

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED

JUN 25 2018

S.C. SUPREME COURT

KENDEAL JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002556

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT
2009-GS-42-5465
2010-GS-42-2629

STATE OF SOUTH CAROLINA)

VS.)

CHAVIS PULLEN)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

VS.)

KENDEAL JONES)

MARCH 9, 2011
SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, II

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

DERRICK BULSA, ASSISTANT SOLICITOR
SPARTANBURG, SOUTH CAROLINA

ATTORNEY FOR THE STATE

ROBERT HALL, ESQUIRE
SPARTANBURG, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT, CHAVIS PULLEN

MAX SINGLETON, ESQUIRE
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ATTORNEY FOR THE DEFENDANT, KENDEAL JONES

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS	DIRECT	CROSS	CROSS	RE-DIRECT
MIKE WEST				
BY MR. BULSA	38			
BY MR. SINGLETON		43		
BRENDALL MATHIS				
BY MR. BULSA	45			
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BY MR. HALL		140		
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SONJA GIST				
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BY MR. HALL		164		
BY MR. SINGLETON			166	
TERRI CARTER				
BY MR. BULSA	167			
BY MR. HALL		174		
BY MR. SINGLETON			177	
JOHN BURGESS				
BY MR. BULSA	180			
BY MR. HALL		193		
BY MR. SINGLETON			202	

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV
S-1	PHOTO	4	
S-2	PHOTO	4	
S-3	PHOTO	4	
S-4	PHOTO	4	
S-5	PHOTO	4	52
S-6	PHOTO	4	52
S-7	PHOTO	4	49
S-8	PHOTO	4	49
S-9	PHOTO	4	49
S-10	PHOTO	4	48
S-11	PHOTO	4	48
S-12	DIAGRAM	4	51
S-13	CD		41
S-14	CD		41

1 (DOCUMENTS MARKED FOR I.D. AS STATE'S EXHIBIT
2 NUMBERS 1 THROUGH 12.)

3 THE COURT - GOOD MORNING, LADIES AND GENTLEMEN.
4 LADIES AND GENTLEMEN, WE ARE NOW GOING TO BEGIN THE TRIAL
5 OF THE CASE OF THE STATE OF SOUTH CAROLINA VERSUS CHAVIS
6 PULLEN AND ALSO THE STATE OF SOUTH CAROLINA VERSUS KENDEAL
7 JONES. NOW, BEFORE WE MOVE INTO THE JURY SELECTION
8 PROCESS, THE CLERK OF COURT NEEDS TO SWEAR YOU IN AND THEN
9 I'LL HAVE SOME QUESTIONS FOR YOU. SO IF YOU WOULD, PLEASE
10 STAND AND RAISE YOUR RIGHT HAND AND REPEAT OUT LOUD WHEN
11 THE CLERK ASK YOU TO DO SO.

12 (WHEREUPON THE JURY PANEL IS DULY SWORN BY THE
13 DEPUTY CLERK)

14 THE COURT - LADIES AND GENTLEMEN, AGAIN WE'RE
15 NOW GOING TO BEGIN THE SELECTION PROCESS IN THIS TRIAL.
16 AS I INFORMED YOU THIS IS ACTUALLY --- THIS CASE INVOLVES
17 BOTH OF THE DEFENDANTS, CHAVIS PULLEN AND ALSO KENDEAL O.
18 JONES. NOW, MR. PULLEN IS CHARGED BY INDICTMENT OF THREE
19 COUNTS OF ARMED ROBBERY, THAT ON JUNE THE 11TH, 2009 THAT
20 HE DID COMMIT AN ARMED ROBBERY AGAINST A PERSON BY THE
21 NAME TERRANCE MOATES, ALSO AGAINST RHASHEED (SIC)
22 MIDDLETON AND ALSO AGAINST NELSON MIDDLETON. MR. PULLEN
23 IS ALSO CHARGED WITH ASSAULT AND BATTERY OF A HIGH AND
24 AGGRAVATED NATURE, THAT HE COMMITTED --- ALLEGEDLY
25 COMMITTED ON JUNE THE 11TH, 2009 AGAINST A TERRANCE

5

1 MOATES, AND MR. PULLEN IS ALSO CHARGED WITH BURGLARY IN
2 THE FIRST DEGREE WHICH IS ALLEGED TO HAVE OCCURRED ON JUNE
3 THE 11TH, 2009 WHERE HE ENTERED THE DWELLING OF RHASHEED
4 (SIC) MIDDLETON LOCATED AT 507 SOUTH DANIEL MORGAN AVENUE
5 HERE IN SPARTANBURG. MR. KENDEAL O. JONES IS CHARGED WITH
6 BURGLARY IN THE FIRST DEGREE, ALLEGEDLY THAT HE ENTERED
7 THE DWELLING OF RHASHEED (SIC) MIDDLETON LOCATED AT 507
8 SOUTH DANIEL MORGAN AVENUE ON JUNE THE 11TH, 2009, AND MR.
9 KENDEAL JONES IS ALSO --- HAS THREE CHARGES OF ARMED
10 ROBBERY, AGAIN, ALLEGING THAT ON JUNE THE 11TH, 2009 HE
11 DID COMMIT AN ARMED ROBBERY AGAINST A TERRANCE MOATES,
12 ALSO AGAINST A RHASHEED (SIC) MIDDLETON AND ALSO AGAINST
13 A NELSON MIDDLETON. NOW, LADIES AND GENTLEMEN, AT THIS
14 TIME I'M GOING TO ASK IF MR. KENDEAL JONES WILL PLEASE
15 STAND AND FACE THE LADIES AND GENTLEMEN OF THE JURY AND
16 ALSO IF MR. CHAVIS PULLEN WILL ALSO STAND AND FACE THE
17 LADIES AND GENTLEMEN OF THE JURY.

18 (DEFENDANTS STAND)

19 THE COURT - LADIES AND GENTLEMEN OF THE JURY, IS
20 THERE ANYBODY IN THE JURY PANEL WHO IS RELATED BY BLOOD OR
21 MARRIAGE TO EITHER OF THESE GENTLEMAN OR DO YOU HAVE A
22 CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH EITHER OF THESE
23 GENTLEMEN? IF SO, I NEED FOR YOU TO PLEASE STAND AT THIS
24 TIME.

25 (NO RESPONSE)

1 THE COURT - ALL RIGHT, THANK YOU VERY MUCH,
2 GENTLEMEN. YOU MAY BE SEATED.

3 LADIES AND GENTLEMEN, I AM NOW GOING TO READ A
4 LIST OF POTENTIAL WITNESSES WHO MAY BE CALLED AS PART OF
5 THIS CASE. I NEED FOR YOU TO PLEASE LISTEN TO ALL OF
6 THESE NAMES. AFTER I CALL ALL OF THESE NAMES, I'M GOING
7 TO ASK THAT YOU PLEASE STAND IF YOU KNOW ANY OF THESE
8 INDIVIDUALS PERSONALLY OR IF YOU HAVE A CLOSE PERSONAL OR
9 SOCIAL RELATIONSHIP WITH ANY OF THESE INDIVIDUALS OR IF
10 YOU'RE RELATED BY BLOOD OR MARRIAGE TO THEM. I WILL ALSO
11 ASK IF THESE INDIVIDUALS ARE PRESENT IN THE COURTROOM WHEN
12 I CALL YOUR NAME, I'M GOING TO ASK IF YOU WOULD TO PLEASE
13 STAND AND FACE THE LADIES AND GENTLEMEN OF THE JURY AS
14 WELL. WE HAVE JOHN BURGESS, SPARTANBURG PUBLIC SAFETY
15 DEPARTMENT. WE HAVE TERRI CARTER. WE HAVE SONJA GIST.
16 WE HAVE JULIE JAMES. WE HAVE MATHIS BRENDALL. WE HAVE
17 NELSON MIDDLETON. WE HAVE RHASHEED (SIC) MIDDLETON. WE
18 HAVE TERRANCE MOATES. WE HAVE JAQUAN RICE, AND MIKE WEST
19 OF SPARTANBURG COUNTY COMMUNICATIONS. LADIES AND
20 GENTLEMEN OF THE JURY PANEL, ARE ANY OF YOU RELATED BY
21 BLOOD OR MARRIAGE TO ANY OF THESE INDIVIDUALS OR DO YOU
22 HAVE A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH ANY OF
23 THESE INDIVIDUALS? IF YOU DO, PLEASE STAND AT THIS TIME.

24 (NO RESPONSE)

25 THE COURT - ALL RIGHT. I'M NOW GOING TO ASK THE

1 ATTORNEYS WHO WILL BE PARTICIPATING IN THE TRIAL OF THIS
2 CASE TO PLEASE STAND AND INTRODUCE THEMSELVES TO YOU.
3 PLEASE LISTEN TO THEM, LADIES AND GENTLEMEN.

4 MR. BULSA - I GUESS I'LL GO FIRST. MY NAME'S
5 DERRICK BULSA. I WORK FOR THE SPARTANBURG SOLICITOR'S
6 OFFICE.

7 MR. HALL - I'M ROBERT HALL. I REPRESENT MR.
8 CHAVIS PULLEN; STEVE DENTON'S WHO'S AN ATTORNEY HERE WILL
9 BE WITH US IN THIS TRIAL.

10 MR. SINGLETON - MY NAME'S MAX SINGLETON. I
11 REPRESENT KENDEAL JONES WHO'S THERE AT THE END OF THE
12 TABLE.

13 THE COURT - THANK YOU, GENTLEMEN. HAS ANY
14 MEMBER OF THE JURY PANEL BEEN REPRESENTED BY ANY OF THE
15 ATTORNEYS THAT ARE INVOLVED IN THIS CASE OR DO YOU OR ARE
16 YOU RELATED BY BLOOD OR MARRIAGE TO THEM OR DO YOU HAVE A
17 CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH ANY OF THE
18 ATTORNEYS? IF SO, PLEASE STAND AT THIS TIME.

19 (JUROR RESPONDS)

20 THE COURT - YES, SIR, YOUR JUROR NUMBER?

21 JUROR - 226.

22 THE COURT - YOU'RE MR. ROACH?

23 JUROR - THAT'S CORRECT.

24 THE COURT - AND WHO IS IT THAT YOU KNOW, SIR?

25 JUROR - MR. BULSA.

1 THE COURT - AND THE FACT THAT YOU KNOW MR. BULSA
2 WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO GIVE THE
3 STATE AND THE DEFENSE A FAIR AND IMPARTIAL TRIAL IN THE
4 EVENT YOU'RE SELECTED AS A MEMBER OF THIS JURY?

5 JUROR - NO, SIR, IT WON'T.

6 THE COURT - THANK YOU, SIR. YOU MAY BE SEATED.
7 HAS ANY MEMBER OF THE JURY PANEL OR YOUR FAMILY EVER BEEN
8 REPRESENTED BY THE SPARTANBURG COUNTY PUBLIC DEFENDER'S
9 OFFICE? IF SO, PLEASE STAND AT THIS TIME.

10 (NO RESPONSE)

11 THE COURT - HAS ANY MEMBER OF THE JURY PANEL OR
12 A MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN PROSECUTED BY
13 THE SPARTANBURG COUNTY SOLICITOR'S OFFICE OR THE SEVENTH
14 CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE STAND AT THIS
15 TIME.

16 (NO RESPONSE)

17 THE COURT - HAS ANY MEMBER OF THE JURY PANEL OR
18 A MEMBER OF YOUR FAMILY EVER BEEN PROSECUTED BY ANY OTHER
19 STATE OR FEDERAL PROSECUTOR'S OFFICE? IF SO, PLEASE STAND
20 AT THIS TIME.

21 (JUROR STANDS)

22 THE COURT - YES, SIR, YOUR JUROR NUMBER?

23 JUROR - 92.

24 THE COURT - AND YOU'RE MR. GILBERT?

25 JUROR - YES, SIR.

1 THE COURT - SIR, THE FACT THAT THAT HAS
2 OCCURRED, WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO
3 GIVE BOTH THE STATE AND THE DEFENSE A FAIR AND IMPARTIAL
4 TRIAL IN THE EVENT YOU'RE SELECTED AS A MEMBER OF THIS
5 JURY?

6 JUROR - IT WOULD HINDER MINE, SIR, BECAUSE THEY
7 PUT MY UNCLE IN PRISON FOR LIFE.

8 THE COURT - ALL RIGHT, THANK YOU, SIR. HAS ANY
9 MEMBER OF THE JURY OR YOUR IMMEDIATE FAMILY EVER BEEN
10 INVESTIGATED FOR OR CHARGED WITH ANY TYPE OF CRIME
11 INVOLVING BURGLARY, ROBBERY, THEFT, FRAUD, LARCENY, BREACH
12 OF TRUST, OBTAINING GOODS BY FALSE PRETENSE, FORGERY,
13 FRAUDULENT CHECK OR ANY OTHER SIMILAR OFFENSES? IF SO,
14 PLEASE STAND AT THIS TIME.

15 (JURORS STAND)

16 THE COURT - YES, MA'AM, YOUR JUROR NUMBER?

17 JUROR - 242.

18 THE COURT - YOU'RE MS. SMITH?

19 JUROR - YES, SIR.

20 THE COURT - MA'AM, THE FACT THAT THAT HAS
21 OCCURRED, WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO
22 GIVE BOTH THE STATE AND THE DEFENSE A FAIR AND IMPARTIAL
23 TRIAL IN THE EVENT YOU'RE SELECTED AS A MEMBER OF THIS
24 JURY?

25 JUROR - NO, IT WOULDN'T.

1 THE COURT - THANK YOU, MA'AM. YOU MAY BE
2 SEATED. YES, MA'AM, YOUR NUMBER?

3 JUROR - 262.

4 THE COURT - YOU'RE MS. THOMPSON?

5 JUROR - YES, I AM.

6 THE COURT - MA'AM, THE FACT THAT THAT HAS
7 OCCURRED, WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO
8 GIVE BOTH THE STATE AND THE DEFENSE A FAIR AND IMPARTIAL
9 TRIAL IN THIS CASE?

10 JUROR - OH, NO.

11 THE COURT - THANK YOU, MA'AM, YOU MAY BE SEATED.
12 YES, MA'AM?

13 JUROR - 78.

14 THE COURT - 78?

15 JUROR - (INDICATING YES)

16 THE COURT - YOU'RE MS. FARR?

17 JUROR - YES, SIR.

18 THE COURT - MA'AM, THE FACT THAT THAT HAS
19 OCCURRED, WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO
20 GIVE BOTH THE STATE AND THE DEFENSE A FAIR AND IMPARTIAL
21 TRIAL IN THE EVENT YOU'RE SELECTED AS A MEMBER OF THIS
22 JURY?

23 JUROR - NO, SIR.

24 THE COURT - THANK YOU, MA'AM. YOU MAY BE
25 SEATED. HAS ANY MEMBER OF THE JURY PANEL OR YOUR

11

1 IMMEDIATE FAMILY EVER BEEN A VICTIM OF A VIOLENT CRIME?
2 IF SO, PLEASE STAND AT THIS TIME.

3 (JURORS STAND)

4 THE COURT - YES, MA'AM, YOUR JUROR NUMBER?

5 JUROR - 217.

6 THE COURT - YOU'RE MS. PRITCHETT?

7 JUROR - PRITCHETT.

8 THE COURT - PRITCHETT. AND, MA'AM, THE FACT
9 THAT THAT HAS OCCURRED, WOULD THAT IN ANY WAY AFFECT YOUR
10 ABILITY TO GIVE BOTH THE STATE AND THE DEFENSE A FAIR AND
11 IMPARTIAL TRIAL?

12 JUROR - NO, SIR.

13 THE COURT - THANK YOU, MA'AM. YOU MAY BE
14 SEATED. YES, SIR, YOUR JUROR NUMBER?

15 JUROR - 124.

16 THE COURT - MR. IRELAND?

17 JUROR - YES, SIR.

18 THE COURT - SIR, THE FACT THAT THAT HAS
19 OCCURRED, WOULD THAT IN ANY WAY AFFECT YOUR ABILITY TO
20 GIVE BOTH THE STATE AND THE DEFENSE A FAIR AND IMPARTIAL
21 TRIAL?

22 JUROR - YES, IT WOULD.

23 THE COURT - THANK YOU, SIR. YOU MAY BE SEATED.
24 HAS ANY MEMBER OF THE JURY PANEL FORMED OR EXPRESSED ANY
25 OPINIONS ABOUT ANY ISSUE OR MATTER THAT IS INVOLVED IN

1 THIS CASE? IF SO, PLEASE STAND AT THIS TIME.

2 (NO RESPONSE)

3 THE COURT - IS ANY MEMBER OF THE JURY PANEL
4 AWARE OF ANY BIAS OR PREJUDICE TOWARDS EITHER THE STATE OR
5 THE DEFENDANTS IN THIS CASE? IF SO, PLEASE STAND AT THIS
6 TIME.

7 (NO RESPONSE)

8 THE COURT - IS THERE ANY MEMBER OF THE JURY
9 PANEL THAT WAS A MEMBER OF THE GRAND JURY WHICH ISSUED THE
10 INDICTMENT IN THIS CASE? IF SO, PLEASE STAND AT THIS
11 TIME.

12 (NO RESPONSE)

13 THE COURT - IS THERE ANY MEMBER OF THE JURY
14 PANEL WHO IS A MEMBER OF OR CONTRIBUTOR TO ANY GROUP WHICH
15 HAS AS ITS PRIMARY CONCERN THE PROMOTION OF LAW
16 ENFORCEMENT OR VICTIMS' RIGHTS? NOW, THESE GROUPS WOULD
17 INCLUDE, BUT CERTAINLY BE NOT LIMITED TO SUCH GROUPS AS
18 MADD, SADD OR CAV, CITIZENS AGAINST VIOLENT CRIMES. IF
19 SO, PLEASE STAND AT THIS TIME.

20 (JURORS STAND)

21 THE COURT - YES, MA'AM, YOUR JUROR NUMBER?

22 JUROR - 64.

23 THE COURT - YOU'RE MS. DAVIS?

24 JUROR - YES, SIR.

25 THE COURT - MA'AM, THE FACT THAT THAT OCCURS,

13

1 WOULD THAT IN ANY WAY --- WOULD THAT IN ANY WAY AFFECT
2 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENSE A FAIR
3 AND IMPARTIAL TRIAL?

4 JUROR - NO, SIR.

5 THE COURT - THANK YOU, MA'AM. YOU MAY BE
6 SEATED. DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY
7 REASON WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A
8 JUROR IN THIS CASE WITH PARTICULAR EMPHASIS BEING PLACED
9 ON YOUR ABILITY TO BE FAIR AND IMPARTIAL TO BOTH THE STATE
10 AND THE DEFENSE? IF SO, PLEASE STAND AT THIS TIME.

11 (NO RESPONSE)

12 THE COURT - ANY ADDITIONAL QUESTIONS FROM THE
13 STATE?

14 MR. BULSA - NO, YOUR HONOR.

15 THE COURT - ANY ADDITIONAL QUESTIONS FROM THE
16 DEFENSE?

17 MR. SINGLETON - NONE, YOUR HONOR.

18 MR. HALL - NONE, YOUR HONOR.

19 THE COURT - ALL RIGHT. COULD I SEE THE LAWYERS
20 FOR A MOMENT?

21 (BENCH CONFERENCE IS HELD IN THE PRESENCE OF THE
22 JURY PANEL BUT OUT OF THE HEARING OF THE JURY PANEL WHICH
23 WAS NOT REPORTED.)

24 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN, WE
25 WILL NOW PROCEED ON FURTHER WITH THE SELECTION OF THE

1 JURY. I KNOW THAT PROBABLY YOU HAVE PARTICIPATED ALREADY
2 IN TWO OTHER JURY SELECTIONS THIS WEEK, SO YOU HAVE
3 PROBABLY A BETTER --- HAVE A BETTER IDEA OF WHAT'S GOING
4 TO TAKE PLACE THAN OTHERS, BUT --- WE ACTUALLY USED TO
5 HAVE --- OR WE STILL HAVE THE WOODEN BARREL. WE ACTUALLY
6 HAD A WOODEN BARREL AND WE'D BRING IN A PERSON FROM THE
7 SCHOOL FOR THE DEAF AND BLIND THAT WAS VISUALLY IMPAIRED
8 AND WE'D --- ALL YOUR NAMES WOULD BE IN A LITTLE CAPSULE
9 AND WE'D ACTUALLY SPIN THE BARREL AND WE'D HAVE THAT
10 PERSON REACH IN AND PULL OUT YOUR NAMES AND READ THE NAMES
11 OUT. WE HAVE GOTTEN A LITTLE BIT MORE SOPHISTICATED WITH
12 OUR PROCESS. WE NOW HAVE --- THIS IS MS. ASHLEY, SHE'S
13 WITH THE CLERK'S OFFICE AND SHE IS --- ACTUALLY HAS A
14 COMPUTER PROGRAM THAT CAN RANDOMLY SELECT NAMES, SO THAT'S
15 WHAT SHE'S DOING NOW, SO IF YOU'LL GIVE US JUST A MOMENT
16 WE WILL HAVE THE LIST AND THEN WE WILL START CALLING THE
17 NAMES AND WE WILL GO THROUGH WHAT'S CALLED THE STRIKING
18 PROCESS TO FINALLY GET THE ACTUAL MEMBERS THAT WILL SERVE
19 ON THIS JURY. (PAUSE) WHEN THE CLERK CALLS YOUR NAME,
20 I'M GOING TO ASK YOU IF YOU WOULD TO PLEASE BRING ANY
21 PERSONAL ITEMS THAT YOU MIGHT HAVE WITH YOU AND COME UP
22 HERE AND STAND WITH THIS BAILIFF AND FACE THE LAWYERS.

23 DEPUTY CLERK - JUROR 64, JOAN DAVIS.

24 THE COURT - I BELIEVE WE'RE IN AGREEMENT IT'S
25 TEN, TEN AND TEN?

1 MR. HALL - YES, SIR.

2 DEPUTY CLERK - WHAT SAY THE STATE?

3 MR. BULSA - PLEASE PRESENT THE JUROR.

4 DEPUTY CLERK - WHAT SAY THE DEFENSE?

5 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE
6 TRIAL OF THIS CASE.

7 DEPUTY HALL - JUROR 146, JENNIFER LARK. WHAT
8 SAY THE STATE?

9 MR. BULSA - PLEASE PRESENT THE JUROR.

10 DEPUTY CLERK - WHAT SAY THE DEFENSE?

11 MR. SINGLETON - NO OBJECTION. PLEASE SEAT THE
12 JUROR.

13 MR. HALL - PLEASE SWEAR THE JUROR.

14 DEPUTY CLERK - JUROR 278, KALE WHITE. WHAT SAY
15 THE STATE?

16 MR. BULSA - PLEASE PRESENT THE JUROR.

17 DEPUTY CLERK - WHAT SAY THE DEFENSE?

18 MR. SINGLETON - PLEASE PRESENT THE JUROR.

19 MR. HALL - PLEASE SWEAR THE JUROR.

20 DEPUTY CLERK - JUROR 45, MARIO CASTILLO. WHAT
21 SAY THE STATE?

22 MR. BULSA - PLEASE PRESENT THE JUROR.

23 DEPUTY CLERK - WHAT SAY THE DEFENSE?

24 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE
25 TRIAL OF THIS CASE.

