

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

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SC Court of Appeals

ROBERT A. YOUNG

PETITIONER,

v.

THE STATE

RESPONDENT

APPELLATE CASE NO 2017-001544

APPENDIX

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2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Robert Young,) 2007-GS-42-996-998
7 Defendant.) February 4 - 6, 2008
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13

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Motions

1 (Proceedings February 4, 2008)

2 THE COURT: All right. Now, I understand that we have
3 some motions to address before we can pick the jury.

4 MR. McPHERSON: Yes, sir.

5 THE COURT: And tell me again what those are, Mr.
6 McPherson.

7 MR. McPHERSON: We have a motion to suppress any
8 statements that were made by the defendant to law
9 enforcement officers.

10 THE COURT: And do we have such statements?

11 MR. McPHERSON: There are some written statements
12 and/or --

13 THE COURT: Okay. Motion to suppress statements.
14 All right. What else?

15 MR. McPHERSON: Then there's a motion -- there was
16 also an identity made through a photo lineup. We would
17 move to suppress that. I believe it's the same officer.

18 THE COURT: You're moving to suppress the photo lineup
19 identification?

20 MR. McPHERSON: Yes, sir.

21 THE COURT: As based upon it is too suggestive or
22 something?

23 MR. McPHERSON: Yes, sir.

24 THE COURT: Okay. And what else?

25 MR. McPHERSON: And then there was a search of the

Motions

1 defendant's home. And we would move to suppress that
2 search.

3 THE COURT: Is it based upon a warrant, or not?

4 MR. McPHERSON: It was not based on a warrant. It was
5 based on his consent to search, but we are saying that he
6 didn't give his consent.

7 THE COURT: Okay. And y'all expect these motions to
8 take about how long? An hour maybe?

9 MR. BULSA: Maybe, yes, sir.

10 MR. McPHERSON: It shouldn't take too long, I don't
11 think.

12 MR. BULSA: It shouldn't take that long.

13 Is the defendant going to testify?

14 MR. McPHERSON: I don't think so.

15 MR. BULSA: It may not take that long then.

16 THE COURT: Well, it doesn't look like we are going to
17 get -- I mean, the jury selection is going to take some
18 period of time. I think -- it is not really ten after
19 9:00, it's ten minutes to 12:00 or a quarter to 12:00.

20 All right. Well, we'll just have the jury come back
21 at 2:00 o'clock, and then we can select a jury then. Okay?

22 MR. BULSA: Yes, sir.

23 THE COURT: All right. Are you going to do that?
24 Just tell them to come back at 2:00 to the jury room.

25 All right. Where is Mr. Young?

Motions

1 MR. MCPHERSON: He is in the holding cell. Can I be
2 excused?

3 THE COURT: Sure. How long are you going to be gone?

4 MR. MCPHERSON: A minute or two.

5 THE COURT: Okay.

6 (Whereupon, a recess was taken. The defendant was
7 brought into the courtroom.)

8 THE COURT: Do y'all have any preference on what order
9 you want to address these motions, or are they going to
10 have the same witnesses?

11 MR. BULSA: Excuse me, Your Honor?

12 THE COURT: Do y'all have any preference on what order
13 you wish to address the motions?

14 MR. BULSA: Your Honor, we have one witness that will
15 be common to all three issues, and then there is one
16 secondary witness to the statement, two other witnesses as
17 to the search. I don't know to what extent we need to go
18 into those. But I guess I can basically -- do you want to
19 put up the one main witness? And then we can see where we
20 stand with that.

21 THE COURT: All right. Yeah. Let's go ahead.

22 MR. BULSA: The state calls Joseph Bohon.
23
24
25

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 JOSEPH BOHON, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Okay. Detective Bohon, you investigated this case, is
5 that correct?

6 A Yes, sir.

7 Q What was your first contact with the defendant?

8 A November 2nd of '06 at 2:29 a.m. in the morning.

9 Q Was that at his residence?

10 A Yes, sir, it was.

11 Q On Locust Court.

12 A Yes, sir, it was.

13 Q And did you speak with him at that residence?

14 A Yes, sir, I did.

15 Q And I believe you went there at least on two separate
16 occasions that morning.

17 A Yes, sir.

18 Q Was he a suspect at those times?

19 A No, sir.

20 Q So your interviews with him, were they basically in
21 the doorway?

22 A Yes, sir, they were.

23 Q And was he later developed into a suspect?

24 A Yes, sir, he was.

25 Q And did you later then arrest him and bring him down

Joseph Bohon (In-camera)
Direct examination by Mr. Balsa

1 to the sheriff's office?

2 A Yes, sir, I did.

3 Q Okay. I'm going to try to do this in a chronological
4 order. I believe you first determined him to be a suspect
5 through your investigation and then identification by the
6 victim, is that correct?

7 A Yes, sir.

8 Q So that, the photo lineup of him with the victim,
9 would have taken place before any written statements.

10 A Yes, sir.

11 Q And that would have taken place before the search of
12 his residence?

13 A Yes, sir.

14 Q Okay.

15 MR. BULSA: Mr. McPherson, this is the original if I
16 may get these marked.

17 (Lineup marked State's Exhibit No. 1 for
18 Identification.)

19 Q Now, Detective Bohon, did the victim know his
20 assailant?

21 A Yes, sir. He knew him as a regular customer.

22 Q Okay. So he knew him. But did he know his name?

23 A No, sir, he did not know him on a name basis, but he
24 knew him as a regular customer of his.

25 Q And in your investigation did you develop the name of

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 Robert Young?

2 A Yes, sir, I did.

3 Q And what steps did you take to connect Robert Young to
4 the victim's assailant?

5 A I did a 6-person photo lineup through a computer
6 database and showed it to the victim, and he was able to
7 identify him out of that lineup.

8 Q And the victim for the record is Dixon Ijioma?

9 A Yes, sir.

10 MR. BULSA: I believe his name is on the witness list,
11 madam clerk.

12 Q And was the victim at the hospital when you showed him
13 this lineup?

14 A Yes, sir, he was.

15 Q And I'm going to show you what's been marked State's
16 Exhibit No. 1 for this hearing. Is that the lineup you
17 showed Mr. Ijioma?

18 A Yes, sir, it is.

19 Q Explain the process you used to show him that lineup.

20 A I basically just showed Mr. Ijioma the lineup. I said
21 does anybody in this 6-person lineup look familiar to you.
22 And he immediately without hesitation pointed to Mr. Young.
23 He said that's the guy that shot me.

24 Q And did you ever in any way suggest to him who might
25 be in that lineup?

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

- 1 A No, sir, not at all.
- 2 Q And when you say without hesitation, did he look at it
3 first and then pick somebody out, or did he immediately go
4 to it?
- 5 A He just immediately went to it. I mean, he didn't
6 have to sit there and think or study the photographs or
7 anything.
- 8 Q Was there any other officer present when that was
9 conducted?
- 10 A Jason Bryant.
- 11 Q Okay. And there's a second -- well, let me ask you
12 this. There's some writing under -- there's a picture
13 circled and then some writing. Would you describe what
14 that is?
- 15 A That'll be the victim's initials where he initials
16 this is the guy, identifying him, that shot him.
- 17 Q Okay. And there's a second page attached to that.
18 What is that form?
- 19 A That's an affidavit form that we use at the sheriff's
20 office which states that the victim did positively identify
21 this guy, the suspect.
- 22 Q Does he sign that form as well?
- 23 A Yes, sir. He did.
- 24 Q Is that a notarized form?
- 25 A The form is also notarized by Jason Bryant.

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 Q Okay. Based upon that lineup did you then go sign
2 arrest warrants on the defendant?

3 A Yes, sir, I did.

4 Q And did you assist in serving those warrants?

5 A Yes, sir, I did.

6 Q Where did you serve the warrants?

7 A At [REDACTED] Locust.

8 Q Is that where he lived?

9 A Yes, sir, it is.

10 Q Okay. Who went with you?

11 A Sergeant Allen Wood, Jason Bryant and Detective
12 William Gary.

13 Q And when you got to this residence, please describe to
14 the Court what took place.

15 A Basically, we knocked on the door and advised, I
16 believe, his mother that we had an arrest warrant for her
17 son.

18 At that point he came to the door and was placed into
19 handcuffs. I brought him outside to the front-yard area of
20 his residence, and I asked him would he give us permission
21 to search his residence, particularly his room.

22 He agreed. He signed a permission-to-search form.
23 And at that point it was made very clear to him, you know,
24 that if he refused the search we could not search.

25 Q Okay.

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 (Permission to search marked State's Exhibit 2 for
2 Identification.)

3 Q Let me show you State's Exhibit No. 2. If you would,
4 explain what that form is.

5 A This is basically a form that's reading a suspect
6 their rights. It states their rights and it states what
7 the sheriff's office is wanting to do, basically saying
8 that we want to conduct a search of the property and
9 without a search warrant they do have the right to refuse a
10 search.

11 Q What time of day was this?

12 A 2:14 p.m.

13 Q That was in the afternoon hours.

14 A Yes, sir.

15 Q, Did the defendant appear to have any difficulty
16 understanding what you were asking him?

17 A No, sir.

18 Q Did he appear to be awake and alert?

19 A Yes, he did.

20 Q In fact, the evening -- I guess it would have been the
21 morning before -- is this the same day of the morning?

22 A Yes, sir.

23 Q Okay. So you spoke with him during the morning hours
24 of November 2nd, and you went back later in the afternoon
25 hours of November the 2nd.

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Okay. Did he appear to be acting any differently
- 3 between your two contacts with him?
- 4 A No, sir.
- 5 Q Did he have any questions concerning this process?
- 6 A No, sir, he did not.
- 7 Q And did he willingly sign that consent form?
- 8 A Yes, sir, he did.
- 9 Q And did anybody witness that along with yourself?
- 10 A Detective Jason Bryant did.
- 11 Q Now, you commented that this form explains his rights.
- 12 Did you read him any other rights during this process?
- 13 A I read him his rights off a Miranda pocket card.
- 14 Q Okay. So you read him his what we call Miranda
- 15 rights.
- 16 A Yes, sir.
- 17 Q Preinterrogation waiver rights.
- 18 A Yes, sir.
- 19 Q And that would have been before you asked for a
- 20 consent to search.
- 21 A Yes, sir.
- 22 Q Did he understand those rights?
- 23 A Yes, sir.
- 24 Q All right. Was anybody else present at the house?
- 25 You said his mother was there. But was she there? Did she

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 witness any of this take place?

2 A This occurred out in the front yard of his residence.

3 The consent to search was basically signed on the back of a
4 patrol car.

5 Q So she would have been inside.

6 A Yes, sir, she would have been inside when he was read
7 his Miranda rights and when he signed the consent to search
8 form.

9 Q Okay. Now, you had seen him the morning before. Was
10 there anything in particular you were going to search for?

11 A The morning before when I had spoken with him he was
12 dressed in all black and had a shirt on that said "Snitches
13 get stitches". So that's something I remembered. And he
14 was wearing black cloth pants and black shoes.

15 Q And the victim, did he give you a clothing
16 description?

17 A Dark clothing.

18 Q Said the man was wearing dark clothing.

19 A Yes, sir.

20 Q Okay. So you have the description by the victim and
21 then you've got your own personal observation of the
22 defendant. Okay. And was there anything else in
23 particular you were going to search for?

24 A Possibly a weapon, handgun.

25 Q Okay. Did you participate in the search?

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 A No, sir, I did not.

2 Q Okay. What did you do at that time?

3 A At that point I transported Mr. Young to the sheriff's
4 office for an interview.

5 Q Okay. So you get the consent to search form signed.
6 You had arrested the defendant, and you take him to the
7 sheriff's office to speak with him. Who conducts the
8 search?

9 A Detective Gary did.

10 Q Okay. Did Detective Bryant stay with him?

11 A Yes, he did.

12 Q Okay. So as far as what was recovered and how it was
13 recovered, it comes to you through him, correct?

14 A Yes, sir.

15 Q Okay. All right. Now, what takes place at the
16 sheriff's office?

17 A I sat Mr. Young down and read him his rights again off
18 of a Miranda waiver form, which he signed. And then I
19 began to speak with him about his case.

20 Q Okay.

21 MR. BULSA: I will get these pages marked. Mr.
22 McPherson, this is a waiver form.

23 (Pre-interrogation waiver form marked State's Exhibit
24 No. 3 for Identification; voluntary statement marked
25 State's Exhibit No. 4 for Identification; voluntary

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 statement marked State's Exhibit No. 5 for Identification.)

2 Q Detective, when you took him back to the sheriff's
3 office, where did you take him?

4 A To an interview room upstairs in the investigations.

5 Q Was any other officer with you?

6 A Not initially. After Detective Gary finished up
7 searching the residence he came in and assisted.

8 Q Okay. So at the beginning it was you and Mr. Young.

9 A Yes, sir.

10 Q Okay. And was your first process to have him to read
11 him his rights?

12 A Yes, sir.

13 Q Let me show you State's Exhibit No. 3 for this
14 hearing. Is that the form that contains those rights that
15 you went over with him?

16 A Yes, sir, it is.

17 Q Explain to the Court how you read him those rights,
18 the process you undertook.

19 A I put the form in front of him and just go over it
20 step by step and advise him he has the right to remain
21 silent, anything he says can and will be used in a court of
22 law, he has the right to talk to a lawyer and have one
23 present with him while he's being questioned and if he
24 cannot afford to hire a lawyer one will be appointed to
25 represent him before any questions if he wished so.

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 And the last part of that says you have a right to
2 stop answering questions at any point during the
3 questioning. And "The above rights are read to me," by me,
4 Detective Bohon, which I put my name right there.

5 The second part of this form says, "I will waive,"
6 parenthesis, "give up, my rights as explained above and
7 agree to talk to Detective Bohon in reference to an ABWIK
8 and robbery. Any statement you make is of your own free
9 will without fear, threat to harm, favor or reward of any
10 kind."

11 And I asked Mr. Young how many years in school he
12 finished, and he stated 11. It was then that I asked could
13 he speak the English language. And he advised me he could
14 write the English language.

15 And I filled out this last sentence. It says, "Im
16 able to read and write the English language and I finished
17 11 years in school." And he signed that portion of it also
18 here. And then I wanted him to sign his signature and
19 witnessed my signature.

20 Later on in the interview Detective Gary came back in
21 and went back over his rights again and said is this your
22 signature. He stated yes. He said was you read your
23 rights. He said yes. And you understand your rights. And
24 he said yes. And at that point Detective Gary notarized
25 it.

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 Q Okay. Out beside the rights where the numbers are
2 there appear to be some lines and initials besides those.
3 Explain what those are.

4 A These lines is where I checked off beside the number
5 as I was reading each line advising him of his rights.

6 I would mark it a line beside each number when I got
7 to number five. And then he initialed his initials beside
8 each one of these lines saying that he had read it and
9 understood these also. Kind of an extra step.

10 Q All right. And did at any time he have any questions
11 about any of these rights?

12 A No, sir.

13 Q You stated he went through 11 years in school. Did he
14 understand them?

15 A Yes, sir, he did.

16 Q From your perspective did he appear to understand
17 them?

18 A Yes, sir.

19 Q Did you make him any promises?

20 A No, sir.

21 Q Did you threaten him in any way?

22 A No, sir.

23 Q Did you try to coerce him or force him to sign this
24 document?

25 A No, sir.

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 Q Officer, this form is dated or is timed at 2:58 p.m.
2 Did he then give you a statement?

3 A Yes, sir.

4 Q Explain the process that you undertook with the
5 statement.

6 A Basically, after reading him his rights, I just wanted
7 to get his side of the story and any time line of where he
8 was at the night the incident occurred.

9 When questioning him about that he gave me his side of
10 the story. After he verbally gave me his side of the story
11 I wrote down what he had told me verbally.

12 Q Okay.

13 A And after taking the written statement from him, which
14 I wrote at his request, I read back over the statement
15 which he then signed.

16 Q All right. So looking at State's Exhibit No. 4, would
17 that be the first written statement you obtained from him?

18 A Yes, sir, it is.

19 Q And that is timed at 4:21 p.m. So the time from
20 2:58 to 4:21 consists of your just discussions with him and
21 questioning of him, as well as the actual transcription of
22 his statement.

23 A Yes, sir.

24 Q All right. And did you go over that statement with
25 him?

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 A Yes, sir, I did.

2 Q Did he read it?

3 A Yes, sir, he did.

4 Q Did he sign it?

5 A Yes, sir, he did.

6 Q And did he acknowledge that was, in fact, his
7 statement?

8 A Yes, he did.

9 Q All right. I have here what's State's Exhibit No. 5
10 which appears to be a second statement of him with a time
11 of 5:11, is that correct?

12 A Yes, sir.

13 Q Okay. What took place from the end of the first
14 statement to that second statement?

15 A Detective Gary came in as we was finishing that
16 statement up and said he would notarize that being present
17 when the statement was actually given.

18 When we finished up on that statement Detective Gary
19 advised Mr. Young that we recovered some pants from inside
20 his bedroom that tested positive for human blood. And at
21 that point he was told it was the blood of the victim and
22 how could he explain that. And that's when he went on to
23 give a second statement to justify how he got that blood on
24 his pants.

25 Q Okay. And did you do that in the same form, you wrote

Joseph Bohon (In-camera)
Direct examination by Mr. Bulsa

1 it in his words?

2 A Yes, sir.

3 Q Okay. And did he sign that one as well?

4 A Yes, sir, he did.

5 Q And you and Detective Gary also signed it as
6 witnesses?

7 A Yes, sir.

8 Q Did he at any time ever ask to stop answering any
9 questions?

10 A Sometime around 5:30 p.m. he just stated, man, I'm
11 tired of talking and I'm just ready to go to the county.
12 So at that point, you know, he's saying he don't want to
13 talk to us any more. And so the interview was ended at
14 that point.

15 Q And that was after the second written statement.

16 A Yes, sir.

17 Q So y'all actually continued to question him until he
18 finally terminated the interview.

19 A Yes, sir.

20 Q Okay. Did he ever seek to invoke any of the other
21 rights? Did he ever ask for a lawyer?

22 A No, sir.

23 Q Thank you. Answer any questions Mr. McPherson has.
24
25

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson.

1 CROSS-EXAMINATION

2 BY MR. McPHERSON

3 Q Now, when you went to the -- I believe you indicated
4 you went to the hospital to do a photo lineup.

5 A Yes, sir.

6 Q And how do you say the last people in this case -- how
7 do you say his name?

8 A Ijioma is the best way I can pronounce it. I hope
9 that's close to it.

10 Q Ijioma?

11 A Yes, sir.

12 Q Is that his first name or last name?

13 A That's his last name. Like I say, his first name is
14 actually Dick. Uba is his middle name. And they call him
15 Dixon.

16 Q Okay. And what time was it when you went to the
17 hospital to speak with Ijioma?

18 A Around 10:36 a.m. in the morning.

19 Q Okay. And where in the hospital was he?

20 A He was in the neuro I. C. U., Room No. 5.

21 Q Okay. Did you learn why he was in that room, that
22 neuro I. C. U. room?

23 A I guess due to having a head injury, is why he would
24 have been in there.

25 Q And he had not undergone any operation at that time,

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

1 had he?

2 A No, sir.

3 Q In fact, he indicated to you that he was in a lot of
4 pain, did he not?

5 A Yes, sir, he did.

6 Q And during that time he told you he really didn't want
7 to talk about this, didn't he?

8 A Actually, he was ready to talk to us to explain the
9 situation of knowing who actually shot him. And he said
10 that, you know, he was ready to look at a lineup. And
11 after showing that lineup he said he just did not feel like
12 giving a long, drawn out, detailed statement.

13 Q So he really just wanted to get out of there, correct?

14 A I won't say that, but he was ready to get back to get
15 some rest.

16 Q Okay. So wouldn't you agree with me that he just did
17 that photo lineup just so he could get you out of there
18 because he was in a lot of pain?

19 A No, sir. He did the photo lineup because he was
20 concerned about who shot him.

21 Q And when you were interviewing him the -- I guess the
22 bullets or whatever were still lodged in his skull, is that
23 correct?

24 A Yes, sir.

25 Q And didn't he complain to you about being in a lot of

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

1 pain?

2 A At the end of speaking with him when I asked him did
3 he want to give a long, detailed statement, he said he was
4 in some pain and he'd prefer to wait and do that later,
5 because I told him that would take a little bit longer,
6 maybe up to an hour, to get that statement from him.

7 Q Well, let's go to the permission to search. That was
8 at 2:14 p.m. Do you want to see the document? Would it
9 help?

10 A I have it.

11 Q I'm showing you what's been marked as State's
12 Exhibit 2. Is that the permission to search form?

13 A Yes, sir, it is.

14 Q And you indicated on that document that that took
15 place at 2:14 p.m., is that correct?

16 A Yes, sir.

17 Q All right. Now, prior to that time you had been
18 talking to Robert Young the night before, is that correct?

19 A Yes, sir.

20 Q In fact, you were talking to him real late at night.
21 Wouldn't you agree with that?

22 A Yes, sir.

23 Q Like 2:45 or 3:00 o'clock in the morning?

24 A The last time I spoke with him was at 3:00.

25 Q 3:00 o'clock in the morning?

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

1 A It was 2:40 a.m. the last time I spoke with him in the
2 morningtime.

3 Q Okay. Now, this permission to search form, you just
4 handed it to the defendant and told him to sign here?

5 A No, sir.

6 Q How did you do that?

7 A I read over the form with him, everything that's on
8 the form, as well as read to him.

9 Q You read it to him?

10 A Yes, sir.

11 Q And did you read it slow or did you read it fast, or
12 how would you describe the way you read it to him?

13 A I will say at a normal average speed. I didn't read
14 it real slow, you know, like he was in first grade or
15 anything. I didn't read it real fast either.

16 Q And did you ask him if he understood what this
17 document was saying?

18 A Yes, sir.

19 Q And did you try to explain this document to him at all
20 or did you just read it to him and ask him if he -- and
21 then just tell him to sign it?

22 A I read him the form and explained the form to him.
23 And basically every time I do this form I tell people if
24 you tell us we can't go in, then we can't without a search,
25 without an arrest warrant or a search warrant rather.

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

- 1 Q So are you testifying you told him that?
- 2 A Yes, sir.
- 3 Q You told him that you don't have a right to go into
4 that house but if he signs this form he's going to give you
5 that right?
- 6 A Yes, sir.
- 7 Q And he's also giving you the right to take whatever
8 you deem appropriate?
- 9 A Yes, sir.
- 10 Q You told him that?
- 11 A Yes, sir.
- 12 Q At or about 2:14 p.m.
- 13 A Yes, sir.
- 14 Q Now, do you know whether or not he was up all night
15 because of this investigation?
- 16 A I know he was up until at least 2:40 a.m.
- 17 Q But you don't know if he had been asleep after y'all
18 left or not, do you?
- 19 A No, I do not know for a fact, no.
- 20 Q In fact, he appeared to be very tired when you
21 interviewed him the next day, did he not?
- 22 A No, sir.
- 23 Q No, sir?
- 24 A No, sir. At 5:30 when he was wanting to go to the
25 county jail, as he said, it appeared that he was tired of

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

1 speaking with us.

2 Q And then after you got the consent to search, this was
3 after he was under arrest or before he was under arrest?

4 A We went and served the arrest warrant.

5 Q I'm sorry?

6 A I said we went to serve the arrest warrant at his
7 residence, knocked on the door and spoke with his mother.
8 He came to the door and he was placed in the cuffs. So at
9 that point he was arrested.

10 He was brought out and backed -- on the back of one of
11 the patrol cars. He was read his Miranda rights. And then
12 he was read his consent to search form.

13 Q Okay. And then did y'all search the house right then
14 or take him on in?

15 A I personally transported Mr. Young to the sheriff's
16 office.

17 Sergeant Allen Wood, Detective Bryant, Detective Gary
18 stayed behind. So at that point I had no knowledge of what
19 else took place other than what was told to me later.

20 Q But when you transported him to the sheriff's office,
21 where did you take him after you got to the sheriff's
22 office?

23 A Took him upstairs in the sheriff's office which was
24 the investigation division, and he was placed in an
25 interview room with me.

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

- 1 Q Okay. Could you describe that interview room?
- 2 A A small, very small, room, four plain walls, a door.
- 3 Q No windows?
- 4 A No windows, two chairs and a desk or a table.
- 5 Q And you had him in that interview room for several
- 6 hours, correct?
- 7 A Yes, sir.
- 8 Q Now, I believe you first indicated when you first gave
- 9 him his Miranda warnings you read off a card that you keep
- 10 in your wallet or something like that, is that correct?
- 11 A Yes, sir.
- 12 Q You keep that on you?
- 13 A Do I keep that on me?
- 14 Q Yes.
- 15 A Most of the time.
- 16 Q And today?
- 17 A No, sir.
- 18 Q It's not on you today?
- 19 A No, sir.
- 20 Q Okay. Now, then the next time you read his Miranda
- 21 warnings is at the sheriff's office on the second floor in
- 22 the interview room, is that correct?
- 23 A Yes, sir.
- 24 Q And what did you read them off?
- 25 A Off a preinterrogation Miranda waiver form that we

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

1 have.

2 Q Okay. And did you read it to him first before he
3 initialed and signed it, or exactly how did you go through
4 giving him his Miranda warnings off this interview
5 preinterrogation waiver form?

6 A I just read him the form. And then after I read it to
7 him I had him read back over it and sign the places if he
8 agreed to speak with us.

9 Then beside the actual Miranda rights part of it,
10 section one through five, I had him initial beside each one
11 of those that he actually looked at it and read over it.

12 Q Okay. Now, who filled out the form, you or him?

13 A I filled out the form and he signed in the places. It
14 has a place for his signature. And then he initialed
15 beside one through five. But I actually filled out. If
16 you're talking about his name and the information, I filled
17 that out.

18 Q And you would agree with me when you were going
19 through all of this he was pretty tired. Wouldn't you
20 agree with that?

21 A I mean, he wasn't laying his head down saying he was
22 sleepy or anything. I guess, you know, looking at it
23 commonsense-wise if he had been up at 3:00 o'clock, even
24 with sleep he could have been sleepy. He could have been.
25 I mean, he did not appear to be drowsy or anything like

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

1 that.

2 Q Didn't he indicate to you that he was tired and he
3 really didn't want to be bothered?

4 A Yes, sir, he did at 5:30 p.m.

5 Q But before that he also indicated that.

6 A No, sir, he did not.

7 Q Okay. Wouldn't you agree with me that when he signed
8 this form he really didn't understand it, this
9 preinterrogation waiver form?

10 A I would definitely not agree with you.

11 Q I'm sorry?

12 A I wouldn't agree with you. He did understand the
13 form.

14 Q Okay.

15 MR. McPHERSON: No further questions.

16 THE COURT: Anything else?

17 MR. BULSA: No, sir.

18 THE COURT: Step down.

19 Do you have any other witnesses?

20 MR. BULSA: Unless the Court feels like you need to
21 hear it. I'll do it real briefly. Detective Bryant.

22 JASON BRYANT, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BULSA

25 Q Detective Bryant, did you go with Detective Bohon to

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

1 the hospital to see Mr. Ijioma?

2 A Yes, sir, I did.

3 Q Okay. And was that purpose to try to identify who
4 shot him?

5 A That is correct.

6 Q And did you witness the photographic lineup process?

7 A I did.

8 Q Okay. In fact, did you sign the second page of
9 State's Exhibit No. 1?

10 A Yes, sir, I did.

11 Q Okay. And explain it in your -- from your perspective
12 what happened.

13 A On that date, which was 11/2 of '06, and we were at
14 the Spartanburg Regional Medical Center, myself and
15 Investigator Bohon did show the victim in the case a
16 6-photo lineup, and he did identify this individual as a
17 regular customer of his and he had picked up on Palisade
18 Street and taken to Locust Court, picked up at Locust Court
19 and taken back to Palisade Street. And he was also the
20 person who had shot him several times the night. And, "He
21 had stole my cab."

22 Q Do you have a recollection as to how long it would
23 have taken Mr. Ijioma to point out the person?

24 A It was without hesitation.

25 Q Is that unusual in these kind of situations?

Jason Bryant (In-camera)
Direct examination by Mr. Bulsa

- 1 A Not when they knew who did it.
- 2 Q Okay. So in your understanding he knew who did it.
- 3 He just didn't know the name.
- 4 A Correct.
- 5 Q Okay. Did you also go with Detective Bohon to [REDACTED]
- 6 Locust Court?
- 7 A I did, yes, sir.
- 8 Q Let me show you State's Exhibit No. 2. Did you
- 9 witness that permission to search form?
- 10 A I did, sir.
- 11 Q Okay. And would you describe to the Court from your
- 12 perspective what took place during that consent to search?
- 13 A What was done on November the 2nd at approximately
- 14 2:14 p.m., he was asked for consent to search the residence
- 15 at [REDACTED] Locust Court, and which he did, Mr. Young, provide a
- 16 written permission to search and did sign without any,
- 17 without any problems at all.
- 18 Q Were you there the entire time?
- 19 A Yes, sir, during the permission to search, that's
- 20 correct.
- 21 Q Okay. Were you there when he was placed under arrest?
- 22 A I was. That was once we had originally arrived at the
- 23 residence.
- 24 Q Okay. So he was arrested and then he was asked for
- 25 permission to search.

Joseph Bohon (In-camera)
Cross-examination by Mr. McPherson

- 1 A That is correct.
- 2 Q Was that form read to him?
- 3 A Yes, sir.
- 4 Q In your presence?
- 5 A Yes, sir.
- 6 Q Did Mr. Young have any questions about that?
- 7 A Not at all.
- 8 Q Did he willingly sign that form?
- 9 A He willingly sign that form?
- 10 Q Yes.
- 11 A He willingly signed it, that's correct.
- 12 Q All right. That's all I have. Answer any questions
- 13 Mr. McPherson may have.
- 14 CROSS-EXAMINATION
- 15 BY MR. MCPHERSON
- 16 Q Now, you would agree with me, would you not, that
- 17 Mr. Young was not told that?
- 18 A I am sorry, sir? I couldn't hear you.
- 19 Q Would you agree with me that Mr. Young was not told
- 20 that if he didn't sign that form y'all couldn't search his
- 21 residence?
- 22 A He was never told that.
- 23 Q He was never told that. Am I correct? Yes?
- 24 A Yes.
- 25 MR. MCPHERSON: I pass the witness. No further

Joseph Bohon (In-camera)
Redirect examination by Mr. Bulsa
Recross-examination by Mr. McPherson

1 questions.

2 REDIRECT EXAMINATION

3 BY MR. BULSA

4 Q When you say he was never told that, are you saying
5 Detective Bohon never said that statement to him?

6 A No, sir. He did say that statement to him. I was
7 under the impression that he was threatened or coerced into
8 making that statement from the defense.

9 Q Okay. During the reading of that form --

10 A Correct.

11 Q -- did you or Detective Bohon tell him that if you
12 don't sign this form, if you don't give us consent to
13 search we can't search your residence without a warrant?

14 A Right. The form was explained to him as is clearly
15 stated in the photograph that this was, you know, written
16 permission to search without a warrant. He was explained
17 the process.

18 Q Okay. All right. Thanks.

19 RECROSS-EXAMINATION

20 BY MR. MCPHERSON

21 Q But this form doesn't clearly state that if you don't
22 sign this form we can't search your residence, does it?

23 A Without a search warrant.

24 Q Does it say that in there?

25 A Yes, sir.

Joseph Bohon (In-camera)
Redirect examination by Mr. Bulsa

1 Q But I understand it says the written permission to
2 search without a search warrant is given to me. But it
3 doesn't say in this form entitled "Permission to search" if
4 you don't sign this form we can't search your residence
5 without a search warrant, does it?

6 A What are you trying to ask?

7 Q I am just asking you if it's in that form.

8 A I'll be glad to read the form to you if you would like
9 for me to.

10 Q Well, just show me where it says that if you don't
11 sign this form we can't search this residence.

12 A Without a search warrant.

13 Q Without a search warrant.

14 A Correct.

15 Q But it's in this form?

16 A I'm sorry?

17 Q It's contained in --

18 A Would you like for me to read the form to you?

19 Q It is in State's Exhibit 2?

20 A Correct.

21 Q Okay.

22 MR. MCPHERSON: I have no further questions.

23 REDIRECT EXAMINATION

24 BY MR. BULSA

25 Q I hate to belabor it. But read the part of the form

William Gary (In-camera)
Direct examination by Mr. Bulsa

1 that you feel answers that question.

2 A "The above named officers currently have my permission
3 to take from my premises and property any letters, papers,
4 material or any other property or things they desire as
5 evidence for criminal prosecution in the case under
6 investigation. This written permission to search is
7 without a search warrant, is given to me by the above
8 officers voluntarily without fear, threats, without any
9 threats or search, promises, or promises of any kind at
10 2:14 p.m. on the 2nd day of November of 2006 at [REDACTED] Locust
11 Court in Spartanburg, South Carolina.

12 Q Okay. Thank you.

13 MR. BULSA: That's all I have.

14 THE COURT: You may step down.

15 MR. BULSA: The state call William Gary.

16 WILLIAM GARY, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BULSA

19 Q Detective Gary, were you present when the defendant,
20 Robert Young, gave two statements, and also did you witness
21 his preinterrogation waiver form? I'm showing you State's
22 Exhibits 3, 4 and 5.

23 A Yes, sir, I was.

24 Q Okay. You were there in the form of a notary?

25 A Yes, sir.

William Gary (In-camera)
Direct examination by Mr. Bulsa

1 Q Okay. Did you actually witness the reading of his
2 Miranda warnings to him?

3 A We went over it. When I came in, when we were
4 finishing up the paperwork, the persons when we finished, I
5 asked again over that so that the warrant could be
6 completed if this was his name, that his signature, that he
7 understood all the rights, that he, in fact, signed it and
8 did he swear that was the truth. And that's when I
9 notarized the Miranda form.

10 Q That's State Exhibit No. 3?

11 A Yes, sir.

12 Q Okay. So in your presence and upon your questioning
13 that he acknowledged that he signed those documents.

14 A Yes, sir.

15 Q And he understood them?

16 A Yes, sir.

17 Q And did you then notarize any of his statements as
18 well?

19 A Yes, sir. The first statement was being completed
20 when I got there. I was there to witness the signature
21 there and notarize it, and then I was present for the
22 second.

23 Q Okay. State's Exhibit No. 4. Did you undertake the
24 same process of asking him if that was his statement and he
25 agreed with that?

William Gary (In-camera)
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q And that was his signature on that form.

3 A Yes, sir.

4 Q Did he appear that he was being threatened or coerced
5 in any way?

6 A Not at all.

7 Q While you were present were any promises made?

8 A No, they were not.

9 Q Was he threatened in any way?

10 A No, he wasn't.

11 Q You said you were there for the second statement,
12 which would be the State's Exhibit No. 5.

13 A Yes, sir, State's 5.

14 Q Did you provide him some information which led to that
15 statement?

16 A Yes. During the search of the residence, particularly
17 his bedroom, there was some items of clothing that matched
18 the description that Detective Bohon observed him wearing
19 earlier that morning. And in examination of that clothing
20 in the room there was some swabs that were done that tested
21 positive for blood.

22 So when I came in and read what he was, what was in
23 the first statement, that's when I told him we had found
24 the clothing, had blood on it. And I actually told him
25 then it was the victim's blood.

William Gary (In-camera)
Cross-examination by Mr. McPherson

1 Q You didn't know. You were just telling him that.

2 A Yes.

3 Q Okay. And then he gave that statement.

4 A Yes, he did.

5 Q And did he -- and did Detective Bohon write that out
6 for him?

7 A Yes, he did.

8 Q And he signed admitting that that was his statement.

9 A Yes, he did.

10 Q Answer any questions Mr. McPherson may have.

11 CROSS-EXAMINATION

12 BY MR. McPHERSON

13 Q When you told him it was the victim's blood, did you
14 know it was the victim's blood at that time or were you
15 lying to him?

16 A I was lying to him.

17 MR. McPHERSON: I have no further questions.

18 THE COURT: Step down.

19 MR. BULSA: Nothing further, Your Honor. That's the
20 state's showing.

21 THE COURT: All right. Mr. McPherson, do you wish to
22 present any witnesses or any other evidence in this
23 hearing?

24 MR. McPHERSON: No.

25 THE COURT: Have you discussed with Mr. Young his

1 right to testify and the limitations placed on that
2 testimony at this hearing?

3 MR. McPHERSON: Well, if I could have just a moment.
4 I tried to explain that to him. I'm not sure he fully
5 understands that.

6 THE COURT: Well, in that case I'll explain it to him.

7 Mr. Young, your lawyer has made a motion to suppress
8 the identification made by a witness in this case of you as
9 being the perpetrator of these crimes.

10 He's also made a motion to suppress the admission of
11 statements law enforcement claims was made by you
12 subsequent to your arrest. And he's also made a motion to
13 suppress evidence seized at your residence that they would
14 offer in the trial of this case which they claim was based
15 upon your consent to search the residence.

16 So what I have got to consider during this hearing is
17 whether or not the identification made by Mr. Ijioma should
18 be suppressed, whether or not the statements attributed to
19 you from law enforcement should be suppressed or excluded
20 and whether or not any evidence received from your
21 residence that was the product of the search which they
22 claim was consented to by you should be granted, whether
23 the motion ought to be granted or not.

24 And so I base that on the evidence received during
25 this hearing. And you've got a right to present evidence

1 in this hearing too. You can testify if you want to about
2 it to issues that are relevant to my decision with regard
3 to whether the identification, the statements and/or the
4 evidence from your residence ought to be excluded.

5 You don't have to testify. You just have to
6 understand you have a right to testify. And if you want
7 to, then you can. If you don't want to, I can't make you.

8 Have you discussed your right to testify at this
9 hearing with Mr. McPherson?

10 THE DEFENDANT: Yes.

11 THE COURT: And so you know you do have a right to
12 testify.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he also explained to you that you have
15 a constitutional right not to testify at any time during
16 this trial or to make any statements of any kind as it
17 relates to these charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And understanding the purpose of this
20 hearing and understanding your rights, do you wish to
21 testify or not?

22 THE DEFENDANT: No, sir.

23 THE COURT: Well, is that -- you do wish to or you do
24 not wish to?

25 THE DEFENDANT: No, sir.

1 MR. McPHERSON: Judge, I don't think he -- what I
2 wanted to discuss with him so I'm not sure he fully
3 understands that if he testifies at this hearing only
4 there's, there's a -- the state would be limited in things
5 they could go into.

6 THE COURT: I've explained that to him. Of course
7 that should have already been done long before now.

8 MR. McPHERSON: I know.

9 THE COURT: Mr. Young, do you understand the purpose
10 of this hearing is for me to decide if these matters ought
11 to be excluded? It's not a trial of the case. It's not a
12 decision as to whether you're guilty or not guilty of the
13 crimes.

14 And so if you testify it'll solely, your testimony
15 will solely, relate to whether or not the statements
16 attributed to you were freely and voluntarily made and
17 whether or not that search was actually consented to by
18 you. That's the sole issue in this case. That's all you
19 will be asked about.

20 Does that change your mind about whether or not you
21 will testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: You do not wish to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand I'll have to make my

1 decision based upon the evidence that has been presented?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Have you got any other questions
4 you need to ask me about that, your right to testify at
5 this hearing?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you need to discuss it with Mr.
8 McPherson any further?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. Mr. McPherson, it's your
11 motion. Do you want to be heard?

12 MR. McPHERSON: Yes, Your Honor.

13 Based on the testimony of the officer, they started
14 questioning the defendant in this case the day before at
15 2:00 o'clock in the morning, and they last broke off at
16 3:00 o'clock in the morning. I guess it would be the same
17 day.

18 But then they come back and get him to sign the
19 consent to search form knowing that he hadn't had much
20 rest.

21 So it would be our contention that he did not fully
22 understand what he was signing, and it would be the same
23 contention for the, the consent to search and also his
24 preinterrogation waiver form that they, knowing that he was
25 tired, they took him over to the sheriff's office and

1 quizzed him for several more hours.

2 And so it's our position that he didn't freely and
3 voluntarily and knowingly waive his rights.

4 THE COURT: Are you saying those facts if established
5 as a matter of law would exclude any statement made?

6 MR. MCPHERSON: Yes, sir.

7 THE COURT: All right. Mr. Bulsa.

8 MR. BULSA: Your Honor, first I want -- I believe the
9 Court understands this, but I want to set it up for the
10 record.

11 The police interviewed the defendant on two separate
12 occasions within hours of the crime. At that time he was
13 not a suspect. Therefore I don't believe those statements,
14 interview comments would be questioned by the defense.
15 They didn't raise that motion.

16 Secondly, Your Honor, it was about 12 hours later that
17 they went back to the residence. He clearly had time to
18 rest. He had changed his clothes. And the officer's
19 testimony, he clearly understood what was going on and was
20 not sleepy and did not fall asleep and did not ask for
21 anything.

22 Based on his education, 11th grade, his clear
23 understanding of the rights and his signing of each form,
24 the consent to search form, as well as the Miranda form,
25 and based on the officer's testimony, it's clear that he

1 voluntarily and freely gave up those rights and gave that
2 statement and also consented to the search.

3 THE COURT: All right. Mr. McPherson, any reply you
4 would like to make?

5 MR. MCPHERSON: No, Your Honor.

6 THE COURT: All right. Based upon the testimony and
7 the evidence presented, I do find that the statements
8 provided to law enforcement as shown in State's Exhibits
9 No. 4 and 5 at this hearing were freely and voluntarily
10 made, that the defendant was in custody, but he had been
11 advised of his Miranda rights, and that he understood those
12 rights, that he was aware that he could refuse to answer if
13 he wished to or not to engage in any sort of conversation
14 with the law enforcement officers.

15 But he gave up those rights freely and voluntarily
16 without reward or threat or promise and having understood
17 his rights; and therefore I find the statements were freely
18 and voluntarily made by the defendant, and therefore they
19 will be admitted if otherwise admissible.

20 With regard to the search, based upon what the state
21 contends was consent on November the 2nd of 2006, I find
22 that the defendant did consent to a search of his residence
23 and the consent was based upon his own free will, his own
24 accord, his own decision. He was not coerced, pressured or
25 threatened in any way, that he was advised that he did not

1 have to consent and that a search warrant would be sought.
2 Nevertheless, he freely and voluntarily allowed the
3 officers to search his residence. And that consent was not
4 the product of any coercion, threats or promises.

5 So the motion to exclude evidence from the search of
6 the residence is denied.

7 The defendant's motion to exclude the identification
8 of the defendant by a witness appears to be reliable based
9 upon the evidence received. There's certainly no
10 suggestion or no evidence that the witness was suggested or
11 a particular photographic lineup was suggested to the
12 witness by law enforcement. The lineup itself does not
13 appear to have any suggestiveness about it. They all
14 appear to be six black males, similar characteristics,
15 similar hair styles and similar appearances.

16 And as I understood it from the testimony, Mr. Ijioma
17 knew the defendant. He just didn't know his name. And
18 therefore it was not difficult for him to pick him out of
19 the lineup. He did so without suggestion and without
20 assistance from law enforcement.

21 Therefore the motion to exclude any identification of
22 the defendant as the perpetrator, including any in-court
23 identification of the defendant, is therefore denied.

24 Any other matters we need to address before we recess
25 for lunch?

1 MR. BULSA: No, sir, not from the state.

2 MR. McPHERSON: No, Your Honor.

3 THE COURT: All right. Now, have y'all -- Solicitor,
4 has there been any offers made to the defendant through Mr.
5 McPherson?

6 MR. BULSA: There had been a couple of weeks ago. He
7 rejected it, and now there is no offers.

8 THE COURT: All right. Court is in recess until
9 2:00 o'clock.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. Any matters we need to address
12 before the jury is panel is brought around?

13 MR. BULSA: Not from the state.

14 MR. McPHERSON: No, Your Honor.

15 THE COURT: All right. Bring them around.

16 How is the name pronounced -- Ijioma?

17 MR. BULSA: Ijioma.

18 THE COURT: Ijioma? So the indictment -- I assume the
19 indictments are incorrectly spelled.

20 MR. BULSA: I didn't notice that, Your Honor.

21 THE COURT: You didn't look at the indictments?

22 MR. BULSA: I did, but I didn't notice the
23 misspelling. There's no "O" after the "M". This one is
24 correct.

25 (The following takes place in the presence of the jury

Jury qualification

1 venire.)

2 THE COURT: Good afternoon, ladies and gentlemen.

3 We are ready to begin with jury selection in the first
4 case that's going to require some of your participation.

5 And the title of the case is the State vs. Robert Young.

6 When a person is brought into this court and accused
7 of a crime, that's accomplished by way of a document called
8 an indictment. And an indictment is the charging papers
9 similar to a warrant, but it simply sets forth the charge
10 that has been brought against an individual who is referred
11 to as the defendant.

12 Now, in this particular case we have three separate
13 and distinct criminal offenses, although they are alleged
14 to have arisen out of one particular event or course of
15 events which the state alleges occurred on or about
16 November the 2nd of 2006.

17 And by way of these indictments the state has accused
18 the defendant, who is Robert Young, of having committed the
19 crimes of armed robbery, assault and battery with intent to
20 kill and grand larceny.

21 By way of these indictments the state alleges that
22 Mr. Young did while armed with a deadly weapon or while
23 alleging either by actions or by words that he was armed
24 while using a representation of a deadly weapon, did take,
25 steal and carry away from the person or presence of one

Jury qualification

1 Dixon Ijioma by the use of force or violence or
2 intimidation, did take some goods or monies, being a
3 cellular telephone and some cash. And they allege that the
4 defendant took those items with the intention of
5 permanently depriving the owner of use and possession of
6 his property.

7 They also allege by way of a separate indictment that
8 he did commit an unlawful act of a violent injury upon the
9 person of Dixon Ijioma accompanied with malice aforethought
10 and that he did shoot Mr. Ijioma several times with an
11 intention of killing him.

12 And they further allege by way of an additional
13 indictment that Mr. Young did take, steal and carry away a
14 1990 Ford, excuse me, a 1994 Ford Crown Victoria automobile
15 valued at more than \$1,000 but less than \$5,000. And they
16 allege he took that vehicle from Mr. Ijioma with the
17 intention of depriving the owner of use and possession of
18 his property, alleging that he committed the crime of grand
19 larceny.

20 Now, as to each of those indictments and as to the
21 allegations and the charges contained therein the
22 defendant, Mr. Young, has entered a plea of not guilty. As
23 I indicated to you earlier, when a defendant enters a plea
24 of not guilty the burden is then upon the state because
25 they brought the charge to establish that person's guilt to

Jury qualification

1 the satisfaction of 12 jurors beyond a reasonable doubt
2 before any person could be found guilty of any crime the
3 state claims they committed.

4 And so we are going to be selecting 13 of you. There
5 will be 12 primary jurors and one additional juror who will
6 serve as an alternate juror. And by way of your
7 participation you're going to be called upon to listen to
8 the testimony that will be presented during the trial, to
9 consider any other evidence that might be introduced during
10 the trial.

11 At the trial's conclusion after you're instructed on
12 the law that's applicable in such a case the jury will go
13 back and begin deliberations. And in that deliberation
14 process you'll examine all the evidence. From that
15 evidence you'll decide what you believe to be the true
16 facts as they relate to these allegations.

17 After you decide those facts, you'll then apply the
18 law that I will have provided you. And you will determine
19 whether or not the evidence in the case has established
20 Mr. Young's guilt beyond a reasonable doubt as to each of
21 these separate charges. And of course you will indicate
22 that decision by way of a verdict form.

23 In a given case your verdicts may be the same where
24 you have more than one charge, and it may be different.
25 That of course will depend upon your determination of fact

Jury qualification

1 from the evidence and then your application of the law that
2 I will have provided you.

3 Now, before we can begin with jury selection I've got
4 some questions that I'm going to ask you. And the purpose
5 of these questions is to determine if there is some reason
6 why any one of you jurors should not be selected to
7 participate in the trial of this particular case.

8 So as these questions are asked if they apply to you,
9 you need to respond to them, I'm going to ask that you
10 simply please stand, and I'll address those matters with
11 you individually in the event that should become necessary.
12 But in the end what we're looking for is a jury who can
13 decide the case who is fair and impartial and has no reason
14 why you cannot be fair and impartial.

15 Now, first of all, as I told you, the defendant, that
16 is the person who is accused of having committed each of
17 these crimes, is Robert Young.

18 Mr. Young, if you will, stand and face the jury panel
19 so that they may see who you are. This is Mr. Young, the
20 defendant.

21 (Whereupon, the defendant stood.)

22 THE COURT: Seated at the defense table with Mr. Young
23 is William McPherson. Mr. McPherson is his lawyer. He'll
24 be assisting him in the trial of this case.

25 The person who is alleged to have been the victim of

Jury qualification

1 each of these events or crimes is Dixon Ijioma.

2 Mr. Ijioma, if you will, stand and face the jury panel
3 so they may see who you are.

4 (Whereupon, the victim stood.)

5 THE COURT: Thank you. Be seated.

6 And presenting the case on behalf of the state is
7 Derrick Bulsa and Lauren Barnwell who are assistant circuit
8 solicitors for the 7th Judicial Circuit.

9 Now, I'm going to recite a list of potential witnesses
10 in addition to Mr. Ijioma and Mr. Young. And the reason
11 I'm reciting the list is because I need to find out if any
12 juror has any connection with anybody involved in this
13 case.

14 And that would include Mr. Young and Mr. Ijioma. That
15 would also include any members of their respective
16 families. That would also include the lawyers involved in
17 the trial of the case; and that would also include the
18 following respective witnesses.

19 So if you know any of these people or you are
20 connected with them in any fashion, please stand as their
21 name is called so that we can determine what that
22 relationship is.

23 So in addition to Mr. Young and Ijioma we also have
24 Edward Patrick, Shirley Rice, Sharon Brown, Ramona
25 Fernanders, Mary Quick, Gina Padgett, Robert Talanges,

Jury qualification

1 George Clark, Thomas Heyde, Joseph Bohon, David Hogsed,
2 Randy Bogan, Jason Bryant, Allen Wood, William Gary, Janice
3 Bryson, Margaret Greer, Maryann Shehan, George Nicholson,
4 Giovanni Paparo, Thyeim Miller, Natesha Miller, Jacquelyn
5 Miller, Robert Rosenberg, Hugh Murphy, Manual Ortuno, Amy
6 Stevens, Selena Kinard, Eddie Butler, Sheree Brown, Betty
7 Butler, Richey McSwain, James Armstrong, Dilena Young,
8 Charlita Atchison and Lisa Johnson.

9 Are there any additional potential witnesses for the
10 state?

11 MR. BULSA: No, Your Honor.

12 THE COURT: For the defendant?

13 MR. McPHERSON: No, Your Honor.

14 THE COURT: All right. So anybody who is connected or
15 knows any of those people, I would ask that you please
16 stand. That includes the lawyers too. It would also
17 include the lawyers employed in or any other employee in
18 the circuit solicitor's office, as well as the Spartanburg
19 County Public Defender's Office.

20 So if you know anybody who has been specifically
21 identified or anybody else who might be employed in those
22 departments, I would ask that you please stand.

23 All right. I'm going to start over here, and I'll
24 work across the room.

25 If you will, give me your name and juror number

Jury qualification

1 please, sir, and tell me how that question relates to you.

2 JUROR NO. 59: Marion Grambling, Juror No. 59. I'm
3 related to one of them.

4 THE COURT: Related to who?

5 JUROR NO. 59: Richey McSwain.

6 THE COURT: Richey McSwain. And how are you related
7 to Mr. McSwain?

8 JUROR NO. 59: My brother-in-law.

9 THE COURT: He is your brother-in-law. And would that
10 have any bearing whatsoever upon your decision in this case
11 if you were asked to serve as a juror?

12 JUROR NO. 59: I don't think so.

13 THE COURT: Would you be uncomfortable in any fashion
14 because of that connection? I mean, would you feel like
15 you had to take sides or whatever?

16 JUROR NO. 59: No, sir.

17 THE COURT: No. So you could put aside that
18 connection and base your verdict solely upon the evidence
19 received during the trial.

20 JUROR NO. 59: Yes, sir.

21 THE COURT: All right. Thank you. Be seated. That's
22 Mr. -- excuse me. Juror No. 59.

23 All right. Yes, ma'am.

24 JUROR NO. 53: Rhonda Funderburk, No. 53.

25 THE COURT: Who do you know?

Jury qualification

1 JUROR NO. 53: I know an Edward Patrick. I don't know
2 if it's the same Edward. I knew him as Ed Patrick. I
3 don't know if it's the same person. I used to work with
4 him at Milliken years ago. And I also know a William Gary
5 if it's the same person. His mother works at Milliken.

6 THE COURT: All right. William Gary is a detective
7 with the Spartanburg County Sheriff's Department. Does
8 that help you any?

9 JUROR NO. 53: I know his mother.

10 THE COURT: You know his mother. All right. And
11 would that fact or that connection have any bearing upon
12 your decision in this case?

13 JUROR NO. 53: No, sir.

14 THE COURT: And the other person was Edward Patrick?

15 JUROR NO. 53: Edward Patrick. I think that's the
16 first name you read.

17 THE COURT: It was. What's Mr. Patrick's connection
18 with the case, Mr. Bulsa?

19 MR. BULSA: He would be the first person that saw the
20 victim after the crime. He was working at a bar on Whitney
21 Road.

22 THE COURT: And how old would he be?

23 MR. BULSA: Thirty-seven or 38.

24 THE COURT: It's not the same one?

25 JUROR NO. 53: It's not the same one. This one is

Jury qualification

1 retired.

2 THE COURT: Okay. Thank you, ma'am. You may be
3 seated.

4 Yes, ma'am.

5 JUROR NO. 91: Juror No. 91, Cynthia Kerns. I'm like
6 her. I don't know if it's the person I know, but Charlita.
7 Atchison.

8 THE COURT: Charlita Atchison.

9 Okay. Mr. McPherson, give me some more information
10 about Ms. Atchison.

11 MR. MCPHERSON: She works for the taxi company.
12 What's the name of it?

13 THE COURT: She works for the Yellow Cab Company?

14 MR. MCPHERSON: Well, it's not called Yellow Cab.
15 It's called, has a different name.

16 THE COURT: Well, what's it called?

17 JUROR NO. 91: Is her grandfather Charles Atchison?

18 MR. BULSA: Yes. She is related to Mr. Atchison.

19 THE COURT: All right. She is related to Charles
20 Atchison. Would that be the same one?

21 JUROR NO. 91: Yes, that's the same one.

22 THE COURT: All right. And what's her connection with
23 you?

24 JUROR NO. 91: Nothing. I just dealt with her with
25 real estate. That's all.

Jury qualification

1 THE COURT: Would it have any bearing upon your
2 decision in the case?

3 JUROR NO. 91: No, sir.

4 THE COURT: Okay. Thank you. And you are Juror 91.
5 Yes, sir.

6 JUROR NO. 71: Juror No. 71. I know Detective Gary,
7 as well as Raymond Gist, Ken Garrett and Judge Hayes.

8 THE COURT: All right. Well, they are not on the
9 list, but Mr. Gary is. How do you know Mr. Gary?

10 JUROR NO. 71: Just from the community. I live up
11 near the Chesnee area. And from the high school.

12 THE COURT: Okay. And would it have any bearing
13 whatsoever upon your decision in this case if you were
14 seated as a juror?

15 JUROR NO. 71: No, Your Honor.

16 THE COURT: All right. Thank you. You may be seated.
17 Yes, ma'am.

18 JUROR NO. 142: I'm Juror 142, Carolyn Sparks. And I
19 know William Gary as well.

20 THE COURT: And how do you know him?

21 JUROR NO. 142: I'm a family friend.

22 THE COURT: And would it have any bearing upon your
23 decision in this case?

24 JUROR NO. 142: No, sir.

25 THE COURT: Okay. Thank you. You may be seated.

Jury qualification

1 All right. Is there any member of the jury panel who
2 has ever been -- well, let's do it this way. Has any
3 member of the jury panel or any member of your immediate
4 family -- and I'm going to limit an immediate family member
5 for the purpose of this question to a parent, a spouse, a
6 child or a sibling -- a parent, a spouse, a child or a
7 sibling. I need to know if you or any of those members of
8 your immediate family are now or have ever been employed as
9 any type of law enforcement officer, whether it be a deputy
10 sheriff, a city, a town, a municipal law enforcement
11 officer, a detention facility officer, a department of
12 corrections officer, military police officer, F. B. I., C.
13 I. A., state law enforcement division. What else? Any
14 kind of law enforcement officer -- probation officer. If
15 you or -- this is kind of like that movie, you know, to
16 tell truth. People get up and sit down. And you wonder
17 which one is going to stay and which one is going to sit
18 down. I've got some standing and sitting down.

19 But I need to know if anybody is employed, has ever
20 been employed by a law enforcement agency or you have an
21 immediate family member who has that type of employment.
22 If you have, stand.

23 So I'll start on the end. I'll work my way across by
24 row. And then I'll jump to the other side. Give me your
25 name and juror number, please, sir, and then tell me how

Jury qualification

1 that question relates to you.

2 JUROR NO. 169: Philip Ewing, Juror 169. I was
3 military police in the United States Navy for four years,
4 investigator.

5 THE COURT: You said 169 was your number?

6 JUROR NO. 169: Yes, sir.

7 THE COURT: Okay. All right. Thank you. You may be
8 seated.

9 Yes, ma'am.

10 JUROR NO. 18: Linda Blanton, No. 18. My
11 father-in-law was a detective for Spartanburg County,
12 Willie Blanton, but he's passed away.

13 THE COURT: Okay.

14 JUROR NO. 18: I don't know if that would count.

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

16 Yes, ma'am.

17 JUROR NO. 12: Sandra Belch, Juror 12. I worked for
18 the Spartanburg County Sheriff's Department in criminal
19 records for ten years, but that's been back in the 70's.

20 THE COURT: All right. Thank you. Be seated.

21 Yes, sir.

22 JUROR NO. 173: Kenneth Price, Juror No. 123. My son
23 is presently a member of the transportation police.

24 THE COURT: All right. Thank you, sir.

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 33: Cheryl Cooper, Juror 33. My son is
2 presently employed as a law enforcement officer.

3 THE COURT: Where?

4 JUROR NO. 33: Greer.

5 THE COURT: All right. Thank you. Be seated.

6 Yes, sir.

7 JUROR NO. 156: Thomas Watson, Juror 156. And my
8 father was a military police officer. He is now deceased.

9 THE COURT: Thank you. Be seated.

10 I'll start on the front row here.

11 Yes, ma'am.

12 JUROR NO. 10: Debra Bates, No. 10. My daughter used
13 to work for Northside Correctional.

14 THE COURT: All right. Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 53: Rhonda Funderburk, No. 53. My father
17 worked for the city of Lagrange and Georgia police. And it
18 was back in the 60's.

19 THE COURT: Okay. Thank you. Be seated.

20 Yes, ma'am.

21 JUROR NO. 1: Juror No. 1, Loucinda Allgood. I worked
22 for the department of youth services.

23 THE COURT: Thank you. Be seated.

24 Yes, sir.

25 JUROR NO. 73: Juror No. 73. My stepson currently is

Jury qualification

1 a Mauldin police officer.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 164: Dana Wood, Juror No. 164. And my
5 brother was with the Spartanburg County Sheriff's Office.

6 He's no longer there.

7 THE COURT: What was your brother's name?

8 JUROR NO. 164: Kevin Lanford.

9 THE COURT: All right. Thank you. Be seated.

10 Next row. Yes, ma'am.

11 JUROR NO. 84: Carolyn James. My nephew is David
12 Hall, City of Spartanburg, city.

13 THE COURT: Tell me your number, please, ma'am.

14 JUROR NO. 84: 84.

15 THE COURT: And your nephew works at the city of
16 Spartanburg?

17 JUROR NO. 84: David Hall.

18 THE COURT: All right. Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NO. 91: Juror No. 91, Cynthia Kerns. J. L.
21 Hall, nephew, City of Spartanburg.

22 THE COURT: All right. Thank you. Be seated.

23 Yes, ma'am.

24 JUROR NO. 116: Tracy Nutt, Juror No. 116. I worked
25 for the Greenville County Sheriff's Office between 1995 and

Jury qualification

1 2000.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 110: Cindy Moore, 110. My brother is a
5 former officer with the Hanahan police department and
6 Charleston County Sheriff's Department.

7 THE COURT: Thank you, ma'am. Be seated.

8 Next row.

9 JUROR NO. 71: Gene Harris, Juror No. 71. My father
10 was a police officer in Illinois and my daughter was a
11 detention officer for Spartanburg County.

