fluid. A gun may be a
25 deadly weapon even if it is not operating.

1 And when entering -- when entering or while in
2 the dwelling or fleeing from the dwelling the
3 defendant or an accomplice caused physical injury to
4 anyone not participating in the crime.

5 One of the scenarios is the State must prove
6 either that they entered the dwelling with a weapon
7 or that while in the dwelling or fleeing from the
8 dwelling they caused injury to someone who was not an
9 accomplice to the crime.

10 A third possible option is when entering or
11 while in the dwelling or when fleeing, the defendant
12 or an accomplice used or threatened to use a
13 dangerous object, or when entering or while in the
14 building, the defendant or an accomplice displayed
15 what was -- what was or appeared to be a knife, a
16 pistol, a revolver, a rifle, a shotgun, a machine
17 gun, or other firearm, or the defendant entered or
18 remained in the dwelling in the nighttime.

19 Nighttime is the period between sunset and
20 sunrise in which there is not enough daylight to
21 recognize a person's face except by artificial light
22 or by moonlight.

23 Now, those are five different options that I
24 gave you. The State must only prove one of them
25 beyond a reasonable doubt.

1 And so if you find that the State has proven any
2 one of them beyond a reasonable doubt, then those --
3 that is one of the elements of burglary that the
4 State must prove.

5 Now, the defendants also charged with the crime
6 of armed robbery. In order to prove this offense,
7 the State must prove -- first prove beyond a
8 reasonable doubt that the defendant took personal
9 property from the person or presence of another
10 person.

11 Property is in the presence of a person if it is
12 within the person's reach, inspection, observation,
13 or control so that the person could, if not overcome
14 with violence or prevented by fear, keep possession
15 of the property.

16 The State must prove beyond a reasonable doubt
17 the defendant charged -- that the defendant carried
18 away the property intending to permanently deprive
19 the owner of the property and to keep the property
20 for the defendant's own use.

21 The slightest removal of the property or the
22 complete possession of the property even for an
23 instant by the defendant is deficient -- is
24 sufficient to show a taking and carrying away of the
25 property.

1 The taking and carrying away of the property
2 must have been done with violence or by putting the
3 owner of the property in fear of violence.

4 Finally the State must prove beyond a reasonable
5 doubt the defendant was armed with a deadly weapon
6 during the robbery.

7 A deadly weapon is any article, instrument or
8 substance which is likely to cause death or great
9 bodily injury. Whether an instrument has been used
10 as a deadly weapon depends on the facts and
11 circumstances of each case. And I have given you
12 earlier possible examples of a deadly weapon.

13 Now, the defendant is also charged with two
14 counts of assault and battery with intent to kill.
15 In order to prove assault and battery with intent to
16 kill, the State must prove beyond a reasonable doubt
17 that the defendant committed an unlawful act of
18 violence -- of a violent nature to a person of
19 another with malice aforethought.

20 An assault occurs when a person unlawfully
21 attempts or offers to commit a violent injury upon
22 another person and has the present ability to
23 complete the attempted injury.

24 An assault is the intentional creation of a --
25 excuse me -- of a reasonable fear of immediate bodily

1 harm. It is not necessary that the attempted injury
2 or harm actually takes place.

3 For example, if I walk up to you when we are
4 within arms reach and I draw back to hit you, that is
5 an assault.

6 A battery is the unlawful touching of another
7 person by a person who has committed the assault. An
8 unlawful touching can be caused by a part of the
9 accuser's body or by any object the accused puts into
10 motion.

11 A battery is the completion of the assault by
12 using or applying force to another person, however
13 slight, or in a rude, angry, or resentful manner
14 without legal justification for doing so.

15 Using my earlier example, if I carried through
16 with the assault by hitting you, then it is a
17 battery.

18 Malice is hatred, ill will, or hostility towards
19 another person. It is the intentional doing of a
20 wrongful act without just cause or excuse and with
21 the intent to inflict an injury or cause
22 circumstances that the law will infer an evil intent.

23 Malice aforethought does not require the malice
24 exist for any particular time before the act is
25 committed, but malice must exist in the mind of the

1 defendant just before and at the time the act is
2 committed.

3 Therefore, there must be a combination of the
4 evil intent and the act. Malice aforethought may be
5 express or inferred. These terms express and
6 inferred do not mean different kinds of malice, but
7 merely the manner in which malice may be shown to
8 exist.

9 There is -- that is either by direct evidence or
10 by inference from the facts and circumstances which
11 are proved.

12 Express malice is shown when a person speaks
13 words and expresses hatred or ill will for another or
14 when the person prepared beforehand to do the act
15 which was later accomplished.

16 For example, lying in wait for a person, or
17 other acts in preparation going to show that the deed
18 was within the defendant's mind would be expressed
19 malice.

20 Malice may be inferred from the conduct showing
21 a total disregard for human life. Inferred malice
22 may also arise when the deed is done with a deadly
23 weapon.

24 A deadly weapon, as I have explained to you, is
25 any article or instrument or substance which is

1 likely to cause death or great bodily injury.

2 Now, if the facts prove beyond a reasonable
3 doubt sufficient to raise an inference of malice to
4 your satisfaction, this inference would be simply an
5 evidentiary fact to be considered by you along with
6 the other evidence in this case and you may give it
7 the weight you decide it should receive.

8 A specific intent to kill is not an element of
9 assault and battery with intent to kill, but there
10 must be a general intent to commit serious bodily
11 injury.

12 Intent means intending the result which actually
13 occurred not accidentally or involuntary. Intent may
14 be shown by acts and conducts of the defendant and
15 other circumstances which you may naturally and
16 reasonably infer intent.

17 Evidence of the character of the assault, the
18 character of an instrument used, the manner in which
19 it was used, the purpose to be accomplished, and the
20 resulting wounds or injuries may be considered in
21 determining intent with which the assault was
22 committed.

23 Intent may be inferred when it is demonstrated
24 that the defendant voluntarily and willfully
25 committed an act, the natural tendency to which it

1 destroys another's life.

2 Now, the defendant is also charged with
3 possession of a weapon during the commission of a
4 violent crime.

5 The State must prove beyond a reasonable doubt
6 the defendant was in possession of a firearm or
7 visibly displayed a firearm or visibly displayed what
8 appeared to be a firearm during the commission of a
9 violent crime.

10 A firearm means any machine gun, automatic
11 rifle, revolver, pistol, or any weapon which will or
12 is designed to or may be readily converted to expel a
13 projectile.

14 In order to find the defendant guilty of
15 possession of a weapon during the commission of a
16 violent crime, there first must be a finding that the
17 defendant guilty -- is guilty of committing a violent
18 crime or attempting to commit a violent crime.

19 And I instruct you that burglary in the first
20 degree, armed robbery, and assault and battery with
21 intent to kill are all violent crimes.

22 Now ladies and gentlemen, you're not partisans
23 or advocates for the State of South Carolina or this
24 defendant. You don't serve on a jury to reward your
25 friends or punish your enemies. Clearly that system

1 of justice wouldn't be tolerated.

2 You have been selected by both the State and
3 this defendant as fair and impartial jurors. It is
4 your duty then by your joint deliberations to
5 determine the truth in this case giving to this
6 defendant the benefit of every reasonable doubt on
7 each and every issue.

8 And then to the facts which you determine to be
9 true, you are to take and apply the law that I have
10 now given you and reach a verdict that speaks the
11 truth.

12 When you have accomplished this, you will have
13 satisfied your oath as jurors and discharged your
14 duty to the Court.

15 Now Mr. Foreman, I have had my Law Clerk type up
16 a possible verdict form. And it's simply the caption
17 of the case, the State of South Carolina versus Devan
18 Dwyer.

19 And these are the possible verdicts. Count one,
20 we the jury find the defendant guilty of burglary in
21 the first degree, first degree burglary.

22 Count two, we the jury find the defendant not
23 guilty of first degree burglary. I'm sorry. That's
24 number two on count one.

25 Count two is, we the jury find the defendant

1 guilty of armed robbery, we the jury find the
2 defendant not guilty of armed robbery.

3 Count three, we the jury find the defendant
4 guilty of assault and battery with intent to kill
5 Sarah Victoria McKenzie, or two, we the jury find the
6 defendant not guilty of assault and battery with
7 intent to kill Sarah Victoria McKenzie.

8 On count four, we the jury find the defendant
9 guilty of assault and battery with intent to kill
10 Rohan Anderson, or we the jury find the defendant not
11 guilty of assault and battery with intent to kill
12 Rohan Anderson.

13 And on count five, we the jury find the
14 defendant guilty of possession of a weapon during the
15 commission of a violent crime, or we the jury find
16 the defendant not guilty of possession of a weapon
17 during a violent crime.

18 Now, on count five, he can only be guilty of
19 possession of a weapon during a violent crime if you
20 find him guilty of one of the violent crimes above
21 that.

22 If you found him not guilty on all the crimes
23 above that, you wouldn't even go to count five. You
24 understand that?

25 Now, the order that I put these in makes

1 absolutely no difference and you should draw no
2 inference from that order. We just had to simply put
3 them in some order.

4 I will send you back to the jury room. You
5 can't start your deliberations yet because I'm going
6 to have to talk with these attorneys and be sure I
7 haven't left anything out.

8 If I have, I will bring you back out and charge
9 you further on the law. If I have covered everything
10 that they think is important, I will send this
11 verdict form into the jury room along with evidence
12 in this case.

13 When you have received the verdict form, that
14 will be your indication to start your deliberation.

15 Now, during your deliberation, if one of you
16 need to be excused, then you have got to stop
17 deliberations until that person returns back into the
18 room. You only can deliberate on this case when all
19 12 of you are present.

20 When you have reached a verdict, and it must be
21 a unanimous verdict, which means all 12 of you must
22 agree on the verdict, you're to knock on the door,
23 the bailiff will bring you back out, and we will
24 receive that verdict.

25 So if you will go to the jury room at this time.

1 I will either send this evidence in and you can begin
2 your deliberations or I will bring you back out.
3 Now, if you will stay with me. Looks like everybody
4 is going to make it.

5 (Jury left the courtroom at 3:02 pm.)

6 THE COURT: Are there any exceptions, deletions
7 by the State?

8 MS. FANT: No, Your Honor.

9 THE COURT: By the defense?

10 MRS. STEVENS: No, sir, Your Honor.

11 THE COURT: Okay. Ladies, if y'all will be sure
12 all the evidence is together and check off with the
13 Court Reporter...

14 (Alternate juror excused.)

15 (Jury began deliberations at 3:05 pm.)

16 THE COURT: It's my understanding we have a
17 verdict. If we could find Mrs. Stevens.

18 (Whereupon there was a pause.)

19 THE COURT: Ladies, I understand we have a
20 verdict. Anything before we bring the jury in from
21 the State?

22 MS. FANT: Nothing from the State.

23 THE COURT: From the defense?

24 MRS. STEVENS: No, sir, Your Honor.

25 THE COURT: Thank you. Bring in the jury.

1 (Jury entered the courtroom at 4:31 pm.)

2 VERDICT

3 THE COURT: Mr. Foreman, I understand y'all have
4 reached a verdict.

5 FOREMAN: Yes, we have.

6 THE COURT: Is it a unanimous verdict?

7 FOREMAN: Yes, Your Honor.

8 THE COURT: All right. If you will pass it up,
9 please sir.

10 (Bailiff approached the foreman then approached
11 the Court.)

12 THE COURT: You may publish the verdict.

13 BAILIFF: For the State of South Carolina,
14 County of Sumter, in the Court of General Sessions,
15 docket number 06-GS-43-553, State of South Carolina
16 versus Devan Dwyer, defendant.

17 As to count one, we the jury find the defendant
18 guilty of first degree burglary.

19 As to count two, we the jury find the defendant
20 guilty of armed robbery.

21 As to count three, we the jury find the
22 defendant guilty of assault and battery with intent
23 to kill Sarah Victoria McKenzie.

24 As to count four, we the jury find the defendant
25 guilty of assault and battery with intent to kill

1 Rohan Anderson.

2 As to count five, we the jury find the defendant
3 guilty of possession of a firearm during the
4 commission of a violent crime. Signed Allen
5 Mitchell, foreman, dated April the 14th, 2009.

6 Ladies and gentlemen of the jury, if this is
7 your verdict, so say ye all by raising your right
8 hand. Thank you.

9 THE COURT: Anything from the State before I
10 dismiss the jury?

11 MS. FANT: No, Your Honor.

12 THE COURT: From the defense?

13 MRS. STEVENS: No, sir, Your Honor.

14 THE COURT: Okay. Ladies and gentlemen, I want
15 to thank you. I have been telling you all week you
16 couldn't talk about this case. Now you can talk
17 about it with anybody you want to...

18 (The Court dismissed the jury to call back after
19 6 pm this evening.)

20 MS. FANT: Are you prepared for sentencing, Your
21 Honor?

22 THE COURT: Yes, ma'am. Okay.

23 MS. FANT: Your Honor, we are ready for
24 sentencing at this time. Mr. Dwyer does have a prior
25 record.

1 MRS. STEVENS: I haven't made any post-trial
2 motions.

3 THE COURT: Oh, I'm sorry. I didn't realize you
4 had a motion. That's why I asked you. Go ahead.

5 MRS. STEVENS: Well, you asked if I had anything
6 in front of the jury, and I didn't --

7 THE COURT: I'm sorry. You're right.

8 MRS. STEVENS: -- motions in front of the jury.
9 Your Honor, I would ask for a new trial. The defense
10 was prejudiced by the fact that Mr. Anderson was not
11 here.

12 We would contend, Your Honor, that his
13 statements were contrary to what Ms. McKenzie said.
14 Our strategy was to pursue those differences.

15 Your Honor, if it -- if the jury had heard that
16 there was an alternate theory or an alternate
17 relation of how this event occurred, they may have
18 been able to find a different verdict.

19 As it was, they only had one person there who
20 declared that it was my client without giving him the
21 opportunity to have heard from another person who did
22 not identify my client.

23 They never made any effort to have him identify
24 my client, and I feel that my client was greatly
25 prejudiced by not having a chance to have

1 Mr. Anderson here.

2 THE COURT: Did you make any efforts to subpoena
3 Mr. Anderson?

4 MRS. STEVENS: No, sir, I did not. I was told
5 yesterday that they had no idea where he was.

6 THE COURT: Okay. And I respectfully deny your
7 motion. I -- the case of -- the State put up a case
8 and the jury found beyond a reasonable doubt that
9 your client was guilty on these charges.

10 And the fact that one of the potential victims
11 was absent I don't -- that goes to the weight of what
12 the jury considered, so I respectfully deny your
13 motion.

14 MRS. STEVENS: I would also contend, Your Honor,
15 that the jury was unduly prejudiced by the actions of
16 the victim while she was on the stand and testifying
17 and that they were overduly prejudiced by that.

18 THE COURT: Okay. Well, I deny that motion as
19 well. I mean, I thought -- I didn't see any behavior
20 that she showed that I thought in any way except
21 prejudice -- she -- she testified and the jury
22 obviously believed her testimony.

23 MRS. STEVENS: Yes, sir.

24 THE COURT: Okay.

25 SENTENCING

1 MS. FANT: Your Honor, Mr. Dwyer does have a
2 prior record for some -- a magistrate level offenses
3 such as minor in possession of alcohol, violation of
4 seatbelt, and noise ordinances, and one conviction
5 of -- for a burglary -- well, the local says
6 burglary, but the NCIC says a burglary that was pled
7 down to a receiving stolen goods, and we would
8 contend that that's probably the correct one. And
9 that is his prior record.

10 On behalf of the State, we would just ask that
11 you take into consideration the serious nature of
12 this crime and the harm that was done to the victim.
13 I do believe Ms. McKenzie wants to address you, Your
14 Honor.

15 THE COURT: Okay. Yes, ma'am.

16 MS. MCKENZIE: Hello. I just cannot, you know,
17 even up to this day, I just cannot believe he was --
18 he would do something like that to me.

19 Now, I lost a family member that was shot in the
20 head and they found her in a park due to a shooting.
21 And all the shooting needs to stop, and I need -- I
22 think he should be taken off the streets as long as
23 possible.

24 I feel he's a danger to my life also. It's not
25 right because regardless of what faults me and him

1 had, I never once threatened this man: He had no
2 right to shoot me and somebody else that didn't even
3 have anything to do with it.

4 He shouldn't be allowed to walk the streets no
5 time soon. That's just my feel for it.

6 *THE COURT:* Thank you.

7 *MS. FANT:* Your Honor, I believe Detective
8 Culick from the Police Department would also like to
9 address you.

10 *THE COURT:* Yes, ma'am.

11 *OFFICER CULICK:* Yes, Your Honor. Even though
12 this case is an older case, one of the older ones on
13 the docket, I still remembered it because it's not
14 often that we get a case where someone is shot and
15 they think they are dying and they tell law
16 enforcement before, you know, passing away or almost
17 passing away in this case, who did this to them.

18 So that stood out to me. She has never changed
19 her story the whole entire time. She's called us
20 numerous times about being very scared when he was
21 out on bond, things like that.

22 And I just feel like due to the seriousness of
23 this crime, and all the things that he was convicted
24 of today, that he should spend a majority of his life
25 in prison for this and give her peace. Thank you.

1 THE COURT: Thank you. Anything else?

2 MS. FANT: No, Your Honor.

3 THE COURT: Yes, ma'am.

4 MRS. STEVENS: I would like to note for the
5 record, Your Honor, that my client was out on bond
6 for over two years, and I never heard any threats or
7 complaints that he was in any way interfering with
8 Ms. McKenzie.

9 Your Honor, he is currently on jail -- in jail
10 on a different issue, not anything having to do with
11 Ms. McKenzie.

12 Your Honor, I understand that the jury has made
13 their decision, and my client appreciates it, that
14 that is done, but he still denies that he did this,
15 and I understand that that doesn't matter in the
16 scheme of things, but I did want to tell you that he
17 still maintains his innocence in this case, Your
18 Honor.

19 He does have a prior receiving stolen goods and
20 some magistrate court cases, but he does not have any
21 violent offenses on his record.

22 He does not have any crimes against persons on
23 his record, Your Honor, and I would ask that you take
24 into consideration that he is a young man, that this
25 happened several years ago, that he does have family

1 who supports him and cares for him.

2 As I mentioned in my closing argument, Your
3 Honor, we all feel very badly that this happened to
4 Ms. McKenzie, but I would ask that you consider that
5 he is -- that he is a young man and that he doesn't
6 have anything else like this in his record.

7 And Your Honor, that the other person who
8 allegedly was there received a sentence of 10 years
9 suspended to time served and probation.

10 And although they did not charge him with
11 everything that they charged Mr. Dwyer with, they
12 could have and they did not.

13 THE COURT: Okay.

14 MS. FANT: Are you -- are y'all done? Your
15 Honor, I'd like to respond very briefly.

16 THE COURT: Okay.

17 MS. FANT: Just on a couple of things. One is
18 that the -- I do not believe that -- obviously
19 they -- the co-defendant is an entirely different
20 circumstance.

21 Just wanted to point out that that was a
22 strategic decision to plead him guilty given the
23 nature of the case.

24 We certainly think he actually should spend just
25 as much time as Mr. Dwyer, but that was something we

1 just felt we had to do at the time.

2 Obviously he's not eligible for probation -- a
3 probationary sentence on some of these charges. In
4 addition, she indicates that he's never been in this
5 type of trouble before.

6 One of the reasons that we did not call
7 Ms. Cassandra McCray, his girlfriend, is because
8 since November she has filed police reports saying
9 that he burned her trailer down, then she took that
10 back, and she said she had a witness who saw that.

11 Then she reported he burglarized her house by
12 kicking in the back door with a pair of pliers and
13 threatened her, that she intimidated -- that he
14 intimidated her and told her she better not testify
15 in this case, that she got text messages and
16 phonecalls from him.

17 And then again another burglary where he
18 allegedly kicked in her back door with a hand -- and
19 had a handgun and threatened her.

20 And then finally a shooting incident which she
21 claims that he fired shots at her from a car when she
22 was with her sister.

23 Now, ultimately I received in the -- in the mail
24 a note from Patrick Killen, who apparently
25 represented Mr. Dwyer at his prelim on some of these

1 charges, where she filed an affidavit saying she made
2 it all up, all five things, she just totally made it
3 up, he never did anything, and he's a nice guy.

4 Obviously we believe that law enforcement
5 treated her with respect, responded to her calls when
6 she asked and said on several occasions to me and to
7 law enforcement that she feared for her life.

8 And the fact she's withdrawn those and actually
9 filed an affidavit, I would say that that's worth
10 only what we gave it which was the reason that we did
11 not call her for trial.

12 THE COURT: Okay.

13 MRS. STEVENS: So is she unbelievable because
14 she lies or is she unbelievable because she takes it
15 back, Your Honor? She never said that Mr. Dwyer
16 burned down her house.

17 We went to the police. He took a polygraph and
18 he passed the test. She never recanted that he
19 burned down her house.

20 They are not currently boyfriend and girlfriend,
21 Your Honor. And it's my understanding that he has
22 another girlfriend and that at some times Ms. McCray
23 does have some issues with Mr -- with Mr. Dwyer.

24 I have spoken to one of the police officers who
25 was investigating some of these cases and he doesn't

1 necessarily believe that Ms. McCray was being honest
2 when she reported them to begin with. And I'd like
3 you to take that into consideration.

4 THE COURT: Well, he hasn't been convicted of
5 any of those crimes. I'm not going to consider them
6 at all in his sentencing. I'm basing his sentence on
7 what I heard in this courtroom and what he did.

8 And breaking into a person's house in the middle
9 of the night and going in and robbing them and
10 shooting them is about as serious as you can get in
11 this state.