1 DEPUTY CLERK - JUROR 35, ANTHONY --- PLEASE SAY
2 YOUR LAST NAME.

3 JUROR - CABEZA.

4 DEPUTY CLERK - WHAT SAY THE STATE?

5 MR. BULSA - PLEASE PRESENT THE JUROR.

6 DEPUTY CLERK - WHAT SAY DEFENSE?

7 MR. HALL - PLEASE SWEAR THE JUROR.

8 DEPUTY CLERK - JUROR 138, ROY KETNER. WHAT SAY
9 THE STATE?

10 MR. BULSA - PLEASE PRESENT THE JUROR.

11 DEPUTY CLERK - WHAT SAY THE DEFENSE?

12 MR. SINGLETON - PLEASE PRESENT THE JUROR.

13 MR. HALL - SWEAR THE JUROR.

14 DEPUTY CLERK - JUROR 149, TERESA LOVING. WHAT
15 SAY THE STATE?

16 MR. BULSA - PLEASE PRESENT THE JUROR.

17 DEPUTY CLERK - WHAT SAY THE DEFENSE?

18 MR. HALL - GO AHEAD AND EXCUSE THE JUROR FROM
19 THE TRIAL OF THIS CASE.

20 DEPUTY CLERK - JUROR 215, JOLLENE PRIESTER.
21 WHAT SAY THE STATE?

22 MR. BULSA - PLEASE PRESENT THE JUROR.

23 DEPUTY CLERK - WHAT SAY THE DEFENSE?

24 MR. HALL - PLEASE SWEAR THE JUROR.

25 MR. SINGLETON - PLEASE SWEAR THE JUROR.

1 DEPUTY CLERK - JUROR 12, NELLIE BALLENGER. WHAT
2 SAY THE STATE?

3 MR. BULSA - PLEASE PRESENT THE JUROR.

4 DEPUTY CLERK - WHAT SAY THE DEFENSE?

5 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE
6 TRIAL OF THIS CASE.

7 DEPUTY CLERK - JUROR 209, WESLEY PIERCE. WHAT
8 SAY THE STATE?

9 MR. BULSA - PLEASE PRESENT THE JUROR.

10 DEPUTY CLERK - WHAT SAY THE DEFENSE?

11 MR. SINGLETON - PLEASE PRESENT THIS JUROR.

12 DEPUTY CLERK - JUROR 246, ROBERT SMITH. WHAT
13 SAY THE STATE?

14 MR. BULSA - PLEASE PRESENT THE JUROR.

15 DEPUTY CLERK - WHAT SAY THE DEFENSE?

16 MR. SINGLETON - PLEASE EXCUSE THE JUROR.

17 DEPUTY CLERK - JUROR 282, ADAM WILLIAMS. WHAT
18 SAY THE STATE?

19 MR. BULSA - PLEASE PRESENT THE JUROR.

20 DEPUTY CLERK - WHAT SAY THE DEFENSE?

21 MR. HALL - PLEASE SWEAR THE JUROR.

22 DEPUTY CLERK - JUROR 271, RICKY WADDELL. WHAT
23 SAY THE STATE?

24 MR. BULSA - PLEASE EXCUSE THE JUROR IN THIS
25 CASE.

1 DEPUTY CLERK - JUROR 166 --- HOW DO YOU SAY YOUR
2 FIRST NAME?

3 JUROR - (NO RESPONSE)

4 DEPUTY CLERK - MS. MCLEOD. MR. MCLEOD.

5 JUROR - MCCLEOD.

6 DEPUTY CLERK - WHAT SAY THE STATE?

7 MR. BULSA - PLEASE PRESENT THE JUROR.

8 DEPUTY CLERK - WHAT SAY THE DEFENSE?

9 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE
10 TRIAL OF THIS CASE.

11 DEPUTY CLERK - JUROR 213, LARA PREWITT. WHAT
12 SAY THE STATE?

13 MR. BULSA - PLEASE PRESENT THE JUROR.

14 DEPUTY CLERK - WHAT SAY THE DEFENSE?

15 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE
16 TRIAL OF THIS CASE.

17 DEPUTY CLERK - JUROR 79, BRANDON FERNANDERS.
18 WHAT SAY THE STATE?

19 MR. BULSA - PLEASE EXCUSE MR. FERNANDERS IN THIS
20 CASE.

21 DEPUTY CLERK - JUROR 88, THOMAS FULLER. WHAT
22 SAY THE STATE?

23 MR. BULSA - PLEASE PRESENT THE JUROR.

24 DEPUTY CLERK - WHAT SAY THE DEFENSE?

25 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE

1 TRIAL OF THIS CASE.

2 DEPUTY CLERK - JUROR 287, MAE CAROLYN MCDOWELL.

3 WHAT SAY THE STATE?

4 MR. BULSA - PLEASE PRESENT THE JUROR.

5 DEPUTY CLERK - WHAT SAY THE DEFENSE?

6 MR. HALL - PLEASE SWEAR THE JUROR.

7 DEPUTY CLERK - JUROR 2, ELIZABETH ALLUM. WHAT
8 SAY THE STATE?

9 MR. BULSA - PLEASE PRESENT THE JUROR.

10 DEPUTY CLERK - WHAT SAY THE DEFENSE?

11 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE
12 TRIAL OF THIS CASE.

13 DEPUTY CLERK - JUROR 293, WILLIAM WOOD. WHAT
14 SAY THE STATE?

15 MR. BULSA - PLEASE EXCUSE THE JUROR IN THIS
16 CASE.

17 DEPUTY CLERK - JUROR 37, STACY CAMP. WHAT SAY
18 THE STATE?

19 MR. BULSA - PLEASE PRESENT THE JUROR.

20 DEPUTY CLERK - WHAT SAY THE DEFENSE?

21 MR. HALL - PLEASE SWEAR THE JUROR.

22 DEPUTY CLERK - JUROR 62, ROMNEY DANTZLER. WHAT
23 SAY THE STATE?

24 MR. BULSA - PLEASE EXCUSE THE JUROR IN THIS
25 CASE.

1 DEPUTY CLERK - JUROR 264, STANLEY TOPICK. WHAT
2 SAY THE STATE?

3 MR. BULSA - PLEASE PRESENT THE JUROR.

4 DEPUTY CLERK - WHAT SAY THE DEFENSE?

5 MR. HALL - PLEASE SWEAR THE JUROR.

6 DEPUTY CLERK - JUROR 70, SCOTT DUKE. WHAT SAY
7 THE STATE?

8 MR. BULSA - PLEASE PRESENT THE JUROR.

9 DEPUTY CLERK - WHAT SAY THE DEFENSE?

10 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE
11 TRIAL OF THIS CASE.

12 DEPUTY CLERK - JUROR 270, CRYSTAL WADDELL.
13 WHAT SAY THE STATE?

14 MR. BULSA - PLEASE PRESENT THE JUROR.

15 DEPUTY CLERK - WHAT SAY THE DEFENSE?

16 MR. HALL - PLEASE SWEAR THE JUROR.

17 DEPUTY CLERK - JUROR 78, CROCKER SONYA FARR.
18 WHAT SAY THE STATE?

19 MR. BULSA - PLEASE EXCUSE THE JUROR IN THIS
20 CASE.

21 DEPUTY CLERK - JUROR 226, KENNETH ROACH. WHAT
22 SAY THE STATE?

23 MR. BULSA - PLEASE PRESENT THE JUROR.

24 DEPUTY CLERK - WHAT SAY THE DEFENSE?

25 MR. HALL - PLEASE EXCUSE THE JUROR FROM THE

1 TRIAL OF THIS CASE.

2 DEPUTY CLERK - JUROR 65, ANTHONY DAWKINS. WHAT
3 SAY THE STATE?

4 MR. BULSA - PLEASE PRESENT THE JUROR.

5 DEPUTY CLERK - WHAT SAY THE DEFENSE?

6 MR. SINGLETON - PLEASE PRESENT THE JUROR.

7 DEPUTY CLERK - AND FOR THE ALTERNATE, JUROR 128,
8 JENNY JARVIS. WHAT SAY THE STATE?

9 MR. BULSA - PLEASE PRESENT THE JUROR.

10 DEPUTY CLERK - WHAT SAY THE DEFENSE?

11 MR. HALL - PLEASE SWEAR THE JUROR.

12 DEPUTY CLERK - JURY SELECTION'S BEEN COMPLETED.

13 THE COURT - THANK YOU, MADAM CLERK. ANY
14 OBJECTIONS TO THE MANNER OF SELECTION OF THE JURY FROM THE
15 STATE?

16 MR. BULSA - NO, YOUR HONOR.

17 THE COURT - ANY FROM THE DEFENSE?

18 MR. HALL - NONE, YOUR HONOR.

19 MR. SINGLETON - NO, YOUR HONOR.

20 THE COURT - ALL RIGHT, THANK YOU. LADIES AND
21 GENTLEMEN, CONGRATULATIONS, YOU'VE BEEN SELECTED AS OUR
22 NEXT JURY. GIVE ME JUST A MOMENT IF YOU WOULD. I NEED TO
23 SPEAK TO THOSE PEOPLE. I WANT TO THANK YOU FOR YOUR TIME
24 AND YOUR PATIENCE WHILE WE WENT THROUGH THIS PROCESS THIS
25 MORNING. MY UNDERSTANDING IS THAT JUDGE COLE IS GOING TO

1 BE IN A POSITION THAT HE MAY BE SELECTING ANOTHER JURY
2 SOON. I CAN'T TELL YOU NOW HOW MUCH TIME, BUT IF YOU
3 WOULD, I'M GOING TO ASK THAT YOU RETURN BACK TO THE JURY
4 ASSEMBLY ROOM AND DO SO QUIETLY AND SOMEONE WILL BE THERE
5 SHORTLY TO GIVE YOU AN UPDATE, BUT THANK YOU AGAIN FOR
6 YOUR TIME THIS MORNING.

7 (REMAINING JURY PANEL EXITS THE COURTROOM)

8 THE COURT - COULD I SEE THE LAWYERS?

9 (BENCH CONFERENCE IS HELD IN THE PRESENCE OF THE
10 JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
11 REPORTED.)

12 THE COURT - ALL RIGHT, LADIES AND GENTLEMEN,
13 CONGRATULATIONS, YOU HAVE BEEN SELECTED AS OUR FIRST JURY
14 IN THIS COURTROOM FOR THIS WEEK. WE'RE GOING TO IN JUST
15 A MOMENT BEGIN THE ACTUAL TRIAL OF THE CASE. I NEED TO --
16 - I'M GOING TO LET YOU TAKE A LITTLE BREAK RIGHT NOW,
17 THEN WE'LL COME BACK AND WE'RE GOING TO HAVE THE OPENING
18 STATEMENTS. I NEED TO --- I'LL GIVE YOU SOME OTHER
19 INSTRUCTIONS, BUT I NEED TO INSTRUCT YOU NOW THAT YOU
20 CANNOT HAVE ANY DISCUSSIONS WITH ANYONE ABOUT ANYTHING
21 INVOLVING THE CASE UNTIL AT THE END OF THE TRIAL WHEN YOU
22 BEGIN YOUR DELIBERATIONS. NOW, MY INSTRUCTIONS TO YOU AND
23 MY CHARGE TO YOU NOT TO HAVE ANY DISCUSSIONS INCLUDE YOU
24 CAN'T DISCUSS IT WITH ANYBODY IN THE COURTROOM, AT LUNCH-
25 BREAKS, WITH FAMILY, FRIENDS AND IN THE EVENINGS, BUT IT

23

1 ALSO INCLUDES YOU CANNOT DISCUSS THIS CASE AMONG
2 YOURSELVES UNTIL YOU BEGIN YOUR DELIBERATIONS. I'LL
3 EXPLAIN THE REASONS WHY JUST SHORTLY WHEN WE BEGIN WITH
4 THE OPENING COMMENTS, BUT AT THIS TIME I'M GOING TO LET
5 YOU GO WITH THE BAILIFF. HE'S GOING TO SHOW YOU WHERE THE
6 JURY DELIBERATION ROOM --- BE --- THERE'S RESTROOMS BACK
7 THERE AND WE'LL GET YOU BACK IN ABOUT TEN OR FIFTEEN
8 MINUTES AND WHEN WE RETURN, MR. ADAMS, --- MR. WILLIAM ---
9 I'M SORRY, ADAM WILLIAMS, I'M GOING TO ASK THAT YOU SERVE
10 AS OUR FORE-PERSON OF THIS JURY WHEN WE RETURN, BUT AT
11 THIS TIME YOU CAN GO WITH THE BAILIFF.

12 (JURY EXITS THE COURTROOM)

13 THE COURT - ALL RIGHT, WE'LL STEP DOWN FOR ABOUT
14 --- COME BACK ABOUT ELEVEN O'CLOCK.

15 (RECESS TAKEN)

16 THE COURT - ANYTHING BEFORE WE BRING THE JURY
17 BACK?

18 MR. BULSA - NOT FROM THE STATE, YOUR HONOR.

19 THE COURT - ALL RIGHT.

20 MR. BULSA - I WILL PUT ON THE RECORD I ASKED MY
21 WITNESSES TO BE SEQUESTERED --- DEFENSE ASKED FOR THEM TO
22 BE SEQUESTERED. I'VE ASKED MY WITNESSES TO REMAIN
23 OUTSIDE. WE DO HAVE THREE VICTIMS AND THE INVESTIGATING
24 OFFICER IN THE COURTROOM. THE FIRST WITNESS WILL BE MIKE
25 WEST FROM COMMUNICATIONS. HE'S NOT A FACT WITNESS, SO I

1 DON'T BELIEVE THAT'S A VIOLATION OF SEQUESTRATION ISSUE.

2 MR. HALL - THERE'S NO OBJECTION, YOUR HONOR.

3 MR. SINGLETON - NO OBJECTION.

4 (JURY RETURNS TO THE COURTROOM)

5 THE COURT - ALL RIGHT, MR. FOREMAN, LADIES AND
6 GENTLEMEN, WE'RE NOW READY TO BEGIN THE TRIAL OF THE CASE.
7 BEFORE WE PRESENT ANY OF THE TESTIMONY, I NEED FOR YOU TO
8 PLEASE STAND AND RAISE YOUR RIGHT HAND AND LET THE CLERK
9 SWEAR YOU IN.

10 (WHEREUPON, THE JURY IS DULY SWORN BY THE DEPUTY
11 CLERK.)

12 THE COURT - LADIES AND GENTLEMEN, BEFORE WE
13 BEGIN THE TRIAL I WANT TO TELL YOU THAT THIS TRIAL
14 PROBABLY WILL BE DIFFERENT FROM WHAT YOU MIGHT EXPECT.
15 MANY PEOPLE DO NOT HAVE THE CHANCE TO ATTEND AN ACTUAL
16 COURT SESSION AS YOU ARE DOING NOW AND MAY THINK FROM
17 WATCHING TELEVISION OR MOVIES OR READING BOOKS THAT TRIALS
18 ARE ALWAYS FILLED WITH HIGH DRAMA, INTENSE ACTION AND
19 RIVETING CIRCUMSTANCES. WHILE ALL OF THESE THINGS MAY BE
20 TRUE AT TIMES, THIS TRIAL IS NOT FOR ENTERTAINMENT. IT IS
21 A FUNDAMENTAL PART OF OUR DEMOCRACY, A SEARCH FOR THE
22 TRUTH IN AN EFFORT TO MAKE SURE THAT JUSTICE IS DONE
23 BETWEEN THE PARTIES BEFORE THE COURT. SEARCHING FOR THE
24 TRUTH AND MAKING SURE THAT JUSTICE IS DONE IS OFTEN SLOW,
25 DELIBERATE AND REPETITIVE, JUST THE OPPOSITE OF WHAT YOU

25

1 MAY HAVE SEEN ON TELEVISION OR IN MOVIES OR READ ABOUT IN
2 BOOKS. THIS COURTROOM IS A PLACE OF HONOR. IT IS
3 DEDICATED TO THE PROTECTION AND PRESERVATION OF CITIZENS'
4 RIGHTS THROUGH WHAT MANY HAVE CALLED THE GREATEST JUSTICE
5 SYSTEM EVER CREATED. THE ATTORNEYS APPEARING BEFORE YOU,
6 THEY ARE ADVOCATES FOR THE PARTIES THAT THEY REPRESENT,
7 BUT FIRST AND FOREMOST THEY ARE OFFICERS OF THE COURT
8 SWORN TO UPHOLD THE INTEGRITY AND FAIRNESS OF OUR JUDICIAL
9 SYSTEM AND TO HELP YOU IN THE SEARCH FOR THE TRUTH. YOU
10 SHOULD EXPECT THEM TO BE PROFESSIONAL, COMPETENT AND
11 ETHICAL IN THEIR REPRESENTATION OF THEIR CLIENT'S
12 INTEREST, BUT REMEMBER THAT YOU HAVE TAKEN AN OATH TO TRY
13 THIS CASE AND REACH A FAIR AND JUST VERDICT AND YOU ARE
14 ALSO EXPECTED TO BE PROFESSIONAL, REASONABLE AND ETHICAL,
15 BUT I DO WANT TO THANK YOU FOR ACCEPTING THE IMPORTANT
16 RESPONSIBILITY OF JURY SERVICE AND FOR YOUR CONTRIBUTION
17 TODAY TO OUR JUSTICE SYSTEM. LADIES AND GENTLEMEN, THE
18 DEFENDANTS IN THIS CASE, THEY ARE CHARGED BY WAY OF
19 INDICTMENTS, AND THEY'RE CHARGED WITH THE CRIMES THAT I
20 HAD PREVIOUSLY ANNOUNCED. THEY ARE CHARGED WITH BURGLARY
21 IN THE FIRST DEGREE, AGGRAVATED ASSAULT --- I'M SORRY ---
22 ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AS TO
23 MR. CHAVIS PULLEN, AND THEN ALSO THEY ARE CHARGED WITH
24 ARMED ROBBERY. NOW, THE ELEMENTS OF THESE TYPES OF
25 CRIMINAL OFFENSES WILL BE EXPLAINED TO YOU LATER, BUT I

1 JUST NEED TO LET YOU KNOW THAT THESE INDICTMENTS, THEY ARE
2 SIMPLY THE CHARGES BY WHICH THE CASES ARE BROUGHT INTO THE
3 COURT, AND THEY ARE NOT IN ANY SENSE EVIDENCE OF ANY OF
4 THE ALLEGATIONS THAT ARE CONTAINED IN THE INDICTMENTS.
5 THE DEFENDANTS, THEY HAVE EACH PLED NOT GUILTY TO ALL OF
6 THE CHARGES AGAINST THEM. THE STATE, THEREFORE, HAS THE
7 BURDEN OF PROOF, AND THEY MUST PROVE EACH ELEMENT OF THE
8 INDICTMENT BEYOND A REASONABLE DOUBT, AND IT WILL BE YOUR
9 DUTY, LADIES AND GENTLEMEN, TO DECIDE WHETHER OR NOT THE
10 STATE HAS MET THAT BURDEN. YOUR PURPOSE AS JURORS IS TO
11 FIND AND DETERMINE THE FACTS. YOU ARE THE SOLE JUDGE OF
12 THE FACTS. IF AT EVER ANY TIME DURING THIS TRIAL I MAKE
13 ANY COMMENTS REGARDING THE FACTS, YOU MUST DISREGARD THOSE
14 COMMENTS. YOU ARE TO DETERMINE THE FACTS FROM THE
15 TESTIMONY YOU HEAR AND THE OTHER EVIDENCE INTRODUCED IN
16 THIS COURTROOM. IT IS UP TO YOU TO DETERMINE THE
17 INFERENCES WHICH YOU MAY FEEL PROPERLY CAN BE DRAWN FROM
18 THE EVIDENCE THAT IS PRESENTED. IT IS ESPECIALLY
19 IMPORTANT THAT YOU PERFORM YOUR DUTY OF DETERMINING THE
20 FACTS DILIGENTLY AND CONSCIENTIOUSLY, BECAUSE ORDINARILY,
21 THERE IS NO WAY TO CORRECT AN ERRONEOUS DETERMINATION OF
22 FACTS THAT IS MADE BY A JURY. NOW, ON THE OTHER HAND AND
23 WITH EQUAL EMPHASIS, THE SAME LAW THAT MAKES YOU THE JUDGE
24 OF THE FACTS MAKES ME THE JUDGE OF THE LAW. THE LAW AS
25 GIVEN BY THE COURT IS THE ONLY LAW YOU MAY CONSIDER. YOU

27

1 MUST ACCEPT AND FOLLOW IT AND EVEN THOUGH YOU MAY DISAGREE
2 WITH IT. I CANNOT TELL YOU WHAT THE FACTS ARE AND YOU
3 CANNOT DISAGREE --- I CANNOT TELL YOU WHAT THE FACTS ARE
4 AND YOU CANNOT DISAGREE WITH ME ABOUT WHAT THE LAW IS OR
5 WHAT THE LAW SHOULD BE. YOUR JOB IS TO TAKE THE LAW AS I
6 GIVE IT TO YOU AND APPLY IT TO THE FACTS AS YOU FIND THEM
7 FROM THE TESTIMONY OF THE WITNESSES AND OTHER EVIDENCE
8 THAT IS INTRODUCED DURING THE COURSE OF THIS TRIAL. AFTER
9 DOING THAT, YOU WILL RENDER YOUR VERDICT, A TRUE AND JUST
10 VERDICT UNDER THE SOLEMN OATH THAT YOU JUST TOOK AS
11 JURORS. NOW, UNTIL I ADVISE YOU TO BEGIN YOUR
12 DELIBERATIONS, YOU MUST NOT DISCUSS THIS CASE WITH ANYONE,
13 INCLUDING YOUR FELLOW JURORS, FRIENDS, FAMILY MEMBERS AND
14 ANYONE THAT IS INVOLVED IN THIS CASE. THIS INCLUDES
15 DISCUSSIONS FACE-TO-FACE AND BY THOSE BY TELEPHONE, E-
16 MAIL, TEXT, BLOGS OR ANY OTHER METHOD OF COMMUNICATION.
17 YOU MAY NOT USE A COMPUTER, CELL PHONE OR OTHER ELECTRONIC
18 DEVICE WITH COMMUNICATION CAPABILITIES AT ANY TIME WHILE
19 IN THIS COURTROOM OR DOING YOUR DELIBERATIONS. DURING
20 YOUR BREAKS FOR MEALS OR OVERNIGHT, IF NECESSARY, YOU MAY
21 USE THESE DEVICES. HOWEVER, YOU MAY NOT AT ANY TIME USE
22 THESE DEVICES TO GET OR SEND INFORMATION ABOUT THE CASE.
23 THIS INCLUDES INFORMATION ABOUT A PARTY, A WITNESS, AN
24 ATTORNEY OR A COURT OFFICER, NEWS ACCOUNTS ABOUT THE CASE,
25 RESEARCH ON ANY TOPIC RAISED, ANY TOPIC YOU MAY THINK