12 THE COURT: Thank you. Be seated.

13 Yes, sir.

14 JUROR NO. 96: Eric Lichtenberg, Juror No. 96. Law
15 enforcement in the Air Force from '74 to '79.

16 THE COURT: Thank you, sir.

17 Yes, sir.

18 JUROR NO. 52: Juror 52. My brother works for the
19 State of Virginia Department of Corrections.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NO. 142: Carolyn Sparks, 142. My husband works
23 for probation and parole services.

24 THE COURT: In Spartanburg?

25 JUROR NO. 142: Yes, sir.

Jury qualification

1 THE COURT: All right. Thank you. Be seated.

2 Yes, sir.

3 JUROR NO. 16: Anthony Blackwell. My father was a
4 Spartanburg County police officer. And No. 16.

5 THE COURT: He worked for the sheriff's department?

6 JUROR NO. 16: Yes, sir.

7 THE COURT: Now or in the past?

8 JUROR NO. 16: He's passed away now.

9 THE COURT: Okay. Thank you. Be seated.

10 Yes, sir.

11 JUROR NO. 152: David Varner, Juror No. 152. My
12 mother retired from the South Carolina Department of
13 Corrections and my wife used to work for the South Carolina
14 Department of Corrections.

15 THE COURT: Thank you. Be seated.

16 Yes, sir.

17 JUROR NO. 30: Paul Champion, No. 30. My brother
18 works at the Federal Bureau of Prisons in Florida.

19 THE COURT: All right. Thank you, sir.

20 Anyone else need to respond to that question,
21 connected with law enforcement?

22 (No response.)

23 THE COURT: Is there any member of the jury panel who
24 has a family member who is presently -- who presently has a
25 case pending that the 7th Judicial Circuit Solicitor's

Jury qualification

1 Office is handling for you or that family member? If so,
2 please stand.

3 (No response.)

4 THE COURT: Has any member of the jury panel or any
5 member of your immediate family ever had a case? Either
6 you or that family member was assisted by the solicitor or
7 was being prosecuted, that is was on the opposite side.
8 You or a family member ever been assisted by the solicitor
9 or prosecuted by the solicitor? If so, please stand.

10 (No response.)

11 THE COURT: Has any member of the jury panel ever been
12 a witness who was called to testify?

13 Yes, ma'am.

14 JUROR NO. 18: You said solicitor?

15 THE COURT: Yes, ma'am. Which question are you
16 responding to now?

17 JUROR NO. 18: Ever used a solicitor.

18 THE COURT: Ever been assisted by the solicitor. Yes,
19 ma'am. Give me your number, please.

20 JUROR NO. 18: No. 18.

21 THE COURT: All right. Tell me how that question
22 relates to you.

23 JUROR NO. 18: It has been about 29 years ago.

24 THE COURT: Twenty-nine years ago?

25 JUROR NO. 18: Yes, sir. Does that matter?

Jury qualification

1 THE COURT: No, ma'am. I mean, I want you to tell me
2 what it was. I mean I meant -- let me say that.

3 JUROR NO. 18: Been arrested.

4 THE COURT: Well, I need to know what it was about.

5 JUROR NO. 18: May I come up there?

6 THE COURT: Yes, ma'am, you certainly may.

7 (Bench conference held off the record with juror and
8 counsel.)

9 THE COURT: Anyone else wish to respond to that
10 question or need to respond to the question?

11 Yes, ma'am. Do you want to tell me from there or do
12 you want to come up here?

13 UNIDENTIFIED JUROR: It don't matter.

14 THE COURT: Either one. If it's easier for you to
15 stay there, you can stay there.

16 (Bench conference held off the record with an
17 unidentified juror and counsel.)

18 THE COURT: Anyone else?

19 Yes, ma'am.

20 (Bench conference held off the record with an
21 unidentified juror and counsel.)

22 THE COURT: Anybody else?

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 is a member of any organizations which we sometimes

Jury qualification

1 characterize as law enforcement support or victims
2 advocates or victim support organizations? They might
3 include those like Mothers Against Drunk Drivers, Citizens
4 Against Violent Crime, the honorary sheriffs' association,
5 the troopers' association, a neighborhood watch association
6 or any other similar type of organization. I need to know
7 if you are a member of those types of organizations or you
8 contribute time or money to any of those types of
9 organizations. If that be the case, I would ask that you
10 please stand.

11 All right. I'll ask your name and your number. Tell
12 me what organizations you're a member of or you contribute
13 time or money to.

14 Yes, sir.

15 JUROR NO. 156: Thomas Watson, Juror 156. And I make
16 a yearly contribution to the South Carolina Troopers
17 Association.

18 THE COURT: Okay. Thank you. Be seated.

19 Yes, sir.

20 JUROR NO. 59: Marion Grambling, Juror No. 59. I give
21 to the troopers' association and am a member of the
22 neighborhood watch, and I donate time of my company to Safe
23 Homes.

24 THE COURT: Okay. Thank you, sir.

25 Yes, sir.

Jury qualification

1 JUROR NO. 119: Juror No. 119, Scott Payne. I
2 contributed to the troopers' association in the past.
3 Money.

4 THE COURT: Thank you. Be seated.

5 Yes, ma'am.

6 JUROR NO. 10: Debra Bates, No. 10. I contribute to
7 the foundation, Spartanburg Regional.

8 THE COURT: What, now?

9 JUROR NO. 10: Foundation.

10 THE COURT: Spartanburg County Foundation?

11 JUROR NO. 10: Spartanburg Regional.

12 THE COURT: Spartanburg Regional. Okay. Thank you.

13 Yes, ma'am.

14 JUROR NO. 133: No. 133, Lorie Rothenburg. And I
15 contribute to the South Carolina Troopers Association.

16 THE COURT: Thank you, ma'am.

17 JUROR NO. 63: Juror 63. And I contribute to the
18 South Carolina Troopers Association. I'm a member of the
19 neighborhood watch where I live and also against -- Mothers
20 Against Drunk Drivers.

21 THE COURT: All right. Thank you, ma'am.

22 Yes, ma'am.

23 JUROR NO. 91: Juror No. 91, Cynthia Kerns. South
24 Carolina State Troopers.

25 THE COURT: Thank you.

Jury qualification

1 Yes, sir.

2 JUROR NO. 52: Fifty-two. Troopers Association.

3 THE COURT: Thank you.

4 Is there any member of the jury panel or any member of
5 your immediate family -- again, those immediate family
6 members are parent, spouse, child or sibling -- you or an
7 immediate family member has ever been the victim of a crime
8 that might be classified as a violent crime? That would
9 include murder, manslaughter, burglary, armed robbery,
10 criminal sexual conduct, criminal domestic violence of a
11 high and aggravated nature or any other similar type of
12 crime that might be considered a violent offense. I need
13 to know if you or a family member has ever been the victim
14 of such an offense. If so, please stand.

15 All right. And those who are standing, I'm going to
16 ask you to tell me whether it was you or a family member
17 that was the victim, and then I'll ask you what the nature
18 of the offense was.

19 If you want to respond to the question where you are,
20 that's fine. If you prefer to come down here, you can come
21 down here, and I'll discuss it with you privately.

22 Okay. I'll just start over here and work my way
23 across. If you want to come down here, do so. If you
24 don't, just tell me where you are.

25 You're Juror No. 18.

Jury qualification

1 JUROR NO. 18: Yes, sir. We already discussed it.
2 THE COURT: Yes, ma'am, we did. That's Juror No. 18.
3 Yes, ma'am.
4 JUROR NO. 11: Peggy Bayne, Juror No. 11. My
5 stepfather was robbed at gunpoint and he -- no one was ever
6 caught.
7 THE COURT: And is there anything about that event or
8 that experience that would affect your judgment in this
9 case?
10 JUROR NO. 11: No.
11 THE COURT: Can you answer that out loud?
12 JUROR NO. 11: No, sir.
13 THE COURT: All right. Thank you, ma'am. You can
14 answer it out loud and the answer is no?
15 JUROR NO. 11: Yes. That's right.
16 THE COURT: Okay. Thank you.
17 Yes, ma'am.
18 JUROR NO. 87: I'm Lee Ann Johnston, Juror No. 87.
19 And our restaurant, Fuddruckers, in Anderson is currently
20 involved in a robbery, gunshot, that shot our manager. And
21 our company is a defendant in the case.
22 THE COURT: And is there anything about that event
23 that would affect your judgment in this case?
24 JUROR NO. 87: It could.
25 THE COURT: Well, I guess anything is possible. They

Jury qualification

1 claim that in Roswell, New Mexico, aliens are still coming
2 back. But what I need to know is do you think there's a
3 reasonable probability that that experience is going to
4 cloud your ability to be fair and impartial in this case.

5 JUROR NO. 87: I believe it could, yes, sir.

6 THE COURT: Okay. We'll excuse Juror No. 87 from
7 participation in this case. But don't leave yet.

8 Yes, ma'am.

9 JUROR NO. 35: Pamela Coppes, Juror No. 35. My father
10 was involved in an assault where he was the victim over 25
11 years ago; my first husband was killed by a drunk driver;
12 and my sister was robbed at gunpoint in Jamaica.

13 THE COURT: And would any of those events or
14 experiences have any impact upon your decision in this
15 case?

16 JUROR NO. 35: No, sir.

17 THE COURT: All right. Thank you, ma'am. You may be
18 seated.

19 Yes, sir.

20 JUROR NO. 59: No. 59, Marion Gramling. I was
21 burglarized.

22 THE COURT: Would that have any bearing upon your
23 decision in this case?

24 JUROR NO. 59: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Ms. Bates.

2 JUROR NO. 10: Debra Bates, No. 10. My home was
3 broken into four times, plus I have a brother that was
4 charged with breaking and entering.

5 THE COURT: And would either of those facts have any
6 bearing upon your decision?

7 JUROR NO. 10: No, sir.

8 THE COURT: Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 95: My name is Peggy Landers, Juror No. 95.
11 I was robbed while living in Israel. And I was in the
12 apartment but there was -- it was burglarized while I was
13 there.

14 THE COURT: Would that have any bearing upon your
15 decision in this case?

16 JUROR NO. 95: No.

17 THE COURT: Thank you. Be seated.

18 Ms. Kerns.

19 JUROR NO. 91: Yes. I was a victim of a criminal
20 domestic violence, and I was the victim. It was my
21 exhusband. And I had head injuries from the back. And my
22 sister was hit by a drunk driver. It was less than a year
23 apart twice.

24 THE COURT: And would either of those facts have any
25 bearing upon your decision in this case?

Jury qualification

1 JUROR NO. 91: No, sir.

2 THE COURT: Thank you. Be seated.

3 MR. MCPHERSON: I'm sorry. What was her name?

4 THE COURT: Ninety-one.

5 Yes, ma'am.

6 JUROR NO. 103: 103. Our home at one time was
7 burglarized.

8 THE COURT: And would that have any affect upon your
9 judgment in this case?

10 JUROR NO. 103: No, sir.

11 THE COURT: Thank you. Be seated.

12 Yes, ma'am.

13 JUROR NO. 43: Forty-three. My house was broken into.

14 THE COURT: Would that have any bearing upon your
15 decision in this case?

16 JUROR NO. 43: No.

17 THE COURT: Thank you. Be seated.

18 Yes, sir.

19 JUROR NO. 101: Milton Lownes, 101. I was struck when
20 I was a manager. An employee struck me. And they charged
21 him with aggravated assault.

22 THE COURT: Would that have been any bearing upon your
23 decision?

24 JUROR NO. 101: No.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Yes, ma'am.

2 JUROR NO. 7: Yes. My daughter was a victim of
3 assault and battery of a high and aggravated nature.

4 THE COURT: And you are?

5 JUROR NO. 7: Laura Bailey, Juror No. 7.

6 THE COURT: Seven. Would that have any bearing upon
7 your decision?

8 JUROR NO. 7: No.

9 THE COURT: Thank you. Be seated.

10 Next.

11 JUROR NO. 99: My name is Veronica Littlejohn, No. 99.
12 My brother was killed during a home invasion.

13 THE COURT: He was killed what?

14 JUROR NO. 99: Wife. Home invasion.

15 THE COURT: Okay. And would that event have any
16 bearing upon your decision in this case?

17 JUROR NO. 99: No, sir.

18 THE COURT: Thank you. Be seated.

19 Yes, sir.

20 JUROR NO. 52: Fifty-two. My mother and sister were
21 assaulted in a break-in.

22 THE COURT: Would that have any bearing upon your
23 decision?

24 JUROR NO. 52: No, sir.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Yes, ma'am.

2 UNIDENTIFIED JUROR: Can I come up there?

3 THE COURT: Oh, yes, ma'am. Sure.

4 (Bench conference held off the record with juror and
5 attorneys.)

6 THE COURT: Anyone else?

7 All right. Now, I have told you what the basic facts
8 are that relate to these cases.

9 Now, I don't know anything the facts of the case. I'm
10 just telling you what I read in these indictments. But, as
11 you know, the state claims that Mr. Young committed the
12 crime of armed robbery and assault and battery with intent
13 to kill and grand larceny.

14 Is there anything about the nature of these charges
15 themselves or the little facts or information you've heard
16 about the facts that would have any bearing upon your
17 decision in the case?

18 In other words, is there any juror that would have any
19 difficulty in being fair and impartial based simply upon
20 the nature of the case, what the case is about? If you
21 think you cannot be fair and impartial based upon the
22 nature of the case, I would ask that you please stand.

23 (No response.)

24 THE COURT: Has any member of the jury panel already
25 made up your mind or formed an opinion as to what you think

Jury qualification

1 the ultimate outcome ought to be in this case based upon
2 what you've heard up to this point or based upon any other
3 consideration? I just need to know if you've already kind
4 of decided what the verdict ought to be. If so, please
5 stand.

6 (No response.)

7 THE COURT: Does any juror know of any reason
8 whatsoever why you feel you could not be fair and impartial
9 if you were called upon to serve as a juror in this
10 particular case? If so, please stand. Do you have any
11 reason whatsoever why you could not be fair and impartial?

12 (No response.)

13 THE COURT: Any other questions requested by the
14 state?

15 MR. BULSA: No, Your Honor.

16 THE COURT: By the defendant?

17 MR. MCPHERSON: No, Your Honor.

18 THE COURT: All right. Draw us a jury, please, ma'am.

19 Your names are selected randomly, all of your names.
20 And as your name is called you're going to be asked to come
21 forward.

22 If you're towards the wall, you can just come around
23 the tables. If you're towards the center, come up the
24 center aisle.

25 I need for you to come forward. If you'll just stand

Jury qualification

1 about two steps past where the desks where the lawyers are
2 seated, each side has an opportunity to have you seated for
3 service in the case or to excuse you from service in this
4 particular case.

5 So as you come forward if either lawyer asks that you
6 be excused, just go back and have a seat where you are now.
7 If both agree to have you seated for service in the case,
8 you will be having a seat over there in the jury box to
9 your right and to my left.

10 So simply please come forward as your name is called,
11 and you will be instructed if you're to be seated for
12 service in the case or excused from service in the case.

13 (Whereupon, a jury was impanelled.)

14 THE COURT: Those jurors who were selected, I'm going
15 to ask you to please go with a bailiff to a jury room. And
16 I'll bring you back in just a few minutes to begin with the
17 trial of the case.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Are there any matters to be addressed
21 regarding jury selection by the state?

22 MR. BULSA: No, Your Honor.

23 THE COURT: By the defendant?

24 MR. MCPHERSON: No, Your Honor.

25 (Whereupon, the remaining members of the jury venire

1 were excused.)

2 (Photographs marked State's Exhibits Nos. 6 through 17
3 for Identification; map marked State's Exhibits Nos. 18 and
4 19 for Identification; map marked State's Exhibit No. 20
5 for Identification.)

6 THE COURT: All right. Bring the jury in, and ask Mr.
7 Price to take the foreperson's seat.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: All right. Ladies and gentlemen, we are
11 ready to begin with the trial.

12 And, Mr. Price, I'm going to ask you to serve as the
13 foreperson of the jury. And as the foreperson you'll have
14 three specific duties that none of the other jurors will
15 have.

16 Number one, you'll be asked to serve as the
17 spokesperson for the jury. And so if during the trial
18 something needs to be brought to my attention, you or a
19 fellow juror has some difficulty or problem or question, if
20 you'll let the bailiff know, he'll let me know, and I'll
21 address it.

22 Secondly, you're going to be asked to preside over the
23 jury deliberations when that time comes at the end of the
24 trial after all of the evidence has been received and I
25 have given you the instruction on the law.

1 When you go back to begin jury deliberations you will
2 preside over that process in the jury room simply to ensure
3 that those deliberations are carried out in some orderly
4 fashion.

5 And, thirdly, you'll be asked to write the verdicts or
6 the decisions of the jury. You'll do that on a verdict
7 form that I'll provide you when you go back to deliberate
8 on which you will indicate the jury's unanimous decision as
9 to each of the separate offenses.

10 Now, the foreperson has those specific duties that I
11 have just indicated. That doesn't mean that he's any more
12 important than any of you other jurors, because the
13 decision of a jury is the unanimous consensus opinion of
14 all 12 jurors. And so all of you will have an equal say
15 and an equal vote in what the ultimate decisions will be in
16 this case.

17 Someone simply has to be delegated those
18 responsibilities that I have just indicated, and I have
19 delegated those to Mr. Price in appointing him as the
20 foreperson. But all of you jurors are equally important so
21 far as the ultimate decisions are concerned, because the
22 verdicts have to be unanimous. All 12 of you must be in
23 agreement.

24 Now, Ms. Moore, you've been selected as an alternate
25 juror. And the function of an alternate is to take the

Jury sworn

1 place of one of the original 12 if during the trial one of
2 these original 12 cannot continue to serve for some reason.
3 And if that's the case, then you would be called upon to
4 take that person's place. In that event you would become
5 the 12th juror. And that being the case, you would also
6 participate in the jury deliberations.

7 If however when the time comes for jury deliberations
8 all of the original 12 are able to participate your service
9 ends. You won't be able to participate any further,
10 because the verdicts of the jury are that of 12. No more
11 than 12 are allowed to participate in that deliberation
12 process.

13 But it is important that you pay just as careful
14 attention as we ask of all of the jurors in the case
15 because it does occur from time to time for one reason or
16 another one of the original 12 may be unable to continue.
17 In that event you become the 12th.

18 So we do appreciate your participation as an
19 alternate, just as we appreciate the participation of all
20 of you jurors who have been selected for the purpose of
21 deciding the verdicts in this particular case.

22 You may swear the panel.

23 (Whereupon, the jury was duly sworn.)

24 THE COURT: All right. Ladies and gentlemen, as you
25 know, you have been selected to decide the verdicts in the

1 case of the State vs. Robert Young.

2 Mr. Young has been accused by the prosecutor with
3 having committed three separate and distinction offenses
4 arising out of one event that they allege occurred back on
5 November the 2nd of 2006.

6 By way of these indictments which I referred to prior
7 to your selection he is accused of having committed the
8 crime of armed robbery, assault and battery with intent to
9 kill and grand larceny. And the victim in each of the
10 cases is alleged to be Dixon Ijioma.

11 Now, as to the charges and as to the allegations the
12 defendant has entered a plea of not guilty. And, as I told
13 you, that plea of not guilty therefore places upon the
14 prosecutor the burden of proving the allegations that they
15 have made, the burden of proving each of the essential
16 elements of each crime they have alleged. And therefore
17 the burden is upon the state to establish the defendant's
18 guilt to the satisfaction of you 12 jurors beyond a
19 reasonable doubt before any verdict of guilty could be
20 returned as it relates to any of the charges.

21 Now, the indictments are legal documents. They're
22 official documents. They will be in the jury room because
23 it's on the back of the indictments, Mr. Foreman, that
24 you're going to be asked to indicate the jury's unanimous
25 decision as it relates to that particular charge.

1 But other than serving as the verdict form, they serve
2 no purpose so far as you jurors are concerned. In other
3 words, they're not evidence of anything. They're not proof
4 of anything. The state has to prove his guilt to these
5 charges beyond a reasonable doubt, and they do that by the
6 presentation of evidence during the trial of the case. And
7 so these are not in any way exhibits or proof of anything.

8 Now, as I say, the burden is on the state to establish
9 the defendant's guilt beyond a reasonable doubt, and so the
10 state will go forward first in its presentation of evidence
11 because they do have the burden of proof.

12 A defendant in a criminal trial does not have to prove
13 anything. He certainly doesn't have to prove that he's not
14 guilty because in some cases that would not even be
15 possible.

16 So while the state does have to present evidence
17 because they do have that burden of proof, a defendant does
18 not have to testify, doesn't have to call any witnesses,
19 doesn't have to produce any evidence. And should that be
20 the case, you can't hold that against him or consider it in
21 any way. You have to base your decision upon the evidence
22 that is received during the trial of the case.

23 Now, in a moment the lawyers are going to address you
24 in what are called opening statements. And there are two
25 occasions when lawyers are permitted to address the jury.

1 And that is at the beginning of the trial before any
2 evidence has been introduced and then again at the
3 conclusion of the trial after all of the evidence has been
4 received.

5 Now, keep in mind, as I just indicated, the evidence
6 comes in between the lawyers' opening and closing
7 statements. And so what the lawyers tell you in those
8 opening and closing statements is not to be considered by
9 you as evidence in the case because the lawyers aren't
10 witnesses to anything. They're not going to be telling you
11 anything they know about this case of their own personal
12 knowledge as witnesses will be. They're not going to be
13 placed under oath and testify from the witness stand. And
14 they won't be subjected to direct and cross-examination as
15 witnesses will be. And therefore what they tell you is not
16 evidence in the case. But you should listen to what they
17 have to say because those statements do serve a purpose.

18 The opening statements serve to provide you with a
19 basic understanding as to what this case is about from the
20 perspective of both the state and the defense. And it
21 establishes some context in which to place the evidence
22 that you'll be hearing and seeing shortly thereafter.

23 The closing statements occur after all of the evidence
24 has been received. And, again, those aren't evidence, but
25 it does permit the lawyers an opportunity to discuss with

1 you the evidence that you've seen and heard during the
2 trial of the case. And through that discussion each will
3 have an opportunity to try to persuade you or to convince
4 you that that evidence does or does not support a
5 particular decision. And, as I've stated, it's in between
6 the statements of the lawyers that we receive the evidence.

7 The state has the burden of proof. They go forward
8 first. And following that the defendant may testify or
9 present evidence if he elects or wishes to, but he's not
10 required to.

11 After everything has been presented to you, I will
12 then instruct you on the law that's applicable in the case.
13 And then you'll go back into the jury room. And you 12
14 jurors will be called upon through the exercise of good
15 judgment and common sense conscientiously applied to the
16 evidence in the case to decide what you believe to be the
17 true facts as they relate to these allegations in these
18 cases.

19 Then once you decide those facts, you will then apply
20 the law that I will have provided you. And you will make
21 the determination as to whether or not the defendant has
22 been proven guilty beyond a reasonable doubt as to each of
23 the separate offenses.

24 If he has, then your verdict is guilty. If he has
25 not, then your verdict would be not guilty as it relates to

Opening statements

1 that particular indictment.

2 And you have three indictments. And you'll be
3 considering those charges separately as to the facts and as
4 to the law. And so in this case, and in any given case
5 where you have more than one charge, your verdicts may be
6 the same as it relates to all of the indictments, or it may
7 be different. That will depend upon your determination of
8 fact and then your application of the law and then
9 ultimately your decision as to that charge.

10 It's important that you keep an open mind through the
11 course of the trial. In other words, you're not to begin
12 deciding the case until all of the evidence has been
13 received, until I've instructed you on the law and until
14 you've been asked to begin with your deliberations in the
15 case. That is the process that is designed for you 12
16 jurors to arrive at a fair and just decision in this case.

17 So I do want to thank you in advance for your
18 participation, as well as for your careful attention. I
19 would ask that you please give the lawyers your attention
20 now as they give you their opening statements.

21 Ms. Barnwell.

22 MS. BARNWELL: Thank you, Your Honor.

23 Ladies and gentlemen, Dixon Ijioma, or Dick as he's
24 referred to, moved here to the United States from Nigeria
25 in 2001.

Opening statements

1 He's been a taxi driver here in Spartanburg County
2 since 2004. And on November the 1st of 2006 around
3 10:30 at night he gets a phone call. He recognizes the
4 caller as a regular client, customer, passenger. They call
5 them fares. So he recognizes the regular fare. But he's
6 busy with another fare, another client-passenger. So he
7 can't go pick up that regular fare right then.

8 So a little time passes. It's an hour before
9 midnight, 11:00 o'clock to midnight area. And he gets a
10 call again -- again from the regular fare that had called
11 him earlier. He recognizes the caller. And he is done for
12 the night. At this point of the night, 11:30 or so, he's
13 finished.

14 But he knows the guy. He knows this guy well enough
15 to have previously given him his personal card with his
16 personal cell phone number on it. No. I need to get a
17 ride. So he goes over to Amos Street to a neighborhood
18 where he has picked the fare up many times before.

19 And, ladies and gentlemen, the evidence today is going
20 to prove to you that that regular fare, that regular
21 customer that Mr. Ijioma picked up that night, was the
22 defendant, Robert Young.

23 So he goes over to Amos Street where he's, like I
24 said, picked up the defendant many times before. He picks
25 him up. It's late at night. Protocol for Dixon is to

Opening statements

1 usually make a fare that late at night sit in the front
2 with him so he can keep an eye on him.

3 But he knows. He knows the defendant. He lets him
4 hop in the back with him. So off they go. They go to
5 their final destination, is Locust Court, again, a place
6 where Dixon has dropped the defendant off many times
7 before.

8 But this night, November 1st, they don't make it to
9 Locust Court because right before they make it to Locust
10 Court, right before that intersection of Locust Court and
11 Longview Drive, Dixon feels something slam into the back of
12 his head. And then he feels it again. And it's at that
13 point that he realizes he has been shot in the back of the
14 head two times, twice.

15 He slams on the brake, throws it in park, jumps out of
16 his cab and comes face to face with the defendant pointing
17 a gun in his face and demanding all of his money.

18 Well, Dixon throws him his wallet, throws him his cell
19 phone, runs from the cab, runs for his life, runs down the
20 street to the first place that's open, Mamasun's Bar, runs
21 into the bar.

22 Eddie Patrick is working that night. He is running
23 the karaoke that night. He helps him, gives him first aid,
24 gives him aid, calls the police, calls the ambulance. They
25 get there in time. They save Dixon Ijioma's life.

Opening statements

1 Now, at the end of this trial today, well, during this
2 trial you're going to hear from, you're going to hear this
3 story unfold from witnesses, investigators, police
4 officers. You're going to see evidence. You're going to
5 hear things.

6 And at the end of this trial we are going to ask you
7 to return verdicts of guilty for assault and battery with
8 intent to kill, armed robbery and grand larceny against
9 Robert Young for his actions on Dixon Ijioma.

10 My name is Lauren Barnwell. I'm an assistant
11 solicitor here in Spartanburg County. And along with
12 Deputy Solicitor Derrick Bulsa, we thank you in advance for
13 your time and your attention, and we thank you.

14 THE COURT: Mr. McPherson.

15 MR. MCPHERSON: My client is -- his defense is alibi.
16 He was over off Palisade Street. He's going to have some
17 witnesses come in here and testify that he had been hanging
18 out there all day long and all evening long, that he was
19 never out at their sight more than a few minutes and that
20 he didn't go home until about 1:00 or 1:45, 2:00 o'clock in
21 the morning.

22 So we are asking you -- we get -- our evidence comes
23 on last. So we're asking that you keep an open mind.
24 Don't form an opinion in this case until you've heard all
25 the evidence. Thank you very much.

Joseph Bohon
Direct examination by Mr. Bulsa

1 MR. BULSA: The state calls Detective Bohon.

2 JOSEPH BOHON, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BULSA

5 Q Detective, introduce yourself to the jury.

6 A My name is Joseph Bohon. I am a detective with the
7 Spartanburg County Sheriff's Office. I've worked at the
8 sheriff's office for seven years and been a detective for
9 the past four. And prior to that I worked two years at the
10 Department of Corrections.

11 Q And did you work this case?

12 A Yes, sir, I did.

13 Q Where was the first place you responded?

14 A Mamasun's Bar and Grill, Highway 221 in Whitney.

15 Q Okay. Detective, we're just going to go briefly into
16 what you're going to tell this jury. But let's first talk
17 about the locations of these areas.

18 If you would, look at State's Exhibit No. 18. Can you
19 identify that for us?

20 A It's a large map of the area and large surrounding
21 areas.

22 Q Okay. Is that, does that look like it's out of a map
23 book?

24 A Yes, sir, it does.

25 Q Spartanburg County?

Joseph Bohon
Direct examination by Mr. Bulsa

1 A Yes, sir, it does.

2 Q Does that show essentially most of the city of
3 Spartanburg?

4 A Yes, sir, it does.

5 Q Does it show the location where you would have
6 responded to?

7 A Yes, sir, it does.

8 MR. BULSA: Your Honor, I would move this into
9 evidence if I may.

10 MR. MCPHERSON: No objection.

11 THE COURT: It's admitted.

12 (Map marked State's Exhibit No. 18.)

13 Q Detective, if you would, State's Exhibit No. 18, if
14 you would, take that exhibit and highlight the area where
15 you would have responded.

16 (Pause.)

17 Q Okay. While you were at that location did you have
18 occasion to investigate anything that occurred around that
19 area?

20 A Yes, sir. I initially responded to the bar. The
21 scene at the bar consisted of -- at the time I arrived the
22 victim was already transported by E. M. S. to Spartanburg
23 Regional Hospital which is nearby.

24 Inside the bar at the door of the bar was a large
25 amount of blood the victim had ran to and bled out a lot.

Joseph Bohon
Direct examination by Mr. Bulsa

1 I ended up finding a blood trail from the actual bar
2 scene going down 221, going across 221 to where there was a
3 U-Haul place and the Nissan dealership across the street.
4 The blood trail led back across to an area of Longview
5 Drive. The blood trail ran towards Locust Court. However
6 it stopped short of Locust Court. It would have been
7 somewhere around Belmont, is where he stopped finally and
8 the blood dropped off.

9 Q And if you would, take that marker and circle the
10 area, just the general area, of where you were looking that
11 night and where your investigation led you.

12 (Pause.)

13 Q Now, let me show you State's Exhibit No. 19. Does
14 that enlarged portion of the map show the area that you
15 just marked on State's Exhibit 19?

16 A Yes, sir, it does.

17 Q Okay. Is that an accurate representation of that
18 portion?

19 A Yes, sir, it is.

20 MR. BULSA: Your Honor, the state would move State's
21 Exhibit 19 into evidence.

22 MR. MCPHERSON: No objection.

23 THE COURT: It's admitted.

24 (Map marked State's Exhibit No. 19.)

25 Q Even this larger blowup, would you highlight on that

Joseph Bohon
Direct examination by Mr. Bulsa

1 where Mamasun's would be and where the trail of blood led
2 you?

3 (Pause.)

4 Q Okay.

5 A Let me see that again.

6 Q I show you State's Exhibit 19. From the jury
7 perspective, what are we talking about? Okay. Or point
8 out to the jury. Do you see Spartanburg Regional Medical
9 Center? Show us the location.

10 A This little triangle right here, that's going to be
11 the bar scene right there. And the blood trail kinda goes
12 down through here and the bridge --

13 THE COURT: Excuse me just a minute.

14 You've got your back to the court reporter, and so
15 she's having a difficult time hearing what you have to say.

16 So you need to use the microphone, or you can stand up
17 and go stand out there next to the machine and look back.

18 MR. BULSA: Thank you, Your Honor.

19 (Whereupon, the witness left the stand.)

20 Q Make sure you speak up, okay, so the court reporter
21 and the jury can hear you?

22 A Okay. This right here is going to be the bar scene
23 right here. The trail goes down right through here, which
24 is 221, onto Longview, up to around Belmont right here.

25 Q Okay. While you're standing there, did you learn

Joseph Bohon
Direct examination by Mr. Bulsa

1 where the defendant resided?

2 A Up here at Longview and Locust. Actually, she lives
3 on Locust Court, third house on the right.

4 Q Okay. All right. You can have a seat.

5 (Whereupon, the witness returned to the stand.)

6 Q If you would now look back to State's Exhibit No. 18,
7 the large map. Did your investigation take you anywhere
8 else in the city of Spartanburg?

9 A Yes, sir. Later our investigation took us back to a
10 location where the cab driver was called from and actually
11 a location where the vehicle was found dumped at.

12 Q Okay. And what location was that?

13 A It was on Amos Street.

14 Q Is that area shown in State's Exhibit No. 18?

15 A Yes, it is.

16 Q If you would, draw a circle around the area in
17 question there.

18 (Pause.)

19 Q Okay. Let me show you what's been marked State's
20 Exhibit No. 20. Does that show the area that you
21 identified in State's Exhibit 19?

22 A Yes, sir. It's an enlarged photo of it.

23 Q Okay. So you could see?

24 A Yes, sir.

25 MR. BULSA: Your Honor, I would move this into

Joseph Bohon
Direct examination by Mr. Bulsa

1 evidence.

2 MR. McPHERSON: No objection.

3 THE COURT: What number is that?

4 MR. BULSA: State's 20.

5 (Map marked State's Exhibit No. 20.)

6 Q Using State's 20, would you highlight Amos Street?

7 MR. McPHERSON: Your Honor, I'm going to object to him
8 marking on the evidence once it's already admitted into
9 evidence.

10 THE COURT: Overruled.

11 Q And is that where you found or the -- Mr. Ijioma's
12 car, the taxi cab was found?

13 A Yes, sir.

14 Q Okay. Church Street is the other way. All right.
15 This location is actually in the city of Spartanburg, is
16 that right?

17 A Yes, sir. If you was coming out of the county in
18 Spartanburg and going into the city, as you're going down
19 221 you'll find the main post office on your right. Just
20 keep on traveling down 221 or South Church Street. There's
21 a Pepsi plant on your left. Amos Street is directly near
22 that.

23 Q Okay. Well, let's show that on State's Exhibit 18.
24 So you've got the two areas highlighted. What's the most
25 direct route?

Joseph Bohon
Direct examination by Mr. Bulsa

1 A The most direct route would be to come down Highway 9.

2 As you come down --

3 (Whereupon, the witness left the stand.)

4 A The most direct route is to come down Highway 9 or 221
5 right here. That's where Highway 9 and 221 split right
6 here.

7 If you came down 221 and got on North Church Street,
8 you'd travel North Church Street all the way down to South
9 Church Street. It can't be considered 221 right here.

10 As you travel down South Church Street, Amos Street
11 will be off to your left directly off 221. So, basically,
12 you're only taking two roads. You're taking -- or really
13 can be considered as taking one road, 221, all the way down
14 to Amos Street. It's kind of a straight shot as far as
15 driving on one particular road to get to Amos Street.

16 Q So the Amos Street portion to the right of the map is
17 in the city and the portion to the left of the map would be
18 in the county.

19 A Yes, sir. This would be the county of Spartanburg.
20 And as you are going into the city, this right here would
21 be the city of Spartanburg.

22 Q Okay. Have a seat.

23 (Whereupon, the witness returned to the stand.)

24 Q Did you learn if the defendant either lived or had any
25 family in this area -- Amos Street?

Joseph Bohon

Cross-examination by Mr. McPherson

1 A At Amos Street, if my memory serves me correct, I
2 think it's [REDACTED] Amos Street where Mr. Young's uncle lives
3 at. His last name is Miller. I think it's Bobby Miller.

4 Q Did he have any relatives on Palisade Street?

5 A Not sure about relatives right off, but I knew he has
6 some acquaintances there, particularly a female he knew.

7 Q All right. Now, you later -- your investigation took
8 you further, but I'm going to stop you right there and
9 recall you later.

10 MR. BULSA: Your Honor, that's all I have of this
11 witness at this time.

12 Q Answer any questions Mr. McPherson has on these
13 points.

14 You can turn the lights back on.

15 Do you need the map, Mr. McPherson?

16 MR. MCPHERSON: No.

17 CROSS-EXAMINATION

18 BY MR. MCPHERSON

19 Q When you go from one end of town or from the county to
20 over there on Amos Street, that's a pretty good way, isn't
21 it, pretty good distance?

22 THE COURT: Mr. McPherson, would you please stand when
23 you question the witness?

24 MR. MCPHERSON: Yes, sir.

25 Q Let me put it this way. How far from Mamasun's Bar to

Joseph Bohon
Cross-examination by Mr. McPherson

- 1 Amos Street? How far is that distance?
- 2 A I do not know right off. Just a guess, I would say
- 3 approximately 6 miles.
- 4 Q Okay. And would you not agree that there are quite a
- 5 few traffic lights on the way from Mamasun's Bar to Amos
- 6 Street?
- 7 A There is several as you get into the city, yes, sir.
- 8 Q And the speed limit along these roads is 30 to
- 9 40 miles an hour. Would you agree with that?
- 10 A Yes, sir.
- 11 Q So it would take 15 or 20 minutes to go from one side
- 12 of town to the other side. Would you agree with that?
- 13 A No, I would not.
- 14 Q You would not?
- 15 A No, sir, I would not.
- 16 Q You could do it in about five minutes?
- 17 A At nighttime when there isn't much traffic on the road
- 18 and it's usually late at night, 12:00 o'clock, there's not
- 19 much traffic on the road, six to ten minutes.
- 20 Q Still have to stop for the traffic lights, or do
- 21 people not stop for traffic lights at night?
- 22 A Most people stop for traffic lights at night, yes,
- 23 sir.
- 24 Q So they would still have to stop, correct?
- 25 A If they're law-abiding citizens, yes, sir.

Joseph Bohon
Cross-examination by Mr. McPherson

- 1 Q And the truth is you really can't get up a lot of
2 speed because there's so many traffic lights along the
3 route. Would you agree with that?
- 4 A Yes, sir.
- 5 Q Now, you estimated that he could possibly do it in six
6 minutes, six to ten minutes. But you would have to agree
7 that you made it that far in six minutes, that you would
8 almost have to be flying across town and practically
9 running all the red lights or stop lights, wouldn't you?
- 10 A For six minutes, yes, sir.
- 11 Q Okay. So it would be more like ten to 15 minutes,
12 correct?
- 13 A I would say more like ten minutes.
- 14 Q Did you ever time the distance?
- 15 A No, sir, I didn't.
- 16 Q Sir?
- 17 A No, sir, I did not.
- 18 Q You didn't think that was critical in this case?
- 19 A This case was pretty cut and clear to me, sir.
- 20 Q Now, as part of your investigation --
- 21 MR. McPHERSON: Your Honor, I have no further
22 questions at this time. But if the state does not recall
23 him, Your Honor, I want to recall him.
- 24 THE COURT: Okay.
- 25 MR. BULSA: Your Honor, we intend to recall him as our

Dixon Ijioma
Direct examination by Mr. Bulsa

1 witness at this time.

2 THE COURT: Okay. Step down.

3 MR. BULSA: The state calls Dixon Ijioma.

4 DIXON IJIOMA, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q Good afternoon, Mr. Ijioma. Introduce yourself to the
8 jury, please.

9 A My name is Dick Ijioma, but people call me Dixon
10 Ijioma.

11 Q Okay. Sir, where are you from?

12 A I am from Nigeria.

13 Q And how long have you been in the United States?

14 A About seven years now.

15 Q Have you been in Spartanburg the whole time?

16 A No. Actually, I was from out in Raleigh, North
17 Carolina, and I came down to Spartanburg.

18 Q Okay. And do you go back to Nigeria on occasion?

19 A Yes. I've been back to Nigeria about two times.

20 Q Do you still have family there?

21 A Yes. I have my children and my parents.

22 Q Okay. And do you take care of them?

23 A Of course, yes.

24 Q How do you take care of them?

25 A Well, in Nigeria we don't have what you call social

Dixon Ijioma
Direct examination by Mr. Bulsa

1 security system, so we have to be responsible for our
2 parents and our children. So what I do is to send them
3 from what I make out of the taxi.

4 Q Send them money you make from the taxies?

5 A Yes, sir.

6 Q That's to care for both your parents and your
7 children.

8 A Yes, sir.

9 Q Now, how long have you been driving a taxi?

10 A I started driving taxi from June 19 -- 2004.

11 Q And do you own the car that you drive?

12 A Yes, sir; yes, sir.

13 Q And do you drive for a specific taxi company?

14 A Yes. I drive for Yellow Deluxe.

15 Q Yellow Deluxe. Okay. I'm going to ask you to look at
16 a couple of pictures. Okay. State's Exhibit No. 7, do you
17 recognize that?

18 A Yes. That's my car.

19 Q Okay. And State's Exhibit No. 6?

20 A That's my taxi.

21 Q Okay.

22 MR. BULSA: And, Your Honor, the state would move
23 these two exhibits into evidence.

24 MR. MCPHERSON: No objection.

25 THE COURT: They are admitted.

Dixon Ijioma
Direct examination by Mr. Bulsa

1 (Photographs marked State's Exhibits Nos. 6 and 7.)

2 Q I think the jury has seen the taxi before, but I'm
3 going to put it up there for a specific reason. State's
4 Exhibit No. 7, this is your vehicle, is that correct?

5 A Yes, sir.

6 Q Do you have any idea where it is in that picture?

7 A Not at all.

8 Q Okay. That's not a place that you would have left it,
9 is it?

10 A No, not at all.

11 Q Okay. State's Exhibit No. 6, that's a view of your
12 driver's door?

13 A Pardon?

14 Q Is that a picture of your driver's door?

15 A Yes, sir.

16 MR. MCPHERSON: Your Honor, I'm going to object to him
17 leading the witness.

18 THE COURT: Overruled.

19 A That is it.

20 Q And we see a name beneath the mirror there. Is that
21 your name?

22 A Yes, sir.

23 Q And this says owner, slash, operator. Says owner,
24 slash, operator, and then your name?

25 A Yes, I'm operator, yes.

Dixon Ijioma
Direct examination by Mr. Bulsa

1 Q All right. How do you get fares, people to taxi
2 around?

3 A You're asking the fares are?

4 Q How do you go about getting the people that you pick
5 up?

6 A Okay. Well, by nature of our business, we act as
7 independent operators. In other words, you get your own
8 cab. But you operate on the Yellow Deluxe. That means you
9 pay them weekly fee of what you call the tamanachies (sic)
10 of around \$75. That gives you the privilege of not only,
11 okay, the people are paying \$175 to use the services of the
12 Yellow Deluxe. In other words, they try and dispatch
13 customer to you. But by being an independent operator it
14 gives you the privilege of seeking for your own customers.
15 The way we do it is --

16 Q Let me make sure people can understand you because you
17 have a thick accent.

18 A Okay.

19 Q Okay. You're an independent operator but you pay a
20 fee to the Yellow Deluxe?

21 A Yes, sir.

22 Q And that way they dispatch customers to you.

23 A Yes.

24 Q But you also can take your own customers.

25 A Yes.

Dixon Ijioma
Direct examination by Mr. Bulsa

1 Q Okay. All right. And did you -- how do you get your
2 own customers?

3 A All right. We print out cards like this.

4 Q All right. Go ahead and talk about it.

5 A With this card if you get a customer who wants you to
6 be picking him up every time, he might request for you to
7 give him the card so that he can call you any time without
8 calling the office, the Yellow Deluxe. It's allowed.

9 Probably because you have given somebody little
10 discounts, the best thing now, you know, start calling
11 without necessarily calling the office. So that's how we
12 operate.

13 Q Okay.

14 (Business card marked State's Exhibit 21 for
15 Identification.)

16 Q You are holding one and you gave me one earlier.
17 State's Exhibit No. 21, is that your business card?

18 A Yes, sir.

19 MR. BULSA: Your Honor, I would move this into
20 evidence.

21 MR. MCPHERSON: No objection.

22 THE COURT: It is admitted.

23 (Business card marked State's Exhibit 21.)

24 MR. BULSA: Publish this on the overhead, State's
25 Exhibit 21.

Dixon Ijioma
Direct examination by Mr. Bulsa

- 1 Q This is your business card that you would hand out to
2 regular customers.
- 3 A Yes, sir.
- 4 Q Mr. Ijioma, do you recognize the defendant?
- 5 A Yes, sir.
- 6 Q Okay. Was he a regular customer?
- 7 A Yes, sir.
- 8 Q And did you give him one of those cards?
- 9 A Yes.
- 10 Q Now, do you remember the evening of November the
11 1st and November the 2nd around midnight of 2006? Do you
12 remember that evening?
- 13 A Yes.
- 14 Q Something happened to you, didn't it?
- 15 A Yes.
- 16 Q Would you describe for the jury if you would what
17 happened?
- 18 A Actually, earlier that night Robert called me to come
19 and pick him up from Amos Street.
- 20 Q Now, you just called him Robert. Did you know his
21 name?
- 22 A I don't. I don't know his name. I just call him
23 Robert from what I know now.
- 24 Q Okay. So a customer calls you.
- 25 A Yeah, a customer called me.

Dixon Ijioma
Direct examination by Mr. Bulsa

1 Q Okay.

2 A So to pick him up from Amos Street. It's a regular
3 customer I know too well, because I've picked him up
4 several times over the past almost a year.

5 I picked him up from Wofford, Seven Palisade, [REDACTED]
6 Palisade, [REDACTED] -- [REDACTED] Palisade. And the house I am sure I
7 picked him up the last night.

8 Q Okay. Let me pause you right there. State's Exhibit
9 No. 20. You picked him up on various occasions from
10 Palisade Street and Amos Street.

11 A Yes, sir.

12 Q Okay. Now, on this evening what occurred?

13 A So this evening he called me to pick him up from Amos
14 Street. I told him that I was busy, that I'll get to him
15 as soon as I can.

16 After a long time when I suppose he has already gotten
17 a ride, I decided to go pick up my mail from the post
18 office. Arriving at the post office, he called me again
19 asking me if I have forgot him. I said no. I told him I'm
20 on my way to pick him up.

21 He told me that he was waiting outside. I said no,
22 stay inside, when I get there I'll call you. That was the
23 point he told me that he didn't call me with his cell
24 phone, he lost his cell phone, he has called from
25 somebody's phone. I said, okay, I'll get you. He asked me

Dixon Ijioma
Direct examination by Mr. Bulsa

1 how long. I say about three minutes I'll be there.

2 About three minutes I was there. I got in from the
3 down side of Amos Drive. And I made him to sit right
4 behind me.

5 When he got into my car I remember asking him how was
6 his day. He said fine. Then I reminded him that the last
7 time I picked him up he should paid me -- he paid me
8 instead of \$7, he paid me \$6. He told me it was \$7. We
9 never argued about it. So we kept going.

10 Q Where were you taking him?

11 A I was taking him to Locust Court. That's the normal
12 place I used to take him. Then I --

13 Q What route did you take? What route did you take?

14 A I go as soon as we came out from Amos Drive or Amos
15 Street, we went on South Church Street, down North Church
16 Street and then into Longview to Locust Court.

17 Q Okay. Let me pause you right there. Take State's
18 Exhibit No. 18 and trace the route that you would have
19 taken him.

20 A Can I?

21 Q Yes, sir.

22 (Pause.)

23 Q Is that it? Okay. All right. Okay. Highlighted in
24 yellow, Amos Court being on the right and Longview being on
25 the left. About how far is that?

Dixon Ijioma
Direct examination by Mr. Bulsa

1 A I cannot just say for sure. That would be about 5 or
2 6 miles. I'm not quite sure on that.

3 Q About how long does it take you to make that trip?

4 A Just about six or seven minutes.

5 Q Okay. And do you speed when you go down that route?

6 A Not at all. I go the speed limit.

7 Q Okay. Now, did anything happen during that trip?

8 A Yes. While we are going on Church Street I remember
9 that when we got to Marriott by Church Street I saw a lady
10 just by the light. So she didn't close her hood very well.
11 I drew her attention to it. So she pulled into Marriott
12 and we kept going. That was a time I started telling my
13 customer how my hood came up on me one night, one day.

14 I assume we are going. We moved from 221 into
15 Longview. When we got into Longview I had a very big hit
16 on my head. It very hitting sound, bla. Blood just flew
17 everywhere.

18 I looked at myself. I had my hand. I shouted, oh, my
19 God, I'm dying. I thought it was just enough. I tried to,
20 I see the car. He shot again. Why he shot, I didn't know
21 if I was going to die. He was shooting me. I thought
22 somebody was just going to come.

23 And what I did was stopped the car in the middle of
24 the road. I jumped out. When I jumped out he came out
25 from the back of the seat and now face to face with me with

Dixon Ijioma
Direct examination by Mr. Bulsa

1 the gun pointed at me saying give me all the money you have
2 here or I will kill you here.

3 Then I dip my hand in my breast pocket and brought out
4 my cell phone with my money and threw it to him. So that's
5 how described it when he was trying to grab this stuff.

6 Then I took off running. I ran from that place to
7 Mamasun's where I saw some good Americans who helped me
8 call the police. They thought I remembered the one guy.
9 He was just fighting when I came in there. He was just
10 crying saying, because they asked me my name when I arrived
11 in there. I told him. I told him my name is Dixon. The
12 guy was saying Dixon. I told him that I was tired and I'm
13 losing a lot of blood. I'm tired. He had his sister on
14 telling me these things, you will not die, you will not
15 die. He was just crying. Well, that much I know.

16 By the time they call the police and the ambulance,
17 that's the only time I knew myself.

18 Q Do you remember telling him you knew who shot you?

19 A Yes, when the police got there. They were very, like
20 do I know who shot me. I told them yes.

21 I gave information on where I used to pick him up. I
22 gave them information on where he lives. I told them. And
23 his car lot and everything. I give the police information.

24 Q But you didn't know his name.

25 A I didn't know his name.

Dixon Ijioma
Direct examination by Mr. Bulsa

1 Q Do you remember where you stopped your car that
2 evening?

3 A Yes. That was on Longview but around, around Belmont
4 by Longview just around the corner.

5 Q Okay. And when did you realize that it was your
6 passenger that was shooting you?

7 A That was the time I jumped out. He now came out from
8 the back of the seats, fussing me now, asking me to give
9 him all the money I have or he will kill me here.

10 Q And do you see the person who shot you in this
11 courtroom?

12 A Yes, sir.

13 Q Please point him out to the jury.

14 A This is him.

15 Q Sitting at the defense table?

16 A Yes, sir.

17 Q The man you knew, the man who was your regular
18 customer?

19 A Yes.

20 Q And you picked up that night?

21 A Yes, sir.

22 Q Was there anybody else in your car that night?

23 A No, not my car. He was in it.

24 MR. BULSA: Let the record reflect the witness has
25 identified the defendant, Robert Young.

Dixon Ijioma
Direct examination by Mr. Bulsa

1 Q Mr. Ijioma, would you step down, please? And show the
2 jury where you were shot.

3 (Whereupon, the witness left the stand.)

4 Q Okay. The back right portion of your head? Do you
5 still have scars there?

6 A Yes.

7 Q Step down so the rest of the jury can see you. Were
8 you taken to the hospital?

9 A Yes, sir.

10 Q Have a seat.

11 (Whereupon, the witness returned to the stand.)

12 Q Do you have any idea of why you didn't die?

13 A That was just miracle.

14 Q Did they take the bullets out of your head at the
15 hospital that evening?

16 A No, not that evening. It was some couple of weeks, I
17 think, because they were like leaving the bullets in my
18 head. But each time I get to the sun I start having itches
19 and irritation. So the doctors are kind of skeptical. You
20 have to remove the bullets or leave them there. But at the
21 point I insisted that they have to remove it because I was
22 not feeling comfortable. So the surgery was done after I
23 did.

24 THE COURT: You can turn the lights back on.

25 Q Mr. Ijioma, how long were you in the hospital?

Dixon Ijioma
Direct examination by Mr. Bulsa

- 1 A Until about 14 or 15 hours.
- 2 Q Okay. Did the police come and visit with you in the
3 hospital?
- 4 A After the time I open my eyes, you know, I was
5 confused what happened, if I remembered, you know, that I
6 be shot, I was shot last night. So after I then, I saw
7 some police officers and they came, you know, to see me.
- 8 Q And did they show you some pictures while you were at
9 the hospital?
- 10 A Yes, sir.
- 11 Q And did you identify one of those pictures?
- 12 A Yes, sir.
- 13 Q And the picture you identified, who was that?
- 14 A That was the person that shot me.
- 15 Q That was the defendant?
- 16 A Yes, sir.
- 17 Q Do you remember what kind of clothing he was wearing?
- 18 A I told the polices I know he's not putting on white
19 clothes because if it is white I will see it at the night.
20 He was putting on dark clothes.
- 21 Q Dark clothes?
- 22 A Yes.
- 23 Q So you got shot. You got out of the car, threw your
24 money and cell phone at him and you ran. Were you able to
25 go back to that same location and pick your cab up?

Dixon Ijioma
Direct examination by Mr. Bulsa

- 1 A No, not at all.
- 2 Q Where did you see your cab next?
- 3 A Well, after the police, and the police invited me to,
- 4 I think police station or somewhere there, they showed me
- 5 my car, like picked it up from there.
- 6 Q And how long had you had that car?
- 7 A I had it for almost two years from January of 2005
- 8 until the time the incident happened.
- 9 Q What was the value of your car?
- 10 A It was \$3,150.
- 11 Q \$3,150?
- 12 A Yes, sir.
- 13 Q State's Exhibit No. 7, it appears you kept it in good
- 14 condition.
- 15 A Yes, sir.
- 16 Q Okay. Did the police release the car back to you?
- 17 A Yes, sir.
- 18 Q Show you a series of pictures, State's No. 8, 9, 10,
- 19 11, 12, 13, 14, 15, 16 and 17. When you got your car back,
- 20 do these pictures show the condition your car was in?
- 21 A Yes, sir, of course.
- 22 Q Okay. And you've looked at those pictures with me and
- 23 before court, right?
- 24 A Yes, sir.
- 25 Q Okay. I'm going to show them on the overhead in a

Dixon Ijioma
Direct examination by Mr. Bulsa

1 second. These are all pictures of your car and the
2 interior.

3 A Yes.

4 Q Okay.

5 MR. BULSA: Your Honor, the state would move these
6 pictures into evidence.

7 MR. McPHERSON: No objection.

8 MR. BULSA: Your Honor, for the record, State's
9 Exhibits 8 through 17.

10 THE COURT: They are admitted.

11 (Photographs marked State's Exhibits Nos. 8 through
12 17.)

13 Q You were actually driving your car when you first got
14 shot, right?

15 A Yes.

16 Q When you received your car back did it have your blood
17 all over it?

18 A Yes.

19 Q Okay. State's Exhibit No. 8, is that your blood on
20 your driver's door?

21 A Yes.

22 Q State's Exhibit No. 9, is that your blood on your
23 steering wheel?

24 A Yes.

25 MR. McPHERSON: Your Honor, again I object to him

Dixon Ijioma
Direct examination by Mr. Bulsa

1 leading the witness.

2 THE COURT: Overruled.

3 Q State's Exhibit No. 10, does that show blood on your
4 headrest?

5 A Yes.

6 Q State's Exhibit No. 11, does that show blood up near
7 your visor on the left?

8 A Yes.

9 Q And State's Exhibit No. 12, some blood droplets on the
10 passenger door?

11 A Yes.

12 Q Okay. You were shot twice in the head, right?

13 A Yes.

14 Q And the bullets stayed in your head for a couple of
15 weeks at least.

16 A Yes.

17 Q Okay. I'm not hearing you. Answer?

18 A Yes.

19 Q Okay. Now, I'm going to show you these two pictures
20 here. State's Exhibit No. 16 shows the -- it's taken from
21 the back of the car towards the front. And State's Exhibit
22 No. 17 shows two marks to your windshield. Do you recall
23 how those got there?

24 A Actually, I don't know how he was shooting because at
25 the point one of the bullets came right, you know, just

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Direct examination by Mr. Bulsa

- 1 shot about and came back to my head. So I can't answer how
2 I know he was shooting.
- 3 Q You don't remember how many times he shot.
- 4 A I know that he shot me in the head twice.
- 5 Q Okay. And then from your -- from the car you see two
6 shots to the windshield.
- 7 A Yeah.
- 8 Q Okay. And here's a view from the driver's door inside
9 looking specifically at the passenger side of the car.
10 What is all of that stuff?
- 11 A That is just some junk things I have. I neatly packed
12 them. They are where about in my car.
- 13 Q Okay. State's Exhibit No. 14 is an opposite view of
14 your seat. Are you saying you didn't leave your items in
15 that condition?
- 16 A No, not at all.
- 17 Q And were the keys left in your car?
- 18 A Repeat that.
- 19 Q Were your keys in your car when you received it back?
- 20 A Yes.
- 21 Q Were they -- let me show you State's Exhibit No. 15.
22 Is that your set of keys?
- 23 A Yeah, that's my keys.
- 24 Q Is that among the items in the passenger side of your
25 car?

Dixon Ijioma
Direct examination by Mr. Bulsa

- 1 A I can't see it there.
- 2 Q Okay. But is that where this stuff was, was on that
- 3 side of the car?
- 4 A Do you mean when I picked it up?
- 5 Q Yes, sir.
- 6 A No. I think the police gave me the key to go get the
- 7 car.
- 8 Q Okay, okay. So you don't know where they were found.
- 9 A No, no.
- 10 Q You know you just got it back.
- 11 A Yeah. I just got it back.
- 12 Q Okay. Do you still drive a cab?
- 13 A Yes, sir.
- 14 Q Do you still drive the same cab?
- 15 A Yes.
- 16 Q How did you get this cleaned up?
- 17 A Well, I took it to somebody on John B. White Boulevard
- 18 so he will just, okay, plus I explain it to him. I told
- 19 him what happened. So he cleaned it up for me. He did it.
- 20 Q What hours did you drive back when this happened?
- 21 A Repeat that, please.
- 22 Q I'm sorry. What hours of the day did you drive when
- 23 you got shot?
- 24 A Well, I was driving second and third shift sometimes
- 25 but not always. So I was always, because when I got shot I

Dixon Ijioma
Direct examination by Mr. Bulsa

1 drive in the night. So I was only supposed to drive in the
2 evening at night.

3 Q Okay. Did you make more money in the evening?

4 A Not actually. I think what happened was that we have
5 to drive, so I just drive that night. Most of before what
6 made me to start driving then was when I was actually
7 driving because I was working with Pantry.

8 Q Okay. Let's not go into that. I want to know now
9 what shift do you drive.

10 A Right now I drive day.

11 Q Day shift.

12 A Yes.

13 Q Back when, before you got shot, you were driving night
14 shift.

15 A Afternoon and night.

16 Q Afternoon and night?

17 A Yes.

18 Q Okay. All right. And why did you change your
19 pattern?

20 A Well, first, it was a horrible experience I went on to
21 experience again.

22 Q Okay. Have you ever been shot before?

23 A No, not until.

24 Q Do you have any -- are you certain the defendant is
25 the man that shot you?

Dixon Ijioma

Cross-examination by Mr. McPherson

1 A Yes, yes.

2 THE COURT: Don't get right up on the microphone. If
3 you'll just speak up loudly it'll pick it up. You're
4 distorting it by moving back and forth.

5 Q Any doubt in your mind, Mr. Ijioma, that the man, the
6 last person you drove that night, is the man who shot you?

7 A Yes.

8 Q And you knew that man as a regular customer.

9 A Yes.

10 Q And that man was the defendant.

11 A Yes.

12 MR. MCPHERSON: Your Honor, again he is just leading
13 the witness right and left.

14 THE COURT: Overruled.

15 Q Sir, your answer?

16 A Yes.

17 Q Thank you. Answer any questions that Mr. McPherson
18 may have.

19 CROSS-EXAMINATION

20 BY MR. MCPHERSON

21 Q Now, after you had been shot you went down, you ran
22 down to a bar, is that correct?

23 A Sir, speak up a little.

24 Q After you had been shot you went down to like a bar.

25 A Yes, sir.

Dixon Ijioma
Cross-examination by Mr. McPherson

- 1 Q Do you recall the name of the bar?
- 2 A The name of the place Mamasun's.
- 3 Q Okay. And do you recall where that was located, the
- 4 bar?
- 5 A Please?
- 6 Q I'm sorry?
- 7 A Repeat it. Say it again.
- 8 Q Where is Mamasun's Bar located?
- 9 A Okay. It's located on 221.
- 10 Q Okay. Now, when you first went to the bar, you talked
- 11 to one of the patrons or one of the people that were
- 12 working in the bar, is that correct?
- 13 A Whenever I went into the bar it was all karaoke. So
- 14 all of them were asking me, you know, who shot me, my name.
- 15 And I was just describing it to them.
- 16 Q Okay. Do you recall when the police came?
- 17 A Yes.
- 18 Q And when the police came isn't it true that you told
- 19 them that you had received a phone call on your cell phone
- 20 and that you were directed to go to Locust Court and pick
- 21 up the fare? Isn't that true?
- 22 A I'm not sure you presented this right. I was called
- 23 from Amos Drive to go to Locust Court.
- 24 Q Yes. But didn't -- would you agree you initially told
- 25 the police that you picked up the fare on Locust Court?