12 So the Sentence of the Court on burglary first
13 is the defendant committed the State Department of
14 Corrections for a term of 30 years.

15 On count two, armed robbery, is 25 years to run,
16 concurrent with count one.

17 On count three, assault and battery with intent
18 to kill on Ms. McKenzie, the Sentence of the Court is
19 he is committed the State Department of Corrections
20 for a term of 20 years to run concurrent with count
21 one.

22 On count four, assault and battery on
23 Mr. Anderson is 15 years to run concurrent with count
24 one.

25 And on count five is five years to run

1 concurrent with count one.

2 MS. FANT: Thank you, Your Honor.

3 OFFICER CULICK: Thank you.

4 (End of requested transcript of record.)

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2006-GS-43-0553

State of South Carolina. Respondent,

v.

Devan Jevon Dwyer #00302693 Appellant.

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STATEMENT OF THE CASE

On the evening of August 3, 2005, City of Sumter police officers were dispatched to _____, Sumter, South Carolina for "shots fired." Shortly thereafter, the police officers arrived at the location and entered the residence where they were met at the door by the male victim, Rohan Anderson. Mr. Anderson told the police that he and the other victim, Sarah McKenzie, had been robbed and shot within the residence. Mr. Anderson had been shot in the left shoulder and Ms. McKenzie had been shot in the chest. After the victims were taken by ambulance to Tuomey Hospital in Sumter, police processed the crime scene, obtained evidence and took several photographs. Several of the police photographs depicted what appeared to be marijuana and crack cocaine (Crime Scene Photographs) (R.pp. 123-130).

On August 3, 2005, shortly after the incident, Mr. Anderson provided a written statement to law enforcement officials (R.p. 121). On August 15, 2005, Ms. McKenzie also provided a written statement (R.p. 122). The two statements varied in several regards.

The next day, August 4, 2005, the Appellant appeared voluntarily at the Sumter Police Department. After providing a suspect statement of his own, he, the Appellant, was arrested and charged with Burglary First Degree. He was later served with warrants for two counts of Assault with Intent to Kill and Minor in Possession of Pistol.

On May 25, 2006, the Sumter Grand Jury indicted Appellant for two counts of Assault and Battery with Intent to Kill and Possession of a Pistol by a Person

Under the Age of 21. Then, on February 19, 2009, the Grand Jury re-indicted the Appellant for Burglary First Degree, Armed Robbery, two counts of Assault and Battery with Intent to Kill and Possession of a Firearm/Knife During the Commission of a Violent Crime (R.p. 120). On April 13-14, 2009, the case came to trial before a jury in the Sumter County Court of General Sessions, the Honorable R. Ferrell Cothran, Jr. presiding. The State moved forward on all counts of the February 19, 2009 indictment.

After the selection of the jury, but before the State's case was presented, the State moved to preclude the defense from introducing several of the photographs taken by the police shortly after the incident in question. The photographs depicted what appeared to be illicit drugs: marijuana and crack cocaine in McKenzie's home. The State argued that the photographs showing drugs were irrelevant and would cast the victims of the crime in a negative light. Trial counsel for the Appellant argued that the photographs were necessary to the Appellant's defense. The court ruled in favor of the State in regards to the drug photographs (R.pp. 1-14).

Also before the State's case commenced, the trial counsel for the Appellant argued that the State's case as to the second count of Assault and Battery with Intent to Kill as to victim Mr. Anderson should not go forward as he was not present to testify. Trial counsel for the Appellant argued that the absence of Mr. Anderson violated the Appellants constitutional right to confront witnesses against him, the Appellant. The State argued that it could go forward on the Mr. Anderson count of Assault and battery with Intent to Kill even in his, Mr. Anderson's, absence. The Court allowed the State to go forward on that count of the indictment (R.pp.116-117).

Thereafter, the trial of the case before the jury commenced. The State presented seven (7) witnesses and presented and entered thirty-six (36) items of evidence. There were six (6) court exhibits. The defense presented no evidence. At the conclusion of closing arguments, the jury convicted the Appellant on all counts of the indictment. Appellant was sentenced to thirty (30) years on the Burglary First count, twenty-five (25) years on the Armed Robbery count, twenty (20) years on the first count of Assault and Battery with Intent to Kill, fifteen (15) years on the second count of Assault and Battery with Intent to Kill and five (5) years on the Possession of a Firearm/Knife During the Commission of a Violent Crime count. The Court ordered that all sentences run concurrent with the Burglary First sentence.

On April 20, 2009, Appellant's trial attorney, Lauren B. Stevens, Esquire, filed and served a Notice of Appeal. On May 15, 2009, by order of the Honorable Kaye G. Hearn, C.J., Patrick M. Killen, Esquire was substituted as the Appellant's appellate counsel.

STATEMENT OF ISSUES ON APPEAL

1. DID THE COURT ERRONEOUSLY EXCLUDE PHOTOGRAPHS TAKEN BY THE POLICE THE NIGHT IN QUESTION WHICH DEPICTED ILLICIT DRUGS IN THE HOME OF THE VICTIM?
2. DID THE TRIAL COURT ERR IN ALLOWING THE STATE TO GO FORWARD ON THE SECOND COUNT OF ASSAULT AND BATTERY WITH INTENT TO KILL IN VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHT TO CONFRONT HIS ACCUSER AS THE VICTIM/ACCUSER WAS ABSENT FROM THE TRIAL OF THE CASE?

ARGUMENT

1. THE TRIAL COURT ERRED IN PRECLUDING INTRODUCTION OF THE POLICE PHOTOGRAPHS DEPICTING ILLICIT DRUGS.

While appellate courts reviewing admission or denial into evidence photographs material do so under an abuse of discretion standard, as "[t]he relevancy, materiality, and admissibility of photographs as evidence are matters left to the discretion of the trial court," State v. Johnson, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000), the denial of the use of the photographs in this case prevented the Appellant from a defense which could have led to a different outcome.

In her statement, Ms. McKenzie's did not admit to drugs being in the home (Witness Statement of Sarah McKenzie dated August 15, 2005). Because she, Ms. McKenzie, failed to mention the drugs to the police when giving a statement, the Appellant could have used this omission on the part of Ms. McKenzie to attack her credibility during cross examination. That alone made the pictures relevant. State v. Langley, 334 S.C. 643, 515 S.E.2d 98 (1999).

Because the court's ruling left the Appellant without at least one issue that could have strengthened his defense, the trial court's finding at the onset of the case

that the pictures depicting the illicit drugs could not be used by the Appellant, whose rights are paramount, amounted to an abuse of discretion.

2. THE TRIAL COURT ERRED IN ALLOWING THE STATE TO GO FORWARD ON THE SECOND ASSAULT AND BATTERY WITH INTENT TO KILL INDICTMENT IN VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHT TO CONFRONT HIS ACCUSER AS THE VICTIM/ACCUSER, ROHAN ANDERSON, WAS NOT PRESENT IN THE COURTROOM.

The State should have been prohibited from going forward on the Rohan Anderson, Assault and Battery with Intent to Kill count of the indictment as he, Rohan Anderson, was not present to testify against the Appellant. The Sixth Amendment guarantees a criminal defendant the right to be confronted with the witnesses against him. U.S. Constitution Amendment VI. The right of confrontation is essential to a fair trial because it promotes reliability and ensures that convictions will not result in testimony of individuals who cannot be challenged at trial. State v. Dinkins, 339 S.C. 597, 601, 529 S.E.2d 557, 599 (Ct. App. 2000).

While it is true that the written Victim Statement provided by Mr. Anderson to police was not presented as evidence at the trial of the case, the fact remains that this accuser was not present to testify in regards to the alleged actions of the Appellant and injuries that he, Mr. Anderson, sustained in the incident. The result was one victim, who clearly believed, as evidenced by her testimony, that the Appellant was one of the perpetrators of the crime, testifying that he, the Appellant, has also perpetrated a crime on a second victim. The court should have required the State to produce the second victim to testify as to who shot him.

Moreover, in connection with the Appellant's argument in regards to the photographs of the drugs, because Mr. Anderson was not present, the Appellant

was unable to introduce Mr. Anderson's Victim Statement into evidence or cross examine him, Mr. Anderson, in regards to the statement, particularly the portion where he, Mr. Anderson, indicates that one of the perpetrators had asked "where the dope at?" Ms. McKenzie, as discussed *supra*, did not say in her statement that the perpetrators had demanded the location of the "dope." This difference in versions of events was significant and the defense should have been able to exploit it before the jury.

The State was able to enjoy a conviction versus the Appellant on this count of Assault and Battery with Intent to Kill without having to produce the actual victim. The result for the Appellant, whose rights are paramount, was an unfair trial.

CONCLUSION

For the reasons above, Appellant respectfully requests that the Court grant the following relief:

On issue one, involving the trial court's abuse of discretion and denying use or entry of the drug photographs – reverse the trial court's judgment and remand for a new trial.

On issue number two, involving the trial court's denial of the Appellant's motion to prohibit the State from going forward in the absence of an accuser – reverse the trial court's judgment and remand for a new trial.

February 1, 2010

Respectfully Submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of General Sessions

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2006-GS-43-0553

State of South Carolina, ... Respondent.

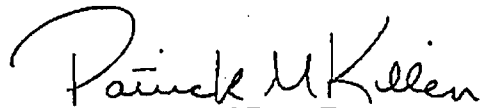
v.

Devan Jevon Dwyer #00302693. Appellant,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Final Brief complies with Rule
211, SCACR.

February 1, 2010



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Hon. R. Ferrell cothran, Jr., Circuit Court Judge

The State,

Respondent,

v.

Devan Jevon Dwyer,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not preclude Appellant from introducing photographs. Further, the issue was not properly preserved for review because the trial court's ruling *in limine* was not a final ruling.
- II. The trial court did not err in allowing the State to proceed on the indictment for assault and battery with intent to kill. Further, the issue is not properly preserved for review on appeal.

STATEMENT OF THE CASE

Appellant was indicted for burglary in the first degree, armed robbery, two counts of assault and battery with intent to kill (ABIK), and possession of a firearm during the commission of a violent crime. On April 13-14, 2009, Appellant was tried before the Honorable R. Ferrell Cothran, Jr. and a jury. The jury found Appellant guilty on all counts. The court sentenced Appellant to thirty years for burglary; twenty-five years, concurrent, for armed robbery; twenty years, concurrent, for one count of ABIK; fifteen years, concurrent, for the second count of ABIK, and five years, concurrent, for possession of a firearm. This appeal follows.

STATEMENT OF FACTS

On August 3, 2005, Appellant entered Sarah McKenzie's home without consent. McKenzie and her ex-boyfriend, Rohan Anderson, were in her bedroom at the time. Appellant entered the bedroom with a gun, while Rick Vanburen blocked the doorway. (T.84-86; R. 16-18). Appellant demanded McKenzie's money and cell phone. As he left, he shot both McKenzie and Anderson. (T.87; R. 19).

Appellant did not cover his face, so McKenzie easily identified Appellant, known to her as "D", because she had known him for years. (T.88-89; R. 20-21). Anderson met the first responding officers at the residence. Detective Lyons spoke with Anderson, who told him two black males entered the residence and they were robbed and shot. (T.141; R.69). McKenzie told responding officer she was shot by "D" and later told investigators at the hospital she was shot by "D." (T.110-112; 142; 159; 166; R.42-44; 70; 78; 85). McKenzie selected Appellant out of a photographic line-up without any hesitation. (T.161-163; 231; R.80-82; 104).

Appellant shot McKenzie through the right shoulder, with the bullet lacerating blood vessels in the lungs or chest wall and becoming lodged in the spine. A breathing tube was placed to maintain her airway, and ultimately, she was transferred to Palmetto Health Richland Memorial Hospital because Tuomey did not have the services she needed. (T.215-219; R.89-93). Anderson was shot in the left shoulder and the bullet passed through and exited. (T.219; R.93). He was treated and released from the hospital.

ARGUMENT

1. The trial court did not preclude Appellant from introducing photographs. Further, the issue was not properly preserved for review because the trial court's ruling *in limine* was not a final ruling.

Appellant asserts the trial court precluded him from offering into evidence photographs of the crime scene. The trial court ruled *in limine* that Appellant would have to show the relevance of the photographs and if they were relevant, they could be admitted. Appellant never offered the photographs into evidence, so a final ruling on their admissibility was never obtained.

First, the issue is not preserved for review on appeal. Normally, a motion *in limine* to exclude evidence made at the beginning of trial does not preserve the issue for appellate review because a motion *in limine* is not a final determination. State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001). "A ruling on the motion is not the ultimate disposition on the admissibility of evidence. It remains subject to change based upon developments during trial." State v. Floyd, 295 S.C. 518, 520, 369 S.E.2d 842, 843 (1988). Additionally, a trial judge does not abuse his discretion when he refuses to rule on the admissibility of evidence until offered in the regular course of trial. See State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982); see also, State v. Silver, 307 S.C. 326, 329, 414 S.E.2d 813, 815 (Ct. App. 1992) (finding no prejudice due to the trial judge's refusal to rule until the evidence was offered at trial).

It is clear from the record the trial court did not make a final ruling on the admissibility of the photographs during the pre-trial motion *in limine* hearing. The trial court

found it was difficult to determine whether the photographs would be relevant without hearing some of the testimony and evidence in the trial. (T.38-39; R.13-14). Specifically, the trial court ruled: “if something happens in this trial that makes them relevant, they may come in.” The trial court continued: “[A] Motion *in limine* doesn’t go throughout the trial any way.” (T.39; R.14). Clearly, the trial court was not making a final ruling on the admissibility of the photographs, and he expected Appellant to offer the photographs for admission if Appellant believed they were admissible. Appellant never offered the photographs for admission into evidence; therefore, the trial court was never offered the opportunity to make a final ruling on their admissibility. Accordingly, the issue is not preserved for review on appeal.

The issue, even if preserved, is without merit. “The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). A trial court abuses its discretion when its conclusions are controlled by an error of law or lack evidentiary support. State v. Sweet, 374 S.C. 1, 5, 647 S.E.2d 202, 204-05 (2007).

Appellant seemed to request the trial court to require the State to admit the photographs as part of the State’s case. The trial court correctly ruled: “She can pick and choose what pictures she wants to put in. . . . I can’t make her put in something that she doesn’t want to put in.” (T.35; R. 10). The State bears the burden of proof and is entitled to prove its case in the manner of its choice. See, State v. Hamilton, 327 S.C. 440, 446-447, 486 S.E.2d 512, 515 (1997); State v. Cheatham, 349 S.C. 101, 110, 561 S.E.2d 618, 623 (Ct. App. 2002). As discussed above, the trial court did not preclude Appellant from admitting

the photographs into evidence during cross-examination or if he put up a case. The trial court merely required a showing of relevancy before they could be admitted. Accordingly, the trial court properly refused to require the State to admit the photographs into evidence.

Finally, “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. “All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible.” Rule 402, SCRE.

Appellant sought to admit photographs showing two items asserted to be drugs. The items were located during a search of the crime scene. There is absolutely no relevance to the possession of drugs by McKenzie to the case at hand. Whether she possessed drugs only serves to possibly impugn her character and is not relevant to whether Appellant committed burglary, armed robbery, or ABIK. Accordingly, the trial court would have been correct if he had excluded the photographs because they were not relevant.

II. The trial court did not err in allowing the State to proceed on the indictment for assault and battery with intent to kill. Further, the issue is not properly preserved for review on appeal.

Appellant contends the trial court erred in allowing the State to proceed on the indictment alleging Appellant committed assault and battery with intent to kill (ABIK) against Rohan Anderson. He maintains because Anderson was not available to testify, the State should not have been allowed to proceed. The State presented sufficient evidence to convict Appellant of ABIK as it related to Anderson. Further, it is doubtful this issue is preserved for review on appeal.

First, the issue is not preserved for review on appeal. Appellant argues on appeal the trial court erred in allowing the trial to proceed on the ABIK indictment alleging Anderson as the victim. If this is construed as a motion to quash the indictment or dismiss the indictment, Appellant never moved to quash or dismiss the indictment prior to the jury being sworn. Accordingly, the argument is not properly preserved for review on appeal. See State v. Gentry, 363 S.C. 93, 101-103, 610 S.E.2d 494, 499-500 (2005).

Further, Appellant maintains allowing the case to proceed on the ABIK indictment listing Anderson as a victim violated his right to confront his accuser. This issue is without merit because Appellant fails to point to any statement in the record made by Anderson that the trial court admitted over Appellant's objection on the grounds it violated the confrontation clause. Appellant never objected to any testimony or admission of evidence on the ground it violated his ability to confront the accuser or witness. A contemporaneous objection to the improperly admitted testimony would be required to preserve the issue for

review on appeal. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) (to preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court). Accordingly, the issue is not preserved for review on appeal.

On the merits, the State has the right to prove its case with the evidence of its choice. See State v. Hamilton, 327 S.C. 440, 446-447, 486 S.E.2d 512, 515 (1997) (finding it is a “fundamental principle that the prosecution is entitled to prove its case with evidence of its own choosing”). The State does not have to put forth Anderson’s testimony or statement in order to prove the required elements of ABIK if those elements can be proven by other competent testimony and evidence. Further, it is absurd to believe the victim must testify in order for the State to proceed on an indictment. Such a holding would make prosecution for any type of homicide, crime against an infant, or crime against an incompetent person impossible.

In addition, Appellant’s only motion was a motion for new trial. A trial judge has the discretion to grant or deny a motion for a new trial, and his decision will not be reversed absent a clear abuse of discretion. State v. Simmons, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983); see also, State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007). The motion appears to be based on the failure of the State to call Anderson as a witness, which as discussed above, it is within the State’s discretion to determine what evidence to present in order to prove its case. Accordingly, the trial court properly denied the motion for a new trial.

Finally, the State proved the required elements of ABIK beyond a reasonable doubt. ABIK is defined as an unlawful act of a violent nature to the person of another with malice

aforethought, either express or implied. State v. Wilds, 355 S.C. 269, 275, 584 S.E.2d 138, 141 (Ct. App. 2003). Murder is the killing of a person with malice aforethought, either express or implied. Id. With the exception of the death of the victim, each and every element of murder must be proven beyond a reasonable doubt in order for a jury to convict a defendant of ABIK. Id.

McKenzie testified she and Anderson were both present when Appellant burgled her residence with the intent of robbing her. She testified Appellant shot both her and Anderson before fleeing. Further, Detective Lyons testified Anderson suffered a gunshot wound to his left arm. (T.141; R.69). Detective Culick also testified two individuals were shot during the burglary. (T.223-224; R.96-97). Finally, Dr. Stanford testified Anderson suffered “two circular wounds, anterior left shoulder consistent with gunshot wound by appearance.” (T.219; R.93). The State proved its case with overwhelming evidence demonstrating Appellant’s guilt of committing ABIK against Anderson.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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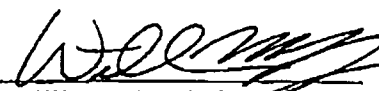
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February 22, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Hon. R. Ferrell cothran, Jr., Circuit Court Judge

The State,

Respondent,

v.

Devan Jevon Dwyer,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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Columbia, South Carolina 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 22, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Sumter County
Hon. R. Ferrell cothran, Jr., Circuit Court Judge

The State,

Respondent,

v.

Devan Jevon Dwyer,

Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Patrick M. Killen, Esquire
Jones, Seth, Shuler & Killen, LLP
Post Office Box 1268
Sumter, South Carolina 29151

I further certify that all parties required by Rule to be served have been served.
This 22nd day of February, 2010.


ELLEN DuBOIS
Legal Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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.

Devan Jevon Dwyer,

Appellant.

Appeal From Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-010
Submitted January 1, 2011 – Filed January 24, 2011

AFFIRMED

Patrick M. Killen, of Sumter, for Appellant.

Attorney General Henry Alan Wilson, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General William M. Blich, Jr., all of Columbia; and Solicitor C. Kelly Jackson, of Sumter, for Respondent.

PER CURIAM: Devan Jevon Dwyer was convicted of first-degree burglary, armed robbery, two counts of assault and battery with intent to kill (ABWIK), and possession of a firearm during the commission of a violent crime. On appeal, Dwyer argues the trial court erred in excluding photos of drugs found in the victim's home and violated Dwyer's constitutional right to confront witnesses. We affirm.¹

1. As to whether the trial court erred in excluding photographs taken by the police on the night in question that depicted illegal drugs in the victim's home: Because Dwyer failed to introduce the evidence during trial after the trial court granted the motion in limine to exclude the photos, we find this issue is not preserved for our review. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996) ("A ruling in limine is not a final ruling on the admissibility of evidence. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.") (internal citation omitted); S.C. Dep't of Highways & Pub. Transp. v. Galbreath, 315 S.C. 82, 83 n.2, 431 S.E.2d 625, 627 n.2 (Ct. App. 1993) (noting the losing party has the burden to introduce the evidence during trial after the trial court granted the motion in limine and "even where a motion in limine is granted, it is not the final ruling on the admissibility of the evidence." (citing State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988))).

2. As to whether the trial court erred in allowing the State to prosecute the second ABWIK in violation of Dwyer's constitutional right to confront victim's boyfriend: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal.").

AFFIRMED.

FEW, C.J., SHORT and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



RECEIVED

FEB 11 2011 *WB*

**ATTORNEY GENERALS
OFFICE**

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

February 10, 2011

REMITTITUR

The Honorable James C. Campbell
141 N. Main Street., Rm 308
Sumter, SC 29150-4965

Re: The State v. Dwyer, Devan Jeyon
2006-GS-43-00553

Dear Mr. Campbell:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

VA AG/rj

cc: Patrick McFadden Killen, Esquire
Assistant Attorney General William M. Blitch, Jr.