1 WOULD BE HELPFUL IN DECIDING THE CASE OR ANY TESTIMONY
2 PRESENTED BY ANY WITNESS. I DO NOT ANTICIPATE THAT THERE
3 WILL BE ANY TYPE OF MEDIA COVERAGE, BUT IF THERE IS WHILE
4 THIS COURT --- WHILE THIS TRIAL IS GOING ON, DO NOT READ,
5 LISTEN TO OR WATCH ANY NEWS REPORTS ABOUT THIS CASE. THIS
6 INCLUDES ANYTHING THAT MIGHT BE IN THE NEWSPAPERS OR ON
7 THE INTERNET, RADIO OR TELEVISION. YOU MUST NOT CONSIDER
8 ANYTHING YOU MAY HAVE HEARD OR READ ABOUT THE CASE OUTSIDE
9 OF THE COURTROOM WHETHER BEFORE OR DURING THE TRIAL.
10 AFTER THE CASE IS SUBMITTED TO YOU, YOU MUST DISCUSS IT
11 ONLY IN THE JURY ROOM WITH YOUR FELLOW JURORS. THE
12 ATTORNEYS AND THE PARTIES IN THE CASE HAVE BEEN ADVISED
13 THAT THEY ARE NOT TO TALK TO YOU AT ALL. SO IF YOU SEE
14 ANYONE INVOLVED IN THE CASE AND THEY DO NOT EVEN SAY HELLO
15 TO YOU, THEY'RE NOT BEING UNFRIENDLY. THEY'RE JUST
16 FOLLOWING MY INSTRUCTIONS. NOW, IT IS IMPORTANT THAT YOU
17 KEEP AN OPEN MIND AND NOT DECIDE ANY ISSUE IN THE CASE
18 UNTIL ALL OF THE EVIDENCE HAS BEEN PRESENTED, THE PARTIES
19 HAVE MADE THEIR CLOSING ARGUMENTS AND I HAVE INSTRUCTED
20 YOU ON THE LAW OF THE CASE. IT IS YOUR SOLEMN
21 RESPONSIBILITY TO DETERMINE THE GUILT OR INNOCENCE OF THE
22 DEFENDANTS, AND YOUR VERDICT MUST BE BASED SOLELY ON THE
23 EVIDENCE AS IT IS PRESENTED TO YOU IN THIS TRIAL AND ON
24 THE LAW AS I INSTRUCT YOU DURING AND AT THE CLOSE OF THE
25 TRIAL. NOW, IN JUST A MOMENT THE SOLICITOR WILL MAKE WHAT

1 IS CALLED AN OPENING STATEMENT IN WHICH THE SOLICITOR WILL
2 EXPLAIN TO YOU THE ISSUES IN THE CASE OR AT LEAST WHAT THE
3 SOLICITOR THINKS THE ISSUES ARE IN THE CASE. THE
4 ATTORNEYS FOR THE DEFENDANTS MAY ALSO MAKE AN OPENING
5 STATEMENT, ALTHOUGH THEY ARE NOT REQUIRED TO DO SO. WHAT
6 THE ATTORNEYS TELL YOU DURING THEIR OPENING STATEMENT IS
7 NOT EVIDENCE IN THE CASE. IT IS ONLY THEIR CONTENTION AS
8 TO WHAT THE ISSUES ARE. THE EVIDENCE IN THIS CASE WILL BE
9 PRESENTED TO YOU BY TESTIMONY OF SWORN WITNESSES FROM THIS
10 WITNESS STAND AND ANY EXHIBITS THAT MIGHT ALSO BE
11 PRESENTED DURING THE COURSE OF THE TRIAL. NOW, FROM TIME
12 TO TIME DURING THIS TRIAL YOU MAY HEAR ONE OF THE
13 ATTORNEYS SAY SOMETHING LIKE, YOUR HONOR, I BELIEVE WE
14 HAVE A QUESTION OF LAW OR A MATTER OF LAW TO DISCUSS WITH
15 YOU, OR THEY MAY SAY, YOUR HONOR, MAY WE APPROACH THE
16 BENCH, OR I MYSELF MAY FIND IT NECESSARY TO EXCUSE YOU
17 FROM THE COURTROOM FOR A SHORT WHILE SO THAT THE ATTORNEYS
18 AND I CAN DISCUSS MATTERS OF LAW. NOW, THE REASON FOR
19 THIS IS BECAUSE YOU ARE THE JUDGES OF THE FACTS AND AT
20 SOME TIMES WHEN I AM DISCUSSING MATTERS OF LAW WITH THE
21 ATTORNEYS, IT MAY BE NECESSARY FOR ME TO MAKE COMMENTS
22 ABOUT SOME OF THE FACTS THAT HAVE BEEN PRESENTED IN
23 CONNECTION WITH THE RULING ON WHETHER OR NOT A PARTICULAR
24 LAW APPLIES. I AM NOT SUPPOSED TO TELL YOU WHAT I THINK
25 THE FACTS ARE SO I WILL EXCUSE YOU FROM THE COURTROOM

1 WHILE THESE DISCUSSIONS TAKE PLACE SO THAT YOU IN NO WAY
2 WILL BE INFLUENCED BY ANYTHING THAT I SAY IN RULING ON
3 ISSUES OF LAW. IN DETERMINING WHAT THE TRUE FACTS ARE IN
4 THIS CASE, YOU MUST DECIDE WHETHER OR NOT THE TESTIMONY OF
5 A WITNESS IS BELIEVABLE. IT WILL BE MY RESPONSIBILITY TO
6 RULE AS A MATTER OF LAW WHETHER OR NOT CERTAIN TESTIMONY
7 IS ADMISSIBLE AT ALL OR NOT, BUT ONCE THE TESTIMONY IS
8 ADMITTED, WHETHER OR NOT YOU BELIEVE IT IS SOLELY FOR YOU
9 TO DETERMINE. IN DECIDING WHETHER TO BELIEVE A WITNESS,
10 YOU HAVE THE RIGHT TO CONSIDER THE INTEREST OF ANY
11 WITNESS, THE BIAS OF ANY WITNESS, THE PREJUDICE OF ANY
12 WITNESS, THE OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE
13 MATTERS AND THINGS ABOUT WHICH THE WITNESS MAY TESTIFY AND
14 THE WAY THE WITNESS ACTS ON THE WITNESS STAND. YOU HAVE
15 A RIGHT TO CONSIDER ANYTHING THAT IS IN THE RECORD THAT
16 WILL HELP YOU EVALUATE THE TESTIMONY OF THE WITNESS. THAT
17 MEANS THAT IT IS YOUR DUTY TO PAY CLOSE ATTENTION TO THESE
18 WITNESSES, TO OBSERVE THE WITNESSES, TO LISTEN TO THEM AND
19 TO PAY CLOSE ATTENTION TO THE ATTORNEYS AND TO THE COURT.
20 DO NOT LET YOUR THOUGHTS WANDER, BUT GIVE STRICT ATTENTION
21 TO THE TESTIMONY THAT IS PRESENTED IN THIS CASE, SO THAT
22 AT THE END OF THE TESTIMONY AFTER ALL OF THE ARGUMENTS OF
23 COUNSEL HAVE BEEN MADE AND I HAVE CHARGED YOU ON THE LAW,
24 YOU WILL THEN BE IN A POSITION TO DETERMINE WHAT THE TRUE
25 FACTS ARE AND APPLY THOSE FACTS TO THE LAW THAT I GIVE YOU

1 AND, THUS, RENDER A TRUE AND JUST VERDICT. IT IS YOUR
2 ADDED DUTY, MR. FORE-PERSON, TO PRESIDE IN THE JURY ROOM
3 AND BE THE JURY SPOKESPERSON HERE IN THE COURT. IT WILL
4 ALSO BE YOUR DUTY TO WRITE THE VERDICT, BUT I WILL GIVE
5 YOU FURTHER INSTRUCTIONS ABOUT THAT AT THE CONCLUSION OF
6 THE CASE. NOW, IN ORDER TO PRESERVE EVERYONE'S RIGHTS, I
7 WILL GIVE THE PARTIES AN OPPORTUNITY TO OBJECT TO ANYTHING
8 THAT I HAVE SAID. ANY EXCEPTIONS FROM THE STATE?

9 MR. BULSA - NO, YOUR HONOR.

10 THE COURT - ANY FROM THE DEFENSE?

11 MR. SINGLETON - NONE, YOUR HONOR.

12 MR. HALL - NO, YOUR HONOR.

13 THE COURT - ALL RIGHT, WE WILL NOW PROCEED WITH
14 THE OPENING STATEMENTS.

15 MR. BULSA - THANK YOU, YOUR HONOR. LADIES AND
16 GENTLEMEN, THIS CASE IS ABOUT WHAT IS TERMED IN POLICE-
17 WORK A HOME INVASION. ON JUNE THE 11TH, 2009 ABOUT TEN
18 THIRTY IN THE EVENING RHASHAWN MIDDLETON, HER BOYFRIEND
19 AND BROTHER, ONE OF RHASHAWN'S CHILDREN, ANOTHER CHILD, A
20 FRIEND OF THERE'S, WERE AT HER HOME IN CAMMIE CLAGGETT
21 APARTMENTS. THOSE ARE ON SOUTH DANIEL MORGAN JUST ABOVE
22 THE BEACON DRIVE-IN. THEIR APARTMENT FACES A CHURCH
23 THAT'S ACROSS THE STREET. THEY WERE THERE WATCHING THE
24 NBA FINALS. A GENTLEMAN COMES TO THE DOOR WHOM THEY KNOW.
25 THAT IS KENDEAL JONES. HE HAS A NICKNAME OF PACMAN. YOU

1 MAY BE HEARING A LOT ABOUT NICKNAMES IN THIS CASE, BUT
2 KENDEAL JONES'S NICKNAME IS PACMAN. HE KNOCKS ON THE
3 DOOR, ASKS IF ANYBODY HAS CHANGE. THEY ALLOW HIM IN. HE
4 GOES IN WITH ONE --- WITH TERRANCE, TERRANCE MOATES, WHO
5 IS GOING TO MAKE SOME CHANGE FOR HIM. IMMEDIATELY AFTER
6 KENDEAL COMES IN, TWO OTHER MEN COME IN, ONE WITH A MASK,
7 ONE WITH SOME OTHER KIND OF FACE COVERING LIKE A BANDANNA
8 AND A HAT. THE EVIDENCE WILL SHOW I SUBMIT TO YOU, THAT
9 THE MAN IN THE MASK WAS CHAVIS PULLEN. HIS NICKNAME KNOWN
10 TO THE WITNESSES IS KOOLAID. THERE'S A THIRD MAN WHO THEY
11 BELIEVE THEY KNOW WHO IS, BUT THEY DIDN'T HAVE ENOUGH
12 IDENTIFICATION ON HIM, SO HE WASN'T CHARGED, AT LEAST YET.
13 THE POLICE IN THEIR INVESTIGATION DETERMINED WHO KOOLAID
14 WAS. THE WITNESSES KNEW WHO KENDEAL JONES WAS, SO CHARGES
15 WERE BROUGHT AGAINST THOSE TWO MEN. THIS CASE IS ABOUT
16 THE TWO DEFENDANTS ACTING IN CONCERT TOGETHER, COOPERATING
17 TOGETHER, IN AGREEMENT TOGETHER, AS WHAT WE CALL IN THE
18 LAW, THE HAND OF ONE IS THE HAND OF ALL. A WEAPON WAS
19 DISPLAYED BY KOOLAID, MR. PULLEN. WE ALLEGE THE EVIDENCE
20 WILL SHOW THAT HE CONFRONTED MR. MOATES IN THE KITCHEN
21 AREA OF THIS APARTMENT, STRUCK HIM IN THE HEAD WITH THAT
22 WEAPON. WHEN HE STRUCK HIM IN THE HEAD, A ROUND FIRED OFF
23 INTO THE WALL. MS. MIDDLETON HAD A CHILD UPSTAIRS
24 SLEEPING. YOU CAN IMAGINE WHAT KIND OF FRANTIC SCENE WAS
25 GOING ON WHILE THIS WAS TAKING PLACE. EACH ONE OF THESE

33

1 WITNESSES ARE NAMED AS VICTIMS BECAUSE EACH ONE OF THEM
2 HAD SOME MONEY OR ITEMS STOLEN FROM THEM, MONEY AND CELL
3 PHONE. THEY'LL TESTIFY TO YOU AS TO WHAT WAS TAKEN FROM
4 THEM. THAT'S WHY THEY'RE EACH LISTED AS A SEPARATE
5 VICTIM. THESE TWO DEFENDANTS ARE CHARGED WITH BURGLARY,
6 BECAUSE THEY WENT INTO THE HOUSE. YOU'RE GOING TO HEAR
7 THE LAW SAYS THEY HAVE TO GO IN WITHOUT THE CONSENT.
8 KOOLAID CLEARLY DID NOT HAVE CONSENT TO GO IN WITH A GUN
9 WEARING A MASK. I IMAGINE THERE'S GOING TO BE SOME
10 ARGUMENT --- THIS IS ONE OF THE ISSUES THE JUDGE SAID I'LL
11 BE TELLING YOU --- AS TO ABOUT PACMAN. ON THE SURFACE IT
12 APPEARS HE HAD PERMISSION, BECAUSE THEY SAID HE COULD COME
13 IN, THEY KNEW HIM, BUT THE LAW DOES NOT ALLOW YOU TO GAIN
14 CONSENT BY TRICKERY OR DECEIT WHICH WE SUBMIT THE EVIDENCE
15 IS GOING TO SHOW. HE WAS THE DOORMAN IN THE HOME
16 INVASION. HE GOT IN TO MAKE SURE THERE WAS NOTHING GOING
17 ON TO REDUCE THE LEVEL OF ANY DANGER THAT THE VICTIMS
18 THOUGHT THERE MIGHT --- THERE MIGHT BE. HE GETS IN, HIS
19 BUDDIES COME IN BEHIND HIM. WE ARGUE HE IS JUST AS GUILTY
20 OF THAT BURGLARY AND JUST AS GUILTY OF THE ARMED ROBBERIES
21 BECAUSE HE WAS A PARTY TO THE CRIMES. THE TWO MASKED MEN
22 FLED OUT THE FRONT DOOR. MR. JONES FLED OUT THE BACK
23 DOOR. THEY SPLIT UP AND GO IN OPPOSITE DIRECTIONS WHEN
24 THEY LEAVE. MR. JONES GETS INTO HIS CAR AND DRIVES OFF.
25 THE OTHER TWO MEN RUN IN THE OPPOSITE DIRECTION. THE

1 POLICE ARE CALLED BY A LADY WHO WAS WALKING BY. SHE'LL
2 TESTIFY. IN FACT, YOU'LL HEAR HER 9-1-1 CALL IN HERE IN
3 JUST A MINUTE. AND THEN THEY WERE ALSO CALLED BY RHASHAWN
4 MIDDLETON. KENDEAL JONES FLED THE SCENE. HE DIDN'T CALL
5 THE POLICE. HE DIDN'T GO TO THE POLICE. IN FACT, THEY
6 COULDN'T FIND HIM FOR ABOUT SIX OR SEVEN MONTHS. WE
7 SUBMIT TO YOU THAT EVIDENCE OF FLIGHT YOU CAN USE TO SHOW
8 CONSCIOUSNESS OF GUILT TO SHOW HE WAS COMPLICIT IN THIS
9 CRIME. THAT'S AN ISSUE. THIS IS A SERIOUS MATTER. EACH
10 WITNESS WILL TESTIFY FROM THEIR PERSPECTIVE WHAT THEY SAW,
11 WHAT THEY HEARD, WHAT WAS TAKEN FROM THEM. YOU'LL HEAR
12 FROM THE LADY THAT WAS WALKING UP THE STREET, WHAT SHE SAW
13 AND HEARD AND HER ACTIONS. THE POLICE WILL TESTIFY ABOUT
14 THEIR INVESTIGATION. THE JUDGE WILL CHARGE YOU ON THE
15 ELEMENTS OF THESE CRIMES. I MENTIONED A FEW OF THEM TO
16 YOU IN MY OPENING STATEMENT, THE ONES THAT I FEEL GOING TO
17 BE AT ISSUE. IT'S YOUR JOB AS THE JUDGE SAID TO LISTEN TO
18 EACH WITNESS. YOU'RE GOING TO SEE PHOTOGRAPHS, DIAGRAM OF
19 THE INSIDE OF THE HOUSE. WE'RE GOING TO PLAY 9-1-1 CALLS
20 FOR YOU. TAKE ALL THAT INTO CONSIDERATION AS YOU LISTEN
21 TO EACH WITNESS, AND THEN AT THE END I'LL COME ARGUE AND
22 ASK YOU TO CONVICT BOTH OF THESE MEN AS WE FEEL THEY'RE
23 GUILTY. THANK YOU.

24 MR. HALL - MAY IT PLEASE THE COURT.

25 THE COURT - YES, SIR.

1 MR. HALL - SOLICITOR, COUNSEL, MR. FOREMAN,
2 LADIES AND GENTLEMEN OF THE JURY, AS THE JUDGE TOLD YOU
3 BEFORE, MY NAME'S ROBERT HALL. I REPRESENT CHAVIS PULLEN.
4 IF YOU'LL JUST PLEASE STAND UP.

5 (MR. PULLEN COMPLIES)

6 MR. HALL - RIGHT HERE. THIS IS MY CLIENT. MR.
7 SINGLETON REPRESENTS MR. JONES THERE. THANK YOU. HAVE A
8 SEAT.

9 (MR. PULLEN COMPLIES)

10 MR. HALL - FIRST I WANT TO THANK YOU FOR YOUR
11 SERVICE, AND I WANT TO THANK YOU FOR PAYING ATTENTION. I
12 WATCHED WHILE THE JUDGE WAS SPEAKING TO YOU. I'VE WATCHED
13 WHILE MR. BULSA WAS SPEAKING TO YOU AND YOU WERE PAYING
14 ATTENTION, AND THAT'S VERY IMPORTANT BECAUSE A JURY CANNOT
15 DO ITS JOB UNLESS IT PAYS ATTENTION TO WHAT'S GOING ON IN
16 THE COURTROOM, AND THAT'S WHAT I'M GOING TO ASK YOU TO DO.
17 THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE
18 DOUBT THAT THESE TWO MEN WERE INVOLVED IN A BURGLARY, THAT
19 KENDEAL JONES AND CHAVIS PULLEN WERE INVOLVED IN A
20 BURGLARY, AN ARMED ROBBERY AND ASSAULT. THE DEFENSE
21 DOESN'T HAVE TO PROVE ANYTHING. YOU NEED TO LISTEN TO THE
22 WITNESSES AND LISTEN TO THEIR ANSWERS AND LISTEN TO THE
23 EVIDENCE, LOOK AT THE EVIDENCE THAT'S PRESENTED. LOOK AT
24 EVERYTHING, BECAUSE THAT'S WHAT YOU'RE GOING TO USE ALONG
25 WITH THE LAW TO DETERMINE WHETHER OR NOT THE STATE HAS

1 CARRIED THAT BURDEN OF PROOF. NOW, I'M NOT GOING TO TAKE
2 A LOT OF TIME HERE, BECAUSE I'VE PRETTY MUCH SAID WHAT I
3 WANT TO SAY IN OPENING STATEMENT, IS PLEASE, PAY
4 ATTENTION. IT IS EVERYBODY IN THIS COURTROOM'S DAY IN
5 COURT, PROBABLY THE ONLY DAY IN COURT THEY'LL GET ON THIS.
6 LISTEN, ABSORB WHAT'S BEING PRESENTED DURING THE TRIAL.
7 AT THE APPROPRIATE TIME USE YOUR COMMON SENSE TO DETERMINE
8 WHAT THOSE FACTS ACTUALLY HAVE BEEN PROVEN AND APPLY IT TO
9 THE LAW AS THE JUDGE GIVES YOU. NOW, MR. SINGLETON'S
10 GOING TO SPEAK WHEN I SIT DOWN AND I DO THANK YOU FOR
11 PAYING ATTENTION AND BEING HERE TODAY.

12 MR. SINGLETON - MAY IT PLEASE THE COURT.

13 THE COURT - YES, SIR.

14 MR. SINGLETON - AGAIN, I JUST WANT TO REITERATE
15 WHAT MR. --- SOLICITOR BULSA AND MR. --- AND THE PUBLIC
16 DEFENDER STATED, THANK YOU FOR BEING HERE TODAY. THIS IS
17 A VERY IMPORTANT DAY FOR EVERYBODY IN THIS ROOM,
18 ESPECIALLY FOR MY CLIENT, KENDEAL JONES. HE'S BEEN ---
19 THIS EVENT OCCURRED TWENTY-ONE MONTHS AGO, ABOUT. AND
20 HE'S BEEN WAITING FOR THIS DAY TO COME TO CLEAR HIS NAME,
21 BECAUSE HE'S BEEN ACCUSED OF SOME VERY SERIOUS CRIMES.
22 LIKE THE SOLICITOR SAID AND THE PUBLIC DEFENDER SAID, WE
23 WANT YOU TO LISTEN TO THE EVIDENCE, LOOK AT THE EVIDENCE,
24 LISTEN TO THE WITNESSES, LISTEN TO WHAT THE JUDGE
25 INSTRUCTS YOU AS TO THE ELEMENTS OF THE LAW AND DETERMINE

1 WHETHER THE SOLICITOR HAS PROVED HIS CASE BY A
2 PREPONDERANCE OF THE EVIDENCE. HE HAS CONTENDED IN HIS
3 OPENING STATEMENT THAT THIS WAS SOMEHOW HATCHED UP BETWEEN
4 MY CLIENT AND MR. PULLEN. IT IS TRUE THAT MY --- THE
5 EVIDENCE WILL SHOW THAT MY CLIENT WAS LET INTO THE
6 APARTMENT AFTER KNOCKING ON THE DOOR AND LET IN BY ONE OF
7 THE VICTIMS OR BY ONE OF THE RESIDENTS WHILE THEY WERE
8 WATCHING THE NBA FINALS. THEY SAY HE WAS THERE TO GET
9 CHANGE FOR FIVE DOLLARS. WE CONTEND HE WAS THERE FOR
10 SOMETHING ELSE WITH THAT FIVE DOLLARS. WE WANT YOU TO
11 LISTEN TO THE EVIDENCE AND SEE IF IT MAKES ANY SENSE.
12 THERE'S NOTHING IN THE EVIDENCE TO THIS POINT TO SHOW THAT
13 MY CLIENT WAS EVER LISTED AS A SUSPECT BY ANY OF THE SO-
14 CALLED VICTIMS OR BY ANY OF THE RESIDENTS OF THAT HOUSE OR
15 APARTMENT. THEY SAY --- THE SOLICITOR STATED IN HIS
16 OPENING STATEMENT THAT THERE WAS A LADY ACROSS THE STREET
17 WHO CALLED 9-1-1. SHE NEVER IDENTIFIED MY CLIENT AS BEING
18 ONE OF THE INDIVIDUALS THAT SHE SUPPOSEDLY SAW OUTSIDE THE
19 APARTMENT. WE WANT YOU TO LISTEN TO THE EVIDENCE, SEE IF
20 IT FITS --- SEE IF THEY'VE PROVEN BY PREPONDERANCE OF THE
21 EVIDENCE WHETHER MY CLIENT IS GUILTY BY ASSOCIATION,
22 BECAUSE THEY'RE SAYING THAT THE HAND OF ONE IS THE HAND OF
23 ALL, BECAUSE THEY'RE SAYING MY CLIENT SUPPOSEDLY WAS ABLE
24 TO GET EVERYTHING STARTED BY GOING IN --- BY GAINING
25 ACCESS TO THE APARTMENT. LISTEN TO THE EVIDENCE AND JUST

MIKE WEST - DIRECT BY MR. BULSA

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1 MAKE AN EDUCATED DECISION, BECAUSE THIS IS VERY IMPORTANT
2 FOR BOTH OF THESE INDIVIDUALS HERE, ESPECIALLY MY CLIENT
3 BECAUSE THEY'RE BEING CHARGED WITH SOME VERY SERIOUS
4 CRIMES, SO WE ASK --- AGAIN, I JUST ASK YOU TO LISTEN TO
5 THE EVIDENCE AND LOOK AT THE EVIDENCE AND LISTEN TO THE
6 WITNESSES AND THEN MAKE A DETERMINATION FROM THERE. THANK
7 YOU.