Dixon Ijioma
Cross-examination by Mr. McPherson

1 A What do you mean by picking up the fare, picking up
2 the customer?

3 Q Yes. When you picked up the customer you told the
4 police initially when they first came and talked to you,
5 you told them you got a call to go to Locust Court --

6 A Yes.

7 Q -- to pick up a customer.

8 A Yes.

9 Q And so that was incorrect, isn't that correct?

10 A It's correct because I picked -- I got a call to pick
11 him up from Amos Drive. We are heading to Locust Court. I
12 don't know what I did that wasn't correct.

13 Q But wouldn't you agree with me you told the police
14 that the fare called you and you went to Locust Court to
15 pick him up?

16 A I didn't go to Locust Court to pick him up. I picked
17 him up from Amos Drive.

18 Q Well, I'm just asking you isn't that true what you
19 told the police.

20 A I didn't say that because I told them where we came
21 from and where we're heading to.

22 Q Isn't it true you also told them he lived in the first
23 house on the right on Locust Court?

24 A I cannot say exactly if that be what I told, but I
25 know that I drop him off in second house on the right on

Dixon Ijioma
Cross-examination by Mr. McPherson

1 Locust Court because I been picking him up for almost a
2 year.

3 Q Right. You had been picking him up almost a year.

4 A Yes.

5 Q But yet you told the police he lived at the first
6 house on the right.

7 A Well, under that condition, because the police was
8 asking me these questions just to describe who shot me and
9 where I was going.

10 Q And where you picked the customer up, right?

11 A Yes.

12 Q Now, and you're saying today that he lives in the
13 second house on the right.

14 A That's second house on the right. That's where he
15 lives.

16 Q Now, when you pick a customer up do y'all have a
17 certain protocol or procedure that you have to follow with
18 the cab company?

19 A I don't understand that question.

20 Q When you pick a fare up do you have to call in to the
21 cab company and tell them I've picked up this fare?

22 A That's why I said that we are independent operators.
23 Like the young man that shot me, I don't need to tell the
24 company that I have picked up the ride.

25 Q So you're saying they do not require you to call in --

Dixon Ijioma
Cross-examination by Mr. McPherson

1 A No, not at all.

2 Q -- for customers. Now, so there wouldn't be any
3 records of your ever picking this customer up, is that
4 correct?

5 A For that night there will not be record, but there may
6 be record previously. I have gone to pick him up.

7 Q So you're saying sometimes he would call the cab
8 company and have you pick him up?

9 A Yes, like most of times during the day or morning time
10 when he's moving down to Palisade he calls the company.
11 But at night, because we only two drivers nights, I go to
12 pick him up to bring him back to Locust Court.

13 Q Now, do you recall an incident where he had left a
14 cell phone in your cab and he called you and asked you to
15 bring him the cell phone?

16 A Yeah. That was days before this incident. He forgot
17 his cell phone in my car, then called me back later to
18 bring it to him. Then I went to him and I, you know, gave
19 it to him.

20 Q Do you recall telling him that he had to call you back
21 and then you told him you had gotten him mixed up with
22 somebody else?

23 A Okay. What happened that night was I didn't know who
24 have the cell phone. I don't know who has the cell phone.
25 I thought that the last person I picked up has the cell

Dixon Ijioma
Cross-examination by Mr. McPherson

1 phone.

2 When he called me to -- that he has left his cell
3 phone, then I went straight to where I dropped the person
4 off in Palisade, because I picked the person off from
5 Norris Street. My dispatcher gave me the drive to drop the
6 guy off in Palisade.

7 Then when I went there and dropped, he called me. I
8 thought he is the person that dropped off that has the cell
9 phone. He said no. Then since I know who he is then I
10 went straight to his house and dropped the cell phone.

11 Q But you admit you initially got him mixed up with
12 somebody else.

13 A I said I didn't know who had the cell phone. When he
14 called me and told me the cell phone is his, I took it to
15 him.

16 Q But the first time you went to the wrong place, right?

17 A Yeah, because I don't know who had the cell phone.

18 Q Even though when he called you he identified himself.

19 A He did not identify himself.

20 Q And you're saying that he never told you his name or
21 nickname or anything like that.

22 A The time he's never -- I never knew his name.

23 Q You'd be --

24 THE COURT: Excuse me just a minute. Let me see the
25 lawyers a minute.

Dixon Ijioma

Cross-examination by Mr. McPherson

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 THE COURT: Let me ask the jury to step out just a
4 minute, please.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Mr. Young, this witness is on the witness
8 stand, and he's undergoing his direct and
9 cross-examination.

10 If you want to testify in this trial, you're going to
11 be permitted to do so. But in the meantime you don't get
12 to testify sitting at that table by shaking your head in
13 agreement or in disagreement with what a witness says. Do
14 you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You just sit there quietly and keep your
17 head still. And if you want to contradict what this
18 witness is saying, you'll get to testify in this trial.
19 And you can contradict anything you want to. But you're
20 not going to do it from that table. You'll have to do that
21 from the witness stand. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Let's see if we can't adjust
24 that microphone so that will be working, Mr. Bailiff,
25 please, sir. I mean, that's not going to be satisfactory.

Dixon Ijioma
Cross-examination by Mr. McPherson

1 That's one problem. We can't keep blowing into it.

2 What you have to do is you have to speak out loudly,
3 and it will pick it up. If you lean in and talk into it,
4 it distorts the whole sound. So just speak out loudly and
5 it should it pick up. But it needs to be bent down or
6 something, because when he blows into it, it distorts the
7 sound.

8 All right. You might have to come in a little bit,
9 but just be sure you speak loudly and it should pick up.

10 All right. Bring the jury back in.

11 (The following takes place in the presence of the
12 jury.)

13 MR. MCPHERSON: May I proceed?

14 THE COURT: Sure. Yes, please.

15 Q Mr. Ijioma --

16 A Yes, sir.

17 Q -- how long was it from the time you indicated you
18 were shot until the time you recovered your car back?

19 A I cannot remember for sure, but I knew it was a couple
20 of, some weeks, because it was after I had the surgery.

21 Q Okay. But do you know how quickly the police
22 recovered your car?

23 A No.

24 Q Okay. Now, you say this was a 1994.

25 A Crown Vic.

Dixon Ijioma
Cross-examination by Mr. McPherson

- 1 Q So it was 12 years old at the time of the offense,
2 alleged offense? In other words, 1994 was the age of your
3 vehicle or car.
- 4 A Yes.
- 5 Q The incident happened in November of 2006, correct?
- 6 A Yes.
- 7 Q So that would make the car approximately 12 years old?
- 8 A There about, yeah.
- 9 Q Is that correct?
- 10 A I have to calculate to make sure.
- 11 Q So you would agree with me that's pretty old for a
12 vehicle even in 2006.
- 13 A Well, I don't think it's old because when I bought it
14 it was very clean and neat.
- 15 Q All right. But the value of \$3,150, it wouldn't be
16 worth near that amount in 2006.
- 17 A In 2005 -- 2005 generally that's how much I bought it.
- 18 Q Okay. But it already had depreciated over a year's
19 time, had it not?
- 20 A I don't have an idea about that.
- 21 Q Do you remember when in 2005 you bought it?
- 22 A January.
- 23 Q January. So it was nearly two years old from the time
24 you bought it, correct?
- 25 A Okay.

Dixon Ijioma
Cross-examination by Mr. McPherson

- 1 Q Is that correct?
- 2 A Yes.
- 3 Q Okay. And you would agree that you were not
- 4 permanently deprived of the property -- permanently.
- 5 A I don't understand what you mean by permanently.
- 6 Q Well, you would agree that you recovered the property
- 7 fairly quickly.
- 8 A Well, I recovered it when I got better because I, I
- 9 was in the house for a long time.
- 10 Q Now, when this last call came in, I believe you
- 11 indicated you were at the post office.
- 12 A Yes, sir.
- 13 Q And so from the post office to Amos Street took you
- 14 more or less how long to get there?
- 15 A It was just about three minutes I was able to get
- 16 there.
- 17 Q Two or three minutes. I didn't understand.
- 18 A I said about three minutes.
- 19 Q Three?
- 20 A Yeah. That's what I told, but I can't say for sure
- 21 because --
- 22 Q But about three minutes.
- 23 A Yeah.
- 24 Q And then you picked up your customer on Amos Street.
- 25 A Yes.

Dixon Ijioma
Cross-examination by Mr. McPherson

1 Q And drove him all the way across town. Were you
2 speeding or driving normal speed?

3 A I was driving normal speed.

4 Q And were you stopping for all the traffic lights that
5 were red?

6 A Right now I can't say exactly how the lights are
7 turning because I know I was not anticipating that. So I
8 was not collecting all of those.

9 Q I understand. But when you're driving the cab you try
10 to obey the traffic laws, do you not?

11 A Yes.

12 Q And you also try to abide by the speed limits, is that
13 correct?

14 A Right.

15 Q And you would agree both you and the officer testified
16 that from Amos Street to over on the other side of town is
17 at least 6 miles.

18 A As I told you, I'm not very good in that, but, you
19 know, that's just my estimate.

20 Q All right. So it would have taken 12 to 15 minutes to
21 get on the other side of town.

22 A It would because that was nighttime. We don't have a
23 lot of traffic. And these lights can be green from South
24 Church Street to North Church Street that night, because
25 that's a major route. All the major routes, they are

Dixon Ijioma
Cross-examination by Mr. McPherson

1 lights. Most of the lights are on green except you're
2 coming from a small out road into a major road.

3 Q But you would agree there are quite a few lights on
4 Church Street.

5 A Say that again, please.

6 Q You would agree with me there are quite a few lights
7 on Church Street, the route your traveled.

8 A There are a lot of lights on Church Street.

9 Q And you went down Church Street, correct?

10 A Yes.

11 Q How far down Church Street did you go?

12 A Church Street south or north? Which way, North Church
13 or South Church?

14 Q Well, you went from South Church down North Church,
15 correct?

16 A Yes, sir.

17 Q Okay. And so from the time you got the phone call it
18 would have been at least 15 minutes before you got to the
19 other side of town. Would you not agree with that?

20 A I can't say for sure, sir.

21 Q But you do agree with me that when you initially told
22 the police you picked the fare up on Locust Court that
23 night that was a mistake.

24 A As I said, I, we are going to, if the police reported
25 that I picked the person up from Locust Court that was not

Dixon Ijioma

Cross-examination by Mr. McPherson

1 right. I told the police that the call came from Amos
2 Street. And this very place at Amos I have picked him up
3 there. The night he shot me was the third time I have
4 picked him up from that very spot.

5 Q On Amos Street.

6 A On Amos Street. That was the third time I have picked
7 him from that very spot. So he never has come out from the
8 house. He's always hanging at the corner of that street.

9 Q Okay. And that's what you told the police that night
10 when you were at the hospital.

11 A I told the police that I picked him up from Amos
12 Street and we were heading to Locust Court.

13 Q I'm sorry. That's what you told the police that first
14 arrived at Mamasun's Bar.

15 A What is I told the police?

16 Q That's what I'm asking you.

17 A What I said is what I told the police.

18 Q Isn't it -- or I'm going to ask you again. Isn't it
19 true you --

20 MR. BULSA: Your Honor, he's asked and answered that
21 several times.

22 THE COURT: Are you objecting to it?

23 MR. BULSA: Yes, sir, I am.

24 THE COURT: I sustain the objection.

25 MR. MCPHERSON: I have no further questions.

Dixon Ijioma
Redirect examination by Mr. Bulsa
Recross-examination by Mr. McPherson

1 MR. BULSA: Just briefly in reply, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BULSA

4 Q Mr. Ijioma, you had two gunshot wounds to the back of
5 your head.

6 A Yes, sir.

7 Q And you just run from the area of Belmont and Longview
8 to Mamasun's.

9 A Yes, sir.

10 Q And the number on your card, that's your cell number?

11 A Yes, that's my cell number.

12 Q And that's the number where you received these calls?

13 A Yes.

14 Q And the night this happened you received two calls
15 from the defendant?

16 A Yes.

17 Q And the person who did this, was that the last fare
18 you had that evening?

19 A That was the last fare I had.

20 Q And was that the defendant?

21 A Yes.

22 Q Thank you, Mr. Ijioma. That's all I have.

23 RECROSS-EXAMINATION

24 BY MR. MCPHERSON

25 Q When you gave a written statement to the police you

Dixon Ijioma
Recross-examination by Mr. McPherson

1 only mentioned one telephone call, isn't that correct?

2 A I told the police that he called me earlier that night
3 and I told him that I was busy but I'll get to him as soon
4 as I can. While I was coming out -- while I was still in
5 the post office he called me the second time. That was
6 when I went to pick him up.

7 Q And did you put that in your statement that you gave
8 to the police, your written statement?

9 A I told the police that he called me the first time,
10 then called me again.

11 Q And then you told the police he called you the first
12 time at what time?

13 A I was not sure of the time because I have already
14 stated the police, and I told them he called me earlier
15 that night. When I mean earlier, that will be about 9:00,
16 after 9:00, or thereabout 10:00.

17 I was busy. I told him I was busy, I'll get to him as
18 soon as I can. Later after almost an hour I thought he has
19 gotten a ride. So that's what made me not to go to him
20 straight but to go to the post office to pick my mail.

21 Q And you told this to the police in your written
22 statement?

23 A What part of it?

24 Q I'm sorry?

25 A What part are you asking me?

Dixon Ijioma
Recross-examination by Mr. McPherson

1 Q What you're just now telling me.

2 MR. BULSA: Your Honor, I would ask Mr. McPherson show
3 him his statement.

4 (Voluntary statement marked Defendant's Exhibit No. 1
5 for Identification.)

6 Q All right. I'm showing you what's marked as Defense
7 Exhibit No. 1. It's a 3-page document. Do you recognize
8 it?

9 A Yeah.

10 Q What is it?

11 A That's my statement.

12 Q That's what you gave to the police?

13 A Yes.

14 Q Okay. And would you show me in here where it is you
15 told the police he called you earlier that night?

16 A This statement is just from the point he called me at
17 post office. That's the point that contained here.

18 Q So now you're saying you did not put it in your
19 written statement, is that correct?

20 A I said that's the facts. The last fact is what is
21 contained there.

22 Q So you were mistaken when you told me you had put it
23 in your written statement, weren't you?

24 A Well, you know, this statement has taken almost a year
25 or thereabouts, my statement.

Dixon Ijioma
Recross-examination by Mr. McPherson

- 1 Q When was the last time you saw your written statement?
- 2 A I can't remember for sure.
- 3 Q Has it been recent?
- 4 A I think so, yeah, but I can't say precisely now.
- 5 Q Did the solicitor give you a copy of this statement?
- 6 A Yes.
- 7 Q And when was the last time or the -- let me ask you
- 8 this. When was it you first saw the solicitor or the
- 9 assistant solicitor in this case?
- 10 A On this case?
- 11 Q Yes.
- 12 A Well, that was sometime in January because I been on
- 13 vacations after that for most.
- 14 Q Right. It was the latter part of January, right?
- 15 A And one time around two weeks, yeah.
- 16 Q Around January the 23rd or something like that?
- 17 A I'm not good with dates. I can't remember exactly the
- 18 date, but I know it was in January.
- 19 Q But would you agree with me it was the latter part of
- 20 January?
- 21 A I came back on the 15th of January, so it should be
- 22 around the middle of January.
- 23 Q And you went over this statement with them.
- 24 A Yes. I consistently told, told the police and
- 25 everyone that he called me earlier that night and called me

Dixon Ijioma
Redirect examination by Mr. Bulsa

1 again.

2 Q So even though you have recently reviewed this
3 statement again, you made a mistake, didn't you?

4 A I don't know the part that you calling mistake. I
5 said consistently said I'm telling you what I know that he
6 called me twice that night. He called me earlier. I told
7 him when I have time I will get to you. Then he called me
8 again while I was in post office asking me if I have
9 forgotten him. I told him no, I will be there as soon as I
10 can.

11 Q Okay. Now, I believe you testified earlier you are
12 positive he stayed in the second house on the right.

13 MR. BULSA: Your Honor, I am going to object. This is
14 beyond redirect.

15 THE COURT: Sustained.

16 MR. MCPHERSON: No further questions.

17 MR. BULSA: If I may, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. BULSA

20 Q Which statement are you referring to?

21 (Statement marked State's Exhibit No. 22 for
22 Identification.)

23 Q Okay. Mr. Ijioma, this is State's Exhibit No. 22 for
24 Identification. Is this your statement you gave to the
25 police?

Dixon Ijioma
Redirect examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q It's three pages, right?
- 3 A Yes, sir.
- 4 Q You signed all three pages.
- 5 A Yes, sir.
- 6 Q It was written by the detective, Detective Bohon, is
- 7 that correct?
- 8 A Yes, sir.
- 9 Q And was this taken after you got out of the hospital?
- 10 A No, it was at the hospitalized. I think it was at the
- 11 hospital.
- 12 Q On November the 3rd of 2006. Do you remember when you
- 13 got out of the hospital?
- 14 A I'm trying to remember, recall, where this because I
- 15 spoke with him, and I know he never came to my house for
- 16 this, but I think it was in the hospital.
- 17 Q Okay.
- 18 A Yeah, because he has never been to my house. I think
- 19 was in the hospital. He gave it to me.
- 20 Q Okay. All right. Well, you told him what happened
- 21 and you wrote it down.
- 22 A Huh?
- 23 Q You told him what happened.
- 24 A I told him what happened.
- 25 Q And he wrote it down.

Dixon Ijioma
Redirect examination by Mr. Bulsa

1 A Yeah. I didn't write it.

2 Q Okay. Now --

3 MR. BULSA: Your Honor, I would like to offer this
4 into evidence if I could. He's trying to impeach him with
5 it. I'm going to point out something in it. I'm going to
6 have him read from it.

7 MR. MCPHERSON: I'm going to object to it.

8 THE COURT: Well, does it relate to that question
9 about --

10 MR. BULSA: Exactly, Your Honor. It does, yes, sir.

11 THE COURT: The two?

12 MR. BULSA: Yes, sir.

13 THE COURT: The one phone call --

14 MR. BULSA: Yes, sir.

15 THE COURT: All right. Well, you can ask him. You
16 can show it.

17 MR. BULSA: Okay. I'll show it to him.

18 Q I'll ask you start reading right here where it says,
19 "After that I went to the main post office."

20 A Do I have to read it loud?

21 Q You can read it out loud.

22 A Okay. "After that I went to the post office on South
23 Church Street. While at the post office I received a phone
24 call from a regular customer of mine who wanted to -- who
25 wanted me to pick him up on Amos Street and take him to

Dixon Ijioma
Redirect examination by Mr. Bulsa

1 Locust Court. At that time I was, at that time it was
2 after 11:30. The regular customer had called me earlier in
3 the night also on my personal cell phone, but I was unable
4 to pick him up at that time. After leaving the post office
5 I went to Amos Street and I picked the regular customer up
6 at the first house on the right."

7 Q Okay. That's --

8 A "On the right. That was where he was standing."
9 That's not first house on the right is talking about Amos,
10 Amos, not Locust Court.

11 Q Okay. Now, Mr. Ijioma, that, this statement you gave
12 to the police, didn't talk about the earlier call.

13 A Yeah. You know, this is what I gave the police and
14 stated that he called me twice.

15 Q Okay. Thank you. That's all I have right now.

16 THE COURT: All right. You may step down. Thank you.

17 All right. Ladies and gentlemen, we're going to
18 recess for the afternoon.

19 Let me caution you as you leave you're not permitted
20 to talk about this case until you are involved in jury
21 deliberations. And that of course won't be until all of
22 the evidence has been received and I've instructed you on
23 the law.

24 So during the overnight recess do not discuss the case
25 with any family members, no husband, wife, child, friend,

1 neighbor. You can't discuss it even among yourselves until
2 you're involved in jury deliberations. So don't talk about
3 the case in any fashion whatsoever with any person
4 whatsoever.

5 Also, you have to base your verdict and your decision
6 upon what you see and hear during the trial of the case.
7 You're not to allow yourselves to be influenced by any
8 outside consideration. So you're also not permitted to
9 allow yourselves to be exposed to any type of media
10 coverage that relates to the case should there be some,
11 whether it be television, radio or newspaper. Avoid it.
12 You can't consider it; you can't listen to it; you can't
13 watch it; you can't read about it.

14 Also, don't conduct any research or do your
15 investigation into any issue, whether it be on the internet
16 or any other type of research or investigation. Again, you
17 have to base your decision upon what you see and hear
18 during the trial. You can't be influenced by any outside
19 consideration.

20 Okay. Have a good evening. Please report back to
21 your jury room at 9:30 in the morning, 9:30 in the morning.
22 Have a good evening.

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Mr. McPherson, were you aware of that

1 portion of the statement that referred to the witness
2 telling the police?

3 MR. McPHERSON: I've read that statement several times
4 and hadn't picked up on that.

5 THE COURT: Hadn't seen that.

6 Okay. Anything else before we recess?

7 MR. BULSA: No, sir.

8 THE COURT: Court is in recess until 9:30 in the
9 morning.

10 END OF PROCEEDINGS FEBRUARY 4, 2008
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1 (Proceedings February 5, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters we need to address
5 before the jury is brought in?

6 MR. BULSA: None by the state, Your Honor.

7 MR. McPHERSON: Yes, Your Honor. If they have any lay
8 witnesses, I'd like copies of their records for impeachment
9 purposes.

10 THE COURT: I would assume they had already been
11 provided.

12 (Pause.)

13 MR. BULSA: Your Honor, the next witness is Eddie
14 Patrick, and I'm sharing the record with Mr. McPherson.

15 Based on my review, I don't see anything within the
16 10-year timeframe that is, but I'll allow him to review it
17 for himself.

18 MR. McPHERSON: This is the only one I have a question
19 about, but we are not too concerned, a conviction in 2003
20 for a guilty misdemeanor of sexual battery. And this was
21 out of what state? Looks like --

22 MR. BULSA: Virginia.

23 MR. McPHERSON: Out of Virginia.

24 MR. BULSA: Do you need to question the witness on it?

25 THE COURT: Well, I don't. I mean, do you?

1 MR. BULSA: If it's a misdemeanor, I'd argue that it's
2 not admissible. A misdemeanor is commonly in other states
3 less than a year.

4 MR. McPHERSON: Judge, we will waive going into any
5 possible criminal record on that particular witness.

6 MR. BULSA: This is Sharon Brown's, excuse me, Shirley
7 Rice's. She does have something.

8 THE COURT: All right. I understand the defense has
9 been provided criminal histories on the next two witnesses
10 which are Edward Patrick and Shirley Rice. Is that true?

11 MR. BULSA: Those are the next two lay witnesses.
12 Ms. Rice won't be. That is --

13 THE COURT: Well, in any event, the defense has been
14 provided copies of criminal histories on Edward Patrick and
15 Shirley Rice.

16 MR. BULSA: Yes, sir.

17 THE COURT: Okay.

18 MR. BULSA: For the record, Ramona Fernanders does not
19 have a criminal history, I'm told. And there were two
20 witnesses, Natesha and Thyeim Miller. We're running their
21 rap sheets. We just learned of them yesterday.

22 THE COURT: All right. Anything else?

23 MR. BULSA: No, sir.

24 THE COURT: Bring the jury in, please.

25 (The following takes place in the presence of the

Edward Randolph Patrick
Direct examination by Ms. Barnwell

1 jury.)

2 THE COURT: Good morning, ladies and gentlemen.

3 As you know, when we recessed yesterday the state was
4 in the midst of their presentation of evidence. So we will
5 continue with that presentation this morning.

6 Before we do that let me be sure that that chair is
7 screwed down. Is it?

8 THE JUROR: I think it is okay.

9 THE COURT: All right. Be careful over there.

10 All right. Mr. Bulsa.

11 MS. BARNWELL: Thank you, Your Honor. The state calls
12 Edward Patrick.

13 EDWARD RANDOLPH PATRICK,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. BARNWELL

16 Q Mr. Patrick, please state your full name for the
17 record.

18 A Edward Randolph Patrick.

19 Q And where are you currently employed?

20 A We Haul It All out of Boiling Springs.

21 Q Okay. And where were you employed in November of
22 2006?

23 A At Mamasun's Cocktails and Dreams.

24 Q Okay. And what did you do as an employee there?

25 A I was the karaoke deejay.

Edward Randolph Patrick
Direct examination by Ms. Barnwell

1 Q Okay. And were you karaoke deejaying the night of
2 November the 1st or early morning November the 2nd?

3 A Yes, ma'am.

4 Q Okay. And did you have the opportunity to see Dixon
5 Ijioma that night?

6 A Oh, yes, ma'am.

7 Q Would you just please explain to the jury how that
8 came about, how you saw Dixon Ijioma?

9 A It was shortly after 11:00 p.m. He had came into the
10 bar hollering someone call 9-1-1, I've been shot.

11 I had recognized him as a regular cab driver we used.
12 So I came down off the stage and went to him and seen that
13 he was just very upset. I had Laura, the waitress, hand me
14 towels and put them on his head. I put him into a chair
15 and just kinda kept him there until, you know, the
16 ambulance came.

17 Q Let me just stop you there, and let's go back.

18 When he first walked in how was his emotional state?

19 Can you describe that like what --

20 A His arms were up and he was, you know, just trying to
21 get attention.

22 Q Okay. And did you see the wounds that you are talking
23 about? Did you see? What was his physical condition?

24 A Well, at first, yes, you could see where he had two
25 cuts in his head.

Edward Randolph Patrick
Direct examination by Ms. Barnwell

1 Q Okay. And then what did he tell you had happened?

2 A That he had been shot.

3 Q Did he go into detail? Did he say anything else?

4 A Well, he said that, that he knew who the guy was but
5 he just couldn't think of his name and that he had taken
6 him, you know, to that same house on Locust, you know,
7 several times.

8 Q Okay. And so then what did you do for Mr. Ijioma?

9 A I just held the towels on his head until the ambulance
10 and stuff came and, you know, just kind of talked to him
11 and, you know, just made sure. I mean, he never passed out
12 or anything.

13 Q Okay.

14 A We were just trying to keep him calm, I guess.

15 Q So he was conscious during this whole time?

16 A Oh, yeah; oh, yeah.

17 Q And how long did it take in your proximity for the
18 ambulance and police officers to respond?

19 A From the time he hit the door until they were there, I
20 would say maybe less than ten minutes.

21 Q Okay. So they responded fairly quickly.

22 A Oh, yeah, oh, yes, definitely.

23 Q Okay. And while you were there did you speak to the
24 police officers?

25 A I believe I spoke with -- I think it's Officer Heyde.

Edward Randolph Patrick
Cross-examination by Mr. McPherson

1 And there was one other one, but I really don't recall his
2 name.

3 Q Okay.

4 MS. BARNWELL: One moment, Your Honor.

5 (Pause.)

6 Q I have no further questions. Please answer any
7 questions Mr. McPherson has.

8 CROSS-EXAMINATION

9 BY MR. MCPHERSON

10 Q Mr. Patrick, in your statement would you agree with me
11 that what he told you was he said the man who lives in the
12 first house on the right on Locust Street?

13 A Yes, sir.

14 Q That was more or less what he told you --

15 A Yes, sir.

16 Q -- about the man.

17 A Yes, sir.

18 Q And that's what you put in your statement.

19 A Yes, sir.

20 Q Which is a little different from what you've testified
21 to.

22 A Well, there was no question about where, you know, he
23 lived. I voluntarily said that, what Mr. Dixon had said,
24 yeah.

25 Q Okay. But what Mr. Dixon told you is that he lives in

Edward Randolph Patrick
Cross-examination by Mr. McPherson

1 the first house on the right on Locust Street.

2 A As I understood it, that was where the gentleman
3 lived, yes, sir.

4 MR. MCPHERSON: May I approach the witness?

5 THE COURT: Yes, sir.

6 MR. MCPHERSON: Now, could I get this marked as a
7 defense exhibit?

8 (Voluntary statement marked Defendant's Exhibit No. 2
9 for Identification.)

10 Q You testified earlier that he said he had taken the
11 man to a house on Locust Street on many occasions, correct?

12 A Yes, sir.

13 Q But you didn't put that in your statement, did you?

14 A I don't recall.

15 Q All right.

16 MR. MCPHERSON: May I approach the witness?

17 THE COURT: Yes.

18 Q I'm showing you what's marked as Defense Exhibit 2.
19 Do you recognize that?

20 A Yes, sir. That is, that is the statement I gave at
21 the time that happened.

22 Q And does it say in your statement that he took the man
23 to Locust Street on many occasions?

24 A No, sir.

25 Q Now, you've talked with the prosecutor regarding this

Edward Randolph Patrick
Redirect examination by Ms. Barnwell

1 case, have you not?

2 A Yes, sir.

3 Q How many times have you talked with him?

4 A I believe twice.

5 Q Okay. And they went over your statement with you?

6 A I received a copy of it yesterday, but, I mean, there
7 was no, no talk of it, no, sir.

8 Q Okay. No further questions.

9 MS. BARNWELL: Just real briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. BARNWELL

12 Q Mr. Patrick, the victim told you that he knew the man
13 that shot him.

14 A Yes, ma'am.

15 MS. BARNWELL: No further questions.

16 THE COURT: You may step down.

17 MR. BULSA: The state calls Deputy Thomas Heyde.

18 THOMAS HEYDE, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BULSA

21 Q Deputy, please introduce yourself to the jury.

22 A Yes. Deputy Thomas Heyde. I work for the Spartanburg
23 County Sheriff's Office.

24 Q How long have you been a deputy?

25 A How long? A year and a half.

Thomas Heyde
Direct examination by Mr. Bulsa

- 1 Q And what was your occupation before that?
- 2 A I was a city police officer, city of Spartanburg.
- 3 Q For how long?
- 4 A Seven years.
- 5 Q Okay. So you've been an officer over eight years?
- 6 A Yes, sir.
- 7 Q Back in November of 2006 what were your duties with
- 8 the sheriff's office?
- 9 A I was currently on street patrol for the Whitney-Una
- 10 area.
- 11 Q And on November the 1st, November the 2nd, that
- 12 evening, did you get a call to go to Mamasun's?
- 13 A Yes, sir, I did.
- 14 Q And that's on Whitney Road?
- 15 A Yes, sir.
- 16 Q Right near the bridge where Pine Street crosses over
- 17 Whitney?
- 18 A Yes, sir.
- 19 Q And do you recall what time you responded to that
- 20 area?
- 21 A Yes, sir. It was shortly after midnight.
- 22 Q And when you got to that location, could you describe
- 23 what you saw taking place?
- 24 A Yes, sir. Immediately upon my arrival I went inside
- 25 the club and discovered Mr. Ijioma sitting on a chair with

Thomas Heyde
Direct examination by Mr. Bulsa

1 his face away from me crouched over putting several white
2 towels on the back of his head, excessive bleeding on the
3 towels. And Mr. Patrick was also helping assist in keeping
4 the wound under control. And immediately I requested E. M.
5 S. for arrival because I saw that his condition was very
6 life-threatening, seeing that was a wound to the back of
7 the head.

8 Q And what was his demeanor?

9 A Very excitable. He was basically doing everything he
10 could to just keep alive at that point and contain the
11 wound.

12 Q How about Mr. Patrick? How was he?

13 A Mr. Patrick was a little excited as well but worked
14 pretty good under pressure and assisted.

15 Q And were you able to speak with Mr. Ijioma?

16 A I was able to speak very briefly but could not get any
17 specific information as he had his attention drawn to his
18 wound. He was probably unable to hear what I was trying to
19 ask him. But he was unable to disclose any specific
20 information at that time upon waiting for the ambulance to
21 arrive.

22 Q Was he able to tell you whether he knew his assailant
23 or not?

24 A No, sir.

25 Q About how long did he remain there until the ambulance

Thomas Heyde
Direct examination by Mr. Bulsa

1 picked him up?

2 A He was there for at least five minutes.

3 Q What did you do once he left?

4 A Once he left I made sure that the scene was secured
5 for all remaining evidence that remained inside the club.
6 I also had two other deputies canvass the Locust Street
7 area over by Longview to make at least a fresh attempt to
8 locate the suspect.

9 Q What drew your attention to Longview and Locust?

10 A I got information from Mr. Ijioma that the suspect
11 could possibly be left in that area because that was the
12 last area he was in. And that is where he actually was
13 shot.

14 Q Did you know that he was a cab driver?

15 A After I saw his business card, then it was disclosed
16 what his occupation was.

17 Q And were you looking for his cab?

18 A Yes, we were. Not me personally, but the two other
19 deputies that were helping me assist.

20 Q Was it found in the area?

21 A No.

22 Q Did other officers come to the scene and help process
23 the scene and began an investigation?

24 A Yes, sir.

25 Q Thank you, Officer. Answer any questions Mr.

Thomas Heyde
Cross-examination by Mr. McPherson

1 McPherson may have.

2 CROSS-EXAMINATION

3 BY MR. MCPHERSON

4 Q When you went to Mamasun's Bar did you go with anybody
5 else?

6 A I was the initially. And other officers did assist me
7 on the scene thereafter.

8 Q Do you recall a Deputy Clark being there?

9 A Yes, sir.

10 Q Did you go with him or did he come in a separate unit?

11 A He was in a separate unit.

12 Q Okay. Were you present when Deputy Clark questioned
13 Mr. Ijioma?

14 A Yes, sir.

15 Q Okay. Do you recall his responses to Deputy Clark?

16 A No, sir, I do not.

17 Q Okay. So when you talked to him, he didn't disclose a
18 name, clothing or any description whatsoever, did he?

19 A No, sir. He was distracted with his wound.

20 Q All right. And that was part of your job, was to try
21 to pick up a description of the suspect.

22 A I'm sorry, sir?

23 Q That was part of your job there at the scene, was to
24 attempt to pick up a description of the suspect if
25 possible.

Shirley Rice
Direct examination by Mr. Bulsa

1 A Yes, sir. I had two of my partners go canvass the
2 area for the suspect.

3 Q But you weren't able to pick up any description
4 whatsoever?

5 A No, sir, not at the time.

6 MR. McPHERSON: I have no further questions.

7 MR. BULSA: Nothing further.

8 Your Honor, we ask he be excused.

9 THE COURT: He may be.

10 (Whereupon, the witness was excused.)

11 MR. BULSA: The state calls Shirley Rice.

12 SHIRLEY RICE, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BULSA

15 Q Good morning, Ms. Rice.

16 A Good morning.

17 Q Introduce yourself to the jury.

18 A My name is Shirley Rice.

19 Q Okay. Where do you live, ma'am?

20 A I live on [REDACTED] Amos Street.

21 THE COURT: Let me ask you if you'll move that chair
22 up about a foot.

23 A I live at [REDACTED] Amos Street.

24 Q Okay.

25 A Spartanburg.

Shirley Rice
Direct examination by Mr. Bulsa

- 1 Q How long have you lived there?
- 2 A About 14 years.
- 3 Q All right. And that house is owned by who?
- 4 A Owned by my daughter.
- 5 Q Your daughter. Your daughter is who?
- 6 A Sharon Brown.
- 7 Q Sharon Brown.
- 8 All right. And, ma'am, do you have a phone in your
- 9 house?
- 10 A Yes, sir.
- 11 Q Okay. And what's that phone number?
- 12 A [REDACTED]-8714.
- 13 Q I want you to look at what's been marked for
- 14 identification as State's Exhibit No. 27. Do you see that
- 15 number up there, [REDACTED]-8714?
- 16 A Yes, sir.
- 17 Q That's your phone number?
- 18 A Yes, sir.
- 19 Q That is a BellSouth record. Do you see BellSouth on
- 20 it?
- 21 A Okay.
- 22 MR. McPHERSON: I object to these on the grounds that
- 23 these are not --
- 24 THE COURT: Sustained.
- 25 MR. McPHERSON: I'm sorry?

Shirley Rice
Direct examination by Mr. Bulsa

- 1 THE COURT: Sustained.
- 2 MR. BULSA: I'm not introducing them at this time.
- 3 I'm just getting her to identify them.
- 4 THE COURT: She can't identify those.
- 5 MR. BULSA: She can identify the number on it.
- 6 THE COURT: She testified what the number is.
- 7 MR. BULSA: Yes, sir. That's what I wanted.
- 8 Q Ms. Rice, do you know the defendant?
- 9 A Yes, sir.
- 10 Q How do you know him?
- 11 A Well, I -- my fiance at that time. He's my husband
- 12 now. I've been with him 22 years, which is his uncle.
- 13 Q So you have been with Mr. Young's uncle for 22 years.
- 14 A Yes.
- 15 Q Mr. Young's uncle is named what?
- 16 A Bobby Miller.
- 17 Q So you and Bobby Miller have been together for 22
- 18 years. And he has been living at that residence with you
- 19 for 14 years?
- 20 A Yes, sir.
- 21 Q Okay. And what's his physical condition?
- 22 A He has -- he had a heart attack. He had a stroke.
- 23 He's got gas aspirate.
- 24 Q You take care of him?
- 25 A Yes, sir.

Shirley Rice
Direct examination by Mr. Bulsa

- 1 Q Is that pretty much your job?
- 2 A Yes, sir.
- 3 Q All right. It's a hardship for you to be up here
- 4 today, right?
- 5 A Yes, sir.
- 6 Q Okay. We're going to let you go in just a minute.
- 7 Okay?
- 8 A All right.
- 9 Q All right. Ma'am, did you ever have an occasion to
- 10 call a cab to your house?
- 11 A I can't remember why I called a cab.
- 12 Q Do you know Mr. Ijioma?
- 13 A No, sir. Never seen him.
- 14 Q Never seen him before?
- 15 A Uh-uh.
- 16 Q So if his number showed up on your shown records, you
- 17 would have no reason to know why.
- 18 A Well, several people's used my phone. So and it has
- 19 been used before, you know. So I don't. I can't.
- 20 Q Okay. Do you remember back in November of 2006 when
- 21 your, I guess, was it your nephew by marriage now, got
- 22 arrested?
- 23 A Uh-huh, yes.
- 24 Q Okay. And the night that this incident happened do
- 25 you remember seeing him at your house that night?

Shirley Rice
Cross-examination by Mr. McPherson

1 A Yes, sir.

2 Q He actually came by and used your telephone.

3 A Yes, sir.

4 Q And that was late in evening.

5 A Yes.

6 MR. MCPHERSON: Your Honor, I'm going to object to him
7 leading the witness.

8 THE COURT: Sustained.

9 Q Was that late in the evening?

10 A Yes.

11 Q Okay. Was that the last time you saw him that night,
12 is after he left from using the phone?

13 A Yes, sir.

14 Q Okay. Do you know how he left your house?

15 A No, sir.

16 Q He went outside and you stayed inside.

17 A Yes, sir.

18 Q Okay. Thank you, ma'am. That's all I have. Answer
19 any questions Mr. McPherson has.

20 CROSS-EXAMINATION

21 BY MR. MCPHERSON

22 Q Now, Ms. Rice, you said several people came in and
23 used your phone, is that correct?

24 A It have been, yes.

25 Q All right. And I believe you indicated at one time,

Shirley Rice
Cross-examination by Mr. McPherson

1 whenever it was he came into your home, that you know for a
2 fact it was around 12:50 in the evening.

3 A Yes, sir.

4 Q And are you certain of that time?

5 A For a fact.

6 Q No question.

7 A Give, you know, they refreshing me so that I say five
8 or ten minutes, give or take. But I know it was ten
9 minutes to 1:00 because I looked at my clock.

10 Q Okay.

11 A Because I fussed at him for coming that time of night
12 and knocking on my door.

13 Q Okay. So it is possible you could have gotten your
14 days mixed up?

15 A No, sir; no, sir, because the detectives was at my
16 house the next day.

17 Q Okay. But you're just absolutely positive.

18 A I'm positive it was ten minutes to 1:00.

19 Q And could you hear the conversation or any part of the
20 conversation?

21 A I was so upset at Robert for coming to my house that
22 late at night until I was fussing at him. And I told him
23 that this is the last time you're going to use my phone
24 this late at night. He said I want to call for me a ride.
25 He -- I told him to go and use the phone. And I was

Shirley Rice
Cross-examination by Mr. McPherson

1 constantly fussing. And I was really mad because he had
2 woke me up out of my sleep. And I could hear him talking,
3 but I really wasn't concentrating on what he was saying.
4 But I knew it was a lady that he was talking to. And the
5 lady was fussing at him.

6 Q Okay. And you're positive it was a lady that was
7 fussing.

8 A Yes, yes.

9 Q No doubt in your mind.

10 A No doubt in my mind. She was very loud. I could hear
11 her, hear her fussing through the phone. Robert never said
12 one word.

13 When she got through fussing he said okay, and he hung
14 up my phone. And he said I'm going to wait on my ride on
15 the front porch.

16 Q Okay. Now, where is -- your house is on what street?

17 A On Amos Street.

18 Q Now, is it the first house on the right on Amos
19 Street?

20 A Coming off of Church Street it's the first house on
21 the right. It is the second one coming off of Liberty,
22 South Liberty.

23 MR. MCPHERSON: I have no further questions.

24 MR. BULSA: Briefly in reply.

25

Shirley Rice
Redirect examination by Mr. Bulsa

1 REDIRECT EXAMINATION

2 BY MR. BULSA

3 Q Ms. Rice, you say Mr. Young came by that night to use
4 your phone to call for a ride?

5 A Yes, sir. That's what he said.

6 Q Did anybody else come by to use your phone that night?

7 A At this time I can't remember. And at that time the
8 next day when the detectives come out there, I can't
9 remember nobody else but Robert that night.

10 Q Nobody else but your son? Did your daughter come by
11 that night?

12 A Yes. Shortly after Robert left out of the house, I
13 say five minutes after Robert left out of the house, my
14 daughter came.

15 Q Okay. Did she call first?

16 A Yeah, she called. That was -- I think it was just
17 shortly after Robert. Maybe time he left out of the house,
18 she called. I can't really say. But she called and said
19 she was coming over. But, see, when my daughter called me
20 and said she was coming over, she also goes to give my
21 sister medicine at night.

22 Q Okay.

23 A Uh-huh. She does that every night.

24 Q I understand. But before she came over she actually
25 called your house.

Shirley Rice
Redirect examination by Mr. Bulsa

1 A Yes.

2 Q And that was after Mr. Young had used your phone.

3 A Yes.

4 Q All right. And her number is what?

5 A 253-9975.

6 Q And on State's Exhibit No. 27, again --

7 MR. McPHERSON: Your Honor, I am going to object to
8 her testifying from any document that's not in evidence.

9 THE COURT: I don't think she is testifying from a
10 document.

11 MR. McPHERSON: Well, he's getting ready to show it to
12 her.

13 MR. BULSA: She is going to identify the number.

14 THE COURT: I thought she already did.

15 MR. BULSA: I'm going to get her to acknowledge that
16 that is the correct number on this record.

17 THE COURT: Okay.

18 MR. McPHERSON: Objection.

19 THE COURT: Overruled.

20 Q Okay. State's Exhibit 27.

21 THE COURT: That's not an exhibit yet.

22 MR. BULSA: I know. For identification.

23 THE COURT: Okay.

24 MR. McPHERSON: Well, Judge, she's testifying from a
25 document that's not in evidence. Again, I raise the

Shirley Rice
Redirect examination by Mr. Bulsa

1 objection.

2 THE COURT: She's not testifying from the document.
3 She's already testified what the number was.

4 MR. McPHERSON: I understand. But now he's showing
5 her the document and she's getting ready to. I don't want
6 to go into it. She's getting ready to testify from that
7 particular document by making --

8 THE COURT: Well, I think she's probably going to
9 testify she sees that number on that document. But that
10 document, I assume, will be admitted later on by a proper
11 person. If not, then it won't be in evidence.

12 All right. Go ahead.

13 Q Is this your daughter's number on your -- on this
14 document?

15 A Yes, sir.

16 Q Okay. Thank you, ma'am.

17 MR. BULSA: That's all I have.

18 THE COURT: Anything else? You may step down.

19 MR. BULSA: We ask Ms. Rice be excused to tend to her
20 husband.

21 THE COURT: You may be.

22 (Whereupon, the witness was excused.)

23 MR. BULSA: Officer Talanges.
24
25

Robert Charles Talanges
Direct examination by Ms. Barnwell

1 ROBERT CHARLES TALANGES,
2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. BARNWELL

4 Q Please state your name for the record.

5 A Robert Charles Talanges.

6 Q And, Investigator Talanges, where are you employed?

7 A Spartanburg County Sheriff's Office.

8 Q Okay. And where were you employed in November of
9 2006?

10 A At the Spartanburg County Sheriff's Office.

11 Q Okay. And what is your title at the sheriff's
12 department?

13 A We are considered, I guess, investigator, I. D.
14 investigators or forensic investigators.

15 Q Okay. And what are some of your job -- what is your
16 job description as an I. D. investigator?

17 A Our job description is to process any and all crime
18 scenes that we're called to respond to.

19 Q And what kind of things do you do when you process a
20 crime scene?

21 A First of all, start off with arriving at the scene,
22 surveying the scene, photographs, marking and collection of
23 any evidence located, preservation of the evidence,
24 packaging and then submitting it for testing.

25 Q Okay. And did you arrive on the crime scene on

Robert Charles Talanges
Direct examination by Ms. Barnwell

1 November the 2nd of 2006, early morning hours, late night
2 November the 1st of 2006?

3 A Yes, I did.

4 Q Okay. And where did you respond to?

5 A 280 Whitney Road. That's a local bar there.

6 Q Okay. And when you arrived on that scene, what did
7 you encounter?

8 A E. M. S. and multiple deputies were already on the
9 scene. They were working on the victim inside the
10 business. Basically, when I was there they were cutting
11 his clothes off and placing him -- loading the victim up
12 ready to transport to the hospital.

13 Q Okay. Did you learn who the victim's identity was?

14 A No, I did not.

15 Q Okay. And what then sort of investigation did you do?

16 A Basically, the first thing I did is surveyed the
17 scene. I started photographing. And then I collected the
18 victim's clothes to preserve them and place them into
19 evidence bags.

20 Q Okay. Did you do any other investigation outside of
21 Mamasun's?

22 A After transportation of our, the victim we started
23 searching the area, roadway area. We had word that the
24 victim had actually ran into the bar. So we started
25 searching the Whitney Road area for any signs of

Robert Charles Talanges
Direct examination by Ms. Barnwell

1 bloodstains or blood drops, sidewalks, roadways, any. That
2 whole area we searched for blood.

3 Q Okay. And what did you uncover? What did you
4 discover?

5 A Going towards Chesnee on 221 there were blood drops
6 located headed towards the I-85 bridge, 585 bridge. And
7 over towards the U-Haul rental sidewalk area there was also
8 blood found there, blood droplets.

9 Q And so there was a blood trail.

10 A Yes, there was.

11 Q And did what did you do? Did you do anything to the
12 blood trail? I mean, what was -- what's the protocol when
13 you find a blood trail?

14 A We started marking it. And basically we did -- we
15 started working the scene backwards from the bar location
16 and we started following the blood trail to the origin or
17 location.

18 Q Okay. Did you do any swabbing of the blood trail?

19 A After photographing and -- it took us quite a long
20 period of time to actually track down this blood. We
21 marked it first. And then we actually -- I actually
22 collected the swabs.

23 Q Okay. And I'm going to show you what's been marked as
24 State's Exhibit 25. Can you tell me what this is?

25 A I've got it marked as of course the case number,

Robert Charles Talanges
Direct examination by Ms. Barnwell

1 2006-110074. It says two swabs, Q-tip. It was collected
2 on Longview Drive and Whitney Road at approximately 1:55 in
3 the morning on November the 2nd.

4 MS. BARNWELL: Your Honor, we move this into evidence
5 as State's Exhibit 25.

6 MR. McPHERSON: I'm going to object, Your Honor, on
7 the grounds that it's not relevant, one. And then I assume
8 they're going to use this later on down the road. And they
9 haven't shown the chain if there is a chain.

10 THE COURT: Let me see y'all just a minute.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right. The objection is overruled
14 subject to the item being identified and otherwise made
15 relevant.

16 Q Investigator Talanges, would you open that up and see
17 what's inside there? And can you identify those?

18 A These are our Q-tip swab boxes, and they were taken
19 from two difference locations. One was Longview Drive and
20 the other is Whitney Road.

21 Q So Longview Drive and Whitney Road.

22 A That's correct.

23 Q And how did they end up in that evidence bag?

24 A I placed them in there.

25 Q Okay. And then after you placed -- how did they get

Robert Charles Talanges
Cross-examination by Mr. McPherson

1 into the little white boxes?

2 A The white boxes are boxes, collection boxes, that we
3 actually fold up and place the collection inside and seal
4 them and mark where we located them, date, time and all the
5 other pertinent evidence.

6 Q Okay. And then what do you do with the little white
7 boxes?

8 A They're placed inside the evidence envelope and sealed
9 and then placed into evidence until further testing is
10 needed.

11 Q And is that what you did with this particular grouping
12 of things?

13 A Yes.

14 Q Okay.

15 MR. MCPHERSON: I'm sorry. I didn't hear his last
16 answer.

17 MS. BARNWELL: He said yes.

18 THE COURT: Was your answer yes or no?

19 THE WITNESS: Yes, sir. It was yes.

20 MS. BARNWELL: I have no further questions for this
21 witness.

22 Q Please answer any questions Mr. McPherson has.

23 CROSS-EXAMINATION

24 BY MR. MCPHERSON

25 Q I believe you indicated there were no blood drops,

George Nicholson
Direct examination by Mr. Bulsa

1 were located in the area between Belmont Street and Locust
2 Court, is that correct?

3 A That is correct.

4 Q How far is Belmont from Locust, from the last blood
5 drop that you found?

6 A You're looking approximately, I'll take a rough guess,
7 150 to 250 feet maybe, if that.

8 MR. MCPHERSON: No further questions.

9 MS. BARNWELL: We have nothing further.

10 THE COURT: You may step down.

11 MR. BULSA: We ask he be excused.

12 THE COURT: You may be.

13 (Whereupon, the witness was excused.)

14 MR. BULSA: The state calls George Nicholson.

15 GEORGE NICHOLSON, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Mr. Nicholson, if you would, introduce yourself to the
19 jury.

20 A My name is George Nicholson. I work for AT&T out of
21 Columbia. I'm their asset protection manager for South
22 Carolina.

23 Q And AT&T purchased BellSouth just recently?

24 A It merged at the beginning of last year, yes, sir.

25 Q Okay. So how long have you been with AT&T?

George Nicholson
Direct examination by Mr. Bulsa

1 A Since the beginning of last year. Prior to that I was
2 with BellSouth, Southern Bell since 1972.

3 Q Okay. So you have been in this line of work for 30
4 years.

5 A Yes, sir.

6 Q Okay. And as part of your job do you deal with the
7 records?

8 A Yes, sir.

9 Q Phone records?

10 A I'm considered the custodian of records for purposes
11 like this.

12 Q Okay. And let me show you what's been marked State's
13 Exhibit No. 27 for Identification. Do you recognize that
14 document?

15 A Yes, sir. It's a list of calls from and to a specific
16 telephone or target number.

17 Q Is that an accurate copy of those records?

18 A Yes, sir, it is.

19 Q Okay. And when were those records printed? Can you
20 tell?

21 A I can't tell from the two pages here. I would have to
22 go back and look at the search warrant. Is that all right
23 with you?

24 Q Yes, sir.

25 A We were served with a search warrant in November of

George Nicholson
Direct examination by Mr. Bulsa

1 '06.

2 Q Okay. And you were asked for records pertaining to
3 what number?

4 A Telephone No. [REDACTED]-8714. This was responded to by
5 the office that provides these records on the 14th of
6 November of 2006.

7 Q Okay. And did you pursuant to my request identify the
8 subscriber information for that number?

9 A Yes, sir, I did.

10 Q And who does that number belong to?

11 A That number belonged to a Sharon M. Brown at [REDACTED] Amos
12 Street in Spartanburg.

13 Q And these records, what dates do they pertain to?

14 A The first call is on November 1st, 2006, at 7:53 a.m.
15 The last call is on November 2nd, 2006, at 2124 military
16 time.

17 Q Okay.

18 MR. BULSA: Your Honor, I would offer State's
19 Exhibit 27 into evidence.

20 MR. MCPHERSON: I'm going to object on the grounds
21 that they are not relevant.

22 THE COURT: They are not relevant?

23 MR. MCPHERSON: Yes, sir.

24 THE COURT: All right. Overrule the objection.

25 (BellSouth records marked State's Exhibit No. 27.)

George Nicholson
Direct examination by Mr. Bulsa

1 Q In a minute we're going to project these on the
2 screen. And I want you to identify certain columns and
3 what they mean. And while we're waiting for this to warm
4 up --

5 THE COURT: Do y'all have more than one copy so that
6 he doesn't have to crane his neck?

7 MR. BULSA: Yes, sir. Here's a copy.

8 THE COURT: Okay.

9 Q I would ask you to highlight if you would, or we have
10 sort of marked on this page -- highlight the phone numbers
11 or the calls that were made around either shortly before or
12 after midnight, November the 1st, November the 2nd. And
13 how many calls were there?

14 A Well, there were two as far as the timeframe you gave
15 me. There was one just like 14 minutes before midnight and
16 one 25 minutes after.

17 Q Okay. So the one shortly before midnight, what was
18 the next most recent call to that one?

19 A Prior to that one, you mean?

20 Q Yes, sir.

21 A 2132 military time.

22 Q Which is what time?

23 A 9:32 p.m.

24 Q 9:32 p.m.

25 A Yes.

George Nicholson
Direct examination by Mr. Bulsa

1 Q And the one after midnight, what was the next most
2 recent call to that one?

3 A At 8:46 in the morning.

4 Q So these records --

5 MR. MCPHERSON: Your Honor, I'm going to object to
6 further testimony in that the records speak for themselves.

7 THE COURT: I understand. Overrule the objection.

8 Q All right. Do you have a copy of these records with
9 you, sir?

10 A Yes, sir, I do.

11 Q Okay. You've highlighted two areas for us. The first
12 column list has a number, number 38. What is that?

13 A Well, there's on the far left column, that's just the
14 number sequence of the calls just to make it easier to keep
15 track of what page you're on. But it's call 38 of the
16 calls we provided to you.

17 Q Okay. And so we're going to be concerned with call
18 number 38 and number 39. Call number 38 if you would, read
19 that line across so the jury can understand what that
20 information is.

21 A Well, the first column -- each column has a heading at
22 the top. So but the first column says call date, which is
23 the date the call was made. The next one is call time,
24 which is the time the call was made. The third one is the
25 calling number. That's the number that originated the

George Nicholson
Direct examination by Mr. Bulsa

1 telephone call. And the fourth column is called number.

2 That's the number that received the telephone call.

3 Then you have a duration like the -- or in this case
4 seconds. And a column that says answered, meaning, yes, it
5 was answered. And there is a type of call. That little
6 one is basically a local call.

7 Q So looking at call number 38, that call was placed at
8 23:46:50.

9 A Yes, sir.

10 Q Okay. And regular time that's 11:46, 50 seconds, p.m.

11 A That's correct.

12 Q And the third column, you said, was the calling
13 number.

14 A Yes. That's the one originating the call.

15 Q Okay. So from call 38, what does that tell us about
16 this call?

17 A Well, the telephone number that we previously
18 identified as belonging to Sharon Brown, originated call to
19 this second number, the one that ends in [REDACTED]-6873.

20 Q So someone placed a call at 11:46:50 from Sharon
21 Brown's residence to the [REDACTED] number.

22 A Yes, sir.

23 Q Okay. The [REDACTED] number is -- do you know what type of
24 number that is?

25 A That belongs to the SunCom Telephone Company. It's a

George Nicholson
Direct examination by Mr. Bulsa

- 1 wireless number. But as far as which customer of SunCom's
2 has it, I could not tell you that.
- 3 Q Okay. So SunCom is a cellular phone company?
- 4 A Yes, sir.
- 5 Q All right. Now, let's go. That call lasted about 33
6 seconds.
- 7 A Yes, sir.
- 8 Q Thirty-four seconds. Okay. And call number 39 would
9 have been after midnight, 12:25:18 a.m.
- 10 A Yes, sir.
- 11 Q Okay. And the third column is the calling number.
- 12 A Correct.
- 13 Q Do you know whose number that is?
- 14 A Yes, sir, I do.
- 15 Q Whose number is that?
- 16 A That also belongs to Sharon Brown, but at [REDACTED] Ardmore
17 Road at Spartanburg.
- 18 Q Okay. So that number called Sharon Brown's number at
19 Amos Street.
- 20 A Yes, sir.
- 21 Q Okay. And it appears that that lasted about ten and a
22 half seconds.
- 23 A Correct, sir.
- 24 Q Now, Mr. Nicholson, I also asked you about another
25 number, [REDACTED]-2152. Were you able to identify who that

George Nicholson
Direct examination by Mr. Bulsa

1 belonged to?

2 A Yes, sir, I was. In the timeframe in November of '06
3 it belonged to -- it was actually being billed to Florida
4 Telephone, or abbreviated Flatel, F-L-A-T-E-L, Inc., which
5 is a reseller service. And it was listed to T. Miller at
6 156 --

7 MR. McPHERSON: Your Honor, I'm going to object on the
8 grounds this is hearsay.

9 THE COURT: Overruled.

10 A It was listed to the name, initial T. Miller at [REDACTED]
11 Palisade Street in Spartanburg.

12 Q [REDACTED] Palisade Street, T. Miller?

13 A Yes, sir.

14 Q I show you State's Exhibit No. 26 for Identification.
15 The number I just asked you about, [REDACTED]-2152, does that show
16 on those records?

17 A Yes, sir, it does.

18 MR. McPHERSON: Your Honor, I am going to object to
19 him testifying from a document that's not in evidence.

20 THE COURT: Are these his records?

21 MR. BULSA: No. These are the SunCom records.

22 THE COURT: Sustain the objection.

23 MR. BULSA: Okay.

24 Q But that number, [REDACTED]-2152 --

25 MR. McPHERSON: Objection. I'm sorry.

George Nicholson
Direct examination by Mr. Bulsa

1 THE COURT: Let me see y'all just a minute.

2 MR. BULSA: That's a BellSouth number. He can testify
3 to that.

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 Q Mr. Nicholson, let me clarify this for the jury. The
7 [REDACTED]-2152 number, is that a BellSouth or an AT&T number?

8 A It is a BellSouth number, but it's being sold to a
9 reseller rather than directly to a consumer or subscriber.

10 Q Okay. And when was it resold?

11 A In this case this service was established
12 December 5th of 2005.

13 Q Previous to being sold it belonged to BellSouth.

14 A Yes, sir. Well, it still belongs to BellSouth as far
15 as the actual customer paying the bill.

16 Q Okay.

17 A They're paying Florida Telephone, and Florida
18 Telephone pays BellSouth.

19 Q Okay. That's a cell phone number associated with [REDACTED]
20 Palisade.

21 A Yes, sir.

22 Q Thank you, sir. That's all I have at this time.

23 Answer any questions Mr. McPherson may have.

24 MR. MCPHERSON: We have no questions.

25 THE COURT: You may step down. Thank you.

Ramona Fernanders
Direct examination by Ms. Barnwell

1 MR. BULSA: Your Honor, we ask that Mr. Nicholson be
2 excused..

3 THE COURT: He may be.

4 (Whereupon, the witness was excused.)

5 MS. BARNWELL: The state calls Ramona Fernanders.

6 RAMONA FERNANDERS, having
7 been duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. BARNWELL

9 Q Please state your full name for the record.

10 A Ramona Fernanders.

11 Q Ms. Fernanders, where are you employed?

12 A I'm a general manager at Garfield's Restaurant at
13 Westgate Mall.

14 Q Okay. And where do you live?

15 A I live at [REDACTED] Palisade Street.

16 Q Okay. And did you live there in November of 2006?

17 A Yes, ma'am, I did.

18 Q Okay. And that night, November the 1st, 2006, into
19 the early morning hours of November the 2nd, what had you
20 done that night?

21 A I don't know what I had actually done, but I got home
22 about 12:30.

23 Q Okay. So in the morning, 12:30, November the 2nd.

24 A Yes, ma'am.

25 Q Okay. And when you arrived at your home, what did

Ramona Fernanders
Direct examination by Ms. Barnwell

1 you, what did you do?

2 A When I pulled up in my driveway, when I got out of my
3 car a lady name Vickie Smith called my name. And I asked
4 Vickie what did she want. And she told me that she wanted
5 me to take her to the store because she wanted to purchase
6 some little cigarettes.

7 THE COURT: Let me ask the bailiff.

8 If you'll pull -- do you see this thing? That's
9 just -- I'm asking the bailiff to check it. The microphone
10 is sticking through it. That's not the way it is supposed
11 to be.

12 (Pause.)