FORM 5

STATE OF SOUTH CAROLINA

RECORDED

2011 DEC 22 AM 11:59

IN THE COURT OF COMMON PLEAS

COUNTY OF

DEWAN DWYER

JAMES D. CAMPBELL

CLERK OF COURT

SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY

OF ORIGINAL FILE

2011-CP-43

2412

Full name and prison number (if any) of Applicant.

Barbara Shaper

v.

DEPUTY CLERK OF COURT

SUMTER COUNTY

SOUTH CAROLINA

State of South Carolina

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 Lee CT
2. Name and location of Court which imposed sentence Sumter County Court house, Sumter SC
3. Name(s) of co-defendant(s) (if any) Rick Vanburzan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006 GS-43-0553
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/14/09 30 years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes Direct Appeal
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. confirmed the lower courts decisions due to my counsel raising issues that was reserved for review
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 1-24-10
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See attachments

- (a) _____
(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? _____
(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. _____
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. _____
ii. _____
iii. _____
iv. _____
(c) the disposition thereof:
i. _____
ii. _____
iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- no
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Because I've only been to Direct Appeal
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Lauren Stevens 141 N. Main Street Rm#102 Sumter SC 29150
 - ii. Patrick Killen 5 Low Range PO Box 1268 Sumter SC 29151
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. trial
 - ii. Direct appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacated / new trial

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA

County of

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Debra Sims 12-20-11
De Sims 12-20-11

SWORN to and subscribed before me this 20
day of December, 2011.

Debra Sims

(L.S.)

Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

RECORDED
2011 DEC 22 AM 11:59

JAMES C. CAMPBELL
CLERK OF COURT
CLAY COUNTY, S.C.

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Juan Feyn

Applicant

SWORN or affirmed to and subscribed before me this
20 day of Dec., 2011.

Debra Singer

Notary Public

My Commission Expires: 11-4-2015

INEFFECTIVE ASSISTANCE OF COUNSEL

- (A). Trial counsel was ineffective for failing to pursue a alibi defense. There was a alibi witness that gave investigators written statements approximately 3½ years prior to trial. Alibi witness also talked to trial counsel on several different occasions.

RELEVANT FACTS

On August 3, 2005, a crime was being in progress at the home of Sarah Victoria McKenzie at around 4:00 a.m.

The victim McKenzie implicated the applicant. The victim statement and testimony at trial was contested by Trial Counsel Lauren Stevens, but wasn't contested by any probative evidence, when the record clearly shows that a strong alibi witness was available. See: Exhibit #1 (Alibi witness statement by Cassandra Davis/McCray).

The alibi witness wrote a statement on the night of the crime alleging that the applicant Devon Dwyer was at home with her all during the night of the crime. The question in this case is, "Why didn't trial counsel attempted to pursue this alibi defense at trial, which would of clearly devastate the prosecution's case based on the fact that the state's case wasn't overwhelming with convincing evidence. See: Glover v. State, 458 S.E.2d 538 (1995)

INEFFECTIVE ASSISTANCE OF COUNSEL

- (B). Trial counsel was ineffective for not notifying the courts within (10) ten days prior to trial of a alibi defense, which completely destroyed applicant chances of presenting this alibi defense at trial.

RELEVANT FACTS

Pursuant to SCRCrimP Rule 5 Disclosure In Criminal Cases (E) Notice of Alibi states: The defense has to notify the prosecution within (10) ten days prior to trial that the applicant is pursuing a alibi defense, failure to do so within

those (10) days, the alibi defense is lost or no longer available to the accuse. See: State v. Landon, 634 S.E.2d 660 (a violation of the rule governing the disclosure of evidence in criminal cases is not reversible error unless prejudice is shown). In the applicant's case, prejudice is clearly shown, because the record is undisputed that a alibi defense was available and the record clearly shows that counsel never attempted to pursue an alibi defense when she clearly had only (10) days prior to trial to do. Counsel Stevens clearly sabotaged applicant's alibi defense witness, and due to such error this case should be reversed and remanded. See: Underwood v. State, 425 S.E.2d 20 (1992). Also See: Strickland v. Washington, 104 S.Ct. 2052.

INEFFECTIVE ASSISTANCE OF COUNSEL

- C. Trial counsel was ineffective for failing to subpoena witness/victim Rohan Anderson, being that Attorney Stevens based her whole defense trial strategy on the inconsistencies of the victim's statement.

RELEVANT FACTS

Trial Counsel stated on the record....

Mrs. Stevens: Your Honor, the statements between Ms. McKenzie and Mr. Anderson are very different, and that was part of the-- what we were going to base our defense on.

The fact that he's not here and they are not going to use the statement prejudices my client a great deal. See: (Trial Transcript pg. 31, lines 11-17). Exhibit #2

However, trial counsel was ineffective for failing to attempt to subpoena Mr. Anderson when she was more than aware that Mr. Anderson testimony was viable to our defense.

When a statement is admissible because it falls within a hearsay exception, it may be used substantively, that is, to prove the truth of matter asserted. See: State v. Ladner, 644 S.E.2d 684, also See: §17-23-60 "Accused right to counsel, to produce witnesses and proofs, and to confront

witnesses.

INEFFECTIVE ASSISTANCE OF COUNSEL

- D. Trial counsel was ineffective for failing to suppress the evidence of victim Mr. Anderson, when the accused was not allowed to confront the witness which violated the applicant's constitutional right of the 6th amendment of the United States.

RELEVANT FACTS

During the pretrial stages of trial, Prosecutor Fant argues that. There is no right to confront someone unless their statement is coming in, but express to the court, "We don't anticipate anything other than the initial excited utterance that he got shot along with his medical records proving that he got shot along with Ms. Williams. See: Trial Transcript pg. 30 and 31. Exhibit #3

Applicant argues at that point his "right to confront witness" was violated because applicant relied strongly on his innocence and was not able to challenge that testimony regarding Mr. Anderson. See: State v. Dinkins, 529 S.E. 2d 557 (2000) (the right of confrontation is essential to a fair trial in that it promotes reliability in criminal trial and ensures that conviction will not result from testimony of individuals who cannot be challenged at trial.

CONCLUSION

For all the foregoing reasons that applicant has stated this case should be reversed and remanded for a new trial.

s/ *Reverend*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

INDICTMENT/CASE#: 2006-GS-43-0553

STATE VS.

DEVAN J. DWYER

AW#: H907743

AKA:

Date of Offense: August 03, 2005

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-00 CERTIFIED TRUE COPY

DOB: 1985

SS#: [REDACTED]

CDR Code #: 0079 OF ORIGINAL FILE

Address: .

DL#

SID#

Barbara Shaper
 SENTENCE REPORT
 SUMTER COUNTY
 SOUTH CAROLINA

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st (Count 1)in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 7, 1, 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine Sant
 Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South
 Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$90.11 TP (SCCJA Surcharge)

TOTAL

\$
 \$
 \$100 \$160.00
 \$100 \$
 \$12 \$
 \$500 \$
 \$25 \$25.00
 \$100 \$
 \$50 \$
 \$40/ea \$
 \$
 \$5 \$5.00
 \$133.90

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

INDICTMENT/CASE#: 2006-GS-43-0553

STATE

VS.

DEVAN J. DWYER

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED] 1985

SS# [REDACTED]

AW#: direct presentment

Date of Offense: 8-3-05

S.C. Code §: 16-11-330(A) + CL

CDR Code #: 0139

Address:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Armed Robbery (count 2)in violation of § 16-11-330(A) + CL of the S.C. Code of Laws, bearing CDR Code # 01139☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine Sant

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: CL☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$3.90
§90.11 TR (SCCJA Surcharge)	\$5	\$5.00
TOTAL		\$133.90

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

INDICTMENT/CASE#: 2006-GS-43-0553

STATE

VS.

DEVAN J. DWYER

A/W#: H907781

AKA:

Date of Offense: August 03, 2005

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0620

DOB: 1985

SS#:

CDR Code #: 0014

Address:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: ABIK (count 3)in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 1, 4☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine East

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 21☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.40
\$90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$133.40

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

4-14-09

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

STATE VS.

DEVAN J. DWYER

AKA:

Race: Black

Sex: Male

Age:

DOB: 1985

SS#

Address:

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006-GS-43-0553

AW#: H907782

Date of Offense: August 03, 2005

S.C. Code §: 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: ADIK (count 4)

in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 1, 4

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine Sant
Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 121

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
§90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$1339.00

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

21-14-09

Clerk of Court/Deputy Clerk

Court Reporter:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

INDICTMENT/CASE#: 2006-GS-43-0553

STATE

VS.

DEVAN J. DWYER

AW#: H907783

AKA:

Date of Offense: August 03, 2005

Race: Black

Sex: Male

Age:

S.C. Code §: 16-23-0030, 0050(A)(1)

DOB: [REDACTED] 1985

SS#: [REDACTED]

CDR Code #: 2364

Address: .

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: possession of firearm during commission of crime of violencein violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0, 5, 4, 9
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine Fort

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 21☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90\$90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90*James C. Campbell*

Clerk of Court/ Deputy Clerk

Court Reporter:

Kathy Richardson

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 1 12 14
4-14-09

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) INDICTMENT FOR
BURGLARY 1ST, ARMED ROBBERY, ASSAULT AND
BATTERY WITH INTENT TO KILL (2 Counts),
POSSESSION OF FIREARM/KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on February 19, 2009, the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – BURGLARY (1st Degree)

That DEVAN JEVON DWYER did in Sumter County on or about August 3, 2005, enter the dwelling of Sarah Victoria McKenzie (now Williams), without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime while armed with a deadly weapon, in violation of Section 16-11-311(A)(1)(a) & (3), South Carolina Code of Laws (1976), as amended.

COUNT TWO – ARMED ROBBERY

That DEVAN JEVON DWYER did in Sumter County on or about August 3, 2005, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a handgun, did feloniously take from Sarah Victoria McKenzie (now Williams) in the presence of Sarah Victoria McKenzie (now Williams), by means of force or intimidation goods or monies of the said Sarah Victoria McKenzie (now Williams), such goods or monies being described: cash money and a cell phone.

COUNT THREE – ASSAULT AND BATTERY WITH INTENT TO KILL

That DEVAN JEVON DWYER did in Sumter County on or about August 3, 2005, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that he did commit an unlawful act of a violent nature to the person of another, to-wit: Sarah Victoria McKenzie (now Williams), with malice aforethought, either express or implied, by shooting the said Sarah Victoria McKenzie (now Williams) with a handgun.

COUNT FOUR – ASSAULT AND BATTERY WITH INTENT TO KILL

That DEVAN JEVON DWYER did in Sumter County on or about August 3, 2005, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that he did commit an unlawful act of a violent nature to the person of another, to-wit: Rohan Anderson, with malice aforethought, either express or implied, by shooting the said Rohan Anderson with a handgun.

COUNT FIVE – POSSESSION OF FIREARM/KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

That DEVAN JEVON DWYER in Sumter County on or about August 3, 2005, was in possession of and did visibly display a firearm, to wit: a handgun, during the commission of a violent crime as defined in Section 16-1-60, to-wit: burglary, armed robbery, and assault and battery with intent to kill, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

P. Kelly Jackson
SOLICITOR

WITNESSES

SUMTER PD

Ross

ARREST WARRANT NUMBER

H907781(3); H907782 (4); H907783 (5)

H907743 (1); Direct Presentment (2)

D/A: 8/10/05

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 12 Feb 09

VERDICT

Foreperson of Petit Jury

Date:

AMENDED

DOCKET NO. 2006-GS-43- 553

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2009

THE STATE

vs.

DEVAN JEVON DWYER

Indictment for

BURGLARY 1ST, ARMED ROBBERY,
 ASSAULT AND BATTERY WITH INTENT TO
 KILL (2 Counts), POSSESSION OF
 FIREARM/KNIFE DURING THE
 COMMISSION OF A VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

ARREST WARRANT S/B-9/16/05

H- 907743

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMTERTHE STATE
against

DEVAN J DWYER

Address: _____

Phone: _____ SSN: _____
 Sex: ☒ M Race: ☒ B Height: 602 Weight: 200
 DL State: SC DL#: _____
 DOB: _____/85 Agency ORI#: SC0430100
 Prosecuting Agency: 1541 - ROSS
 Prosecuting Officer: _____
 Offense: BURGLARY 1ST DEGREE
 Offense Code: 0079
 Code/Ordinance Sec. 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
 defendant Devan Dwyer
 on 09/05/05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Del 8-12-2005 Commitment List App/ warrant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMTER

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant DET. R ROSS who
 being duly sworn deposes and says that defendant DEVAN J DWYER
 did within this county and state on 08/03/05
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of SUMTER)
 in the following particulars:

DESCRIPTION OF OFFENSE:

INCIDENT # 05082367

BURGLARY 1ST DEGREE (16-11-0311)

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID IN THE NIGHT TIME BREAK INTO
 AND ENTER THE RESIDENCE OF ONE SARAH MCKENZIE LOCATED AT _____ IN THE CITY OF SUMTER,
 STATE OF SC. THE DEFENDANT ALONG WITH A CO-DEFENDANT ENTERED MCKENZIE'S RESIDENCE THROUGH AN
 UNLOCKED FRONT DOOR. ONCE INSIDE THE DEFENDANT AND CO-DEFENDANT HELD A GUN ON MCKENZIE AND HER
 BOYFRIEND (ROHAN ANDERSON) WHILE DEMANDING MCKENZIE TO GIVE THEM ALL OF HER MONEY. MCKENZIE GAVE
 THE DEFENDANT AND CO-DEFENDANT \$80.00. THE DEFENDANT THEN SHOT MCKENZIE AND ROHAN ANDERSON.
 PROBABLE CAUSE: THE VICTIM (MCKENZIE) HAS IDENTIFIED THE DEFENDANT FROM A SIX PERSON PHOTO LINE-UP
 AND WILL ATTEST TO SAME. LAW ENFORCEMENT WILL ALSO ATTEST TO SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMTER

Affiant's Address DET. R ROSS/107 E. HAMPTON AVE
SUMTER, SC 29150
 Affiant's Telephone 436-2790

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
 on 08/03/05 defendant DEVAN J DWYER
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of SUMTER) as set forth below:

DESCRIPTION OF OFFENSE:

BURGLARY 1ST DEGREE (16-11-0311)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 08-05-05Signature of Issuing Judge Steele Gindal (L.S.)

Signature of Issuing Judge

Judge Code: _____

Judge's Address

115 N HARVIN ST/PO BOX 1428

SUMTER, SC 29151

Judge's Telephone

803-436-2200

Issuing Court:

☒

Magistrate

☐

Municipal

☐

Circuit

ORIGINAL

ARREST WARRANT

H- 907781

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SUMTER

2005 AUG 18 01:12:39

THE STATE

against

DEVAN J DWYER SUMTER COUNTY, S.C.

Address: _____

Phone: _____ SSN: _____

Sex: _____ Race: _____ Height: _____ Weight: _____

DL State: _____ DL #: _____

DOB: _____ Agency ORI#: SC0430100

Prosecuting Agency: 1341 - ROSS

Prosecuting Officer: _____

Offense: ASSAULT & BATTERY WITH INTENT TO KILL

Offense Code: 0014

Code/Ordinance Sec. 16-03-0620

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Devan J. Dwyer on 2-10-05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Sol B-19-2005/Deirda

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SUMTER

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant DET. R ROSS who being duly sworn deposes and says that defendant DEVAN J DWYER did within this county and state on 08/03/05 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of SUMTER) in the following particulars:

DESCRIPTION OF OFFENSE:

INCIDENT # 05082367

ASSAULT & BATTERY WITH INTENT TO KILL (16-03-620)

I further state that there is probable cause to believe that the defendant DEVAN J DWYER did commit the crime set forth and that probable cause is based on the following facts:

THAT THE DEFENDANT DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID WITHOUT JUST CAUSE OR PROVOCATION, SHOOT ONE SARAH MCKENZIE IN THE RIGHT SHOULDER CAUSING THE VICTIM TO BE ADMITTED TO TUMMEY FOR INJURIES, SAID OFFENSE HAVING OCCURRED AT _____, IN THE CITY OF SUMTER, STATE OF SC.

PROBABLE CAUSE: THE VICTIM HAS IDENTIFIED THE DEFENDANT IN A SIX PERSON PHOTO LINE UP. LAW ENFORCEMENT WILL ATTEST TO THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SUMTER

Affiant's Address DET. R ROSS/107 E. HAMPTON AVESUMTER, SC 29150Affiant's Telephone 436-2790

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 08/03/05 defendant DEVAN J DWYER

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of SUMTER

DESCRIPTION OF OFFENSE:

ASSAULT & BATTERY WITH INTENT TO KILL (16-03-620)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 8-10-05

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: _____

Judge's Address 115 N HARVIN ST/PO BOX 1428SUMTER, SC 29150Judge's Telephone 803-436-2280Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ARREST WARRANT

H- 907783

STATE OF SOUTH CAROLINA

SUMTER County/ Municipality of

THE STATE

against

DEVAN J DWYER

Address: _____

Phone: _____ SSN: _____

Sex: _____ Race: _____ Height: _____ Weight: _____

DL State: _____ DOB: _____ Agency ORI#: SC0430100

Prosecuting Agency: 1541 ROSS

Prosecuting Officer: POSSESSION OF

Offense: PISTOL UNDER 21 2364

Code/Ordinance Sec. 16-23-30(C)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Devan J. Dwyer
on 8-10-05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Sol 8-19-05 / Denied

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

AFFIDAVIT

DET. R ROSS

Personally appeared before me the affiant DEVAN J DWYER who
being duly sworn deposes and says that defendant DEVAN J DWYER
did within this county and state on 08/03/05State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of SUMTER)
in the following particulars:DESCRIPTION OF OFFENSE: INCIDENT # 05082367
POSSESSION OF PISTOL UNDER 21 (16-23-30(C))I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THAT THE DEFENDANT DID COMMIT THE ABOVE STATED OFFENSE IN THAT HE DID HAVE IN HIS POSSESSION
A SMALL HANDGUN. IN WHICH HE USED TO SHOOT 2 INDIVIDUALS. SAID OFFENSE HAVING OCCURRED AT
IN THE CITY OF SUMTER, STATE OF SC.PROBABLE CAUSE: A WITNESS HAS GIVEN LAW ENFORCEMENT A STATEMENT IMPLICATING THE ABOVE.
LAW ENFORCEMENT WILL ATTEST TO THE SAME.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMTERAffiant's Address DET. R ROSS/107 E. HAMPTON AVESUMTER, SC 29150Affiant's Telephone 436-2790

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 08/03/05 defendant DEVAN J DWYER
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of SUMTER) as set forth below:DESCRIPTION OF OFFENSE:
POSSESSION OF PISTOL UNDER 21 (16-23-30(C))Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 8-10-05

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: _____

Judge's Address 115 N HARVIN ST/PO BOX 1428SUMTER SC 29151Judge's Telephone 903-426-2280Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

CERTIFIED TRUE COPY
SUMTER, the criminal laws of the
ORIGINAL FILE

DEPUTY CLERK OF COURT

SUMTER COUNTY
SOUTH CAROLINA

13:49:57 Thursday, January 21, 2016

CMTI330D	SCDC OFFENDER MANAGEMENT SYSTEM	01/21/16
OMCOMITA	RELEASE DATE SCREEN	C056427
SCDC# > 302693	LOC: LEE	
DWYER, DEVAN JEVON	SCDC CLASSIFICATION...: VIOLENT	
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE	SEXUAL REGISTRY...: N	
	SEXUAL PREDATOR...: NOT APP	
	DNA STATUS...: COMPLETED	
	GPS REQUIREMENT...: N	
	PREA DECISION...:	
CURRENT SENTENCE: 030-00-000	CONSECUTIVE SENTENCE ...: N	
030-00-000	CURRENT SENT START DATE: 10/08/2007	
PROJECTED COMPLETION DATES		
MAXOUT DATE: 04/01/2033	CURRENT EWC ..: 3 F 5	
YOA SIX YEAR DATE: / /	CURRENT EEC ..: NOT CURRENTLY EARNING EEC	
INITIAL PAROLE DATE: 00/00/0000	NEXT PAROLE HEARING DATE: 00/00/0000	
TOTAL GT DAYS EARNED: 000000	LABOR CREW/WORK PROG DATE: 99/99/9999	
TOTAL EARNED WORK CREDITS ..: 000710	LABOR CREW DISQ REASON:	
TOTAL EDUCATION CREDITS: 000000	CATEGORY 4 OR 5 OFFENSE	
TOTAL EXTRA EARNED CREDITS ..: 000	SUPERVISED REENTRY DATE...: 00/00/00	
TOTAL SERVICE TIME EARNED ...: 002983	ISS.....:	
PFKEYS: 5:HISTORY OF DATE CHANGES		

South Carolina Department of Corrections

Classification Summary Reports

Date: Thursday, January 21, 2016

Classification Summary Reports

Inmate Number

Classification Summary Report for DWYER, DEVAN JEVON :