8 MR. BULSA - STATE CALLS MIKE WEST.

9 THE COURT - COME ON AROUND, SIR. COME RIGHT UP
10 HERE AND ALLOW THE CLERK OF COURT TO SWEAR YOU IN.

11 MIKE WEST. AFTER BEING FIRST DULY SWORN.
12 TESTIFIES AS FOLLOWS -

13 THE COURT - IF YOU WOULD, SIR, JUST PULL
14 YOURSELF UP TO THAT MICROPHONE.

15 (MR. WEST COMPLIES)

16 THE COURT - THERE YOU GO.

17 DIRECT EXAMINATION

18 BY MR. BULSA -

19 Q MR. WEST, WOULD YOU INTRODUCE YOURSELF TO THE JURY?

20 A MY NAME'S MIKE WEST.

21 Q WHO ARE YOU EMPLOYED BY?

22 A SPARTANBURG COUNTY. IT'S SPARTANBURG
23 COMMUNICATIONS, 9-1-1.

24 Q HOW LONG HAVE YOU BEEN WITH THEM?

25 A SIXTEEN AND A HALF YEARS.

MIKE WEST - DIRECT BY MR. BULSA

39

1 Q WHAT ARE SOME OF YOUR DUTIES WITH COMMUNICATIONS?

2 A I'M THE TRAINING COORDINATOR AND PUBLIC HEAD
3 COORDINATOR AS ONE OF THE ADMINISTRATIVE --- SENIOR
4 ADMINISTRATIVE PEOPLE; I ALSO AM CUSTODIAN OF THE RECORDS
5 AND ANY RECORDINGS THAT ARE MADE FROM PHONE CALLS AND
6 DISPATCH CALLS.

7 Q WELL, LET'S EDUCATE THE JURY A LITTLE BIT. HOW OFTEN
8 ARE 9-1-1 CALLS RECORDED?

9 A EVERY CALL THAT COMES INTO THE COMMUNICATION CENTER
10 FLOOR, WHETHER IT 9-1-1 OR GENERAL ADMIN CALL AND ANY
11 RADIO DISPATCH IN OR OUT OF THE COMMUNICATION CENTER IS
12 RECORDED AUTOMATICALLY.

13 Q ON SOME SORT OF COMPUTER SYSTEM?

14 A ON A DIGITAL RECORDING SYSTEM, YES, SIR.

15 Q ARE THOSE RECORDS --- ARE RECORDINGS ACCESSIBLE?

16 A THEY'RE ONLY ACCESSIBLE TO THE FEW OF US WHO HAVE HAD
17 THE AUTHORITY TO GO IN TO PULL RECORDS AND STUFF LIKE
18 THAT.

19 Q AND WERE RECORDS OR WERE CALLS INVOLVING THIS CASE
20 RECORDED ONTO A DISK?

21 A YES, SIR, THEY WERE.

22 Q WERE THEY PROVIDED TO THE STATE FOR PROSECUTION
23 PURPOSES?

24 A YES, SIR.

25 Q HAVE YOU REVIEWED THOSE DISKS?

MIKE WEST - DIRECT BY MR. BULSA

40

1 A YES, SIR.

2 Q OKAY. WERE THEY ACCURATE DEPICTIONS OF WHAT WOULD'VE
3 BEEN RECORDED BY ---

4 A YES, SIR, THE BEST I CAN TELL THEY'RE EXACTLY WHAT
5 WOULD'VE BEEN RECORDED ON 9-1-1 CALL.

6 Q OKAY. NOW, SPECIFICALLY, YOU'VE REVIEWED SOME WHAT
7 ARE CALLED CAD REPORTS?

8 A YES, SIR. IT'S AN AUDIT TRAIL PRINTOUT OF EVERYTHING
9 THAT GOES INTO OUR COMPUTERATED DISPATCH SYSTEM THAT'S
10 ENTERED BY ANY --- ANY ONE OF OUR TELE-COMMUNICATORS THAT
11 ENTER ANYTHING INTO IT. IT BECOMES A PERMANENT RECORD AND
12 CAN'T BE ALTERED.

13 Q OKAY. LET ME SHOW YOU THESE. THEY'RE NOT EVIDENCE,
14 BUT JUST FOR YOUR REVIEW IN YOUR TESTIMONY. WHERE WERE
15 THESE CALLS MADE FROM?

16 A THE FIRST CALL, DUE TO THE TIME-FRAME THAT'S ON THE
17 CAD PRINTOUT, THE FIRST CALL WAS MADE FROM --- APPEARS TO
18 BE FROM A CELL PHONE FROM A TERRI CARTER AND THE CALL IS
19 IN THE AREA OF BEACON STREET AND DANIEL MORGAN AVENUE.

20 Q OKAY. AND WHAT TIME WOULD THAT CALL HAVE BEEN MADE?

21 A THAT CALL CAME IN AT APPROXIMATELY TEN --- TEN
22 O'CLOCK --- TEN FORTY AND TWENTY SECONDS AT NIGHT.

23 Q AND WAS THERE A SECOND CALL ---

24 A THE SECOND CALL CAME IN AT TEN FORTY-ONE AND FIFTY-
25 ONE SECONDS AND IT CAME IN FROM THE ADDRESS OF 507 SOUTH

MIKE WEST - DIRECT BY MR. BULSA

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1 DANIEL MORGAN AVENUE, AND THE CALLER'S NAME WAS MONIQUE
2 MOATES.

3 Q OKAY. NOW, THE TWO RECORDINGS YOU LISTENED TO, DO
4 THEY RELATE TO EACH ONE OF THOSE CALLS?

5 A YES, SIR, THEY DID.

6 Q OKAY.

7 MR. BULSA - THESE HAVE PREVIOUSLY BEEN MARKED,
8 YOUR HONOR, STATE'S EXHIBITS 13 AND 14 I BELIEVE WITHOUT
9 OBJECTION.

10 MR. HALL - WITHOUT OBJECTION.

11 MR. SINGLETON - NO OBJECTION.

12 THE COURT - WITHOUT OBJECTION. SO THEY'RE GOING
13 TO BE ADMITTED. IS THAT CORRECT?

14 MR. BULSA - YES, SIR.

15 THE COURT - 13 AND 14.

16 (DOCUMENTS MARKED INTO EVIDENCE AS STATE'S
17 EXHIBITS 13 AND 14.)

18 Q CAN YOU IDENTIFY THOSE DISKS? DO THEY CONTAIN THE
19 CALLS WE'VE BEEN DISCUSSING?

20 A YES, SIR. THIS FIRST DISK IS THE CALL THAT CAME IN
21 FROM THE CELL PHONE, FROM MS. CARTER. AND THE SECOND ONE
22 IS THE CALL THAT CAME IN FROM THE HOUSE ITSELF.

23 Q OKAY. AND HOW ARE THOSE TO BE PLAYED?

24 A THIS CALL SHOULD BE PLAYED FIRST, THE ONE FROM MS.
25 CARTER, BECAUSE IT CAME IN THAT ORDER AND THIS CALL SHOULD

MIKE WEST - DIRECT BY MR. BULSA

42

1 BE PLAYED SECOND.

2 Q DO YOU HAVE TO PLAY IT ON A COMPUTER?

3 A YES, SIR.

4 MR. BULSA - OKAY. YOUR HONOR, I WOULD ASK THAT
5 THE WITNESS STEP DOWN. WE HAVE A COMPUTER SET UP SO THAT
6 WE CAN PUBLISH THOSE RECORDINGS.

7 THE COURT - HOW LONG ARE THEY?

8 MR. BULSA - NOT VERY LONG, YOUR HONOR.

9 THE COURT - ALL RIGHT. SIR, IF YOU WOULD, TELL
10 US THE EXHIBIT NUMBER OF THE ONE YOU'RE PLAYING FIRST.

11 A EXHIBIT NUMBER 13.

12 THE COURT - OKAY, THANK YOU.

13 (WHEREUPON, DISK IS PLAYED FOR THE JURY BY THE
14 WITNESS.)

15 A THAT'S THE END OF THAT RECORDING.

16 Q PLEASE PLAY THE SECOND DISK.

17 A THIS IS EXHIBIT 14.

18 (WHEREUPON, THE SECOND DISK IS PLAYED FOR THE
19 JURY BY THE WITNESS.)

20 A AND THAT'S THE END OF THAT RECORDING.

21 Q OKAY, MR. WEST, ON THE SECOND DISK, THAT'S EXHIBIT
22 14, WE HEAR ONE CALL THAT BEGAN AND THEN IT APPEARED IT
23 HAD BEEN CUT OFF. CAN YOU EXPLAIN WHAT WOULD'VE HAPPENED
24 THERE?

25 A THE PHONE DISCONNECTED FOR SOME REASON, AND THEN WE

MIKE WEST - CROSS BY MR. SINGLETON

43

1 IMMEDIATELY GOT ANOTHER PHONE CALL BACK.

2 Q OKAY. WAS IT THE SAME OPERATOR THAT PICKED IT UP?

3 A NO, IT WASN'T THE SAME OPERATOR THAT PICKED IT UP.

4 THE THIRD RECORDING YOU HEARD HERE WAS THE INITIAL

5 OPERATOR THAT ANSWERED THAT CALL CALLING BACK AND IT'S A

6 POLICY AND PROCEDURE THAT WE HAVE THAT THEY DO.

7 Q THAT'S THE ONE THAT WAS NO CONNECTION.

8 A THE ONE THERE WAS NO CONNECTION. THEY WERE CALLING

9 BACK WHEN THE PHONE DISCONNECTED.

10 Q AND ANOTHER CALL HAD ACTUALLY GONE THROUGH AND THEY

11 HAD ---

12 A YES, SIR.

13 Q --- CONVERSATION. OKAY. ALL RIGHT.

14 MR. BULSA - THANK YOU, SIR. THAT'S ALL I HAVE

15 AT THIS TIME. ANSWER ANY QUESTIONS DEFENSE COUNSEL MAY

16 HAVE.

17 MR. HALL - NO QUESTIONS FROM MR. PULLEN.

18 MR. SINGLETON - JUST A FEW QUESTIONS.

19 CROSS EXAMINATION

20 BY MR. SINGLETON -

21 Q DO YOU KNOW HOW LONG THE FIRST DISK WAS, HOW LONG THE

22 FIRST ---

23 A THE FIRST DISK, WITHOUT LOOKING BACK, I COULDN'T TELL

24 YOU. IT'S PROBABLY MAYBE A MINUTE, MINUTE AND A HALF.

25 Q OKAY. NOW, IT STATES ON THE TIME THAT THEY CALLED

MIKE WEST - CROSS BY MR. SINGLETON

44

1 WAS TEN FORTY TWENTY P.M. IS THAT CORRECT?

2 A YES, SIR. YES, SIR.

3 Q AND ON THESE --- ON THE 9-1-1 CALL REPORT IT SAYS ---
4 IT HAS THE NUMBERS MARKED TWENTY-TWO FORTY-ONE, FIFTY-
5 FIVE. IS THAT WHAT TIME THE CALL ---

6 A THAT'S WHEN THE CALL GETS INITIATED, WHEN THE CAD
7 ACTUALLY SENDS IT THROUGH, AND THEN THERE'LL BE TIMES IN
8 THERE FOR WHEN THE CALL IS DISPATCHED, ---

9 Q OKAY.

10 A --- WHEN THEY ARRIVE AND STUFF LIKE THAT.

11 MR. SINGLETON - OKAY. THAT'S ALL THE QUESTIONS
12 I HAVE, YOUR HONOR.

13 THE COURT - ANY RE-DIRECT LIMITED TO WHAT HE
14 WENT INTO?

15 MR. BULSA - NO, SIR.

16 THE COURT - THANK YOU, SIR. YOU MAY STEP DOWN.

17 MR. BULSA - MAY WE ASK THAT MR. WEST BE EXCUSED?

18 THE COURT - ANY PROBLEM WITH MR. WEST BEING
19 EXCUSED?

20 MR. HALL - NO OBJECTION, YOUR HONOR.

21 MR. SINGLETON - NONE, YOUR HONOR.

22 THE COURT - THANK YOU, SIR. YOU MAY BE EXCUSED.

23 MR. BULSA - COULD WE GET OFFICER MATHIS, PLEASE.

24 THE COURT - SIR, IF YOU WILL COME UP FRONT AND
25 ALLOW THE CLERK OF COURT THE OPPORTUNITY SWEAR YOU IN,

BRENDALL MATHIS - DIRECT BY MR. BULSA

45

1 SIR.

2 BRENDALL MATHIS. AFTER BEING FIRST DULY SWORN

3 TESTIFIES AS FOLLOWS -

4 DIRECT EXAMINATION

5 BY MR. BULSA -

6 Q OFFICER, IF YOU WOULD, PLEASE INTRODUCE YOURSELF TO
7 THE JURY.

8 A OFFICER BRENDALL MATHIS. BEEN WITH THE DEPARTMENT A
9 LITTLE OVER THREE YEARS.

10 Q WHICH DEPARTMENT?

11 A SPARTANBURG PUBLIC SAFETY.

12 Q AND WHAT ARE YOUR DUTIES AT SPARTANBURG PUBLIC
13 SAFETY?

14 A I'M A PATROL OFFICER.

15 Q AND WHAT DOES THAT MEAN TO THE JURY?

16 A BASICALLY RESPOND TO THE CALLS THAT ARE DISPATCHED,
17 CALLS THAT MAY COME IN ON A DAILY BASIS.

18 Q YOU HAVE A CERTAIN AREA OF THE CITY THAT YOU WORK?

19 A I DO.

20 Q WHAT WAS YOUR AREA BACK DURING 2009?

21 A BACK DURING 2009 WAS THE SOUTH SIDE OF TOWN,
22 BASICALLY THE HIGHLAND AREA ITSELF.

23 Q OKAY. WAS CAMMIE CLAGGETTS PART OF THAT AREA?

24 A YES, SIR.

25 Q AND DO YOU RECALL RESPONDING TO AN INCIDENT ON JUNE

BRENDALL MATHIS - DIRECT BY MR. BULSA

46

1 11TH, 2009 TO THE CAMMIE CLAGGETT APARTMENT AREA?

2 A YES, SIR.

3 Q AND WHERE EXACTLY DID YOU RESPOND TO?

4 A IT WAS 507 DANIEL MORGAN AVENUE.

5 Q IS THAT AN APARTMENT --- PART OF AN APARTMENT
6 BUILDING?

7 A YES, SIR, JUST A SECTION OF CAMMIE CLAGGETT.

8 Q OKAY. AND DOES THAT APARTMENT FACE DANIEL MORGAN?

9 A YES, SIR.

10 Q THAT'S WHY IT HAS THE ADDRESS OF DANIEL MORGAN.
11 OKAY.

12 A YES, SIR.

13 Q AND DO YOU HAVE IT NOTED WHEN YOU RESPONDED?

14 A THE TIME WAS TWENTY-TWO FORTY-THREE. I WAS
15 DISPATCHED, ACTUALLY ARRIVED ON SCENE AT THE EXACT SAME
16 TIME.

17 Q OKAY. SO YOU WERE ON PATROL IN THAT AREA?

18 A YES, SIR, I WAS --- I WAS FAIRLY CLOSE.

19 Q TELL US WHAT YOU OBSERVED WHEN YOU ARRIVED.

20 A WE INITIALLY GOT DISPATCHED IN REFERENCE TO A
21 DISTURBANCE. UPON MY ARRIVAL TO THE SCENE, SPEAKING WITH
22 SEVERAL OF THE VICTIMS THAT WERE THERE, FOUND OUT IT WAS
23 A --- ACTUALLY AN ARMED ROBBERY THAT HAD OCCURRED AND THEN
24 AT THAT TIME BEGAN TRYING TO GET SOME DETAILS ABOUT WHAT
25 HAD ACTUALLY HAPPENED.

BRENDALL MATHIS - DIRECT BY MR. BULSA

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1 Q DID YOU CALL FOR ASSISTANCE?

2 A YES, SIR, ANOTHER --- I BELIEVE ANOTHER OFFICER
3 SHOWED UP JUST AS BACK-UP IN REFERENCE TO THE DISTURBANCE
4 CALL AND THEN LATER ON, SEVERAL MINUTES LATER INVESTIGATOR
5 BURGESS AND INVESTIGATOR JAMES SHOWED UP.

6 Q DID THEY RESPOND TO INVESTIGATE THE ARMED ROBBERY?

7 A THEY --- THEY WERE --- I BELIEVE THEY WERE IN THE
8 AREA AND THEN THEY --- THEY CAME BY TO SEE WHAT WAS GOING
9 ON AND THEY CAME TO ---

10 Q OKAY.

11 A ONCE THEY --- ONCE WE ALL FIGURED OUT THAT IT WAS THE
12 --- AN ARMED ROBBERY, THEY BEGAN DOING THEIR PART IN IT.

13 Q WHO DO YOU RECALL SEEING WHEN YOU ARRIVED AT THE
14 APARTMENT?

15 A TERRANCE MOATES WAS THERE. RHASHAWN MIDDLETON, A
16 NELSON MIDDLETON AND I BELIEVE THERE WERE TWO YOUNGER
17 SUBJECTS THERE, JAQUAN RICE AND TYRECE (SIC) MOATES.

18 Q THOSE WERE CHILDREN?

19 A YES, SIR. WELL, THEY --- ONE IS FOURTEEN, ONE'S
20 SEVEN.

21 Q ONE CHILD AND ONE TEENAGER.

22 A YES, SIR.

23 Q OKAY. WHAT WAS THE Demeanor OF THESE --- THESE
24 PEOPLE?

25 A MOST OF THEM WERE PRETTY UPSET, YOU KNOW, OBVIOUSLY,

BRENDALL MATHIS - DIRECT BY MR. BULSA

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1 UNDER THE CIRCUMSTANCES, JUST STRESSED OUT ABOUT THE
2 SITUATION OVERALL.

3 Q OKAY. DID YOU NOTICE ANY INJURIES TO ANY OF THEM?

4 A YES, SIR, MR. MOATES ACTUALLY HAD A LACERATION TO THE
5 BACK SIDE OF HIS HEAD WHERE HE ADVISED HE WAS HIT WITH THE
6 HANDGUN.

7 Q DID YOU TAKE PHOTOGRAPHS?

8 A YES, SIR.

9 Q I SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED STATE'S 10
10 AND 11.

11 MR. SINGLETON - NO OBJECTION.

12 MR. HALL - NO OBJECTION.

13 THE COURT - WITHOUT OBJECTION THEY'LL BE
14 ADMITTED AS STATE'S 10 AND 11.

15 (PHOTOGRAPHS MARKED INTO EVIDENCE AS STATE'S
16 EXHIBITS 10 AND 11.)

17 Q COULD YOU IDENTIFY THOSE PHOTOGRAPHS FOR ME?

18 A YES, SIR. THAT'S A PICTURE OF HIM AND THE SHOT OF
19 THE CUT AND YOU SEE WHERE SOME OF THE BLOOD'S OUT ON THE
20 BACK OF HIS HEAD.

21 Q OKAY. DID YOU LEARN WHERE IN THE APARTMENT HE WAS
22 SHOT?

23 A IT WAS --- HE --- HE ADVISED HE WAS HIT IN THE
24 KITCHEN. WHEN THE SUBJECTS CAME IN, HE WAS ACTUALLY IN
25 THE KITCHEN AREA, SAID ONE OF THE SUBJECTS CAME BACK WITH

BRENDALL MATHIS - DIRECT BY MR. BULSA

49

1 THE GUN IN HIS HAND AND ACTUALLY HIT HIM IN THE BACK OF
2 THE HEAD, AND WHEN HE HIT HIM IN THE BACK OF THE HEAD, THE
3 GUN ACTUALLY WENT OFF DISCHARGING A ROUND INTO THE --- I
4 GUESS YOU'D CALL IT THE PANTRY, CLOSET AREA, WHICH LODGED
5 INTO THE WALL.

6 Q AND DID YOU OBSERVE ANY BULLET HOLE?

7 A YES, SIR, THERE WAS A BULLET HOLE INTO THE DOOR,
8 WHICH ACTUALLY WENT INTO THE PANTRY AND THE BULLET WAS
9 ACTUALLY LODGED INTO THE BACK OF THE WALL IN THE PANTRY.

10 Q WERE YOU ABLE TO RECOVER THE BULLET?

11 A I WAS NOT, NO, SIR.

12 Q SHOW YOU STATE'S EXHIBIT 7, 8 AND 9 PREVIOUSLY
13 MARKED.

14 MR. SINGLETON - NO OBJECTION, YOUR HONOR.

15 MR. HALL - NO OBJECTION.

16 THE COURT - WITHOUT OBJECTION, THEY'LL BE
17 ADMITTED.

18 (PHOTOGRAPHS MARKED INTO EVIDENCE AT STATE'S
19 EXHIBITS 7, 8 AND 9.)

20 Q COULD YOU IDENTIFY WHAT THOSE SHOW?

21 A IT'S A PHOTOGRAPH OF THE KITCHEN AREA WITH A PICTURE
22 OF THE PANTRY DOOR WHERE THE BULLET HOLE WAS AT AND ALSO
23 A PICTURE OF THE INSIDE OF THE PANTRY WHERE THE BULLET
24 LODGED INTO THE WALL.

25 MR. BULSA - PUBLISH THESE FOR THE JURY.

BRENDALL MATHIS - DIRECT BY MR. BULSA

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1 Q IF YOU CAN --- IF YOU NEED TO STEP DOWN, I JUST WANT
2 YOU TO SHOW THE JURY WHAT WE'RE TALKING ABOUT. AND THE
3 PICTURES THEY SPEAK FOR THEMSELVES. FIRST OF ALL, THIS IS
4 MR. MOATES.