13 THE COURT: Thank you.

14 THE WITNESS: Do I get -- okay.

15 A And so I told Vickie that that was fine. So we got
16 back in the car, and she was waiting on her husband, Wando,
17 to come in the street to let him know that I was going to
18 take her to the store. And so I was talking to Vickie and
19 all a sudden she jumped, and I asked her what was wrong.

20 THE COURT: Let me ask you to slow down, please, so we
21 can be sure to understand what you're saying.

22 THE WITNESS: Okay. I'm sorry.

23 A And I asked her what was wrong. And I turned and
24 looked out of my window, and Robert was standing there.

25 Q When you say Robert, who are you referring to?

Ramona Fernanders
Direct examination by Ms. Barnwell

1 A Robert Young.

2 Q Okay. And how do you know Robert Young?

3 A Because I, we, my family has lived on Palisade Street
4 forever, just as well as his. I live at [REDACTED] Palisade
5 Street, and his family has a home right next to me.

6 Q Okay. Now, please continue.

7 A Okay. And I rolled the window down, and I said, "Hey,
8 Robert," and he said hey. He said, "I'm sorry, I didn't
9 mean to scare you." And I said, "Well, that's okay." He
10 said, "Can I take, can you take me to my mom's house?" And
11 I said, "Well, Robert, where do your mom live?" And he
12 said up by the dollar-and-a-half movie. And I said, "Well,
13 okay, that's fine."

14 And so Vickie told me that she would ride with me
15 because she wanted me to take her to the store anyway. So
16 Robert got in the car. And he showed me where his mom
17 lived, and I took him to his mom's house.

18 Q Okay. So you took him to Locust Court?

19 A I did.

20 Q And about what time did you say this was again?

21 A About 12:30 12:45, somewhere along in there.

22 Q Okay. And when did you learn that Mr. Young was being
23 charged with this, this crime?

24 A The next day my sister called me and told me that it
25 was on the news that Robert had been charged with shooting

Ramona Fernanders
Direct examination by Ms. Barnwell

1 a cab driver.

2 Q Okay. And did the police ever speak with you? Did
3 you ever meet with the police?

4 A I did. I had to go down to make a statement. A
5 detective called me and he also told -- he told me that
6 Robert had said that he had been with me on that --

7 MR. MCPHERSON: Your Honor, I'm going to object.

8 THE COURT: Sustained.

9 Q Okay. But you did speak with the police.

10 A I did.

11 Q Okay. And had you been with Robert all day?

12 A No, ma'am, I had not. I hadn't seen Robert that day.

13 Q Okay. You just saw him.

14 A When he walked up and asked me to take him to his
15 mother's house.

16 Q Okay. That night.

17 A Yes, ma'am.

18 MS. BARNWELL: I have no further questions for this
19 witness.

20 THE COURT: Just a minute. She is not through.

21 MR. MCPHERSON: Oh, I'm sorry.

22 Q Ms. Fernanders, who lives at [REDACTED] Palisade?

23 A Thyeim Miller.

24 Q Okay. And do you know how they're related to
25 Mr. Young?

Ramona Fernanders
Cross-examination by Mr. McPherson

1 A They are cousins, Thyeim and Robert are cousins.

2 Q Okay. And that's next door to you?

3 A Yes, ma'am.

4 Q Okay. I have no further questions.

5 CROSS-EXAMINATION

6 BY MR. MCPHERSON

7 Q So you agree that when you took Robert home that
8 evening it was around 12:45 to 1:00 o'clock?

9 A I said 12:30 to 12:45.

10 Q But you would agree with me in your statement you put
11 12:45 to 1:00 a.m.

12 A It was around that time. All I know is Robert asked
13 me to take him to his mom's house, and I took him.

14 Q And you know it was really late at night.

15 A It was late at night, early in the morning.

16 Q It would had to have been after 12:30.

17 A It was 12:30, 12:45, somewhere along in there, sir. I
18 can't be correct, but I took Robert to his mom's house.

19 MR. MCPHERSON: No further questions.

20 MS. BARNWELL: Your Honor, we have nothing further
21 from this witness and ask that she be excused.

22 THE COURT: She may step down. She may be.

23 (Whereupon, the witness was excused.)

24 MR. BULSA: May we approach, Your Honor?

25 THE COURT: Yes.

Giovanni Paparo
Direct examination by Mr. Bulsa

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 THE COURT: All right. Ladies and gentlemen, I've got
4 one matter I need to address outside of your presence. So
5 please go to your jury room. Don't discuss the case. I'll
6 bring you back in just a few minutes.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: We will be at ease for ten minutes.

10 (Whereupon, a recess was taken.)

11 THE COURT: We are ready for the jury?

12 MR. BULSA: Yes, sir.

13 THE COURT: Bring them in, please.

14 (The following takes place in the presence of the
15 jury.)

16 THE COURT: Mr. Bulsa.

17 MR. BULSA: The state calls Giovanni Paparo.

18 GIOVANNI PAPARO, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BULSA

21 Q If you would, sir, please introduce yourself to the
22 jury.

23 A I am Giovanni Paparo. I work for SunCom Wireless in
24 the business security department, custodian of records.
25 And basically what we do is we process subpoenas and put up

Giovanni Paparo
Direct examination by Mr. Bulsa

1 wiretaps for the federal government, identify theft and
2 general security for the company.

3 Q And where do you reside?

4 A Pennsylvania.

5 Q Okay. So you flew down here for this trial?

6 A Okay.

7 Q Okay. And, Mr. Paparo, did you or your office collect
8 records for [REDACTED]-6873?

9 A Yes.

10 Q And I show you State's Exhibit No. 26 for
11 Identification. Can you identify those documents?

12 A Okay.

13 Q What are those documents?

14 A The first page here is the subscriber information,
15 basically the phone number and name of the customer, the
16 address, social security number and the -- shows some
17 payment histories, when it was activated and deactivated
18 and things like that.

19 Q And the second page is?

20 A The second page is full detail records.

21 Q For a certain timeframe?

22 A Right, yes.

23 Q Are those records clear and accurate records of that
24 number for those timeframes?

25 A Yes.

Giovanni Paparo
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, I would move these into
2 evidence.

3 MR. McPHERSON: No objection.

4 THE COURT: They are admitted.

5 (Phone records marked State's Exhibit No. 26.)

6 Q Mr. Paparo, what is this subscriber information on
7 that number?

8 A Dick U. Ijioma.

9 Q Okay. And how long has he had that number?

10 A Okay. Service was activated July 19th of '04.

11 Q Okay. And just so we understand, this is a cell
12 phone?

13 A Yes.

14 Q Okay. And the second page, what is the timeframe in
15 which you provided us?

16 A When we gave the records?

17 Q Yes, sir.

18 A November the 2nd of '06.

19 Q All right. And when does it begin and end?

20 A Okay. November the 1st from 161136. And the most
21 recent one was November the 1st at 2348.

22 Q Okay. Those are in military time, correct?

23 A Yes.

24 Q So the last phone call was 11:48:18 p.m.

25 A Yes.

Giovanni Paparo
Direct examination by Mr. Bulsa

1 Q Okay. You have a copy of this, don't you?

2 A Yes.

3 Q Would you refer to your copy while I put this one on
4 the board? If you would for the jury, let's discuss these
5 column headings first.

6 A Okay.

7 Q Explain what those columns are.

8 A Okay. The first column is the serving switch I. D.,
9 which is the general area of where the calls were made
10 from. Basically, the company at the time has like seven
11 switches. So it's just the general area, the Greenville
12 area.

13 The second column is the, it's also the I. D. number,
14 which is a 4-digit code that corresponds to where the
15 actual tower is located.

16 The second column is -- the third column, I am sorry,
17 is the originating number, which is the actual target
18 number.

19 The next column is dial digits, which is basically the
20 numbers that were dialed.

21 And the column after that is the start time with the
22 date.

23 And the next column after that is the call end time
24 with the date and time.

25 And the last column is duration, which is how long,

Giovanni Paparo
Direct examination by Mr. Bulsa

1 you know, the person was on the call.

2 Q Okay.

3 THE COURT: Before you go any further, let me let the
4 jury move down a seat so you might be able to see a little
5 bit better. I'm not sure. You've got a better chance
6 anyway.

7 (Pause.)

8 Q So column three, the originating number, that is the
9 number who placed the call in relation to this time?

10 A Right.

11 Q Okay. So the first number up there, [REDACTED]-8191,
12 what does that tell us? Somebody called this phone?

13 A Right. That's an incoming call to the phone. So,
14 basically, the originating-number column, whenever the
15 target number is not in there, that number that's in there
16 is the incoming calling number.

17 Q So looking at the third number, it shows the
18 [REDACTED]-6873.

19 A Yes.

20 Q That is this phone.

21 A Yes.

22 Q What does that tell us?

23 A He dialed [REDACTED]-8190.

24 Q Mr. Ijioma or somebody using his phone called that
25 second number.

Giovanni Paparo
Direct examination by Mr. Bulsa

- 1 A Yes.
- 2 Q Okay. So where we don't see a number in the fourth
3 column, that means somebody was calling him.
- 4 A Right, yes.
- 5 Q Okay. If you would, let me get you to highlight the
6 first two numbers there, and the fifth number. If you
7 would, go all the way across. I had you highlight the
8 first number on the list because that would be the last
9 one, the last phone call of this timeframe, correct?
- 10 A Yes.
- 11 Q And that was 11:48 to 11:51 for about three minutes.
- 12 A Yes, sir.
- 13 Q And the next call, [REDACTED]-8714, was placed at what
14 time?
- 15 A 2345.
- 16 Q 11:45, p.m.
- 17 A Uh-huh.
- 18 Q Is that right?
- 19 A Yes.
- 20 Q Okay. And that lasted for about 36 seconds?
- 21 A Yes.
- 22 Q And then the fifth number, [REDACTED]-2152, was placed
23 when?
- 24 A 223105.
- 25 Q So that would be 10:31 p.m.

Giovanni Paparo
Direct examination by Mr. Bulsa

1 A Yes.

2 Q An hour and 15 minutes earlier.

3 A Right.

4 Q And last occurred for one minute and 21 seconds.

5 A Yes.

6 Q Okay. Now, you have subscriber information for the
7 cell phone itself, right?

8 A Yes.

9 Q Do you know the numbers or the owner of the other
10 numbers?

11 A The owner of the --

12 MR. MCPHERSON: Objection unless they are SunCom's
13 subscribers.

14 THE COURT: Well, you understand he can testify to
15 what he, what his records reflect that he's the custodian
16 of, not somebody else.

17 MR. BULSA: Yes, sir.

18 THE COURT: All right.

19 Q Do your records tell you the owner of those other
20 numbers?

21 A No.

22 Q No, sir.

23 Okay. Do your records tell you the company who those
24 numbers belong to?

25 A The other numbers, no.

Joseph Bohon
Direct examination by Mr. Bulsa

1 Q So you can testify to your records and the subscriber
2 information for your records.

3 A Yes.

4 Q These records are accurate as to the phone calls that
5 this number received.

6 A Yes.

7 Q Okay. And this would be the number on this business
8 card, is that right?

9 A Yes.

10 Q Okay. Thank you. Answer any questions Mr. McPherson
11 may have.

12 MR. McPHERSON: I have no questions.

13 THE COURT: You may step down.

14 MR. BULSA: We ask that this witness be excused.

15 THE COURT: He may be.

16 (Whereupon, the witness was excused.)

17 MR. BULSA: The state calls Detective Bohon.

18 JOSEPH BOHON, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BULSA

21 Q Detective, we heard from you a little bit yesterday.
22 Did you go out and drive that route?

23 A Yes, sir, I did.

24 Q Amos Street to Locust?

25 A Yes, sir, I did.

Joseph Bohon
Direct examination by Mr. Bulsa

1 Q And did you do that last night?

2 A Yes, sir.

3 Q Okay. And what is the distance?

4 A I actually went out last night and drove it twice. I
5 drove it when we left the courthouse yesterday at 5:28 p.m.
6 I started off at the post office. And from the post office
7 to [REDACTED] Amos Street was one mile, approximately two minutes.
8 From [REDACTED] Amos Street to the intersection of Locust Court
9 and Longview Drive ended up being 3.5 miles and ten
10 minutes. And that occurred between 5:28 p.m. to 5:40 p.m.

11 Q And how was traffic?

12 A It was very heavy. To show the difference, I ran it
13 again at nighttime. I started out at the post office again
14 at 11:26 p.m. and went to [REDACTED] Amos Street. And it was
15 basically the same time, one mile, two minutes.

16 From [REDACTED] Amos Street to the incident location, the
17 intersection of Locust Court and Longview Drive, it's still
18 the same miles, 3.5 miles. However, it knocked off three
19 minutes. It was only a 7-minute drive, so.

20 Q Now, we're going to get into your investigation of
21 this case. You talked to us about the locations. When did
22 you first respond to this call?

23 A I was notified at 12:30 that night while working an
24 unrelated case. At 12:30 I was notified of the shooting of
25 the cab driver that had been robbed. I arrived on the

Joseph Bohon
Direct examination by Mr. Bulsa

1 scene at 12:50 a.m. in the morning.

2 Q And the scene you're talking about you arrived at was
3 where?

4 A At Mamasun's at 280 Whitney Road.

5 Q Okay. And what was taking place at Mamasun's at that
6 time?

7 A The deputies had did what we call a crime-scene log
8 just to show who is at the crime scene and who enters it,
9 and leaves. Deputy Heyde was on the scene getting
10 information for the incident report. I. D. unit, Talanges,
11 was there processing the scene and taking photos and
12 collecting blood and the victim's clothing.

13 I spoke with several witnesses and took their names
14 and phone numbers and addresses down in case I needed to
15 contact them at a later date and get some more information.

16 Q Okay. And did you collect information which led you
17 to any areas in town?

18 A The intersection of Locust Court and Longview Drive.

19 Q Okay. So you left Mamasun's to go to that location?

20 A When I left Mamasun's I initially went to the
21 hospital.

22 Q Okay.

23 A At that point I could not talk to Mr. Ijioma. I asked
24 the nurse about it. And they told me they wouldn't let me
25 go in to talk to him. The nurse just advised me that he

Joseph Bohon
Direct examination by Mr. Bulsa

1 was unable to be spoken with at that time.

2 After speaking with some of his fellow workers and
3 some close friends and getting some more information about
4 him, I left the hospital to conduct a canvass over at
5 Locust Court and Longview Drive.

6 Q Okay. First went to Mamasun's, and then you went to
7 try to talk to Mr. Ijioma. And you were not able to. Then
8 you went to that intersection. What did you do with
9 that -- when you got to that area of town?

10 A Basically conducted a canvass to see if anyone in the
11 area of Locust Court and Longview Drive had heard any
12 gunshots, had seen anything.

13 I did receive information from the scene initially
14 that the suspect lived nearby based on what the victim had
15 said. To me it was important at that time to find out who
16 in that area frequently gets cabs to their house or calls
17 cabs to their house.

18 Q And when you say canvass, what does that mean?

19 A Canvass is speaking with people in that area, to talk
20 to people on those streets.

21 Q Okay. And did you yourself go down Locust Court?

22 A Yes, sir, I did.

23 Q Okay. What was the first occupied house?

24 A The first occupied house when you turn off Longview
25 Drive on Locust Court, that would be the third house on the

Joseph Bohon
Direct examination by Mr. Bulsa

1 right. It's a white house.

2 The first two houses are vacant. The first house when
3 you turn onto Locust Court may be actually considered, may
4 be a Longview Drive address. I'm not sure. I was looking
5 through my notes. But [REDACTED] Locust Court, that's the first
6 place I stopped at.

7 Q Okay. That's the first occupied house. Did you speak
8 with anybody there?

9 A Yes, I did.

10 Q Approximately what time was this?

11 A It was at 2:29 a.m.

12 Q Okay. November 2nd.

13 A Yes, sir.

14 Q All right. And who did you speak with?

15 A I spoke with Mr. Young.

16 Q The defendant?

17 A Yes, sir.

18 Q How was he dressed?

19 A He was wearing black clothing, black cloth pants. He
20 was wearing a black shirt that said "snitches get
21 stitches".

22 Q Did it appear that he had been awake or asleep?

23 A He came to the door fully dressed with shoes on and
24 everything.

25 Q Okay. Did anybody else come to the door with him?

Joseph Bohon
Direct examination by Mr. Balsa

1 A Eventually -- I don't believe so. For the first time,
2 I don't believe so.

3 Q Okay. So what, what did you talk to him about on that
4 occasion, this first occasion? What were you trying to
5 gather, what information?

6 A First I asked him. I advised him that the sheriff's
7 office was conducting an investigation in reference to a
8 cab driver being shot in the area. I asked him had he
9 heard anything or seen anything. He stated no. I asked
10 him does anybody in the neighborhood get cabs in the area.
11 He stated no. I asked him did he personally ever call any
12 cabs out, and he stated no.

13 Q Okay. And about how long was this conversation?

14 A Probably just a couple of minutes, no, no, no more
15 than several minutes.

16 Q What did you do after he told you that information?

17 A I left his residence and started speaking with his
18 neighbors.

19 Q All right. Did you ask them similar questions?

20 A Yes, sir.

21 Q Okay.

22 A I asked them did they see anything or did they hear
23 any gunshots. No.

24 MR. McPHERSON: Your Honor, I'm going to object to
25 hearsay.

Joseph Bohon
Direct examination by Mr. Bulsa

1 THE COURT: Sustained. Don't testify to what anybody
2 told you unless it was the defendant.

3 Q I don't want you to talk about what they told you.

4 But as a result of talking with them, what did you do?

5 A I determined that I needed to go back to [REDACTED] Locust
6 Court and speak with Mr. Young again and make sure that he
7 hadn't had cabs out to his house in the past.

8 Q Okay. So about what time did your second trip to [REDACTED]
9 take place?

10 A It was at 2:40 a.m. So it would have been, I guess,
11 nine minutes later.

12 Q Okay. So you went back to talk to him again. And
13 then what was the essence of this conversation?

14 A I confronted him about having cabs out to his house,
15 and he still insisted that he hasn't.

16 Q That he did not.

17 A Yes, sir.

18 Q Okay. About how long did this interview take place?

19 A Several minutes.

20 Q Okay. And did you do anything with him at that point?

21 A No, sir.

22 Q You left him at his house?

23 A Yes, sir.

24 Q All right. And then where did you go?

25 A After that I went to several more houses to complete

Joseph Bohon
Direct examination by Mr. Bulsa

1 my canvass. These are houses I went to. They were vacant
2 or no one would come to the door.

3 After completely canvassing I decided to go to the cab
4 company and obtain their records. What I started thinking
5 was kind of like a light switch come on in my head. I
6 said, well, if I go down to the cab company and pull the
7 cab records for Longview Drive and Locust Court and see who
8 has consistently called a cab up there maybe I could find
9 my suspect, because I know my suspect has cabs out to his
10 house.

11 So I went to the cab company. And this -- it's the
12 Yellow Cab Deluxe Company. It's located at 120 Interstate
13 Park, Spartanburg, South Carolina.

14 I spoke with the company dispatcher. Her name is Mary
15 Quick. She provided me with a copy of the company dispatch
16 logs.

17 Q Okay. And once you got that information, what did you
18 do?

19 A Me and Mary Quick started going through the dispatch
20 logs. I did not find anything for Longview Drive.

21 MR. McPHERSON: Your Honor, I'm going to object to any
22 hearsay.

23 THE COURT: Sustained.

24 MR. BULSA: We're not going to go into the records she
25 obtained.

Joseph Bohon
Direct examination by Mr. Bulsa

1 Q After you got the records, where did your
2 investigation take you?

3 A Realizing that [REDACTED] Locust Court was my primary
4 suspect --

5 Q Okay. Did you go back to see Mr. Ijioma?

6 A Yes, sir, I did.

7 Q And was it that, that same morning?

8 A Yes, sir. It would have still been on the 2nd.

9 After obtaining information from the cab company, I
10 completed a 6-person photo lineup with Mr. Robert Young in
11 it.

12 Q Okay. And what did you do with that lineup?

13 A I went to the hospital and showed Mr. Ijioma the
14 lineup.

15 MR. McPHERSON: Your Honor, I'm going to object to the
16 photo lineup on the grounds that it is bolstering.

17 THE COURT: Overruled.

18 Q And so you were able to speak to Mr. Ijioma at that
19 time?

20 A Yes, sir.

21 Q And was he able to identify anybody from that lineup?

22 MR. McPHERSON: Your Honor, I object to any
23 identification as that would be hearsay.

24 THE COURT: Overruled.

25 A Yes. When I showed him the 6-person lineup he

Joseph Bohon
Direct examination by Mr. Bulsa

1 immediately without hesitation went to Mr. Young.

2 Q Mr. Young was one of the six pictures?

3 A Yes, sir.

4 Q Did you try to obtain any phone records around this
5 timeframe?

6 A Yes, sir. Prior to speaking with the victim and
7 showing the lineup I had sent a search warrant off to get
8 the incoming and outgoing phone calls for the victim,
9 Mr. Ijioma's phone records, to find out who called him
10 before he was shot.

11 Q You got that process started by sending to SunCom?

12 A Yes, sir.

13 Q Was anybody looking for the cab?

14 A Yes, sir.

15 Q How was that being done?

16 A After the report was taken and the information was
17 obtained for the cab, basically our deputies put it in the
18 N. C. I. C., which is a national database where if someone
19 out in California ran a tag on a car it'd come back stolen.
20 It was placed in the N. C. I. C. stating that it was taken
21 during an armed robbery. I also myself typed up a flyer, a
22 BOLO, be on the lookout, for all of our road deputies and
23 sent it out to all of them.

24 Q Okay. And did you learn that cab had been recovered?

25 A Yes, sir.

Joseph Bohon
Direct examination by Mr. Bulsa

1 Q When did you learn it had been recovered or located?

2 A After signing warrants on Mr. Young, I was notified by
3 Sergeant Allen Wood that the victim's vehicle had been
4 recovered on Amos Street at an abandoned house --

5 Q Okay.

6 A -- which would be close in proximity across from [REDACTED].

7 Q Okay. And at that time had you talked to anybody from
8 [REDACTED] Amos?

9 A No, sir.

10 Q What was done with Mr. Ijioma's cab?

11 A It was towed to the county shop and placed in a secure
12 location for processing.

13 Q Show you State's Exhibits Nos. 28 and 29. Do you
14 recognize those photographs?

15 A Yes, sir.

16 Q Is that clear and accurate representations of where
17 this cab was found?

18 A Yes, they are.

19 MR. BULSA: I would move these into evidence, Your
20 Honor.

21 MR. McPHERSON: No objection.

22 THE COURT: They are admitted.

23 (Photographs marked State's Exhibits Nos. 28 and 29.)

24 Q State's 29, is that the location where the cab was?

25 A Yes, sir.

Joseph Bohon
Direct examination by Mr. Bulsa

1 Q And it appears that no one lives at that house, is
2 that correct?

3 A Yes, sir.

4 Q Okay. That was State's 28. State's 29 is an
5 alternate view from the front. Do you see some people down
6 in the roadway? Are those law enforcement officers?

7 A Yes, sir, they are.

8 Q So another forensics' officer processed that vehicle.
9 What did you do while he was processing the vehicle?

10 A After it was towed back to the shop and he started
11 processing the vehicle, at that point I left to go serve
12 the arrest warrant on Mr. Young at [REDACTED] Locust Court.

13 Q And about what time was that?

14 A Probably a little after 2:00, 2:10 p.m. or 2:00 p.m.,
15 around 2:10.

16 Q Did some other officers go with you?

17 A Sergeant Allen Wood, Detective William Gary and Jason
18 Bryant.

19 Q So this was about 12 hours after you had spoken to him
20 earlier that same morning.

21 A Yes, sir.

22 Q When you arrived, tell us what took place.

23 A We knocked on his front door. I believe his mother
24 came to the door; and advised her that her son Robert had a
25 warrant for his arrest.

Joseph Bohon
Direct examination by Mr. Bulsa

1 She had him come to the front door. Without any
2 problems at all he came to the front door. He was placed
3 in the handcuffs. He was taken out to the front yard.

4 After I got him out in the front yard I read him his
5 rights off a Miranda pocket card that I carry. After
6 reading him his rights I read the search warrant with
7 reference to searching his house, particularly his bedroom.
8 We wanted to recover any weapons, clothing. He was read
9 that form, and he signed it, consent for us to search his
10 residence.

11 Q Let me stop you right there, Officer. Do you have
12 your pocket card with you?

13 A Yes, sir.

14 Q I want you to read that card to the jury just like you
15 read it to Mr. Young.

16 A "You have the right to remain silent. Anything you
17 say can and will be used against you in a court of law.
18 You have the right to talk to a lawyer and to have him
19 present with you when you're being questioned. If you
20 cannot afford a lawyer one, will be appointed to represent
21 you before any questions if you wish so. You have the
22 right to stop answering any questions at any point. Do you
23 understand these rights?"

24 Q And did he understand them?

25 A He stated he did.

Joseph Bohon
Direct examination by Mr. Bulsa

1 Q Okay. You said you then asked him to search his
2 residence.

3 A Yes, sir.

4 Q Why is that?

5 A To try to recover clothing that he was wearing that
6 night when I spoke with him and also to look for a handgun.

7 Q Did you yourself stay and search the residence?

8 A No, I did not.

9 Q I show you State's Exhibit No. 2 for Identification.
10 Do you recognize that form?

11 A Yes, sir.

12 Q What is that form?

13 A This is the permission to search form that I read to
14 Mr. Young while at his residence.

15 Q Okay. And it sets out what you want to do and his
16 rights about that, right?

17 A Yes, sir.

18 MR. BULSA: Your Honor, I'd move State's Exhibit No. 2
19 into evidence.

20 MR. McPHERSON: No objection.

21 THE COURT: It's admitted.

22 (Permission to search marked State's Exhibit No. 2.)

23 Q So this is timed and dated November 2nd, 2:14, [REDACTED]
24 Locust Court. That's when he gave you permission to
25 search?

Joseph Bohon
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q Okay. And you took him back to the police station?
- 3 A Yes, sir.
- 4 Q And you left other officers to search?
- 5 A Yes, sir.
- 6 Q Okay. You instructed them on the clothing Mr. Young
- 7 was wearing the night before?
- 8 A Yes, sir.
- 9 Q They were also looking for other items --
- 10 A Yes, sir.
- 11 Q -- related to the case.
- 12 Okay. Now, when you took him back to the police
- 13 station, where did you go?
- 14 A Upstairs in the sheriff's office is our investigation
- 15 division. Once we got to the investigation division I
- 16 spoke with Mr. Young in one of our interview rooms.
- 17 Q Okay. And what did you do, or did you do anything
- 18 before you began talking to him about the case?
- 19 A I read Mr. Young his rights again off a Miranda waiver
- 20 form. It's actually a form that they sign.
- 21 Q Okay.
- 22 A It's read to them if they wish to speak with us.
- 23 Q Okay. I show you State's Exhibit No. 3 for
- 24 Identification. Is that the form that you read to him with
- 25 the information on it?

Joseph Bohon
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 MR. BULSA: Your Honor, I'd move State's Exhibit 3
3 into evidence.

4 MR. McPHERSON: No objection.

5 THE COURT: It's admitted.

6 (Pre-interrogation waiver form marked State's Exhibit
7 No. 3.)

8 Q So you had already read him his rights on the -- at
9 his house when you arrested him before you began talking to
10 him.

11 MR. McPHERSON: Your Honor, I'm going to object to the
12 prosecutor testifying in this case.

13 THE COURT: Just ask him a question. Go ahead.

14 Q This was the second time you read him his rights?

15 A Yes, sir.

16 Q All right. If you would, it's on the screen, but I
17 want you to read it to the jury. First, explain the
18 process to them. And then read it to the jury like you
19 would have read it to Mr. Young.

20 A The first thing I would have done is -- at the top
21 here I'm the one that filled in his name, his address, his
22 age and the date, the time and the location, which was at
23 the Spartanburg County Sheriff's Office.

24 I'll start off with number one telling him he had the
25 right to remain silent. Number two, "Anything I say can

Joseph Bohon
Direct examination by Mr. Bulsa

1 and will be used against me in a court of law."

2 Go down to number three. "I have the right to talk to
3 a lawyer and have him present with me while I am being
4 questioned."

5 I go down to number four. "If I cannot afford to hire
6 a lawyer, one will be appointed to represent me before any
7 questioning if I wish so. I have the right to stop
8 answering questions at any point during the questioning."

9 Let's go down to the next line. "The above rights
10 have been read to me by Detective Bohon." I filled that
11 in.

12 The second part says, "I waive or give my rights as
13 explained above and I agree to talk to Detective Bohon,"
14 and I filled in that part, "in reference to an ABWIK,"
15 which is assault and battery with intent to kill, "and a
16 robbery."

17 And, "Any statement I make is of my own free will
18 without fear, threat, promise or favor or reward of any
19 kind, and I am able to read and write the English language
20 and I finished blank years in school." And at that point
21 Mr. Young would have told me he finished 11 years in
22 school.

23 At that point I asked him did he wish to talk to me.
24 He said he did. He signed his signature beside where I've
25 got it marked with X's, beside the two X spots.

Joseph Bohon
Direct examination by Mr. Bulsa

1 While I was reading out one through five I also made
2 checks beside number one, check beside number two, check
3 beside number three, check beside number four and check
4 beside number five. And I told him make sure he went back
5 over there and read that and looked over it himself. And
6 that's when he would have initialed those as he went back
7 down.

8 Q So were you confident that he understood these rights?

9 A Oh, yes, sir.

10 Q Did you ever promise him to get him to speak to you?

11 A No, sir.

12 Q Did you threaten him in any way?

13 A No, sir.

14 Q Did he ever seek to invoke any of these rights?

15 A No, sir.

16 Q How did you begin your discussions with him?

17 A I started off with bringing to light the fact about
18 the cab records in reference to him telling me that he
19 hasn't had a cab out to his house. And based on my
20 investigation he has had cabs out to his house. And he
21 replied to me, well, just because I had a cab out to my
22 house don't mean I shot somebody.

23 Q Okay. Let me -- when did he finally or how did he
24 finally admit that he had a cab out to his house?

25 A I actually physically put down the cab records and

Joseph Bohon
Direct examination by Mr. Bulsa

1 showed it to him and showed him where a cab was sent to his
2 address at [REDACTED] Locust Court.

3 Q Hold on one moment. Let me get these marked.

4 (Cab records marked State's Exhibit No. 34 for
5 Identification.)

6 Q I show you State's Exhibit 34 for Identification. Do
7 you recognize those documents?

8 A Yes, sir.

9 Q What are they?

10 A These are dispatch logs where -- that the Yellow Cab
11 Company keeps. They actually show the driver, the driver
12 number. The drivers are assigned numbers where, they're
13 being picked up from and the destination where they're
14 being taken to. And the time.

15 Q Okay. And are those true and accurate copies of the
16 records that were provided to you by the cab company?

17 A Yes, sir, they are.

18 Q And when did you receive those records?

19 A It would have been on November the 2nd.

20 Q Okay. Was that early morning?

21 A That 3:20 -- 3:20 a.m. in the morning on the 2nd.

22 Q So you had these records in your possession when you
23 began your conversation with Mr. Young.

24 A Yes, sir.

25 Q And did he continue to deny that he used the cab until

Joseph Bohon
Direct examination by Mr. Bulsa

1 you showed him those records?

2 A When he was shown the records he admitted, yes, I have
3 had cabs out to my house, and even pointed out the fact of
4 pointing to the records saying, yeah, that's my old cell
5 phone number there I used to have.

6 Q Okay. So he told you what his old cell phone number
7 was?

8 A Yes, sir.

9 Q What was that number?

10 A [REDACTED]-6772.

11 Q Okay. So he acknowledged that that was his phone
12 number. So he finally admitted. Did he finally admit that
13 he used the cab?

14 A Yes, he did.

15 Q Did he acknowledge how often he used the cab?

16 A He admitted to using them regularly.

17 Q Okay. After you discussed the cabs, what did you then
18 begin discussing with him?

19 A After discussing the cab, he was denying having any
20 involvement with this incident.

21 So at that point I wanted to get a time line on what
22 he had been doing that day, who he had been hanging around
23 and to get his side of the story about in his mind what had
24 occurred that night.

25 So at that point I asked him just to tell me about his

Joseph Bohon
Direct examination by Mr. Bulsa

1 day when he woke up and until that night when he came back
2 home. He verbally told me what he had done that day.
3 After him telling me that verbally, a statement was written
4 by me as he told it to me.

5 Q Okay. I'm going to show you what's been marked
6 State's Exhibit No. 4 for Identification. Do you recognize
7 that?

8 A Yes, sir.

9 Q What is it?

10 A This is a statement that I took from Mr. Young.

11 Q Okay. Does it contain your signature and his
12 signature?

13 A Yes, sir, it does.

14 Q That's actually the original copy?

15 A Yes, sir, it is.

16 MR. BULSA: Your Honor, the state would move this into
17 evidence, State's Exhibit No. 4.

18 MR. MCPHERSON: No objection.

19 THE COURT: It's admitted.

20 (Voluntary statement marked State's Exhibit No. 4.)

21 Q Okay. Let me first show it up here. Do you have a
22 copy of that with you?

23 A Yes.

24 Q Okay. The top portions of this, that's the general
25 information pertaining to Mr. Young?

Joseph Bohon
Direct examination by Mr. Bulsa

1 A Yes, it is.

2 Q It has got a line there, statement written by
3 Detective Bohon at the request of Robert Allen Young.
4 Explain what that is and why you do that.

5 A Normally give somebody -- I'll ask them if they want
6 to write a statement to give their side of the story or for
7 me to write it. Most of the time people prefer that I
8 write their statements. So basically I wrote this
9 statement based on what he told me.

10 Q Okay. So was it sort of like dictation?

11 A Yes, sir.

12 Q Did he talk to you, and you would write?

13 A Yes, sir. I write the statement. When it's finished
14 it would be read back to him. He will look over it
15 physically and make sure that's what he's swearing to.

16 Q And actually there is a block down here for
17 signatures. So he wrote this at 4:21 or he finished
18 writing it at 4:21 that same afternoon.

19 A Yes, sir.

20 Q I know it's on the screen. But if you would, go ahead
21 and read from your copy.

22 A "Yesterday around at 12:00 p.m., noontime, I woke up
23 at my house at [REDACTED] Locust Court, Spartanburg. At around
24 2:00 p.m. the lady across the street gave me a ride to
25 South Liberty Street in Spartanburg. I don't know the

Joseph Bohon
Direct examination by Mr. Bulsa

1 lady's name, but she drives a blue car. I hung out on
2 South Liberty Street all day with some of my home boys.
3 One of them is my friend Joe-Joe who lives on Liberty
4 Street. Later on in the night I went to Ramona Fernanders'
5 house on Palisade Street and she gave a ride home in her
6 silver Jeep. I got home around at 1:30 a.m. on 11/2/06.
7 At no time did I ever ride in a taxi cab that day or
8 night."

9 Q He doesn't talk about going to see his aunt on Amos
10 Street, did he?

11 A No, sir.

12 Q Did he talk about visiting with anybody on Palisade
13 other than Ramona Fernanders?

14 A No.

15 Q Did you ever learn if he lived on Palisade sometime?

16 A Based on the searching through the sheriff's office
17 database system I was able to figure out that he did,
18 Mr. Young did, have a prior address of [REDACTED] Palisade Street
19 listed in our system.

20 Q Okay. Now, was this the end of your conversation with
21 him?

22 A No, sir, it wasn't.

23 Q What took place after you finished this document?

24 A As I was finishing this document up Detective Gary
25 came in. He basically came back from Mr. Young's house.

Joseph Bohon
Direct examination by Mr. Bulsa

1 After this statement was finished Detective Gary confronted
2 him and stated --

3 MR. McPHERSON: Your Honor, I'm going to object to any
4 hearsay from the detective.

5 THE COURT: Sustained.

6 Q Don't tell us what he said, but Detective Gary came in
7 and confronted him with something. And what was
8 Mr. Young's response?

9 A That he was confronted later on in the interview after
10 this first statement. He later decided to give another
11 statement justifying how blood of the victim's could have
12 came in contact with his pants.

13 Q Okay. I show you State's Exhibit No. 5 for
14 Identification. Do you recognize that?

15 A Yes, sir.

16 Q Is that a second statement?

17 A Yes, sir, it is.

18 MR. McPHERSON: No objection.

19 MR. BULSA: We offer Exhibit 5 into evidence.

20 THE COURT: It is admitted without objection.

21 (Voluntary statement marked State's Exhibit No. 5.)

22 Q Prior to this statement did he ever admit or
23 acknowledge that he had seen a cab that night?

24 A He stated he hasn't, never, hasn't rode in one.

25 Q Did he ever talk about having seen a cab in the area?

Joseph Bohon
Direct examination by Mr. Bulsa

- 1 A No, he didn't.
- 2 Q Was that part of your discussions with him?
- 3 A Yes, sir.
- 4 Q Prior to this statement?
- 5 A Yes, sir, it was.
- 6 Q Okay. This is the second statement, same information
- 7 at the top. Time is 5:11, is when you completed it, is
- 8 that correct?
- 9 A Yes, sir.
- 10 Q Did you follow the same format? He spoke and you
- 11 wrote?
- 12 A Yes, sir.
- 13 Q All right. Read that statement to us.
- 14 A "Late last night I was walking down Amos Street on the
- 15 south side near the Pepsi plant and I noticed a black and
- 16 yellow cab parked beside a vacant house. It was dark, and
- 17 I walked up to the cab and I opened the door and looked
- 18 inside, and I seen blood everywhere. So I shut the door
- 19 and left. If there is blood on my pants that is the reason
- 20 why. There was blood all over the driver's-side door."
- 21 Q Now, at no time or at any time before this did he
- 22 volunteer that information to you?
- 23 A No, sir, he did not.
- 24 Q When did this information come out?
- 25 A After giving the first statement and being confronted

Joseph Bohon
Direct examination by Mr. Bulsa

1 with further questioning.

2 Q Okay. After Detective Gary came in?

3 A Yes, sir.

4 Q What took place after you got this statement from him?

5 A He was questioned roughly 15 minutes longer. And then
6 after that he stated that he was really done talking with
7 us and he just wanted to go to the county. So at that
8 point since he stated that he didn't want to speak with us
9 any more, he was transported to the jail.

10 Q Okay. Did you continue to investigate the case?

11 A Yes, sir.

12 Q Did you get the SunCom records that you had seen?

13 A Yes, sir, I did.

14 Q Is State's Exhibit 26 a copy of the records you
15 received from SunCom?

16 A Yes, sir.

17 Q Okay. And did you ever try to obtain any other
18 records?

19 A Did I try to obtain any other phone records?

20 Q Yes, sir.

21 A Yes. I tried or I did obtain the phone records for
22 the phone number of [REDACTED]-8714.

23 Q And why did you search for those records?

24 A Because I determined that was the number that called
25 the victim Ijioma's cell phone.

Joseph Bohon
Cross-examination by Mr. McPherson

1 Q All right. And you received those records from
2 BellSouth?

3 A Yes, sir, I did.

4 Q And State's Exhibit 27 is a copy of those records.

5 A Yes, sir.

6 Q I'm sorry?

7 A These are the records.

8 Q Okay. And did you continue to talk with witnesses?

9 A Yes, sir, I did.

10 Q What would have happened to the items recovered from
11 the house?

12 A They would have been unpackaged by the I. D. unit that
13 responded out to the house after being located, and they
14 would have then been placed into evidence at the sheriff's
15 office.

16 Q Somebody else handles that part of the investigation?

17 A Yes, sir.

18 Q Okay. All right. If you would, answer any questions
19 Mr. McPherson has.

20 CROSS-EXAMINATION

21 BY MR. McPHERSON

22 Q Now, when you indicate they're processing the vehicle
23 for evidence, what are they looking for?

24 A Fingerprints and D. N. A., any type of physical
25 evidence the suspect may have left behind.

Joseph Bohon
Cross-examination by Mr. McPherson

1 Q Okay. And you -- but you didn't process the vehicle,
2 is that correct?

3 A That's correct.

4 Q And so who did process the vehicle?

5 A Processed by I. D. Unit Sanders and I. D. Unit Hogsed.

6 Q Okay. And I believe you said he, Mr. Young, signed a
7 consent to search his residence, is that correct?

8 A Yes, sir.

9 Q And one of the things you were looking for in the
10 residence was a handgun, is that correct?

11 A Yes, sir.

12 Q And to your knowledge was a handgun ever recovered in
13 this case?

14 A No, sir, it wasn't.

15 Q Now, the dispatch logs, you had a chance to look at
16 those dispatch logs, didn't you?

17 A Yes, sir.

18 Q And you were looking specifically for whether or not
19 Mr. Ijioma was dispatched to that house.

20 A No, sir.

21 Q Well, that was one of the things you were looking for,
22 correct?

23 A No. I was just looking to see if the cabs had been
24 dispatched out to his house.

25 Q Okay.

Joseph Bohon
Cross-examination by Mr. McPherson

- 1 A Not a particular driver. I wanted to see who in the
2 area frequently had cabs come out to their residence.
- 3 Q Okay. And you were just looking for any cab, not
4 Mr. Ijioma's cab, is that correct?
- 5 A Yeah, that's correct.
- 6 Q And that would be any cab from Yellow Deluxe?
- 7 A Any cab from Yellow Deluxe. That was the company I
8 went to.
- 9 Q And that would be cabs that went through the dispatch?
- 10 A Yes, sir.
- 11 Q And to your knowledge do all the cabs or are all the
12 calls, do they go through dispatch or not?
- 13 A No, they do not.
- 14 Q Okay. You said in his, in his statement he mentioned
15 hanging out on Liberty Street, is that correct?
- 16 A Yes, sir.
- 17 Q Okay. And is Liberty Street anywhere near Palisade to
18 your knowledge?
- 19 A I would have to look at a map. I think it is close
20 by.
- 21 Q All right. I'm just going to show you what has been
22 marked as State's Exhibit 18.
- 23 A Sir, it runs right off Amos Street on the back side.
- 24 Q So it is kind of like a T-connection right there,
25 Liberty and Palisade.

Joseph Bohon
Cross-examination by Mr. McPherson

- 1 A Yes, sir.
- 2 Q Palisade runs right into Liberty Street?
- 3 A Yes, sir.
- 4 Q So you would agree that they are very close.
- 5 A Yes, sir.
- 6 Q Now, to your knowledge were there any fingerprints
7 found in the car?
- 8 A There was one fingerprint lift. I spoke with the AFIS
9 operator.
- 10 Q But you did lift a fingerprint, is that correct?
- 11 A Yes, sir.
- 12 Q I mean, not you, somebody did.
- 13 A Somebody did, yes, sir.
- 14 Q Okay. Now, this car, the 1994 Ford Crown Victoria
15 taxi cab, it was located the next day?
- 16 A Yes, sir, around lunchtime.
- 17 Q And it had been abandoned, is that correct?
- 18 A Yes, sir.
- 19 Q So would you not agree with me that whoever took that
20 vehicle did not intend to permanently deprive the owner of
21 the property? Would you agree with me?
- 22 A I would not agree with you.
- 23 Q Well, I mean, it was left abandoned, right?
- 24 A I would not agree with you on that.
- 25 Q Certainly didn't find --

Joseph Bohon
Cross-examination by Mr. McPherson

- 1 A I don't believe that he planned on taking it back.
2 That's permanently deprived.
- 3 Q But you didn't find it in his possession, did you?
- 4 A No, sir.
- 5 Q And it was in plain view, wasn't it?
- 6 A From Amos Street it was in plain view, yes, sir.
- 7 Q So it was easily located, correct?
- 8 A Yes, sir.
- 9 Q And, as a matter of fact, nobody saw anybody that you
10 were -- in your investigation, not one of all the witnesses
11 you interviewed saw anyone take that vehicle, is that
12 correct?
- 13 A That would be correct.
- 14 Q Now, you would agree with me that information you had
15 initially obtained indicated that the victim was picked up.
16 I mean the defendant was picked up in the area of Locust
17 Court. That was your initial information, was it not?
- 18 A Yes, sir.
- 19 Q And that whoever shot him hadn't been in the vehicle
20 very long because from where the shooting took place was
21 just a few blocks from Locust Court. That was your initial
22 information, correct?
- 23 A Yeah, that was the initial information, yes, sir.
- 24 Q Okay. In fact, you learned that from one of your
25 deputies, correct?

Joseph Bohon
Cross-examination by Mr. McPherson

1 A Yes, sir.

2 Q And part of the -- your information that you had was
3 that the fare or the customer was picked up on the first
4 house on the right as you turn onto Locust Court.

5 MR. BULSA: Objection, Your Honor. May we approach?

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 Q Now, I assume the police department works closely with
9 the hospital when crimes have been committed and people
10 have to go to the hospital, is that correct, or the
11 sheriff's department?

12 A They do their job and we do ours, and we work
13 together.

14 Q Well, when somebody comes in with a gunshot wound is
15 not a law enforcement agency notified normally?

16 A They are supposed to be.

17 Q Okay. And evidence is recovered, or at the hospital
18 aren't they supposed to turn it over to law enforcement?

19 A Yes, sir.

20 Q And so these two slugs or bullets that were recovered
21 from Mr. Ijioma -- they were recovered, is that correct?

22 A When Mr. Ijioma was in the hospital I asked for the
23 bullets to be removed from his head, and I was advised by
24 hospital personnel that since the victim, Mr. Ijioma, did
25 not have insurance they were not going to be removed.

Joseph Bohon
Redirect examination by Mr. Bulsa

1 I however did not find out until this trial started
2 that he went back several weeks later and had these
3 projectiles, bullets, removed from his head.

4 Q So you're saying you never recovered the projectiles?

5 A Yes, sir. We was never notified.

6 Q You weren't. But you never recovered them either.

7 A No, sir.

8 MR. MCPHERSON: I have no further questions.

9 REDIRECT EXAMINATION

10 BY MR. BULSA

11 Q Detective, when were you able to first speak with
12 Mr. Ijioma?

13 A The first time I spoke with him would have been on the
14 2nd of November of '06, and it was at 10:31 a.m. in the
15 morning.

16 Q Okay. And that would have been where?

17 A That would have been in I. C. U. at the hospital.

18 Q Is that when you showed him that picture lineup?

19 A Yes, sir. I did.

20 Q Were you able to speak to him in detail about the
21 case?

22 A At that time I showed the lineup, is when he picked
23 Mr. Young out. I asked him did he want to give a detailed
24 statement. At that time he said, well, he'd rather just
25 wait since he was in some pain. So I told him it may take

Joseph Bohon
Redirect examination by Mr. Bulsa

1 a couple of hours to get a statement from him, so.

2 Q All right. And did you later go back and get a
3 statement?

4 A Yes, sir, I did.

5 Q In fact, part of it was read by Mr. Ijioma yesterday,
6 is that right?

7 A Yes, sir, it was.

8 Q And was that statement taken in the same fashion that
9 you took the defendant's statement?

10 A Yes, sir.

11 Q You wrote it as Mr. Ijioma told you.

12 A Yes, sir.

13 Q And he was detailed and specific in that statement to
14 you?

15 A Yes, sir.

16 Q And did he tell you he knew who shot him?

17 A Yes, sir.

18 Q Did he tell you where he picked up Mr. Young?

19 A Yes, sir, he did.

20 Q Where did he say he picked up Mr. Young?

21 MR. McPHERSON: Your Honor, I am going to object to
22 him saying what. The victim has already testified, and
23 this is hearsay coming in of what the alleged victim said
24 in this case.

25 THE COURT: Overruled.

Joseph Bohon
Redirect examination by Mr. Bulsa

1 Q When you were able to speak to the victim after he
2 received medical treatment and after his pain had subsided
3 and get specific information from him, where did he say he
4 picked up the person who shot him at?

5 A On Amos Street.

6 Q Okay. And where was he taking this person?

7 A To Locust Court.

8 Q And did he say how he came to pick this person up?

9 A He received a call on his personal cell phone.

10 Q His personal cell phone was the number we have seen on
11 his business card?

12 A Yes, sir.

13 MR. MCPHERSON: Judge, could we approach?

14 THE COURT: Yes.

15 (Bench conference held off the record in the presence
16 of the jury but out of the hearing of the jury.)

17 Q And the phone records -- you got the phone records
18 from the victim's cell phone.

19 A Yes, sir.

20 Q And they showed a phone call to his home from Amos
21 Court or Amos Street.

22 A Yes, sir.

23 Q In fact, they also show a phone call to his phone from
24 Palisade Street.

25 A Yes, sir.

Joseph Bohon
Redirect examination by Mr. Bulsa

1 (Swabs marked State's Exhibit No. 35 for
2 Identification.)

3 Q Detective, did you see the clothing that was recovered
4 from Mr. Young's residence?

5 A Yes, sir.

6 Q Did it match the clothing that you saw him wearing the
7 night before?

8 A Yes, sir, it did.

9 Q In an effort to determine if there was blood on those
10 clothing did you get a swab from Mr. Ijioma?

11 A Yes, sir, I did.

12 Q I show you State's Exhibit No. 35 for Identification.
13 Do you recognize that package?

14 A Yes, sir.

15 Q What is it?

16 A This is an evidence envelope with my handwriting on
17 the outside of it. It has the case number that relates to
18 that specific case. The contents, states two sterile
19 cotton-tip swabs --

20 THE COURT: Use the microphone, please.

21 A The contents, states two sterile cotton swabs of Tiaba
22 (sic) Ijioma, oral D. N. A. mouth swabs. It has the date
23 and time it was recovered and the location it was
24 recovered. It was recovered by me, and it was recovered
25 from the victim.

Joseph Bohon
Redirect examination by Mr. Bulsa

1 Q Is that a swab from his mouth?

2 A Yes, sir, it is.

3 Q And was that to be sent to the South Carolina Law
4 Enforcement for comparison?

5 A Yes, sir.

6 Q Was that in the sealed package, sir?

7 A Yes, sir.

8 MR. BULSA: Your Honor, the state would offer this
9 into evidence.

10 MR. MCPHERSON: As long as they prove up the entire
11 chain, I have no objection. But they haven't proven the
12 chain or the relevancy at this point.

13 THE COURT: All right. The exhibit is admitted
14 subject to being established as relevant.

15 MR. BULSA: Thank you, Your Honor.

16 THE COURT: And the necessary chain of custody.

17 MR. BULSA: Yes, sir.

18 (Swabs marked State's Exhibit No. 35.)

19 Q So you can take out what's inside there if you would.
20 Describe what that object is.

21 A This right here is a completely sterile cardboard box
22 that contains two cotton-tip swabs, and each swab is used
23 to rub on the inner lining of the mouth. And when you do
24 that you get D. N. A. from it. And you can take that D. N.
25 A. and compare it to blood or swabbing.

Joseph Bohon
Redirect examination by Mr. Bulsa

1 Q Okay. Now, that box actually contained the swabs that
2 you put in it, right?

3 A Yes, sir.

4 Q Okay. Does it have your handwriting on it?

5 A Yes, sir, it does.

6 Q Okay. So when you took those swabs from Mr. Ijioma
7 and put them in that box, did you do anything to that box?

8 A Put this red evidence tab tape on the outside of it
9 just to make sure it hadn't been tampered with.

10 Q Okay. And then what did you do with the box?

11 A Take the box and place it in this envelope and then
12 reseal it up with evidence tape also. And this right here
13 would have been opened when it was tested by SLED.

14 Q Okay. And the box would have been opened --

15 A Yes, sir.

16 Q -- by the South Carolina Law Enforcement Division. So
17 you seal that in two ways to retain the integrity of it
18 before it was tested.

19 A Yes, sir.

20 Q Okay. Thank you, Officer. That's all I have.

21 MR. MCPHERSON: I have no further questions.

22 THE COURT: You may step down.

23 MS. BARNWELL: The state would call Gina Padgett.

24

25

Gina Padgett
Direct examination by Ms. Barnwell

1 GINA PADGETT, having been
2 first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MS. BARNWELL
4 Q Please state your name for the record.
5 A Gina Padgett.
6 Q And, Gina, where are you employed?
7 A Spartanburg County.
8 Q Okay. And, Gina, where do you live? Where do you
9 reside?
10 A [REDACTED] Locust Court.
11 Q Okay. And were you living at [REDACTED] Locust Court in
12 November of 2006?
13 A Yes, ma'am.
14 Q And on November 1st of 2006 to the early morning hours
15 of November the 2nd did anything peculiar happen that
16 night?
17 A I was awakened by the Spartanburg County Sheriff's
18 Department.
19 Q Okay. Do you remember about what time that was?
20 A 3:30, guessing.
21 Q A.M.
22 A A.M.
23 Q Okay. And when Spartanburg County came to your door,
24 what kind of things were they asking?
25 A Asked me if I had --

Gina Padgett
Direct examination by Ms. Barnwell

- 1 MR. McPHERSON: I am going to object. It's hearsay.
- 2 THE COURT: Overruled.
- 3 A They had asked me if I had ever seen anyone or know of
- 4 anyone who takes a cab --
- 5 Q Okay.
- 6 A -- on that street.
- 7 Q And did you know anyone on your street, Locust Court,
- 8 to use cabs?
- 9 A Yes, ma'am.
- 10 Q And who did you know of to use cabs?
- 11 A My neighbor.
- 12 Q Okay. And which neighbor?
- 13 A It's the neighbor to my left. I don't know their
- 14 address.
- 15 Q So as you're going up that street do the numbers get
- 16 smaller or larger?
- 17 A Larger.
- 18 Q Okay. Did you ever see that person use taxi cabs?
- 19 A Yes, ma'am.
- 20 Q And what was their physical description?
- 21 A Tall, thin black male.
- 22 Q Okay. And how often have you seen cabs at Locust
- 23 Drive or had you seen cabs at Locust Drive?
- 24 A Several, more than once.
- 25 Q Okay. So would you say he called cabs often?

Gina Padgett
Direct examination by Ms. Barnwell

- 1 A I can't, I can't say how often. I can say I've seen
2 them more than once.
- 3 Q Okay. Ms. Padgett, do you know the defendant, Robert
4 Young?
- 5 A Yes, ma'am.
- 6 Q And how do you know him?
- 7 A I just know him by seeing him.
- 8 Q Okay. And where do you see him?
- 9 A I would see him out in his yard if I would have been
10 outside or --
- 11 Q Okay. And is Mr. Young in the courtroom right now?
- 12 A He is.
- 13 Q Would you point him out?
- 14 A Mr. Young.
- 15 (Whereupon, the witness pointed to the defendant.)
- 16 Q And is he the thin black male that lives on your
17 street?
- 18 A Yes, ma'am.
- 19 Q The one that you said uses cabs often or used cabs
20 often?
- 21 A Yes, ma'am.
- 22 Q Okay. I have no further questions.
- 23 MR. McPHERSON: I have no questions.
- 24 THE COURT: You may step down, please.
- 25 MR. BULSA: Call William Gary.

William Gary
Direct examination by Mr. Bulsa

1 WILLIAM GARY, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA

4 Q Mr. Gary, would you please introduce yourself to the
5 jury?

6 A My name is William Gary. I am employed with the
7 Spartanburg County Sheriff's Office. I've been there
8 approximately 13 years. I'm currently assigned to the
9 investigation division, more specifically the violent
10 crimes-homicide division.

11 Q Back in November of 2006 was that your same position?

12 A It was.

13 Q Did you assist Detective Bohon in investigating a
14 shooting that happened on Longview Drive?

15 A Yes, I did.

16 Q When was your first involvement in that case?

17 A I believe the first involvement would be when
18 Mr. Young was arrested.

19 Q Okay. And did you go to his house with Mr. -- with
20 Detective Bohon?

21 A Yes, I did.

22 Q And did you witness the arrest of detective or, excuse
23 me, of Mr. Young?

24 A Yes.

25 Q By Detective Bohon?

William Gary
Direct examination by Mr. Bulsa

- 1 A Correct.
- 2 Q Were you aware that a consent to search was gained to
3 search that residence?
- 4 A Yes, I was.
- 5 Q Who else was with you?
- 6 A Detective Bohon, Sergeant Allen Wood and Jason Bryant.
- 7 Q And what did you do?
- 8 A Once the consent to search was obtained, Mr. Young was
9 transported to the sheriff's office by Detective Bohon.
10 And Detective Bryant and I proceeded to search the house.
- 11 Q What were you looking for?
- 12 A Specifically, we were looking for clothing that was
13 described by Detective Bohon that he had seen Mr. Young
14 wearing, black pants, shirt that had "snitches get
15 stitches", a firearm.
- 16 Q And what areas of the house did you search?
- 17 A We searched the entire house. The main focus was on
18 the bedroom that was identified as being Mr. Young's
19 bedroom.
- 20 Q How was that identified in that fashion?
- 21 A By his mother.
- 22 Q His mother was there during the search?
- 23 A Yes, she was.
- 24 Q Did you locate anything in that room?
- 25 A Yes. In the -- we went in the front door. You go to

William Gary
Direct examination by Mr. Bulsa

1 the right to go to the bedrooms through the living room
2 area. And the first bedroom to the left was the room that
3 was identified as his bedroom. There's a clothes hamper
4 just inside the doorway on the right wall. And it's a
5 pretty small bedroom. And inside the clothes hamper was a
6 number of items of clothing. And in there was the shirt
7 that had "snitches get stitches" printed on it, several
8 pairs of black pants.

9 Q Okay. Were any photographs taken at that house?

10 A Yes, they were.

11 Q I'm going to show you three pictures, State's Exhibits
12 31, 32 and 33 for Identification. Would you review those,
13 please?

14 (Pause.)

15 A Okay.

16 Q Were those pictures taken at his residence?

17 A Yes. These were taken in the bedroom.

18 Q Okay. Are those accurate pictures of what was found?

19 A Yes, sir, it is.

20 MR. BULSA: Your Honor, the state would offer State's
21 31, 32 and 33 into evidence.

22 MR. MCPHERSON: No objection.

23 THE COURT: They are admitted.

24 (Photographs marked State's Exhibits Nos. 31, 32 and
25 33.)

William Gary
Direct examination by Mr. Bulsa

1 Q I show you these on the overhead, State's 31. It
2 appears to be a pair of black pants.

3 A Yes, sir.

4 Q Is that how you actually found them?

5 A No, sir. They were pulled out of the hamper and they
6 were laid on the bed.

7 Q Okay. For photographing.

8 A Correct.

9 Q State's Exhibit No. 32 appears to be a closeup of some
10 object. What is that?

11 A That's actually the shirt laying underneath some other
12 clothing items.

13 Q And that's how that was found?

14 A Yes, sir.

15 Q And State's Exhibit 33.

16 A It's a photograph of some mail that was found in that
17 bedroom.

18 Q Okay. And why did you take a picture of that?

19 A Generally, the house where there is more than one
20 occupant, especially adult age, a separate male, you find
21 things in a bedroom for that person. So that would show
22 more than likely whose bedroom that is because the mail to
23 that person was in that room. So that's why we documented
24 that.

25 Q Okay. And was the clothing recovered?

William Gary
Direct examination by Mr. Bulsa

- 1 A Yes, it was.
- 2 Q It was taken into evidence?
- 3 A It was.
- 4 Q By yourself?
- 5 A I believe it was Investigator Hogsed that actually
- 6 came to the scene and collected it.
- 7 Q Okay. And what is his role?
- 8 A He, Investigator Hogsed, works in our forensic
- 9 division. They come out to scenes to collect physical
- 10 evidence, fingerprints, photographs. They take the items
- 11 in. They will submit it into evidence for testing. They
- 12 occasionally take swabs and submit the swabs for testing.
- 13 Things such as that.
- 14 Q So once you located something he was called to the
- 15 scene?
- 16 A Yes.
- 17 Q To actually collect the evidence?
- 18 A Correct.
- 19 Q Do you know what he did with them?
- 20 A He placed them -- whenever he collects them like that
- 21 he places them in an evidence bag. And items of clothing,
- 22 specifically if there's an idea that it could have material
- 23 evidence on them, trace evidence, they're packaged
- 24 separately so you don't get a cross contamination of the
- 25 items. And then if they're, say, wet, we have a drying

William Gary
Direct examination by Mr. Bulsa

1 room that they would be put in to dry.

2 And once that process is done, or if it doesn't need
3 that when it's packaged in there, it's turned into our
4 evidence room which is a secured location in the office.
5 And then things from there may be submitted to the state or
6 somewhere else for testing.