CLASSIFICATION SUMMARY REPORT DATED 01/21/2016

SCDC# 00302693

DWYER, DEVAN JEVON

FBI# 296794AC0

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: LEE

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC SENT: 30 YRS 0 MOS 0 DAYS

VICTIM WITNESS: ☐ SEPREQ:N

MED CLASS: ☐

INST RESTRICT: NO RESTRICTION

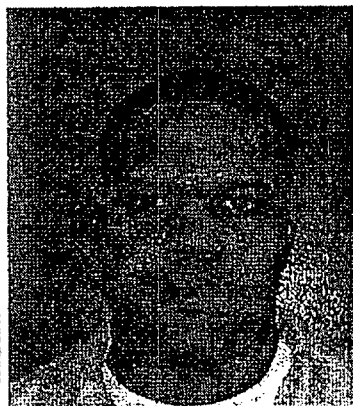
MENTAL CLASS: NMH (NO MENTAL HEALTH TRE

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 30



RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: DAR 2238 T

PROJ MAXOUT DATE: 04/01/2033

PROJ PAROLE DATE: -

EWC JOB: GENERAL WORKER

ASSIGNMENT: DARLINGTON UNIT

EWC LEVEL: 3F5 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE DYS	COUNTY	START	SENTENCE V/NV	CAT	INDICT
ASSLT & BATT W/INTNT KIL	15	0	0	SUMTER	10/08/2007	V	4	06GS43-0553

ARMED ROBBERY	25	0	0	SUMTER	10/08/2007	V	4	06GS43-0553
ASSLT & BATT W/INTNT KIL	20	0	0	SUMTER	10/08/2007	V	4	06GS43-0553
BURGLARY-1ST DEGREE	30	0	0	SUMTER	10/08/2007	V	4	06GS43-0553
FIREARMS PROVISION	5	0	0	SUMTER	10/08/2007	N	3	06GS43-0553
RECEIVE STOLEN PROPERTY	0	0	306	SUMTER	08/06/2003	N	2	03GS43-316

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

BURGLARY-1ST DEGREE	WANTED	PRESIDING JUDGE	CATEG:4
BURGLARY-1ST DEGREE	WANTED	PRESIDING JUDGE	CATEG:4
BURGLARY-1ST DEGREE	HOLD	OPEN ARREST NOTIFICATION	CATEG:4
TRAFFICKING IN COCAINE	HOLD	OPEN ARREST NOTIFICATION	CATEG:4

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

11/04/2014	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	DISMISSED	MAJOR DISC. HEARING
10/02/2014	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
10/02/2014	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
03/27/2014	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	DISMISSED	MAJOR DISC. HEARING
05/29/2013	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
05/29/2013	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
05/29/2013	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
04/16/2013	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
01/22/2013	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
01/22/2013	I/M UNDER INFLUENCE/POSS ALCOHOL OR BUCK	DISMISSED	MAJOR DISC. HEARING
01/22/2013	POSSESSION OF CONTRABAND	DISMISSED	MAJOR DISC. HEARING
11/20/2011	POSSESSION OF CONTRABAND	CONVICTED	ADMINISTRATIVE RESOLUTION
09/16/2009	SOLICIT EMPLOYEE,I/M,VIOULATE SCDC RULE	CONVICTED	ADMINISTRATIVE RESOLUTION
08/27/2009	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

12/17/2014	LEE	INCARCERATED	RETURN FROM COURT
12/17/2014	SUMTER CO	AUTH ABSENCE (AWL)	TO COURT

02/28/2014	LEE	INCARCERATED	RETURN FROM COURT
02/28/2014	SUMTER CO	AUTH ABSENCE (AWL)	TO COURT
10/02/2013	LEE	INCARCERATED	RETURN FROM COURT
10/02/2013	SUMTER CO	AUTH ABSENCE (AWL)	TO COURT
03/18/2013	LEE	INCARCERATED	RETURN FROM COURT
03/18/2013	SUMTER CO	AUTH ABSENCE (AWL)	TO COURT
05/04/2009	LEE	INCARCERATED	ADMINISTRATIVE
04/15/2009	KIRKLAND	INCARCERATED	NEW SENT W/O PR/CS/SF REV
06/14/2004	SUMTER CO	PROBATION	RELEASED TO PROBATION
06/14/2004	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	12/10/2013	-		3F5
GENERAL WORKER	05/28/2013	12/09/2013	LATERAL TRANSFER	3F5
CUSTODIAL WORKER	10/23/2012	05/27/2013	LATERAL TRANSFER	3F5
LANDSCAPE GARDENER	10/31/2011	10/22/2012	PROMOTION	3F5
MACHINE OPERATOR	05/25/2010	10/30/2011	LATERAL TRANSFER	3F5
FOOD SERVICE AIDE	03/16/2010	05/24/2010	INMATE REQUEST	3F5
WASH RACK ATTENDANT	07/23/2009	03/15/2010	LATERAL TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 01:51:31 PM]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

STATE

VS.

DEVAN J. DWYER

AKA:

Race: Black

DOB: [REDACTED] 1985

Sex: Male

SSN: [REDACTED]

CERTIFIED TRUE COPY
OF ORIGINAL FILED

INDICTMENT/CASE#: 2006-GS-43-0553

H907783

Date of Offense: August 03, 2005

CLERK OF COURT S.C. Code §: 16-23-0030, 0050(A)(1)

SUMTER COUNTY CDR Code #: 2364
SOUTH CAROLINA

Address:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: possession of firearm during commission of crime of violence
In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0, 5, 4, 9☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ \$17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: CDI☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
\$90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

SCCA/217 (07/2008)

COUNTY OF SUMTER

INDICTMENT/CASE#: 2006-GS-43-0553

STATE VS.

DEVAN J. DWYER

AKA:

Race: Black

Sex: Male

DOB:

SS#:

Address:

DL#

SID#

CERTIFIED TRUE COPY
OF ORIGINAL FILE # H907743

Age:

Date of Offense: August 03, 2005

Case #: 16-11-0311

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

Case Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: burglary 1st (Count 1)in violation of § 16-21-31 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 7, 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ \$17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine Sant
Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

\$14-1-208 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

\$90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL

\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

PRESIDING JUDGE

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

COUNTY OF SUMTER

STATE

VS.

DEVAN J. DWYER

AKA:

Race: Black

Sex: Male

Age:

DOB: [REDACTED] 1985

SS: [REDACTED]

Address:

DL#

SID#

CERTIFIED TRUE COPY
OF ORIGINAL FILEDCLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ANY#:

Date of Offense: 8-3-05

S.C. Code §: 16-11-330(A) + CL

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Armed Robbery (Count 2)in violation of § 16-11-330(A) + CL of the S.C. Code of Laws, bearing CDR Code # 01139☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ \$17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine Sant
Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 2.5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: et al☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$58-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$58-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$90.11 TR (SCCJA Surcharge)

TOTAL

James C. Campbell

Clerk of Court/Deputy Clerk

Court Reporter:

Kathy Richardson

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

James C. Campbell
3 11 14 14
4-14-09

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

INDICTMENT/CASE#: 2006-GS-43-0553

STATE VS.

DEVAN J. DWYER

AW#: H907781

AKA:

Date of Offense: August 03, 2005

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0620

DOB: [REDACTED] 1985

SS#: [REDACTED]

CDR Code #: 0014

Address:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: ABIK (Count 3)in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 1, 4☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 21☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Recipient:

*Fine:

\$14-1-208 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2895 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3; 1B TP (Law Enforce. Funding)	\$25
\$33.7; 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
\$80.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

Clerk of Court/ Deputy Clerk

COUNTY OF SUMTER

STATE

VS.

DEVAN J. DWYER

AKA:

Race: Black

DOB: 1985

Address:

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006-GS-43-0553

CERTIFIED TRUE COPY
OF ORIGINAL FILED

H907781

Date of Offense: August 03, 2005

S.C. Code §: 16-03-0620

CDR Code #: 0014

CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: ABIK (Count 3)in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 1, 4☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 21☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$90.11 TP (SCCJA Surcharge)

TOTAL

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

STATE

DEVAN J. DWYER

AKA:

Race: Black

DOB: [REDACTED] 1985

VS.

Sex: Male

Age:

SS#: [REDACTED]

Address:

DL#

SID#

4 of 5
CERTIFIED TRUE COPY
OF ORIGINAL FILED

IN COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006-GS-43-0553

CLERK OF COURT AM#: H907782

SUMTER COUNTY Date of Offense: August 03, 2005

SOUTH CAROLINA C. Code §: 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: ADIK (count 4)

in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 1, 4

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine Tant

Solicitor

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 1.5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 21

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$58-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$58-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$90.11 TP (SCCJA Surcharge)

TOTAL

SPECIAL CONDITIONS:

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

21-1-09

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
)
)
)
Devan Dwyer, #302693,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2011-CP-43-2412

RETURN

The Respondent, making its Return to the application for post-conviction relief, filed December 22, 2011, 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 Sumter County Clerk of Court. The Applicant was indicted during the February 2009 term of the Sumter County Grand Jury under indictment 2006-GS-43-00553 for the following counts: (1) Burglary – 1st degree; (2) armed robbery; (3) assault and battery with intent to kill, (4) assault and battery with intent to kill; and (5) possession of firearm/knife during the commission of a violent crime. Lauren Stevens, Esquire, represented him. The Applicant proceeded to trial on April 13 and 14, 2009. On April 14, 2009 the Applicant was found guilty on all counts. The Honorable R. Ferrell Cothran, Jr. sentenced Applicant to thirty years imprisonment for burglary, twenty-five years imprisonment for armed robbery, twenty years imprisonment for one count of assault and battery with intent to kill; fifteen years imprisonment for the second count of assault and battery with intent to kill, and five years imprisonment for possession of a firearm. All sentenced were to run concurrently.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Dwyer, Op. No. 2011-UP-010 (S.C. Ct. App. Filed January 24, 2011. The Remittitur was sent on February 10, 2011.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial court transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Trial counsel was ineffective for failing to pursue a alibi defense."
- b. "Trial counsel was ineffective for not notifying the courts within (10) days prior to trial of a alibi defense which completely destroyed applicant chances of presenting this alibi defense at trial."
- c. "Trial counsel was ineffective for failing to subpoena witness/victim Rohan Anderson, being that Attorney Stevens based her whole defense trial strategy on inconsistencies of the victim's statement."
- d. "Trial counsel was ineffective for failing to suppress the evidence of victim Mr. Anderson, when accuser wasn't allow to confront witness which violated applicant constitutional right of the 6th amendment of the United States."

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCRCP.

III.

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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

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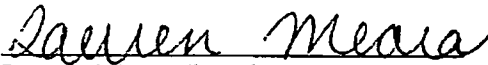
May 31, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2011-CP-43-2412
	)	
DEVAN DWYER, 302693,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Paul Held, Esquire
Law Office of Paul L. Held
138 N. Main Street
Sumter, SC 29150

DATED this 15th day of June, 2012.


 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

COURT OF COMMON PLEAS

DEVAN DWYER, #302693)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
11-CP-43-2412

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

December 17, 2014
Sumter, South Carolina

BEFORE :

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

APPEARANCES:

WILLIE H. BRUNSON, ESQ.
Attorney for Petitioner

DANIEL GOURLEY, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

PETITIONER'S:

No.	Description	I.D./EVD.
1	Statement of Cassandra Davis	12/12
2	AFIS form	24/24
3	SLED catch	26/26

1 MR. GOURLEY: This is Devan Dwyer versus
2 the State of South Carolina, docket number
3 2011-CP-43-2412. He was indicted during the
4 February 2009 term of the Sumter County grand jury
5 for burglary in the first degree, armed robbery,
6 assault and battery with intent to kill, assault and
7 battery with intent to kill, possession of a firearm
8 during the commission of a violent crime.
9 Ms. Stevens represented him. He went through a jury
10 trial April 13th and 14th of 2009 before the
11 Honorable R. Ferrell Cothran, Jr., where he was
12 convicted as indicted. Judge Cothran sentenced him
13 to 30 years imprisonment for burglary, 25 years
14 imprisonment for armed robbery, 20 years
15 imprisonment for one count of assault and battery
16 with intent to kill, 15 years imprisonment for the
17 second count of assault and battery with intent to
18 kill, and five years imprisonment for possession of
19 a firearm. Those sentences were served
20 concurrently. He filed a timely notice of appeal.
21 South Carolina Court of Appeals affirmed his
22 conviction. Remittitur was issued February 10th,
23 2012, filed a timely application for PCR
24 January 30th, 2012, alleging ineffective assistance
25 of counsel. The State made its return on May 31st,

1 2012, and he is represented in this matter by
2 Mr. Brunson, and I turn it over to Mr. Brunson, Your
3 Honor.

4 THE COURT: All right, yes, sir.

5 MR. BRUNSON: May it please the Court,
6 Your Honor.

7 THE COURT: All right, yes, sir.

8 MR. BRUNSON: May it please the Court,
9 Your Honor.

10 THE COURT: Yes, sir.

11 MR. BRUNSON: Your Honor, on behalf of the
12 applicant we would like to request a continuance of
13 this case.

14 THE COURT: Okay.

15 MR. BRUNSON: The applicant is advised
16 that a witness in this case isn't available today.
17 I have attempted to make telephone contact with a
18 witness, and I have not been able to successfully
19 reach her. And in all candor to the Court, Your
20 Honor, we were really number 23 on today's docket;
21 and as a result, I did not think we were going to be
22 reached. However, when I discovered that we were, I
23 attempted in haste to contact her yet again. The
24 phone numbers that I had were not good numbers.
25 Mr. Dwyer provided me with current and updated

1 telephone contact, and I have since tried to contact
2 her on both new home number and a new mobile device.
3 She has not answered the phone, and I have sent her
4 text messages, about three of them, since earlier
5 this morning and she's not responded to those
6 either.

7 Your Honor, a part of the applicant's
8 petition is he's alleged that his counsel was
9 ineffective in that she failed to use alibi. She
10 failed to put the State on notice of alibi, and she
11 failed to subpoena the witness that we're referring
12 to right now. Although, Your Honor, we do have a
13 written statement that was written by this
14 particular witness the applicant wants me to ask for
15 a continuance so that we can obtain her and make her
16 present for today.

17 THE COURT: The next time, I think, you
18 have one is when?

19 MR. GOURLEY: April with Judge James, Your
20 Honor.

21 THE COURT: Ma'am, will that cause you any
22 trouble being here in April?

23 MS. STEVENS: Your Honor, this is the
24 fourth time I have been here.

25 THE COURT: Oh, really.

1 MR. GOURLEY: It's an old case, Your
2 Honor. It's been going on for a long -- I mean,
3 it's a 2011 PCR case, or 2011 PCR number. It's been
4 continued a few times now and Ms. Stevens is here,
5 we've got him here.

6 THE COURT: Yeah, and I understand your
7 problem. I'm gonna go ahead and go forward with it.
8 I mean, I understand you got -- if you need a little
9 time, I mean, I don't mind -- basically, I mean, you
10 know how these things are.

11 MR. BRUNSON: Yes, Your Honor.

12 THE COURT: And because of you moving from
13 23 to 2 I might -- I'll give you some leeway with
14 testimony as to what she would say, I mean, as to
15 hearsay; but I'll be happy to hear it and take it as
16 Judge Epps used to say, for what it's worth. Okay.
17 All right, you can call your first witness.

18 MR. BRUNSON: Your Honor, we'd like to
19 call Mr. Devan Dwyer to the stand.

20 THE CLERK: Place your left hand on the
21 Bible and raise your right hand. State your name
22 please.

23 THE WITNESS: Devan Dwyer.

24 WHEREUPON,

25 **DEVAN DWYER,**

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1 as follows:

2 THE CLERK: Thank you. Come
3 around, Mr. Dwyer. State your name and spell your
4 last for the record.

5 THE WITNESS: Devan Damon (ph) Dwyer.

6 THE COURT: You all right? You're
7 wincing?

8 THE WITNESS: Oh, I got a shot in my hand.

9 THE COURT: You what?

10 THE WITNESS: I got a shot in my hand.

11 THE COURT: Oh, okay. I'm sorry I
12 interrupted you. Spell your last name.

13 THE WITNESS: Devan Damon Dwyer, Devan
14 Damon Dwyer, D-W-Y-E-R.

15 THE COURT: When you get old like me you
16 learn to trade off like that all the time, trust me.
17 Okay.

18 MR. BRUNSON: May it please the Court,
19 Your Honor.

20 THE COURT: Yes, sir.

21 **DIRECT EXAMINATION**

22 BY MR. BRUNSON:

23 Q Mr. Dwyer, you're currently in custody of the
24 South Carolina Department of Corrections, correct?

25 A Yes, sir.

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1 Q And where are you housed?

2 A Lee County Correctional.

3 Q And how long have you been serving an active
4 sentence?

5 A Since 2009.

6 Q Okay. And what is your expected date of release?

7 A 2033.

8 Q And you are basically serving 30 years?

9 A Yes, sir, 30 years.

10 Q And you heard the State recite the charges in
11 which you're serving, correct?

12 A Yes, sir.

13 Q And that's a sentence for five charges, including
14 two assault and batteries with intent to kill?

15 A Yes, sir.

16 Q Okay. And this is your application or your
17 petition for post-conviction relief, correct?

18 A Yes, sir.

19 Q And the basis of your application is that you
20 have received ineffective assistance from your trial
21 counsel; is that right?

22 A Yes, sir.

23 Q And is it a basis of your application that --
24 were you promised anything by your trial counsel?

25 A Just that it was supposed to be dropped and

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1 dismissed.

2 Q All right, let me go into that a little bit. So
3 is it your testimony that your trial counsel advised
4 you that the charges against you would be dropped?

5 A Yeah, it would be dropped and dismissed, and not
6 dropped; it would be lowered to a lesser charge.

7 Q Okay. And did they tell you she had -- well,
8 what was the basis for her telling you that?

9 A She spoke with the Solicitor --

10 Q Okay.

11 A --Hugh Ryan, and he was saying that the case
12 wasn't really a case.

13 Q Okay. And so was it then your understanding and
14 did you believe your counsel once she told you it
15 would be dropped?

16 A Oh, yes, sir.

17 Q Did you expect to have the charges dropped?

18 A Yes, sir.

19 Q Now prior to her advising you of that did you
20 have occasion to talk with her about your case?

21 A I spoke with her once, maybe twice about the
22 case, but whenever I go to roll call and check in to
23 see if I'm on the docket for trial I go and check in
24 with her let her know that I was up there and asked
25 her when is the next time do I need be up there.

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1 Q Did you get the impression that your lawyer was
2 preparing for a trial?

3 A I thought so, but I mean, she's my lawyer so.

4 Q Okay. Well, what did she tell you? Did she tell
5 she was preparing for trial or did she tell you it
6 was going to be dropped, which one?

7 A She told me it was going to be dropped. She told
8 me it was going to be dropped and that was it.

9 Q Did you have an occasion to talk with her about
10 defenses?

11 A We didn't, we didn't really speak about that.

12 Q Now when I talk about defenses I'm talking about
13 alibi included.

14 A Yeah, we spoke about that. We spoke about that.

15 Q So did you tell her that you had an alibi?

16 A Yes, I spoke to her several times about alibi.

17 Q Okay. Who was the alibi witness that you will
18 affirm to?

19 A Cassandra Davis.

20 Q Tell me your relationship to Cassandra.

21 A At the time that was my then girlfriend.

22 Q And who were you residing with at the time of
23 this alleged robbery?

24 A Cassandra Davis.

25 Q Okay. Y'all lived in the same house, sleep in

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1 the same bed?

2 A Sleep in the same bed.

3 Q And what, if anything, is Cassandra's
4 relationship to the victim in the case?

5 A Cousin.

6 Q Okay. So your girlfriend that you were living in
7 the home with is the cousin of the person that you
8 allegedly robbed, correct?

9 A That's correct.

10 Q All right. And around what time did the alleged
11 robbery occur?

12 A I say around 4, 4:30, something like that.

13 Q Okay. Do you have any information regarding
14 Cassandra's position about where you were around
15 that time?

16 A Statement that she gave police?

17 MR. BRUNSON: May I approach the witness,
18 Your Honor?

19 THE COURT: Yes, sir.

20 BY MR. BRUNSON:

21 Q Let me ask you to take a look at this document.
22 You recognize that document?

23 A Yes, sir.

24 Q What is that?

25 A This is a statement that she gave police.

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1 Q "She" being who?

2 A Cassandra Davis.

3 Q All right. And is it signed by -- I mean, is it
4 signed and dated?

5 A Yes, sir, it's signed and dated as August
6 the 4th.

7 Q How did you receive this document?

8 A It was in my motion.

9 Q So you got this document from your lawyer?

10 A Yes, sir.

11 Q And she got it from law enforcement?

12 A Yes, sir.

13 Q And this is Cassandra's statement given to law
14 enforcement?

15 A Yes, sir.

16 MR. BRUNSON: Your Honor, I'd like to move
17 this into evidence as Petitioner's 1.

18 THE COURT: Any objection?

19 THE STATE: I have no objection, Your
20 Honor.

21 THE COURT: All right, without objection.

22 (WHEREUPON, Petitioner Exhibit No. 1 was
23 marked for identification and admitted
24 into evidence.)

25 MR. BRUNSON: Your Honor, if it please the

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1 Court, may I let him look at my copy while...

2 THE COURT: Yeah, go ahead.

3 BY MR. BRUNSON:

4 Q I believe you testified earlier, Mr. Dwyer, that
5 the alleged arm robbery, assault and battery, all
6 this occurred around about 4:00?

7 A Yes, sir.

8 Q Did Cassandra include in her statement some,
9 where you were around or about 4:30, 4:45?

10 A Yes, sir, she did.

11 Q What did she say in that regard?

12 A She said I was in the bed sleep, and she woke me
13 up and let me know that there was something going on
14 outside.

15 Q All right. What time did he say she woke you up?

16 A I can read it?

17 Q Yeah.

18 A About 4:30, 4:45.

19 Q So based on Cassandra's statement you were in the
20 bed sleeping at around 4:30 4:45; is that right?

21 A Yes, sir.

22 Q Okay. Now did your lawyer, Ms. Stevens, know
23 that Cassandra wrote a statement saying you were in
24 the bed asleep around 4:30, 4:45?