5 THE COURT - CAN YOU REFERENCE THE EXHIBIT
6 NUMBER?

7 MR. BULSA - YES, SIR. YES, SIR, I'M SORRY.

8 Q I'M SHOWING STATE'S EXHIBIT NUMBER 10.

9 A YES, SIR, THAT'S A PICTURE OF MR. MOATES.

10 Q THAT'S HOW HE LOOKED THAT NIGHT?

11 A YES, SIR.

12 Q STATE'S EXHIBIT NUMBER 11. DOES THAT SHOW THE INJURY
13 TO HIM?

14 A YES, SIR, THAT'S THE VERY BACK OF HIS HEAD. IT'S
15 KIND OF HARD TO GET A PICTURE OF THE ACTUAL LACERATION
16 ITSELF, BUT YOU COULD SEE WHERE THE ---

17 Q I THINK THE SHEEN FROM THE LIGHT'S KIND OF DISTORTED,
18 BUT THE JURY WILL HAVE THE PICTURE IN THE JURY ROOM.

19 A RIGHT IN THERE AND, BASICALLY, THE BLOOD FROM WHERE
20 HE WAS HIT AND THERE'S A SMALL CUT IN THIS AREA RIGHT
21 HERE.

22 Q AND NOW STATE'S EXHIBIT NUMBER 7, THIS APPEARS TO BE
23 THE KITCHEN AREA?

24 A YES, SIR, IT'S KIND OF THE KITCHEN AREA DINING ROOM.
25 YOU CAN SEE HERE IN THE DOORWAY THIS HOLE HERE IS ACTUALLY

BRENDALL MATHIS - DIRECT BY MR. BULSA

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1 WHERE THE BULLET DISCHARGED THROUGH --- THROUGH THE DOOR.

2 Q THIS IS EXHIBIT NUMBER 8, A LITTLE CLOSER.

3 A YES, SIR. SAME --- SAME DOOR. THERE'S THE HOLE.

4 Q OKAY. STATE'S EXHIBIT NUMBER 9 KIND OF SHOWS THE
5 PATH THROUGH THE PANTRY?

6 A YES, SIR, THE BULLET ENDED UP HERE IN THE SIDE OF THE
7 --- SIDE REAR OF THE PANTRY AREA LODGED INTO THE SHEETROCK
8 WALL.

9 Q OKAY. NOW, I'M GOING TO SHOW YOU STATE'S EXHIBIT
10 NUMBER 12 PREVIOUSLY MARKED.

11 MR. SINGLETON - NO OBJECTION, YOUR HONOR.

12 MR. HALL - NO OBJECTION.

13 THE COURT - WITHOUT OBJECTION.

14 (DIAGRAM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
15 NUMBER 12.)

16 Q IT'S A DIAGRAM OF THE RESIDENCE. YOU DIDN'T CREATE
17 THAT, BUT FROM YOUR RECOLLECTION THAT EVENING, DOES THAT
18 APPEAR TO BE ACCURATE ---

19 A YES, SIR.

20 COURT REPORTER - I'M SORRY. WHAT IS THE EXHIBIT
21 NUMBER?

22 MR. BULSA - EXHIBIT NUMBER 12.

23 Q ALL RIGHT. IF YOU WOULD, KIND OF WALK US THROUGH
24 WHAT THIS SHOWS.

25 A THIS DOWN HERE IS DANIEL MORGAN. AS YOU MENTIONED

BRENDALL MATHIS - DIRECT BY MR. BULSA

52

1 EARLIER, 507 FACES DANIEL MORGAN. THE FRONT DOOR --- ONCE
2 YOU GO INTO THE FRONT DOOR YOU HAVE A DEN AREA, LIVING
3 ROOM TYPE SPACE, GO THROUGH ANOTHER DOOR TOWARDS THE REAR
4 OF THE HOME, YOU'VE GOT A DINING ROOM AND A KITCHEN AREA.
5 THE PICTURES THAT WERE SHOWN, BEST OF MY KNOWLEDGE I
6 BELIEVE, THE PANTRY DOORS WERE BACK IN THIS AREA HERE
7 WHERE THE BULLET HOLE'S FOUND.

8 Q OKAY. AND WHEN YOU GOT TO THE SCENE, WERE THE PEOPLE
9 STILL INSIDE THE APARTMENT OR WERE THEY OUTSIDE THE
10 APARTMENT?

11 A I BELIEVE MOST OF THEM WERE INSIDE. WE ALL PRETTY
12 MUCH WERE IN THE LIVING ROOM FROM WHAT I RECALL. ONE OF
13 THEM MIGHT'VE BEEN OUT ON THE FRONT PORCH.

14 Q SOME OTHER PHOTOGRAPHS I BELIEVE YOU TOOK, STATE'S
15 EXHIBITS 5 AND 6.

16 MR. SINGLETON - NO OBJECTION, YOUR HONOR.

17 MR. HALL - NO OBJECTION.

18 THE COURT - WITHOUT OBJECTION BE STATE'S 5 AND
19 6.

20 (PHOTOGRAPHS MARKED INTO EVIDENCE AS STATE'S
21 EXHIBITS 5 AND 6.)

22 A YES, SIR, THAT'S A PICTURE OF THE FRONT OF THE
23 RESIDENCE AND KIND OF THE BACK SIDE CORNER OF THE
24 RESIDENCE.

25 Q OKAY. DO THEY SHOW BOTH OF THE ENTRANCES AND EXITS

BRENDALL MATHIS - DIRECT BY MR. BULSA

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1 OUT OF THE APARTMENT?

2 A YES, SIR. YES, SIR.

3 Q ALL RIGHT, THIS IS STATE'S EXHIBIT NUMBER 5.

4 A THAT'S JUST A OVERALL SHOT OF THE FRONT DOOR.

5 Q OKAY, AND THERE'S A CHAIR THERE. DO YOU REMEMBER
6 THERE BEING ANY OTHER CHAIRS?

7 A I DON'T RECALL. I DO REMEMBER THAT ONE, BUT I'M NOT
8 SURE IF THERE WAS ANOTHER ONE UP THERE OR NOT.

9 Q AND STATE'S EXHIBIT NUMBER 6 SHOWS THE --- WAS THIS
10 APARTMENT ON THE END OF THE BUILDING?

11 A YES, SIR, I --- IT'S THE VERY LAST ONE. IF YOU'RE
12 LOOKING AT IT FROM THE FRONT, VERY LAST ONE ON THE RIGHT.
13 THIS IS JUST THE SIDE AND THE REAR OF THE APARTMENT.

14 Q AND IT SHOWS THE BACK DOOR?

15 A YES, SIR.

16 Q ALL RIGHT. FROM YOUR UNDERSTANDING OF HOW THE MEN
17 FLED FROM THE RESIDENCE, WHICH DOORS DID THEY EXIT OUT OF?

18 A FROM WHAT I WAS ADVISED, THEY LEFT OUT OF THE FRONT
19 DOOR, SAME WAY THEY CAME IN.

20 Q OKAY. WHO DID YOU SPEAK TO PRIMARILY AT THE SCENE
21 OR DID YOU SPEAK TO EVERYBODY?

22 A I GOT A LITTLE BIT FROM EVERYBODY AND JUST TRYING TO
23 FIGURE OUT WHAT WENT ON WHEN I FIRST INITIALLY ARRIVED.
24 INITIALLY SPOKE WITH MS. MIDDLETON. SHE --- SHE GAVE ME
25 HER SIDE OF THE --- SIDE OF THE STORY.

BRENDALL MATHIS - DIRECT BY MR. BULSA

54

1 Q DID SHE GIVE YOU ANY NAMES?

2 A SHE DID. SHE ADVISED --- YES, SHE ADVISED THAT THE
3 SUBJECT SHE KNOWS AS KENDEAL JONES CAME TO THE RESIDENCE
4 ASKING FOR CHANGE FROM A TEN DOLLAR BILL I BELIEVE'S WHAT
5 IT WAS, YES, SIR, FROM TEN DOLLAR BILL.

6 Q OKAY. DID SHE GIVE A NICKNAME?

7 A PACMAN, SAID THEY CALL HIM PACMAN.

8 Q OKAY. AND DID SHE IDENTIFY ANY OTHER POTENTIAL
9 SUSPECTS?

10 A SHE DID. SHE SAID DURING THE INCIDENT THAT ACTUALLY
11 OCCURRED, SHE SAID ONE OF THE SUBJECTS THEY KEPT CALLING
12 HIM KOOLAID, AND SHE SAID SHE THOUGHT SHE KNEW KOOLAID
13 FROM A GUY THAT SHE KNOWS AS CHAVIS SHELTON WHO PLAYED
14 BALL WITH HER BROTHER-IN-LAW AT ONE TIME.

15 Q OKAY. ALL RIGHT. HOW CERTAIN DID SHE SEEM OF THESE
16 TWO INDIVIDUALS?

17 A SHE --- SHE WAS ADAMANT THAT WAS THEM.

18 Q DID EITHER NELSON MIDDLETON OR TERRANCE MOATES, WERE
19 THEY ABLE TO PROVIDE ANY SUSPECTS?

20 A I DON'T --- I DON'T RECALL THEM BEING ABLE TO, NO,
21 SIR.

22 Q OKAY. DID YOU LEARN WHETHER EACH OF THEM HAD ANY
23 PROPERTY STOLEN FROM THEM?

24 A YES, SIR, --- GET MY LIST. MR. MOATES ADVISED THAT
25 HE HAD A SUM OF CASH, APPROXIMATELY, TEN DOLLARS WAS TAKEN

BRENDALL MATHIS - CROSS BY MR. HALL

55

1 FROM HIM. MS. MIDDLETON ADVISED THAT SHE HAD
2 APPROXIMATELY FIVE DOLLARS AND SOME CELL PHONES TAKEN AND
3 NELSON MIDDLETON ADVISED SHE HAD APPROXIMATELY TWENTY
4 DOLLARS WORTH OF CASH TAKEN FROM HIM.

5 Q FROM YOUR DISCUSSIONS OF THIS CASE WITH THE THREE
6 VICTIMS AND THEIR STATE OF MIND, DID IT APPEAR TO YOU THAT
7 THE THREE MEN WERE WORKING TOGETHER?

8 A IT APPEARED THAT WAY, YES, SIR.

9 MR. BULSA - THANK YOU. ANSWER AND QUESTIONS
10 EITHER ATTORNEY MAY HAVE.

CROSS EXAMINATION

11 BY HALL -

12 Q NOW, OFFICER MATHIS, AT THE TIME JUNE OF 2009, HOW
13 LONG HAD YOU BEEN WITH THE CITY?

14 A APPROXIMATELY A YEAR AND A HALF, STAYED A YEAR AND A
15 HALF.

16 Q AND JUST SO --- HAD YOU HAD LAW ENFORCEMENT
17 EXPERIENCE SOMEWHERE ELSE BEFORE THAT?

18 A NO, SIR.

19 Q AND FROM WHAT IT SOUNDS LIKE IN YOUR TESTIMONY, YOU
20 WERE ALMOST ON THE SCENE WHEN THEY GOT THE CALL.

21 A YES, SIR, I BELIEVE I WAS PATROLLING THE NORRIS RIDGE
22 AREA, SO I WAS WITHIN A MILE OR SO.

23 Q OKAY. DO YOU KNOW WHICH DIRECTION YOU CAME FROM?
24 DID YOU COME FROM JOHN D. WHITE BOULEVARD OR FROM ---
25

BRENDALL MATHIS - CROSS BY MR. HALL

56

1 A I --- I DON'T RECALL, NO.

2 Q OKAY. BUT DID --- DID PEOPLE TELL YOU WHERE THESE
3 ATTACKERS AND ASSAILANTS, WHICH DIRECTION THEY LEFT IN?

4 A FROM WHAT THEY --- WHAT THEY EXPLAINED IS THEY RAN
5 OUT THE FRONT DOOR AND TOOK A LEFT OUT OF THE FRONT DOOR
6 AND FROM THERE I DON'T RECALL ANY OF THEM SAYING A
7 SPECIFIC DIRECTION AFTER THAT.

8 Q OKAY. DID YOU NOT THINK ABOUT HOW YOU CAME AT THAT
9 POINT AND WHETHER YOU MIGHT'VE PASSED SOMEBODY OR ANYTHING
10 LIKE THAT?

11 A SURE, SURE, ONCE I GOT ON THE SCENE BUT ---

12 Q YOU DON'T REMEMBER WHICH WAY YOU CAME FROM.

13 A I DON'T RECALL.

14 Q NOW, DID THEY --- OTHER THAN GIVE YOU NICKNAMES OR
15 NAMES, DID THEY DESCRIBE THESE PEOPLE TO YOU?

16 A THEY DID.

17 Q AND I REPRESENT MR. PULLEN, AND WHEN YOU WERE
18 ANSWERING QUESTIONS, YOU SAID THAT KOOLAID SHE SAID WAS
19 CHAVIS WHO?

20 A SHEL --- SHE CALLED CHAVIS SHELTON.

21 Q SHELTON, CHAVIS SHELTON. OKAY. AND HOW DID SHE
22 DESCRIBE HIM?

23 A UM, SHE ADVISED THAT ONE OF THE SUBJECTS WAS
24 APPROXIMATELY TWENTY-TWO, TWENTY-FOUR YEARS OLD,
25 APPROXIMATELY SIX FOOT FOUR INCHES TALL, HUNDRED AND

BRENDALL MATHIS - CROSS BY MR. HALL

57

1 EIGHTY POUNDS. THAT WAS THE ONE THAT WAS WEARING A WHITE
2 T-SHIRT AND THE RED SILKY SHORTS.

3 Q NOW, IS THAT THE ONE SHE DESCRIBED CALLED KOOLAID,
4 CHAVIS?

5 A YES. I BELIEVE THAT WAS HIM, YES, SIR.

6 Q AND YOU DID YOUR REPORT AND WHEN YOU PUT DOWN
7 INFORMATION FOR MR. PULLEN, NOT SHELTON, WHAT WAS THE
8 HEIGHT THAT Y'ALL PUT DOWN FOR HIM?

9 A FOR MR. PULLEN?

10 Q (NO RESPONSE)

11 A FIVE ELEVEN.

12 Q WERE YOU INVOLVED --- AND YOU'VE HAD CONTACT WITH MR.
13 PULLEN EVER?

14 A NO, I HAVE NOT.

15 Q I USED TO BE GOOD IN MATH, BUT THE DIFFERENCE BETWEEN
16 SIX FOUR AND FIVE ELEVEN IS FIVE INCHES?

17 A YES, SIR.

18 Q OKAY. AND SHE DESCRIBES HIS WEIGHT AS --- LET'S SEE
19 --- A HUNDRED AND EIGHTY POUNDS?

20 A YES, SIR.

21 Q ALL RIGHT. NOW, DO YOU RECALL IF --- I ASSUME YOU
22 WENT IN THE FRONT DOOR.

23 A YES, SIR.

24 Q IS THERE A PORCH LIGHT OR WAS THERE A PORCH LIGHT
25 THERE?

BRENDALL MATHIS - CROSS BY MR. HALL

58

- 1 A MOST OF THE HOUSES HAVE PORCH LIGHTS, YES, SIR.
- 2 Q OKAY, BUT DO YOU RECALL IF THERE WAS A LIGHT ON OR --
- 3 A I --- I DON'T RECALL, NO.
- 4 Q OKAY. AND I ASSUME THERE WERE LIGHTS ON IN THE
- 5 HOUSE.
- 6 A YES, SIR.
- 7 Q AND THEY SHOWED YOU WHERE THE BULLET WENT AND YOU
- 8 TOOK THOSE PICTURES.
- 9 A YES, SIR.
- 10 Q OKAY. DO YOU KNOW IF ANYBODY EVER TRIED TO RECOVER
- 11 THAT BULLET?
- 12 A NOT --- NOT TO MY KNOWLEDGE. I DON'T KNOW.
- 13 Q WOULD THAT BE NORMAL PROCEDURE THAT YOU WOULD KNOW OF
- 14 THAT WOULD TRY TO RECOVER THAT BULLET FOR COMPARISON OF
- 15 SOMETHING LATER?
- 16 A I WOULDN'T. INVESTIGATOR BURGESS MIGHT HAVE A LITTLE
- 17 MORE ENTAIL ON THAT ONE.
- 18 Q OKAY. THERE IS ON THE 9-1-1, THE --- I HEAR SOMEBODY
- 19 SAYING MY BABY, MY BABY. I ASSUME THERE WAS A BABY THERE?
- 20 A THEY ADVISED THAT THERE WAS A NEWBORN THAT WAS
- 21 UPSTAIRS.
- 22 Q BUT UPSTAIRS, YOU DIDN'T SEE IT.
- 23 A YES, SIR.
- 24 Q NOW, THAT --- WHEN YOU SAID --- I THINK YOU SAID
- 25 THERE WERE THESE THREE PEOPLE AND THEN TWO CHILDREN ---

BRENDALL MATHIS - CROSS BY MR. HALL

59

1 A RIGHT.

2 Q YOU TALKING ABOUT DOWNSTAIRS?

3 A THAT WERE DOWNSTAIRS DIRECTLY INVOLVED IN THE
4 INCIDENT, YES.

5 Q OKAY. HOW LONG WERE YOU THERE THAT EVENING?

6 A PROBABLY --- I WOULD SAY PROBABLY AROUND AN HOUR.

7 Q AND HOW LONG WERE YOU THERE BEFORE THE INVESTIGATORS
8 ARRIVED?

9 A MAYBE FIFTEEN MINUTES OR SO.

10 Q AND WERE YOU JUST OBSERVING FOR THE OTHER FORTY-FIVE
11 MINUTES OR WERE YOU INVOLVED IN TAKING STATEMENTS OR ---

12 A YES, SIR, I WAS INVOLVED IN TAKING STATEMENTS AS WELL
13 AS TRYING TO GET THE PHOTOGRAPHS.

14 Q AND WHOSE STATEMENT DID YOU TAKE?

15 A I BELIEVE I TOOK MS. MIDDLETON'S.

16 Q OKAY.

17 A NO, I THINK I --- NO, I'M SORRY. I THINK I TOOK MR.
18 MOATES.

19 Q YOU SAID MS. MOATES?

20 A MR. MOATES.

21 Q MR. MOATES. TERRANCE.

22 A I BELIEVE I TOOK HIS.

23 Q AND DO YOU KNOW APPROXIMATELY WHEN YOU TOOK THAT
24 STATEMENT IN THIS TIME-FRAME YOU WERE THERE?

25 A IT WAS PROBABLY WITHIN THE FIRST TWENTY, TWENTY-FIVE

BRENDALL MATHIS - CROSS BY MR. HALL

60

1 MINUTES OR SO OF BEING THERE.

2 Q DID YOU ASK THEM --- NOW, I BELIEVE YOU SAID MR.
3 MOATES HAD FIVE DOLLARS TAKEN, IF I REMEMBER CORRECTLY.

4 EXCUSE ME, MR. MOATES HAD TEN DOLLARS TAKEN.

5 A YES, SIR.

6 Q DID HE SAY THAT IT WAS A TEN DOLLAR BILL?

7 A HE DIDN'T SAY.

8 Q AND MS. RHASHAWN MOATES (SIC) I THINK HAD FIVE
9 DOLLARS AND A CELL PHONE.

10 A YES, SIR, THERE WAS TWO CELL PHONES TOTAL THAT WERE
11 TAKEN.

12 Q TWO CELL PHONES.

13 A YES, SIR.

14 Q WERE BOTH OF THOSE TAKEN FROM MS. MOATES (SIC) OR ---

15 A YES, SIR.

16 Q APPRECIATE THAT. I MISSED THE TWO CELL PHONES. AND
17 WE DON'T KNOW IF IT WAS A FIVE DOLLAR BILL OR FIVE ONES OR
18 CHANGE.

19 A THEY DIDN'T SPECIFY.

20 Q AND THE THIRD VICTIM, MR. NELSON (SIC) I BELIEVE WAS
21 TWENTY DOLLARS?

22 A YES, SIR.

23 Q ANYTHING ELSE?

24 A NOT --- NOT THAT I RECALL, NO, SIR.

25 Q AND WE DON'T KNOW IF THAT WAS A TWENTY DOLLAR BILL,

BRENDALL MATHIS - CROSS BY MR. SINGLETON

61

1 TWO TENS, FOUR FIVES, WHATEVER?

2 A DON'T HAVE ANY IDEA.

3 Q SO NOBODY --- TO YOUR KNOWLEDGE NOBODY ASKED THOSE
4 QUESTIONS?

5 A NOT --- I DIDN'T, NO, SIR.

6 Q OKAY.

7 MR. HALL - CHAVIS, COULD YOU STAND UP? COULD
8 YOU STEP AROUND --- STEP RIGHT HERE ---

9 (MR. CHAVIS COMPLIES)

10 Q YOU'RE IN LAW ENFORCEMENT; YOU HAVE TO GIVE
11 DESCRIPTIONS. SIX FOUR OR LESS?

12 A LESS.

13 Q OKAY. HUNDRED AND EIGHTY POUNDS OR LESS?

14 A PROBABLY A LITTLE LESS, BUT HE'S CLOSE TO THAT.

15 MR. HALL - ALL RIGHT. HAVE A SEAT. I WON'T ASK
16 YOU HOW MUCH I WEIGH.

17 (LAUGHTER)

18 MR. HALL - NOTHING FURTHER.

19 MR. SINGLETON - MAY IT PLEASE THE COURT.

20 THE COURT - YES, SIR.

21 CROSS EXAMINATION

22 BY MR. SINGLETON -

23 Q OFFICER BURGESS, DID YOU DO A POLICE REPORT?

24 A THAT'S BURGESS.

25 Q I'M SORRY. OFFICER MATHIS. I'M SORRY. DID YOU DO

BRENDALL MATHIS - CROSS BY MR. SINGLETON

62

1 A POLICE REPORT?

2 A YES, SIR.

3 Q HOW LONG WAS YOUR REPORT? ABOUT FOUR PAGES?

4 A YES, SIR.

5 Q OKAY. DURING --- DURING YOUR TIME OR IN YOUR POLICE
6 REPORT, THERE'S NO INDICATION THAT MR. JONES WAS EVER
7 IDENTIFIED AS A SUSPECT. IS THAT CORRECT?

8 A I DON'T ---

9 Q THERE'S NOTHING LISTED IN YOUR REPORT THAT IDENTIFIES
10 HIM AS A SUSPECT.

11 A SHE --- MS. MIDDLETON HAD ADVISED THAT HE WAS THE ONE
12 THAT INITIALLY CAME TO THE HOUSE.

13 Q AND THAT SHE --- THAT SHE LET HIM INSIDE THE HOUSE.
14 CORRECT?

15 A TO GET THE --- FROM MY UNDERSTANDING TO GET THE
16 CHANGE FOR THE TEN DOLLAR BILL.

17 Q OKAY. WHEN YOU GOT TO THE HOUSE, DID YOU NOTICE WHAT
18 THE RESIDENTS WERE DOING, WHAT WAS GOING ON INSIDE THE
19 LIVING AND WHAT WAS ON T.V.?

20 A NO, I DON'T RECALL THAT. IT WAS PRETTY MUCH
21 EVERYBODY RUNNING AROUND TRYING TO FIGURE OUT WHAT WAS
22 GOING ON WHEN I FIRST INITIALLY ARRIVED.