7 Q Now, where was the clothing when Investigator Hogsed
8 actually came and collected it?

9 A The -- it would have been laying on the bed at that
10 point.

11 Q Been taken out of the hamper and put on the bed and it
12 was photographed and then weighed. Actually Investigator
13 Hogsed --

14 A He took the photographs when he got there.

15 Q Okay. Detective, were you aware of the cab in this
16 case?

17 A As far as the location of it?

18 Q Yeah. Did you know where it was?

19 A At that point I don't believe we did.

20 Q Had you ever been to the Mamasun's that night?

21 A No, no, I had not.

22 Q Did you ever go to the location where the cab was
23 recovered?

24 A Yes, I did.

25 Q Was that before or after you went to Locust Court?

William Gary
Direct examination by Mr. Bulsa

- 1 A Right now I can't recall. If I could see -- I believe
2 it was Investigator Bohon's notes -- that he wrote it up
3 for me in there it might refresh my memory on that.
- 4 Q My point is, is did you take the clothing that were in
5 those pictures, did you ever take those out of the house
6 and put them in the cab.
- 7 A No, not --
- 8 Q Okay. Did you ever take those clothes to Mamasun's to
9 where the blood was and put the blood on them?
- 10 A No.
- 11 Q Okay. So you never contaminated the clothing with any
12 blood.
- 13 A No.
- 14 Q That's my point. And then you basically found them
15 and left them. And Detective Hogsed had packaged them up.
- 16 A Correct.
- 17 Q Did you find a weapon?
- 18 A I'm sorry?
- 19 Q Did you find a weapon?
- 20 A No, we did not.
- 21 Q Okay. Did you find anything else in the residence
22 that you recovered?
- 23 A Not that I recall, no.
- 24 Q After finding the clothing did you go to the sheriff's
25 office?

William Gary
Direct examination by Mr. Bulsa

1 A I did. When the clothing was -- yes, I did. I went
2 to the sheriff's office.

3 Q Okay. And what did you do when you got to the
4 sheriff's office?

5 A I went to check on the interview process with
6 Mr. Young and Detective Bohon and actually went into the
7 interview room while it was going on.

8 Q Okay. Let me show you State's Exhibit No. 3 and No.
9 4. Do those have your signature on them?

10 A Yes, they do.

11 Q Okay. In what fashion?

12 A I signed both of these forms as the notary.

13 Q And explain that process to the jury, how you came to
14 sign those documents.

15 A When I came in -- Item No. 3 is the preinterrogation
16 waiver form where it goes over a person's rights.

17 When I came into the room that had already been
18 completed. The statement was being finished up when I was
19 coming into the room.

20 Once that process was -- once this statement was
21 finished, when I was going to notarize the statement I went
22 back over the rights form to verify with Mr. Young that
23 this was his signature in both places, that he understood
24 everything on that form, which he told me that he did.

25 I asked him, "Do you swear that that's the truth,"

William Gary
Direct examination by Mr. Bulsa

1 which he did. And that's when I notarized the name.

2 Q And when did you notarize this statement?

3 A Once it was completed and I saw him sign that he swore
4 that was the truth.

5 Q Did you read over that statement?

6 A Yes, sir.

7 Q Before you -- I guess before you signed it yourself.

8 A Yes, sir.

9 Q Okay. And as a result of reading over that statement
10 did you question the defendant yourself?

11 A I did.

12 Q How so?

13 A When the clothing was found in his room there was some
14 places on it that from my experience appeared to be a
15 liquid of some point, possibly blood. With dark clothing
16 it's hard to really tell.

17 So when Investigator Hogsed got there we had him do a
18 presumptive test which tests for hemoglobin to test to see
19 if it's blood, and there's more specifically one for human
20 blood. And it tested positive for that. And upon his
21 arrest I had not observed any visible injuries of him.

22 When I came in once this statement was finished here,
23 I told him we had found the clothing in there, that it had
24 blood on it. And I even told him more specifically that it
25 had the victim's blood on it.

William Gary
Direct examination by Mr. Bulsa

1 Q That was before you actually knew.

2 A Yes.

3 Q Okay. And then what did he do when you confronted him
4 with that information?

5 A That's when he -- we proceeded to get a second
6 statement from him because he all of a sudden says, well, I
7 did see a cab parked over here that, you know, I may have
8 brushed up against, you know, that had blood on it and that
9 must be where that came from.

10 Q Okay. To try to justify that information?

11 A Yes. To me it was important, because if you're being
12 questioned about this, I think you would tell us beforehand
13 that you happened to see a cab with blood on it. That's
14 why I threw that out there.

15 Q State's Exhibit No. 5, is that the next statement he
16 gave?

17 A Yes. This is the second statement that was taken.

18 Q Did you actually witness that as well?

19 A Yes.

20 Q Notarize it?

21 A Notarized it.

22 Q Thank you, Detective. Answer any questions Mr.
23 McPherson may have.

24

25

William Gary
Cross-examination by Mr. McPherson

1 CROSS-EXAMINATION

2 BY MR. McPHERSON

3 Q So you admit you lied to the defendant.

4 A Absolutely. I lied to him.

5 Q Okay. So you don't have any problem lying?

6 A Not in a case like this, no, I do not.

7 Q So in his statement he admits to opening the door to
8 the cab, is that correct?

9 A Yes, sir.

10 Q And for him to open the door of a vehicle that doesn't
11 belong to him and look inside to see what's in there, that
12 could be a crime, could it not, especially if you have the
13 intent to take stuff?

14 MR. BULSA: Objection, Your Honor. That calls for
15 speculation.

16 MR. McPHERSON: He is a law enforcement officer.

17 THE COURT: Overruled.

18 Go ahead.

19 A It can be a carbreaking, but that would fail in
20 comparison to someone being questioned and actually being
21 under arrest for shooting someone, a cab driver more
22 specifically. And you've been questioned about that and
23 you don't tell us before that you've seen a cab with blood
24 in it that you've opened and that's what you're being asked
25 about, it's not until I lie to you and tell you we have the

William Gary
Cross-examination by Mr. McPherson

1 victim's blood.

2 We did have blood, but I lied and said we have the
3 victim's blood. It takes several weeks to get those
4 results back. And it's not until that that all of a sudden
5 now you're telling us, oh, yeah, by the way, I saw a cab
6 and opened the door because I was going to steal something
7 out of it but I didn't want to tell you that. That was my
8 reason for doing that.

9 Q Okay. But in order to answer the question he would
10 have been submitting or admitting to you that he had broken
11 the law.

12 MR. BULSA: Objection, Your Honor. May we approach?

13 THE COURT: Okay.

14 (Bench conference held off the record in the presence
15 of the jury but out of the hearing of the jury.)

16 MR. BULSA: Thank you, Your Honor.

17 Q Do you recall the question I just asked?

18 A If you could, repeat it one more time.

19 Q Okay. For him to admit that he had opened the door of
20 that cab to look inside to see what he could steal, that
21 would be admitting to a crime, would it not?

22 A It would be admitting to a crime that had been
23 reported as a crime. But when you don't have a complaint
24 or something like that, it would be like somebody telling
25 me -- I'm questioning them about a murder because they're

William Gary
Cross-examination by Mr. McPherson

1 seen running from the store, and so I'm questioning them
2 about that. And, you know, would you not tell me if you're
3 really running from the store because you just stole
4 something out of the same store and that's why you are seen
5 running from it? I think you would tell me that. You'd be
6 like, hey, I shoplifted versus a murder. Okay. I'll tell
7 you all about that.

8 Q But it would have been an admission to a crime,
9 correct?

10 A It would have been an admission to a crime if we had a
11 report of it. There was no report or victim of that.

12 Q But he doesn't, you would agree with me he doesn't,
13 know the law as well as you do.

14 A I don't know his knowledge of the law.

15 MR. MCPHERSON: I have no further questions.

16 MR. BULSA: Nothing further.

17 THE COURT: You may step down.

18 MR. BULSA: We would ask he be excused.

19 THE COURT: He may be.

20 (Whereupon, the witness was excused.)

21 MR. BULSA: Next witness, Investigator Hogsed.

22 DAVID HOGSED, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BULSA

25 Q Please introduce yourself to the jury.

David Hogsed
Direct examination by Mr. Bulsa

- 1 A David Hogsed.
- 2 Q Who are you employed with?
- 3 A Spartanburg County Sheriff's Office.
- 4 Q And what are your duties in the sheriff's office?
- 5 A I am assigned to the crime scene unit.
- 6 Q And how long have you been in this line of work?
- 7 A With the crime scene unit?
- 8 Q Yes, sir.
- 9 A Approximately nine years.
- 10 Q Okay. Was that all with the sheriff's office?
- 11 A No. Two, a little over two and a half, years with the
- 12 sheriff's office. Prior to that I was with the city of
- 13 Spartanburg.
- 14 Q So how long have you been in law enforcement?
- 15 A Be 19 years in October.
- 16 Q Now, it is Investigator Hogsed? Is that your title?
- 17 A Yes, sir.
- 18 Q Investigator, were you called to help process any
- 19 locations or items involved in the shooting of a cab driver
- 20 back in November '06?
- 21 A I was. I was notified that a cab involved in this
- 22 which had been taken was recovered on Amos Street, which is
- 23 actually in the city of Spartanburg.
- 24 Q Okay. Now, we heard earlier from Robert Talanges. Is
- 25 he a coworker of yours?

David Hogsed
Direct examination by Mr. Balsa

- 1 A He is.
- 2 Q He processed the scene at Mamasun's on Whitney Road.
- 3 A Yes.
- 4 Q Did you go to the location yourself?
- 5 A No, I did not.
- 6 Q You were brought in to process the cab.
- 7 A Yes. I was working my tour duty for that day when the
- 8 cab was recovered, and I responded.
- 9 Q So does Investigator Talanges work the night shift and
- 10 you work the day shift?
- 11 A That's correct.
- 12 Q Okay. All right. And where did you respond to to
- 13 process the vehicle?
- 14 A It was on Amos Street, which is off South Church
- 15 Street near the Pepsi-Cola plant if you're familiar with
- 16 that area. It was between, pulled in between -- it was
- 17 actually pulled into the driveway of a vacant house between
- 18 house numbers 172 and 180. The house it was at did not
- 19 have a house number on it.
- 20 Q I want to look at all of these before I bring them
- 21 over here. State's Exhibit No. 28, does that pretty much
- 22 show how it was found?
- 23 A Yes. It is.
- 24 Q Okay. And when you got to that location, what did you
- 25 do?

David Hogsed
Direct examination by Mr. Bulsa

1 A We all parked on the roadway. We approached the
2 vehicle. As you can see, I started taking digital
3 photographs from the roadway working my stuff up. And then
4 there all I basically did was take digital photographs of
5 the car. And I also collected a, it's a Westgate laundry
6 card that was lying on the ground by the driver's door. I
7 collected it for fingerprint processing later.

8 Q Okay. I show you a series of pictures, 6 through 13,
9 and No. 29. Are those pictures you took of this vehicle at
10 that location?

11 A Yes, sir, they are.

12 Q Okay. Did you do anything further other than taking
13 those pictures and recovering that laundry card at that
14 location?

15 A No. Once those were done the Spartanburg County tow
16 truck was called for, and it was then taken to our county
17 shop and secured within its building for processing there.

18 Q And then you went over it in more detail.

19 A Right.

20 Q What were you looking for?

21 A Of course there was blood that was visible on the car.
22 Even out on Amos Street that was obvious when we opened the
23 door to look inside.

24 At the crime lab we would look for anything such as
25 trace evidence, which could be blood, hair, fibers,

David Hogsed
Direct examination by Mr. Bulsa

1 projectiles, cartridge cases if any were there. And then
2 we would go into latent fingerprinting and processing.

3 Q And let's talk first about fingerprinting. Were you
4 able to lift any fingerprints off any item?

5 A Investigator Sanders and I actually went back. While
6 I was processing the vehicle I actually had to leave and
7 then go back to it. And Investigator Sanders responded
8 with me and helped me. She lifted some ridge detail off
9 the car. However when we gave it to our agency examiner it
10 was insufficient for him to make an identification.

11 Q So the fingerprints didn't help us.

12 A Sir?

13 Q The fingerprints didn't help us.

14 A They did not help, no, sir.

15 Q Did you find any projectiles?

16 A Yes, I did.

17 While I was at the shop there was two projectiles on
18 the top of the right side of the dashboard where you're
19 being, where your defroster is. They were numbered and
20 marked.

21 I was able to retrieve one of those. When I went to
22 retrieve the other it fell down into the venting system and
23 we were unable to retrieve that one.

24 Q I show you State's Exhibit No. 30 for Identification.

25 I don't believe that's in evidence yet. Do you recognize

David Hogsed
Direct examination by Mr. Bulsa

1 that picture?

2 A Yes, I do.

3 Q You took that picture?

4 A I did.

5 Q And is it from the vehicle we were discussing?

6 A Yes, on the right-side windshield area on the top of
7 the dashboard.

8 MR. BULSA: Your Honor, I would offer State's
9 Exhibit 30 into evidence.

10 MR. McPHERSON: No objection.

11 THE COURT: It's admitted.

12 (Photograph marked State's Exhibit No. 30.)

13 Q Now, describe what this is showing.

14 A The mark on the right, you can't see the number in
15 this photograph, but the marker on the right would be
16 number one. That marker would be for the projectile at the
17 back where you see the glass behind the markers. That's
18 marking that projectile is item number one.

19 Number two is marking the projectile that is actually
20 setting in the creased area of the venting for your
21 defroster, for your heating system.

22 Q And you were only able to recover one of those?

23 A Yes. The one marked as number two as I went to pick
24 it up with tweezers, undoubtedly it was just barely there.
25 And when my tweezers hit it, it fell down into the vent

David Hogsed
Direct examination by Mr. Bulsa

1 system, but I was able to get the one that's under the
2 glass.

3 Q Okay. Show you State's Exhibit No. 17 previously
4 entered. Do you recognize that picture?

5 A I do. That's the driver's, inside driver's, side of
6 the windshield.

7 Q Okay. From your experience could you tell which
8 direction those had been made from?

9 A Those would be traveling from inside the vehicle
10 towards the windshield.

11 Q Do they appear to be separate strikes?

12 A Yes. That's two impact marks.

13 Q Okay. Now, do you know if anything was done with the
14 bullets you recovered, the rounds you recovered?

15 A Not that I know of. I did not send anything for
16 analysis from the projectiles.

17 Q Were there any shell casings recovered from this
18 vehicle?

19 A No, sir.

20 Q From your experience and the location of those shots
21 above the steering wheel and the rounds recovered on the
22 dash, do you have an opinion as to where this shooting had
23 occurred?

24 MR. McPHERSON: Your Honor, I'm going to object. That
25 calls for speculation.

David Hogsed
Direct examination by Mr. Bulsa

1 THE COURT: Sustained.

2 Q How long have you been doing this line of work?

3 A Nine years.

4 Q And have you testified in many cases?

5 A Numerous.

6 Q And what kind of experience do you have with crime
7 scene investigation analysis?

8 A I've worked every major crime scene in the city of
9 Spartanburg for the seven years I was there.

10 Q Do you have any special training that you've
11 undertaken?

12 A I've had several schools, yes, sir.

13 Q Such as?

14 A Blood spatter analysis. I actually went to classes on
15 projectile impact marks and glass fragment markings, of
16 course latent print. Numerous homicide schools.

17 MR. BULSA: I offer Investigator Hogsed as an expert
18 in crime scene analysis.

19 THE COURT: Let me see y'all just a minute.

20 (Bench conference held off the record in the presence
21 of the jury but out of the hearing of the jury.)

22 Q You testified that you had training in impact.

23 A Yes. I attended a 1-week course on projectile impact
24 marks to a vehicle in Columbia, South Carolina.

25 Q And describe what that course would have entailed.

David Hogsed
Direct examination by Mr. Bulsa

1 A It went into details of reading how when a bullet
2 enters a vehicle, whether it be from glass, plastic or
3 windshields or the metal from a car, of how you can
4 determine the trajectory of the bullets.

5 Q Okay. And with that training would that allow you to
6 make an opinion in this type of case?

7 A Yes, it would.

8 Q Okay. As to where the shots would have come from to
9 have made those impacts?

10 A Yes, sir.

11 MR. BULSA: Your Honor, I want to offer him for that
12 purpose to provide that information.

13 MR. McPHERSON: I object.

14 THE COURT: Who provided the training?

15 Q South Carolina Law Enforcement Division?

16 A Yes, sir. It's part of the criminal justice academy.

17 THE COURT: And who provided the instruction?

18 THE WITNESS: I don't recall the instructor's name,
19 Your Honor.

20 Q And when would that training have been?

21 A It was about three years ago. It was an instructor
22 that the criminal justice academy brought in as an expert
23 in firearms obviously.

24 THE COURT: All right. Overrule the objection.

25 Q Just for that limited purpose, do you have an opinion

David Hogsed
Direct examination by Mr. Bulsa

1 as to where the shots would have come from to make those
2 impacts?

3 A From rear to front.

4 Q From rear to front?

5 A Yes, sir.

6 Q All right. Now, did you process any other areas in
7 this case?

8 A Yes. I -- the reason why I had to leave the shop, or
9 the county shop rather, when I was processing the vehicle
10 was to go to [REDACTED] Locust Court.

11 Q Okay. And what did do you when you got to [REDACTED] Locust
12 Court?

13 A When I got to [REDACTED] Locust Court, Investigator William
14 Gary and Investigator Jason Bryant was on the scene.

15 A consent to search form had been signed on the
16 residence. Investigator William Gary had found some
17 clothes in a clothes basket in a bedroom with some areas on
18 it he thought that may be blood. He asked that I test
19 those areas to see if they were blood.

20 Q Did you do so?

21 A I did. I actually used what's called an O. B. T. I.
22 test. This test is something that we started using about a
23 year ago. It's used in hospital systems. It actually
24 tests for human blood using human blood hemoglobin.

25 Q And did you receive a result?

David Hogsed
Direct examination by Mr. Bulsa

- 1 A Yes. It was a positive reaction when I tested an area
2 on a pair of black Dicky pants.
- 3 Q Okay. And did you recover those items of clothing?
- 4 A Yes, I recovered that, and I think two to three shirts
5 and also a black bandana.
- 6 Q Okay.
- 7 (Pants marked State's Exhibit No. 36 for
8 Identification; shirt marked State's Exhibit No. 37 for
9 Identification.)
- 10 Q I show you what's been marked for identification
11 State's 36 and 37. I will move these documents out of your
12 way. Do you recognize those packages?
- 13 A Yes. These were completed by me.
- 14 Q And when did you complete those?
- 15 A November 2nd of '06. The shirt was collected at
16 3:08 p.m., and the pants were collected the same date at
17 3:07 p.m.
- 18 Q And were those taken from [REDACTED] Locust Court?
- 19 A Yes, they were.
- 20 Q Are those the items that you would have tested?
- 21 A I did not test the black t-shirt, but I did test the
22 spot on the black jeans, black Dicky pants.
- 23 Q Is that what is shown in State's Exhibit 31?
- 24 A Yes.
- 25 Q Okay. Now, how did you package those items?

David Hogsed
Direct examination by Mr. Bulsa

1 A When I packaged them when I collected them they were
2 put straight into a paper bag. The paper bag is then
3 rolled up and sealed with evidence tape, and it is pretty
4 much left sealed.

5 Q Okay. So you would have rolled it tight and sealed it
6 at the bottom?

7 A That's correct.

8 Q That's how you would have done it. Okay. Would you
9 have done the same thing with the shirt?

10 A Yes. That's correct.

11 Q What's the purpose of putting that tape on it?

12 A That's an integrity seal. It has to be cut in order
13 to break. If you try to tear it off without cutting it, it
14 leaves a sticky mark and all of that on the tape. So you
15 can tell it has been tampered with.

16 Q Okay. Now, did you package the shirt and pants in
17 those individual packages at [REDACTED] Locust Court?

18 A I did.

19 Q Now, when you left the shop where you were processing
20 the car did you bring any of the blood back with you, or
21 with you to Locust Court?

22 A The blood that I collected from the car?

23 Q Or any of the blood that you saw in the car. Did you
24 take any of that to Locust Court?

25 A No, I did not.

David Hogsed
Direct examination by Mr. Bulsa

1 Q What I am trying to get at is did you put any blood on
2 those clothes.

3 A No. I did not.

4 Q So you would have collected them and sealed them with
5 that evidence tape. And then what would you have done with
6 them?

7 A They would have been taken to the sheriff's office.
8 And we did some fingerprint processing on some items that
9 were collected from the car for fingerprint processing.
10 Once that was done all items were submitted into evidence.

11 Q And they were kept in a secure facility?

12 A Yes. That's correct.

13 Q For later processing?

14 A Yes. To be sent to our state crime lab, SLED, for
15 analysis.

16 Q Okay. So you processed the car and you collected the
17 clothing from the house.

18 A That's correct.

19 Q Do you know why the bullet wasn't submitted to SLED?

20 A I have no idea, sir.

21 Q Was there a weapon ever recovered?

22 A Not to my knowledge.

23 Q Was there anything that you could have compared that
24 round to?

25 A No, sir.

David Hogsed
Cross-examination by Mr. McPherson

1 Q Okay. Answer any questions Mr. McPherson may have.

2 CROSS-EXAMINATION

3 BY MR. MCPHERSON

4 Q Now, are you a fingerprint expert?

5 A I am certified by the F. B. I. to read latent prints.

6 Q Okay. And were you the one that read these latent
7 prints, or not?

8 A Sir?

9 Q Were you the one who read the latent prints?

10 A No, sir. I'm not.

11 Q Okay. That would have been somebody else?

12 A Yes, sir.

13 Q Now, have you also been trained in trying to collect
14 D. N. A. from a crime scene?

15 A I have.

16 Q And you would agree with me that people can touch
17 things and leave their D. N. A. behind?

18 A It's called touch D. N. A.

19 Q Right. And did you process the vehicle for touch D.
20 N. A.?

21 A I did.

22 Q And I'm assuming you didn't get any touch D. N. A.

23 A I have not seen any of the analysis reports that came
24 back from our state lab. They did not come back to me.

25 Q So there may be, there may be reports out there

David Hogsed
Cross-examination by Mr. McPherson

1 showing there was touch D. N. A.

2 A I did touch D. N. A. on several areas of the vehicle.
3 Usually what happens is Investigator Talanges would be the
4 primary crime scene investigator on this since he responded
5 to the initial call.

6 What I did later would be -- and he would be informed
7 of it. And he will, once he started to do the SLED
8 paperwork or an investigator started to do the SLED
9 paperwork for any analysis, they would send it down. I
10 have no clue what went for analysis.

11 Q You just know you collected touch D. N. A.

12 A That's correct.

13 Q And could you tell the jury where you collected this
14 touch D. N. A. from?

15 A The area swabbed for blood and possible touch D. N. A.
16 were the steering wheel, interior driver's door, interior
17 of the right-side front door, all four exterior and
18 interior -- no. I'm sorry. All four interior door
19 handles, the gear shift, exterior left side of the vehicle
20 behind the left-side rear door.

21 Q Okay. And would you explain to the jury what touch D.
22 N. A. is?

23 A Theory is, and it doesn't always happen, but theory is
24 when you touch something skin cells are left. Basically,
25 what we try to do is pick up those skin cells for touch D.

Hugh Murphy
Direct examination by Mr. Bulsa

1 N. A., for D. N. A. purposes.

2 MR. MCPHERSON: I have no further questions.

3 MR. BULSA: Nothing further.

4 THE COURT: You may step down.

5 MR. BULSA: We ask he be excused.

6 THE COURT: He may be.

7 (Whereupon, the witness was excused.)

8 MR. BULSA: The state calls Hugh Murphy.

9 HUGH MURPHY, having been

10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BULSA

12 Q Let me move this out of your way.

13 Please introduce yourself to the jury.

14 A My name is Hugh Murphy. I'm with the Spartanburg

15 County Sheriff's Office. I am -- I've been there just over

16 20 years. Presently I'm the AFIS or the fingerprint

17 expert.

18 Q How long have you been doing that?

19 A Total time a little over six years. I've been

20 qualified for AFIS since 1997.

21 Q And you call yourself an expert. How is that?

22 A Yes, sir.

23 Q Do you have special training?

24 A Yes, sir. I have attended most all of the fingerprint

25 classes that's produced, I mean, provided through the

Hugh Murphy
Direct examination by Mr. Bulsa

1 academy. I've been through advanced fingerprints with Ron
2 Smith and advanced palm prints with Ron Smith.

3 Q How do you actually do your job? How do you get the
4 fingerprints to analyze?

5 A Well, you collect the fingerprints. And you have the
6 computer that you can mark the ending lines to show the
7 computer which way the lines go and bifurcations, which is
8 a separation where the two prints come, I mean, two ridges
9 come together on a fingerprint. You mark the computer,
10 mark the fingerprint on the computer. And it can analyze
11 and compare that fingerprint to the fingerprints that's in
12 the SLED files.

13 Q So officers bring you what they think are readable
14 prints and you try to analyze those?

15 A They bring what they, usually what they, collect. If
16 it's good, it's good; if it's not, it's not.

17 Q Do you remember this case in particular?

18 A Yes, I do.

19 Q Were you brought any fingerprints? Were you brought
20 any?

21 A Yes, sir, I was.

22 Q Am I using the correct term -- fingerprints? Is there
23 another term that you're supposed to use -- latent prints?

24 A Latent prints. Latent prints is a fingerprint that
25 has been lifted up. In other words, it's been -- someone

Hugh Murphy
Direct examination by Mr. Bulsa

1 has touched something and the fingerprint has been lifted.
2 That's called a latent print. And that's what was supplied
3 to me.

4 Q How many of those did you get in this case?

5 A Three cards.

6 Q And were you able to identify any of those?

7 A I was not.

8 Q Why?

9 A Lack of ridge detail. Some of them had no detail at
10 all. Some of them had very few lines.

11 Q So they don't -- do they tell us one thing or another?
12 What can you determine from what you found?

13 A Well, one of them looked -- it looked like it was real
14 small, looked like it might have been a female or a child.
15 One of them had some ridges in it. It did not belong to
16 Mr. Young. Another one had a little bit of ridges in it,
17 and it did not belong to Mr. Young.

18 Q Were those -- were they identifiable with anybody?

19 A No.

20 Q If you had had somebody's prints to compare it to,
21 could you have found out whose they were?

22 A No.

23 Q When you say they didn't belong to Mr. Young, how do
24 you know --

25 A I could tell by the classification of his

Hugh Murphy
Direct examination by Mr. Bulsa

- 1 fingerprints. They did not meet the same classification.
2 I looked at that area of what I did have to Mr. Young's,
3 and they did not match his.
4 Q That doesn't mean he wasn't in the area.
5 A No, sir.
6 Q That just means he didn't touch those items.
7 A I did have fingerprints that I could not tell. Nobody
8 could ever tell whose they were. And you could be in the
9 area and not leave fingerprints.
10 Q Describe that for the jury. How does that happen?
11 A You could have had gloves on or you might not even
12 have touched the vehicle.
13 Q Okay. If you touch something does it always leave a
14 print?
15 A No, it does not. If you had washed your hands
16 recently or your hands are rubbed dry, it would be not
17 conducive to leaving good fingerprints.
18 Q How about the items that you are leaving prints on?
19 A It was the outside of the driver's door, I believe,
20 the window.
21 Q Okay. All right. Does it, do those always, do you
22 always leave fingerprints if you touch that kind of
23 surface?
24 A Not always, no.
25 Q Okay.

Hugh Murphy
Cross-examination by Mr. McPherson

1 A And not always readable fingerprints.

2 Q Thank you. Answer any questions Mr. McPherson has.

3 CROSS-EXAMINATION

4 BY MR. MCPHERSON

5 Q Now, I believe you testified, or you didn't come right
6 out and say this, but you had the known prints.

7 A I did.

8 Q And would you tell the jury what you mean by known
9 prints?

10 A Fingerprints that was on file from previous, from when
11 they were collected previously.

12 Q Okay. And so you knew those prints belonged to him.

13 A Yes, I did.

14 Q And then you took the prints that were submitted to
15 you. And I think you testified only three were submitted?

16 A Three cards.

17 Q Not four.

18 A No, sir. I had three.

19 Q Do you know what happened to the fourth card?

20 A I had three. That's all I received.

21 Q Okay. But you had the known prints of Robert Young,
22 and you compared the latent prints to the known prints of
23 Robert Young.

24 A Right.

25 Q And you testified, I believe, that those prints that

Hugh Murphy
Redirect examination by Mr. Bulsa

1 you had did not belong to Robert Young.

2 A They eliminated. Those two prints eliminated Robert
3 Young. I think that's his name.

4 MR. MCPHERSON: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. BULSA

7 Q When you say eliminated, it eliminated him from being
8 the owner of those two prints?

9 A That's all it eliminates, is those two prints.

10 Q Okay. That doesn't mean he wasn't in the cab.

11 A That doesn't mean anything except that that was not
12 his print.

13 Q Thank you.

14 THE COURT: You may step down. Thank you.

15 MR. BULSA: We ask he be excused.

16 THE COURT: He may be.

17 MR. BULSA: May we approach?

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 THE COURT: All right. Ladies and gentlemen, we're
21 going to recess for lunch.

22 Keep in my mind caution. Don't discuss the case;
23 don't do any research; don't allow yourselves to be exposed
24 to any media coverage; don't allow yourselves to be exposed
25 to anybody else talking about the case.

Margaret Greer
Direct examination by Mr. Bulsa

1 Do have a good lunch. Please report back to your jury
2 room at 2:30 this afternoon, 2:30 this afternoon.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Court is in recess until 2:30.

6 (Whereupon, a recess was taken.)

7 THE COURT: Are y'all ready for the jury?

8 MR. McPHERSON: Yes, sir.

9 THE COURT: Okay. Bring them in.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: Good afternoon, ladies and gentlemen.

13 We are going to continue with the state's presentation
14 of evidence.

15 Mr. Bulsa.

16 MR. BULSA: The state calls Margaret Greer.

17 MARGARET GREER, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BULSA

20 Q Good afternoon, Deputy Greer.

21 A Good afternoon.

22 Q Would you please introduce yourself to the jury?

23 A My name is Margaret Greer.

24 Q Are you employed with the sheriff's office?

25 A I am. I've worked for the sheriff's office for about

Margaret Greer
Direct examination by Mr. Bulsa

1 four years. Prior to that I worked for Spartanburg Public
2 Safety for 11 years.

3 Q And back in November of 2006 what were your duties
4 with the sheriff's office?

5 A I was the evidence custodian. I would take in
6 evidence from officers and store it and transported it to
7 SLED and back as needed.

8 Q And how long were you an evidence officer?

9 A About three years.

10 Q And in particular in this case did you review records
11 as to whether you took any items to SLED?

12 A I did.

13 Q And SLED is the South Carolina Law Enforcement
14 Division?

15 A Yes, sir.

16 Q And the purpose for taking them to that location was
17 what?

18 A Is for testing. They do different types of testing
19 that we can't do here.

20 Q Okay. I show you a series of packaging. State's
21 Exhibits 36 and 37 contain clothing items. When those
22 items of that nature are turned into evidence are they in a
23 sealed format?

24 A They are. When we receive them from the I. D.
25 officers, as you can see the tape up here, it would have

Margaret Greer
Direct examination by Mr. Bulsa

1 been folded down and sealed down right here. And the same
2 thing with this item. That here would have been folded
3 down and sealed right there.

4 Q And they are held in that fashion at the sheriff's
5 office until they're transported?

6 A Yes, sir.

7 Q And when they're transported -- let me get to that in
8 a minute. Those are those kind of packaging. And then we
9 have State's Exhibits 25, 35 and 38. These are different
10 forms of packaging.

11 A Yes, sir.

12 Q And how are those sealed and held?

13 A The smaller items that will fit into these envelopes,
14 they come to the evidence officer sealed in this manner by
15 the I. D. officer.

16 Q Okay. And the purpose of those, that tape, is for
17 what?

18 A It's for the chain of custody to show that it was
19 sealed when it got to me.

20 Q And whether it was tampered with or not?

21 A That's correct.

22 Q Now, did you yourself take these items to the South
23 Carolina Law Enforcement Division?

24 A Yes, sir, I did.

25 Q Okay. Specifically, you took the packages 36 and 37,

Margaret Greer
Direct examination by Mr. Bulsa

- 1 which would have been clothing?
- 2 A Yes, sir.
- 3 Q And State's 25 is swabs.
- 4 A Yes, sir.
- 5 Q And State's 35, which is a swab of Mr. Ijioma.
- 6 A Yes, sir.
- 7 Q And State's 38 additionally are also some swabs off
- 8 the victim.
- 9 A Yes, sir.
- 10 Q Okay. And when you took these to the sheriff's or,
- 11 excuse me, to the South Carolina Law Enforcement Division,
- 12 were they in a sealed fashion?
- 13 A Yes, sir, they were.
- 14 Q Had they been opened or tampered with while at the
- 15 sheriff's office?
- 16 A No, sir.
- 17 Q Now, when you took these items to -- I believe the
- 18 South Carolina Law Enforcement Division is in Columbia,
- 19 correct?
- 20 A Yes, sir.
- 21 Q When you took them to Columbia, do you recall what
- 22 process was undertaken there?
- 23 A When you go to SLED you go into their evidence intake
- 24 area.
- 25 They have clerks that look over your paperwork. They

Margaret Greer
Direct examination by Mr. Bulsa

1 make sure all of your items are sealed, and then in
2 addition they heat-seal them into another package. And
3 then they send them off to the different divisions for
4 testing.

5 These three items were all tested for D. N. A.
6 analysis. So they would have been put in a heat-sealed
7 bag. Then I have to sign the front of the bag and also
8 sign across the seal, and put the date as well. And then
9 that's how they return them to us as well.

10 Q Let me show you State's Exhibit No. 40. Do you
11 recognize that package?

12 A Yes, sir.

13 Q What is it?

14 A These are the sealed bags for the D. N. A. evidence.

15 Q That these packages would have been placed in.

16 A That's correct. And then here is my initials across
17 the heat seal on both of these.

18 Q Okay. Now, how about the bigger packages?

19 A The larger packages, if it's something that won't fit
20 into one of their heat-sealed packages, they have boxes,
21 and they will seal it up into boxes, seal every opening
22 with tape, and then put evidence tape across it similar to
23 the red tape that you saw except theirs is yellow. And
24 then I would sign that seal on each corner.

25 Q Okay. Now, we don't have those boxes today. Do you

Margaret Greer
Cross-examination by Mr. McPherson

1 know what happens to those?

2 A When we get the stuff back from SLED, in order to
3 facilitate our storage if it's a large box and it only has
4 a couple of items, we'll open it up and put the items back
5 in the original box that they came in.

6 Q By that time they've already been tested.

7 A That's correct.

8 Q Okay. All right. Thank you. I believe that's all I
9 have for you at this time. Answer any questions Mr.
10 McPherson has.

11 CROSS-EXAMINATION

12 BY MR. MCPHERSON

13 Q Is that everything you took to SLED in connection with
14 this case?

15 A Yes, sir.

16 Q Do you know what a gunshot residue kit is?

17 A I do.

18 Q What is that?

19 A That's a kit that's got swabs in it. They rub it
20 across your hands, and then they seal it up. And then that
21 would end up going to SLED.

22 Q And normally they would take that from somebody they
23 think may have fired a weapon?

24 A Yes, sir.

25 Q Do you recall whether or not you took a gunshot

Margaret Greer
Redirect examination by Mr. Bulsa

1 residue kit to SLED?

2 A I did not take a gunshot residue kit to SLED.

3 Q Is that normally where it would go, is to SLED?

4 A I just take what they give me, sir. I don't have
5 any -- I just do what they tell me.

6 Q Have you ever taken gunshot residue kits to SLED?

7 A I have, yes, sir.

8 Q Okay. But in this case you have no knowledge of a
9 gunshot residue kit.

10 A I did not take one down, sir.

11 MR. MCPHERSON: No further questions.

12 REDIRECT EXAMINATION

13 BY MR. BULSA

14 Q Are you familiar with how those are taken?

15 A The gunshot residue kits?

16 Q Yes, ma'am.

17 A All I know is they swab across the hands and then they
18 seal them, and it comes in a sealed envelope. I haven't
19 ever actually seen inside of one.

20 Q Okay. So do you know the perimeters under which those
21 are taken?

22 A No, sir, I don't.

23 Q Thank you.

24 MR. BULSA: That's all I have.

25 THE COURT: You may step down.

Janice Bryson
Direct examination by Mr. Bulsa

1 MR. BULSA: Your Honor, we ask that she be excused.

2 THE COURT: She may be.

3 (Whereupon, the witness was excused.)

4 MR. BULSA: The state calls Jan Bryson.

5 JANICE BRYSON, having been

6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA

8 Q Good afternoon, Ms. Bryson.

9 A Good afternoon.

10 Q Please introduce yourself to the jury.

11 A My name is Janice Bryson.

12 Q Who are you employed with?

13 A I'm employed by the South Carolina Law Enforcement
14 Division.

15 Q What are your duties with them?

16 A I'm a forensic evidence technician in the evidence
17 processing department.

18 Q Can you explain what that department does?

19 A Whenever items of evidence are submitted to the lab
20 with a request to look for hair, fiber, blood or semen,
21 it's my responsibility to process the evidence, collect the
22 evidence and make sure that it's routed to the appropriate
23 department.

24 Q Okay. When you say process it, do you mean you
25 actually physically look at it and search for any items of

Janice Bryson
Direct examination by Mr. Bulsa

1 interest --

2 A That's correct.

3 Q -- on clothing? Okay. Now, in this case in
4 particular did you receive some items from Spartanburg
5 County?

6 A Yes, sir, I did.

7 Q All right. Do you remember what you received?

8 A I received a pair of pants, two long-sleeve t-shirts
9 and a bandana.

10 Q Okay. And what was the condition in which you
11 received those?

12 A They were in a sealed container.

13 Q Okay. I show you two items, State's 36 and 37. Do
14 these packages look familiar?

15 A Yes, sir, they do. They have my initials, the SLED
16 lab number, item number and the day that I processed the
17 evidence.

18 Q Would you have been the one to break the seal?

19 A Yes, sir. I did.

20 Q Okay. And once you broke the seal to take the pieces
21 of clothing out, what did you then do?

22 A The request was made to look for blood. So I do a
23 visual exam of the item. And if I see any areas that
24 appear to be blood, I do a chemical test. And if that
25 chemical test is positive I know to cut that area out and

Janice Bryson
Direct examination by Mr. Bulsa

1 send it to D. N. A. for further testing.

2 Q And with regards to these two pieces of clothing, did
3 you find any items?

4 A Yes, sir. On the pair of pants I took four cuttings
5 that were positive for the presumptive test of blood. Item
6 4, a long-sleeve t-shirt, I took one cutting that was
7 positive for the presumptive test of blood.

8 Q Okay. I've got some gloves here for you. Would you
9 mind? First start with the shirt, State's Exhibit 37.
10 Pull that out and kind of demonstrate what you would have
11 done.

12 A Do you have any scissors?

13 MR. BULSA: Any scissors, Madam Clerk?

14 (Pause.)

15 Q Now, this is wrapped in white paper. Is that how it
16 came?

17 A No, sir. When we're testing we put white butcher
18 block paper, and I put the item on this paper. This is the
19 t-shirt, our item number four, and this is the back of the
20 t-shirt. And I took one cutting from the sleeve that was
21 positive for the presumptive test of blood.

22 Q That would be the right sleeve?

23 A Right, on the back side.

24 Q And you cut out the entire area?

25 A Yes, sir, I did. And I gave that cutting to somebody.

Janice Bryson
Direct examination by Mr. Bulsa

1 Q Does the size of the area you cut out correspond with
2 the amount of blood?

3 A No, sir. I make my cutting larger.

4 Q Okay. Put that back. And I will let you look at
5 State's Exhibit 36, the pants.

6 THE COURT: If you don't mind, if you will, move that
7 microphone out of the way. That will resolve that. It
8 keeps bumping against it.

9 A This is the pair of pants that I processed. I took
10 four cuttings. I took two from the front. This is Item
11 3.1, 3.2, and then I took two cuttings from the back, 3.3
12 and 3.4.

13 Q Okay. All right. Thank you. Now, you didn't have a
14 sample of the victim's blood anywhere near you, did you?

15 A No, sir, I didn't.

16 Q Okay. And once you took these cuttings, what did you
17 do with them?

18 A I placed the individual cuttings in a gold coin
19 envelope, and then I placed all the envelopes in a
20 heat-sealed pouch. I sealed it initially and dated it.

21 Q Let me show you State's Exhibit 39. Do you recognize
22 that pouch?

23 A Yes, sir. This is the heat-sealed pouch that I
24 generally -- I placed my cuttings in. That's the SLED lab
25 number, my name and the initials. And I sealed it and

Janice Bryson
Cross-examination by Mr. McPherson

1 initialed and dated it.

2 Q And the seal is done to ensure the integrity of the
3 items inside?

4 A That's correct.

5 Q Okay. And then what do you do with that once you seal
6 it?

7 A I took this to the evidence log-in area to be placed
8 in the D. N. A. box.

9 Q Okay. And is that the extent of your involvement with
10 the evidence?

11 A Yes, sir.

12 Q And you packaged the clothing to be returned back?

13 A That's correct.

14 Q Okay.

15 MR. BULSA: Your Honor, I will move them all in at the
16 same time. That's all I have at this time.

17 Q Answer any questions Mr. McPherson may have.

18 CROSS-EXAMINATION

19 BY MR. MCPHERSON

20 Q Yeah. Just a couple. You indicated that when you
21 made a cutting you cut out a larger area than the area of
22 the blood that you found.

23 A That's correct.

24 Q And that represents all of the different areas where
25 you found blood.

Janice Bryson
Redirect examination by Mr. Bulsa

1 A That's correct.

2 MR. McPHERSON: I have no further questions.

3 MR. BULSA: Just briefly in reply.

4 REDIRECT EXAMINATION

5 BY MR. BULSA

6 Q Some of the cuttings appear to be larger than others.

7 A Some of the stains may have been larger.

8 Q Okay. So the larger the cutting, the larger the
9 stain.

10 A That's correct.

11 Q But in either event, the cutting is certainly larger
12 than the stain.

13 A That's correct.

14 Q Thank you, ma'am.

15 THE COURT: You may step down. Thank you.

16 MR. BULSA: We ask that she be excused.

17 THE COURT: She may be.

18 (Whereupon, the witness was excused.)

19 MR. BULSA: The state calls Mary Ann Shehan.

20 MARY ANN SHEHAN, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BULSA

23 Q Good afternoon, Ms. Shehan.

24 A Good afternoon.

25 Q Please introduce yourself to the jury.

Mary Ann Shehan
Direct examination by Mr. Bulsa

- 1 A My name is Mary Ann Shehan. I work at the South
2 Carolina Law Enforcement Division, commonly known as SLED.
- 3 Q What is your occupation there?
- 4 A I am a forensic scientist. I am assigned to the D. N.
5 A. and serology section where I accept evidence for
6 criminal cases. I process those cases. The report is
7 based on my findings, and testify in court when necessary.
- 8 Q How long have you been a forensic scientist?
- 9 A With SLED it's been two years. In total it's been
10 four and a half.
- 11 Q And where did you get your education?
- 12 A I received a bachelor of science, integrated science
13 and technology, with a concentration in biotechnology from
14 James Madison University in James Madison University in
15 Harrisonburg, Virginia.
- 16 Q Where did you begin your work?
- 17 A I was previously employed at, working at Cellmart.
18 It's a private D. N. A. laboratory. I was employed there
19 for approximately two and a half years.
- 20 Q Was that straight out of college?
- 21 A Yes, sir.
- 22 Q Did you receive any training with them?
- 23 A Yes. I received training in-house by court qualified
24 analysts on the proper techniques and procedures used in
25 that laboratory.

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 Q And then how did you wind up in South Carolina?

2 A I accepted a position at SLED as basically the same
3 type of role, a D. N. A. analyst.

4 Q Were you recruited?

5 A Yes, I was by -- which is now our captain. He was the
6 supervisor of D. N. A.

7 Q And did you receive training at SLED?

8 A Yes. I did receive in-house training at SLED by also
9 a court-qualified analyst in the proper procedures and
10 techniques used at SLED.

11 Q And have you ever testified before?

12 A No, I have not.

13 Q Is that because of your length of time at SLED?

14 A That is correct.

15 MR. BULSA: Your Honor, I would offer Agent Shehan as
16 an expert in forensic analysis and D. N. A. analysis.

17 THE COURT: Any objection?

18 MR. McPHERSON: Yes, Your Honor. Based on what she
19 said, she has never testified in court before. And for
20 that reason I would object.

21 THE COURT: Well, if that were a ground, nobody would
22 ever be an expert.

23 MR. McPHERSON: I understand, but that's why I'm
24 objecting.

25 THE COURT: All right. Overrule the objection.

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 Q Is it Agent Shehan? Is that what they call all of
2 you -- agents?

3 A Yes, sir.

4 Q Okay. Agent Shehan, did you receive some items to
5 test for Spartanburg County in this case?

6 A Yes, I did.

7 Q First of all, identify what you received.

8 A I received two -- one package that contained two
9 cartons of swabs. Those swabs were labeled one from a
10 U-Haul and one from the roadway of Longview.

11 Then I received another package containing nine
12 cartons of swabs. Those swabs were from the driver's-door
13 interior handle, the interior driver's door, the exterior
14 left-side pillar behind the left rear door, swabs from the
15 interior right front door, swabs from right front door
16 interior handle, swabs from the steering wheel, swabs from
17 the gearshift, swabs from the left rear door interior
18 handle, swabs from the right door interior handle.

19 Q So you received quite a few swabs.

20 A Yes, sir.

21 Q And what condition were they in when you received
22 them?

23 A They are sealed intact. They were in a plastic pouch
24 that was sealed by, at SLED, as well as in envelopes that
25 were sealed by the agency.

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 Q Okay. I show you what's been marked as State's
2 Exhibit 40. Let's start with this one. What is that
3 package there?

4 A This is the plastic pouches that when evidence comes
5 into SLED they put the items of evidence in these pouches.
6 This is the packaging for the standard of the victim that I
7 received.

8 Q Okay. Would that be State's Exhibit 35?

9 A Yes, sir.

10 Q Okay.

11 A And then this larger package would be the package that
12 the -- containing the swabs.

13 Q Okay. And that's State's Exhibits 25 and 38.

14 A Yes.

15 Q Okay.

16 MR. BULSA: Your Honor, at this time I would move
17 these into evidence.

18 THE COURT: What's the numbers?

19 MR. BULSA: Let's see. We have got 25, 38, 35 and 40.

20 MR. MCPHERSON: No objection.

21 THE COURT: They are admitted.

22 (Swabs marked State's Exhibits Nos. 25 and 38;
23 evidence packaging marked State's Exhibit No. 40.)

24 Q In addition to those swabs that you received from
25 Spartanburg County did you receive some cuttings from the

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 evidence processing?

2 A Yes, I did.

3 Q And is that what's in State's Exhibit 39?

4 A Yes, sir.

5 Q And were they in the sealed condition?

6 A Yes.

7 MR. BULSA: Your Honor, I would move State's
8 Exhibit 39 into evidence.

9 MR. McPHERSON: I'm sorry?

10 MR. BULSA: I move State's Exhibit 39 into evidence.

11 MR. McPHERSON: No objection.

12 THE COURT: It's admitted.

13 (Cuttings marked State's Exhibit No. 39.)

14 Q Now, what test did you conduct of these items?

15 A I first performed a serology test based on this test
16 for the presence of blood on some of the swabs and the
17 cuttings of clothing.

18 Q Okay. What were you looking for?

19 A Blood.

20 Q Blood. Anybody's in particular?

21 A Not necessarily. I just looked for blood.

22 Q Okay. And once you determined that, what did you then
23 do?

24 A I then send it for D. N. A. analysis.

25 Q And were you the one that actually conducted the D. N.

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 A. analysis?

2 A Yes, sir. I performed the D. N. A. analysis.

3 Q Okay. And what were your findings?

4 A I developed a D. N. A. profile from the items, swabs
5 from the roadway, which is Item 1.2; Item 2.2, which was
6 swabs from the interior driver's door; Swab 2.3, which was
7 swab from the exterior left side pillar behind the rear
8 door; Item 2.4, which is swabs from the interior right
9 front door; 2.6, which was swabs from the steering wheel;
10 and Item 3.1, which was cuttings from the defendant's
11 pants. And all of those items matched the D. N. A. profile
12 of the victim, Dixon Ijioma.

13 Q Okay. Let's pause right there. So you got a swab
14 from the roadway that matched the victim.

15 A Uh-huh.

16 Q Swabs from various parts in the car that matched the
17 victim.

18 A Yes, sir.

19 Q And a -- one of the cuttings from one of the piece
20 of --

21 A Right. From the subject's pants.

22 Q From the subject's pants that matched the victim.

23 Okay. All right. Now, what other items or results did
24 you get?

25 A I also developed D. N. A. profiles that were mixtures

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 from the Items 3.3, 3.4, which were both cuttings from the
2 subject's pants, as well as Item 4.1, which was cutting
3 from the defendant's shirt.

4 Q So we have -- and what's the mixture? Tell us that.

5 A It's basically a mixture of at least two individuals.
6 There's more than one per -- basically.

7 Q Okay. And were you able to identify anybody within
8 this mixture?

9 A Yeah. The major contributor of D. N. A. to those
10 items matched the profile of Dixon Ijioma, the victim.

11 Q And by major contributor, what do you mean?

12 A Sometimes we can tell that there is more D. N. A. from
13 one individual versus another based on our detection
14 results. So in this case we could, and the results were
15 that the major contributor who had more D. N. A. was from
16 the victim.

17 Q Okay. So we can say that Mr. Ijioma's blood was on
18 the cutting taken from the shirt?

19 A Yes.

20 Q And Mr. Ijioma's blood was on at least three of the
21 cuttings from the pants.

22 A That's correct.

23 Q Okay. Now, what else did you find?

24 A I also developed a profile that was a mixture from
25 Item 3.2, which was another cutting of the subject's pants.

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 There the major contributor was from an unidentified male
2 individual.

3 Q All right. So Mr. Ijioma's blood wasn't in that
4 mixture.

5 A That's right. There's also the minor contributor, but
6 there wasn't enough D. N. A. to tell me who that was. It
7 was insufficient.

8 Q Explain that to the jury. Why could you not find out?

9 A Sometimes, well, in this case the minor contributor is
10 too low of a level for D. N. A. perpilageneration (sic).
11 We test 15 different locations, and only a few of those
12 locations show this minor profile. And it was in such a
13 threshold that we interpret with caution when we -- and we
14 can't say whether or not it's, you know, we can't make any
15 kind of conclusion.

16 Q Well, does that mean that Mr. Ijioma's blood wasn't in
17 that mixture?

18 A It does not mean that.

19 Q Does it mean it could have been there but you couldn't
20 find enough to?

21 A It's possible. I just can't say. It's inconclusive
22 basically.

23 Q Okay. You can't conclusively say his blood was in
24 that mixture.

25 A Correct.

Mary Ann Shehan
Direct examination by Mr. Bulsa

- 1 Q But it could have been.
- 2 A It's possible.
- 3 Q Okay. All right. Now, those -- you've talked about
- 4 all five cuttings, I believe, right?
- 5 A Yes.
- 6 Q Now, did you try anything else with the rest of the
- 7 swabs?
- 8 A Yes. I tested all the swabs.
- 9 Q All the swabs. Okay. What did you find?
- 10 A I developed a profile from Item 1.1, which is a swab
- 11 from the U-Haul. And that was from a different
- 12 unidentified male individual.
- 13 Q Okay.
- 14 A And then I developed partial D. N. A. profiles from
- 15 Items 2.5, which was a swab from the right front door
- 16 interior handle, and 2.9 which were swabs from the right
- 17 rear door interior handle. And those are also insufficient
- 18 for reliable interpretation.
- 19 Q Okay.
- 20 A Then I did not develop a D. N. A. profile from Items
- 21 2.1, which was swabs from the driver's door interior
- 22 handle, and 2.8, which were swabs from the left rear door
- 23 interior handle.
- 24 Q Okay.
- 25 A And then I have one more. No S. T. R. D. N. A.

Mary Ann Shehan
Direct examination by Mr. Bulsa

1 profile was developed from Item 2.7, which is swabs from
2 the gear shift.

3 Q Okay. Now, you talked about swabs from handles and
4 gear shift and things of that nature. Explain to the jury
5 what touch D. N. A. is.

6 A Touch D. N. A. is basically whenever you touch an item
7 there is a possibility that you can leave some of your
8 cells behind, depending on how much you sweat or how fast
9 your skin cells shed. And sometimes we can recover a D. N.
10 A. profile from those cells.

11 Q And how likely is it to get touch D. N. A.?

12 A It really depends on the person. You know, sometimes
13 it's great. A lot of times though it's not possible.

14 Q In this case you -- you analyzed swabs from the
15 various locations within the car.

16 A Correct.

17 Q Is touch D. N. A. one of the things that you would
18 have been looking for?

19 A Yes. Some of the swabs had no visible or red stain.
20 So I assumed that it was for touch D. N. A. So I did not
21 test for blood and D. N. A. analysis, which were from the
22 handle and gear shift, so.

23 Q And were you able to identify any touch D. N. A.?

24 A What I did develop was insufficient, meaning there was
25 not enough D. N. A. to have any conclusive result.

Mary Ann Shehan
Cross-examination by Mr. McPherson

1 Q So while you did test for it, it was not enough.

2 A Correct.

3 Q Okay. I believe that's it. Answer any questions Mr.
4 McPherson has.

5 CROSS-EXAMINATION

6 BY MR. MCPHERSON

7 Q Now, when you do these cuttings from the pants and
8 from the shirt, you can't testify as to how the blood got
9 on the pants or the shirt, can you?

10 A No, sir. I can only testify to what was there.

11 Q Okay. And you would agree with me, would you not,
12 that it was only the pants and the shirt where you found
13 the victim's D. N. A. on the defendant's things that
14 belonged to the defendant that were submitted to you?

15 A Those were the only items submitted to me, and I found
16 the victim's D. N. A. on those items.

17 Q And on all the other things such as door handles,
18 things like that, you were not able to develop Mr. Young's
19 D. N. A. profile.

20 A I did not have his D. N. A. standard to make that
21 comparison.

22 Q But you did not develop his D. N. A., did you?

23 A I don't know. I don't have -- I didn't have his
24 standard submitted to even -- what I did test on the handle
25 and stuff was too low anyways to make a reliable

Mary Ann Shehan
Redirect examination by Mr. Bulsa

1 interpretation on those items.

2 Q And I believe all of these cuttings from the shirt,
3 none of that came from the front of the shirt, did it?

4 A I am not aware. I just received the cutting.

5 Q Okay.

6 MR. MCPHERSON: No further questions.

7 MR. BULSA: Just briefly.

8 REDIRECT EXAMINATION

9 BY MR. BULSA

10 Q Mr. McPherson asked you about the touch D. N. A. on
11 the various locations in the car. The ones where you found
12 insufficient, that means you didn't even find the victim's
13 in there.

14 A Correct.

15 Q Thank you.

16 THE COURT: You may step down. Thank you.

17 MR. BULSA: Your Honor, we would ask she be excused.

18 THE COURT: She may be.

19 (Whereupon, the witness was excused.)

20 MR. BULSA: If I may consult with the court reporter
21 on the evidence.

22 (Pause.)

23 MR. BULSA: Your Honor, I believe we have got
24 everything entered, except we move into evidence the pants
25 and the shirt which have been testified to by a variety of

Motion

1 witnesses as State's 36 and 37.

2 MR. MCPHERSON: No objection.

3 THE COURT: They are admitted.

4 (Pants marked State's Exhibit No. 36; shirt marked
5 State's Exhibit No. 37.)

6 MR. BULSA: Your Honor, at this time the state would
7 rest.

8 THE COURT: All right. Ladies and gentlemen, that is
9 all the testimony or other evidence to be offered by the
10 state, at least in their case in chief.

11 Before we can go any further I've got a couple of
12 matters I'll need to address with the lawyers.

13 So I'll ask you to please go to your jury room. Do
14 not yet discuss the case. I'll bring you back shortly to
15 continue.

16 (The following takes place outside the presence of the
17 jury.)

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. I understand the state has
20 rested. The defendant is in this courtroom.

21 Mr. McPherson, do you have any motions or other
22 matters to address before the jury is returned?

23 MR. MCPHERSON: Yes, I do, Your Honor.

24 I'd like to make a motion for a directed verdict on
25 armed robbery, on assault and battery with intent to kill

Motion

1 and on the grand larceny indictments on the grounds that
2 the state has failed to prove all of the elements of each
3 of the offenses that have been charged.

4 THE COURT: All right. Well, let's start with armed
5 robbery. What element have they failed to present evidence
6 as to?

7 MR. MCPHERSON: Well, there is no evidence that the
8 alleged victim in this case took the cellular phone or
9 cash.

10 THE COURT: There's no, there's no evidence that the
11 defendant took a cellular phone or cash?

12 MR. MCPHERSON: As alleged in the indictment.

13 THE COURT: Do you mean other than the testimony of
14 Mr. Ijioma?

15 MR. MCPHERSON: He says he threw it at him, but there
16 is no evidence that he took it.

17 THE COURT: Well, I think forcible surrender of
18 property through the use of fear and intimidation
19 constitutes a robbery.

20 All right. Any other element as to the armed robbery
21 charge?

22 MR. MCPHERSON: No, Your Honor.

23 THE COURT: All right. Motion for a directed verdict
24 on that ground is denied.

25 What about the assault and battery with intent to

Motion

1 kill? Where do they lack evidence on that?

2 MR. McPHERSON: Well, I think all the testimony was
3 that this happened on November the 1st, and they've alleged
4 in the indictment that it happened on November the 2nd.

5 THE COURT: On or about.

6 MR. McPHERSON: That's all.

7 THE COURT: That's all on that one?

8 MR. McPHERSON: Yes, sir.

9 THE COURT: All right. Motion for a directed verdict
10 is denied on that ground.

11 Last indictment, grand larceny?

12 MR. McPHERSON: Yes, sir. There's been no evidence to
13 show that there was a permanent taking. The vehicle was
14 obviously abandoned by someone, at least by the next day or
15 maybe the same day. And also as to the value of the
16 vehicle, the victim testified as to the value two years
17 before, but he didn't testify as to the present value.

18 THE COURT: All right. Anything else?

19 MR. McPHERSON: No.

20 THE COURT: Motion for a directed verdict is denied.

21 Any other matters we need to address before the jury
22 is brought back in?

23 MR. McPHERSON: No, Your Honor.

24 THE COURT: Have you discussed with Mr. Young his
25 right to testify as well as to remain silent?

1 MR. MCPHERSON: Yes, I have, Your Honor.

2 THE COURT: Has he indicated to you what he wishes to
3 do in that regard?

4 MR. MCPHERSON: When I discussed it with him earlier
5 he had indicated to me he did not wish to testify.

6 THE COURT: All right. Mr. Young, do you understand
7 that when you're accused of a crime and you're brought to
8 trial on that charge that you have an absolute right to
9 remain silent?

10 In other words, nobody can make you take the witness
11 stand and testify during the trial of this case. You don't
12 have to make any statement. You don't have to answer any
13 questions that relate to these charges, because you have an
14 absolute right to remain silent and to require the state to
15 carry their burden of proving your guilt beyond a
16 reasonable doubt by the presentation of evidence. And you
17 don't have to assist them in those efforts by taking the
18 witness stand and answering questions that might tend to
19 prove your own guilt.

20 At the same time, if you wish to personally provide
21 any testimony or evidence for this jury's benefit, now is
22 the only opportunity that you will have to provide that
23 testimony.

24 In other words, you can't wait until later and change
25 your mind, or after the jury reaches a decision and change

1 your mind about your decision.

2 Of course whatever decision that is to be made in that
3 respect, it's your decision. It's not your lawyer's
4 decision; it's not my decision; it's not anyone else's
5 decision. It's your decision, and only you can make it.

6 Now, have you had time to talk with Mr. McPherson
7 about your right to testify, as well as not testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, do you understand that if you choose
10 to testify that you would have to answer not only your
11 lawyer's questions but you'd also have to answer the
12 prosecutor's questions to the extent that they were
13 relevant even if the answers might tend to prove you
14 guilty?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you also understand that if you choose
17 not to testify that I would instruct the jury that they may
18 not hold that against you or consider that fact in any way
19 during their deliberations or in their determination as to
20 whether or not the evidence in this case proves you guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, have you had time to talk with your
23 lawyer about the advantages and the disadvantages of
24 testifying, as well as not testifying?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And have you had time to reflect upon your
2 decision?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And have you made a decision?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And what is it?

7 THE DEFENDANT: I won't testify.

8 THE COURT: You are not going to testify?

9 THE DEFENDANT: No, sir.

10 THE COURT: And is that a decision that you made of
11 your own free will and accord?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did anybody force you into it?

14 THE DEFENDANT: No, sir.

15 THE COURT: Anybody pressure you into it?

16 THE DEFENDANT: No, sir.

17 THE COURT: Did anybody suggest to you that that's
18 what you ought to do in this case?

19 THE DEFENDANT: No, sir.

20 THE COURT: You made that decision on your own and
21 you're satisfied with it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any other witnesses that you
24 want Mr. McPherson to call on your behalf?