25 A She had to. I got this from her.

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1 Q Okay. So she read the statement?

2 A Yes, sir.

3 Q So, now is it your position then that Cassandra
4 was a viable alibi witness for you?

5 A Yes, sir.

6 Q Because she knew that you were sleeping in the
7 bed at 4:30, 4:45?

8 A Yes, sir.

9 Q All right. Now did you ask Ms. Stevens to use
10 Cassandra as an alibi witness?

11 A Yes, sir, I did.

12 Q All right. Did she use Cassandra as an alibi
13 witness?

14 A No, sir.

15 Q All right. Is it your contention then that she
16 was ineffective because she failed to use Cassandra
17 as an alibi witness after you requested?

18 A Yes, sir.

19 Q Okay. Now are you aware of any requirements that
20 an attorney must do in order to put the State on
21 notice of an alibi?

22 A At that time, no.

23 Q Okay. But do you know whether or not Ms. Stevens
24 put the State on notice of her intent to use
25 Cassandra as an alibi witness?

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1 A No, sir, she didn't.

2 Q She did not, correct?

3 A That's correct.

4 Q So is it then your second contention that she was
5 ineffective because she failed to put the State on
6 notice of her intent to use an alibi?

7 A Yes.

8 Q Okay. Did Ms. Stevens subpoena or put Cassandra
9 Davis, your alibi witness, under a subpoena?

10 A No, sir.

11 Q Okay. Is it then your contention that Ms.
12 Stevens was ineffective for failing to put
13 Ms. Cassandra Davis under subpoena?

14 A Can you repeat the question for me.

15 Q Was she ineffective counsel because she failed to
16 subpoena your alibi witness?

17 A Yes, sir, she was ineffective.

18 Q Okay. So in regard to your defense of alibi you
19 stated three grounds in which you rely upon to prove
20 the fact that Ms. Stevens was ineffective. One,
21 that she did not utilize the witness at trial?

22 A That's correct.

23 Q That she did not notify the court of her intent
24 to use alibi as a defense?

25 A That's correct.

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1 Q And that she failed to subpoena the witness in
2 question, Ms. Cassandra Davis?

3 A That is correct.

4 Q Okay. Now ---

5 A And might I add that Cassandra was in court every
6 day of trial.

7 Q Okay. So Cassandra was present in the courtroom?

8 A Yes, sir, she was.

9 Q Okay. So the subpoena wasn't really that
10 necessary?

11 A The ---

12 Q But she was there?

13 A Was there.

14 Q Okay. Did you advise Ms. Stevens that Sandra
15 was there?

16 A Yes, sir, I did.

17 Q Did you tell Ms. Stevens that you wanted to call
18 her as a defendant, I mean, I'm sorry, as a witness?

19 A As a witness, Yes, sir, I did.

20 Q And what, if anything, did Ms. Stevens say to you
21 in regard to your request?

22 A She was like we -- I don't recall her exact words
23 but she didn't get called.

24 Q Okay. She didn't honor your request. All right,
25 now, I believe you have alleged that Ms. Stevens was

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1 ineffective in failing to subpoena Rohan Anderson;

2 is that correct?

3 A That's correct.

4 Q All right. Now can you please explain to the
5 court who Rohan Anderson is and what he has to do
6 with your case.

7 A Rohan Anderson was a victim in my case and he was
8 also a witness to the crime that I was charged with.

9 Q Okay. So how many victims were there?

10 A Two.

11 Q All right. And were both victims shot?

12 A Yes, sir.

13 Q Okay. Who's the first victim?

14 A It was Sara McKenzie.

15 Q Okay. And the other was?

16 A Rohan Anderson.

17 Q Okay. How many victims testified in your trial?

18 A One.

19 Q And that was ---

20 A Sara McKenzie.

21 Q Okay. Now what, if anything, did Sara McKenzie
22 say about your, about the incident and what
23 conflicted with what Rohan said, if anything?

24 A She said, Sara stated that the -- that she had a
25 conversation with the person who started. Rohan

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1 didn't say anything about a conversation. Sarah
2 said that the gun was grayish/black. Rohan said
3 something different. Rohan said the person came in
4 and shot and robbed him, demanded money and drugs.
5 Sara didn't say anything about that. Sara said the
6 person who robbed and shot her had some kind of,
7 some attire on their face and their head and Rohan
8 didn't say anything about that.

9 MR. GOURLEY: Your Honor, just for the
10 record, I understand your comments this morning, but
11 I'm just gonna object for the record.

12 THE COURT: Yeah, just for the record, and
13 overruled. In other words, I'm just gonna -- go
14 ahead.

15 MR. BRUNSON: Thank you, Your Honor.

16 BY MR. BRUNSON:

17 Q So you've identified what you believe are
18 inconsistent statements?

19 A Yes, sir.

20 Q Between Sara and Rohan?

21 A Yes, sir.

22 Q Between the two alleged victims?

23 A Yes, sir.

24 Q And that only one testified at trial?

25 A Yes, sir.

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1 Q Now is it your position then that there would
2 have been a difference if Rohan had testified?

3 A Yes, sir, there could have been a big difference.

4 Q Okay. And let me ask you this regarding Rohan.
5 So is it your intention that your lawyer was
6 ineffective because she didn't subpoena Rohan.

7 A Yes, 'cause she basically, she say that she
8 basically trial strategy on inconsistency of the two
9 statements of Rohan and Sara.

10 Q All right. And did your lawyer Ms. Stevens make
11 that argument to the Court about Rohan being a
12 necessary witness?

13 A Yes, sir, she did.

14 Q And can I -- may I approach, Your Honor.

15 THE COURT: Yes, sir.

16 BY MR. BRUNSON:

17 Q I'm gonna hand you a book. Do you recognize
18 that?

19 A Yes, sir.

20 Q What is that big book?

21 A This is my transcript.

22 Q All right. And that's the transcript from your
23 trial, correct?

24 A Yes, sir.

25 Q If you turn to page 31 of that transcript, that

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1 line 11.

2 A Uh-huh.

3 Q Would you read that for the record.

4 A Ms. Stevens: Your Honor, the statements between
5 Ms. McKenzie and Mr. Anderson are very different and
6 that was part of the, what we were going to base our
7 defense on.

8 Q Okay. And that is Ms. Stevens communicating with
9 the judge?

10 A Yes, sir.

11 Q Okay. Now, and that's basically a statement that
12 Ms. Stevens is saying that Rohan's testimony is
13 important, correct?

14 A Yes, sir.

15 Q But you mentioned that she didn't subpoena him,
16 right?

17 A Yes, sir.

18 Q And that's one of the grounds?

19 A Yes, sir.

20 Q Well, did Ms. Stevens ask for a continuance in
21 this case?

22 A No, sir, she didn't.

23 Q So is it your position then that she should have
24 asked for a continuance?

25 A Yes, sir.

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1 Q So by her not asking for a continuance to
2 subpoena Rohan, is that one of the bases in which
3 you're saying that she was ineffective?

4 A Yes, sir, she was ineffective.

5 Q Okay. Now one of your warrants is for assault
6 and battery with intent to kill and the victim in
7 that warrant is Sara McKenzie, right?

8 A That's correct.

9 Q But you've got another warrant for assault and
10 battery with intent to kill, correct?

11 A That's correct.

12 Q And that is for shooting who?

13 A Rohan Anderson.

14 Q All right. So is it your testimony that you were
15 convicted for shooting a person that didn't testify
16 at trial?

17 A That's correct.

18 Q So is it your contention then that your right to
19 confront your accuser was abridged?

20 A That's correct.

21 THE STATE: And Your Honor, I would
22 object. That's a direct appeal issue. Ms. Stevens
23 made a motion to try to sever this. I don't see any
24 claim of ineffective assistance of counsel on this
25 allegation.

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1 THE COURT: Okay, that's noted. I'll
2 allow you, give you some leeway on it.

3 BY MR. BRUNSON:

4 Q So if Ms. Stevens had requested a continuance and
5 that continuance was denied, wouldn't Ms. Stevens
6 then be able to object because it abridged your
7 constitutional right?

8 A Yes, sir.

9 Q And if she had asked for the continuance and it
10 was denied, wouldn't then she had preserved that
11 issue for appeal?

12 A That's correct.

13 Q So, is then another basis for ineffective
14 assistance of counsel the fact that Ms. Stevens
15 failed to make a motion?

16 A That's correct.

17 Q And object to that motion?

18 A That's correct.

19 Q Thereby preserving an appealable issue?

20 A That's correct.

21 Q So is that another ground in which you're asking
22 this Court to grant your PCR on?

23 A Yes, sir.

24 Q Were there any latent prints collected in this
25 case?

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1 A Yes, sir.

2 Q Were any of those prints collected from the crime
3 scene?

4 A Yes, sir.

5 MR. BRUNSON: Permission to approach?

6 THE COURT: Yes, sir.

7 BY MR. BRUNSON:

8 Q Take a look at this document for us.

9 A Yes, sir.

10 Q Look up at ---

11 A Yes, sir.

12 Q You recognize this document?

13 A Yes, sir.

14 Q How did you receive a copy of this document?

15 A From Ms. Stevens.

16 Q Okay. Was it provided to her in discovery?

17 A Yes, sir, it was in discovery.

18 Q Okay. And how did she get this document?

19 A From law enforcement or...

20 Q All right. And can you read for the record what
21 this is.

22 A It's a — at the top it's Sumter Police
23 Department, Automated Fingerprint Identification
24 System. And it goes to read: Item submitted, one
25 latent placard card bearing latent lift.

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1 Q Okay.

2 A Result, suitable image. One-one has been
3 searched four times through South Carolina AFIS
4 system with negative results.

5 MR. BRUNSON: Your Honor, we'd like to
6 move this into evidence as Petitioner's 2.

7 THE COURT: Any objection?

8 THE STATE: No, Your Honor.

9 THE COURT: All right, without objection.

10 MR. BRUNSON: Thank you, Your Honor.

11 (WHEREUPON, Petitioner Exhibit No. 2
12 was marked for identification and
13 admitted into evidence.)

14 MR. BRUNSON: Thank you, Your Honor.

15 BY MR. BRUNSON:

16 Q So basically this is a fingerprint that was
17 collected from the scene, correct?

18 A That's correct.

19 Q Bottom line is it ran through AFTIS and it came
20 back no result?

21 A Yes, sir.

22 Q But the important part is that it's a good print,
23 right?

24 A Yes, sir.

25 Q Okay. When was that run?

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1 A It was ran in ---

2 Q If -- would looking at the top of it give you a
3 better idea?

4 A August 2009.

5 Q Okay, that's fine. Well, let me give it to you.
6 I want you to read what the date of that
7 correspondence is.

8 A August 9th, 2005.

9 Q Now that indicates it was ran prior to August
10 9th, 2005, correct?

11 A Yes.

12 Q So you -- are you alleging that Ms. Stevens was
13 ineffective because she failed to introduce this
14 into evidence?

15 A Yeah, she failed to introduce it into evidence.

16 Q Okay. Now let me ask you -- may I approach, Your
17 Honor?

18 THE COURT: Yes, sir.

19 BY MR. BRUNSON:

20 Q Take a look at this document. Can you identify
21 that.

22 A Yes, sir, it's a ---

23 Q SLED catch?

24 A Yeah, this from SLED from where they run the
25 fingerprints and ---

RW - D. DWYER - DIRECT

1 Q That's your SLED catch, right?

2 A Yeah, it's mine.

3 MR. BRUNSON: Your Honor, we'd like to
4 move this into evidence as Petitioner's 3.

5 THE COURT: Any objection?

6 THE STATE: No objection, Your Honor.

7 THE COURT: All right, without objection.

8 (WHEREUPON, Petitioner Exhibit No. 3 was
9 marked for identification and admitted
10 into evidence.)

11 BY MR. BRUNSON:

12 Q I want to direct your attention to about the
13 third paragraph down on that SLED catch. What does
14 it say? It doesn't say name?

15 THE COURT: Yeah, right here.

16 THE WITNESS: Yes, sir.

17 BY MR. BRUNSON:

18 Q What name is on there?

19 A Ryan Devan Devon (ph).

20 Q Is that you?

21 A Yea, that's me.

22 Q And the next paragraph down says what?

23 A David Carter Evan.

24 Q What ---

25 A 3/6/2003, and it was last updated on the, on

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1 9/2/2005.

2 Q What does that, with a one beside it, what does
3 that say?

4 A Fingerprint images on this subject are stored.

5 Q Okay. So, all right, is it your testimony and
6 that your fingerprint was in the system?

7 A Yes, sir.

8 Q And what date was your fingerprint in the system?

9 A March 6th, 2003.

10 Q All right. And this fingerprint was lifted when
11 from the scene?

12 A In August 9th, 2005.

13 Q And processed in the AFIS system?

14 A Yes, sir.

15 Q And came back negative, right?

16 A Came back negative with mine.

17 Q So is it your testimony that it wasn't your
18 fingerprint because your fingerprint was in the
19 system, correct?

20 A That's correct.

21 Q So if your lawyer had introduced that evidence,
22 is it your testimony that she was ineffective
23 because she didn't introduce this evidence?

24 A That's correct.

25 Q Do you believe that if she had introduced that

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1 there was a fingerprint lifted from someone that
2 wasn't you would help your case?

3 A Yes, sir, a whole lot.

4 Q Whose name is on the fingerprint result?

5 A As the examiner?

6 Q Yes. Read it.

7 A Hodge.

8 Q Was that person subpoenaed in this case?

9 A No, sir.

10 Q If that person had been subpoenaed would this,
11 could this evidence possibly have come in and been
12 introduced?

13 A Yes, sir.

14 Q So was your attorney ineffective because she
15 failed to introduce to subpoena the person so that
16 they could testify that this wasn't your print?

17 A That's correct.

18 Q Okay. Is that another basis for your petition?

19 A Yes, sir, it is.

20 Q So in summary, is it correct that you have
21 testified that Ms. Stevens was ineffective in a
22 number of particulars?

23 A Yes, sir.

24 Q One, in that she failed to subpoena Cassandra
25 Davis as an alibi witness?

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1 A That's correct.

2 Q And two, that she failed to put the State on
3 notice of her intent to use alibi as a defense?

4 A That's correct.

5 Q In three, in promising you that the case would be
6 dismissed and then going to trial?

7 A That's correct.

8 Q And four, failing to subpoena Rohan Anderson?

9 A That's correct.

10 Q And five, failing to request a continuance to
11 subpoena Rohan Anderson?

12 A That's correct.

13 Q And three, in failing to object to a denial of a
14 motion that wasn't made?

15 A That's correct.

16 Q And five, in failing to introduce evidence of a
17 latent print?

18 A That's correct.

19 Q Or in failing to subpoena the people that would
20 allow the evidence to come in.

21 A That's correct.

22 Q And in six, failing to preserve appealable issues
23 for the record.

24 A That's correct.

25 Q How many times did you meet with Ms. Stevens

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1 after she told you that the case was going to be
2 dismissed?

3 A Maybe one, maybe.

4 Q One? And when was that in relation to the trial?

5 A Two days before trial.

6 Q So you came to trial on Monday?

7 A I went to trial on Monday. I saw her in the
8 county that Saturday.

9 Q So prior to seeing her in the county that
10 Saturday -- well, what did she tell you when you saw
11 her Saturday?

12 A Be ready, we're going to trial Monday.

13 Q All right. What was the last communication you
14 had with her prior to seeing her Saturday?

15 A I don't recall.

16 Q Okay. And how much time did you spend with her
17 that Saturday two days before the trial?

18 A It wasn't long at all.

19 Q If you had to estimate would you say it was
20 seconds, minutes, or hours?

21 A Five or ten minutes.

22 Q Five or ten minutes?

23 A Five or ten.

24 Q Is there any other particular that you would like
25 to allege is a basis for your petition and anything

PW - D. DWYER - CROSS

1 you'd like to offer that would further support your
2 allegation that Ms. Stevens was an ineffective
3 attorney for you?

4 A That's it.

5 MR. BRUNSON: No further questions, Your
6 Honor.

7 THE COURT: Okay.

8 Yes, sir.

9 THE STATE: May it please the Court, Your
10 Honor.

11 THE COURT: Yes, sir.

12 **CROSS-EXAMINATION**

13 BY THE STATE:

14 Q Mr. Dwyer, you just recently stated that you met
15 with your attorney one time prior to your trial?

16 A I met right before trial. Yeah, I met with her
17 right before trial.

18 Q Okay.

19 A I met right before trial. I seen her several
20 times over the period of what, three-and-a-half
21 years.

22 Q But you only had like one discussion with her?

23 A Like one discussion about the ---

24 Q About the case?

25 A Yeah.

PW - D. DWYER - CROSS

1 Q Okay. Did y'all ever go over any kind of
2 discovery material or anything like that?

3 A Uh ---

4 Q Like what the State had against you or what they
5 were going to show?

6 A The statements.

7 Q Okay. And your attorney talked to you about
8 possible defenses and you wanted the defense of
9 alibi raised, right?

10 A Yes, sir.

11 Q And you told Ms. Stevens about Cassandra?

12 A Yes, sir.

13 Q And so Cassandra was in the courtroom during your
14 trial?

15 A Yes, sir.

16 Q And now one of your, your second allegation is
17 that she was ineffective for failing to subpoena
18 Mr. Anderson; is that right?

19 A Yes, sir.

20 Q Okay. Now do you recall the State's testified
21 that, or not testified but discussed, that they
22 weren't able to subpoena Rohan Anderson and he had
23 basically disappeared, and they went to extreme
24 measures to try to get Rohan Anderson; do you recall
25 that?

PW - D. DWYER - CROSS

1 A Yes, sir, I recall that. I also recall them
2 saying that they never told Ms. Stevens that they
3 had him or that they ever was able to contact him.

4 Q Okay, but the State did testify or stated they
5 attempted to contact his family members from several
6 different states to try to locate him, right?

7 A Yes.

8 Q Okay. And the State obviously did not produce
9 Rohan Anderson, right?

10 A State didn't.

11 Q And Ms. Stevens, do you recall Ms. Stevens making
12 several objections during the course of trial to try
13 to keep Rohan Anderson's testimony or statement out
14 of your trial?

15 A She tried. She tried, yeah.

16 Q And she alleged that it was a confrontation
17 clause issue, you had a right to confront
18 Mr. Anderson if he was going to, as a potential
19 victim in the case, right, and the trial judge ruled
20 against her, right?

21 A Yes, sir.

22 Q Since your hearing have you been able to contact
23 Mr. Anderson?

24 A No, sir.

25 MR. GOURLEY: Your Honor, I don't have

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1 any other questions. Thank you, Mr. Dwyer.

2 THE COURT: Anything else from, on
3 redirect?

4 MR. BRUNSON: None, Your Honor.

5 THE COURT: All right, you can step down.
6 Thank you, sir.

7 Anything else from Applicant other than
8 the fact that, I guess, you renew your request for
9 continuance based upon her being, the witness not
10 being here?

11 MR. BRUNSON: I do, Your Honor.

12 THE COURT: Again, you're protected for
13 the record.

14 Yes, sir.

15 MR. GOURLEY: Thank you, Your Honor. We
16 call Ms. Stevens to the stand please.

17 THE COURT: All right.

18 THE CLERK: State your name please.

19 THE WITNESS: Lauren Boswell Stevens.

20 WHEREUPON,

21 **LAUREN B. STEVENS,**

22 having been duly sworn by the Clerk, testified
23 as follows:

24 THE CLERK: Thank you, come around please.
25 State your name and spell your last for the record.

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1 THE WITNESS: My name is Lauren Boswell
2 Stevens, S-T-E-V-E-N-S.

3 **DIRECT EXAMINATION**

4 BY THE STATE:

5 Q Ms. Stevens, how long have you been practicing
6 law?

7 A I was sworn in in May of 1996.

8 Q And were you appointed or retained?

9 A I worked for the Public Defender's office so I
10 was appointed.

11 Q And how many times did you meet with Mr. Dwyer
12 prior to his trial?

13 A I don't know because when the case was first
14 assigned to Assistant Solicitor Hugh Ryan, whenever
15 he would show up at roll call we would just
16 basically say, hey, he would let me know he was
17 there. He was very conscientious about making sure
18 that I knew he was there. After it was transferred
19 to Ms. Fant I think we had a different system at
20 that time and I'm not sure we had roll call, so I
21 did not see him quite as often.

22 Q Okay. Well, in speaking of the switch from
23 solicitors can you discuss that -- Mr. Dwyer had
24 stated that you promised him that his changes were
25 going to be dropped. Can you shed some light on

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1 that.

2 A Certainly. I did indeed tell him that because
3 Mr. Ryan told me that. Unfortunately, I took him as
4 at his word; I don't have anything in writing.
5 Ms. McKenzie, the victim in the case, I won't use
6 the exact words that he used to describe her but
7 needless to say, he did not feel that she was a
8 victim worthy of prosecuting Mr. Dwyer over. She
9 was currently in jail serving time for the drugs
10 that they found at the scene. She had a prior
11 record, and she had been shot either a month before
12 or a month after -- I can't remember -- by someone
13 that obviously they didn't know who it was, but he
14 felt like that he not had a very good case. She
15 wasn't a victim that he felt compelled to prosecute,
16 and he told me this on several occasions.

17 Q Okay. And then obviously Katherine Fant took
18 over and circumstances changed at that point in
19 time?

20 A Well, unfortunately, Mr. Ryan went through a
21 difficult part in his life and was having a very
22 difficult time before he left. And I know I sent
23 him, it was either by email or a slip of paper on
24 his desk, as soon as I found out he was leaving
25 there had been three or four cases similar to

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1 Devan's that we had discussed. And I begged him, I
2 said, please, before you leave do not forget that
3 you promised me that you were going to nol pros this
4 case, this case, this case, and this case, and he
5 did not. And then at some point it was transferred
6 to Ms. Fant.