23 Q OKAY. SO YOU DIDN'T NOTICE THAT THEY'D BEEN DRINKING
24 ANY ALCOHOL OR ANYTHING LIKE THAT?

25 A I'M --- NOT THAT I REMEMBER, NO.

BRENDALL MATHIS - CROSS BY MR. SINGLETON

63

1 Q OKAY. DID YOU NOTICE THAT THEY'D BEEN SMOKING
2 ANYTHING WHILE YOU WERE THERE?

3 A NOT THAT I RECALL.

4 Q NOT THAT YOU RECALL?

5 A CIGARETTES PROBABLY, BUT ---

6 Q OKAY, BUT YOU DON'T RECALL.

7 A (NO RESPONSE)

8 Q OKAY. WHILE YOU WERE THERE DID YOU --- DID UM --- DO
9 YOU REMEMBER IF MS. MIDDLETON STATED TO YOU ABOUT A CAR
10 LEAVING AND DRIVING AWAY GOING DOWN THE BEACON --- I MEAN
11 GOING DOWN DANIEL MORGAN AVENUE?

12 A I DON'T RECALL THAT. UM, SHE DID ADVISE THAT MR.
13 JONES HAD BEEN KNOWN TO DRIVE A BLUE CAPRICE.

14 Q OKAY. BUT YOU DON'T KNOW IF SHE ACTUALLY SAW THAT
15 CAR THAT NIGHT OR ---

16 A NOT THAT I RECALL.

17 Q SO YOU DIDN'T CALL OTHER OFFICERS TO SAY, BE ON THE
18 LOOK-OUT FOR ANY TYPE OF CAR?

19 A NOT THAT I RECALL, NO.

20 Q OKAY. DID SHE GIVE YOU THE ADDRESS OF WHERE MR.
21 JONES LIVED?

22 A SHE DID. SHE SAID THAT ---

23 Q DID YOU GO TO MR. JONES' ADDRESS THAT NIGHT?

24 A I DID NOT.

25 Q UM, DO YOU KNOW IF ANYBODY WENT TO MR. JONES' ADDRESS

BRENDALL MATHIS - CROSS BY MR. SINGLETON

64

1 THAT NIGHT?

2 A I'M NOT SURE.

3 Q OKAY. WELL, DO YOU --- IF HE'S SUPPOSEDLY A VICTIM,
4 WOULDN'T YOU HAVE GONE TO HIS ADDRESS THAT NIGHT TO SEE IF
5 HE WAS THERE OR ---

6 A ONCE --- ONCE INVESTIGATOR BURGESS ARRIVED ON THE
7 SCENE, WE DID EVERYTHING TO ASSIST HIM IN HIS
8 INVESTIGATION OF THE CASE.

9 Q OKAY, SO ONCE HE GETS THERE, HE TAKES OVER.

10 A IN A SENSE, YES, SIR.

11 Q OKAY. AND HOW LONG WAS IT BEFORE YOU GOT --- BEFORE
12 HE GOT THERE?

13 A IT WAS PROBABLY FIFTEEN, TWENTY MINUTES.

14 Q OKAY. AND THERE WAS NEVER ANY INDICATION FROM ANY OF
15 THE RESIDENTS OF THE APARTMENT THAT MY CLIENT WAS WEARING
16 A MASK?

17 A NO, NOT THAT I ---

18 Q THAT MY CLIENT WAS --- THERE'S NO INDICATION FROM
19 ANYBODY IN THE APARTMENT THAT MY CLIENT HAD A GUN OR THAT
20 MY CLIENT WAS ACTING IN A THREATENING MANNER?

21 A NO, SIR, NOT THAT I RECALL.

22 Q THERE'S NO INDICATION THAT MY CLIENT TOOK ANYTHING
23 FROM THEM?

24 A NO, SIR.

25 Q OKAY. NOW, THE PANTRY DOOR THAT YOU WERE TALKING

BRENDALL MATHIS - RE-DIRECT BY MR. BULSA

65

1 ABOUT, ARE YOU --- YOU SAID THAT WHEN YOU GO INTO THE BACK
2 --- GO IN THROUGH THE LIVING ROOM INTO THE KITCHEN AND THE
3 DINING ROOM, THAT YOU THINK THE PANTRY IS ON THE LEFT?

4 A I BELIEVE IT WAS ON THE LEFT, YES, SIR.

5 Q ARE YOU POSITIVE ABOUT THAT?

6 A PRETTY SURE.

7 Q OKAY. SO, AGAIN, THERE'S NO INDICATION WHILE YOU
8 WERE THERE FROM TALKING TO MS. MIDDLETON, TERRANCE MOATES
9 AND NELSON MIDDLETON THAT MY CLIENT HAD ANYTHING TO DO
10 WITH THIS.

11 A HE WAS THERE INITIALLY ASKING FOR CHANGE.

12 Q OKAY. THERE'S NO INDICATION FROM THEM WHILE YOU WERE
13 THERE, ACCORDING TO YOUR POLICE REPORT, FOUR PAGE POLICE
14 REPORT, THAT HE HAD ANY INVOLVEMENT IN THIS INCIDENT.

15 A NO, SIR.

16 MR. SINGLETON - OKAY. THAT'S ALL THE QUESTIONS
17 I HAVE, YOUR HONOR.

18 THE COURT - ANY RE-DIRECT LIMITED TO WHAT THEY
19 WENT INTO?

20 MR. BULSA - YES, SIR.

21 RE-DIRECT EXAMINATION

22 BY MR. BULSA -

23 Q YOUR POLICE REPORT LIST KENDRAL JONES AS A SUSPECT,
24 DOES IT NOT?

25 A YES, SIR.

BRENDALL MATHIS - RE-DIRECT BY MR. BULSA

66

1 Q WAS HE AT THE SCENE WHEN YOU ARRIVED?

2 A NO, SIR.

3 Q DID HE EVER COME BACK WHILE YOU WERE THERE?

4 A NO, SIR.

5 Q DO YOU HAVE ANY KNOWLEDGE WHETHER HE CALLED THE
6 POLICE ANY TIME THAT NIGHT ---

7 A NO, SIR.

8 Q --- AND REPORTED THAT HE WAS A VICTIM OF THE CRIME?

9 A NO, SIR.

10 Q ANY KNOWLEDGE AS TO WHETHER HE DROVE HIS CAR TO THE
11 POLICE STATION THAT NIGHT?

12 A NO, SIR.

13 Q MR. HALL WENT INTO YOUR DESCRIPTION THAT YOU RECORDED
14 OF KOOLAID. IS KOOLAID THE ONE THAT WAS WEARING A MASK?

15 A YES, HE HAD A BLACK SKI MASK ON HIS FACE.

16 Q OKAY. AND IS HE THE ONE THAT WAS CARRYING A PISTOL?

17 A YES, SIR.

18 Q AND MR. HALL COMMENTED ABOUT YOUR RECORDING SIX FOOT
19 FOUR INCHES, BUT THE DEFENDANT IS ACTUALLY FIVE ELEVEN.

20 A YES, SIR.

21 Q IS THAT UNUSUAL THAT THE HEIGHT IS INACCURATE?

22 A NO, SIR, HAPPENS FAIRLY OFTEN.

23 Q YOU RECORDED THE WEIGHT TO BE A HUNDRED AND EIGHT
24 POUNDS.

25 A YES, SIR.

BRENDALL MATHIS - RE-DIRECT BY MR. BULSA

67

1 Q THAT WAS THE DESCRIPTION WAS GIVEN TO YOU. IN FACT,
2 MR. HALL REFERENCED YOU TO ANOTHER PAGE IN YOUR REPORT
3 WHERE THE PHYSICAL DESCRIPTION OF MR. PULLEN WAS NOTED.
4 WHAT WAS THE WEIGHT NOTED THERE?

5 A HUNDRED AND EIGHTY POUNDS.

6 Q OKAY. MR. HALL WENT INTO THE ISSUES --- INTO THE
7 ITEMS THAT WERE STOLEN AND YOU CORRECTED HIM THAT TWO CELL
8 PHONES WERE ACTUALLY TAKEN?

9 A YES, SIR.

10 Q WHERE WERE THOSE CELL PHONES TAKEN FROM?

11 A THEY WERE ON THE --- THEY WERE TAKEN OFF OF A TABLE
12 IN THE DEN, LIVING AREA.

13 Q WHO WAS NOTED TO HAVE TAKEN THOSE?

14 A KOOLAID.

15 Q WAS THERE SOME MONEY ALSO WITH THEIR CELL PHONES?

16 A YES, SIR, THERE WAS A SUM OF CASH THAT WAS LAYING ON
17 THE TABLE.

18 Q OKAY. AND IS THAT INFORMATION THAT YOU GAINED FROM -
19 -- WHICH PERSON GAVE YOU THAT INFORMATION?

20 A MS. MIDDLETON.

21 Q OKAY. DID YOU TAKE THOSE TO BE HER PHONES AND MONEY?

22 A YES, SIR.

23 MR. BULSA - THANK YOU. THAT'S ALL I HAVE.

24 THE COURT - ALL RIGHT, THANK YOU, SIR. YOU MAY
25 STEP DOWN.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

68

- 1 MR. MATHIS - YOU WANT YOUR POINTER THING BACK?
- 2 MR. BULSA - YOU CAN LEAVE IT UP THERE. YOUR
- 3 HONOR, I WOULD ASK THAT OFFICER MATHIS BE EXCUSED.
- 4 THE COURT - ANY OBJECTION TO THE OFFICER BEING
- 5 EXCUSED?
- 6 MR. HALL - NO, SIR, YOUR HONOR.
- 7 MR. SINGLETON - NO, SIR.
- 8 MR. BULSA - I BELIEVE HE WOULD LIKE TO WATCH
- 9 SOME OF THE PROCEEDINGS.
- 10 THE COURT - THANK YOU, SIR. YOU MAY EXCUSED IF
- 11 YOU'D LIKE. THE STATE READY TO CALL THEIR NEXT WITNESS?
- 12 MR. BULSA - YES, SIR. THE STATE CALLS RHASHAWN
- 13 MIDDLETON.
- 14 THE COURT - COME ON AROUND, MA'AM. JUST COME
- 15 RIGHT UP HERE AND ALLOW THE CLERK OF COURT THE OPPORTUNITY
- 16 TO SWEAR YOU IN.
- 17 RHASHAWN MIDDLETON, AFTER BEING FIRST DULY SWORN
- 18 TESTIFIES AS FOLLOWS -
- 19 DIRECT EXAMINATION
- 20 BY MR. BULSA -
- 21 Q OKAY, MS. MIDDLETON, INTRODUCE YOURSELF IF YOU WOULD
- 22 TO THE LADIES AND GENTLEMEN OF THE JURY.
- 23 A MY NAME IS RHASHAWN MIDDLETON AND I WAS A VICTIM.
- 24 Q HOW OLD ARE YOU NOW?
- 25 A SIR?

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

69

- 1 Q HOW OLD ARE YOU?
- 2 A I'M THIRTY-TWO AT THE TIME.
- 3 Q OKAY, AND HOW MANY CHILDREN DO YOU HAVE?
- 4 A THREE.
- 5 Q WHAT ARE THEIR AGES?
- 6 A AT THE TIME ONE IS NINE, SEVEN AND A HALF AND TWO.
- 7 Q AND THIS WAS ABOUT EIGHTEEN MONTHS BEFORE, ---
- 8 A YES.
- 9 Q --- THE SUMMER OF 2009?
- 10 A (INDICATING YES)
- 11 Q WHERE WERE YOU LIVING BACK THEN?
- 12 A 507 SOUTH DANIEL MORGAN AVENUE IN CLAMMIE CLAGGETT
- 13 APARTMENTS.
- 14 Q HOW LONG DID YOU LIVE THERE?
- 15 A FOUR AND A HALF YEARS.
- 16 Q DID YOU CONTINUE TO LIVE THERE AFTER THIS INCIDENT?
- 17 A I PROBABLY STAYED THERE FOR LIKE TWO GOOD MONTHS
- 18 BEFORE THEY MOVED US.
- 19 Q WERE ALL OF YOUR CHILDREN IN THE HOME AT THE TIME OF
- 20 THIS INCIDENT?
- 21 A YES.
- 22 Q WHERE WERE THEY ACTUALLY IN THE RESIDENCE?
- 23 A WELL, MY LITTLE BOY, HE'S --- HE WAS SEVEN AT THE
- 24 TIME. HE WAS SITTING RIGHT BESIDE ME ON THE COUCH AND THE
- 25 OTHER TWO WAS UPSTAIRS ASLEEP.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

70

1 Q HOW MANY BEDROOMS ARE IN THAT ---

2 A THREE.

3 Q DID ANYONE LIVE THERE OTHER THAN YOU AND YOUR THREE
4 CHILDREN?

5 A NO, SIR, ME AND MY THREE KIDS.

6 Q DID YOU HAVE ANY VISITORS OVER THAT EVENING?

7 A YES, SIR.

8 Q WHO?

9 A I HAD MY BROTHER, NELSON MIDDLETON, AND MY KIDS'
10 FATHER, TERRANCE MOATES, AND MY FRIEND-GIRL'S SON, JAQUAN,
11 WAS THERE. HE WANTED TO COME AND WATCH THE GAME.

12 Q AND HOW OLD WAS JAQUAN?

13 A FOURTEEN.

14 Q HOW LONG HAVE YOU BEEN SEEING TERRANCE MOATES?

15 A WELL, WE BEEN SEEING EACH OTHER, THIS YEAR HERE MAKE
16 TWELVE YEARS.

17 Q OKAY. WHAT WERE Y'ALL DOING AT THE RESIDENCE?

18 A WE WAS WATCHING THE NBA FINALS. WE WAS JUST SITTING
19 AROUND WATCHING THE GAME.

20 Q AND DID ANYBODY COME TO THE HOUSE AT ANY TIME THAT
21 EVENING?

22 A THAT EVENING?

23 Q YES, MA'AM.

24 A AROUND THE TIME OF THE GAME?

25 Q YES, MA'AM.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

71

- 1 A YES, SIR.
- 2 Q ALL RIGHT, WHO CAME OVER?
- 3 A KENDEAL JONES.
- 4 Q HAD HE BEEN INVITED?
- 5 A NO, SIR.
- 6 Q DO YOU KNOW HIM?
- 7 A YES.
- 8 Q HOW?
- 9 A WELL, WE ALL GREW UP LIKE A --- LIKE FAMILY SINCE WE
10 WAS LIKE IN THE FIRST, SECOND GRADE.
- 11 Q WHERE DID YOU GROW UP?
- 12 A IN LAKEVIEW MANOR.
- 13 Q SO YOU KNOW HIM BY SIGHT?
- 14 A YES.
- 15 Q DID HE EVER VISIT YOUR PLACE BEFORE?
- 16 A NO, SIR.
- 17 Q WAS THIS UNUSUAL FOR HIM TO COME OVER?
- 18 A YES, SIR.
- 19 Q DID YOU KNOW HE WAS COMING OVER?
- 20 A NO, SIR.
- 21 Q DID HE CALL THAT EVENING?
- 22 A EARLIER THAT DAY.
- 23 Q OKAY, AND WHAT WAS THE CALL ABOUT?
- 24 A I REMEMBER HIM ASKING ABOUT THE GAME. THAT'S ALL.
25 AND I DON'T EVEN KNOW HOW HE GOT MY NUMBER.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

72

- 1 Q OKAY, BUT WERE YOU EXPECTING HIM TO COME THAT
2 EVENING?
- 3 A NO.
- 4 Q DID HE JUST WALK IN OR DID HE KNOCK ON THE DOOR OR --
5 -
- 6 A HE KNOCKED.
- 7 Q --- TELL US WHAT HAPPENED.
- 8 A HE KNOCKED ON THE DOOR.
- 9 Q OKAY. AND DID ANYBODY GET UP TO SEE WHO IT WAS?
- 10 A I SAID WHO IS IT AND HE SAID PACMAN.
- 11 Q AND YOU JUST USED THE NAME PACMAN.
- 12 A (INDICATING YES)
- 13 Q HOW LONG HAS HE HAD THAT NICKNAME?
- 14 A SINCE I'VE KNOWN HIM.
- 15 Q YOU KNOW HIM BY HIS NICKNAME. DO YOU KNOW HIM BY HIS
16 VOICE?
- 17 A YES.
- 18 Q AND WHEN YOU HEARD IT WAS HIM, WHAT DID YOU DO?
- 19 A COME IN.
- 20 Q YOU ALLOWED HIM TO COME IN?
- 21 A (INDICATING YES)
- 22 Q WHY?
- 23 A LIKE FAMILY. I WAS JUST LETTING HIM IN.
- 24 Q AND WHY WAS HE THERE?
- 25 A WHEN HE KNOCKED AND CAME IN, HE ASKED FOR CHANGE.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

73

1 Q AND WHAT TOOK PLACE WHEN HE ASKED FOR CHANGE?

2 A WELL, BY THE TIME HE ASKED FOR CHANGE AND MR. MOATES
3 STOOD UP, HE DIDN'T EVEN MAKE IT OUT OF THE LIVING ROOM
4 GOOD BEFORE THE OTHER TWO CAME IN BEHIND HIM.

5 Q OKAY. SO I JUST HEARD YOU SAY MR. MOATES STOOD UP.
6 WAS HE GOING TO MAKE CHANGE FOR ---

7 A YES.

8 Q --- MR. JONES?

9 A YES.

10 Q OKAY. AND WHERE WERE --- WHERE WAS HE HEADED?

11 A TO THE KITCHEN.

12 Q OKAY. DO YOU KNOW WHY HE WAS GOING IN THERE?

13 A HE SAID HIS WALLET WAS IN THE KITCHEN.

14 Q OKAY. AND WAS MR. JONES FOLLOWING HIM IN THAT
15 DIRECTION?

16 A YES.

17 Q ALL RIGHT. HOW FAR DID THEY MAKE IT BEFORE ANYTHING
18 ELSE HAPPENED?

19 A PROBABLY ONE FOOT INTO THE KITCHEN.

20 Q AND THEN WHAT HAPPENED?

21 A THEN THE OTHER TWO GUNMEN CAME IN AND --- THE OTHER
22 TWO CAME IN AND THE GUNMAN DEMANDED US TO GET DOWN ON THE
23 FLOOR, AND I JUST AUTOMATICALLY STARTED SCREAMING AND
24 YELLING.

25 Q LET ME BACK UP ONE STEP. WHEN PACMAN KNOCKED ON THE

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

74

1 DOOR, WAS EVERYBODY IN THE LIVING ROOM?

2 A YES.

3 Q SHOWING STATE'S EXHIBIT 12 ON THE OVERHEAD. THE DOOR
4 OPENS INTO THE LIVING ROOM?

5 A YES.

6 Q SO YOU HAD FURNITURE IN THERE AND A TELEVISION;
7 EVERYBODY'S SITTING AROUND WATCHING THE GAME.

8 A YES.

9 Q ALL RIGHT. THEN MR. --- MR. JONES COMES IN; MR.
10 MOATES GETS UP, GO INTO THE KITCHEN WITH HIM.

11 A YES.

12 Q AND HOW SOON AFTER THESE OTHER TWO MEN COME IN?

13 A I'D SAY KENDEAL WASN'T GOOD --- PACMAN WASN'T --- HE
14 WASN'T OUT THE FRONT ROOM GOOD ENOUGH THAT HE HAD LIKE
15 ANOTHER STEP TO TAKE AND HE WOULD'VE BEEN IN THE KITCHEN.

16 Q DID IT APPEAR TO YOU THAT THESE TWO MEN WERE WITH MR.
17 JONES?

18 A YES.

19 Q HOW WERE THESE OTHER TWO MEN DRESSED?

20 A ONE HAD ON A BANDANNA AROUND HIS NOSE AND A HAT ON
21 HIS HEAD, AND THE OTHER ONE JUST HAD ON A FULL STOCKING
22 MASK, A WOOL MASK.

23 Q WERE YOU ABLE TO IDENTIFY EITHER OF THOSE MEN?

24 A AT THE TIME?

25 Q YES, MA'AM.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

75

1 A YES. I IDENTIFIED ONE OF THEM AS --- THE SUSPECT
2 THAT WAS IN THE LIVING ROOM WITH US CALLED OUT HIS NAME.

3 Q OKAY. BUT JUST BY LOOKING AT THEM IN THEIR DISGUISE,
4 WERE YOU ABLE TO RECOGNIZE THEM?

5 A YES, I GOT TO LOOKING AT KOOLAID'S EYES AND HIS EYES
6 --- THAT'S ONE OF THE FIRST THINGS THAT CAME TO MY HEAD,
7 I SAID, TERRANCE, THIS IS KOOLAID THEM.

8 Q WHO WAS CALLING OUT THE NICKNAME KOOLAID?

9 A THE GENTLEMEN THAT HAD US IN THE FRONT ROOM, HIS
10 NAME, I GUESS, DERRICK GOGGINS, DUCK, THE THIRD SUSPECT.

11 Q OKAY, YOU THINK IT WAS DUCK.

12 A YES.

13 Q WAS HIS NAME EVER CALLED OUT?

14 A NO.

15 Q OKAY. WHY DO YOU THINK IT WAS HIM?

16 A BECAUSE WHEN YOU SEE HIM, YOU SEE HIM. ONE TALL, ONE
17 SHORT AND WHEN THEY CALL OUT HIS NAME --- OH, EXCUSE ME --
18 - AND I GOT TO LOOKING AND THE FIRST THING THAT CAME TO MY
19 HEAD, I GUESS HE WAS SURPRISED THAT HE CALLED OUT HIS
20 NAME, THAT'S WHEN HE WAS THREATENING TO GET ME AND TO GO
21 GET MY BABY UPSTAIRS AND THEY WAS READY TO RUN OUT THE
22 FRONT DOOR THEN.

23 Q WHO WAS MAKING THOSE THREATS?

24 A CHAVIS, MR. PULLEN.

25 Q OKAY. ALL RIGHT, MAKE SURE THE JURY UNDERSTANDS

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

76

1 THIS. THESE TWO MEN COME IN; THEY'RE BOTH WEARING
2 SOMETHING COVERING THEIR FACE.

3 A YES.

4 Q ONE'S --- OKAY, YOU SAID ---

5 A ONE'S SHORT.

6 Q YOU SAID HEIGHT-WISE, ONE WAS SHORT AND ONE WAS TALL.

7 A AND ONE TALL. (INDICATING YES)

8 Q OKAY. AND THE SHORTER ONE WAS CALLING OUT THE
9 NICKNAME KOOLAID.

10 A (INDICATING YES)

11 Q IS THAT WHEN YOU MADE THE CONNECTION THAT IT WAS
12 CHAVIS?

13 A YES.

14 Q WHAT DID YOU KNOW CHAVIS'S LAST NAME TO BE?

15 A SHELTON.

16 Q WHY DID YOU KNOW IT TO BE SHELTON?

17 A BECAUSE MY SON AND HIS NEPHEW IS COUSINS ON HIS
18 FATHER'S SIDE, AND I JUST KNOW HIS NEPHEW'S LAST NAME IS
19 SHELTON.