25 MR. MCPHERSON: He does, Your Honor.

George Andrew Clark
Direct examination by Mr. McPherson

1 THE COURT: Okay. You've given Mr. McPherson a list
2 of people that you want him to call today to testify?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. All right. Bring the jury back,
5 please.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: All right. Ladies and gentlemen, as you
9 know, the state has concluded with their presentation of
10 evidence, at least their case in chief.

11 So we're now going to proceed with any to be offered
12 by the defense.

13 Mr. McPherson.

14 MR. MCPHERSON: Thank you, Your Honor. The state, the
15 defense, would call Officer Clark.

16 GEORGE ANDREW CLARK, having
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. MCPHERSON

19 Q Would you state your full name for the record, please?

20 A George Andrew Clark.

21 Q And how are you employed?

22 A I'm employed with the Spartanburg County Sheriff's
23 Department.

24 Q And how long have you been so employed?

25 A I've been here for two and a half years.

George Andrew Clark
Direct examination by Mr. McPherson

- 1 Q And how were you employed, or in what capacity?
- 2 A I am a patrol officer.
- 3 Q Okay. And on November the 1st and November the 2nd of
- 4 2006 how were you employed?
- 5 A I was patrolling the streets on duty from 7:00 p. to
- 6 7:00 a.
- 7 Q And do you recall responding to Mamasun's Bar to a
- 8 shooting victim being at the bar?
- 9 A I do.
- 10 Q Okay. Did you go to Mamasun's Bar?
- 11 A Yes, sir.
- 12 Q And when you got there what did you do?
- 13 A I saw if the victim was okay. I made sure that his
- 14 health was good.
- 15 Q And did you talk to the victim?
- 16 A That, I did.
- 17 Q Okay. And did you ask him what happened?
- 18 A I did.
- 19 Q And do you recall what he told you?
- 20 A In bits and pieces, yes.
- 21 Q I'm sorry?
- 22 A In bits and pieces, yes. He didn't quite say the
- 23 whole incident, how it happened.
- 24 Q But you wrote it down on a piece of paper, did you
- 25 not?

George Andrew Clark
Cross-examination by Ms. Barnwell

1 A That I did.

2 Q And did the victim tell you where he picked the fare
3 up at?

4 A He did state Locust Court, which is Locust Court and
5 Longview.

6 Q Okay. He told you he picked, picked him up on Locust
7 Court and Longview, or on Locust Court.

8 A Yes, sir.

9 Q And did he tell you which house he picked him up at?

10 A I believe he stated the first one on the right.

11 Q And you passed this information on to your superiors?

12 A To the investigator working the case, yes, sir.

13 MR. McPHERSON: No further questions.

14 CROSS-EXAMINATION

15 BY MS. BARNWELL

16 Q Deputy Clark, the victim had just been shot twice in
17 the back of the head when you were speaking with him, isn't
18 that correct?

19 A Correct. There was blood all down the front of him,
20 yes.

21 Q And his accent sometimes can be rather hard to
22 understand?

23 A Correct.

24 Q Okay. And did he tell you at some point -- well, he
25 did tell you at some point that he was familiar with the

Lisa Michelle Johnson
Direct examination by Mr. McPherson

1 person that shot him, didn't he?

2 A That he did.

3 MS. BARNWELL: I have no further questions.

4 MR. MCPHERSON: May this witness be excused?

5 THE COURT: You may step down. You may also be
6 excused.

7 (Whereupon, the witness was excused.)

8 MR. MCPHERSON: Judge, we call Lisa Johnson.

9 LISA MICHELLE JOHNSON, having
10 been first duly sworn, testified as follows:

11 THE COURT: Mr. Bailiff, you're going to have to fix
12 that microphone again. The top is pushed down. It kind of
13 does that.

14 (Pause for juror coughing.)

15 THE COURT: Ms. Moore, do you need to take a short
16 break?

17 THE JUROR: If I can have some water.

18 THE COURT: Okay.

19 (Pause.)

20 DIRECT EXAMINATION BY MR. MCPHERSON

21 Q Ma'am, would you state your full name for the record?

22 A Lisa Michelle Johnson.

23 Q And where do you live, Ms. Johnson?

24 A I was staying at [REDACTED] West Pine Street. I stay at [REDACTED]

25 Bruton Circle in Wellford.

Lisa Michelle Johnson
Direct examination by Mr. McPherson

- 1 Q Okay. And --
- 2 THE COURT: Excuse me just a minute.
- 3 Ma'am, could you please repeat that and go a tad
- 4 slower so we can be sure to understand it?
- 5 A [REDACTED] Brewton Circle in Wellford, South Carolina.
- 6 Q Okay. Do you know a person by the name of Dixon
- 7 Ijioma?
- 8 A Yes, I do.
- 9 Q How is it you know him?
- 10 A He was taking me back and forth to the store, or pick
- 11 me up.
- 12 Q Okay. And how long have you known him?
- 13 A About a year now.
- 14 Q Okay. And do you recall talking to the police about
- 15 Dixon after he had been shot?
- 16 A Yes.
- 17 Q And did you give the police a statement?
- 18 A Yes, I did.
- 19 Q Do you recall the night? Do you recall what happened
- 20 the night he was shot, I mean, from your standpoint?
- 21 A Uh-huh, yes.
- 22 Q Did you talk to him that night?
- 23 A Yes, I did.
- 24 Q And did he call you or did you call him?
- 25 A I had called him.

Lisa Michelle Johnson
Direct examination by Mr. McPherson

- 1 Q Okay. And how did you call him?
- 2 A I had called him on my cell phone.
- 3 Q Did you call him on a home phone or his cell phone?
- 4 A I had called him on my house phone.
- 5 Q Okay. But how about his phone? What kind?
- 6 A On his cell phone.
- 7 Q Okay. And did you talk to him?
- 8 A Yes, I did.
- 9 Q Okay. And could you tell us what happened while you
- 10 were talking to him?
- 11 A When I was talking to him and he was telling me -- he
- 12 was talking. And went 5-10. I heard the phone hung up on
- 13 me. That's the only thing I heard.
- 14 Q When he was talking what?
- 15 A When he was talking to me and he -- I heard something.
- 16 He coughed. And then the phone had hung up.
- 17 Q So you heard him yelling?
- 18 A Yes.
- 19 Q And then the phone was cut off?
- 20 A Yes.
- 21 Q And did he call you back, or he never called you back?
- 22 A No. He never called me back.
- 23 Q Was that the last time you spoke to him that day?
- 24 A That's the last time I talked to him.
- 25 Q And do you know more or less what time it was when you

Lisa Michelle Johnson
Direct examination by Mr. McPherson

1 called him?

2 A Nope.

3 Q Well, have you saw your statement? You made a
4 statement, correct?

5 A Yes.

6 Q And if you saw your statement would that refresh your
7 memory?

8 A Yes.

9 MR. MCPHERSON: Your Honor, may I approach?

10 THE COURT: Yes.

11 (Voluntary statement marked Defendant's Exhibit No. 3
12 for Identification.)

13 Q Okay. Ma'am, I am showing you what's been marked for
14 identification purposes only as Defendant's Exhibit No. 3.
15 Do you recognize that document?

16 A Yes.

17 Q Is that your signature on that document? Is that your
18 signature?

19 A Oh, yes.

20 Q I want you to just take a minute and read the first
21 few lines and see if you can tell what time you called him.

22 (Pause.)

23 Q Okay. Have you had a chance to review it, or do you
24 need more time?

25 A Yes.

Lisa Michelle Johnson
Direct examination by Mr. McPherson

1 Q Now, do you remember what time it was you called him?

2 A Yes.

3 Q What time was it?

4 A 11:45.

5 Q Okay. Do you still -- do you know Mr. Dixon? Do you
6 know Dixon today?

7 A Yes.

8 Q Are y'all still friends?

9 A Yes.

10 Q Does he know where you live today?

11 A No, because I had moved.

12 Q Okay. Do you still ride in his cab?

13 A When I need him, I call him.

14 Q I'm sorry?

15 A When I needed a favor, I would call him.

16 Q Okay. So y'all are still communicating with each
17 other.

18 A Yes.

19 Q Okay. And do you recall the last time you talked to
20 him?

21 A The last time I talked to him was about a couple of
22 weeks ago.

23 Q Okay. And does he ever call you?

24 A No. He returned my call back when I called him.

25 MR. MCPHERSON: No further questions.

Lisa Michelle Johnson
Cross-examination by Mr. Bulsa

1 CROSS-EXAMINATION

2 BY MR. BULSA

3 Q Ms. Johnson, you call Mr. Ijioma for a cab?

4 A Yes.

5 Q Is that why you call him?

6 A Yes.

7 Q What name do you call him by?

8 A Eight.

9 Q Eight?

10 A Uh-huh.

11 Q What does that stand for?

12 A Number Eight, I guess.

13 Q Number Eight. Is that his cab number?

14 A I have no idea. That's what we call him. We just
15 call him Eight.

16 Q Just call him Eight. Okay. All right. And were you
17 a regular customer of his?

18 A Yes.

19 Q Did he give you a card?

20 A He gave me one. I don't know what I did with it.

21 Q Okay. So you've seen this card before, or one like
22 this.

23 A Yes.

24 Q Because he gave you one.

25 A Yes, sir.

Lisa Michelle Johnson
Cross-examination by Mr. Bulsa

1 Q Because you're a regular customer.

2 A Yes.

3 Q All right. And that was so you could call him
4 personally on his cell phone?

5 A Yes.

6 Q All right. And that's what you did that night.

7 A Yes.

8 Q Were you calling to ask for a cab?

9 A I just, I just call him to see how he be doing.

10 Q Okay.

11 A That's the only -- I mean, I called him to see how he
12 be doing and I need a way of going places, because he take
13 me and my friend girl places and pick us up.

14 Q On the night in question did you call him to see if he
15 could pick you up?

16 A Yes.

17 Q Okay. And he wasn't able to, was he?

18 A No.

19 Q Okay. In fact, you don't know why the phone, why he
20 hung up.

21 A No.

22 Q Okay. You didn't hear any shots or anything, did you?

23 A No.

24 Q All right. Ma'am, what's your phone number, or what
25 was your phone number back then?

Lisa Michelle Johnson
Redirect examination by Mr. McPherson

1 A [REDACTED]-8191.

2 Q [REDACTED]-8191. Okay. Let me show you State's Exhibit No.
3 26. Do you see that top number?

4 A Yes.

5 Q Is that your number?

6 A Yes.

7 Q Okay. So that shows you called him. Okay. And you
8 just called him because you were calling for a cab.

9 A Yes.

10 Q You don't know what happened to him, do you?

11 A No.

12 Q Thank you, ma'am.

13 MR. BULSA: That's all I have.

14 REDIRECT EXAMINATION

15 BY MR. MCPHERSON

16 Q Does he know you by name?

17 A Who?

18 Q Does Dixon --

19 A Oh, yes.

20 Q -- know you by name?

21 A Yes.

22 Q You would call yourself a regular customer?

23 A Yes.

24 Q So he knows your first name and your last name.

25 A Oh, he know my last -- my first name.

Thyeim Miller

Direct examination by Mr. McPherson

1 Q Okay. All right. But he does know your first name.

2 A Yes.

3 Q All right.

4 MR. MCPHERSON: No further questions.

5 THE COURT: You may step down.

6 MR. MCPHERSON: Call Thyeim Miller.

7 May this witness be excused?

8 THE COURT: She may.

9 (Whereupon, the witness was excused.)

10 THYEIM MILLER, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. MCPHERSON

13 Q Would you state your name for the record, please?

14 A Thyeim Dever Miller.

15 Q And how old are you, Mr. Miller?

16 A Thirty-one.

17 Q And where do you live?

18 A On [REDACTED] Palisade Street.

19 Q How long have you lived there?

20 A For three years now.

21 Q I'm sorry? How many?

22 A For three years.

23 Q Three years. So you were living there back in -- back
24 there on November the 1st, November 2nd of 2006?

25 A Yes, sir.

Thyeim Miller
Direct examination by Mr. McPherson

1 Q Do you recall that day?

2 A Yes. I remember it.

3 Q Do you recall whether or not Robert Young was at your
4 house any time that evening?

5 A Yes. He was.

6 Q What, what time did he come to your house, do you
7 recall?

8 A We, we was down the street at first, and when we came
9 back up the street, that was around like 9:00. He went and
10 got us something to eat and came back. So he was like
11 after he got something, he sat around to about like
12 10:30 or so, 10:45, you know. And he left and went down
13 the street, you know, and came back.

14 Q Okay. What time, more or less what time, did he leave
15 and go down the street?

16 A He left my house. It was around maybe about 10:35 or
17 10:40 maybe.

18 Q Okay. And how long was he gone down the street?

19 A He wasn't gone long. He stayed down there for a
20 minute, but I saw him, because when I come outside he was
21 supposed to be getting me a cigarette. That's how I
22 remember. And when I came outside I looked down the street
23 and I could see he's, you know, down there. We ain't got
24 but like a couple of street lights on my street, so.

25 Q Okay. And how long did he stay down there, down the

Thyeim Miller
Direct examination by Mr. McPherson

- 1 street?
- 2 A Probably about ten or 15 minutes.
- 3 Q But you saw him down there?
- 4 A Yes.
- 5 Q And to your knowledge was he there the whole time?
- 6 A Yes.
- 7 Q And did he come back to your house?
- 8 A Yes, he came back.
- 9 Q Okay. And, more or less, what time was it when he
- 10 came back?
- 11 A It was around about 11:50, about 11:50 or something
- 12 around, because somebody came before him. And it was
- 13 before 12:00. So it was around like 11:50, 55 some time
- 14 like that.
- 15 Q And you had some company over at your house that
- 16 evening, did you not?
- 17 A Yes.
- 18 Q And who was that?
- 19 A My wife's cousin and a friend of mine.
- 20 Q Did he come back to your house?
- 21 A Who?
- 22 Q Did Robert Young come back?
- 23 A Oh, yes, he came back.
- 24 Q Robert come back to your house?
- 25 A He came.

Thyeim Miller
Direct examination by Mr. McPherson

1 Q And did he come inside your house?

2 A Yes.

3 Q Okay. Then what happened after he came back to your
4 house?

5 A He went and sat on the porch. And he sat down, and he
6 talked to somebody because I could hear him through my
7 window because he was sitting right beside my window. I
8 can hear him out there talking to somebody. And I went out
9 there and I asked him about the cigarettes that he was
10 supposed to have been going to get.

11 MR. BULSA: I object to any hearsay.

12 THE COURT: Sustained.

13 Q Okay. Now, but you talked to him face to face.

14 A Yes.

15 Q And did he give you any cigarettes?

16 A No, he didn't get -- he said he couldn't find none.

17 MR. BULSA: Objection, Your Honor.

18 THE COURT: Sustained. You can't testify as to what
19 anybody told you.

20 THE WITNESS: No. That's what I knew, the last
21 question he asked me.

22 THE COURT: I said you can't testify as to what
23 anybody said.

24 THE WITNESS: Okay, okay. You're right.

25 Q I just asked you if he gave you a cigarette when

Thyeim Miller
Direct examination by Mr. McPherson

1 you --

2 A No. He, he didn't have one.

3 Q Okay. And, more or less, what time was this?

4 A This was around 10:50, I mean, 11:55. It was about
5 around that time when he came back.

6 Q Okay. And then what happened?

7 A He sat there for a while, and then I heard him
8 leaving.

9 Q Okay. Now, how long of a while did he sit there?

10 A He just sat there. It be about 20 minutes, about 20
11 or 30 minutes he sat outside.

12 Q So it would have been after midnight.

13 A Yeah. It was around.

14 Q Are you certain of that?

15 A Yeah. I'm positive.

16 Q And then what happened?

17 A He was gone. You know, he left. And the next morning
18 I found out that he got a ride home from my neighbor.

19 Q Okay. Now, when did you hear about him being accused
20 of being in a robbery?

21 A That was like the next evening. It was around about
22 3:00 o'clock maybe. That's when I heard his name, somebody
23 said his name.

24 Q And how did you feel when you heard that?

25 A It was like when we heard it, we was like, you know,

Thyeim Miller
Direct examination by Mr. McPherson

1 when did this happen. I was thinking it happened that day,
2 ya know what I'm saying, that Thursday. But it was like it
3 happened Wednesday night. And I was like, you know, how
4 could it be because around this time, you know, I'm seeing
5 him. And I was like he couldn't have did it, ya know what
6 I mean, but we was trying to figure that, you know, when
7 did he do this if he did do it.

8 Q Okay. Now, was he ever gone from your house long
9 enough to go across town to where his mother lived? Do you
10 know where his mother lives?

11 A Yes.

12 Q Was he gone long enough to go across town and come
13 back to your house without you knowing it?

14 A No. He couldn't be gone that long.

15 Q I'm sorry?

16 A I mean, because the house, seeing him, it's not
17 possible for him to do that, you know, impossible.

18 Q Okay. So you're telling this jury he was with you the
19 night that Mr. Ijioma is claiming he got shot, is that
20 correct?

21 A Yes, that's correct.

22 Q And who else was at your house?

23 A My wife.

24 Q Is she here today?

25 A Yes. She is in the courtroom.

Thyeim Miller
Cross-examination by Mr. Bulsa

1 MR. McPHERSON: No further questions.

2 CROSS-EXAMINATION

3 BY MR. BULSA

4 Q Mr. Miller, have you got any doubt that Mr. Ijioma got
5 shot?

6 A No. I believe he got shot.

7 Q Okay. So Mr. Ijioma's claim that he got shot is true,
8 right?

9 A Uh-huh.

10 Q Now, do you ever have an occasion to use Mr. Ijioma's
11 services?

12 A No.

13 Q Mr. Ijioma ever give you a card with his phone number
14 on it to call him?

15 A No.

16 Q Okay. And what is your phone number or was your phone
17 number?

18 A At that time it was like [REDACTED]-2152 or something. I
19 can't --

20 Q [REDACTED]-2152. Okay. That number called Mr. Ijioma's
21 number. Are you aware of that?

22 A No.

23 Q Okay. The defendant was using your phone while he was
24 at your house, wasn't he?

25 A Yes.

Thyeim Miller
Cross-examination by Mr. Bulsa

- 1 Q Right?
- 2 A Yes.
- 3 Q Okay. And Mr. Young is related to you, isn't he?
- 4 A Yes.
- 5 Q How?
- 6 A That's my first cousin.
- 7 Q Your first cousin.
- 8 A Yes.
- 9 Q Okay. In fact, didn't he used to live at [REDACTED]
- 10 Palisade?
- 11 A It's a family house, you know.
- 12 Q Family house. And he has actually lived there before.
- 13 A Yes, he has.
- 14 Q Okay. And you didn't keep a stop watch on him, did
- 15 you, when he left?
- 16 A I didn't keep a stop watch, but I, I can remember that
- 17 night because it was like one of my first nights really
- 18 being off. I had been laid off, just got, from my job.
- 19 And I hollered at him. I really didn't get to see him that
- 20 much. So like when he came around, I can remember that
- 21 night. And then how it happened, you know, and then that
- 22 next day, you know, I puts, put it back together. Like I
- 23 said, I ain't see it. I can't.
- 24 Q Okay. And, in fact, he left several times that
- 25 evening, didn't he?

Thyeim Miller
Cross-examination by Mr. Bulsa

- 1 A Yes, he left.
- 2 Q Okay. And the last time he left, where did he go?
- 3 A He went home.
- 4 Q How do you know that?
- 5 A Because that's what my neighbor said, said she brought
- 6 him home.
- 7 Q You don't know that, do you? You didn't see him get
- 8 in the car, did you?
- 9 A I didn't see him, but I saw him walk across my yard.
- 10 Q Did you see him go across to Amos Street to his aunt's
- 11 house?
- 12 A No.
- 13 Q You didn't know he went over there, did you?
- 14 A No, I didn't.
- 15 Q But he did, didn't he?
- 16 A I guess.
- 17 Q You don't know.
- 18 A I don't know.
- 19 Q Just like you don't know where he would have been.
- 20 You don't know where he went when he left.
- 21 A I mean, at that particular time, I'm telling you from
- 22 ten -- from 5:00 o'clock that day when I saw him until
- 23 12:00 o'clock, I can pretty much say that, where he was at
- 24 then until, you know, after he walked across my yard and
- 25 went and got in my neighbor's car and she took him home.

Thyeim Miller
Cross-examination by Mr. Bulsa

- 1 Q Do you know his aunt's name?
- 2 A Which one?
- 3 Q The one that lives on Amos Street.
- 4 A My Aunt Shirley.
- 5 Q Your Aunt Shirley. Did he tell you he visited Aunt
6 Shirley?
- 7 A No.
- 8 Q In fact, he left several times that evening, right?
- 9 A Yeah.
- 10 Q And you didn't walk with him.
- 11 A No.
- 12 Q You didn't go with him. Fortunately for you, you
13 didn't go with him. You don't know where he went, do you?
- 14 A Yeah. I am saying for --
- 15 Q You don't know where he went because you weren't with
16 him, were you?
- 17 A I don't know. He went down to Aunt Shirley's. So I
18 don't know about that.
- 19 MR. McPHERSON: Your Honor, objection. This is not
20 necessary to --
- 21 A So I don't know about that. But I don't, I don't
22 think -- that was around the time when all of this was
23 happening from 11:00 to 12:00, around in there.
- 24 Q You were standing there looking at your clock? How
25 was he dressed?

Thyeim Miller
Cross-examination by Mr. Bulsa

- 1 A He had on a white shirt and some, some black pants.
2 Q Was he wearing that shirt that said "snitches get
3 stitches"?
4 A No, he didn't have on that one.
5 Q He didn't have that on?
6 A No. He had on a white shirt, white, long t-shirt.
7 Q He had a white long t-shirt on?
8 A And a red -- and his black hat.
9 Q And black hat and black pants?
10 A Yeah.
11 Q Do you know when he would have put his black shirt on?
12 A No. I didn't know he had a black shirt until today.
13 Q You didn't?
14 A Na. I didn't know that he had on a black shirt that
15 night until y'all said that's what he wore.
16 Q Do you know he owns that shirt?
17 A Say what?
18 Q Do you know he has a shirt that says "snitches get
19 stitches"?
20 A No. I didn't know nothing about that.
21 Q You didn't know that. Okay. Have you talked to him
22 since he has been arrested?
23 A No.
24 Q You haven't gone and visited him?
25 A Uh-uh.

Thyeim Miller
Redirect examination by Mr. McPherson

1 Q Let's see. Were you on South Liberty at all?

2 A South Liberty, no.

3 Q You weren't on South Liberty that day?

4 A Oh, yeah, earlier. That's where, that's where we went
5 to. He was here at 5:00 o'clock that day.

6 Q Oh, 5:00 o'clock?

7 A He was down on the other Palisade Street off of South
8 Liberty.

9 Q And that was at 5:00 o'clock, seven hours before you
10 claim he left.

11 A Yeah. We, we stayed there together until
12 8:00 o'clock.

13 MR. BULSA: That's all I have.

14 MR. MCPHERSON: Just one question.

15 REDIRECT EXAMINATION

16 BY MR. MCPHERSON

17 Q Now, when you saw him that evening was he acting
18 normal or not?

19 A Oh, he acted just the same way, quite dude. I ain't
20 just, I ain't had no indication or whatever thought that he
21 had done something like this. That's the honest.

22 MR. MCPHERSON: No further questions.

23 THE COURT: You may step down.

24 MR. MCPHERSON: Natesha Miller.

25

Natesha Lenette Miller
Direct examination by Mr. McPherson

- 1 NATESHA LENETTE MILLER,
2 having been first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. MCPHERSON
4 Q Ma'am, would you state your full name for the record,
5 please?
6 A Natesha Lenette Miller.
7 Q Where do you live, Ms. Miller?
8 A Right now I stay in Prince Hall, but at the time we're
9 talking about I stayed at [REDACTED] Palisade Street.
10 Q Okay. And where do you work?
11 A I'm a supervisor at Charles Lea, Charles Lea Center.
12 Q How long have you worked there?
13 A I've been with the center now for three years.
14 Q Okay. Now, do you recall this incident we've been
15 talking about that happened on November 1st, November 2nd?
16 A Yes, sir.
17 Q Where were you that evening, November 1st?
18 A I was home.
19 Q Okay. And when you say home?
20 A At the [REDACTED] Palisade Street address.
21 Q Okay. And are you married?
22 A Yes, sir.
23 Q And to whom are you married?
24 A Thyeim Miller.
25 Q Okay. Now, are you personally related to Robert

Natesha Lenette Miller
Direct examination by Mr. McPherson

1 Young?

2 A Yes, sir. That's my cousin-in-law.

3 Q Okay. And do you recall whether or not Robert Young
4 was over at your house in the evening?

5 A Yes, sir.

6 Q Tell me, do you remember when he came over?

7 A The first time I actually saw Robert that day would
8 have been towards the early part of the evening. And he
9 was there pretty much all day, you know. He was in and
10 out. But the last time I would have seen him would have
11 been late that evening, late that night.

12 Q Do you remember how late?

13 A It would have been after the news hour. It would have
14 been after that hour. I don't know exactly like, you know,
15 1:00 o'clock or nothing like that. But I know it wouldn't
16 have been as late as 1:00 because I was asleep by then.
17 But it would have been after the news hour as far as the
18 last time I seen him.

19 Q Would it have been after midnight?

20 A Well, around midnight time, around midnight time.

21 Q Okay. Now, where were you most of this time? Were
22 you inside or outside, or how?

23 A Inside.

24 Q Okay. And were you seeing him all evening long just
25 for bits and pieces of time?

Natesha Lenette Miller
Direct examination by Mr. McPherson

1 A Well, he would come, he would come there and, you
2 know, he would be in the house probably, you know, the
3 timeframe five to seven minutes. And then they'll go back
4 outside and sit on the porch. And then, you know, they
5 might come back in for something to drink.

6 Or I don't know whatever I was cooking or what not,
7 you know, maybe they ate something. But he, they, he would
8 come in and go back out, and come in and go back out. And
9 then I would go to the door and they was still sitting on
10 the porch or something like that.

11 Q Now, you heard about the incident the next day?

12 A Yes, sir.

13 Q And were you surprised to hear that he was accused in
14 this case?

15 A Yeah. I was like mind blown because I know I had seen
16 them like all night, you know what I'm saying like that,
17 the night before. So I was just like mind blown.

18 Q You believe he was at your house all night long when
19 this happened?

20 A I know he was there because I seen him. You know,
21 it's not like somebody came up and told me, you know.

22 Q Was he ever gone long enough to your knowledge to go
23 across town and come back to your house?

24 A No, sir. The longest, you know, timeframe that I
25 could say that, period, that I didn't see him wouldn't

Natesha Lenette Miller
Cross-examination by Mr. Bulsa

1 never exceeded like 15 or 20 minutes, because, you know,
2 like I said, it's either come in and get something to
3 drink, or, you know, sitting on a porch, me going out and
4 looking out the window or something like that. But no,
5 sir.

6 Q Okay. And was he, was he acting normal that night or
7 unusual? How would you describe his behavior?

8 A He was acting normal. You know, he a real quiet
9 person, you know, laid back. He was acting normal. He
10 wasn't acting abnormal, weird or nothing like that, no.

11 Q He never acted unusual the whole night.

12 A Not throughout the whole time he was there that
13 evening.

14 Q Okay. And the last time you saw him was around
15 midnight.

16 A Yes, sir.

17 Q Okay.

18 MR. MCPHERSON: No further questions.

19 CROSS-EXAMINATION

20 BY MR. BULSA

21 Q Ma'am, did you call a cab that night?

22 A No, sir. But throughout the evening it was several
23 people coming to my house from, you know, my cousins and,
24 you know, my husband's friends in and out. I didn't use
25 the phone, but I can't say who did or didn't.

Natesha Lenette Miller
Cross-examination by Mr. Bulsa

1 Q Did he use the phone?

2 A Him as well as, yes, sir, other people used the phone
3 as well. But I can't say what, you know, number he dialed
4 or somebody called back. And it was like did Robert or
5 anybody call us at that number.

6 Q Let me ask it this way. Okay. If a cab was called
7 from your house, it was more likely to be him than you, is
8 that right?

9 A Well, it could have been him, me, you know, my cousin,
10 my cousin's friend, because I've been home and people have
11 called cabs to my house before.

12 Q Wait a minute. I started off by asking if you called.

13 A No, sir. I did not.

14 Q Okay. And then you just said, well, it could have
15 been him, could have been me, could have been my cousins.

16 A Yeah, because I don't just want to say it was. If it
17 wasn't me, it could have been him, because, you know, like
18 I told you yesterday, it was more than him and me just
19 there.

20 Q Okay. Once again, is it more likely that he called
21 the cab or you called the cab?

22 A He's never called a cab at my house for me to say,
23 yeah, he called a cab there that night. So I can't say
24 that. I can't, I can't say it's more likely he did. Have
25 I ever seen him in a cab before or catch a cab, no, not

Natesha Lenette Miller
Cross-examination by Mr. Bulsa

1 from my house. I haven't. Any time Robert leave my house
2 is with his girlfriends or associates or something like
3 that.

4 Q Okay. So you will agree that a cab did not come to
5 your house to pick him up.

6 A I will agree that I did not see a cab come to my house
7 to pick anybody up.

8 Q You didn't know that he went to his aunt's house on
9 Amos Street, did you --

10 A No, sir.

11 Q -- to call for a ride?

12 A No, sir. I didn't know that.

13 Q You didn't know that.

14 A Uh-huh.

15 Q Just like you don't know how many times he left out of
16 your house.

17 A I can say it was more than one. I can't say he left
18 five times or four times. But throughout the timeframe he
19 was there he left in and out several times. But it wasn't
20 ever longer than 20, 30, 40. I don't know.

21 Q Were you keeping a stopwatch on him?

22 A I wasn't keeping a stopwatch on him, no, sir.

23 Q I'm sorry. Were you keeping a stopwatch on him?

24 A No, sir. I wasn't keeping no stopwatch on him, but
25 being at home, you know, at home from work cooking and

Natesha Lenette Miller
Cross-examination by Mr. Bulsa

1 stuff, I'm just an observant person. And I know if a whole
2 hour had passed, I been done watched two or three shows or
3 whatever in between that. And none of that ever happened.
4 You know, so that's the only -- that's the way that I can
5 relate to myself that he was never gone no 30 or 45
6 minutes, hour or nothing like that.

7 Q You're telling me you were watching T. V. as well as
8 cooking?

9 A Uh-huh.

10 Q And you were in and out of your house --

11 A Yes, sir.

12 Q -- on a number of occasions.

13 A Yes, sir.

14 Q Okay. And you know don't know what time he left.

15 A On which occasion? You talking about all the
16 occasions together?

17 Q The final time he left.

18 A The final time he left, he left that night that I seen
19 him, was like after the news hour. I'm going to say after.

20 Q When is the news hour?

21 A The 11:00 o'clock news.

22 Q Does that go on for an hour?

23 A No. Well.

24 Q It was on for 30 minutes.

25 A Thirty minutes, stay on for 30 minutes.

Dilena Mary Young
Direct examination by Mr. McPherson

1 Q So sometime after 11:30 he left your house.

2 A Yes. The final time that night.

3 Q Thank you, ma'am.

4 MR. BULSA: That's all I have.

5 MR. MCPHERSON: I have no further questions.

6 THE COURT: You may step down.

7 MR. MCPHERSON: We would call Dilena Young.

8 DILENA MARY YOUNG, having
9 been first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. MCPHERSON

11 Q Ms. Young, would you -- I'm sorry. Would you state
12 your name for the record?

13 A Dilena Mary Young.

14 Q And where do you live, Ms. Young?

15 A At the time of this incident I was living at [REDACTED]
16 Locust Court.

17 Q And are you related to Robert Young?

18 A Yes.

19 Q What's the relationship?

20 A That's my son.

21 Q Okay. On November the 1st, November the 2nd, do you
22 know where he was living?

23 A He was living at [REDACTED] Locust Court.

24 Q Okay. And do you recall what time he came home that
25 evening?

Dilena Mary Young
Direct examination by Mr. McPherson

- 1 A From what I, from what I can remember as looking at
2 the clock, I think it was like maybe 1:35. It was no later
3 than 1:40.
- 4 Q Okay. And how was he acting when he came home?
- 5 A Like Robert always does, like Robert.
- 6 Q Was he acting nervous, shaking or acting unusual?
- 7 A Uh-huh. He was acting like Robert. And I told him, I
8 said, why you come in here so late, because I was like, you
9 know, why. I said you don't have to come in here late
10 like, you know, late.
- 11 Q Okay. And do you recall when the police showed up at
12 the house?
- 13 A Probably about, probably about 30 minutes after he got
14 there we heard a knock at the door, and he went to the
15 door. And he said it's the police. I had got in the bed.
16 I had got back in the bed. And he was like it's the
17 police. And so they started asking him questions, and then
18 I got up and came to the door.
- 19 Q And did he cooperate or not cooperate with the police?
- 20 A Very cooperative.
- 21 Q As far as you could tell was he answering all of their
22 questions?
- 23 A Every question. He even gave them his name, age,
24 everything. He was very cooperative because he was asking
25 questions before I even got to the door. So he answered

Dilena Mary Young
Cross-examination by Ms. Barnwell

1 every question. I mean, he didn't -- any questions that
2 they asked him, he did not refrain from answering it.

3 MR. McPHERSON: No further questions.

4 CROSS-EXAMINATION

5 BY MS. BARNWELL

6 Q Ms. Young, your testimony today is that your son,
7 Robert Young, came home at, between 1:35 and 1:40 in the
8 morning.

9 A Uh-huh.

10 Q Did he tell you where he had been?

11 A Oh, uh-uh.

12 Q So you didn't know where he had been.

13 A No, because I know he normally, he always stayed
14 south-side. So he always be like down around there, around
15 Tinos.

16 Q So you just know he showed up at your house where he
17 was living at the time --

18 A Uh-huh.

19 Q -- sometime after 1:00 in the morning.

20 A Uh-huh.

21 Q Do you remember what he was wearing?

22 A He had on some, he had on his black pants and a white
23 shirt.

24 Q A white shirt?

25 A Uh-huh. And he always got a, he always wear a cap.

Dilena Mary Young
Cross-examination by Ms. Barnwell

1 Q Okay. Do you know him to have a "snitches wear
2 stitches" t-shirt, a black t-shirt with that phrase on it?

3 A When he have those, those shirts, I don't be, I don't
4 look at the writing on them. I don't, I don't really pay
5 that any attention as far as the writing.

6 Q So you would say that he does have black shirts with
7 some sort of writing on them.

8 A Probably, yes.

9 Q Okay. Do either of you guys use cabs? Do you know
10 Robert to use a cab, call a cab from your house, take cabs
11 back home?

12 A Yeah. I have seen. I have seen him get -- I have
13 seen him come home in a cab because I think one day, I know
14 the last time I knowed that he drove a cab, because I'm not
15 at home during the day. And then at night if I'm back in
16 the back, in my back bedroom, if he comes in a cab, I mean,
17 I don't know how he get home. And if I'm back in my back
18 bedroom I'm not. I just hear the door, you know, doorbell
19 ringing. And we'll go to the door and pick him up.

20 But I know back in September he came home in a cab
21 because he called us to come and pick him up. But I was
22 cooking at the time. And then my daughter didn't go get
23 him. And so the next thing I know he's pulling up in a
24 cab.

25 Q So he, he did use cabs.

Dilena Mary Young
Cross-examination by Ms. Barnwell

1 A Yeah. He have. Yeah. He do get some cabs. He does
2 get a cab.

3 Q Okay. Were you -- you said you were present at some
4 point when the police officers were questioning him and
5 that he was very voluntary with this statements.

6 A Uh-huh.

7 Q Were you there when he denied to Detective Bohon ever
8 using a cab or having cabs called up on the street?

9 A I didn't, I didn't hear, I didn't hear him deny using
10 a cab.

11 Q Okay.

12 MS. BARNWELL: I have no further questions.

13 MR. MCPHERSON: No further questions.

14 THE COURT: You may step down.

15 MR. MCPHERSON: That's all the evidence we have, Your
16 Honor. We close.

17 THE COURT: Any reply?

18 MR. BULSA: No, sir.

19 THE COURT: All right. Ladies and gentlemen, that is
20 all of the testimony or evidence to be offered in the trial
21 of this case.

22 What remains to be done therefore are the final
23 summations to be accomplished by the lawyers, after which
24 I'll instruct you on the law that's applicable in the case.
25 And then you'll be asked to go back and begin with your

Motions

1 deliberations.

2 Now, because of the hour, we're not going to be able
3 to accomplish all of that this afternoon. So we're going
4 to recess for today. We will resume in the morning at
5 9:30 with the final summations, my instruction and your
6 deliberations.

7 So from now until then and during the overnight recess
8 continue to follow my instructions. Do not discuss the
9 case with anyone; do not permit yourselves to be exposed to
10 any type of media coverage that might relate to the case;
11 don't conduct any independent research or do your own
12 investigation into any issue.

13 Do have a good evening, and please report to your jury
14 room at 9:30 in the morning. We'll see you at 9:30 in the
15 morning.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: Mr. McPherson, do you want to renew your
19 motions or not?

20 MR. MCPHERSON: Yes, sir, I would like to renew my
21 motions, Your Honor.

22 THE COURT: All right. Any additional grounds?

23 MR. MCPHERSON: No.

24 THE COURT: All right. They are denied.

25 Any requests for jury instructions by the state?

1 MR. BULSA: Nothing particular outside the ordinary
2 charges.

3 THE COURT: By the defendant?

4 MR. McPHERSON: Yes, Your Honor.

5 We would request lesser included for the grand
6 larceny of a value less than -- it's a thousand dollars,
7 might make it -- we would just request that for a lesser
8 included instruction on the grand larceny case.

9 THE COURT: Do you want me to charge them petit
10 larceny?

11 MR. McPHERSON: Yes, sir.

12 THE COURT: What's the state's position?

13 MR. BULSA: Your Honor, we feel the evidence shows
14 grand larceny. That's the only evidence in the record.
15 There's no evidence that there's petit larceny.

16 THE COURT: Yeah. I don't know of any testimony there
17 was except that it was worth more than a thousand dollars.
18 Is there?

19 MR. McPHERSON: Well, I understand that he indicated
20 that worth was based on the payment he made two years
21 prior.

22 THE COURT: Well, he said that's what he thought the
23 car was worth. An owner can testify as to the value of
24 their property. There's nothing to contradict it.

25 MR. McPHERSON: I understand.

1 THE COURT: Okay. That motion is denied.

2 Any others?

3 MR. McPHERSON: No, Your Honor.

4 THE COURT: All right. Court is in recess until
5 9:30 in the morning.

6 END OF PROCEEDINGS FEBRUARY 5, 2008

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Closing arguments

1 (Proceedings February 6, 2008)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Bring the jury in.

5 (The following takes place in the presence of the
6 jury.)

7 THE COURT: Good morning, ladies and gentlemen.

8 As you know, when we recessed yesterday all the
9 evidence had been received; and therefore what remains to
10 be done are the lawyers' final summations, after which I'll
11 instruct you on the law that's applicable to each of these
12 charges. And then you'll be asked to go back and begin
13 with your deliberations in the case.

14 So please give the lawyers your attention now as they
15 give you their final summations.

16 Mr. McPherson.

17 The defense will go first, followed by Mr. Bulsa.

18 MR. MCPHERSON: May it please the Court.

19 I'm now showing you what's been marked as State's
20 Exhibit No. 26, and I want to concentrate on that document
21 a little bit.

22 These are the records of Mr. Ijioma's telephone
23 records. He indicated that the last, or there was evidence
24 that the last, phone call that came into evidence, I mean,
25 the last phone call to his cell phone was made by Lisa

Closing arguments

1 Johnson.

2 And you'll be able to take this evidence back to the
3 courtroom (sic) with you. That phone call came in at
4 23:48:18. In other words, it came in around 11:48 and 18
5 seconds. And that was from Lisa Johnson, his friend that
6 he was talking to on the telephone. They talked according
7 to the records for a total of three minutes and four
8 seconds.

9 According to Lisa Johnson, while she was talking to
10 Mr. Ijioma she heard yelling on the phone, and the phone
11 went dead. So that would put the time at about 23:51:22,
12 which is on the record up there.

13 Now, the phone call right before that was 23:45:58.
14 And the difference in those two phone calls, well, that
15 phone call 23:45:58, that lasted for about 30 some odd
16 seconds, 36 seconds.

17 So, now, according to Lisa Johnson, if this incident
18 happened at about 23:51:22, that means that Mr. Ijioma
19 would have had to go to the post office, to Amos Street,
20 all the way across town in less than five minutes, which
21 even the officer by his own testimony, it couldn't have
22 been done quite that fast.

23 So please pay particular attention to that time
24 because it's very important. There's no way it could have
25 happened in that timeframe.

Closing arguments

1 Now, also remember that initially while this offense
2 was still fresh on Mr. Ijioma's mind right after he had
3 been shot and went down to Mamasun's Bar, and he talked to
4 Officer Clark who we had to bring forth, and he told
5 Officer Clark while he was at Mamasun's Bar and while he
6 was waiting on the emergency personnel, that he picked the
7 fare up at the first house on the right on Locust Court.
8 And that makes better sense.

9 In other words, he couldn't have gone very far from
10 Locust Court to Longview or wherever he was shot in that.
11 In other words, that could have happened within five
12 minutes time. And he also indicated that the fare he
13 picked up was standing on the curb by the first house on
14 the right.

15 Now, I want to remind you that although they went to
16 the hospital with the photo lineup that the victim most
17 likely or Mr. Ijioma most likely was under heavy sedation.
18 So naturally he picked out the first person he recognizes.
19 And then he is stuck with that.

20 Now, Robert Young has brought you forth testimony that
21 he was across town on Palisade Street, that he was at
22 Thyeim Miller's house and Natesha Miller's house. He was
23 spending more time with Thyeim than with Natesha.

24 Although they didn't hang together or stay together
25 completely the whole time, Thyeim testified that he was

Closing arguments

1 never out of his sight more than five or ten minutes and
2 never long enough to have gone down, gone across town and
3 come back. Never that long.

4 And remember that Thyeim indicated that he was with
5 him all evening long, that he had gone down the street and
6 looked for some cigarettes. But he looked out and saw him
7 looking for, asking for cigarettes, that he came back, that
8 he had been there with him the rest of the evening.

9 And then he walked down to the neighbor's house and
10 caught a ride home. And that was verified by Ramona
11 Fernanders who indicated he came over late evening around
12 1:00 o'clock and asked her for a ride. He scared her
13 because she was sitting in her car with a friend. And she
14 didn't, she wasn't expecting somebody to walk up. And so
15 it matches the story really good.

16 Now, the cab was parked on Amos Street or close to
17 Amos Street. And my client admits to opening the door to
18 look inside to see what he might find. And that's when the
19 blood could have gotten on his pants, or as to his shirt.
20 But don't forget the clothes were found in a clothes
21 hamper.

22 You had testimony by both his mother and Thyeim, and I
23 believe Natesha, that he was wearing a white shirt that
24 evening, not a dark-colored shirt. I submit to you that
25 the blood that was on his pants or whatever could have been

Closing arguments

1 transferred from one item to another while it was in that
2 clothes hamper.

3 Now, Shirley Rice was positive Robert Young, when he
4 used her telephone, she was positive that it was 1:00 a.m.
5 She told you that the reason she knew that it was 1:00
6 o'clock in the morning was because she had looked at her
7 clock, and her clock said something very close to 1:00 a.m.

8 And she further told you that when the phone call was
9 made that she heard a female on the phone, not a male's
10 voice, and that the female was yelling at him, and that she
11 could hear all of that, that Robert wasn't saying much.

12 Now, I imagine the prosecutor is going to get up and
13 say she was just mistaken about the time because the
14 records from her house are going to show that there wasn't
15 any phone call made at that time, but I submit to you if
16 she's mistaken, she could be mistaken about the day that he
17 came over and made a phone call from her house.

18 Now, as to any phone call coming out of Thyeim
19 Miller's house, I would submit to you that Thyeim did not
20 recall Robert making a phone call and that there were many
21 people in and out of his house. So we don't know who made
22 that phone call.

23 Now, remember the police found no gun, and they
24 searched Robert's house good. He even agreed to let them
25 search, and he let them have whatever they wanted. There

Closing arguments

1 was no evidence of any gunshot residue on my client,
2 absolutely none. If he had been in the area of a gun being
3 shot there should have been gunshot residue on him.

4 There were no fingerprints found on the car that
5 belonged to my client. And Hugh Murphy came up here, and
6 he testified to you that he had Robert Young's fingerprints
7 and that he compared those fingerprints to the fingerprints
8 that were lifted off that car and that they were definitely
9 not Robert Young's but somebody else's and that he could
10 not identify who they belonged to.

11 Now, also there was other blood mixed in on some of
12 the items that -- of the clothes of the defendant. But
13 that blood, in other words, they identified the blood as
14 belonging to Ijioma, but they also said there was an
15 unknown person whose blood that belonged to. But they did
16 not tell you that it was Robert's. So I submit to you that
17 if there was other blood mixed in there that it would have
18 been the shooter and not Robert's.

19 And also I want you to remember by Mr. Ijioma's own
20 admission he had gotten Mr. Young mixed up with another
21 customer who lived in that area. Remember when we were
22 talking about a cell phone that had gotten left in his cab
23 one time, and he was trying to deliver it to the wrong
24 person.

25 And I submit there were other people in the area of

Closing arguments

1 Locust Court that would fit the description of Mr. Young.
2 I submit to you that Mr. Ijioma picked up someone else that
3 may have looked similar to Mr. Young. That person,
4 according to what he's told Officer Clark, was on the curb
5 or near the first house on the right on Locust Court. And
6 that certainly fits the time line better. And that was the
7 first statement he made. And that's while it's still fresh
8 in his mind as to exactly what happened.

9 I further submit to you that based on the evidence
10 you've heard Robert Young was across town when this
11 shooting took place, that he was at Thyeim Miller's house.
12 And he was never out of Thyeim's Miller's sight long enough
13 to make a cell phone -- to make a phone call to someone
14 else's house or, you know, to walk down. He was never.

15 Let me start over. He was never out of Thyeim
16 Miller's sight long enough to walk over to another street,
17 into a house and make a phone call and wait on a cab and go
18 clear across town and come back and then report in at
19 Thyeim's Miller's house. He was never gone long enough to
20 do that.

21 I submit to you the police did not find the gun
22 because my client was not the shooter. There was no
23 gunshot residue kit because my client was not the shooter.

24 There was no D. N. A. trace evidence in the cab, D. N.
25 A. trace evidence in the cab of Mr. Young, because

Closing arguments

1 Mr. Young was not the shooter. The fingerprints on the
2 card definitely were not Mr. Young's because he was not the
3 shooter. Therefore I'm asking that you come back with a
4 not-guilty on all three charges.

5 Now, remember Mr. Clark was a law enforcement officer.
6 Lisa Johnson's statement was taken by the police. But we
7 had to call those witnesses. The state didn't call them
8 because it didn't fit into their neat little plan of how
9 this happened. We brought to you evidence showing to you
10 that Robert Miller did not commit this offense. Thank you.

11 MR. BULSA: Ladies and gentlemen, you sat here and
12 heard Mr. Ijioma tell you his tale. Shot twice to the back
13 of the head, at least two more shots fired in his cab
14 striking the front windshield.

15 The person shooting at him meant to kill him. The
16 person shooting at him meant to kill him because he knew,
17 Mr. Ijioma knew, who was in his cab. And that person knew
18 that Mr. Ijioma could identify him. And Mr. Ijioma did
19 identify him.

20 By the grace of God he was not killed; by the grace of
21 God he was able to leave that area and flee. And he told
22 the police who did this. And that's what this case has
23 been about, this trial has been about, him showing you the
24 information that helps you believe Mr. Ijioma.

25 Number one, I ask you to believe him alone. He has no

Closing arguments

1 reason to lie. Just sitting here listening to this closing
2 argument, he doesn't even want you to believe that
3 Mr. Ijioma was at the post office when he got the phone
4 call to go pick up the fare on Amos Street. There's no
5 reason for Mr. Ijioma to lie about that.

6 He wants you to believe that Lisa Johnson overheard
7 the shooting. Mr. Ijioma says the first thing he knew he
8 got struck in the back of the head, which would have been a
9 shot. Ms. Johnson didn't hear any shots.

10 He had a conversation with her before he picked him
11 up. He picked him up and was driving back to Locust Court
12 like he had done many times before.

13 This man had a different plan. He wanted to kill him
14 and rob him. You've heard a miracle. Mr. Ijioma didn't
15 die.

16 Mr. -- he first wants you to rely on these records and
17 talk about Ms. Johnson, and yet then on the other hand he
18 wants you to ignore the same type of records which put the
19 phone call from Ms. Rice's house at the same time.

20 Mr. Ijioma got a call the second -- this is calls
21 coming in to Mr. Ijioma's phone, [REDACTED]-8714. That is
22 Ms. Rice's house. He came in at 11:45:58 for him to go
23 there and pick him up.

24 Ms. Rice's number. Looks like the phone companies are
25 a about minute off on their times, but 11:46:50, [REDACTED]-8714

Closing arguments

1 called [REDACTED]-6873. That is Mr. Ijioma's phone number. No
2 doubt that the call to pick him up for that last fare came
3 from Amos Street. That is where he picked that person up.

4 It is not a coincidence that a cab happened to wind up
5 back at Amos Street. What happened is he committed this
6 crime. He had to plan his alibi, and he had to get back to
7 Amos Street so he could have people say that I wouldn't
8 ever have left the area.

9 Remember Amos Street is merely one street over from
10 Palisade. And remember Mr. McPherson cross-examined
11 Mr. Ijioma very hard and insisted that he didn't tell the
12 police that the person who called him for that fare called
13 him twice, called him early that evening.

14 Yet Mr. Ijioma did. He read it to you out of his
15 statement, what he told the police, that he had gotten a
16 call earlier that evening but he couldn't pick him up. And
17 low and behold, Mr. Ijioma's phone records backed that up.
18 [REDACTED]-2152. That's the number belonging to the Millers'
19 residence on Palisade.

20 The defendant called him from Palisade wanting a ride.
21 Mr. Ijioma couldn't get him. He then he went to Ms. Rice's
22 house and called. Remember Natesha Miller says he left
23 after the news hour. The news hour was 11:30.

24 It fits, ladies and gentlemen. It fits right in.
25 Mr. Ijioma was certain of his assailant. There is no doubt

Closing arguments

1 about the man that shot him.

2 Ladies and gentlemen, the police recovered the
3 clothing because of great police work and also for whatever
4 information the initial officers were able to obtain from
5 Mr. Ijioma who had two gunshot wounds to his head, who fled
6 from somebody down the street and was bleeding in a bar
7 awaiting medical attention, the police heard Locust Court.

8 And that's where they knew to concentrate their
9 search, and that's where the trail of blood left, led them.
10 It led them up Longview towards Locust Court. And it
11 stopped at Belmont. It stopped at Belmont. But the police
12 heard Locust Court. So they needed to go look there.

13 And the first place they go happens to be Mr. Young's
14 house. And what is he wearing? By keen observation of the
15 detective, wearing all white. Wearing a long-sleeve black
16 shirt and long -- and pants.

17 And he's asked a simple question. Do you know of
18 anybody in the area that uses cabs? No. So they don't.
19 Okay. They go on to the next house. Do you know of
20 anybody in the house in here using cabs? That guy out
21 there does.

22 So they go back to him again. He continued to deny
23 it. He denies it twice. Then the police are able to speak
24 with Mr. Ijioma after some hours in the hospital. And they
25 think Mr. Young might be the man because of the lies he's

Closing arguments

1 told. And, low and behold, without hesitation he picks him
2 out.

3 So then the police begin the process of going to
4 arrest him, which was around 2:00 o'clock the next
5 afternoon, so some 14 hours after the crime.

6 He's changed clothes. They arrest him. He gives
7 consent to search because he knows Mr. Ijioma can identify
8 him. So he has gotten rid of the murder weapon -- not the
9 murder weapon. He got rid of the weapon. He got rid of
10 anything that he thought could tie him to it.

11 But he had dark clothing on. So perhaps you couldn't
12 see the blood. But the police knew, knew to search for him
13 and collected him. And, low and behold, the blood was on
14 his clothing. It just happens to be the victim's blood.

15 There it is on the pants in at least three separate
16 places and also on the right sleeve of the long-sleeve
17 T-shirt, the shirt on, T-shirt. It's not a coincidence.
18 It is a corroboration of fact that supports Mr. Ijioma's
19 identification of the defendant.

20 This man is guilty of these crimes. He had no reason
21 to deny using a cab, yet he denied it twice on the street
22 and denied it when the police brought him downtown and
23 asked him about it again. Only when he was confronted with
24 the cab records did he finally admit that, well, yeah, I
25 did use a cab. Nothing to gain by denying that unless

Closing arguments

1 you're guilty.

2 But then he continues to say I was on South Liberty
3 Street. He doesn't say he was on Palisade. He said he was
4 on South Liberty Street hanging out. That's close by
5 Palisade, but he doesn't say anything about being at
6 Palisade, which the Millers say he was there pretty much
7 all night. South Liberty is down the street. It's also
8 near Amos Street. But he doesn't talk about Palisade and
9 doesn't talk about the Millers.

10 You'll have this back there. I am not going to read
11 it to you now, but you'll have it back there. He doesn't
12 talk about any of that. He only talks about getting a ride
13 with Ramona Fernanders. He says he got home at 1:30. Mr.
14 Fernanders I believe sat here and testified that she said
15 it was closer to 12:30 when she took him home, which fits
16 right in the time line. This case has been a lot about
17 time lines.

18 Mr. Ijioma got a call around 10:30 from the defendant
19 wanting a ride. He couldn't give him a ride. He got
20 another ride from the defendant, or he got another call
21 from the defendant about 11:45 wanting him to come to Amos
22 Street and pick him up. He'd picked him up before. He
23 said, sure, I'll come and do it. He was going to get off
24 work. But he said, no, I'll take you home. He was
25 familiar with the man.

Closing arguments

1 So he picks him up, drives him, drives him towards his
2 house, gets shot. Mr. Ijioma is able to get away and runs
3 to Mamasun's. The police arrived shortly after midnight.
4 It fits. The defendant drives the cab back to Amos Street.
5 After midnight hooks with Ms. Fernanders and gets his ride
6 back to his house.

7 Natesha Miller says, yeah, he was with us, he left
8 sometime after the news hour, which is 11:30. Fits right
9 into that timeline.

10 And then he never mentions seeing a cab with blood,
11 even though he's being questioned about a cab driver being
12 shot and robbed. If you are not involved in that why don't
13 you volunteer the information when you're -- when the first
14 officer knocks on the door, hey, do you know anything about
15 this crime, cab driver's just got shot? Well, I was over
16 on Amos Street and I saw the cab over there. He doesn't do
17 that. He doesn't say anything about the cab until he is
18 confronted with blood on his clothes.

19 Ladies and gentlemen, it's clear the defendant is
20 guilty. The defense talks about fingerprints on the cab.
21 Well, he admits touching the cab here.

22 All of this forensic evidence you have, we have the
23 good blood evidence on the clothing. But you don't always
24 leave a fingerprint. All of this stuff about C. S. I. and
25 T. V. shows like that, it doesn't all work that way because

Closing arguments

1 the defendant admitted, at least in his last statement,
2 yeah, I touched the cab, I opened the door.

3 Well, then if we hadn't lifted his fingerprints he
4 would have just said, well, I told you I touched the car,
5 that's why my fingerprints are on there. But you can't use
6 the argument because the fingerprints aren't there, I
7 wasn't there. You can't do that.

8 The touch D. N. A., the detectives tried that and it
9 didn't come back conclusive. That's just the fallacy of
10 the silence. It's not always going to be there.

11 The gunshot residue. Mr. McPherson wants to talk
12 about that. Well, if he shot a gun he would have residue
13 on him. Did you hear any testimony about that? Did you
14 hear any testimony that if you shoot a gun you're going to
15 have residue? And if you did, did you hear how long it
16 would take for that residue to get off of your hands, how
17 you can remove it from your hands?

18 The man wasn't a suspect initially. By the time they
19 eventually solved the case and wondered if he was a culprit
20 and then went to arrest him, it was 14 hours later. You
21 heard how long G. S. R. stays on your hands. The defense
22 could have brought that up. No.

23 Ladies and gentlemen, I submit to you the defendant is
24 guilty of assault and battery with intent to kill. That is
25 the commission of an unlawful act of a violent nature upon

Closing arguments

1 a person of another with malice aforethought, that malice
2 being expressed or implied.

3 You shoot somebody in the back of the head twice, I
4 submit to you, ladies and gentlemen, that is assault and
5 battery with intent to kill. You don't need medical
6 testimony to talk about the injury. You just need to know
7 that the nature of the act was intended, because in this
8 case death. You don't even have to find that. But I
9 submit to you that's what the intentions were. When you
10 shoot somebody in the back of the head, what else do you
11 try to do?

12 I submit to you that the evidence shows he's guilty of
13 armed robbery. Mr. Ijioma fled the car. The defendant
14 demanded his money. He tossed it and was able to get away.
15 He robbed him of his money and cell phone.

16 Mr. Ijioma had to leave his cab there. The police
17 found -- traced the blood. The cab wasn't there. Somebody
18 stole the cab. It was found on Amos Street. I submit to
19 you the defendant is the one that stole that cab. He is
20 guilty of grand larceny greater than \$1,000.

21 I submit to you, ladies and gentlemen, Mr. Ijioma is
22 the accuser. He pointed him out to you in court. He was
23 adamant about that. He told the officers at the scene who
24 did it, he told Eddie Patrick, the man, the good samaritan
25 as he called him who was treating his wounds to his head.

Jury charge

1 He told him who did it and just didn't know his name. When
2 he was shown the photo lineup, he identified him without
3 hesitation.

4 This is the man that shot and tried to kill Dixon
5 Ijioma, a Nigerian in Spartanburg trying to make a living.
6 I ask you to do your duty and find the defendant guilty of
7 all charges.

8 THE COURT: Mr. Foreman and ladies and gentlemen of
9 the jury, you of course have now heard and seen all the
10 evidence, as well as the final summations of the lawyers.
11 So it's now my obligation to instruct you on the law that's
12 applicable in the case. Then you'll be asked to go back
13 and begin with your deliberations.

14 Through that process you'll examine all of the
15 evidence. From that evidence you'll decide the facts. And
16 after deciding the facts you'll apply the law and simply
17 arrive at a first and just decision.

18 It is your exclusive duty to determine what the facts
19 are, and you do that through your own common sense
20 examination and evaluation of all of the testimony and the
21 other evidence received during the trial of this case.

22 You 12 jurors alone will decide what weight, value and
23 effect to give to any particular testimony or other
24 evidence in the case. Your sole objective is to simply
25 reach the truth in the matter, and by doing that you will

Jury charge

1 have fulfilled your obligations as jurors, and that is to
2 simply give both the state and the defendant a fair and
3 impartial trial.

4 Now, in this case, as you know, the state through the
5 prosecutor has accused the defendant of three separate and
6 distinct crimes. Those crimes are set forth in three
7 separate and distinct indictments.

8 As I told you, the indictments will be in the jury
9 room, but the indictments are not evidence in the case.
10 They're not proof of anything. But on the back of each
11 indictment, Mr. Foreman, you're going to be asked to
12 indicate the jury's unanimous decision as it relates to
13 that particular charge.

14 The three charges that are set forth in these
15 indictments are the crime of armed robbery, the crime of
16 grand larceny and the crime of assault and battery with
17 intent to kill.

18 By way of one of the indictments the state alleges
19 that on or about November the 2nd of 2006 that Robert Young
20 did here in Spartanburg County commit the crime of robbery
21 while armed with a deadly weapon.

22 And they say that he took, stole and carried away
23 personal property that belonged to Dick Ijioma by the use
24 of force or violence and/or intimidation in order to
25 accomplish the robbery.

Jury charge

1 They also allege by way of a separate indictment that
2 on the same date Mr. Young did take, steal and carry away
3 personal property valued at more than \$1,000 from
4 Mr. Ijioma, that property being a 1994 automobile.

5 The final indictment alleges the crime of assault and
6 battery with intent to kill. And they allege that Robert
7 Young did here in Spartanburg County commit an unlawful act
8 of violent injury upon the person of Dick Ijioma
9 accompanied by malice aforethought by shooting him with a
10 firearm and intending to kill him.

11 Now, as to each of those indictments and as to each of
12 the allegations and each of the charges that are set forth
13 in each of those indictments the defendant has entered a
14 plea of not guilty. And that plea of not guilty, as you
15 know, has placed upon the state the burden of proving the
16 allegations that they have set forth in each of those
17 indictments, the burden of proving each of the essential
18 elements that make up each of the crimes that are set forth
19 in those indictments; and therefore the burden is upon the
20 state to establish the defendant's guilt to the
21 satisfaction of you 12 jurors beyond a reasonable doubt
22 before any verdict of guilty could be returned as it
23 relates to a particular indictment.