7 Q In the past has this been somewhat of a typical
8 procedure between you and Mr. Ryan on any previous
9 case?

10 A Mr. Ryan had been a public defender before he was
11 a prosecutor so he knew what being a public defender
12 was like. Mr. Ryan was very easy to work with.
13 Unfortunately, if this event had not happened in his
14 life and -- I would like to think that he would, I
15 had always been able to take him at his word before
16 and I think that if this unfortunate event in his
17 life had not occurred that he would have dismissed
18 the charges against Devan.

19 Q Now obviously you were well aware that Ms. Fant
20 was planning on talking this case to trial?

21 A She and I had a relationship, yes, I was very
22 well aware.

23 Q Yes, ma'am. And so in preparation for trial did
24 you file Rule 5 and Brady motions?

25 A I did indeed.

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1 Q And did you review that with Mr. Dwyer?

2 A I know I gave it to him and I know we discussed
3 some parts of it, and when I knew -- they were very
4 sneaky, and they would send out the trial list
5 Friday afternoon.

6 Q Okay.

7 A Around 4, and they would put, you know, 25 trials
8 on it. And the first time Devan's name came up for
9 trial I went to see him the next day, and we
10 discussed the case. I can't say how long I was
11 there. I would think it was probably more than 30
12 minutes, but I'm not gonna tell you I was there for
13 six hours. I know we did have some discussion about
14 the statements about Cassandra and some strategy as
15 well.

16 Q Okay. Well, speaking of strategy, what was your
17 strategy in this case?

18 A I always believe that it is best to go last.

19 Q Okay.

20 A You learn in law school and in life and
21 especially experience during trial, that juries
22 usually remember the first thing they hear and the
23 last thing they hear. And I always felt it was
24 important, unless my client really needed to
25 testify, that I not put up a defense in the sense

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1 that I didn't put any evidence in that would make me
2 lose that right of last argument.

3 Q Okay.

4 A Because the Solicitor gets to go first and I
5 always wanted to be able to go last and be the last
6 thing they hear before they go into the jury room to
7 start to deliberate so that was my strategy.

8 Q Okay.

9 A Now as to why I did not put up Cassandra.

10 Q Uh-huh.

11 A First, her statement, Mr. Dwyer in his statement
12 states he was with a Ricky Meyers. In Cassandra's
13 statement he says, she says he was with Rick Van
14 Buren. Now Rick Van Buren was the co-defendant in
15 this case, not Ricky Meyers, so it concerned me that
16 she put him with the co-defendant the night of the
17 crime when he had put himself with someone else.

18 Q Okay.

19 A It also concerned me because she stated that she
20 was in and out of sleep. She talked to him on his
21 cell phone at some point. He told her he was
22 outside. She dozed off. She woke up he was there.
23 She went back to sleep. She woke up about 4:30 or
24 so and he was there, but it didn't say how long he'd
25 been there. I was concerned that they were gonna

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1 tear her up on cross-exam. And again, strategy was
2 to go last. But I thought that her statement would
3 not help us because it actually contradicted his and
4 I didn't feel like it actually gave him the alibi he
5 was hoping for. Number two, at the time of the
6 trial there was a magistrate court criminal domestic
7 violence case against Mr. Dwyer and the victim in
8 that case was Cassandra. There was also an
9 intimidating a witness warrant that alleged that
10 Mr. Dwyer had threatened to burn her house down if
11 she did not testify for him at trial. If I was
12 aware of those two facts, I'm sure that the
13 Solicitor who works with the police were also aware
14 of these facts.

15 Q Okay.

16 A Again, it concerned me that if that did come out
17 when she testified it would make her look like she
18 was lying because he had threatened her.

19 Q Okay. Were you aware of those facts well enough
20 in advance to put the State on notice for alibi if
21 you so chose to do that?

22 A Yes.

23 Q And you made the strategic decision not to put up
24 Cassandra Davis?

25 A I thought she would do more harm or good due to

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1 her testimony and second, loss of last argument.

2 Q Good. Let's talk about Rohan Anderson for a few
3 minutes. Did you ever attempt to try to locate
4 Mr. Anderson?

5 A I did not.

6 Q Okay.

7 A I assume, and we all know what that means, but
8 because he was a victim and one of the counts was
9 specifically against him, that the State would
10 produce him. In hindsight, after listening to the
11 State's declaration on the record and the testimony
12 concerning their attempts to find Mr. Rohan, even
13 had I tried to subpoena him I would not have been
14 able to find him either. And I did have a private
15 investigator that was working with me so I could
16 have tried to find him, maybe I should have, but I
17 doubt I would have been successful.

18 Q Okay. And the State, again, wasn't able to
19 produce Mr. Anderson?

20 A No, they were not, and I was extremely
21 disappointed.

22 Q I think they mentioned that in the transcript
23 that they went to extreme measures to try to find
24 him?

25 A They did indeed.

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1 Q And did you make a motion based off of this?

2 A I did. I said that they should dismiss the
3 charge against Mr. Dwyer concerning Mr. Anderson due
4 to the fact that he would not be able to confront
5 Mr. Anderson. We had really depended on
6 Mr. Anderson being there because their statements
7 were very different, and one of the things that
8 Devan had told me was that Rick had had some sort of
9 relationship with Sara and that Sara had reason to
10 go after Rick Van Buren and that he felt that he was
11 stuck in the middle because he was friends with
12 Rick.

13 Q Okay. Did you object to the testimony regarding
14 Mr. Anderson based on his absence at trial?

15 A Yes.

16 Q Did you make any post-trial motions including a
17 motion based on Mr. Anderson's absence?

18 A Yes.

19 Q Okay. Did you felt it was necessary to request a
20 continuance regarding Mr. Anderson's lack of
21 appearance at trial?

22 A After hearing the State tell -- in the pre-- it
23 was before the trial began that we discussed Rohan's
24 absence. And when the State tells you that they've
25 gone to extreme measures and that they can't find

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1 him, I don't think a continuance would have given me
2 an opportunity. I had -- they have more resources
3 than I do to try to find him, and I didn't think a
4 continuance would be able to produce him.

5 Q All right. Regarding the latent print analysis,
6 Mr. Dwyer's obviously was not found at the scene?

7 A Correct.

8 Q Okay. Did you feel that was important evidence,
9 or what was your thought process on that?

10 A Again, I always prefer to go last. The print
11 said it wasn't him; but it didn't say who it was
12 either so just the fact that they found a usable
13 print that was not him, I did not feel that that was
14 worth giving up the last argument because all the
15 that would prove was that somebody left a
16 fingerprint and it wasn't Mr. Dwyer but I just
17 didn't think the fact that there was a fingerprint
18 that wasn't Mr. Dwyer's was important enough 'cause
19 there was no evidence of actually when the
20 fingerprint got there.

21 Q Right.

22 A I mean, if I had known that it was -- if there
23 had been a test that said it was put there that
24 night by the person who did this, that might have
25 been a different story, but we don't know when that

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1 fingerprint was there. All we knew is that it
2 wasn't his.

3 Q Okay. And again, you strategically you didn't
4 feel like it was worth losing last argument,
5 correct?

6 A Without Mr. Anderson there I wanted to be the
7 last one to talk. I wanted to be able to use all
8 the ammunition that I had about Rick and Victoria
9 and, you know, I just wanted to be the last thing
10 they heard. I wanted to remind them it had to be
11 reasonable doubt.

12 MR. GOURLEY: Your Honor, I have no
13 further questions.

14 Thank you, Ms. Stevens.

15 THE WITNESS: Thank you.

16 THE COURT: All right. Anything?

17 MR. BRUNSON: Yes, Your Honor, may it
18 please the Court.

19 THE COURT: All right. Before you start,
20 tell me again what happened to the person that said
21 they were gonna dismiss the case.

22 THE WITNESS: How much detail do you want?

23 THE COURT: Well, I don't know.

24 THE WITNESS: He was going through a very,
25 a divorce, and he was very hurt and emotional and

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1 it's like he shut down.

2 THE COURT: Oh, okay.

3 THE WITNESS: So it's like he was in his
4 office, but he wasn't there. And then he left and
5 he now works for the Office of Indigent Defense.

6 THE COURT: Okay. All right, I got you.

7 MR. BRUNSON: May it please the Court,
8 Your Honor.

9 THE COURT: Yes, sir.

10 **CROSS-EXAMINATION**

11 BY MR. BRUNSON:

12 Q Attorney Stevens, hello.

13 A Hello.

14 Q You testified that you worked for the Public
15 Defender's Office at that time.

16 A I was.

17 Q About how many cases did you have as a public
18 defender roughly?

19 A Probably in 2005 I would say I probably had
20 between 100 and 150.

21 Q All right. And I believe you testified that back
22 then, and I can attest to this as well, that the
23 Solicitor's Office would send a fax I believe the
24 Friday before to determine court began and you had
25 no way of knowing who or what was on it?

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1 A Yeah, usually about 4:30.

2 Q So how many clients did you have on that trial
3 list along with this client?

4 A I'm sure it's on here somewhere.

5 Q Okay.

6 A But I will tell you that I had a murder case with
7 Samuel Green and Devan Dwyer and then some other
8 non -- not that they were not important to the
9 client, I don't want them to say that, but they were
10 not as major or as serious.

11 Q Some minor offenses?

12 A Minors offenses.

13 Q So you had probably upward of three or four cases
14 on the trial list.

15 A Knowing then I could have had 20.

16 Q That was routine?

17 A It was indeed.

18 Q I've seen your name was on the trial list; you
19 had a lot. Now I believe you testified that Hugh
20 promised you that this case was going to be
21 dismissed.

22 A Several, several times.

23 Q And you relied on that, correct?

24 A I did.

25 Q It's common practice for a defense attorney to

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1 rely on what the Solicitor says; is that correct?

2 A Yes.

3 Q And so being that you had already discussed this
4 case with Mr. Ryan and had worked it out, you didn't
5 prepare for trial when you thought it was worked
6 out, correct?

7 A Correct.

8 Q Okay. And obviously you had a lot of cases that
9 were not worked out that you had been working on,
10 this wasn't one of them?

11 A I thought this one was a done deal.

12 Q All right. Now when Katherine Fant acquired the
13 case after Hugh's abrupt departure, she probably
14 acquired this and plenty of others from Hugh,
15 correct, or ---

16 A I would assume that she -- she was known for
17 having the violent offenses that usually included
18 violence against women, and they seemed to upset her
19 a great deal.

20 Q Okay. So she didn't necessarily pick up the
21 phone and say, hey, Lauren, I got this case against
22 Mr. Dwyer and I'm going to try it. She didn't do
23 that, did she?

24 A No. The first time I knew we were going to trial
25 on it was when it was on that trial list that

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1 Friday.

2 Q All right, I understand. Now is it safe then to
3 assume that you weren't prepared to try the case
4 when you first discovered it's on the list?

5 A I mean, I had -- we had gone over discovery, I
6 had looked over discovery. I had made notes as soon
7 as Hugh left and I knew he had not dismissed it.

8 Q Okay.

9 A Because I didn't know what was gonna happen at
10 that point. I didn't even know who had it at first.

11 Q Right.

12 A So it wasn't like I didn't know there was a
13 chance, but if I had gotten the right solicitor I
14 probably could have gotten that solicitor to agree
15 to drop it too.

16 Q Okay. So I guess my question is, when it
17 appeared on the trial list you had less than a week
18 to get everything ready?

19 A Correct.

20 Q All right. Now I presume since you were
21 operating under the assumption it was gonna be
22 dismissed, there was really no need to send a notice
23 of alibi, correct?

24 A Correct.

25 Q There wasn't a need to subpoena any witnesses or

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1 anything while it was allegedly postured for
2 dismissal?

3 A Correct.

4 Q All right. So no notices of alibi were sent, no
5 subpoenas were sent?

6 A Correct.

7 Q All right. And when you at the last minute
8 discovered, hum, it's on the trial list, you
9 wouldn't have had ten days to give notice of alibi
10 anyway, correct?

11 A Correct.

12 Q So you mentioned that -- I'll come back to that.
13 Now you -- Mr. Dwyer was convicted for assault and
14 battery with intent to kill on Mr. Rohan Anderson?

15 A Yes.

16 Q Rohan wasn't there, right?

17 A Correct.

18 Q And what evidence, if any, was presented that
19 survived, well, that the State relied on to get the
20 conviction about my client shooting the man that
21 wasn't present? Do you recall?

22 A I don't recall.

23 Q Okay.

24 A I'm sorry.

25 Q All right. Now but you did not make -- did you

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1 make a motion for a directed verdict as relates to
2 the charge of assault and battery with intent to
3 kill against Mr. Rohan?

4 A I'm not sure when I made the motion for it to be
5 dismissed, but I would assume that would have been
6 when I did so.

7 Q But it's your testimony that you did make it?

8 A I did indeed make a motion that that count be
9 stricken because of the confrontation clause. I
10 just don't remember exactly when I made the motion,
11 but I did renew it at the end of the trial.

12 Q You did?

13 A Yes.

14 Q All right. Now in regard to the number of
15 grounds in which Mr. Dwyer had alleged, I'm just
16 gonna go through them really quick.

17 A Shoot.

18 Q You were present when he mentioned that he asked
19 you to use Ms. Cassandra Davis as an alibi witness.

20 A Yes.

21 Q Is it true or not true that he asked you to use
22 her as an alibi witness?

23 A He did.

24 Q Okay. And that isn't it true that you would not
25 have been able to use her anyway because you didn't

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1 put the State on notice?

2 A I probably could have been able by the way but
3 technically, correct.

4 Q Okay. And you didn't have a subpoena?

5 A I did not.

6 Q But she was there any way?

7 A I knew she would be there.

8 Q Very good.

9 A I think I'm one that called her and told her to
10 be there.

11 Q All right. So isn't it true that she would have
12 been able to offer testimony regarding him being
13 asleep at 4:30?

14 A Well, what her statement actually says was, then
15 when I got up about 4:30 a.m. or 4:45 a.m. he was in
16 there.

17 Q Okay, if you keep reading she'll say I woke him
18 up.

19 A I never heard him come in so I don't know what
20 time he came back in. I went to the bathroom and
21 when I came from the bathroom I seen a lot of
22 flashing lights through my blinds so that is when I
23 woke him up and asked him did he know that was going
24 on.

25 Q All right. Now so basically that means he was

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1 asleep at 4:30, correct?

2 A He could have been, yes.

3 Q Well she woke him up?

4 A Well, she got him 4:30 a.m. or 5. I mean, to me
5 it just was sketchy.

6 Q I understand, but that would have been evidence
7 that you could have offered, correct?

8 A Correct.

9 Q That he was asleep at 4:30?

10 A Correct.

11 Q Obviously you're his advocate so that's what you
12 would be saying?

13 A Yes, sir.

14 Q All right. Now what you're testifying to is that
15 you basically said, I want last argument. So you
16 basically said reasonable doubt, last argument.

17 A There was the pending CDV charge and the pending
18 intimidating the witness charge as well.

19 Q But you do admit that her testimony might have
20 been considered in the reasonable doubt column?

21 A If the State didn't bring up him threatening her
22 to burn down her house if she didn't testify the way
23 he wanted to, correct?

24 Q I'm sorry, tell me about that. I don't follow
25 that. Now why are you saying the State would say

RW - L. STEVENS - CROSS

1 that he threatened to burn down her house?

2 A 'Cause there was a warrant that she sought saying
3 that he threatened to burn down her house if she did
4 not testify.

5 Q Was that warrant served on him?

6 A I have no idea, but it's in the system.

7 Q So you don't have any evidence that he was served
8 with a warrant for that?

9 A He was in jail.

10 Q But was it for that?

11 A It was either for that or the CDV?

12 Q So you don't know?

13 A He's saying no, but I thought that's what he was
14 in jail for.

15 Q All right. So anyway, let me move to the next
16 one. Rohan Anderson?

17 A Yes.

18 Q I'm gonna direct you to the transcript -- if I
19 may, Your Honor. Page 297, line 15 through 22
20 please.

21 A What page again? I'm sorry.

22 Q 297.

23 A 297?

24 Q Yes, ma'am. Line 15, could you read that, line
25 15 through 22.

RW - L. STEVENS - CROSS

1 A "Your Honor, if it, if the jury had heard that
2 there was an alternate theory or an alternate
3 relation how this event occurred they may have been
4 able to find a different verdict." Should I
5 continue?

6 Q No. All right, so this alternate theory that
7 you're referring to is the one from Rohan, correct?

8 A Yeah, our alternate was that their statements
9 were so different---

10 Q Yes.

11 A ---and that Ms. McKenzie had a beef with Rick Van
12 Buren and that Mr. Rohan would have no reason to
13 harm Devan or Rick.

14 Q So you admit that Rohan Anderson's testimony was
15 critical in this case?

16 A I was devastated he wasn't there.

17 Q But you also admit that you did not subpoena him,
18 correct?

19 A I did not.

20 Q And that you did not make a motion to continue
21 the case so that you could?

22 A Correct.

23 Q All right. And that, do you admit that it was
24 ineffective for you not to subpoena him?

25 A I don't like the word ineffective.

RW - L. STEVENS - CROSS

1 Q Okay.

2 A I would prefer —

3 Q It would have been more effective if you had
4 subpoenaed him?

5 A Yes.

6 Q Okay. Or it would also have been more effective
7 if you had made a motion for continuance so that you
8 could attempt to do that, correct?

9 A It probably would have been, yes.

10 Q Now if, in fact, you had made that motion and the
11 judge had denied that motion, would then you have
12 preserved that issue for an appeal?

13 A Yes.

14 Q All right. So by not making that motion and not
15 getting a ruling on it, you didn't preserve it for
16 appeal?

17 A Unfortunately, no.

18 Q Okay. Now in regard to the latent print.

19 A Yes.

20 Q Oh, before we move on to that. Now if, in fact,
21 you had acquired Mr. Rohan Anderson and produced him
22 for trial, his testimony would have been
23 contradictory to Sara, the other victim.

24 A Sarah Victoria McKenzie, yes, in several aspects.

25 Q And so that then would have also been in your

RW - L. STEVENS - CROSS

1 argument for reasonable doubt, correct?

2 A That was our, pretty much our basis for
3 reasonable doubt.

4 Q All right. So at this point you kind of didn't
5 have two things that could have went to reasonable
6 doubt, two witnesses?

7 A I would agree to the second one, but not the
8 first one.

9 Q Okay, all right. So let's move on to the third.
10 Now you agree that in the discovery you were
11 provided with a latent print.

12 A Correct.

13 Q Pulled from the scene and included in this case
14 as evidence.

15 A Yes.

16 Q All right. And that that print was legible?

17 A One of the three or four was legible, yes.

18 Q One of them, right. And that it was ran through
19 AFIS?

20 A Correct.

21 Q And that it did not match my client?

22 A Correct.

23 Q All right, now, isn't it also true that my
24 client's print was already in AFIS?

25 A Yes.

RW - L. STEVENS - CROSS

1 Q All right. So again, if you had offered that
2 into evidence wouldn't you have then be able to
3 argue that as another piece of reasonable doubt?

4 A I could have shown the jury that there was a
5 fingerprint at the scene that did not belong to my
6 client, yes.

7 Q So somebody was there, somebody did it, but it --
8 this print proved it wasn't his print?

9 A That particular print was not his print, yes.

10 Q All right, very good. Now, and ultimately isn't
11 it true that if you had done those steps he would
12 have had a greater chance of success at trial in
13 being acquitted?

14 A That would be conjecture.

15 Q Not necessarily.

16 THE STATE: Your Honor, it is purely
17 speculation.

18 THE COURT: Well --

19 MR. BRUNSON: Oh, okay. It would enhance
20 the chance is what I asked.

21 THE COURT: I understand what you're
22 asking.

23 THE WITNESS: I don't know.

24 BY MR. BRUNSON:

25 Q Okay, good answer.

RW - L. STEVENS - REDIRECT

1 MR. BRUNSON: Court's indulgence, Your
2 Honor.

3 THE COURT: Sure.

4 MR. BRUNSON: Nothing further, Your Honor.

5 THE COURT: Okay. Anything else?

6 THE STATE: Just very briefly, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. GOURLEY:

9 Q Ms. Stevens, you were on this case for how long,
10 do you recall?

11 A This happened in 2005 and we went to trial in
12 2009.

13 Q Okay, so about?

14 A Three-and-a-half years.

15 Q Okay. And despite the misunderstanding or Mr.
16 Ryan leaving office and Ms. Fant taking over, were
17 you prepared for trial?

18 A I was.

19 Q Okay.

20 A Well, I will say this, I was prepared. I would
21 have been better prepared had Mr. Anderson been
22 there; but, yes, I was prepared to go to trial. And
23 when he wasn't there I had to change my strategy;
24 but, yes I was still prepared.

25 Q And regardless of Mr. Anderson being there, would

1 you have called Ms. Davis as an alibi?

2 A No.

3 Q Okay.

4 MR. GOURLEY: No further questions, Your
5 Honor?

6 THE COURT: Okay, all right. Thanks. You
7 can step down.

8 THE WITNESS: Certainly.

9 THE COURT: All right. As usual I've got
10 to read through all this so I'll take it back with
11 me and read through it and let you guys know. Thank
12 you.

13

14 * * * END OF REQUESTED TRANSCRIPT * * *

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 9th day of May, 2016.