20 Q OKAY. DO YOU THINK THAT'S WHAT HIS MOTHER'S LAST
21 NAME WAS?

22 A I JUST --- YES, THAT'S WHAT I THOUGHT HIS NAME WAS,
23 SHELTON.

24 Q OKAY. WELL, IS THE DEFENDANT CHAVIS PULLEN THE MAN
25 YOU KNEW AS CHAVIS SHELTON?

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

77

1 A YES.

2 Q OKAY. AND IS THAT THE MAN YOU KNEW AS KOOLAID?

3 A YES.

4 Q ALL RIGHT. DESCRIBE A LITTLE FURTHER WHAT WAS GOING
5 ON. THEY CAME IN THE LIVING ROOM, THE DEN AREA, DEMANDED
6 EVERYBODY GET DOWN?

7 A YES, THEY WANTED EVERYONE TO GET DOWN AND THAT'S WHEN
8 CHAVIS FOLLOWED TERRANCE INTO THE KITCHEN AND WE WAS LEFT
9 IN THE FRONT ROOM WITH THE OTHER SUSPECT AND HE CONTINUED
10 ON THREATENING, AND I JUST WOULDN'T GET DOWN FOR NOTHING,
11 THEN HE CAME OUT OF HIS POCKET WITH HIS TWO HANDS. THAT'S
12 WHEN I KNEW HE DIDN'T HAVE A WEAPON AND I WAS TRYING TO
13 GET MY BROTHER ATTENTION, BUT I GUESS --- BECAUSE HE'D
14 BEEN SHOT BEFORE, HE WOULD NOT --- ONCE YOU SAY DROP JUST
15 DON'T MOVE, AND I TRIED EVERYTHING IN THE BOOK, BUT I JUST
16 COULDN'T --- I JUST WANTED MY SON TO GET OUT OF THE LIVING
17 ROOM AND HE WOULDN'T LET HIM OUT AND THAT'S WHEN I HEARD
18 THE GUNSHOT AND I JUST STARTING SCREAMING EVEN LOUDER AND
19 LOUDER AND I JUST KNEW MY BABY WAS AWAKE UPSTAIRS AND ---
20 THEN MY DAUGHTER, SHE'S HARD OF HEARING, SO I DIDN'T THINK
21 THE GUNSHOT WOKE HER UP AND THAT'S WHEN --- THEY WAS ABOUT
22 TO THREATEN TO KILL ME, AND THEY WAS THREATENING TO GO
23 UPSTAIRS AND GET MY BABY. HE JUST KEPT THREATENING, DO
24 YOU WANT ME TO GO UP THERE AND GET YOUR BABY, AND THEN I
25 SAID, NO, JUST --- I WAS TRYING TO GET DOWN ON THE FLOOR,

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

78

1 BUT I GUESS THE LORD WOULDN'T LET ME GET DOWN FOR SOME
2 REASON BECAUSE --- BECAUSE AT THE TIME I WAS GOING --- I
3 WAS GOING TO GRAB MY SON AND JUST RUN, BUT I KNEW I
4 COULDN'T MAKE IT TO THE OTHER ROOM TO GET MY OTHER --- TO
5 GET MY DAUGHTER, SO WE JUST STAYED WITH THEM IN THE ---

6 Q DO YOU KNOW WHAT CAUSED THEM TO LEAVE?

7 A I BELIEVE HE HEARD WHEN HE CALLED HIS NAME OUT, THEN
8 THE GUN WAS JAMMED BECAUSE I GUESS THE SHELL WAS IN IT.
9 THEY KEPT COCKING IT AND THEY COULDN'T COCK IT. THEY
10 COULDN'T GET IT RIGHT AND THEN THAT'S WHEN THEY JUST
11 STARTED GRABBING THE PHONES AND MY BABY'S FIVE DOLLARS OFF
12 THE TABLE AND THEY --- THAT'S WHEN I YELLED AT TERRANCE
13 THAT HE YELLED OUT KOOLAID'S NAME AND THEY RAN OUT THE
14 DOOR.

15 Q DID ANYBODY CHASE AFTER THEM?

16 A YES.

17 Q WHO?

18 A TERRANCE?

19 Q WHAT WAS HE TRYING TO DO?

20 A HE GRABBED THE BEER BOTTLE OFF THE TABLE AND HE
21 CHASED AFTER THEM. I GUESS HE WAS TRYING TO CATCH THEM
22 AND COULDN'T CATCH THEM.

23 Q DID YOU SEE --- WERE YOU IN A POSITION TO SEE WHAT
24 HAPPENED WHEN YOU HEARD THE GUNSHOT?

25 A NO, SIR.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

79

1 Q WHERE WAS --- WHERE DID THE GUNSHOT SOUND?

2 A IT CAME FROM RIGHT BEHIND ME IN THE KITCHEN.

3 Q OKAY. NOW, YOU TALKED A LOT ABOUT TWO MASKED MEN,
4 WHAT THEY WERE DOING. WHAT WAS KENDEAL JONES DOING?

5 A HE WAS IN THE KITCHEN THE WHOLE TIME, AND I GUESS IT
6 TOOK HIM A MINUTE TO GET OUT MY DOOR, BECAUSE MY BACK DOOR
7 WAS JAMMED AND HE COULDN'T AUTOMATICALLY JUST CLICK IT,
8 OPEN THE DOOR AND GET OUT. HE HAD TO LIKE WIGGLE IT A
9 LITTLE BIT, SO THAT'S WHY IT TOOK HIM A MINUTE TO GET OUT.

10 Q SO LET ME UNDERSTAND THIS SO THE JURY UNDERSTAND
11 THIS. TERRANCE WAS GOING IN THE KITCHEN WITH KENDEAL
12 JONES.

13 A YES, SIR.

14 Q TWO MEN COME IN.

15 A (INDICATING YES)

16 Q ONE WITH THE MASK AND THE GUN GOES IN THE KITCHEN ---

17 A YES.

18 Q --- WHERE --- WHERE YOU BELIEVE THOSE TWO MEN WERE.

19 A YES.

20 Q OKAY. AND DID YOU SEE MR. JONES LEAVE OUT YOUR BACK
21 DOOR?

22 A NO, I COULDN'T SEE.

23 Q OKAY. SO DID --- HOW DID YOU KNOW HE WENT OUT THE
24 BACK DOOR?

25 A I GUESS AFTER ONCE THEY GOT TO STRUGGLING WITH THE

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

80

1 GUN AND I WAS LIKE IN MY, SHOULD I GO OR SHOULD I NOT, AND
2 THEN WHEN THEY FINALLY RAN OUT AND TERRANCE RAN FROM OUT
3 THE KITCHEN, THAT'S WHEN I --- I WAS LIKE IN THE WALKWAY
4 AND I COULD SEE MY BACK DOOR WAS WIDE OPEN, WASN'T NOBODY
5 ELSE IN THERE.

6 Q OKAY. ALL RIGHT. DID YOU HEAR MR. JONES SAY
7 ANYTHING DURING ANY OF THIS?

8 A I DIDN'T HEAR HIM SAY A WORD.

9 Q DID HE AT ANY TIME COME BACK?

10 A I HAVE NEVER SEEN HIM SINCE THE INCIDENT.

11 Q OKAY. YOU SAID YOU HAVE KNOWN HIM FOR A LONG TIME.

12 A (INDICATING YES)

13 Q YOU'VE KNOWN MR. SHELTON A LONG TIME, TOO.

14 A RIGHT. SINCE I BEEN WITH TERRANCE.

15 Q OKAY. DID MR. JONES AND MR. SHELTON, EXCUSE ME, MR.
16 PULLEN HANG OUT TOGETHER?

17 A YES.

18 Q MA'AM, WHAT WAS ACTUALLY STOLEN FROM YOU?

19 A WELL, MY BELONGINGS WAS MY CELL PHONE.

20 Q WHOSE MONEY WAS IT ON THE TABLE THAT GOT TAKEN?

21 A THAT WAS MY SON. HE WAS REWARDED FIVE DOLLARS FOR
22 HIS REPORT CARD AND THEY TOOK THAT MONEY, TOO. I MEAN FOR
23 PASSING HIS GRADE.

24 Q YOU WERE IN HERE. YOU HEARD THE 9-1-1 CALL?

25 A YES.

RHASHAWN MIDDLETON - DIRECT BY MR. BULSA

81

1 Q WHICH PHONE WERE YOU USING TO CALL?

2 A MY HOUSE PHONE.

3 Q HOUSE PHONE?

4 A (INDICATING YES)

5 Q AND WE HEARD TWO ACTUAL CALLS.

6 A YES.

7 Q CAN YOU DESCRIBE WHAT HAPPENED?

8 A WHEN I MADE IT OUT THE DOOR, THE CAR WAS PULLING OUT
9 OF THE PARKING LOT, AND THAT'S WHEN I WAS --- I WAS TRYING
10 TO DESCRIBE THE CAR AND AT THE TIME THE WINDOW WAS DOWN --
11 - COMING DOWN, AND TO MY KNOWLEDGE I THOUGHT ALL OF THEM
12 MADE IT TO THE CAR AND THAT'S WHEN THE PHONE DROPPED
13 BECAUSE I WAS SCREAMING AND STUFF, AND WHEN I PICKED IT
14 BACK UP, IT WAS OFF AND THAT'S WHEN I JUST PRESSED IT ON
15 RE-DIALED RIGHT --- 9-1-1 RIGHT BACK.

16 Q SO FROM YOUR PERSPECTIVE YOU THOUGHT ALL OF THEM WERE
17 IN THE CAR DRIVING OFF.

18 A (INDICATING YES)

19 Q OKAY. AND THE 9-1-1 EMPLOYEE, MR. WEST, SAID YOUR
20 CALL CAME IN AS A MONIQUE MOATES.

21 A YES.

22 Q IS THAT YOU?

23 A THAT'S MY MIDDLE NAME.

24 Q MONIQUE'S YOUR MIDDLE NAME AND YOU USED ---

25 A TERRANCE'S LAST NAME,

RHASHAWN MIDDLETON - CROSS BY MR. HALL

82

1 Q --- TERRANCE'S LAST NAME?

2 A YES.

3 Q WHY'D YOU DO THAT?

4 A BECAUSE I HAD SOME PROBLEMS IN --- IN ALL IN THE YEAR
5 OVER LIKE EX-GIRLFRIEND, PEOPLE CALLING PLAYING ON MY
6 PHONE, SO I JUST THOUGHT INSTEAD OF USING MY LAST NAME,
7 I'D JUST USE HIS --- MY KIDS' LAST NAME AND USE MY MIDDLE
8 NAME.

9 Q NO QUESTION THAT WAS YOU CALLING?

10 A YES, THAT WAS ME.

11 Q AND YOU TOLD THE POLICE ABOUT KENDEAL JONES AND
12 KOOLAID?

13 A YES.

14 Q FROM YOUR PERSPECTIVE, MA'AM, WERE THESE MEN WORKING
15 TOGETHER?

16 A YES.

17 MR. BULSA - THANK YOU. ANSWER ANY QUESTIONS
18 EITHER LAWYER MAY HAVE.

19 CROSS EXAMINATION

20 BY MR. HALL -

21 Q LET ME GET THIS STRAIGHT. YOU HAVE --- YOU USE A
22 DIFFERENT NAME FOR UTILITIES?

23 A NO, IT'S JUST THE PHONE.

24 Q JUST THE PHONE.

25 A (INDICATING YES)

RHASHAWN MIDDLETON - CROSS BY MR. HALL

83

1 Q AND THAT'S BECAUSE PEOPLE BOTHER YOU?

2 A NO, IT WAS JUST I JUST HAD HAD A PROBLEM WITH SOMEONE
3 KEPT CALLING MY PHONE LIKE MAYBE --- I THINK I HAD THAT
4 NUMBER FOR PROBABLY ABOUT SIX MONTHS AND I JUST SO HAD IT
5 CHANGED AND DIDN'T WANT TO USE MY LAST NAME.

6 Q BUT YOUR --- YOUR CORRECT SURNAME, LAST NAME IS
7 MIDDLETON?

8 A YES, SIR.

9 Q OH, OKAY. AND MOATES IS ---

10 A MY KIDS AND THEIR FATHER LAST NAME.

11 Q AND TERRANCE IS THE FATHER OF ---

12 A OF ALL THREE OF THEM.

13 Q --- ALL THREE OF YOUR CHILDREN. OKAY. NOW, Y'ALL
14 WERE WATCHING BASKETBALL?

15 A YES, SIR.

16 Q AND WAS THERE DRINKING GOING ON?

17 A WELL, WE MIGHT'VE HAD A COUPLE OF LITTLE DRINKS, YES.

18 Q BECAUSE THERE WAS, I THINK, YOU MENTIONED A BEER
19 BOTTLE ---

20 A YES.

21 Q --- FROM THE HOUSE BEING THROWN.

22 A (INDICATING YES)

23 Q SO Y'ALL ARE HAVING SOME ADULT BEVERAGES ---

24 A YES.

25 Q --- IF YOU WILL. ALL RIGHT. DID Y'ALL TELL THE

RHASHAWN MIDDLETON - CROSS BY MR. HALL

84

1 POLICE OFFICERS THAT YOU'D BEEN DRINKING?

2 A THEY DIDN'T ---

3 Q OR DID HE ASK? I WANT TO ASK YOU THIS. WERE THERE
4 OTHER BEER BOTTLES OR OTHER KIND OF BOTTLES OUT ON THE
5 TABLE WHERE Y'ALL WERE?

6 A PROBABLY ABOUT ONE OR TWO, JUST ONE OR TWO BOTTLES.

7 Q OKAY, SO IT --- THEY WERE THERE. ALL RIGHT? THE ---
8 THIS HAPPENED IN THE EVENING AT TEN THIRTY, TEN FORTY-FIVE
9 SOMEWHERE IN THERE.

10 A (INDICATING YES)

11 Q OKAY. AND YOU'RE SAYING KENDEAL CAME IN AND ASKED
12 FOR CHANGE FOR A WHAT?

13 A FIVE, TEN. I --- I THOUGHT HE SAID FIVE, BUT
14 TERRANCE TOLD ME HE WANTED CHANGE FOR A TEN.

15 Q OKAY. AND TERRANCE WAS GOING TO GIVE HIM CHANGE.

16 A YES.

17 Q FOR TEN DOLLARS. UM, IS THAT UNUSUAL THAT PEOPLE
18 COME BY TO ASK FOR CHANGE?

19 A YES.

20 Q I MEAN THERE'S --- AT THAT TIME OF EVENING THERE'S
21 STORES STILL OPEN AROUND.

22 A YES.

23 Q AND SOMEBODY COULD GO PRESUMABLY TO GET CHANGE FROM
24 ANY OF THOSE.

25 A (INDICATING YES)

RHASHAWN MIDDLETON - CROSS BY MR. HALL

85

1 Q HE DIDN'T COME THERE ASKING FOR SOMETHING ELSE
2 INSTEAD OF CHANGE?

3 A NO, I HEARD DO ANYONE HAVE CHANGE. THAT'S WHAT I
4 HEARD.

5 Q ALL RIGHT. AND YOU TOOK THAT JUST TO MEAN I WANT
6 CHANGE FOR A FIVE OR A TEN DOLLAR BILL.

7 A (INDICATING YES)

8 Q IT WASN'T A CODE FOR ANYTHING ELSE?

9 A NO.

10 Q JUST MEANT CHANGE.

11 A YES.

12 Q ALL RIGHT. NOW, YOU TOLD THE SOLICITOR THAT YOU
13 IDENTIFIED CHAVIS SHELTON PULLEN, MY CLIENT, FROM HIS
14 EYES.

15 A THE WAY THE MASK CUT, THE WAY HIS FACE MADE, WHEN ---
16 WHEN THE OTHER SUSPECT CALLED HIS NAME KOOLAID, I DON'T
17 FORGET A FACE, AND I LOOKED AND I COULD SEE THAT THAT WAS
18 ---

19 Q IS HE THE ONLY PERSON YOU EVER KNOWN WITH THE
20 NICKNAME KOOLAID?

21 A YES.

22 Q NOBODY ELSE.

23 A NO.

24 Q HAVE YOU EVER KNOWN ANYBODY ELSE WITH THE NICKNAME
25 PACMAN?

RHASHAWN MIDDLETON - CROSS BY MR. HALL

86

1 A NO.

2 Q OKAY. NOW, YOU MAKE YOUR IDENTITY; YOU HEAR THE NAME
3 KOOLAID; YOU ONLY KNOW ONE KOOLAID.

4 A (INDICATING YES)

5 Q SO YOU IMMEDIATELY THINK ABOUT CHAVIS.

6 A (INDICATING YES)

7 COURT REPORTER - SHE NEEDS TO ANSWER VERBALLY.

8 A YES.

9 THE COURT - THANK YOU, MA'AM.

10 Q HOW MANY TIMES DID YOU TALK WITH THE POLICE ABOUT
11 THIS --- THAT --- YOU TALKED THAT NIGHT. I THINK YOU GAVE
12 A STATEMENT THAT NIGHT, DIDN'T YOU?

13 A YES.

14 Q AND THAT'S WHERE --- IS IT YOU THAT DESCRIBED CHAVIS
15 AS SIX FOOT FOUR?

16 A YES.

17 Q OKAY. DID YOU TALK TO THEM OTHER TIMES OTHER THAN
18 THAT EVENING WITH INVESTIGATOR JAMES, BURGESS?

19 A YES.

20 Q OKAY. AND I BELIEVE THEY SHOWED YOU A PICTURE LINE-
21 UP OF THE INDIVIDUALS.

22 A YES.

23 Q AND THEY ASKED YOU IF YOU COULD PICK OUT SOMEBODY YOU
24 HAVE KNOWN FOR SOME TIME? CHAVIS PULLEN?

25 A YES.

RHASHAWN MIDDLETON - CROSS BY MR. HALL

87

1 Q AND THEN MR. JONES ALSO SOMEBODY THAT YOU'VE KNOWN
2 MOST OF YOUR LIFE.

3 A YES.

4 Q NOW, YOU SAY THE DISTINGUISHING FEATURES --- I GUESS
5 FEATURES --- WHEN YOU HEARD THE NAME KOOLAID, YOU LOOKED
6 AT THIS PERSON THAT THEY REFERRED TO KOOLAID, THAT YOU SAY
7 IS CHAVIS, AND YOU KNEW HIS EYES.

8 A YES. IF YOU PUT A MASK ON HIM TO THIS DAY, PUT HIM
9 IN A LINE-UP, I COULD PROBABLY POINT --- FIND --- BEHIND
10 THE MASK.

11 Q GLAD YOU SAID THAT. DID THE POLICE EVER DO THAT,
12 GIVE YOU A LINE-UP WITH JUST PEOPLE'S EYES, WITH LIKE, YOU
13 KNOW, LIKE THEY HAVE ON A MASK?

14 A NO.

15 Q ALL RIGHT. SO YOU JUST SAID THIS IS A GUY THAT I
16 KNOW AS CHAVIS SHELTON AND KOOLAID.

17 A YES.

18 Q ALL RIGHT. BUT THEY DIDN'T GIVE YOU A LINE-UP THAT
19 JUST SHOWED HIS EYES, SORT OF LIKE SOMEBODY WITH A MASK ON
20 IN ANY WAY?

21 A NO.

22 Q ALL RIGHT. AND IT'S YOUR TESTIMONY THAT MR. MOATES
23 HAD HIS WALLET IN THE KITCHEN AREA?

24 A YES, TO MY KNOWLEDGE, YES.

25 Q OKAY. AND HE WAS GOING TO MAKE CHANGE FOR MR. JONES.

RHASHAWN MIDDLETON - CROSS BY MR. HALL

88

- 1 A YES.
- 2 Q ALL RIGHT. NOW, FROM THE DRAWING IT LOOKS LIKE IT'S
- 3 A STRAIGHT SHOT FROM THE ENTRANCE DOOR TO THE KITCHEN.
- 4 A YES.
- 5 Q IS THERE A DOOR ON THE KITCHEN OR IT'S JUST OPEN?
- 6 A IT'S JUST OPEN.
- 7 Q OKAY. AND WHERE THE DINING ROOM IS, IS THAT A FULL
- 8 WALL OR IS IT A HALF WALL OR ---
- 9 A WHERE THE DINING ROOM?
- 10 Q YES, WHERE YOU HAVE THE LITTLE CIRCLE, I GUESS, FOR
- 11 A TABLE, ---
- 12 A YES.
- 13 Q --- THAT'S A WALL?
- 14 A (INDICATING YES)
- 15 Q OKAY. SO IT'S JUST THAT --- THE REGULAR DOOR OPENING .
- 16 ---
- 17 A (INDICATING YES)
- 18 Q --- THIRTY, THIRTY-SIX INCHES.
- 19 A YES.
- 20 Q ALL RIGHT. AND MR. MOATES I BELIEVE YOU SAID HAD
- 21 GOTTEN INTO THE KITCHEN AND MR. JONES WAS ALMOST AT THE
- 22 KITCHEN. IS THAT WHAT --- DID I HEAR YOU CORRECTLY?
- 23 A I SAID MR. MOATES HAD DONE MADE IT INTO THE KITCHEN
- 24 AND KENDEAL WAS LIKE A FOOT --- A STEP AWAY FROM MAKING IT
- 25 COMPLETELY IN THE KITCHEN BEFORE THE OTHER TWO CAME IN

RHASHAWN MIDDLETON - CROSS BY MR. HALL

89

1 RIGHT BEHIND HIM.

2 Q OKAY. TERRANCE IS IN THERE; KENDEAL'S ALMOST IN
3 THERE AND THE OTHER TWO CAME IN.

4 A YES.

5 Q OKAY. WAS THE DOOR --- IT LOOKS LIKE IN THE PICTURE
6 THERE'S A STORM DOOR ---

7 A YES.

8 Q --- OR SCREENED DOOR, AND PRESUMABLY A DOOR, A
9 REGULAR HOUSE DOOR.

10 A YES.

11 Q ALL RIGHT. WERE THEY OPEN BEFORE THESE PEOPLE CAME
12 IN? WERE THEY CLOSED OR WHAT ---

13 A CLOSED.

14 Q BOTH OF THEM WERE CLOSED?

15 A YES.

16 Q OKAY. AND THAT'S AN ALUMINUM STORM DOOR LOOKED LIKE?

17 A YES.

18 Q DOES IT MAKES NOISE WHEN PEOPLE OPEN IT?

19 A MINE DIDN'T.

20 Q OH, IT DIDN'T?

21 A (INDICATING NO)

22 Q OKAY. NOW, DID PEOPLE HAVE TO KICK THE DOOR IN. OR
23 DID IT APPEAR THEY JUST OPENED IT?

24 A THEY JUST RE-OPENED THE DOOR AND WALKED RIGHT IN.

25 Q OKAY. SO THE DOOR WASN'T LOCKED OR ANYTHING?

RHASHAWN MIDDLETON - CROSS BY MR. HALL

90

- 1 A (INDICATING NO)
- 2 Q OKAY. NOW, YOU DON'T KNOW WHAT HAPPENED IN THE
3 KITCHEN.
- 4 A NO, SIR.
- 5 Q BUT THE ONE YOU HAVE --- THE KOOLAID THAT YOU SAY IS
6 CHAVIS WENT INTO THE KITCHEN?
- 7 A YES.
- 8 Q AND SO AT THAT POINT IN THE KITCHEN WOULD BE THE GUY
9 WITH THE MASK AND THE GUN, ---
- 10 A YES.
- 11 Q --- KENDEAL JONES AND TERRANCE MOATES.
- 12 A YES.
- 13 Q ALL RIGHT. AND IN THE LIVING AREA THERE'S YOU, YOUR
14 BROTHER, ONE OF YOUR CHILDREN, YOUR SON. AM I CORRECT
15 THERE?
- 16 A YES.
- 17 Q AND THEN ONE OTHER CHILD WHO'S VISITING?
- 18 A YES. IT WAS MY FRIEND-GIRL. THEY DIDN'T HAVE THE
19 CONVERTER BOX OR NOTHING AT THE TIME, SO HE WANTED TO COME
20 OVER TO WATCH THE GAME.
- 21 Q SO HE WAS THERE WATCHING THE GAME.
- 22 A (INDICATING YES)
- 23 Q HE'S FOURTEEN. HE WAS OLDER THAN YOUR CHILDREN.
- 24 A YES.
- 25 Q OKAY. AND HE WAS IN THE DEN THE WHOLE TIME OF ---

RHASHAWN MIDDLETON - CROSS BY MR. HALL

91

1 A YES.

2 Q --- ALL THIS GOING ON. OKAY. DID --- DO YOU KNOW
3 IF HE TALKED TO THE POLICE AT ALL OR ---

4 A OH, I DON'T KNOW.

5 Q NOW, THERE WAS A GUNSHOT AND YOU DESCRIBED THEY WERE
6 DOING SOMETHING WITH THE GUN, THE GUY WITH THE GUN WAS
7 DOING SOMETHING OR ---

8 A YES, AFTER THE GUNSHOT, THAT'S WHEN MR. CHAVIS RAN
9 BACK INTO THE LIVING ROOM AND HE RAN STRAIGHT TO THE OTHER
10 SUSPECT AND THE GUN --- THEY WAS TRYING TO COCK THE GUN --
11 -

12 Q IS THAT SOMETHING YOU'VE SEEN BEFORE, PEOPLE TRYING
13 TO ---

14 A OH, NO. I'VE NEVER BEEN AROUND GUNS, NEVER BEEN IN
15 AN INCIDENT LIKE THIS BEFORE.

16 Q OKAY. SO HOW YOU KNOW THAT'S WHAT THEY WERE DOING?

17 A BECAUSE YOU COULD HEAR IT CLICK-CLICK, CLICK-CLICK.
18 THEY WAS BOTH TRYING TO GET IT TO DO SOMETHING, AND ALL
19 YOU COULD HEAR IS CLICK-CLICK, CLICK-CLICK, AND THEY
20 COULDN'T ---

21 Q WELL, DID YOU TALK TO THE OFFICER OR SOMEBODY ELSE
22 AND UNDER --- AND LEARN THAT THEY'RE TRYING TO CLEAR THE
23 GUN AT THAT --- WHEN THEY'RE DOING THAT?