24 The burden is never upon a defendant to prove that he
25 is not guilty or to prove that he is innocent, because in

Jury charge

1 many cases that might not even be possible.

2 You are instructed that it is a vital, important and
3 cardinal rule of law that every defendant in a criminal
4 trial, and it doesn't matter how serious the offense might
5 be, that person who is charged is always presumed to be
6 innocent of that charge. And that presumption of innocence
7 remains with any defendant, as it does with this defendant,
8 from the time that he is placed under arrest and throughout
9 the course of the criminal process and even throughout the
10 course of the actual trial in the case.

11 That presumption of innocence will be with Mr. Young
12 even as you go back into your jury room to begin with your
13 deliberations in this case. And that presumption of
14 innocence will be with him in that jury room, and it will
15 remain with him forever unless you 12 jurors determine that
16 he's no longer entitled to that presumption of innocence.

17 That is after you've carefully considered all the
18 evidence in the case, and from that evidence you've decided
19 the facts, and after deciding those facts you've applied
20 the law that I will have provided you, if you 12 jurors
21 determine that his guilt to a particular indictment has
22 been proven beyond a reasonable doubt, then he would no
23 longer be entitled to that presumption of innocence as it
24 relates to that particular charge.

25 But it is only if, unless and until you 12 jurors are

Jury charge

1 satisfied of his guilt beyond a reasonable doubt that the
2 presumption of innocence would no longer be applicable.

3 Now, while the state does have the burden of proving
4 the defendant's guilt beyond a reasonable doubt, that
5 doesn't mean that the state has to prove his guilt beyond
6 all doubt or beyond any possible doubt. But it does
7 require the state to prove his guilt to your satisfaction
8 beyond a reasonable doubt.

9 The term reasonable doubt should be given its plain
10 and ordinary meaning. A reasonable doubt is the kind of
11 doubt that would cause a reasonable person to hesitate to
12 act upon the information provided. And a defendant in a
13 criminal trial is entitled to any reasonable doubt that
14 arises from the evidence, or lack of evidence, in a case.

15 If upon any factual issue essential to a finding of a
16 verdict of guilty you have some reasonable doubt as to how
17 that issue should be resolved, it would be your duty to
18 resolve that reasonable doubt in favor of the defendant.

19 And therefore if upon your consideration of the whole
20 case as it relates to a particular indictment, if you have
21 a reasonable doubt as to his guilt, you must resolve that
22 reasonable doubt in his favor and return a verdict of not
23 guilty as to that particular charge.

24 And, on the other hand, after you've carefully
25 considered all the evidence and applied the law, if you

Jury charge

1 have no reasonable doubt as to his guilt, then of course it
2 would be your corresponding duty to convict the defendant
3 or to find him guilty of any crime that you are satisfied
4 has been proven beyond a reasonable doubt.

5 Now, the same law that provides that you are the
6 judges of the facts also provides that I am the judge of
7 the law. That simply means that nobody is going to tell
8 you how to arrive at your determination of fact in this
9 case.

10 You do that, as I have stated, through the exercise of
11 good judgment and common sense conscientiously applied to
12 the testimony and the evidence received during the trial of
13 the case.

14 You must however under your oath as a juror accept the
15 law as I provide it to you as being the law that is
16 applicable in this particular case. In other words, you're
17 not to concern yourself with what you thought the law was
18 before you came to serve as a juror this week or what you
19 think the law ought to be.

20 You must under your oath simply accept the law as I
21 provide it to you as being the law that you are to apply in
22 this case. And then you simply take that law and you apply
23 it to the facts as you 12 jurors determine those facts to
24 be based upon your own common sense evaluation of all of
25 the testimony and evidence received during the trial.

Jury charge

1 Now, as I told you, you are the finders of the facts
2 in this case. And because you are the finders of the facts
3 you are therefore necessarily the sole judges of the
4 credibility or the believability of each witness that has
5 testified during the trial of this case.

6 You 12 jurors alone will decide what weight, value and
7 effect to give to any particular witness' testimony or
8 other evidence in the case. Again, your sole objective is
9 to simply reach the truth in the matter.

10 But in assessing a particular witness' credibility or
11 believability there are some factors which you should take
12 into consideration as you make that evaluation, and I'm
13 going to list those factors for you.

14 You may consider the demeanor of the witness, that is
15 how the witness appeared to you when the witness testified.
16 Was the witness straightforward in responding to questions
17 that were asked of that witness, or was the witness
18 hesitant or evasive in responding to questions that were
19 asked of that witness?

20 Simply put, did the witness appear to you to be
21 telling the truth and to have knowledge of the facts to
22 which that witness has testified.

23 You may also consider whether or not the testimony of
24 a witness was consistent, or was it inconsistent with that
25 witness' testimony given here in the courtroom or in

Jury charge

1 comparison to other statements or testimony given outside
2 of court? And you may also consider whether or not the
3 testimony of a witness is consistent or inconsistent with
4 other testimony or other evidence received during the trial
5 of the case.

6 You may also consider how the witness came to know the
7 facts to which that witness has testified. That is what
8 was that particular witness' opportunity and ability to
9 perceive the existence of those facts to which that witness
10 has testified by having previously used his or her senses.
11 And then what is that witness' ability to be able to come
12 into court and to accurately recollect to you as to what
13 they have previously seen or heard, or felt for that
14 matter.

15 You may also consider any bias or prejudice or
16 interest that a witness might have in the case. In other
17 words, do you find some reason that a particular witness
18 would come into court and would testify one way or another
19 to help or to hurt one side or the other.

20 You may consider any interest that a witness might
21 have in the outcome of this case if you determine that that
22 witness does have such an interest and you find that that
23 interest would bear upon that particular witness'
24 credibility.

25 You may also consider whether or not the testimony of

Jury charge

1 a witness is strengthened, or is it weakened by other
2 testimony or other evidence in the case?

3 Now, because you are the finders of the fact and
4 because you are the judges of the credibility of each
5 witness, you are permitted to believe as much or as little
6 of what a witness has testified to as you deem is
7 appropriate.

8 Therefore you can believe everything that a witness
9 testified to. You may choose to believe none of it. You
10 may believe one portion of a witness' testimony and reject
11 some other portion of that same witness' testimony.

12 In a given case you could believe one witness as
13 opposed to several, or several as opposed to one. But
14 whatever your good judgment and common sense tells you is
15 the most believable and credible testimony is the testimony
16 you should accept. And you should reject any testimony
17 that you find not to be credible or believable.

18 Again, your sole objective is to reach the truth in
19 matter, and it should not matter from what source that
20 truth may come, whether it be from a witness for the state
21 or a witness for the defendant or a combination of
22 testimony received from both sides in this case.

23 Now, as you are aware, the defendant is charged with
24 three separate and distinct criminal offenses. And I'm
25 going to instruct you on the law as it relates to those

Jury charge

1 three separate offenses and the elements that have to be
2 established in order for a person to be found guilty of a
3 particular crime.

4 And I'm simply going to start. I've got to start
5 somewhere. I'm just going to start with the indictment
6 charging the defendant with the crime of armed robbery.

7 The criminal offense known as armed robbery includes
8 the lesser offense known as robbery, which also includes
9 the offense or term of larceny. Therefore I'm going to
10 define for you the term larceny; then I'll define for you
11 the term robbery; and then I'll define for you the offense
12 of armed robbery.

13 Larceny is commonly referred to and known as stealing.
14 Larceny is the taking and the stealing and the carrying
15 away of personal property belonging to another with the
16 intention of depriving the owner of use and possession of
17 his property and converting that property to the taker's
18 own use.

19 A robbery is commonly referred to as a larceny by
20 force. But in the law it is defined as the taking,
21 stealing and carrying away of the personal property of
22 another having any value whatsoever from the person or the
23 presence of any person without his or her consent and with
24 an intent to steal by using force or violence to accomplish
25 the theft or by threatening to use force or violence in

Jury charge

1 order to accomplish the theft or the larceny.

2 Forcing a person to surrender property out of fear
3 from intimidation through the use of force or violence or
4 the threat of the use of force or violence with an intent
5 to steal the property is a robbery under the law.

6 Now, Section 16-11-330 of the Code of Laws -- and the
7 code of laws are these blue volumes. Every year the
8 legislature meets. They address a lot of different issues.
9 And they pass statutes, regulations and rules that govern
10 our conduct in a lot of ways.

11 When the legislature passes what's called a criminal
12 statute or a penal statute, it just means that they're
13 prohibiting a citizen from engaging in certain types of
14 conduct. And where a person is found to have engaged in
15 that conduct in violation of the law, then you're subject
16 to being punished by some penalty.

17 Understand that the jury is never to be concerned with
18 punishment or penalty. You are only to be concerned with
19 whether or not a defendant has been proven guilty beyond a
20 reasonable doubt of a crime the state claims he committed.

21 In any event, 16-11-330 is the code section that
22 relates to the crime of armed robbery. And that particular
23 code section provides that a person who commits robbery as
24 I have defined that term for you while armed with a pistol,
25 dirk, slingshot, metal knuckles, razor or other deadly

Jury charge

1 weapon is guilty of the crime of armed robbery.

2 And therefore under the statute an armed robbery is
3 defined as a robbery which is committed while the
4 perpetrator is armed with a pistol, firearm or other deadly
5 weapon which is used or the use of which is threatened in
6 order to accomplish the robbery.

7 Now, another indictment charges the crime of grand
8 larceny. Grand larceny, as I have told you, is a larceny
9 which is defined as stealing. It's taking property,
10 carrying it away and converting the property to the taker's
11 own use with the intention of permanently depriving the
12 true owner of use and possession of his property.

13 In this case the state alleges grand larceny. And
14 grand larceny is defined in Section 16-13-30 as taking,
15 stealing and carrying away personal property of another
16 having a value of \$1,000 or more. Stealing property valued
17 at \$1,000 or more is grand larceny under the law.

18 And the remaining indictment charges the defendant
19 with the crime of assault and battery with intent to kill.
20 An assault and battery with intent to kill includes the
21 terms assault and the term battery. So I'll define the
22 term assault and I'll define the term battery, and then
23 define assault and battery with intent to kill.

24 An assault is the unlawful attempt to do violence or
25 injury to the person of another where there is the present

Jury charge

1 ability to complete the attempt by way of a battery. And a
2 battery is the unlawful and intentional touching or the
3 striking of the person of another by the person committing
4 the assault or by some object put in motion by that person.
5 That is it is the completion of an act doing violence or
6 injury to the person of another.

7 A battery may be further defined as the carrying into
8 effect an assault by using or applying force to the person
9 of another without just cause or legal excuse.

10 An assault and battery with intent to kill is defined
11 as an unlawful act of a violent nature towards the person
12 of another, the natural tendency of which is to cause death
13 or result in serious bodily harm and the unlawful act
14 constituting the assault and battery is accompanied with
15 malice aforethought either expressed or implied.

16 Malice aforethought is an essential element of the
17 crime, and it must be proven beyond a reasonable doubt.

18 Now, with regard to malice aforethought, malice is the
19 term connoting an ill will and an intent to do harm. It is
20 a technical term importing wickedness and excluding just
21 cause or legal excuse. It is something which springs from
22 depravity and from a heart devoid of social duty.

23 Malice maybe likewise defined as a state of mind which
24 indicates a formed purpose and design to do a wrongful act
25 under circumstances that exclude any legal right to do it.

Jury charge

1 The words expressed or implied malice do not mean
2 different kinds of malice but merely the manner in which
3 malice may be shown to have existed, that is to say either
4 by direct evidence or by circumstantial evidence from which
5 malice might reasonably be inferred. And of course an
6 inference is simply a deduction of fact which may logically
7 and reasonably be drawn from the proof of some other fact
8 or set of facts.

9 Now, malice may be expressed as where there is an
10 expressed threat to kill or a lying in wait or where the
11 circumstances show directly that an intent to kill was
12 entertained by the person committing the assault and
13 battery accompanied by malice aforethought.

14 Malice may be inferred, though no expressed intent to
15 kill is proven by direct evidence, where the facts and the
16 circumstances which have been proven by the evidence in the
17 case satisfy you beyond a reasonable doubt that malice was
18 present in the mind of the person committing the assault
19 and battery at the time that that assault and battery took
20 place.

21 The existence of malice may be shown by circumstantial
22 evidence, that is those circumstances shown to have been in
23 existence at the time of the event. And you are permitted
24 to infer the existence of malice from proof of an unlawful
25 and an intentional killing or attempted killing of another

Jury charge

1 person without justification or legal excuse.

2 You are permitted to infer the existence of malice
3 from proof of a wrongful intent to injure another person
4 through the infliction of serious bodily harm indicative of
5 a wicked or depraved spirit.

6 You may infer the existence of malice from proof of
7 the intentional use of a deadly weapon in the commission of
8 an assault and battery. You may infer the existence of
9 malice from proof of the intentional commission of an act
10 or acts which is or are inherently dangerous to human life.

11 You may infer the existence of malice from proof of
12 the intentional killing of another or the intentional
13 commission of criminal acts which result in the death of
14 another person during the commission of a felony which is
15 dangerous to human life or where the circumstances of the
16 crime create a substantial foreseeable risk to human life.
17 And for purposes of this principle of law, armed robbery is
18 classified as a felony under the law of this state.

19 You may also infer the existence of malice from the
20 proof of a commission of a reckless act or acts which are
21 inherently dangerous to human life and which are done so
22 recklessly as to manifest a depravity of mind signifying an
23 extreme disregard for or an extreme indifference to human
24 life.

25 Now, malice as an essential element of the crime of

Jury charge

1 assault and battery with intent to kill does not
2 necessarily mean an actual or a specific intent to take
3 human life but rather a state of mind signifying a general
4 malignant recklessness and extreme disregard for or
5 indifference to human life.

6 Now, even if the facts proven in the case are
7 sufficient to raise an inference of malice, such an
8 inference would simply be an evidentiary fact to be taken
9 into consideration by you 12 jurors, along with all the
10 evidence received during the trial of the case. And you
11 may give those inferences what weight, if any, you
12 determine they should receive, if any.

13 Simply stated, you are permitted to infer the
14 existence of malice from proof of any one or more of those
15 circumstances that I have described, as well as from any
16 other evidence in the case reasonably tending to prove such
17 fact. But you are in no way required to do so. You simply
18 must use your own common sense to determine whether or not
19 malice has been proven by the evidence in the case.

20 Now, it's also essential that there exist not only
21 malice but that there be malice aforethought. And the law
22 does not require that malice must exist for any appreciable
23 length of time before the commission of an act which
24 proximately causes a potentially fatal result.

25 Indeed, that malice may be conceived at the very

Jury charge

1 moment that the act is committed. It is sufficient in the
2 law so long as the state proves beyond a reasonable doubt
3 both the existence of malice and the commission of an act
4 or acts by the defendant which resulted in the assault and
5 battery, the natural tendency of which is to take human
6 life or to result in serious bodily harm.

7 Now, further you are instructed that while a specific
8 intent to kill may be established by the evidence in the
9 case, it is not necessary that a specific intent to kill on
10 the part of the defendant be proven in order for the
11 defendant to be found guilty of assault and battery with
12 intent to kill.

13 There must however be proven beyond a reasonable doubt
14 that the defendant did have at least a general criminal
15 intent in order for the offense of assault and battery with
16 intent to kill to be established.

17 Criminal intent is defined as a state of mind that
18 operates jointly with an act in the commission of a crime.
19 Criminal intent is a mental state of conscious wrongdoing.

20 So, again, an assault and battery with intent to kill
21 is an assault and battery as I have defined those terms for
22 you, the natural tendency of which is to cause death or
23 result in serious bodily harm, and the unlawful acts
24 constituting that assault and battery are accompanied with
25 malice aforethought.

Jury charge

1 Now, as I have already instructed you, the state has
2 the burden of proving every essential element of each crime
3 alleged against the defendant beyond a reasonable doubt.
4 And therefore not only must the state prove beyond a
5 reasonable doubt that the crimes as alleged in the
6 indictments were committed by someone in this case, the
7 state must further prove beyond a reasonable doubt that it
8 was, in fact, this defendant who was the perpetrator of
9 those crimes and not someone else.

10 If, after a careful consideration and an examination
11 of all of the evidence in this case relating to the issue
12 of identification, if you have a reasonable doubt as to the
13 accuracy of the identification of the defendant as the
14 perpetrator of any crime proven to have been committed by
15 someone, then you must resolve that reasonable doubt in
16 favor of the defendant and return a verdict of not guilty.

17 Now, in this case the defendant has raised what is
18 referred to in the law as the defense of alibi. An alibi
19 means that the defendant was at another specified place at
20 the time that the crime alleged by the state to have been
21 committed was committed and therefore it was not possible
22 for the defendant to have committed the crime that he is
23 accused of because he was not present at the scene where
24 that crime was committed.

25 While a defendant may present evidence of an alibi,

Jury charge

1 there is no burden on the defendant to prove an alibi. The
2 burden is always on the state to prove a defendant guilty
3 beyond a reasonable doubt, and therefore that would
4 necessarily require that the state prove that the defendant
5 was actually present where the crime was committed and that
6 he committed that crime and therefore was not somewhere
7 else.

8 In other words, because the state has the burden of
9 proving the defendant's guilt, that burden would
10 necessarily require the state prove beyond a reasonable
11 doubt that the defendant was not some other place.

12 You are further instructed, and I emphasize to you,
13 that the fact that a defendant does not testify during the
14 trial of a criminal case is not a fact which may be taken
15 into consideration by jurors in their deliberations or in
16 their determination as to whether or not a defendant's
17 guilt has been proven. You may not permit such a fact to
18 weigh in the slightest degree against a defendant.

19 The burden is always upon the state to prove a person
20 guilty beyond a reasonable doubt as I have told you. The
21 burden is never upon a defendant to prove that he is not
22 guilty or to prove that he is innocent. And therefore you
23 may not draw any inference nor reach any conclusion from
24 the fact that a defendant does not testify during the trial
25 of a criminal case, nor may that fact be considered by you

Jury charge

1 during your deliberations, nor may you even discuss that
2 fact while you are engaged in your deliberations.

3 Now, Mr. Foreman and ladies and gentlemen of the jury,
4 I am not in any way concerned with what your verdicts are,
5 but I do tell you that your decisions must be unanimous.
6 All 12 of you must be in agreement before any verdict may
7 be returned as it relates to a particular indictment.

8 Now, Mr. Foreman, as I told you, you are going to be
9 the person who will preside over the deliberations in the
10 jury room simply to ensure that those deliberations are
11 carried out in some orderly fashion. But all jurors should
12 and are expected to participate in the jury deliberations,
13 because, as I have stated, the verdict is a consensus
14 opinion of all 12 jurors, and all have to be in agreement
15 before a verdict may be returned.

16 Now, Mr. Foreman, you and your fellow jurors will have
17 two potential verdict forms as it relates to each of the
18 separate indictments, and those two verdict forms are
19 guilty or not guilty.

20 So whichever your decision is as it relates to a
21 particular charge in an indictment, if it's guilty or not
22 guilty, indicate that selection in the space provided.
23 You'll see on the back of the indictment there's the word
24 verdict in the lower left-hand corner. And it's beneath
25 that word that you're going to be asked to indicate the

Jury charge

1 jury's unanimous decision. You're also asked to sign your
2 name as the foreperson and place the appropriate date on
3 the indictment also.

4 During your deliberations, don't know that it will
5 happen but it may. If you have a question about the
6 evidence, you have a question about the facts, I can't
7 answer those questions.

8 If you're wondering if there's some additional
9 evidence that can be produced, don't ask about it. It
10 doesn't matter if there's more evidence that can be
11 produced or not. You can't get it because you're now going
12 back to begin your deliberations.

13 No additional evidence can be admitted into this case
14 now that you're going back to deliberate. So, and if you
15 have a question about the testimony or facts in the case, I
16 can't answer them.

17 If you have a question about some testimony and you
18 think that that question can be answered by having
19 testimony replayed in whole or in part, we can allow that.

20 So if you have a question that can be answered by
21 having testimony reheard, Mr. Foreman, you'll have to let
22 me know, and we will make those arrangements.

23 We do not have transcripts of a witness' testimony.
24 So I can't provide you with a transcript. But if you want
25 to hear testimony replayed, we'll bring you back into the

Jury charge

1 courtroom. And we can play a witness' testimony in whole
2 or in part. Whatever the jury determines they need to
3 hear, we'll make provision for that.

4 If during your deliberations you have a question about
5 the law that is applicable, that is you need an additional
6 instruction, you need a better explanation, you need a
7 clarification of what I've already provided, I can answer
8 those questions. So if you have a question about the law,
9 I'll be happy to answer that question for you. But I
10 cannot answer questions of fact. But you can hear
11 testimony if you need to.

12 During your deliberations there might be somebody who
13 needs to smoke a cigarette. And if there are smokers on
14 the jury, you're probably wanting to have one right now.

15 You can smoke if you want to, but you can't smoke in
16 the jury room. If you want to smoke you'll have to go
17 outside. It might be raining. I'm not sure. But if you
18 want to go outside to smoke, let the bailiff know. They'll
19 make those arrangements.

20 You are instructed however that if any juror is absent
21 for some authorized purpose the deliberations have to stop.
22 They may only resume when all 12 jurors are present so that
23 all may participate.

24 Now, I don't know how long your deliberations are
25 going to take. That will depend upon your consideration of

Jury charge

1 all of the evidence and your discussions. It could be a
2 short period of time; could be a long period of time; could
3 be in between.

4 Right now it's about a quarter till 11:00. It's not
5 lunchtime yet. But if you get to a point in your
6 deliberations where you think it is appropriate or you wish
7 to have lunch ordered, if you'll let the bailiff know, I'll
8 send the clerk of court back there to take your lunch
9 orders.

10 It usually takes about an hour and 15 minutes to have
11 lunch ordered, prepared and brought to the courthouse for
12 your benefit in the jury room. So just keep that in mind
13 as you go back. It's going to take about an hour and 15
14 minutes to have that done. So as you go back and begin
15 deliberations, if you get to a point where you want to
16 order lunch, you think it's advisable, let us know and
17 we'll make those arrangements.

18 Now, with the exception of Ms. Moore, I'm going to ask
19 the original 12 jurors if you'll please go back into the
20 jury room.

21 Do not yet begin deliberations. I've got some matters
22 I'll need to address with the lawyers. If I don't need to
23 bring you back for any reason, then I'll send word by way
24 of the bailiff that you can begin with your deliberations.
25 In that event, he'll bring all of the exhibits which have

Jury charge

1 been introduced during the trial.

2 And to you, Mr. Foreman, he'll also bring the
3 indictments which will serve as the verdict forms.

4 So please retire to your jury room, but do not begin
5 deliberations until I send you word to do so.

6 (Whereupon, the jury retired to deliberate at
7 10:45 a.m.)

8 (Whereupon, the alternate juror was excused.)

9 THE COURT: Are there any exceptions taken to the
10 instruction or requests for additions to the instruction by
11 the state?

12 MR. BULSA: No, Your Honor.

13 THE COURT: By the defendant?

14 MR. MCPHERSON: No, Your Honor.

15 THE COURT: All right. Let me ask y'all to verify the
16 exhibits before they go back.

17 (Pause.)

18 THE COURT: All of the exhibits are accounted for?

19 MR. BULSA: Yes, sir.

20 MR. MCPHERSON: Yes, sir.

21 THE COURT: Send them back and ask the jury to begin
22 deliberations and notify us when they've concluded.

23 We will be at ease while the jury is deliberating.

24 (Whereupon, a recess was taken.)

25 THE COURT: The jury has sent a question, and they

Verdict

1 want to be, as they say, refreshed on the term of grand
2 larceny.

3 I've shown a written instruction defining that term to
4 the lawyers, and it's my understanding that you're in
5 agreement to send that written instruction back --

6 MR. McPHERSON: Yes, sir.

7 MR. BULSA: Yes, sir.

8 THE COURT: -- as opposed to bringing the jury back
9 for them to hear the same thing. I'm going to send it
10 back.

11 They're having lunch. It makes it easier, but I'll be
12 happy to do either one.

13 MR. McPHERSON: No. I'm in agreement with you sending
14 it back. And I've also spoken to my client and stated to
15 him that if he wants them to come out and you read it to
16 them that he has that right. He says it's okay with him if
17 you just send it back.

18 THE COURT: All right. We'll continue to be at ease
19 while the jury is deliberating.

20 (Whereupon, the note was sent to the jury at 12:00
21 noon.)

22 (Question from the jury marked Court's Exhibit No. 1.)

23 THE COURT: I'm told the jury has reached a verdict.
24 Are we ready to receive it?

25 MR. BULSA: I am waiting on co-counsel. There she is.

Verdict

1 Yes, sir.

2 MR. McPHERSON: The defense is ready.

3 THE COURT: All right. Bring them in.

4 (Whereupon, the jury returned to the courtroom at
5 12:50 p.m. to report its verdict.)

6 THE COURT: Mr. Foreman, have you and your fellow
7 jurors reached a unanimous decision on each of the
8 indictments?

9 THE FOREMAN: Yes, we have, Your Honor.

10 THE COURT: Did you indicate those decisions on the
11 back of the indictments as requested?

12 THE FOREMAN: Yes, sir.

13 THE COURT: Did you sign your name as the foreperson?

14 THE FOREMAN: Yes, sir.

15 THE COURT: If you will, please, hand those up by way
16 of the bailiff.

17 You may publish the verdicts.

18 THE CLERK: State of South Carolina, County of
19 Spartanburg, in the Court of General Sessions, the State
20 vs. Robert Young, as to Indictment 2007-GS-42-0997, grand
21 larceny, we, the jury, find the defendant not guilty.
22 Signed by the foreperson, Kenneth Price, today's date,
23 2/6/08.

24 As to Indictment No. 2007-GS-42-0998, armed robbery,
25 we, the defendant, find the defendant -- we the jury find

Verdict

1 the defendant guilty. Signed, foreperson, Kenneth Price,
2 today's date, 2/6/08.

3 And as to Indictment No. 2007-GS-42-0996, assault and
4 battery with intent to kill, we, the jury, find the
5 defendant guilty, signed, again, foreperson, Kenneth Price,
6 dated 2/06/08.

7 Ladies and gentlemen of the jury, is this is your
8 still and still your verdict? If so, please raise your
9 right hand.

10 (Whereupon, all jurors responded in the affirmative.)

11 THE CLERK: So say you all.

12 THE COURT: Does the defendant wish to have the jury
13 polled?

14 MR. McPHERSON: Yes, he does, Your Honor.

15 THE COURT: All right. Poll the jury, please, ma'am.

16 THE CLERK: Ladies and gentlemen of the jury, I'll ask
17 you a question. And that question is is this your verdict
18 and still your verdict.

19 When I call your name, if you would, please, just
20 stand and answer yes or no.

21 Juror 154, Hollie Walker.

22 THE JUROR: Yes or --

23 THE COURT: The question is are these your decisions.
24 And if they still are, just stand and say, yes, they are.

25 THE JUROR: Yes, they are.

Verdict

1 THE COURT: If they're not, say, no, they're not.
2 THE CLERK: Juror No. 52, Ronald Franks.
3 THE JUROR: Yes.
4 THE CLERK: Juror No. 7, Laura Bailey.
5 THE JUROR: Yes.
6 THE CLERK: Juror No. 96, Eric Lichtenberg.
7 THE JUROR: Yes.
8 THE CLERK: Juror No. 2, Cynthia Alverson.
9 THE JUROR: Yes.
10 THE CLERK: Juror No. 28, Miguel Castro.
11 THE JUROR: Yes.
12 THE CLERK: Juror No. 85, Vivian Jeter.
13 THE JUROR: Yes.
14 THE CLERK: Juror No. 117, Doris Painter.
15 THE JUROR: Yes.
16 THE CLERK: Juror No. 14, Kenneth Belue.
17 THE JUROR: Yes.
18 THE CLERK: Juror No. 123, Kenneth Price.
19 THE JUROR: Yes.
20 THE CLERK: Juror No. 148, Thomas Stoner.
21 THE JUROR: Yes.
22 THE CLERK: Juror No. 164, Dana Wood.
23 THE JUROR: Yes.
24 THE CLERK: So say you all.
25 THE COURT: All right. Any other matters to be

Sentence

1 addressed with the jury present?

2 MR. McPHERSON: Not with the jury present, no.

3 (Whereupon, the trial jury was excused.)

4 THE COURT: All right. Anything further on behalf of
5 the state?

6 MR. BULSA: Your Honor, the defendant has a criminal
7 history. 2001, threatening the life of a public official;
8 2004, possession with intent to distribute drugs. I don't
9 have the actual drug. Possession of crack cocaine and
10 possession with intent to distribute near a school. That's
11 2004.

12 THE COURT: Is that all?

13 MR. BULSA: Yes, sir.

14 THE COURT: All right. Mr. McPherson.

15 MR. McPHERSON: Judge, under Statute 17-25-50 we would
16 ask that whatever sentence you're going to give the
17 defendant, that you would give him concurrent sentencing.

18 THE COURT: Mr. Young, is there anything you would
19 like to tell me before I impose a sentence?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. On Indictment 2007-998, that's
22 the indictment for armed robbery, wherein you have been
23 found guilty by a jury of that offense, Sentence of the
24 Court is you, Robert Young, be confined to the South
25 Carolina Department of Corrections for a period of 30

Motion

1 years.

2 Indictment 2007-996, an indictment for assault and
3 battery with intent to kill, wherein you have been found
4 guilty by a jury of that offense, Sentence of the Court is
5 you, Robert Allen Young, be confined to the South Carolina
6 Department of Corrections for a period of 20 years.

7 Those sentences are to run consecutively with one
8 another. The defendant to be given credit for any time
9 he's entitled to pursuant to 24-13-40.

10 Mr. Young, you have a right to appeal the verdicts of
11 the jury and the Sentence of the Court. You must file any
12 notice of your intention to appeal those decisions within
13 ten days of today's date.

14 MR. MCPHERSON: Your Honor, at this time we would like
15 to move for a new trial based on the motions that we
16 previously made on these two charges.

17 THE COURT: All right. What motion did you previously
18 make?

19 MR. MCPHERSON: I made motions for direct verdicts.
20 And we made those motions.

21 THE COURT: All right. Motion for a new trial is
22 denied.

23 END OF REQUESTED TRANSCRIPT OF RECORD
24
25

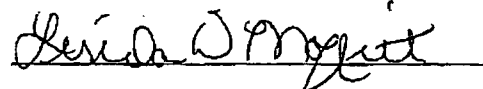
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 4th, 5th and 6th days of February 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 16, 2008



Linda D. Moffitt
Circuit Court Reporter

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.

Robert Allen Young, Appellant.

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2010-UP-333
Submitted June 1, 2010 – Filed June 28, 2010

AFFIRMED

Appellate Defender Elizabeth A. Franklin-Best, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Salley W. Elliott, and Assistant Attorney
General A. West Lee, all of Columbia; and Solicitor Harold
W. Gowdy, III, of Spartanburg, for Respondent.

PER CURIAM: Robert Allen Young appeals his convictions for armed robbery and assault and battery with the intent to kill. He contends the trial court erred in admitting evidence that he possessed a black t-shirt with the phrase "Snitches Get Stitches" printed on it. Specifically, Young argues on appeal that the t-shirt constituted inadmissible character evidence. However, this issue is not preserved for our review because trial counsel never objected to the admission of the evidence. We affirm pursuant to Rule 220(b), SCACR, and the following authority: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

AFFIRMED.[1]

FEW, C.J., THOMAS, and PIEPER, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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FORM 5

STATE OF SOUTH CAROLINA)

County of SPARTANBURG)ROBERT YOUNG # 326514)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2010-CP-42-5566

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Spartanburg County Court House, 180 Magnolia Street, Spartanburg, SC 29306
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Arm Robbery 07-GS-42-0998
 - (b) Assault & battery with intent to kill 07-GS-42-0996

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- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See attachment
- (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? N/A
- (b) ~~any petition in State or Federal Courts for habeas corpus or post-convictions relief?~~ N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (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. William Mcpherson, 366 N. Church St. Suite 3000
Spartanburg, SC
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial and sentencing
 ii. _____
 iii. _____

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**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Robert Young, 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.

Robert Young
Applicant

SWORN or affirmed to and subscribed before me this

14th day of October, 2010

Ludheen Bryant
Notary Public

My Commission Expires: May 26, 2020

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State concisely and in the same order the facts which support each of the grounds set out in (10):

(A). On February 4, 09 at the Spartanburg Court House, Applicant (herein petitioner), trial had started, in front of the Honorable Judge J. Derham Cole. Petitioner was represented by William H. McPherson Esquire. During the pre-trial stage, before Petitioner's trial, his counsel did not raise the fact that Petitioner's arrest warrant was 1). rubber stamped by the Spartanburg Magistrate Judge; and 2). the arrest warrant did not state probable cause; and 3). said warrant was deficient. Petitioner's arrest warrant for arm robbery specifically stated:

"The Defendant did take money and cell phone by means of force and violence and while armed with deadly weapon, being a hand gun... warrant is based upon police investigation."

Petitioner's arrest warrant for assault and battery with intent to kill (ABWIK) and grand larceny, states the same conclusory -bare bones- facts, that was presented to said magistrate Judge. Petitioner's trial Counsel per having Petitioner motion for discovery before trial was deficient in not bringing forth the barebone warrant affidavit to the said trial Judge. Petitioner was also prejudiced in not having the said warrant adjudicated in front of said Judge and it's a reasonable probability that said Judge would had ruled in Petitioner's favor as to said bare bones affidavit; And/or if not, Petitioner would had had said issue preserved for appeal, and per that, petitioner contends that trial Counsel was ineffective in not raising said issue.

(B). On February 4, 08, the day of Petitioner's trial, the Judge had asked both the State and Petitioner's trial Counsel about pre-trial motions to be heard before the Jury was picked in Petitioner's trial. (Tr. pg. 12, l. 1-3) Petitioner's trial Counsel raised, in front of the trial Judge, three pre-trial motions, e.i., motion to suppress the written statement made by Petitioner to the police and 2). the photo-line up of Petitioner; 3). to suppress the search of Petitioner's residence. (Tr. pg. 12, L. 7-25; pg. 13, L. 12)

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to point out something in it. I'm going to have him read from it.

Mr. McPherson: I'm going to object to it.

The Court: well, does it relate to that question about...

Mr. Bulsa: exactly, your honor. It does, yes sir.

The Court: The two?

Mr. Bulsa: yes, sir.

The Court: The two?

Mr. Bulsa: yes, sir.

The Court: the one phone call.

Mr. Bulsa: yes, sir.

The Court: All right. Well, you can ask him. You can show it.

Mr. Bulsa: Okay, I'll show it to him.

Q). I'll ask you start reading right here where it says,

"After that I went to the main Post Office."

A). Do I have to read it loud?

Q). You can read it out loud.

(Tr. pg. 144, L. 3-25; pg. 145 L. 1-14)

The trial Judge, after he sent the Jury back for recess, inquired into the Petitioner's trial counsel's awful cross-examination of said victim on the witness stand. Said Judge had asked trial Counsel:

The Court: Mr McPherson, were you aware of that portion of the Statement that referred to the witness telling the police?

Mr. McPherson: I've read that statement several times and hadn't picked up on that.

The Court: Hadn't seen that...

(Tr. pg. 146, L. 25; pg. 147, L. 1-5)

The Petitioner's trial Counsel awful cross-examination of said victim had the effect of bolstering the state's witness in front of the Jury, in which Petitioner's trial Counsel supposed to place the State case to an adversial testing before the Jury in Petitioner's case. Trial Counsel's deficient performance in cross-examining said victim to matters clearly stated in his statement, it had prejudiced the Petitioner, by trial Counsel

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As shown above, Petitioner's trial Counsel was ineffective for not objecting to the State incessantly reiterating the fact that Petitioner possessed a t-shirt that stated "snitches get stitches. And but for Counsel error trial would had been different.

E). During Petitioner's trial, the State presented testimony from Spartanburg investigator Joseph Bohon, as to matters that Petitioner stated in his statement. During the cross-examination of said investigator, the State, after said investigator read verbatim Petitioner's statement to the Jury, said investigator stated:

Q). He doesn't talk about going to see his aunt on Amos street, did he?

A). no sir.

Q). Did he talk about visiting with anybody on Palisade other than Ramona Fernandez?

A). no.

(Tr. pg. 218, L. 9-14)

Said investigator then proceeded to read the next statement that Petitioner made in the record in which the State referred again to Petitioner post-arrest silence.

Q). now, at no time or at anytime before this did he volunteer that information to you?

A). no, sir, he did not.

Q). when did this information come out?

A). After giving the first statement and being confronted with further questioning.

(Tr. pg. 220, L. 13-25; pg. 221, L.1)

Petitioner's trial Counsel also allowed the State to question Spartanburg investigator William Gary as to Petitioner's second statement in regards to Petitioner's post-miranda silence.

A). That's when he--we proceeded to get a second statement from him because he all of a sudden says, well, I did see a cab parked over here that, you know, I may have brushed up against, you know, that had blood on it and that must be where that came from.

Q). okay, to try to justify that information?

A). yes. To me it was important because if you're being questioned about this, I think you would tell us beforehand

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(Tr. pg. 151, L. 9-10)

In addition to that, the time that petitioner left Mrs. and Mr. Miller residence, the shooter was already riding with the victim according to Lisa Johnson. Ms. Johnson testimony stated:

Q). Okay. And could you tell us what happened while you were talking to him?

A). When I was talking to him and he was telling me--he was talking. And went s-10. I heard the phone hang up on me. That's the only thing I heard.

Q). When he was talking what?

A). When he was talking to me and he -- I heard something. He coughed. And then the phone hung up.

Q). So you heard him yelling?

A). Yes.

Q). And then the phone was cut off?

A). Yes.

(Tr. pg. 306, L. 9-20)

The said witnesses testified that it was 11:45 when she had called the victim and thereafter the victim as such was shot. (Tr. pg. 307 L. 13-25; pg. 1-5)

The State witness Shirley Rice, testified that Petitioner did not come to her residence until 12:50 am. Said witnesses testimony also laid the foundation that another person had committed the crime. Ms. Rice testified that:

Q). Okay. And what's that phone number?

A).

(Tr. pg. 161, L. 12-15)

Q). All right Ma'am, did you ever have an occasion to call a cab to your house?

A). I can't remember why I called a cab...

Q). So if his number showed up on your shown records, you would have no reason to know why?

A). Well, several peoples used my phone. So and it has been used before, you know. So I don't I can't... (Tr. pg. 163, L. 9-10; 16-19)

Q). Now, Ms. Rice, you said several people came in used your phone. Is that correct?

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Petitioner's clothing. (Tr. pg. 246, L. 5-9) let alone, Petitioner's trial Counsel even pounded the said witness as to the fact of car breaking versus assault and battery with the intent to kill. (Tr. pg. 247, 7-25; pg. 248, L. 1-25 pg. 249, L.1-20) During the Jury instruction of the parties, Petitioner trial Counsel failed to raise the lesser included offense of car breaking due to the evidence presented in the record at Petitioner's trial.

There's a reasonable likelihood chance that but for Counsel's error in not raising the lesser included offense of car breaking that the Jury would had found Petitioner guilty of said offense rather than assault and battery with the intent to kill and arm robbery. For that reason, Petitioner contend that trial Counsel was ineffective regarding said grounds.

(H). After the trial Judge read the Jury the instructions as to the law that they must follow in Petitioner's case. (Tr. pg. 355-

379) The Jury Forman, with the decision of the rest of the Jurors, came with a verdict of guilty, in Petitioner's case, on both charges of arm robbery and assault and battery with intent to kill. And as for Petitioner's charge of grand larceny, they had found him not guilty. (Tr. pg. 379, L. 23-25; pg. 380, L. 1-25; pg. 381, L. 1-6) Petitioner's trial Counsel had failed to move the Court for a motion for new trial on the grounds of inconsistent verdict because the grand larceny charge is an essential element of the said assault and arm robbery charge. Petitioner contends that once the grand larceny charge couldn't be proved, the other said charges fail as a matter of law. Petitioner contends that Counsel was ineffective for not preserving the grounds of inconsistent verdict, at the new trial stage, for appellate review.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Robert Young, #326594	)	2010-CP-42-5566
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed October 18, 2010, 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 Spartanburg County Clerk of Court. The Applicant was indicted at the February 2007 term of the Spartanburg County Grand Jury for assault and battery with intent to kill (2007-GS-42-0996), grand larceny, (2007-GS-42-0997), and armed robbery (2007-GS-42-0998). He was represented by William McPherson, Esquire. On February 6, 2008, following a jury trial before the Honorable J. Derham Cole, the Applicant was convicted and sentenced to the following to thirty (30) years for armed robbery (2007-GS-42-0998) and twenty (20) years for assault and battery with intent to kill (2007-GS-42-0996), to run consecutively¹.

A timely Notice of Appeal was filed on Applicant's behalf, and the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Young, Op. No. 2010-UP-0333. (filed June 28, 2010). The Remittitur was returned July 14, 2010.

¹ The jury found the Applicant not guilty of grand larceny.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Trial Counsel, in that;

- a. Counsel failed to make a motion to suppress the arrest warrant on the grounds that:
 - i. "The Spartanburg Magistrate judge rubber stamped the arrest warrant; and . . ."
 - ii. "The Spartanburg investigator arrest warrant did not state probable cause when brought before said magistrate judge;
 - iii. "Said warrant was deficient under the fourth and fourteenth amendment."
- b. Counsel failed to adequately prepare and investigate the law into petitioner's case, in particular as it relates to the search and seizure.
- c. Counsel failed to object to the state repeatedly introducing improper character evidence into applicant's trial, in particular, the t-shirt.
- d. Counsel failed to object to the prosecutorial misconduct regarding Applicant's post-Miranda silence.
- e. Counsel failed to raise a third-party defense.
- f. Counsel failed to raise the lesser included offense of car breaking.
- g. Counsel failed to move for a motion for new trial on the grounds of inconsistent verdict.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. 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 Respondent requests that an evidentiary hearing be held.

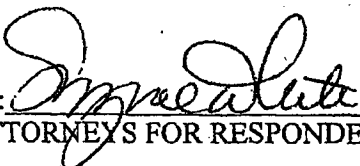
Respectfully Submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

July 15, 2011

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Robert Young,

2010-CP-42-5566

Applicant,

v.

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Sean C. Cobourn, Esquire
Cobourn & Salceby, LLP
P.O. Box 5888
Spartanburg, South Carolina 29304


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 15th day of June, 2011.

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

} IN THE COMMON PLEAS COURT

3 Robert Young,
4 Applicant,

} TRANSCRIPT OF RECORD
2010-CP-42-5566

5 -VS-

6 The State.

} December 5, 2011
Spartanburg, South Carolina

7
8
9
10
11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE
13
14

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

16 J. KENNETH ROBERTSON, ESQUIRE
Attorney for the Applicant

17
18 SUZANNE H. WHITE, ESQUIRE
Attorney for the State

19
20
21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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1 THE COURT: We're on the record in the matter of
2 Robert Young vs. the State of South Carolina.

3 Yes, ma'am.

4 MS. WHITE: Thank you, Your Honor.

5 This is a case that we originally had called and
6 needed to continue to be able to obtain the deposition of
7 the attorney that represented Mr. Robert Young. It's case
8 No. 2010-CP-42-5566.

9 We have been able to get the telephone deposition
10 conducted of Mr. William McPherson, and you should have a
11 transcript of that in your packet.

12 THE COURT: I do.

13 MS. WHITE: And I believe at this point we are
14 probably going to just begin and let Mr. Kenny Robertson
15 begin by presenting testimony from the applicant.

16 THE COURT: Yes, sir.

17 MR. ROBERTSON: May it please the Court. My name is
18 James Kenneth Robertson. I represent Mr. Young in this
19 action for P.C.R.

20 Mr. Young will be our one and only witness, and we
21 expect it will be fairly distinct. Per our previous
22 agreement, we're going to limit just to his actual pled
23 P.C.R., and probably not even all of the elements of the
24 pled P.C.R., simply because essentially we feel there are
25 several particular exemplars of problems with the defense

Robert Young
Direct examination by Mr. Robertson

1 that Mr. Young received that are simple mistakes that we
2 feel really go to a key element of just being inadequately
3 prepared for this particular trial, a trial of this
4 magnitude. And that's what we'll limit our testimony to
5 today and would ask your indulgence in reading over the
6 P.C.R. or the deposition where you can see the response
7 that we received to our questions to Mr. McPherson.

8 We would call Mr. Young.

9 ROBERT YOUNG, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. ROBERTSON

12 Q Would you please state your name for the record?

13 A My name is Robert Young.

14 Q Mr. Young, how did you meet Mr. McPherson initially?
15 How did you come to have Mr. McPherson represent you for
16 your trial?

17 A Oh, I believe he was appointed to me.

18 Q It was a court-appointed attorney. And at the time
19 that you first met Mr. McPherson where were you?

20 A I was in the county jail.

21 Q Okay. And did you ever meet with Mr. McPherson
22 outside of the jail other than at the time of your trial?

23 A No, sir.

24 Q Okay. Do you remember how many times you met with
25 Mr. McPherson?

Robert Young
Direct examination by Mr. Robertson

- 1 A I say five at the most.
- 2 Q Okay. And does that include on the day of trial?
- 3 A Yes, sir.
- 4 Q Okay. And did he discuss with you the charges that
- 5 were being brought against you?
- 6 A Yes, sir.
- 7 Q Okay. And when you met with him on these visits, how
- 8 long would you say the visits listed on average?
- 9 A I would say ten minutes.
- 10 Q Okay. Ten minutes or so?
- 11 A Yeah.
- 12 Q So the total amount of time that you spent with
- 13 Mr. McPherson including the day of trial would have been an
- 14 hour or less, is that correct?
- 15 A Yeah, yes, sir.
- 16 Q Okay. And did you have an opportunity to discuss with
- 17 him the charges that were being brought against you?
- 18 A Yeah.
- 19 Q Okay. And did you have an opportunity to discuss with
- 20 him a theory for your defense?
- 21 A Yes, sir.
- 22 Q Okay. And briefly, what was your defense?
- 23 A Basically, my defense was that, you know, it was
- 24 somebody else that did it, because, you know, I had
- 25 alibi -- alibi witnesses on my behalf.

Robert Young
Direct examination by Mr. Robertson

- 1 Q Okay. And essentially your alibi was that you did not
2 have time to commit the alleged shooting, is that correct?
- 3 A Yeah, and -- and make it to another part of town, yes,
4 sir.
- 5 Q Okay. And you admitted that you had, in fact, called
6 this particular cab driver for a ride, is that correct?
- 7 A Yes, sir.
- 8 Q Okay. And Mr. McPherson was aware of that.
- 9 A Yes, sir.
- 10 Q And you have witnesses who place you at the scene
11 where the cab was found, is that correct?
- 12 A Yes, sir.
- 13 Q And you were there for what period of time?
- 14 A Talking about where the car was found at?
- 15 Q Where the car was found. How long had you been at the
16 area where the car was found?
- 17 A I say I was in the area about an hour, I say.
- 18 Q Okay. And you had witnesses who were able to place
19 you at that scene at that time.
- 20 A Yes, sir.
- 21 Q And did Mr. McPherson obtain statements from those
22 witnesses or present testimony from those witnesses at your
23 hearing?
- 24 A Yes, sir. I believe he did.
- 25 Q And the shooting that occurred occurred in a different

Robert Young
Direct examination by Mr. Robertson

- 1 portion of Spartanburg, is that correct?
- 2 A Yes, sir.
- 3 Q And that was several miles away.
- 4 A Yes, sir.
- 5 Q Did Mr. McPherson present any evidence whatsoever as
- 6 to how far away that was, how long it would have taken
- 7 somebody to get from where you were to there or anything
- 8 along those lines to support your alibi?
- 9 A No, not really.
- 10 Q Okay. Did you discuss that at length with him?
- 11 A Yes, sir.
- 12 Q And one of the problems that you faced with your case
- 13 was that you were not able to testify, is that correct?
- 14 A Yes, sir.
- 15 Q And why did you choose not to testify?
- 16 A I chose not to testify because McPherson told me they
- 17 would bring up my record.
- 18 Q You did have a past record.
- 19 A Yeah.
- 20 Q And he felt that that would be damaging as character
- 21 evidence.
- 22 A Yes, sir.
- 23 Q Okay. But one of your allegations was that there was
- 24 a problem with one piece of evidence that Mr. McPherson
- 25 allowed to come in, is that correct?

Robert Young
Direct examination by Mr. Robertson

1 A Yes, sir.

2 Q Can you describe for the court what that objection you
3 have is or what that problem you had is?

4 A Well, he let the state present improper character
5 evidence by stating I had on a t-shirt that said "snitches
6 get stitches".

7 Q Okay.

8 MR. ROBERTSON: Entered into the evidence, Your Honor,
9 was a t-shirt that had a slogan on it. The slogan we feel
10 was somewhat offensive, "snitches get snitches".

11 And the state was allowed to state this to the jury a
12 total of six times without a single objection, not to the
13 admissibility of the shirt itself but to the relevance of
14 the slogan.

15 The slogan never appears in any of the statements of
16 the victim. It was identified as a piece of evidence that
17 was collected when the police searched Mr. Young's
18 residence.

19 Q What do you feel the effect of that slogan was on your
20 trial?

21 A I believe it made a -- a great, great difference
22 really.

23 Q In the opinion of the jury as to your character?

24 A Yeah, yeah, opinion of the jury.

25 Q Okay. And trying to protect your character was one of

Robert Young
Direct examination by Mr. Robertson

1 the reasons that you didn't take the stand in your own
2 defense, is that correct?

3 A Yes, sir.

4 Q So that somewhat undermined that defense.

5 A Yes, sir.

6 Q Now, in addition to this Mr. McPherson was able to
7 cross-examine the state's key witness, is that correct?

8 A Yes, sir.

9 Q And who was the state's key witness?

10 A Dean Lojan [sic].

11 Q And he was the cab driver --

12 A Yes, sir.

13 Q -- who was shot.

14 A Yes, sir.

15 Q And part of your defense was that he was mistaken as
16 to the identity of the shooter.

17 A Yes, sir.

18 Q Okay. And in the process of eliciting testimony on
19 cross-examination you allege that there was an error on the
20 part of Mr. McPherson. What was that error? In
21 particular, Mr. McPherson was questioning him about phone
22 calls that you had made to him in order to obtain a ride in
23 the cab?

24 A Yeah, yes, sir.

25 Q And in doing that you allege that Mr. McPherson made a

Robert Young
Direct examination by Mr. Robertson

1 mistake in that he accidentally bolstered the witness'
2 testimony, is that correct?

3 A Yes, sir.

4 Q Okay. How did he bolster the witness' testimony, do
5 you remember?

6 A Let's see. Because he --

7 Q He was asking about the number of times you had
8 called, is that correct?

9 A Yes, sir.

10 Q Okay. And, in fact, one of the calls that you had
11 made to this particular cab driver was part of your alibi,
12 was that not?

13 A Yes, sir.

14 Q Because you had an alibi witness who testified that
15 you were making that phone call mere minutes before the
16 actual shooting occurred, is that correct?

17 A Yes, sir.

18 Q And by accidentally bolstering the witness, is it your
19 contention that he made that witness seem more credible to
20 the jury?

21 A Yes, sir.

22 Q Had you ever used this particular cab company before?

23 A Yeah, a couple of times.

24 Q Had you ever ridden with this particular cab driver?

25 A Yes, once.

Robert Young
Direct examination by Mr. Robertson

1 Q Okay. And the area that you were to be picked up
2 from, the area where the cab was found, was there a lot of
3 activity in that area at that time of night?

4 A Yes, sir.

5 Q Okay. And the area where the cab driver was shot, are
6 you familiar with that area?

7 A Yes, sir.

8 Q Is there a fair amount of activity in that area at the
9 time of night when this occurred?

10 A No, not like the part where the car was found at.

11 Q Is it your contention that had you received a better
12 defense the outcome would have been different?

13 A Yes, sir.

14 Q Okay. And you admit that Mr. McPherson was dealing
15 with a number of challenges with your case.

16 A Yes, sir.

17 Q Because we did have an eye-witness identification.
18 But you essentially had the alibi defense. You had alibi
19 witnesses. And essentially you were alleging that this
20 witness was not credible because he was mistaken.

21 A Yes, sir.

22 Q Do you feel that that defense was adequately put forth
23 by Mr. McPherson?

24 A No, sir.

25 Q And do you feel that Mr. McPherson adequately objected

Robert Young
Cross-examination by Ms. White

1 to the evidence that was presented against you so it would
2 be preserved for appeal?

3 A No, sir.

4 Q Is there anything additional that you'd like to tell
5 the Court today?

6 A No, sir. That's it.

7 Q Thank you. If you would, answer any questions.

8 CROSS-EXAMINATION

9 BY MS. WHITE

10 Q Mr. Young, just a few questions.

11 In -- the night actually in question, kind of going
12 back to the cab driver, you said you admitted that you had
13 called the cab driver and used that company before, is that
14 right?

15 A Yes, ma'am.

16 Q But when the cops initially came and questioned you at
17 the house before you were ever a suspect you denied ever
18 calling a cab or using that company, didn't you?

19 A Yes, ma'am.

20 Q Okay. And the only -- they came back to you a second
21 time after a neighbor said that you had called the cab
22 company and that she had seen you use the cab, is that
23 right?

24 A Yes, ma'am.

25 Q Okay. And Mr. -- the victim in the case identified

Robert Young
Cross-examination by Ms. White

1 you through a 6-photo lineup while he was in the hospital,
2 is that right?

3 A Yes, ma'am.

4 Q Okay. And you actually gave the police consent to
5 search your home, is that correct?

6 A Yes, ma'am.

7 Q And while they were there they found clothing that
8 later was determined to have the victim's blood on it?

9 A Yes, ma'am.

10 Q Okay. And that was introduced at trial.

11 A Yeah.

12 Q And the victim -- his photo identification was
13 introduced at trial, and he identified you in the courtroom
14 as well, is that right?

15 A Yeah.

16 Q Okay. Now, did they -- the police also or -- excuse
17 me -- the state also used some phone records to show that
18 you were at your aunt's house and called the cab company at
19 this time, is that right?

20 A No.

21 Q Or that a phone call was made from her house to that
22 cab company, is accurate.

23 A Yeah, yes. And she made a statement that I was
24 talking to a female. So I never made that phone call.

25 Q Okay, okay.

Robert Young
Cross-examination by Ms. White

1 A And she also stated that it was people in and outta
2 the house at the time.

3 Q Right. And so that was the state's witness, your
4 aunt -- that they could prove a phone call had been made
5 from the house to the cab company but not necessarily who
6 had made it.

7 A Yes, ma'am.

8 Q Okay. And Mr. McPherson actually -- he started off
9 and tried to do several things to suppress your statements
10 and to suppress the evidence of the clothes, is that right?

11 A Yeah.

12 Q Okay. And he also alleged that there was not proper
13 consent, that maybe you had been up all night and you
14 couldn't give consent to actually give them a search.

15 A Yes.

16 Q And tried to suppress the voluntary statements that
17 you gave police, is that right?

18 A Yes.

19 Q Okay. And all of those were denied by the Court?

20 A Yes.

21 Q And in regards to witnesses, he presented several
22 witnesses on your behalf, didn't he?

23 A Yes.

24 Q Okay. And he tried to get another client of the cab
25 driver who was on the phone to kind of put him at a

Robert Young
Cross-examination by Ms. White

1 different location or time maybe than he had alleged
2 earlier?

3 A Yes.

4 Q Okay. And also your cousin I believe who was kind of
5 an alibi witness for you.

6 A Uh-huh.

7 Q All right. Another cousin and your mother -- they
8 also testified on your behalf, didn't they?

9 A Yeah.

10 Q Okay. And he requested, made several motions and
11 requested a lesser included charge for the grand larceny
12 charge, is that right? Do you recall that from petty
13 larceny instead of grand larceny?

14 A Yeah. I believe he did.

15 Q Okay. And just for the facts, you were ultimately
16 found not guilty of the grand larceny but guilty of the
17 ABWIK and the armed robbery, is that right?

18 A Yes.

19 Q Okay. Now, the "snitches get stitches", that was
20 mentioned mostly by the detectives. Was that correct?

21 A Yeah, detectives and prosecutors.

22 Q Okay. And -- and in the -- in the testimony they
23 mentioned that in the way of when they went to interview
24 you at the house, that's what you were wearing, a t-shirt,
25 is that right?

Robert Young
Cross-examination by Ms. White

1 A Yeah.

2 Q Okay. And it was a black t-shirt with that saying on
3 it, is that correct?

4 A Yeah, but they stated that several times during the
5 trial too.

6 Q Right. All right. And your witnesses had testified
7 that you were wearing a white t-shirt, is that right, when
8 they had seen you?

9 A Yeah.

10 Q Okay. And so there was some conflict over whether or
11 not you were wearing a black or white t-shirt that evening,
12 is that right?

13 A No, not really wasn't no conflict because basically
14 they stated that I was wearing a black t-shirt. You know,
15 I guess they got it mixed up. People said I had on a white
16 t-shirt.

17 Q But that was -- the victim had identified you as
18 wearing dark clothing, didn't he?

19 A Yes.

20 Q So your witnesses were saying you were wearing a white
21 shirt. So that was an opposite statement, right?

22 A I'm thinking about one of my witnesses saying I was
23 wearing a white shirt.

24 Q Okay.

25 A But the -- the black shirt had bold, bold white

Robert Young
Redirect examination by Ms. White

1 writing on the front and back. And, you know, he never did
2 state that, you know, what the shooter was wearing, a black
3 shirt with bold writing on the front and back.

4 Q Okay. He just said dark clothing.

5 A Yes.

6 Q Okay. All right.

7 MS. WHITE: And I think that is all that I have at
8 this time, Your Honor.

9 THE COURT: Any redirect limited to what she went on
10 into?

11 MR. ROBERTSON: Just a touch, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. ROBERTSON

14 Q Again, the issue with the shirt was not necessarily
15 that he was ineffective in attacking the admissibility of
16 the shirt, that's correct, right?

17 A Uh-huh.

18 Q His failure was in allowing that particularly
19 offensive slogan to be used over and over.

20 A Yes.

21 Q You're the type of person who owns these types of
22 things and wears these types of clothing. And your problem
23 is that he did not object --

24 A Yes.

25 Q -- to the admissibility of the slogan, is that

1 correct?

2 A Yes, sir.

3 MR. ROBERTSON: That's my only redirect, Your Honor.

4 THE COURT: All right. Thank you.

5 Thank you, sir. You may step down.

6 And I do have the transcript of the deposition of

7 Mr. McPherson that I will review as well.

8 All right. Thank you very much.

9 MS. WHITE: Thank you, Your Honor.

10 MR. ROBERTSON: Thank you, Your Honor.

11 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in Common Pleas Court for Spartanburg County, South Carolina, on the 5th day of December 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

October 1, 2012

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

COUNTY OF SPARTANBURG

Robert Young,

Applicant,

-VS-

CASE NO: 2010-CP-42-5566

State of South Carolina,

Respondent.

Telephone Deposition of WILLIAM MCPHERSON, a
witness called by Counsel on behalf of the Respondent,
pursuant to the applicable provisions of the South
Carolina Rules of Civil Procedure, taken before Cynthia
L. Weathers, a Professional Court Reporter and Notary
Public in and for the State of South Carolina, on
November 22, 2011, at the office of Suzanne H. White,
Assistant Attorney General, Rembert C. Dennis Building,
1000 Assembly Street, Columbia, South Carolina,
commencing at the hour of 2:00 p.m.

APPEARANCES

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REPRESENTING THE RESPONDENT

ALSO PRESENT

Robert Young
ICDC Officer Ronald Metts
ICDC Officer Patrick Owens

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STIPULATIONS

It is hereby stipulated by and between counsel for the respective parties the right to reserve objections as to the form of question.

BY MS. WHITE:

We're here today in the case of Robert Young versus the State of South Carolina. It is case number 2010-CP-42-5566. Mr. Young has filed a PCR application, October 18th, 2010, alleging various claims of ineffective assistance of counsel. We did have an initial hearing at which point this was continued to allow for us to conduct a telephone deposition of Mr. Young's trial counsel, William McPherson, who now lives in Texas. And at the time, Mr. Young and his counsel agreed and consented to not amend the application or add any additional allegation so that the Respondent was able to respond fully with this deposition with Mr. McPherson. And we have also consented to allow Mr. McPherson to be sworn in via the telephone by the court reporter here today. And I will turn it over to her for that.