Frances B. Ray
FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Devan Dwyer, #302693,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED
2015 MAY 15 11 3:56
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.
Case No. 2011-CP-43-2412

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hume
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on January 30, 2012. Respondent made its return on May 31, 2013. An evidentiary hearing in to the matter was convened on December 17, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Willie H. Brunson, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the February 2009 term of the Sumter County Grand Jury under indictment 2006-GS-43-00553 for the following counts: (1) Burglary – 1st degree; (2) armed robbery; (3) assault and battery with intent to kill, (4) assault and battery with intent to kill; and (5) possession of firearm/knife during the commission of a violent crime. Lauren Stevens, Esquire, represented him. Applicant proceeded to trial on April 13 and 14, 2009. On April 14, 2009, the Applicant was found

guilty on all counts. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to thirty years imprisonment for burglary, twenty-five years imprisonment for armed robbery, twenty years imprisonment for one count of assault and battery with intent to kill; fifteen years imprisonment for the second count of assault and battery with intent to kill, and five years imprisonment for possession of a firearm. All sentences were to run concurrently.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Dwyer, Op. No. 2011-UP-010 (S.C. Ct. App. Filed January 24, 2011. The Remittitur was sent on February 10, 2011.

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Trial counsel was ineffective for failing to pursue a alibi defense."
- b. "Trial counsel was ineffective for not notifying the courts within (10) days prior to trial of a alibi defense which completely destroyed applicant chances of presenting this alibi defense at trial."
- c. "Trial counsel was ineffective for failing to subpoena witness/victim Rohan Anderson, being that Attorney Stevens based her whole defense trial strategy on inconsistencies of the victim's statement."
- d. "Trial counsel was ineffective for failing to suppress the evidence of victim Mr. Anderson, when accuser wasn't allow to confront witness which violated applicant constitutional right of the 6th amendment of the United States."

At the PCR hearing Applicant proceeded on the following claims:

1. Ineffective Assistance of Counsel

- a. Failing to present Cassandra Davis as an alibi witness.
- b. Failing to put the State on notice for a possible Alibi notice.
- c. Promising Applicant that the case would be dismissed.
- d. Failing to subpoena Rohan Anderson for trial.
- e. Failing to request a continuance to locate Rohan Anderson.
- f. Failing to introduce latent print.
- g. Failing to preserve appealable issue for review.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Lauren Stevens. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he expected to be released in 2033. Applicant stated that he understood the PCR process and wanted to move forward with his PCR. Applicant stated that he felt he received ineffective assistance of counsel for counsel's failure to pursue an alibi witness. Applicant further stated that Trial Counsel promised him that the charges were going to be *nol prossed*.

Applicant stated that he spoke with Trial Counsel once or twice about the case. Applicant stated that he felt she was not preparing for trial and felt that the charges were going to be dropped. Applicant stated that he told Trial Counsel that he had an alibi, Cassandra Davis. Applicant stated Cassandra Davis was his girlfriend at the time. Applicant stated that he was living with Cassandra Davis. Applicant stated that the alleged robbery occurred around four or four thirty in the morning. Applicant stated that he was in bed asleep when the robbery was alleged to have occurred. Applicant stated Trial Counsel was aware that he was asleep at the time. Applicant stated Cassandra Davis was available as a witness to testify. Applicant stated that he asked Trial Counsel to use Cassandra Davis as a witness. Applicant stated that he was aware of the ten day notice rule for alibi. Applicant stated Cassandra Davis was present in the courtroom during trial. Applicant stated that a subpoena was not necessary.

Applicant stated that Rohan Anderson was the victim in the case. Applicant stated Sara McKenzie and Robinson gave inconsistent statements. Applicant stated only one of the two

witnesses testified at trial. Applicant stated it would have made a difference if Robinson had testified at trial. Applicant stated Rohan Anderson did not testify at trial. Applicant further stated there were latent prints collected. Applicant stated Trial Counsel failed to introduce the finger print into evidence.

Applicant recalled the State informing the trial court that they went through great lengths trying to contact or subpoena Rohan Anderson. Applicant recalled the State was unable to track Rohan Anderson down or get Rohan Anderson subpoenaed for trial. Applicant recalled Trial Counsel making several objections or motions during trial regarding the State's inability to produce Rohan Anderson at trial. The basis for one objection was that the failure to produce Rohan Anderson amounted to a violation of Applicant's 6th Amendment rights under the confrontation clause. Applicant recalled that all of Trial Counsel's motions and or objections were overruled by the trial court. Applicant stated that he has not been in contact with Rohan Anderson and that he was not present to testify during his PCR hearing.

Following Applicant's testimony, Trial Counsel was called to testify by the State. Trial Counsel stated she has been practicing law since 1996 and was appointed to represent Applicant in his case. Trial Counsel stated she had approximately 100-150 case load. Trial Counsel stated she was on the case for three and a half to four years. Trial Counsel stated she filed Brady and Rule 5 motions and reviewed the material with Applicant. Trial Counsel stated that she could not recall the amount of times she met with Applicant due to the numerous roll call's and switch with solicitor's. Trial Counsel stated the Solicitor Office would always send a list the Friday before the case would be called for trial. Trial Counsel stated she learned the case would be going to trial the Friday before it was set.

Trial Counsel stated that the former Assistant Solicitor Hugh Ryan told her that the charges would be dropped because the victim had a significant record and had been shot recently. Trial Counsel said the Assistant Solicitor Hugh Ryan did not feel compelled to prosecute Applicant because of the victim. Trial Counsel stated Assistant Solicitor Hugh Ryan went through some personal issues and left the Third Circuit Solicitor's office. Trial Counsel stated Assistant Solicitor Hugh Ryan did not *not* *prossed* the charges as he had promised. Trial Counsel stated she did not have anything in writing from Assistant Solicitor Hugh Ryan. Trial Counsel stated she relied on Assistant Solicitor Hugh Ryan's word and felt it was a done deal. Trial Counsel stated the case was transferred to Assistant Solicitor Catherine Fant. Trial Counsel stated Assistant Solicitor Catherine Fant planned to take the case to trial.

Trial Counsel stated she discussed strategy and statements with Applicant. Specifically, Trial Counsel stated their strategy was "best to go last" in closing arguments. Trial Counsel stated that she felt it was important to not put up a defense. Trial Counsel stated she wanted last closing argument. Trial Counsel stated she did not call Cassandra Davis as a witness because her testimony would have conflicted with Applicant's statements. Specifically, Trial Counsel stated Applicant's statement put him with a co-defendant. Trial Counsel further stated Cassandra Davis did not say how long Applicant had been home in bed. Trial Counsel stated Cassandra Davis statement was not an effective alibi.

Trial Counsel noted that Cassandra Davis had a pending domestic violence case and intimidating witness case against Applicant. Specifically, Trial Counsel stated Cassandra Davis alleged that Applicant threatened to burn her house down if she did not testify at his trial. Trial Counsel stated Cassandra Davis was present for trial despite her not being subpoenaed. Trial Counsel concluded that it would be risky to put her on the stand. Trial Counsel stated she did not

file an alibi notice, but felt she could have “finagled” it if she needed to get an alibi defense into trial. Trial Counsel stated it was a strategic decision not to put Cassandra Davis up.

Trial Counsel stated she did not seek out Rohan Anderson. Trial Counsel stated she felt state would be able to produce him. Trial Counsel was of the opinion that she would not be able to find Rohan Anderson because the State went through great efforts to locate him and was unable to find him. Trial Counsel stated she made a motion to dismiss the charges concerning Anderson due to a confrontation clause issue. Trial Counsel stated she made a post trial motion based on Rohan Anderson’s absence. Trial Counsel stated she did not think a continuance would produce Rohan Anderson.

Trial Counsel stated that it was a strategic decision not to put in the latent fingerprint found. Specifically, Trial Counsel stated the fact that the police found a print was not worth giving up last argument. Trial Counsel stated it was a random fingerprint and not important enough to give up last closing argument. Trial Counsel stated she felt it was important to have last closing argument because the State did not produce Rohan Anderson. Trial Counsel stated she was fully prepared for trial. Trial Counsel stated when Rohan Anderson was not present the strategy changed. Trial Counsel stated Cassandra Davis would not have been called as a witness, regardless of whether Rohan Anderson appeared at trial.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel’s testimony credible

and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Ineffective Assistance of Counsel for failing to call Cassandra Davis as an alibi witness.¹

This Court finds Applicant's allegation that he received ineffective assistance of counsel for trial counsel's failure to call Cassandra Davis as a potential alibi witness to be without merit. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Trial Counsel stated it was her strategic decision not to call Cassandra Davis as a witness for two reasons. First, Trial Counsel stated it was their decision to not put up any evidence and reserve the last closing argument. Trial Counsel stated it was her opinion that last closing argument was extremely important in this case because the State failed to produce Rohan Anderson. Trial Counsel stated calling Cassandra Davis as a witness was not worth losing

¹ This Court notes allegation a and b are similar in nature and will be addressed as one general allegation of ineffective assistance of Trial Counsel for failing to produce Cassandra Davis as an alibi witness during Applicant's trial.

closing argument. Second, Trial Counsel stated Cassandra Davis was not a credible witness. Specifically, Trial Counsel stated Cassandra Davis statement contradicted Applicant's statement that he was with a co-defendant. Additionally, Trial Counsel stated Cassandra Davis had filed criminal domestic violence charges and intimidating a witness charge against Applicant. Trial Counsel concluded that Cassandra Davis would not have been a credible witness. The trial strategy articulated by trial counsel in this case was held to be reasonable in Stokes v. State². In Stokes, trial counsel stated that he chose not to use certain witnesses at trial because, "in his judgment at the time, their testimony would not have been of value to the Petitioner's case". Stokes, 308 S.C. at 548, 419 S.E.2d at 779. The Supreme Court affirmed the lower court's ruling that "trial counsel adequately put forth a defense by calling the only witness whom he believed to be credible and supportive of the defense strategy." Id.

In Edwards v. State, this Court held that "[a] witness's credibility and demeanor is crucial to an attorney's trial strategy, and an attorney cannot be said to be deficient if there is evidence to support his decision to not call a witness with serious credibility questions." Edwards v. State, 392 S.C. 449, 458, 710 S.E.2d 60, 65 (2011). In Jackson v. State, this Court held that counsel was not deficient for failing to call a witness at trial when corroboration of the defendant's statement was more credible through the testimony of another witness and the witness' credibility would have been an issue if he testified. Jackson v. State, 329 S.C. 345, 351-52, 495 S.E.2d 768, 771 (1998). Based on the foregoing, this Court finds Trial Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

² 308 S.C. 546, 419 S.E.2d 778 (1992).

Furthermore, Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency for failing to call Cassandra Davis as an alibi witness at trial because Applicant failed to produce Cassandra Davis at the PCR hearing. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witness's testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id. Applicant can show no prejudice because he did not present any testimony from her during the PCR hearing. Based off of the foregoing, this Court finds Applicant's allegation must be denied and dismissed with prejudice.

Ineffective assistance of counsel for promising Applicant that the charges would be dismissed.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for counsel promising him that his charges would be dismissed is meritless. Trial Counsel stated that the former Assistant Solicitor Hugh Ryan told her that the charges would be dropped because the victim had a significant record and had been shot recently. Trial Counsel said the Assistant Solicitor Hugh Ryan did not feel compelled to prosecute Applicant because of the victim. Trial Counsel stated Assistant Solicitor Hugh Ryan went through some personal issues and left the Third Circuit Solicitor's office. Trial Counsel stated Assistant Solicitor Hugh Ryan

did not *nolle prosequi* the charges as he had promised. Trial Counsel stated she did not have anything in writing from Assistant Solicitor Hugh Ryan. Trial Counsel stated she relied on Assistant Solicitor Hugh Ryan's word and felt it was a done deal. Trial Counsel stated the case was transferred to Assistant Solicitor Catherine Fant. Trial Counsel stated Assistant Solicitor Catherine Fant planned to take the case to trial. Based on the foregoing, this Court finds Trial Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Additionally, this Court notes Applicant has failed to present sufficient evidence as to how he was prejudiced. Trial Counsel stated met with Applicant, reviewed the discovery material with Applicant, and discussed strategy with Applicant. Trial Counsel stated she was prepared to try the case. Therefore, this Court finds Applicant has failed to provide sufficient evidence as to how he was prejudiced. Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to request a continuance and/or subpoena Rohan Anderson for trial.*³

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to subpoena Rohan Anderson or in the alternative request a continuance to locate Rohan Anderson is without merit. Trial Counsel stated she did not seek out Rohan Anderson. Trial Counsel stated she felt the State would be able to produce him. Trial Counsel stated she was of the opinion that she would not be able to find Rohan Anderson because the State went through great efforts to locate him and was unable to find him. A review of the trial transcript reveals that the State went through great efforts to attempt to locate Rohan Anderson. (p. 32 line

³ This Court notes Applicant's allegations d and e are similar and shall be addressed as one claim of ineffective assistance of counsel for failing to request a continuance to locate Rohan Anderson or in the alternative to subpoena Rohan Anderson for trial.

22—p. 33 line 9; p. 189 line 7—p. 191 line 9). Based on the foregoing, this Court finds Trial Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, this Court finds Applicant can show no prejudice as a result of Trial Counsel's alleged deficiency because Applicant failed to present any testimony from Rohan Anderson during the PCR hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witness's testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Ineffective assistance of counsel for failing to introduce a latent print during trial.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to introduce a latent fingerprint during trial is without merit. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art,

and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” Id. at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Trial Counsel stated that it was a strategic decision not to put in the latent fingerprint found. Specifically, Trial Counsel stated the fact that the police found a print was not worth giving up last argument. Trial Counsel stated it was a random fingerprint and not important enough to give up last closing argument. Trial Counsel stated she felt it was important to have last closing argument. Based on the foregoing, this Court finds Trial Counsel’s actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Additionally, this Court notes Applicant can show no prejudice as a result of Trial Counsel’s alleged deficiency because he failed to present any evidence at the PCR hearing to show how the introduction of the latent fingerprint would have had any possible effect on the result of trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

*Ineffective assistance of counsel for failing to preserve an
appealable for review.⁴*

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to preserve the issue of whether the trial court erred in allowing the State to prosecute the second ABWIK in violation of Applicant's constitutional right to confront victim's boyfriend is without merit. Under the second prong of the analysis in Strickland, the PCR applicant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. In order to prove prejudice, Applicant must show that the judge erred in denying his suppression motion. See generally Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is *meritorious* and that the verdict would have been different absent the evidence that should have been excluded." (emphasis added)).

This Court finds Applicant can show no prejudice as a result of Trial Counsel's failure to preserve the issue for appellate review because the issue falls on its merits. On the merits, the State has the right to prove its case with the evidence of its choice. See State v. Hamilton, 327 S.C. 400, 446-447, 486 S.E.2d 512, 515 (1997) (finding it is a "fundamental principle that the prosecution is entitled to prove its case with evidence of its own choosing"). The State does not have to put forth Rohan Anderson's testimony or statement in order to prove the required elements of ABIK if those elements can be proven by other competent testimony and evidence.

⁴ This Court assumes Applicant's allegation references the fact that the South Carolina Court of Appeals found the issue of whether the trial court erred in allowing the State to prosecute the second ABWIK in violation of Applicant's constitutional right to confront victim's boyfriend was not preserved for review.

Further, it is absurd to believe the victim must testify in order for the State to proceed on an indictment. Such a holding would make prosecution for any type of homicide, crime against an infant, or crime against an incompetent person impossible.

Furthermore, the State proved the required elements of ABIK beyond a reasonable doubt. ABIK is defined as an unlawful act of a violent nature to the person of another with malice aforethought, either express or implied. State v. Wilds, 335 S.C. 269, 275, 584 S.E.2d 138, 141 (Ct. App. 2003). Murder is the killing of a person with the malice aforethought, either express or implied. Id. With the exception of the death of the victim, each and every element of murder must be proven beyond a reasonable doubt in order for a jury to convict a defendant of ABIK. Id.

This Court notes, Sarah McKenzie testified she and Rohan Anderson were both present when Applicant burgled her residence with the intent of robbing her. She testified Applicant shot both her and Rohan Anderson before fleeing. Further, Detective Lyons testified Rohan Anderson suffered a gunshot wound to his left arm. (p. 141). Detective Culick also testified two individuals were during the burglary. (p. 223-223). Finally, Dr. Stanford testified Rohan Anderson suffered "two circular wounds, anterior left should consistent with gunshot wound by appearance." (p. 219). Based off of the foregoing, this Court finds the State proved its case with overwhelming evidence demonstrating Applicant's guilt of ABIK against Rohan Anderson. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent

failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt). Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[signature to follow]

CONCLUSION

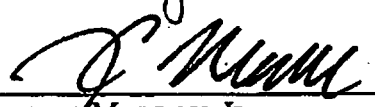
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of May, 2015.


J. CORDELL MADDOX, JR.
Presiding Judge
Third Judicial Circuit

Anderson, South Carolina



RECORDED

2015 MAY 15 PM 3: 56

State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

J. CORDELL MADDOX, JR.
JUDGE

100 SOUTH MAIN STREET
POST OFFICE BOX 8002
ANDERSON, SOUTH CAROLINA 29622
TELEPHONE: (864) 260-4638
FAX: (864) 260-8348
E-MAIL: cmaddox@scjd.state.sc.us

May 8, 2015

The Honorable James C. Campbell
Sumter County Judicial Center
215 N Harvin St Rm 303
Sumter, SC 29150-4974

Re: 2011-CP-43-2412//Devan Dwyer v State

Dear Honorable Campbell:

Please find enclosed an order for the above referenced case that has been signed by Judge Maddox.

I would greatly appreciate it if you would file this in your office and provide certified copies to the attorney(s) of record.

Thank you for your assistance in this matter. With kindest regards,

Sincerely,

Cindy Hicks

Cindy Hicks
Administrative Assistant
Judge J. Cordell Maddox, Jr.

/ch
enclosure

no copies

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

RECORDED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP4302412

Devan Dwyer

2015 MAY 18 11:56 AM

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hoot
DEPUTY CLERK OF COURT
SUMTER COUNTY
S.C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: **See attached Order.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled. (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

5/18/2015

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Devan #302643 Dwyer Lci 990 Wisacky Hwy Bishopville,
SC 29010
Paul L. Held 138 N. Main St. Sumter, SC 29150

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-
1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

DEVAN DWYER, #302693

vs.

STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

RECORDED
2015 MAY 15 PM 3:56
JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CASE NO.: 2011-CP-43-2412

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Willie H. Brunson, Bar No. _____ Address: Post Office Box 370 Sumter, South Carolina 29150 Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Daniel Gourley, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Estimated Time Needed: _____	
		Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		May 5, 2015 Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

To: South Carolina Supreme Court
Clerk of Court
P.O. Box 11330
Columbia, SC 29211

From: Devan Dwyer, #302693
Lee Corr. Inst.
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Devan Dwyer v. State of South Carolina
Case No. 2011-CP-43-2412

Dear: Clerk of Court,

Please note that applicant is providing this Honorable Clerk's Office with a "Notice of Appeal" that was drafted by Applicant himself. Although Applicant was represented by counsel at the pcr stage, however; PCR Counsel Willie H. Brunson failed to file a notice of appeal and 59(e) motion that Applicant requested on numerous occasions. Therefore, Applicant is taking the approach to file his own "Notice of Appeal" so that he can have the Supreme Court review his case on the merits.

Sincerely,


Devan Dwyer

Date: July 10, 2015

cc: Devan Dwyer
Attorney Willie H. Brunson

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
J. Cordell Maddox, Jr., Circuit Court Judge

Devan Dwyer, #302693

Applicant,

v.

State of South Carolina,

Respondent

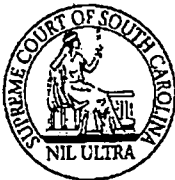
Case No. 2011-CP-43-2412

NOTICE OF APPEAL

Applicant was denied of his Post Conviction Relief Application on May 8, 2015 by the Honorable J. Cordell Maddox, Jr. Applicant is preserving his right to appeal the court's decision pursuant to Austin v. State, 305 S.C. 453 (1991).

Devan Dwyer, #302693
Lee Corr. Inst.
990 Wisacky Hwy.
Bishopville, SC 29010

July 10, 2015



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

July 20, 2015

Willie H. Brunson, Esquire
PO Box 370
Sumter SC 29150

Re: Devan Dwyer v. State
Appellate Case No. 2015-001520
Lower Court Case No. 2011CP4302412

Dear Counsel:

Your client has filed a *pro se* notice of appeal in this case, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter. I have enclosed a copy of the *pro se* notice of appeal.

I remind you that you remain his counsel of record before this Court. Rule 71.1(g) of the South Carolina Rules of Civil Procedure ("A final decision entered under the Act shall be reviewed according to the procedure specified by Rule 243, SCACR. If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.").

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR).

The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals.

The order can be found at

www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

For this matter to proceed, it will be necessary for you to provide this Court with the following within ten (10) days of the date of this letter:

- (1) A proof of service showing that the notice of appeal has been served on the counsel for the State; and,
- (2) A written statement from you indicating the date on which you received written notice of entry of the order dated May 8, 2015. This order was apparently filed with the clerk of the circuit court on May 15, 2015.