Whereupon,

WILLIAM MCPHERSON,

having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. WHITE:

4 Q. Thank you, Mr. McPherson. If you would, just go
5 ahead and give me a little bit of background on,
6 just in general, your practice of law. How long
7 have you been practicing law? Obviously, you're in
8 Texas now, but at the time of this trial -- this
9 was in February of 2008 -- how long had you been
10 practicing law?

11 A. I had been practicing since 1968. So how long is
12 that?

13 Q. That's about 40 years, I believe.

14 A. Correct. And I've been in criminal law for about
15 20 years.

16 Q. Okay.

17 A. Primarily. I mean I was about 99 percent criminal
18 law from the last 20 years.

19 Q. And was that all in South Carolina?

20 A. No. Most of it was in Texas. I moved to South
21 Carolina in 2005, I believe it was. I initially
22 obtained my license in South Carolina, and then I
23 moved to Texas and got licensed out here. When I
24 moved back to South Carolina, I had my license
25 reinstated over there.

1 Q. Okay. And when you moved back to South Carolina in
2 2005 and were reinstated, what capacity, which type
3 of job I guess, did you start working in here?

4 A. I went to work for the Public Defender's Office in
5 Spartanburg, South Carolina --

6 Q. And is that --

7 A. -- as a criminal defense lawyer.

8 Q. Okay. And is that the capacity in which you were
9 representing Mr. Young in this case?

10 A. Yes.

11 Q. So you were appointed in this case?

12 A. Correct.

13 Q. Do you know at which point or at which time frame -
14 - this case was tried February 6th of 2008. Mr.
15 Young was indicted February of 2007. Do you have
16 any time frame or knowledge at which point you were
17 appointed to represent him?

18 A. I would assume about the time of his indictment or
19 maybe shortly before that. As best I can recall, I
20 think I was already with the Public Defender's
21 office.

22 Q. Okay. In regards to just some basics about the
23 case, do you recall general meetings with Mr. Young
24 about the case?

25 A. Not very well. If I remember correctly, he was in

1 jail, and I met with him several times and
2 discussed the case with him. And it's usually my
3 practice to go over the case with them, whatever
4 materials I'm furnished by the Solicitor's Office.
5 I usually go over that material with the Defendant.

6 Q. And when you say that, are you referring to
7 discovery materials?

8 A. Yes.

9 Q. So did you file, or someone from your office, file
10 a discovery motion in this case?

11 A. Yeah. Someone from my office does.

12 Q. Okay. And were you the only attorney that ever
13 worked on this case from your office, to your
14 knowledge?

15 A. To my knowledge, yes.

16 Q. Okay. In this time period, you said you met with
17 Mr. Young several times at the jail. Did he ever
18 bond out? Was he in jail the whole time prior to
19 trial?

20 A. As best I recall, he was in jail the whole time.

21 Q. Okay. And in going over with him the case and the
22 discovery materials you had received, what was I
23 guess the main concept of the State's case that
24 they had in regards to evidence that they had
25 against your client?

1 A. Hold on just a minute. Okay. I'm sorry. Would
2 you ask that again, please?

3 Q. Sure. In regards to the discovery materials you
4 received, and in reviewing the case with your
5 client, can you recall what materials or what
6 evidence the State had against your client in this
7 case?

8 A. Yes. They had eyewitness testimony. In other
9 words, the victim, the alleged victim in the case,
10 had been shot in the back of the head, I believe
11 twice. And the victim lived. Actually, he was
12 only in the hospital for a day or two. And he was
13 able to identify the Defendant as the person that
14 shot him. They also had blood DNA from the victim
15 on the Defendant's pants. And I believe they had
16 some other evidence of him being in the area. They
17 had evidence of a telephone call made from I
18 believe his aunt's house, or somebody -- a
19 relative's house -- a telephone call that was made
20 to the victim near the time that the Defendant was
21 picked up.

22 Q. Okay.

23 A. So they had a fair amount of evidence against the
24 Defendant.

25 Q. And when you reviewed with the Defendant, did you

1 talk with him about any kind of defense at the
2 time? Did he offer any defense for you to work on,
3 I guess?

4 A. Well, I don't remember exactly when it was offered,
5 but I know I talked to him about the case. I
6 talked to him about the strength of the Solicitor's
7 case, that I felt like they had a fairly strong
8 case. He talked to me about alibi witnesses, and
9 that he could show that he was with some other
10 people at the time of the offense. So we discussed
11 that.

12 Q. Okay. So alibi defense was the main strategy that
13 you had or defense that he offered to you?

14 A. Correct.

15 Q. Okay. Was there ever any discussion of a plea to
16 these charges?

17 A. Yes. For the longest time, the Solicitor's office
18 would not give me a recommendation other than he
19 could plead to all the charges straight up to the
20 court. I kept asking the Solicitor's office to
21 give us a better recommendation than that, that we
22 couldn't live with that. So eventually, near the
23 time of trial -- I don't remember -- maybe a week
24 or two before trial -- they made us a
25 recommendation of 20 years in prison if he would

1 plead. And I took that recommendation to the
2 client, to Mr. Young, and he rejected it. I
3 recommended that he take it.

4 Q. And that recommendation from you was based on what?

5 A. It was based on the facts in the case because I
6 felt like they had a very strong case, being the
7 eyewitness, who was going to testify that Robert
8 Young was the shooter; based on the fact that DNA
9 was on his clothes; and based on the fact that they
10 had telephone evidence of a phone call going from
11 his relative's house to the victim's cell phone.

12 Q. And ultimately, you said that he did reject that
13 offer and he wanted to proceed to trial.

14 A. That's correct.

15 Q. Okay. At this point, you said that you had met
16 with him several times to go over discovery
17 materials. Do you recall meeting with him prior to
18 trial closer to that time?

19 A. Well, we met, you know, I would say more than just
20 several -- I would say we met quite a few times.
21 And even up to the time of trial, trying to get it
22 ready, speaking to his witnesses, and telling him
23 what they were telling me. There was one witness I
24 was hunting and we didn't find until the last
25 minute, and that was the -- that really wasn't the

1 witness that he was after. It was -- it was, I
2 believe, a person the victim was speaking to on the
3 telephone.

4 Q. Okay.

5 A. We found her right at the last minute.

6 Q. So you did have a chance, and you felt like the
7 applicant, or Mr. Young, had a chance and had
8 offered you names of witnesses he wanted you to
9 call for the case.

10 A. Yes. I think he, or somebody, some of them came by
11 my office and spoke to me. They gave me
12 statements, and then I went out to the actual -- to
13 their houses where the Defendant said he was at,
14 and interviewed them over there, too. I went to
15 the home of all the individuals that were involved.

16 Q. Did your office employ a private investigator or
17 anyone to work on the case to assist you in this?

18 A. Our office has an investigator. I think we have
19 two investigators, or we had two investigators. I
20 don't remember how much assistance I got. I know I
21 did most of the leg work. Usually, I don't do all
22 of the leg work. When it comes to hunting
23 witnesses, the investigators do that.

24 Q. But you said in this case, you recall that you
25 actually went to the homes of many of the

1 witnesses?

2 A. I went to the homes and interviewed them, and I
3 just wanted to get a feel for where he was at and
4 what he was telling me, you know, where he was at
5 and what he was doing at this time. I wanted to
6 see how it squared up with what the witnesses were
7 saying.

8 Q. Did you ever take the time or take the chance to
9 actually kind of map out, I guess, the scene of the
10 crime, the various locations that the applicant
11 testified he was at versus the location the victim
12 said things had occurred?

13 A. Not that I know of.

14 Q. Okay. Now, at trial, I want to ask you a few
15 questions about some of the witnesses and some of
16 the statements that were made. You made several
17 pretrial motions; is that correct?

18 A. Yes.

19 Q. And were those ruled in your favor; do you recall?

20 A. As I recall, they were not ruled in my favor.

21 Q. And is it correct that you made a motion to
22 suppress his statements that he made? A motion to
23 suppress the photo line-up identification, and a
24 motion to suppress any evidence that the police had
25 secured as a result of their search of his home

1 based upon, they said, his consent; is that right?

2 A. I believe that's correct.

3 Q. Okay. And I believe the record will reflect that
4 those were made on page 12 of the transcript. And
5 do you recall, were there were arguments or
6 testimony presented in support of those motions?

7 A. I know we didn't put the Defendant at -- there was
8 testimony put up. It was primarily by the
9 Solicitor's office. Mr. Young was given an
10 opportunity to testify, and he chose not to
11 testify. But there was testimony put up --

12 Q. Okay.

13 A. -- for those motions.

14 Q. And at that point, after the testimony, is when did
15 the Judge rule you said against you on all of those
16 motions?

17 A. That's correct.

18 Q. Okay. And at that point, the State began their
19 case, I guess. What -- It's kind of hard. They
20 had a pretty long list of witnesses. And I'm not
21 going to go through every witness, obviously,
22 because of time. One of the issues that was raised
23 on appeal that has been brought up was an issue
24 with the fact that the applicant at one point, when
25 the police interviewed him before he was even a

1 suspect, was wearing a black T-shirt that said
2 snitches get stitches?

3 A. Yes.

4 Q. That was mentioned several times. And I believe it
5 might have been mentioned, I tried that at perhaps
6 five times, six times, at the actual trial by
7 various witnesses throughout direct examination,
8 mostly, in regards to identifying what he was
9 wearing at the time that they interviewed him, and
10 what he was wearing when they got the T-shirt out
11 of the hamper and had the blood on it. Did you
12 ever think about objecting to that as improper
13 character evidence?

14 A. No. I did not. I'm not, you know, I did not. I
15 think primarily because the evidence I had was that
16 he was wearing a T-shirt, a white T-shirt, when
17 this crime went down. And I thought, you know,
18 being a black T-shirt certainly is different from a
19 white T-shirt.

20 Q. So ---

21 A. But I didn't object, and I didn't -- I really
22 didn't think about it.

23 Q. Okay. So at the time of the trial as you were
24 hearing that, I guess my first question -- let me
25 back track a little bit -- had you ever talked with

1 Mr. Young prior to the trial about what the wording
2 of the T-shirt said?

3 A. Well, other than just going over the evidence with
4 him, I don't think we ever discussed, you know,
5 whether it should come in or stay out. I don't
6 recall discussing that with him.

7 Q. Okay. So you never discussed the actual wording.
8 You just talked about the actual T-shirt, or?

9 A. Well, we mentioned the T-shirt, and I know we
10 reviewed the evidence, you know, that was on the T-
11 shirt, but we never discussed trying to keep it out
12 of evidence.

13 Q. Okay. And so during trial, you're saying at the
14 time, that just wasn't something that entered your
15 mind that you needed to object to?

16 A. Correct.

17 Q. Okay. In regards to the T-shirt issue, what was
18 the main thought in your mind about I guess the
19 issue of his clothing then?

20 A. Well, my main thought was that the victim
21 identified him as having on a black T-shirt, and
22 his alibi witnesses identified him as having on a
23 white T-shirt. So that's quite a distinction. And
24 I was thinking, you know, if they will believe the
25 alibi witnesses, that will give them something to

1 hang their hat on.

2 Q. Okay. So focusing more on the color, the
3 distinguishing factor of the color?

4 A. Correct.

5 Q. Okay. And in regards to another issue that was
6 brought up, at one point in your cross-examination
7 of the victim, there was a point that you began to
8 ask him -- he had testified that the applicant, Mr.
9 Young, in this matter, had called him once to get a
10 ride, that he had not been able to get over there
11 yet, and then he called him twice, and there was
12 some back and forth. And at the time, it appeared
13 that you were attempting to impeach him with his
14 previous statement. Do you recall that incident?

15 A. Yes. It was just a mistake on my part. I had
16 overlooked I think page two of the victim's
17 statement in which I was in error in my
18 questioning, and the victim was correct.

19 Q. Okay. So there was no strategy behind that part.
20 It was just --

21 A. Well, I was trying to discredit the victim through
22 his testimony, and I think we found other areas
23 that didn't match up. But this area did match up.

24 Q. Okay. And if you'll bear with me a minute, Mr.
25 McPherson. I'm writing some notes here. Okay.

1 You called several witnesses on the Defense's
2 behalf, didn't you, on behalf of the Defense?

3 A. Yes, I did.

4 Q. And were those all family members?

5 A. Well, these were people he asked me to -- I know
6 some of them were family members. I can't offhand
7 say they were all family members, but I know these
8 were witnesses he asked me to call on his behalf.

9 Q. Okay. And I think the record will reflect you
10 called one police officer, one Ms. Lisa Johnson,
11 who was a client of the cab driver, who I think was
12 on the phone with him when the phone cut off.--

13 A. Right.

14 Q. -- and then Mr. Miller, his cousin, Ms. Miller, the
15 cousin's wife, and Mrs. Young, his mother.

16 A. Right.

17 Q. Okay. I think you've already talked a little bit
18 about it, but if you can, just kind of clarify for
19 me. What was the strategy in presenting those
20 witnesses?

21 A. To show that he was at a home several miles from
22 his house, but that he was at that home until past
23 midnight, and that he had on different clothing
24 from what the victim had identified him as having
25 on. And we were trying to show that there was just

1 no way possible for him to go from one side of town
2 to the other as quickly as the time frame as the
3 victim was maintaining that it could have happened.

4 Q. Okay. And --

5 A. And he had, you know, he had witnesses saying that
6 he was with them when this incident happened.

7 Q. All right. In regards to the issue of -- the
8 applicant has alleged that you failed to object to
9 prosecutorial misconduct regarding his post-Miranda
10 silence. To your understand, do you have any
11 comment or any thought as to that allegation?

12 A. Well I just -- my thought is that he gave several
13 statements to the police, and that, you know, I
14 objected properly to the evidence that they were
15 trying to get in. But as far as his post-Miranda
16 rights, he had given up those rights and agreed to
17 talk to the police, for the most part.

18 Q. And were there any situations that you, even now as
19 you've had a chance to review the file and the
20 transcript, that you believe should have been
21 objected to, comments made by the prosecution in
22 the case regarding that?

23 A. Well, there may have been one or two, but they
24 would be minor, and I don't -- I think they were
25 kind of harmless.

- 1 Q. Okay. In regard to a third-party defense, was
2 there any ever discussion of a third-party defense?
- 3 A. No. Our defense was just that this Defendant
4 didn't do it.
- 5 Q. Okay. And he's also raised an allegation that you
6 failed to raise the lesser included offense of car
7 breaking, or breaking into a motor vehicle. Is
8 that anything that you thought of at the time, or
9 thought was a lesser included of in the charges he
10 was facing?
- 11 A. No. I don't believe it is a lesser included. But
12 no, it's not something I thought of.
- 13 Q. Okay. And I believe my final question is just
14 going to be about the fact -- well, there's two
15 final -- two questions, I guess. One is in regards
16 to a motion for a new trial on the grounds of an
17 inconsistent verdict. Was that an issue that you
18 ever considered raising?
- 19 A. No.
- 20 Q. Okay. Did you think that the verdict of not guilty
21 of grand larceny was inconsistent with the other
22 two guilty verdicts?
- 23 A. No. I did not.
- 24 Q. All right.
- 25 A. I raised the issue that there was no evidence that

1 he intended to -- or that whoever took the cab --
2 intended to permanently deprive the owner of the
3 cab because it was abandoned a short time later.

4 Q. Okay. And then finally, he also had raised an
5 allegation that you had failed to make a motion to
6 suppress the arrest warrant on a couple of grounds,
7 primarily that it was deficient and that it didn't
8 properly state probable cause for his arrest.

9 A. Well, the warrants had some probable cause in
10 there, and also, I believe the victim had IDed the
11 Defendant through a photo lineup, and also way
12 before trial, this case had already been indicted.

13 Q. Okay.

14 A. So I did not suppress or attempt to suppress the
15 arrest warrants.

16 Q. Okay. All right. I think that's all the questions
17 I have at this time. And, Mr. McPherson, I'll turn
18 it over to Mr. Robertson for cross.

19 A. Okay.

20 CROSS-EXAMINATION

21 BY MR. ROBERTSON:

22 Q. Thank you, Mr. McPherson. I appreciate your time.
23 I really only have just a few questions. Do you
24 have an idea of an actual number of times that you
25 met with Mr. Young prior to the trial?

1 A. No. I do not, but I guess an idea would be
2 anywhere from five to ten times. I know I met with
3 his mother, and seems like a pastor, in my office
4 trying to convince even his mother -- this was well
5 in advance of trial -- trying to show his mother
6 that the Solicitor's office had a pretty strong
7 case against their son -- against her son -- but I
8 know I met with him quite a few times.

9 Q. And you were asked -- his primary defense was
10 essentially an alibi defense; is that correct?

11 A. Yes.

12 Q. And as elements of that, you had witnesses who were
13 placing him at somewhere other than where the crime
14 occurred --

15 A. That's correct.

16 Q. -- and wearing different clothing?

17 A. Correct.

18 Q. Okay. And part of the theory was that he couldn't
19 have performed the crime because he wouldn't have
20 had time to get to where the crime occurred and
21 then back; is that correct?

22 A. That's correct.

23 Q. But earlier when you were asked, you said that you
24 did not map out the scene of the crime or the
25 locations where it happened or anything else like

1 that; is that correct?

2 A. Well, a lot of times I'll go on Google, and I can't
3 recall if I did it. But usually what I'll do in a
4 case that involves distances like this, is go on
5 the internet and Google the maps to get an idea and
6 picture in my mind the different locations that
7 we're dealing with. It is not unusual for me to do
8 that on most cases..

9 Q. Okay. But you didn't present any evidence like
10 that at the hearing; is that correct?

11 A. No. I did not present any evidence.

12 Q. And why was that?

13 A. I think we just had testimony as to the distances.
14 It was several miles. The distances were several
15 miles apart.

16 Q. All right. And this is going to be my last set of
17 questions. You mentioned that in regards to post-
18 Miranda silence, that he had given up his Miranda
19 rights by choosing to talk to the police; is that
20 correct?

21 A. Yes, on two occasions.

22 Q. Okay. But isn't it true that he can choose to
23 basically reinstate his Miranda rights at any time?

24 A. That's true.

25 Q. And isn't it true that if he chooses not to answer

1 questions by exercising his Miranda rights, that
2 can't be used against him?

3 A. That's true.

4 Q. Those are all the questions that I have.

5 MS. WHITE: And I do not have any other
6 questions. I do not believe, based on the cross-
7 examination, Mr. McPherson.

8 WITNESS: Okay.

9 MS. WHITE: We did have one question in
10 regards to your signing of the deposition.

11 WITNESS: You can fax it over and I'll sign it
12 or ever how ya'll want to do it.

13 MS. WHITE: Okay. We didn't know. The court
14 reporter said that we could probably have it ready
15 by next Friday. We're actually going to have Mr.
16 Young's testimony done by the next Monday, which is
17 December 5th. So if we have it, we could then fax
18 it over potentially either Friday afternoon or
19 Monday morning, and have you fax it back, signed.

20 WITNESS: Yes. Would it be all right if I
21 just fax back the signature paper, or would you
22 like me to fax back the whole thing?

23 MR. ROBERTSON: I wouldn't have a problem with
24 that.

25 MS. WHITE: I think that's fine. Both counsel

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1 has agreed that that's fine.

2 WITNESS: Okay. Just the signature page?

3 MS. WHITE: Yes. We'll just have the
4 signature page after you, you know, have the whole
5 thing sent to you and then you can fax back the
6 signature page acknowledging that you are okay with
7 that transcript.

8 WITNESS: Okay.

9 MS. WHITE: And if anyone else has anything --

10 MR. ROBERTSON: Nothing further.

11 MS. WHITE: I think we are done. Thank you,
12 Mr. McPherson.

13 (Whereupon, the deposition concluded at 3:00 p.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

Be it known that I, Cynthia L. Weathers, a Professional Court Reporter and Notary Public, did have William McPherson appear before me on November 22, 2011 at the offices of the Attorney General, Rembert C. Dennis Building, 1000 Assembly Street, Columbia, South Carolina;

That the witness was duly sworn under pains and penalties of perjury to testify the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand and seal this 27th Day of November, 2011.


Cynthia L. Weathers
Notary Public For South Carolina
My Commission Expires January 13, 2021

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ERRATA SHEET

In Re: Robert Young -vs- State of South Carolina
 Deponent: William McPherson
 Deposition Date: November 22, 2011

WMM Said testimony is correct as is and requires no changes

I desire the following corrections be made

CORRECTIONS

Please indicate changes desired and reason:
 (if necessary, attach additional sheets)

PAGE LINE

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Under penalty of perjury, the foregoing transcript of testimony in connection with the above matter is the truth and the whole truth. Sworn to by me this 29th day of November, 2011.

Will H. McPherson

Signature of Deponent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Robert Young, #326594

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2010-CP-42-5566

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 18, 2010. The Respondent made its Return on or about July 15, 2011. An evidentiary hearing into the matter was convened on December 5, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by J. Kenneth Robertson, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The sworn testimony of William McPherson, Esquire, was presented to the Court by transcript of his deposition by telephone. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2007 term of the Spartanburg County Grand Jury for assault and battery with intent to kill (2007-GS-42-0996), grand larceny, (2007-GS-42-0997), and armed robbery

(2007-GS-42-0998). He was represented by William McPherson, Esquire. On February 6, 2008, following a jury trial before the Honorable J. Derham Cole, the Applicant was convicted and sentenced to the following to thirty (30) years for armed robbery (2007-GS-42-0998) and twenty (20) years for assault and battery with intent to kill (2007-GS-42-0996), to run consecutively¹.

A timely Notice of Appeal was filed on Applicant's behalf, and the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Young, Op. No. 2010-UP-0333. (filed June 28, 2010). The Remittitur was returned July 14, 2010.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Trial Counsel, in that;
 - a. Counsel failed to make a motion to suppress the arrest warrant on the grounds that:
 - i. "The Spartanburg Magistrate judge rubber stamped the arrest warrant; and . . ."
 - ii. "The Spartanburg investigator arrest warrant did not state probable cause when brought before said magistrate judge;
 - iii. "Said warrant was deficient under the fourth and fourteenth amendment."
 - b. Counsel failed to adequately prepare and investigate the law in the petitioner's case, in particular as it relates to the search and seizure.
 - c. Counsel failed to object to the state repeatedly introducing improper character evidence into applicant's trial, in particular, the t-shirt.
 - d. Counsel failed to object to the prosecutorial misconduct regarding Applicant's post-Miranda silence.
 - e. Counsel failed to raise a third-party defense.
 - f. Counsel failed to raise the lesser included offense of car breaking.
 - g. Counsel failed to move for a motion for new trial on the grounds of inconsistent verdict.

At a previous hearing date, the Applicant and his PCR Counsel consented to raising no additional amendments or additional allegations once it was determined that trial counsel would need to be deposed by telephone prior to the evidentiary hearing and testimony of the Applicant.

¹ The jury found the Applicant not guilty of grand larceny.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Applicant, his Counsel and Respondent consented to Mr. McPherson being sworn in by court reporter via telephone for purposes of the deposition. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Failure to Move to Suppress the Arrest Warrant

The Applicant alleged that Counsel was ineffective for failing to move to suppress the arrest warrant on several grounds. At the hearing, the Applicant failed to present any evidence or testimony in support of this allegation. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to this claim and it is denied and dismissed.

Failure to Prepare and Investigate Search and Seizure Law Related to Case

The Applicant alleged that Counsel was ineffective for failing to prepare and investigate search and seizure law as it related to Applicant's case. The only testimony presented by Applicant was testimony regarding the limited time that he met with Counsel, with Applicant testifying that he met with Counsel approximately five times for a maximum of ten minutes for each meeting. However, he also testified that during his meetings with Counsel they had the opportunity to discuss charges and defenses. Counsel testified that the Applicant was in jail the entire time before trial and he met with him several times prior to trial. Counsel testified that he was able to review discovery materials with the Applicant, review the charges and possible defenses, and discuss potential witnesses. There was no testimony or evidence presented as to

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Counsel's failure to properly present arguments regarding the search and seizure of evidence from the Applicant's home.

A review of the transcript also supports the conclusion that Counsel was fully prepared and represented the Applicant properly at trial. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (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). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). This Court finds that the Applicant failed to meet his burden of proof and this claim is denied and dismissed.

Failure to Object to Improper Character Evidence

The Applicant testified that Counsel was ineffective for failing to object to improper comments made by the Solicitor regarding a t-shirt that the Applicant was wearing when he was arrested that had the statement "snitches get stitches" on it. The Applicant argued that the State referenced that phrase six times during the trial. Counsel testified that he did not think of objecting when the State mentioned the t-shirt phrase. Counsel testified that the only discussion he had with the Applicant regarding the t-shirt was the fact that there was conflicting testimony regarding whether or not the Applicant was wearing a black or white t-shirt. The Court notes

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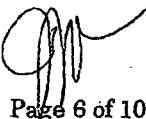
that although it may have been deficient for Counsel to fail to object to the term "snitches get stitches," the Applicant failed to demonstrate any prejudice from Counsel's failure to object. The State did not argue the term in its closing argument and there was overwhelming hard evidence (the victim's blood on Applicant's clothing, positive ID by victim, and phone records), which established Applicant's guilt. Applicant was not prejudiced by any alleged deficient representation because there was overwhelming evidence of his guilt. Where there is overwhelming evidence of guilt, trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). Even though the Court of Appeals found that the issue was not preserved for review, it was clearly a harmless error if it was error at all. Therefore, this claim is denied and dismissed.

Failure to Object to State's Improper Comments Regarding Applicant's Post-Miranda Silence

The Applicant also alleged that Counsel was ineffective for failing to object to the State's improper comments regarding the Applicant's post-Miranda silence. The Applicant failed to present any evidence or testimony in support of this allegation. This Court finds that he failed to meet his burden of proof. Therefore, this claim is denied and dismissed.

Failure to Raise Third Party Defense

The Applicant alleged that Counsel was ineffective for failing to raise a defense of third party guilt. In light of the Applicant's testimony, this Court interprets this as allegation as an allegation of Counsel failing to present a proper defense of alibi that the Applicant could not have committed the crime and someone else must have. The Applicant testified that he met with Counsel and did have the opportunity to discuss the charges and the defense of alibi and of someone else committing the crime. Applicant testified that he did not have time to get to that

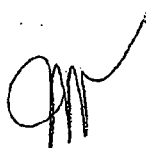

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part of town from where he was based on his alibi witnesses. Applicant testified that Counsel failed to present any testimony at trial to support Applicant's claim of the time it would have taken for Applicant to get to the location of the incident. Counsel testified that he did discuss alibi witnesses with the Applicant and tried to meet with and take statements from each witness that Applicant offered. Counsel also testified that he called several witnesses at trial with the strategy of showing that Applicant was several miles away from where the robbery and shooting happened and was wearing different clothing than the victim had identified at the time of the incident.

The record reflects that the sole defense presented by Counsel was a defense of innocence based on the unlikelihood that the Applicant could have made it to the location of the incident based on the testimony of defense witnesses. Although Applicant alleged that Counsel should have provided testimony regarding the mileage or specific time it would take for Applicant to get to the location, Applicant failed to produce any evidence at the hearing that additional testimony would have changed the outcome of trial. Again, this Court finds that based on the overwhelming evidence of Applicant's guilt that was presented by the State, there is no prejudice, even if there was deficient performance on behalf of Counsel as to the alibi defense. Where there is overwhelming evidence of guilt, trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). Furthermore, as the record reflects, the jury was charged with an instruction regarding the State's burden in disproving the Applicant's alibi defense and apparently did not find that defense credible. Therefore, this claim is denied and dismissed.



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Failure to Request the Lesser-Included Offense of Car Breaking

The Applicant also alleged that Counsel was ineffective for failing to request the lesser-included offense of car breaking. This Court finds that this allegation is without merit. The offense of breaking into a motor vehicle is not the lesser-included offense of any of the charges that the Applicant had been indicted for. Furthermore, this Court finds that the Applicant failed to offer any evidence or testimony in support of this allegation. Therefore, this claim is denied and dismissed.

Failure to Move for New Trial on Grounds of Inconsistent Verdict

The Applicant also alleged that Counsel was ineffective for failing to make a motion for a new trial based on the grounds that there was an inconsistent verdict. This Court finds that this allegation is without merit. The finding of the Applicant not guilty of grand larceny does not preclude his guilt of assault and battery with intent to kill. Furthermore, this Court finds that the Applicant failed to offer any evidence or testimony in support of this allegation. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that trial counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

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that trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

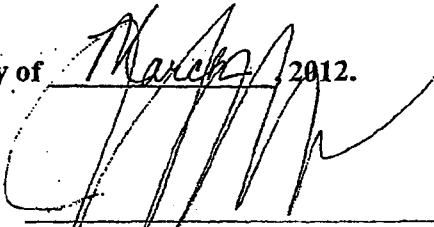
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek an appeal review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures 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.

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AND IT IS SO ORDERED this 16th day of March, 2012.



J. Mark Hayes II
Presiding Judge

Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Robert Young #326594
Association,

APPLICANT,

VS.

The State of South Carolina
RESPONDENT,

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-42-5566

AFFIDAVIT OF JAMES K ROBERTSON

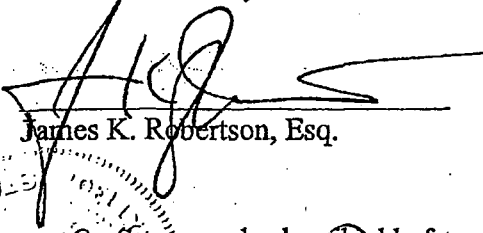
After being duly sworn, now comes the undersigned, James K. Robertson, and deposes and says the following:

1. I am an attorney practicing law in Spartanburg South Carolina with the firm Cobourn & Saleeby LLC.
2. I represented the Applicant, Robert Young, at his PCR hearing on December 5, 2011.
3. Prior to the PCR hearing on December 5, 2011, I conducted discovery on Mr. Young's behalf and corresponded with the Attorney General's Office.
4. I deposed Mr. Young's prior attorney William McPherson, Esq. via telephone at the office of the Attorney General of South Carolina.
5. On March 16, 2012 Judge Mark Hayes II signed an order of dismissal in Applicant's case.
6. This order was mailed to Sean Cobourn on March 20, 2012.
7. Mr. Cobourn is an attorney in my office, however he does not handle PCR cases.
8. Mr. Cobourn was not familiar with Mr. Young's case and the order was misplaced in an attempt to get it to the appropriate legal team.
9. On March 21, 2012 my office sent a letter to Mr. Young explaining that we did not have a signed order in his case and we were waiting to receive this order before filing his notice of appeal.
10. On April 2, 2012 I discussed the appeal process with Mr. Young and again stated that without a signed order we could not proceed with his notice of appeal.
11. I attempted to obtain a signed copy of the order of dismissal and requested same from the Spartanburg County Clerk of Court on July 10, 2012.
12. On July 13, 2012 I received a copy of the order.

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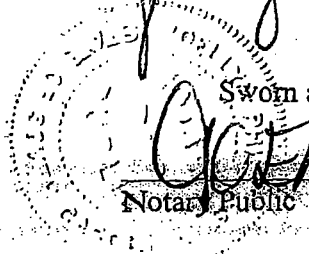
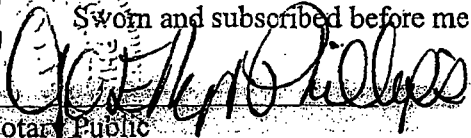
13. As I did not receive a signed order in this case I did not file a notice of appeal on behalf of Mr. Young.

Further Affiant sayeth not.


James K. Robertson, Esq.

7.18.12
Date

Sworn and subscribed before me this 18th day of July 2012.



Notary Public

My Commission expires 3-25-13.

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

ROBERT YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212591

PETITION FOR WRIT OF CERTIORARI

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Did the PCR court err in failing to find trial counsel ineffective for not objecting to the state's repeated reference to Petitioner's black T-shirt with the slogan "snitches get stitches" which was improper character evidence and prejudicial to Petitioner when the victim made no reference to the slogan?

STATEMENT

In February 2007, the Spartanburg County Grand Jury indicted Robert Allen Young on the charges of armed robbery (AR), assault and battery with intent to kill (ABWIK), and grand larceny. On February 4-6, 2008, Young proceeded to trial before the Honorable J. Derham Cole and a jury. Young was represented by William H. McPherson, and the state was represented by Derrick B. Bulsa and Lauren Barnwell. The jury found Young not guilty of the grand larceny, and guilty of AR and ABWIK. App. 382, ll. 18 – App. 383, ll. 11. Judge Cole sentenced Young to thirty years on the AR, and twenty years on the ABWIK to run consecutively. App. 385, ll. 21 – App. 386, ll. 9. Young's attorney filed a notice of appeal. The appeal was perfected by the Office of Appellate defense. The South Carolina Court of Appeals affirmed Young's convictions and sentences on June 28, 2010. State v. Young, Op. No. 2010-UP-0333 (Ct. App. filed June 28, 2010).

On October 18, 2010, Young filed an application for post-conviction relief (PCR). The state filed a return on July 15, 2011. On September 20, 2011, the Honorable J. Mark Hayes, II, issued an Order of Continuance for the evidentiary hearing in order for the State and Petitioner to conduct a telephone deposition of trial counsel, William McPherson, because he then resided in Texas. App. App. 468, (Order of Continuance). Young was represented James K. Robertson, and the state was represented by Suzanne White, Assistant Attorney General. On November 22, 2011, the telephone deposition of William McPherson, was conducted by the state's attorney and Petitioner's attorney. App. 429. On December 5, 2011, an evidentiary hearing was held before the Honorable J. Mark Hayes, II. Young was again represented by James Robertson, and the state was represented by Suzanne White. On March 16, 2012, Judge Hayes issued an order denying Young's PCR application and dismissing it with prejudice. App. 455. Young's attorney filed a notice of appeal. This petition follows.

ARGUMENT

The PCR court erred in failing to find trial counsel ineffective for not objecting to the state's repeated reference to Petitioner's black T-shirt with the slogan "snitches get stitches" which was improper character evidence and prejudicial to Petitioner when the victim made no reference to the slogan.

Young was alleged to have shot a local cab driver twice in the back of his head while robbing him late on the night of November 1st, 2006. The victim, a Nigerian named Ijioma, testified that Young was a regular customer and that he had picked him up several times in the past year. App. 114, ll. 2-4. He identified Young as the shooter. App. 126, ll. 24 – App. 127, ll. 1. Young called alibi witnesses on his behalf during the trial. App. 314, ll. 10 – App. 333, ll. 7. Ijioma also picked Young out of a lineup. App. 206, ll. 13- App. 207, ll. 3. The State established that Ijioma's blood was found on Young's clothing. App. 291, ll. 20-22. Young did not testify on his own behalf.

At every opportunity, the State elicited from witnesses the fact that Young owned a shirt that stated "Snitches get stitches." During pretrial, Officer Bohon testified to the shirt. App. 24, ll. 11-14. Before the jury, he testified that when he first interviewed Young on the day *after* the crime:

A: He was wearing black clothing, black cloth pants. He was wearing a black shirt that said "snitches get stitches."

App. 202, ll. 19-21.

Officer Gary testified, regarding the search of Young's house:

A: Once the consent to search was obtained, Mr. Young was transported to the sheriff's office by Detective Bohon. And Detective Bryant and I proceeded to search the house.

Q: What were you looking for?

A: Specifically, we were looking for clothing that was described by Detective Bohon that he had seen Mr. Young wearing, black pants, shirt that had "snitches get stitches", a firearm.

App. 240, ll. 8-15.

Then,

And in there was the shirt that had "snitches get stitches" printed on it, several pairs of black pants."

App. 241, ll. 6-8.

The State even moved a picture of the shirt into evidence, even though the victim never testified that his shooter was wearing a t-shirt that said anything at all on it. App. 242, ll. 9-12.

The State continued their character assassination:

Q: Was he wearing that shirt that said "snitches get stitches"?

App. 324, ll. 2-3.

Q: Do you know he has a shirt that says "snitches get stitches"?

A: No. I didn't know nothing about that.

App. 324, ll. 18-20.

And,

Q: Okay. Do you know him to have a "snitches wear stitches" t-shirt, a black t-shirt with that phrase on it?

App. 336, ll. 1-2.

Trial counsel did not object once to the admission of these inappropriate comments. App.

442, ll. 1 – App. ll. 15.

At his PCR hearing, Young testified that his trial attorney was ineffective for not objecting to the state's reference to the t-shirt with the slogan "snitches get stitches" because it was improper character evidence and hurt Young's defense. Young explained that he did not testify because his prior record would come in if he did, and he wanted to keep that out. App. 416, ll. 12 – App. 417, ll. 7..

PCR counsel argued to the court that the state made reference to the slogan at least six times before the jury. Trial counsel did not object once. PCR counsel explained that this slogan was never mentioned by the victim, and was collected when the police searched Young's residence. App. 417, ll. 8 – 18.

Young believed the slogan made a "great, great difference" in his case. He believed the slogan affected the jury's opinion of him. App. 417, ll. 19 – App. 418, ll. 5.

Trial counsel testified via telephone deposition because he was then residing in Texas. App. App. 429; App. 432, ll. 1 – 22. Trial counsel admitted that he did not think about objecting to the state's comments about the t-shirt with the slogan. He did not see it as something he needed to object to. App. 441, ll. 18 – App. 444, ll. 4. Trial counsel said the main defense at trial was an alibi defense as he had witnesses who placed Young somewhere other than the crime. However, he did not present any evidence at trial concerning distances and time. App. 449, ll. 9 – App. 450, ll. 24.

The PCR judge ruled that regarding ineffective assistance of counsel, he found Young's testimony to not be credible, and found trial counsel's testimony to be credible. App. 462. The PCR judge ruled that Young failed to show any prejudice from trial counsel's failure to object to the slogan on the t-shirt being admitted. The judge wrote that it was clearly a harmless error if any error at all. The judge ruled, citing Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994), that where there was overwhelming evidence of guilt, trial counsel's deficient representation will not be prejudicial.

The Court of Appeals held that this issue, which was raised on direct appeal, was not preserved for the Court of Appeals review. The Court cited the case of State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003), which held that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.

Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland v. Washington, *supra*; Butler v. State, *supra*.

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. The applicant must prove that counsel's performance was deficient and fell below reasonable professional norms; and there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 117-118, 386 S.E.2d 624 (1989).

The State's constant reference to the slogan present on the t-shirt was improper character evidence and was elicited solely to paint a picture of Young as a thug. He was denied his rights to due process because it introduced an arbitrary factor into his trial and was highly prejudicial. See State v. Hawkins, 292 S.C. 418, 357 S.E.2d 10 (1987). And see Dawson v. Delaware, 503 U.S. 159, 112 S.Ct. 1093 (1992) (Defendant's membership in alleged white racist prison gang was not relevant to sentencing proceeding where the evidence was not tied in any way to the murder of the victim, who was white, and there was no showing that the organization committed any unlawful or violent acts or even endorsed those acts); United States v. Roark, 924 F.2d 1426, 1432-34 (8th Cir.

1991) (The 8th Circuit prohibits the use of gang evidence that does not relate to the guilt or innocence of a defendant). *See also* Murphy v. Florida, 421 U.S. 794, 95 S.Ct. 2031 (1975).

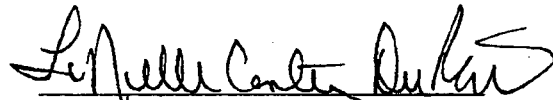
Rule 404 (a), SCRE, provides that evidence of a person's character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion. The two exceptions are (1) evidence of a pertinent trait of character offered by an accused or by the prosecution to rebut the same; or (2) evidence of a pertinent trait of character of the victim. Neither of these two exceptions apply to young's case.

Trial counsel was ineffective for not objecting to the numerous references to the t-shirt with the slogan "snitches get stitches" because it was prejudicial to Young. The slogan gave the impression that he was revengeful, or could be in reference to gang activity. This was prejudicial to Young.

CONCLUSION

Based on the above, certiorari should be granted, and the convictions and sentences reversed, and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'LaNelle Cantey DuRant', written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 4th day of March, 2013.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

ROBERT YOUNG,

PETITIONER,

V.

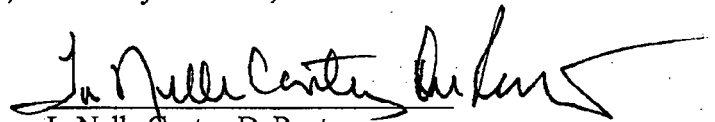
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212591

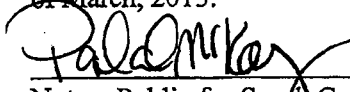
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Suzanne H. White, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of March, 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 4th day
of March, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.



Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 4, 2013

Suzanne H. White, Esquire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Robert Young v. State of South Carolina

Dear Suzanne:

Enclosed are two copies of the petition for writ of certiorari and the appendix in the above case that I filed today with the S.C. Supreme Court.

If you have any questions concerning this matter, please contact me.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/pcm

Enclosures

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 4, 2013

Mr. Robert Young #326594
Lieber Correctional Institution
PO Box 205
Ridgeville, SC 29472

Re: Your appeal

Dear Mr. Young:

Enclosed please find a copy of the petition for writ of certiorari and a copy of the appendix in your case that I filed today with the South Carolina Supreme Court on your behalf.

Should you have any questions concerning this matter, please contact me.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/pcm

Enclosures

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2012-212591

Robert Young.....Petitioner,

v.

State of South Carolina, ...Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General
SC Bar #78225

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did the PCR Court properly hold that Counsel was not ineffective for failing to object to the State's references to Petitioner's T-shirt with the slogan "snitches get stitches", when Petitioner failed to establish deficient performance by Counsel or any resulting prejudice?

STATEMENT OF THE CASE

The Petitioner is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Petitioner at the February 2007 term of General Sessions for assault and battery with intent to kill (2007-GS-42-0996), grand larceny (2007-GS-42-0997), and armed robbery (2007-GS-42-0998). William McPherson, Esquire, represented the Petitioner. On February 6, 2008, a jury convicted the Petitioner of assault and battery with intent to kill and armed robbery.¹ The Honorable J. Derham Cole sentenced the Petitioner to confinement for thirty (30) years for armed robbery and a consecutive twenty (20) years for assault and battery with intent to kill.

A timely Notice of Appeal was filed on Petitioner's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Petitioner's conviction and sentence. State v. Young, Op. No. 2010-UP-0333 (S.C. Ct. App. June 28, 2010). The Remittitur was issued on July 14, 2010.

The Petitioner subsequently filed a PCR application on October 18, 2010. An evidentiary hearing into the matter was convened on December 5, 2011, at the Spartanburg County Courthouse. The Petitioner was present at the hearing and was represented by J. Kenneth Robertson, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. Following the hearing, The Honorable J. Mark Hayes, II denied the PCR application by written Order dated March 16, 2012.

A timely Notice of Appeal was filed on Petitioner's behalf and a Petition for Writ of Certiorari was submitted. This Return to the Petition for Writ of Certiorari follows.

¹ The jury found Petitioner not guilty of grand larceny.

STANDARD OF REVIEW

The proper standard of review of a post conviction relief evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

- I. **The PCR Court properly held that Counsel was not ineffective for failing to object to the State's references to Petitioner's T-shirt with the slogan “snitches get stitches”, when Petitioner failed to establish deficient performance by Counsel or any resulting prejudice.**

Petitioner was charged with assault and battery with intent to kill (ABWIK) and armed robbery, following an incident in which Petitioner shot a local cab driver twice in the back of his head while attempting to rob him. The State charged Petitioner after the cab driver identified Petitioner through a photo lineup and based upon Petitioner's regular use of the same cab driver over the prior year. The Petitioner alleged that Counsel was ineffective for failing to object to the State's repeated reference to Petitioner's black T-shirt with the slogan “snitches get stitches” which was improper character evidence and prejudicial to Petitioner.

In a post-conviction relief proceeding, the Petitioner bears the burden of proving the allegations in their application. 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 Petitioner 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, 80 L.Ed.2d 674. The Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of Counsel. First, the Petitioner 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, 386 S.E.2d at 625, (citing Strickland). Second, Counsel's deficient performance must have prejudiced the Petitioner such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Petitioner testified he met with Counsel about five times before the trial. (App. p. 414). Petitioner testified he understood the alibi defense Counsel proposed to use at trial, and provided numerous witnesses that would testify on his behalf. (App. pp. 414-15). Also, Petitioner testified he did not take the witness stand because his prior record would have reflected poorly on his character in front of the jury. (App. p. 416). However, Petitioner testified he thought the six instances of stating he was wearing a shirt with "snitches get stitches" made a great difference. (App. p. 417). Petitioner also stated the statements about his shirt came from detectives that were describing his clothes when they came to interview him. (App. p. 424).

Petitioner admitted to calling the victim, cab driver, on the night of the incident. (App. p. 419). Petitioner testified the victim identified him as the shooter from a six man photo lineup. (App. p. 421-22). Furthermore, Petitioner testified the police found clothing at his home, which

tested positive for the victim's blood. (App. p. 422). Petitioner testified Counsel tried to suppress his statements but was denied. (App. p. 423). Petitioner testified Counsel presented several witnesses on his behalf, including ones Petitioner specifically asked for throughout the trial. (App. p. 423).

Counsel was unable to attend the PCR hearing since he now resides in Texas. The sworn testimony of Counsel was presented to the Court by transcript of his deposition by telephone. Counsel testified he has been practicing law for about forty years, and for the last twenty years his work has been 99 percent criminal. (App. p. 423). Counsel testified he advised Petitioner to take a plea offer presented a week before trial. (App. p. 437). Counsel based his recommendation on the overwhelming weight of evidence against Petitioner. (App. p. 438). Counsel testified the State had the victim to testify, the victim's blood on Petitioner's clothes, and phone records showing a call from the Petitioner's home to the victim's cell phone. (App. p. 438).

Counsel testified he did not think the statement on the T-shirt necessitated an objection. (App. p. 443). Counsel testified his main concern was the color of the shirt, since his alibi witnesses stated Petitioner was in a white shirt, and the shirt discussed was black. (App. p. 443). Counsel testified the distinguishing color was more of a factor for the trial than the statement "snitches get stiches". (App. p. 443-44).

Respondent submits that the PCR court was correct in finding that Petitioner was not prejudiced by any alleged deficient representation because there was overwhelming evidence of the Petitioner's guilt. (App. p. 460-1). Where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v.

State, 305 S.C. 365, 409 S.E.2d 344 (1991). In Ford, trial counsel failed to request an alibi instruction and his representation was found deficient as a result. However, the evidence of the applicant's guilt in Ford was overwhelming; therefore, this Court held that the applicant failed to prove the second prong of Strickland, which requires that an Applicant show prejudice by the deficient representation.

Respondent submits that the Petitioner failed to meet his required burden of proof and probative evidence exists to support the court's denial of his post-conviction relief application.

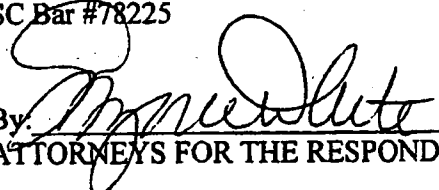
CONCLUSION

For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

SUZANNE H. WHITE
Assistant Attorney General
SC Bar #78225

By: 
ATTORNEYS FOR THE RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

July 22, 2013

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO SPARTANBURG COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes, II, Circuit Court Judge

Circuit Case No.: 2010-CP-42-5566
Appellate Case No.: 2012-212591

ROBERT YOUNG,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

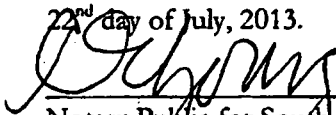
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to the Petition for Writ of Certiorari was served upon Petitioner by depositing the same in the United States mail, postage prepaid, addressed to his attorney of record, LaNelle C. DuRant, Esquire, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina, 29211, on this the 22nd day of July, 2013.


Anne A. Mueller
Legal Assistant for Respondent

SWORN to before me this
22nd day of July, 2013.

 (L.S.)
Notary Public for South Carolina.
My Commission Expires: 10/28/2014



ALAN WILSON
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737
PCR FACSIMILE: 803.734.4113

July 22, 2013

Via Hand Delivery

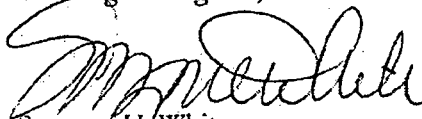
Honorable Daniel E. Shearouse
Clerk of the Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

**RE: Robert Young v. State of South Carolina
Circuit Court Case No: 2010-CP-42-5566
Appellate Case No.: 2012-212591**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter I am serving opposing counsel with this return today.

With highest regards,


Suzanne H. White
Assistant Attorney General

SHW/aam
Enclosures

cc: LaNelle C. DuRant, Esquire (w/enclosure)

RECEIVED

JUL 23 2013

OFFICE OF
APPELLATE COUNSEL

The South Carolina Court of Appeals

Robert Young, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212591

ORDER

This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief. The petition for a writ of certiorari is denied.

H. B. [Signature]

J.

John O. [Signature]

J.

Stephanie P. McDonald

J.

Columbia, South Carolina

cc: Suzanne Hollifield White, Esquire
LaNelle Cantey DuRant, Esquire
Alan McCrory Wilson, Esquire

FILED

12-12-14 *df*

containing a DNA profile from some of the cuttings from the clothing includes a second profile, or a mixture. The defendant suggests in his application that if this person is identified, then he would be a suspect. It is important to remain vigilant that the cuttings are from the defendant's clothing. The victim's blood on the

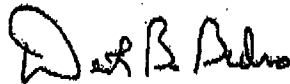
**CLERK OF COURT
SPARTANBURG COUNTY**

defendant's clothing could have been easily mixed with whomever the defendant had come in contact with while wearing the clothing. It is not logical that the second person, if identifiable now, was in any way connected to this crime just because that person's DNA is also on the defendant.

The defense called alibi witnesses at trial, and the jury properly considered their testimony to contrast the victim testimony and physical evidence. His witnesses were cross-examined and their testimony was correctly refuted. The defendant was caught in lies told to police about the cab. The victim pointed the defendant out in court as his attacker. The victim's blood was found on clothing worn by the defendant. The defendant's story about how the blood got on him was not found to be credible by the jury. The evidence was overwhelming as to the identity of the defendant at the perpetration of this crime.

Requiring to consider additional testing of DNA would re-open the pain and suffering of the victim that this crime inflicted. The defense was properly given his day in court as well as the post-trial process. The State respectfully asks the court to rule on the matter without a hearing as allowed under 17-28-50(C), Code of Laws of South Carolina 1976, as amended, and summarily dismiss the Application.

Respectfully submitted,



Derrick B. Bulsa
Deputy Solicitor

June 18

CLERK OF COURT
SPARTANBURG COUNTY
2016 JUN -1 AM 10:23
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) FOR THE SEVENTH JUDICIAL CIRCUIT

STATE,)

v.)

Robert Young,)

Defendant.)

Order to Dismiss
the Defendant's Application
for Forensic DNA Testing

2007-GS-42-0996; 0998

This matter came before the Court pursuant to the defendant's Application for Forensic DNA Testing pursuant to 17-28-10, et seq., Code of Laws of South Carolina, 1976, as amended, dated May 25, 2016. The defendant was convicted at trial for Assault and Battery with Intent to Kill and Armed Robbery in February 2008. The State filed a timely response to the application as directed by 17-28-50(B) on June 1, 2016.

In considering the defendant's application and the State's response pursuant to 17-28-50(C), the Court finds that the defendant is not entitled to additional DNA testing. The Court further finds no further purpose would be served by any further proceedings.

The Court bases its decision on the following reasons:

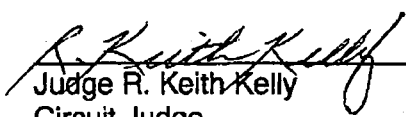
1. that the victim identified the defendant as his attacker to the police and jury;
2. that the items sought to be tested by the defendant were tested prior to his trial;
3. that the results of the DNA testing were presented at the trial;
4. that the victim's blood was found to be on the defendant's clothing by the DNA testing;
5. that the defendant admitted to the police that the victim's blood was on his clothing;
6. that the defendant's story as to how the blood came to be on his clothing was presented to the jury;
7. that the defendant claimed to have no prior contact with the victim's cab company, but evidence was presented to the jury to the contrary;
8. that the defendant was allowed to present alibi witnesses at trial;
9. that after considering all of the evidence in the case, the jury found the defendant guilty beyond a reasonable doubt, and

RRK

10. that the trial and his attorney's effectiveness were properly reviewed by the trial appellate process and post-conviction relief process;

IT IS THEREFORE ORDERED that the defendant's Application for Forensic DNA Testing is dismissed under 17-28-50(C), Code of Laws of South Carolina, 1976, as amended.

IT IS SO ORDERED.



Judge R. Keith Kelly
Circuit Judge

June 9, 2016

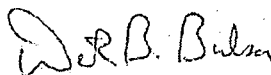
Spartanburg, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
STATE,)	
v.)	State's Response to Defendant's Application
Robert Young,)	for Forensic DNA Testing
Defendant.)	2007-GS-42-998

The State responds to defendant's Application for Forensic DNA Testing pursuant to 17-28-50(B), Code of Laws of South Carolina, 1976, as amended. The State respectfully asks that the Court deny the application. The Defendant convicted of Armed Robbery and Assault and Battery with Intent to Kill on February 6, 2008. He received an aggregate sentence of fifty (50) years. On May 26, 2017, the Defendant filed his application for testing. Pursuant to 17-28-30(B), the application must be filed no later than seven years from the date of sentencing. The Defendant's application is therefore inappropriate due to not being timely filed.

A hearing to consider testing of DNA is not necessary as the Defendant has not timely filed his application. The State respectfully asks the court to rule on this matter without a hearing as allowed under 17-28-50(C), Code of Laws of South Carolina, 1976, as amended, and summarily dismiss the Application.

Respectfully submitted,



Derrick B. Bulsa
Deputy Solicitor

May 29, 2017

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 MAY 30 AM 9:22
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

State of South Carolina)

Plaintiff,)

v.)

Robert A. Young, #326594)

Defendant,)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT
INDICTMENT NOS. 2007-GS-42-996, 998**ORDER DENYING SENTENCE
MODIFICATION AND DENYING DNA
TESTING****RECEIVED**

JUL 26 2017

SC Court of Appeals

This matter came before the court on defendant's "Notice of Sentence Modification" and Application for DNA Testing. The State responded to the present matter claiming that the Application for DNA Testing was not timely. The State also brought to the court's attention that the Honorable Keith Kelly signed an order on June 9, 2016, dismissing a prior Application for DNA Testing filed by Defendant for the same criminal offenses.

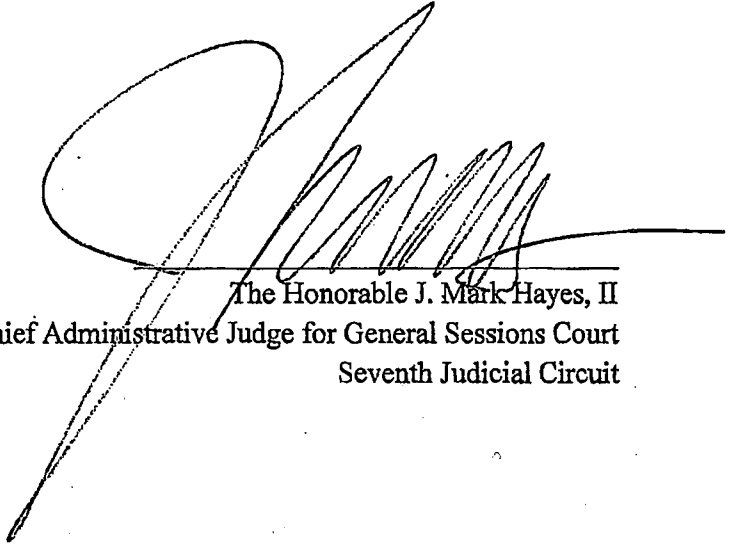
After reviewing the present "Notice of Sentence Modification", the Application for DNA Testing and the State's reply to those documents, the court denies the Defendant the relief he requests. By reference, this court incorporates the prior order of Judge Kelly dated June 9, 2016. The court also notes that much of the allegations contained in his request for sentence modification are allegations related to ineffective assistance of prior trial, appellate and PCR counsels. Such allegations, even if true, do not constitute a bases for relief through a sentence modification request. The remaining allegations involve Defendant's completion of certain educational and rehabilitative programs at the Department of Corrections. He then relies upon a "proposed bill" as establishing his right to a modification of his sentence. The court researched the "proposed bill"

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 JUL -9 AM 11:41
M. K. P. LACELLE

and cannot find that the proposed legislation was enacted by the General Assembly. The remaining parts of his sentence modification involve issue which should have been addressed through a direct appeal of earlier cases.

Therefore, finding no basis for the requested modification of his sentence, the request is denied.

IT IS SO ORDERED.



The Honorable J. Mark Hayes, II
Chief Administrative Judge for General Sessions Court
Seventh Judicial Circuit

July 6, 2017
Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 JUL -6 AM 11:43
M. HOPE BLACKLEY

1. SENTENCE MADE

2. REPORT INDEXED

3. CARD FILED

4. INDEXED

Spartanburg County Sheriff's Office

6. CHECKED SIGNATURE

7. ASSESSMENT AND

FINE CARD MADE

9. TRAFFIC VIOLATIONS COPY

WITNESSES

Computer

Computer

07-GS-42-0998

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 26 2007

TERM

ARREST WARRANT NUMBER

K163985

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 2/22/07

VERDICT

Guilty

Foreperson of Petit Jury

Date: 2/4/08

THE STATE
vs.

Robert Young

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class: FEL/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2007 FEB 27 PM 4:46

MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB. 22 2007

At a Court of General Sessions, convened on _____ the Grand
Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That Robert Young did in Spartanburg County on or about, November 2, 2006, committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of Dick Ijiomoa by means of force, violence, and/or intimidation, goods or monies of Dick Ijiomoa to wit: a cellular phone and cash, with the intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sarah Beth W. Adams
ASSISTANT SOLICITOR

WITNESSES BY
1. SENTENCE MADE
2. REPORT ENTERED
3. CARD PULLED
Spartanburg County Sheriff's Office
4. CHECKED WARRANTS
5. CHECKED STATE PRISON
6. ASS. JUDGMENT AND
Spartanburg County Sheriff's Office
7. TRAFFIC VIOLATIONS CODE

ARREST WARRANT NUMBER

K163982

ACTION OF GRAND JURY

True Bill
Foreperson of Grand Jury
Date: 2/22/07

VERDICT

Guilty

Kenneth D. Price
Foreperson of Petit Jury
Date: 2/14/08

DOCKET NO. 07-GS-42-096

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 26 2007

TERM

THE STATE
vs.

Robert Young

Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL

SC Code: 16-3-620
CDR Code: 014
Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2007 FEB 27 PM 4:46
HARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on FEB 27 2007, the
Grand Jurors of Spartanburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Robert Young did in Spartanburg County on or about November 2, 2006,
commit an unlawful act of violent injury upon the victim, Dick Ijioma, by shooting the
victim several times with the intent to kill him, all in violation of §16-03-620, *THE CODE
OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


ASSISTANT SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Spartanburg
 STATE OF VS.
Robert Allen Young
 AKA:
 Race: 15 Sex: M Age: 24
 SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 01-GS-42-0996
 AWW#: 16163982
 Date of Offense: NOV 2, 2006
 S.C. Code §: 16-3-620
 CDR Code #: 014

RECEIVED

SENTENCE SHEET

JUL 26 2017

SC Court of Appeals

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault & battery with intent to killin violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 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: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§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	\$ <u>25.00</u>
§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)	\$	\$ <u>3.75</u>
TOTAL		\$ <u>198.75</u>

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 FundOther: ☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

KG McKinney, OC

Clerk of Court/ Deputy Clerk

Court Reporter: Linda Moffitt

PRESIDING JUDGE

Judge Code: 2Sentence Date: February 6, 2008

/217 (9/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

STATE OF SOUTH CAROLINA
 COUNTY OF Spartanburg
 STATE Robert Young
 AKA: _____
 Race: B Sex: M Age: 24
 DOB: -82 SS#: _____
 Address: Locust St
 City, State, Zip: Spartanburg, S.C.
 DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 07-GS-42-0998
 A/W#: K167985
 Date of Offense: 11-2-06
 S.C. Code §: 16-11-330(A)
 CDR Code #: 0139

SENTENCE SHEET

JUL 26 2017

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS **SC Court of Appeals**
 TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ 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: R.B. Blevins Robert Young W.D. H. H.

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 36 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: ☐ Heard, ☐ Waived, ☐ 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)	\$
TOTAL	\$128.75

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.

K.G. McKinney, DC
 Clerk of Court/ Deputy Clerk
 Court Reporter: Linda Moffitt

PRESIDING JUDGE

Judge Code:

Sentence Date:

William H. H.
2017
February 6, 2008