Very truly yours,



CLERK

Enclosure

cc: Daniel Francis Gourley, II, Esquire

The Supreme Court of South Carolina

Devan Dwyer, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001520

Lower Court Case No. 2011CP4302412

ORDER

Petitioner has failed to provide a proof of service for the notice of appeal as required by Rules 243(b) and 203(d)(1)(B)(i) of the South Carolina Appellate Court Rules (SCACR). Further, petitioner's counsel has failed to provide this Court with the date on which he received written notice of entry of the order on appeal as requested by this Court's letter dated July 20, 2015. Accordingly, the notice of appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

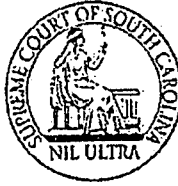
BY



CLERK

Columbia, South Carolina
September 30, 2015

cc: Willie H. Brunson, Esquire
Daniel Francis Gourley, II, Esquire.
Devan Dwyer #302693



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1489
www.sccourts.org

October 16, 2015

The Honorable James C. Campbell
Sumter County Judicial Center
215 North Harvin Street
Sumter SC 29150-4974

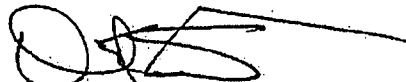
REMITTITUR

Re: Devan Dwyer v. State
Lower Court Case No. 2011CP4302412
Appellate Case No. 2015-001520

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,



CLERK

cc: Willie H. Brunson, Esquire
Daniel Francis Gourley, II, Esquire
Devan Dwyer, #302693

Plaintiff(s) DEC 22 PM 4:29 2015-CP-43-2810

vs.

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: Jeremy A. Thompson, Esquire
Address: Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211SC Bar #: 76091
Telephone #: 803-779-2555
Fax #: 803-779-2556
Other:
E-mail: jeremyatlaw@yahoo.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (610)	☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Employment Security Comm (991) ☐ Other (999)

Submitting Party Signature: _____

Date: December 22, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

DEVAN DWYER, #302693)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

RECORDED)

2015 DEC 22 PM 4: 29)

JOSEPH CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.)

IN THE COURT OF COMMON PLEAS

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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Sumter County Court of General Sessions; 215 N. Harvin Street, Sumter, SC 29150
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-553: Assault and Battery with Intent to Kill (2 counts); First-Degree Burglary; Armed Robbery; Possession of a Weapon during the Commission of a Violent Crime
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/14/09: Thirty years' imprisonment (burglary); twenty-five years' imprisonment

Revised 3/2003

(armed robbery); twenty years' imprisonment (ABWIK); fifteen years' imprisonment (ABWIK);
five years' imprisonment (weapon)

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 1/24/11
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2011-UP-010
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____

Revised 3/2003

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of PCR Counsel
 - (b) _____
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) PCR counsel failed to properly perfect the appeal from the denial of the first Application for Post-Conviction Relief by failing to properly serve the notice of appeal or notify the Supreme Court when he received the order of dismissal.
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. Application for Post-Conviction Relief (2011-CP-43-2412)
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. Sumter County Court of Common Pleas; 215 N. Harvin Street, Sumter, SC 29150
 - ii. _____
 - iii. _____
 - iv. _____

Revised 3/2003

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. 5/15/15

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

Revised 3/2003

(a) This Application for Post-Conviction Relief provides the first opportunity to present these issues.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. Lauren Stevens; 4315 Camden Highway, Dalzell, SC 29040

ii. Patrick M. Killen; McGowan Hood & Felder, LLC; 28 N. Main Street, Sumter,

SC 29150

iii. Willie H. Brunson; Weeks Law Office, LLC; P.O. Box 370, Sumter, SC 29150

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing

ii. Appeal

iii. Post-Conviction Relief

19. State clearly the relief you seek in filing this application:

To be granted permission to seek a belated appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Sumter

RECORDED

2015 DEC 22 PM 4:30

I, Jeremy A. Thompson, 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.

SWORN to and subscribed before me this 22nd
day of DECEMBER 2015

(L.S.)

Notary Public

My Commission Expires: 7/10/2022

Revised 3/2003

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
Devan Dwyer, #302693,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-43-2810

**RETURN AND MOTION TO DISMISS
ALL CLAIMS BEYOND AUSTIN
REVIEW**

In response to the post-conviction relief application filed December 22, 2015,
Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the February 2009 term of the Sumter County Grand Jury under indictment 2006- GS-43-00553 for the following counts: (1) Burglary – 1st degree; (2) armed robbery; (3) assault and battery with intent to kill, (4) assault and battery with intent to kill; and (5) possession of firearm/knife during the commission of a violent crime. Lauren Stevens, Esquire, represented him. Applicant proceeded to trial on April 13 and 14, 2009. On April 14, 2009 the Applicant was found guilty on all counts. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to thirty years imprisonment for burglary, twenty-five years imprisonment for armed robbery, twenty years imprisonment for one count of assault and battery with intent to kill; fifteen years imprisonment for the second count of assault and battery with intent to kill, and five years imprisonment for possession of a firearm. All sentences were to run concurrently.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Dwyer, Op. No. 2011-UP-010 (S.C. Ct. App. Filed January 24, 2011. The Remittitur was sent on February 10, 2011.

Applicant subsequently filed for post-conviction relief on January 30, 2011 (2011-CP-43-2412). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on December 17, 2014, at the Sumter County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and was represented by William Brunson, Esquire. By written Order filed May 15, 2015, Judge Maddox denied and dismissed Applicant's post-conviction relief action.

Thereafter, a notice of appeal was filed, which was dismissed by the South Carolina Supreme Court for failure to timely serve and file. The Remittitur was issued on October 16, 2015.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the prior post-conviction relief records, and appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR Counsel

- a. "PCR Counsel failed to properly perfect the appeal from the denial of the first application for post-conviction relief by failing to properly serve the notice of appeal or notify the supreme court when he received the order of dismissal."

III.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under §17-27-90.” Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin “is limited to its particular factual situation” Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on the matter of the Applicant’s entitlement to an Austin Review.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

[Signature block on following page]

V.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to a review of his first PCR application pursuant to Austin v. State. Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

Respectfully submitted,

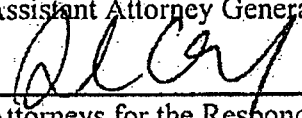
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By:


Attorneys for the Respondents
Post Office Box 11549
Columbia, South Carolina 29211

February 2nd, 2016.

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

DEVAN DWYER, #302693,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-43-2810

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 and Motion to Dismiss All Claims Beyond Austin Review** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jeremy Adam Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
Post Office Box 12891
Columbia, South Carolina 29211

DATED this 2nd day of February, 2016.



Caroline Collins, Legal Assistant
For Respondent

State of South Carolina)
County of Sumter)

In the Court of Common Pleas
Third Judicial Circuit
2015-CP-43-2810

Devan Jevon Dwyer,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

March 17, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

Jeremy A. Thompson, Esquire
Attorney for Applicant

Julia A. Coleman, Esquire
Daniel F. Gourley, II, Esquire
Attorneys for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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Proceedings	4
Certificate Page	8

EXHIBITS

NO.	DESCRIPTION	I.D.	EVID.

No exhibits marked during proceeding.

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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:04 a.m.)

THE COURT: Ms. Coleman.

MS. COLEMAN: May it please the Court?

THE COURT: Certainly.

MS. COLEMAN: This is *Devan Dwyer v. the State of South Carolina*, 2015-CP-43-2810. The applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the February 2009 term of the Sumter County Grand Jury under Indictment 2006-GS-43-00553 for the following counts: burglary first-degree; armed robbery; assault and battery with intent to kill; assault and battery with intent to kill; and possession of a firearm or knife during the commission of a violent crime. Lauren Stevens, Esquire, represented him.

Applicant proceeded to trial on April 13th and 14, 2009. On April 14th, 2009, the applicant was found guilty on all counts. The Honorable R. Ferrell Cothran, Jr., sentenced applicant to 30 years' imprisonment for burglary; 25 years' imprisonment for armed robbery; 20 years' imprisonment for one count of assault and battery with intent to kill; 15 years' imprisonment for the second count of assault and battery with intent to kill; and 5 years'

1 imprisonment for possession of a firearm. All sentences
2 were to run concurrently.

3 A timely notice of appeal was filed. The South
4 Carolina Court of Appeals affirmed the lower court's
5 conviction. The remittitur was sent on February 10th,
6 2011.

7 Applicant subsequently filed a -- an application for
8 postconviction relief on January 30th, 2011. In his
9 application the applicant asserted claims of ineffective
10 assistance of counsel. An evidentiary hearing was convened
11 on December 17th, 2014, at the Sumter County Courthouse
12 before The Honorable J. Cordell Maddox, Jr. Applicant was
13 present at the hearing and was represented by William
14 Brunson, Esquire.

15 By written order filed May 15th, 2015, Judge Maddox
16 denied and dismissed applicant's postconviction relief
17 action. Thereafter, a notice of appeal was filed, which
18 was dismissed by the South Carolina Supreme Court for
19 failure to timely serve and file. The remittitur was
20 issued on October 16th, 2015.

21 We're here today for the second application for
22 postconviction relief, which was filed on December 22nd,
23 2015. The state filed its return on February 2nd, 2016.
24 In this application he is alleging ineffective assistance
25 of PCR counsel for failure -- failure to properly perfect

1 the appeal from the denial of his first application for
2 postconviction relief.

3 Let's see. He's represented in this matter today by
4 Jeremy Thompson. And he's asking for Austin review. And
5 the state has -- we've spoken to his counsel, Mr. Thompson,
6 today. We've also spoken to his prior PCR counsel, Mr.
7 Brunson. And we are in agreement and we consent to the
8 fact that he's entitled to a belated appeal of the denial
9 of his first PCR.

10 THE COURT: Mr. Thompson?

11 MR. THOMPSON: May it please the Court, Your Honor:
12 We are -- we are in -- in agreement with the state. That
13 -- that is, all we're looking for is a belated PCR appeal.
14 What -- what essentially happened with the -- with the
15 first PCR is that the order was filed and Mr. Brunson did
16 not file a notice of appeal. My client actually filed his
17 own pro se notice of appeal.

18 And -- and it was -- it was untimely. The -- the
19 Supreme Court notified Mr. Brunson that my client had filed
20 the -- had -- had filed the appeal, asked Mr. Brunson to
21 please let us know when you -- you know, when you -- when
22 you receive the notice of appeal, and to file a notice of
23 appeal on a proof of service. Mr. Brunson did not do so,
24 and then the Supreme Court dismissed the appeal.

25 So for that basis, we'd believe, you know, obviously,

1 that my client would be entitled to a belated appeal. He
2 certainly wanted one and tried to file one. And it was
3 dismissed because it wasn't timely filed by his attorney.
4 So that's all we're looking for in this action. And so
5 certainly, we're -- we're happy to -- to do this by consent
6 and go ahead and get the appeal underway.

7 THE COURT: All right. Does -- does anybody have a
8 proposed order? Not yet.

9 MR. GOURLEY: Not yet, Your Honor, but we'll be happy
10 to send you one.

11 THE COURT: All right. Court would approve that
12 agreement.

13 MR. THOMPSON: Thank you, Your Honor.

14 MS. COLEMAN: Thank you, Your Honor.

15 (Whereupon, the proceeding was concluded at 10:09 a.m.)

16 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON THE 17TH
DAY OF MARCH, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JUNE 12, 2016

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4302810

Devan Dwyer

RECORDED

2016 APR 22 AM 8:57

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: See attached Order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge 2143 Judge Code 4/21/2016 Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

Jeremy Adam Thompson PO Box 12891 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alan McCrory Wilson PO Box 11549 Columbia, SC 29211-
1549

ATTORNEY(S) FOR THE DEFENDANT(S)

James C. Campbell

Court Reporter

James C. Campbell - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



RECORDED

2016 APR 21 PM 4:04

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

ALAN WILSON
ATTORNEY GENERAL

April 19, 2016

The Honorable James C. Campbell
Clerk of Court, Sumter County
Sumter County Judicial Center
215 N. Harvin Street
Sumter, SC 29150

Re: Devan Dwyer, #302693 v. State of South Carolina
2015-CP-43-2810

Dear Mr. Campbell:

Enclosed please find the original **Order Granting an Appeal Pursuant to Austin v. State**, signed by the Honorable Brooks P. Goldsmith, in the above-captioned case for filing in your office. Please forward a **time stamped copy** back to our office for our files.

Sincerely,


for Julie A. Coleman
Assistant Attorney General

JAC/cc
Enclosure(s)

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Devan Dwyer, #302693

Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-43-2810

ORDER GRANTING AN APPEAL
PURSUANT TO AUSTIN V. STATE

FILED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

APR 21 PM 4:04
RECORDED
CLERK OF COURT
SUMTER COUNTY S.C.

This matter comes before the Court by way of an application for post-conviction relief filed December 22, 2015. Respondent made its Return on February 2, 2016, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on March 17, 2016, at the Sumter County Judicial Center in Sumter, South Carolina. Applicant was present at the hearing and represented by Jeremy A. Thompson, Esquire. Julie A. Coleman, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was indicted during the February 2009 term of the Sumter County Grand Jury under indictment 2006-GS-43-00553 for the following counts: (1) Burglary – 1st degree; (2) armed robbery; (3) assault and battery with intent to kill, (4) assault and battery with intent to kill; and (5) possession of firearm/knife during the commission of a violent crime. Lauren Stevens, Esquire, represented him. Applicant proceeded to trial on April 13 and 14, 2009.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

On April 14, 2009 the Applicant was found guilty on all counts. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to thirty years imprisonment for burglary, twenty-five years imprisonment for armed robbery, twenty years imprisonment for one count of assault and battery with intent to kill; fifteen years imprisonment for the second count of assault and battery with intent to kill, and five years' imprisonment for possession of a firearm. All sentences were to run concurrently.

A timely notice of appeal was filed. The South Carolina Court of Appeals affirmed the lower court's conviction. State v. Dwyer, Op. No. 2011-UP-010 (S.C. Ct. App. Filed January 24, 2011. The Remittitur was sent on February 10, 2011.

Applicant subsequently filed for post-conviction relief on January 30, 2011 (2011-CP-43-2412). In his application, Applicant asserted claims of ineffective assistance of counsel. An evidentiary hearing was convened on December 17, 2014, at the Sumter County Courthouse before the Honorable J. Cordell Maddox, Jr. Applicant was present at the hearing and was represented by William Brunson, Esquire. By written Order filed May 15, 2015, Judge Maddox denied and dismissed Applicant's post-conviction relief action.

Thereafter, a notice of appeal was filed, which was dismissed by the South Carolina Supreme Court for failure to timely serve and file. The Remittitur was issued on October 16, 2015.

ALLEGATIONS

In his current application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR Counsel

- a. "PCR Counsel failed to properly perfect the appeal from the denial of the first application for post-conviction relief by failing to properly serve the notice of appeal or notify the supreme court when he received the order of dismissal."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. Respondent explained that the State was consenting based off of its discussions with prior PCR Counsel and discussion with Applicant's current PCR Counsel.

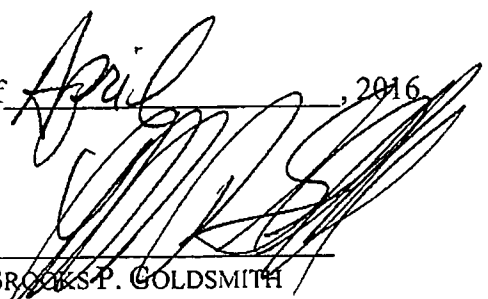
After review of the facts and circumstances surrounding the waiver of Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that Applicant is entitled to appeal the denial of his first post-conviction relief application (2011-CP-43-2412) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of Applicant's first post-conviction relief action (2011-CP-43-2412) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

1. That Applicant be granted an appeal of case 2011-CP-43-2412 pursuant to Austin v. State; and
2. That Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 12 day of April, 2016.



BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit


_____, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

DEVAN DWYER, #302693)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2015-CP-43-2810

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

RECORDED
2016 APR 21 PM 4:04
JAMES E. CARPPELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Plaintiff's Attorney:

Jeremy A. Thompson, Bar No. _____

Address:

PO Box 12891

Columbia, SC 29211

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Julie A. Coleman, Bar No. _____

Address:

PO Box 11549

Columbia, SC 29211

Phone: _____ Fax: _____

E-mail: _____ Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☐ Plaintiff/☒ Defendant

April 7, 2016

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Presiding Judge

2015-CP-43-2810

RECEIVED

MAY 27 2016

SC SUPREME COURT

DEVAN DWYER, #302693,

Petitioner,

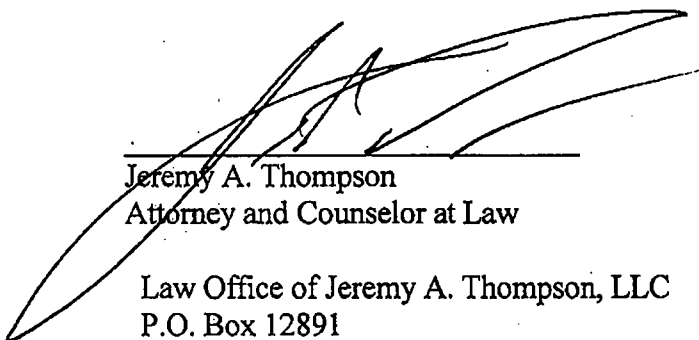
v.

STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

Devan Dwyer, #302693, appeals the Order Granting an Appeal Pursuant to Austin v. State filed April 21, 2016, and received by counsel on April 26, 2016, issued by the Honorable Brooks P. Goldsmith, presiding judge.



Jeremy A. Thompson
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555 Phone
803-779-2556 Fax
jeremyatlaw@yahoo.com E-mail

ATTORNEY FOR PETITIONER

This 25th day of May, 2016.

Other Counsel of Record:
Julie A. Coleman, Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Presiding Judge

2015-CP-43-2810

RECEIVED

MAY 27 2016

SC SUPREME COURT

DEVAN DWYER, #302693,

Petitioner,

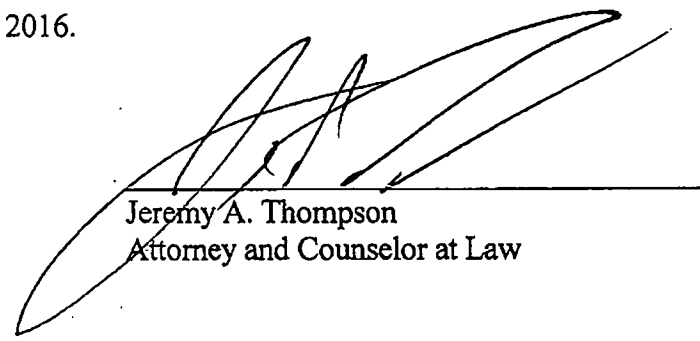
v.

STATE OF SOUTH CAROLINA,

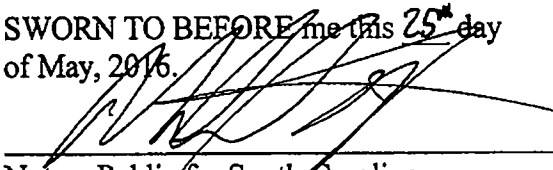
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner's Notice of Appeal in the above-entitled case has been served upon opposing counsel, Julie A. Coleman, Assistant Attorney General, P.O. Box 11549, Columbia, SC 29211, by mailing in an envelope properly addressed with postage prepaid on this _____ day of May, 2016.


Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE me this 25th day
of May, 2016.


(L.S.)
Notary Public for South Carolina
My Commission Expires: 7/10/2022

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2016-001132
Lower Court Case No. 2015-CP-43-2810

RECEIVED

OCT 18 2016

S.C. SUPREME COURT

DEVAN DWYER, #302693,

PETITIONER,

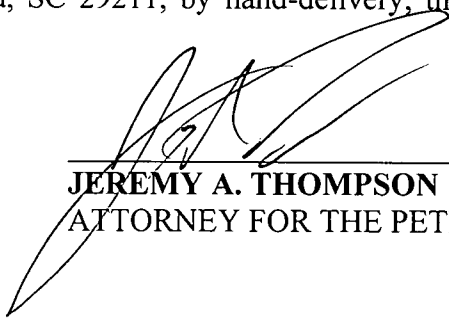
v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

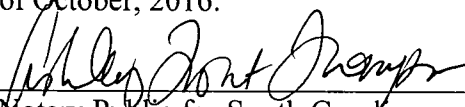
CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Appendix in the above-entitled case has been served upon opposing counsel, Julie Coleman, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by hand-delivery, this 18th day of September, 2016.



JEREMY A. THOMPSON
ATTORNEY FOR THE PETITIONER

SWORN TO BEFORE me this 18th day
of October, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/22/18



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

October 18, 2016

VIA HAND-DELIVERY

RECEIVED

OCT 18 2016

S.C. SUPREME COURT

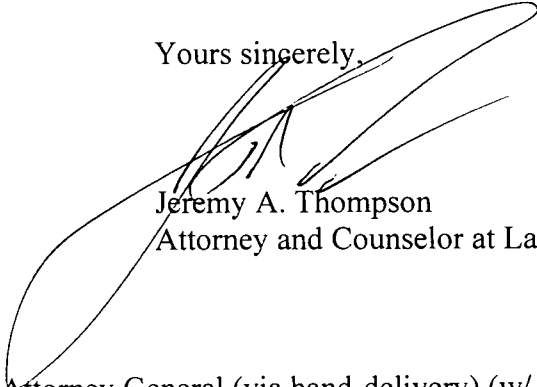
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: Devan Dwyer, #302693 v. State of South Carolina; 2016-001132

Dear Mr. Shearouse:

Enclosed please find the unbound original and two bound copies of the Appendix, as well as the original and one copy of my Certificate of Service in the above-captioned matter. I would appreciate your filing the unbound original and one bound copy of the Appendix, the original Certificate of Service, clocking the extra copies, and returning the extra copies to me. If I can be of any further assistance to the Court in this matter, please do not hesitate to contact me. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures

cc: Julie Coleman, Assistant Attorney General (via hand-delivery) (w/ enclosures)
Devan Dwyer, #302693 (via U.S. mail) (w/ enclosures)
Cassandra McCray (via U.S. mail) (w/ enclosures)