24 A YES. YES.

25 Q WHO TOLD YOU THAT?

RHASHAWN MIDDLETON - CROSS BY MR. HALL

92

1 A I WATCH T.V., SO I KNOW THAT SOMETHING WAS WRONG WITH
2 THE GUN.

3 Q ALL RIGHT. SO YOU WEREN'T FAMILIAR WITH GUNS. DID
4 YOU HAVE THAT KNOWLEDGE FROM T.V. BEFORE THIS HAPPENED OR
5 DID YOU START WATCHING T.V. AFTER THIS HAPPENED AND DECIDE
6 THAT THAT'S WHAT HAPPENED?

7 A I KNOW --- I'VE WATCHED T.V. AND SEE THAT IF THEY
8 CAN'T GET THE GUN TO COCK OR NOTHING, THAT MEAN SOMETHING
9 WRONG WITH IT. IT'S JAMMED OR SOMETHING.

10 Q OKAY. IS THAT SOMETHING YOU'VE LEARNED SINCE THIS
11 INCIDENT OR ---

12 A YES, I LEARNED THAT TOO. (INDICATING YES)

13 Q OKAY, BUT IN YOUR STATEMENT DIDN'T YOU SAY BASICALLY
14 THE SAME THING, HE'S TRYING TO UNJAM THE GUN?

15 A YES.

16 Q SO YOU ACTUALLY MAYBE KNEW SOMETHING ABOUT GUNS FROM
17 T.V. OR WHATEVER BEFORE THIS. RIGHT?

18 A YES.

19 Q OKAY. SO DID YOU MEAN THAT YOU'VE GOTTEN MORE
20 KNOWLEDGE SINCE THEN, BECAUSE YOU'VE TOLD ME THAT YOU
21 LEARNED AFTER ---

22 MR. BULSA - I'M GOING TO OBJECT. HE'S BADGERING
23 HER. SHE'S ANSWERED THE QUESTION.

24 THE COURT - I'M GOING TO LET HIM ASK THE
25 QUESTIONS.

RHASHAWN MIDDLETON - CROSS BY MR. HALL

93

1 MR. HALL - I'LL JUST WITHDRAW THE QUESTION.

2 Q NOW, THE TWO GUYS THAT WERE DOING WHATEVER WITH THE
3 GUN, DID THEY SAY LET'S GO OR DID THEY JUST LEAVE?

4 A NO, THAT'S WHEN I GOT TO YELLING AND I PULLED MY SON
5 UP OFF THE FLOOR AND I LOOKED DOWN AT JAQUAN; THAT'S WHEN
6 I SAID I WAS ABOUT TO RUN UP THE STEPS, AND THAT'S WHEN
7 THE OTHER SUSPECT SAID, KOOLAID, DO YOU WANT ME TO POP
8 THIS B-I-T-C-H, AND THAT'S WHEN I WAS READY TO RUN SOME
9 MORE, BUT THEN THAT'S WHEN HE --- THE OTHER SUSPECT WENT
10 IN THE KITCHEN WITH THE GUN WHERE TERRANCE WAS AT AND
11 THAT'S WHEN MR. PULLEN START THREATENING TO GO GET MY BABY
12 AND I START THINKING IF I DO MAKE IT UP THE STEPS, I WON'T
13 MAKE IT TO THE OTHER ROOM TO GET MY OTHER CHILD, SO THAT'S
14 WHEN I JUST GOT BACK DOWN, SQUATTED BACK DOWN.

15 Q OKAY. DID THEY --- AT WHAT POINT DID THEY LEAVE?
16 HOW DID THEY LEAVE?

17 A THEY LEFT AFTER I BELIEVE --- THEY HEARD ME WHEN I
18 SAID, TERRANCE, THIS KOOLAID, AND THAT'S WHEN THEY
19 COULDN'T GET THE GUN UNJAMMED AND THEY JUST TOOK OFF OUT
20 THE FRONT DOOR.

21 Q WAS THIS WITHIN THIRTY SECONDS OF ---

22 A I DON'T KNOW. I WASN'T KEEPING UP WITH TIME AT THE
23 TIME.

24 Q UNDERSTANDABLE. AND THE TWO PEOPLE, ONE WITH THE
25 MASK AND ONE WITH SOME KIND OF ---

RHASHAWN MIDDLETON - CROSS BY MR. HALL

94

- 1 A BANDANNA.
- 2 Q --- BANDANNA --- DO YOU REMEMBER THE COLOR OF THE
3 BANDANNA?
- 4 A BLUE.
- 5 Q BLUE.
- 6 A I BELIEVE IT WAS BLUE.
- 7 Q ALL RIGHT. AND THE MASK WAS WHAT KIND OF MASK?
- 8 A BLACK, A WOOL --- A WOOL BLACK.
- 9 Q WOOL BLACK MASK. THEY LEFT BY WHAT MEANS?
- 10 A THEY RAN OUT THE DOOR, AND THAT'S WHEN TERRANCE RAN
11 RIGHT BEHIND THEM WITH THE BEER BOTTLE.
- 12 Q AND IS THAT WHEN YOU STOOD UP AND LOOKED AND SAW THE
13 BACK DOOR OPEN THROUGH THAT KITCHEN OPENING?
- 14 A NO, THAT'S WHEN I WAS ABOUT TO GO GET MY BABY, AND
15 THAT'S WHEN JAQUAN SAID I'LL GO GET HIM, AND THAT'S WHEN
16 I COULD TELL MY BACK DOOR WAS OPEN.
- 17 Q OKAY. DID YOU START TO GET YOUR BABY OR CALL 9-1-1
18 FIRST?
- 19 A WELL, FIRST THING CAME TO MY HEAD WAS GO UPSTAIRS AND
20 GET MY BABY, BECAUSE WHEN THE GUNSHOT WENT OFF, I KNOW HE
21 SAT UP, SO I KNEW HE WAS WOKE. THE FIRST THING CAME TO MY
22 HEAD WAS RUN UP THERE AND GET THE BABY.
- 23 Q AND HE WAS HOLD OLD AT THIS POINT?
- 24 A EIGHT AND A HALF MONTHS.
- 25 Q EIGHT AND A HALF MONTHS. OKAY.

RHASHAWN MIDDLETON - CROSS BY MR. HALL

95

1 A (INDICATING YES)

2 Q SO DID YOU CHECK ON THE BABY BEFORE OR AFTER YOU GOT
3 THE 9-1-1 --- MADE THE 9-1-1 CALL?

4 A WHEN JAQUAN RAN UP THE STAIRS TO GRAB MY BABY I WAS
5 AT --- LIKE THE TIME I HAD THE PHONE AND THAT'S WHEN I WAS
6 GOING OUT THE DOOR AND I WAS CALLING 9-1-1.

7 Q AND TELL ME --- AND YOU WENT OUT THE DOOR, TELL ME
8 WHAT YOU SAW?

9 A WHEN I RAN OUT THE DOOR, THE CAR WAS PULLING OUT THE
10 PARKING LOT AT THE TIME COMING --- GOING DOWN DANIEL
11 MORGAN AND THE WINDOW WAS DOWN, COMING DOWN, AND THE FIRST
12 THING CAME TO MY HEAD WAS THEY FIXING TO SHOOT OUT THE
13 WINDOW. THAT'S WHEN MY PHONE DROPPED, AND I PICKED IT
14 BACK UP AND RE-DIALED 9-1-1.

15 Q OKAY. WE'VE GOT THIS NICE DIAGRAM HERE THAT
16 DETECTIVE BURGESS DID. THEY'VE GOT THE FRONT OF YOUR
17 HOUSE. THE PARKING LOT WOULD BE ---

18 A ON THE SIDE WHERE ---

19 Q --- ON THE SIDE --- THE LIVING ROOM/DINING ROOM SIDE.

20 A YES.

21 Q OKAY. AND THEY WENT --- DID YOU SEE THE PEOPLE AFTER
22 THEY RAN OUT? DID YOU SEE THEM ---

23 A NO, TERRANCE WAS BEHIND THEM WHEN THE RAN OUT.

24 Q OKAY. AND TERRANCE CHASED THEM OUT.

25 A YES.

RHASHAWN MIDDLETON - CROSS BY MR. HALL

96

1 Q AND THEN YOU WENT OUT BEHIND TERRANCE.

2 A YES.

3 Q DID YOU SEE HIM THROW THE BEER BOTTLE?

4 A YES, I SEEN HIM WHEN HE SLUNG THE BEER BOTTLE.

5 Q OKAY. BUT DID YOU SEE --- AFTER YOU CAME OUTSIDE,
6 DID YOU SEE THE TWO PEOPLE THAT HAD BEEN IN THERE WITH THE
7 BANDANNA AND MASK?

8 A NO.

9 Q OKAY. BUT YOU SAW A CAR COMING OUT OF THAT PARKING
10 LOT WHICH IS JUST RIGHT BESIDE YOUR APARTMENT.

11 A YES.

12 Q LET'S SEE. THERE'S A LITTLE, ALMOST LIKE A YARD
13 BESIDE THE HOUSE BUT NOT VERY BIG, BEING PART SIDEWALK AND
14 PARKING LOT. RIGHT?

15 A (INDICATING YES)

16 Q OKAY. AND THE CAR YOU SAW, DID IT COME OUT OF THAT
17 PARKING LOT?

18 A YES, IT WAS COMING OUT AT THE TIME.

19 Q OKAY. AND THE WINDOW WAS DOWN.

20 A YES.

21 Q AND YOU SAW THE PEOPLE WITH THE MASK IN THE CAR OR
22 ONE OF THEM OR ALL OF THEM.

23 A NO, AT THE TIME I --- WHEN THE WINDOW WAS COMING
24 DOWN, WHEN HE WAS PASSING THE APARTMENT, THE WINDOW WAS
25 DOWN AND THAT'S WHEN I DROPPED MY PHONE, BECAUSE THE FIRST

RHASHAWN MIDDLETON - CROSS BY MR. HALL

97

1 THING THAT CAME TO MY HEAD WAS THEY WAS FIXING TO SHOOT
2 OUT THE WINDOW.

3 Q SO YOU DIDN'T SEE ANYBODY THAT HAD BEEN ROBBING YOU
4 IN THE CAR?

5 A I SEEN PACMAN --- OR KENDEAL JONES DRIVING AND IT WAS
6 CHAVIS PULLEN'S CAR THAT HE WAS DRIVING.

7 Q CHAVIS'S CAR?

8 A WELL, IT WAS THE CAR THAT I SEEN HIM RIDING AROUND AT
9 THE --- WHEN I RAN INTO HIM AT THE BARBER SHOP AND AT
10 STORES.

11 Q DIDN'T YOU TELL THE POLICE THAT NIGHT THAT YOU SAW
12 ONE OF THE GUYS WITH A MASK IN THE CAR?

13 A YES, WHEN THE WINDOW WAS COMING --- ROLLING DOWN AS
14 I WAS TOWARDS THE DOOR --- AS WAS COMING ON OUT DIALING 9-
15 1-1, THAT WAS THE FIRST THING THAT CAME TO MY HEAD, WAS
16 WHEN I DID SEE THE WINDOW DOWN, IT WAS KENDEAL DRIVING AND
17 I COULD'VE SWORN I SEEN A SUSPECT IN THERE BEFORE I WAS
18 TOLD BY TERRANCE THAT THEY KEPT ON RUNNING.

19 Q WELL, AT THAT POINT YOU WERE WILLING TO SWEAR THAT HE
20 --- ONE OF THE GUYS IN THE MASK WAS IN THE CAR AND KENDEAL
21 WAS DRIVING.

22 A NO, I WASN'T WILLING TO SWEAR BUT I SAID ---

23 Q YOU SAID I WOULD'VE SWORN ---

24 A YES.

25 Q --- BUT THEN TERRANCE TOLD YOU SOMETHING DIFFERENT.

RHASHAWN MIDDLETON - CROSS BY MR. HALL

98

1 A YES, BECAUSE WHEN I MADE IT OUT THE DOOR ALL I SEEN
2 WAS THE CAR.

3 Q NOW, --- NOW, YOU GAVE THE DESCRIPTION OF THE PERSON
4 YOU IDENTIFIED AS KEN --- EXCUSE ME --- AS CHAVIS PULLEN
5 AS SIX FOOT FOUR A HUNDRED AND EIGHTY POUNDS.

6 A YES.

7 Q NOW, SEEING HIM IN THE COURTROOM TODAY WOULD YOU SAY
8 HE'S SIX FOOT FOUR?

9 A I WOULDN'T KNOW. I WAS JUST GUESSING. I'M NOT
10 REALLY OFF THE TOP WITH HEIGHTS AND STUFF.

11 Q DID YOU ASK THE OFFICER, WELL, HOW TALL ARE YOU AND
12 I'LL TELL YOU HOW TALL HE IS COMPARED TO YOU?

13 A YES. I REMEMBER SHOWING HIM HOW HIGH --- HOW TALL HE
14 WAS.

15 Q OKAY. AND THAT'S HOW THEY GOT SIX FOUR?

16 A YES.

17 Q AND THE PERSON THAT WAS --- HAD THE BANDANNA, THE
18 BLUE BANDANNA THAT YOU THOUGHT WAS DUCK OR GOGGINS, HOW
19 TALL WAS HE?

20 A HE STOOD PROBABLY FACE TO FACE WITH ME. I DON'T ---

21 Q AND THAT WOULD MAKE YOU --- IF HE'S YOUR HEIGHT ---

22 A ABOUT --- LAST TIME I CHECK MY HEIGHT BEEN YEARS. I
23 GUESS I SAY I'M ABOUT FIVE ONE, FIVE TWO, SOMETHING LIKE
24 THAT.

25 Q OKAY. WELL, YOU'RE YOUNG ENOUGH --- YOU'RE NOT

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

99

1 SHRINKING YET.

2 A YES, I KNOW. I KNOW --- I'M ABOUT THAT HEIGHT. I
3 JUST REALLY AIN'T KEPT UP WITH MY HEIGHT. IT BEEN YEARS
4 AND YEARS AND YEARS.

5 Q YOU'RE ABOUT FIVE TWO AND HE'S ABOUT THAT TALL.

6 A YES. WE STOOD LIKE EYE TO EYE.

7 MR. HALL - I HAVE NO FURTHER QUESTIONS OF THIS
8 WITNESS.

9 MR. SINGLETON - MAY IT PLEASE THE COURT.

10 THE COURT - YES, SIR, MR. SINGLETON.

11 CROSS EXAMINATION

12 BY MR. SINGLETON -

13 Q HOW LONG HAVE YOU KNOWN MR. JONES?

14 A SINCE --- I'D SAY I WAS LIKE IN THIRD GRADE, MIGHT'VE
15 BEEN IN FOURTH, ELEMENTARY SCHOOL.

16 Q SO FOR ABOUT TWENTY SOMETHING YEARS?

17 A YES.

18 Q WHEN WAS THE LAST TIME YOU HAD SAW MR. JONES IN
19 PERSON BEFORE THAT NIGHT?

20 A A WEEK BEFORE AT A GATHERING AT MY HOUSE.

21 Q OKAY. A GATHERING AT THE SAME APARTMENT?

22 A YES.

23 Q DIDN'T YOU JUST SAY EARLIER THAT'S THE FIRST TIME
24 HE'D EVER BEEN OVER AT YOUR APARTMENT?

25 A WELL, THAT WAS THE FIRST TIME I SEEN HIM, AND I

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

100

1 HAVEN'T SEEN HIM LIKE IN PROBABLY ABOUT TEN YEARS AND THEN
2 ALL OF A SUDDEN HE POPPED UP AT A GATHERING AT MY HOUSE.

3 Q OKAY. WHAT WAS THE GATHERING FOR?

4 A IT WAS NELSON AND TERRANCE'S BIRTHDAY.

5 Q OKAY. SO IS HE FRIENDS WITH TERRANCE AND NELSON?

6 A HE CAME WITH A COUPLE MORE OF HIS FAMILY MEMBERS, SO
7 I GUESS HE WAS JUST COMING WITH THE FAMILY AS A FAMILY
8 GATHERING.

9 Q OKAY. SO EARLIER YOU STATED YOU HAD NEVER BEEN TO
10 YOUR APARTMENT BEFORE, BUT THAT'S MISTAKEN. HE'D BEEN
11 THERE A WEEK EARLIER?

12 A YES.

13 Q OKAY. DID HE CALL YOU EARLIER THAT DAY, THAT SAME
14 DAY?

15 A YES, I REMEMBER HIM CALLING LIKE THAT MORNING.

16 Q DO YOU REMEMBER WHAT TIME OF THE DAY IT WAS?

17 A NO.

18 Q WAS IT BEFORE NOON OR AFTER NOON OR ---

19 A IT WAS BEFORE. I REMEMBER IT WAS THAT MORNING.

20 Q OKAY. DO YOU REMEMBER WHAT Y'ALL TALKED ABOUT?

21 A WE DIDN'T REALLY TALK. (INDICATING NO) HE WAS JUST
22 WANTING TO KNOW WHAT WAS GOING TODAY FOR --- I GUESS HE
23 WAS CALLING TO KNOW WHAT WAS GOING ON ABOUT THE GAME
24 BECAUSE HE WAS LIKE WHAT'S GOING ON.

25 Q OKAY. DID YOU INVITE HIM OVER OR ---

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

101

1 A NO.

2 Q --- JUST SAY, YOU KNOW --- DID YOU TELL HIM NOT TO
3 COME OVER?

4 A I HAD SOMEWHERE TO GO THAT DAY, SO I REMEMBER GETTING
5 OFF THE PHONE. I NEVER INVITED HIM, TOLD HIM TO COME
6 OVER. I NEVER TOLD HIM ---

7 Q AND I BELIEVE YOU ANSWERED THIS BEFORE. I JUST WANT
8 TO GET IT STRAIGHT. YOU STATED WHEN MR. JONES CAME TO
9 YOUR APARTMENT, WAS THE FRONT DOOR AND THE SCREEN DOOR
10 BOTH CLOSED?

11 A YES, THEY WAS SHUT.

12 Q OKAY. WHAT ABOUT ---

13 A YES, I BELIEVE THEY BOTH WERE SHUT, PULLED ---

14 Q ARE YOU POSITIVE?

15 A IT BEEN ABOUT TWO YEARS AGO. I'M TRYING TO THINK WAS
16 IT CRACKED, BECAUSE I WAS EXPECTING MY BROTHER AND HIS
17 GIRLFRIEND TO COME OVER TO FINISH WATCHING THE GAME WITH
18 US, BECAUSE HE HAD JUST GOT OFF WORK, SO I KNOW I DIDN'T
19 HAVE IT LOCKED.

20 Q OKAY. IS IT POSSIBLE YOU COULD'VE LEFT THE MAIN DOOR
21 OPEN AND JUST LEFT THE SCREEN DOOR CLOSED?

22 A TO MY KNOWLEDGE I THOUGHT BOTH DOORS WERE SHUT.

23 Q OKAY. ON THE FRONT OF YOUR APARTMENT THERE'S A
24 WINDOW RIGHT THERE THAT'S FACING DANIEL MORGAN. DID YOU
25 HAVE ANY BLINDS ON THAT WINDOW?

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

102

1 A YES.

2 Q WERE THE BLINDS OPEN OR SHUT OR DO YOU REMEMBER?

3 A SHUT.

4 Q OKAY. AND THERE'S ALSO A SHORT LITTLE PORCH ON YOUR

5 --- OUTSIDE YOUR APARTMENT IS PROBABLY ABOUT --- MAYBE

6 JUST A LITTLE BIT LONGER THAN ONE OF THESE TABLES. IS

7 THAT CORRECT?

8 A YES. YES.

9 Q DO YOU KNOW IF THE LIGHT OVER THE PORCH WAS ON?

10 A YES, I BELIEVE IT WAS ON, BECAUSE I ALWAYS KEEP THE

11 LIGHTS ON.

12 Q DID YOU SEE ANYBODY ON YOUR PORCH THAT EVENING?

13 A NO.

14 Q YOU DIDN'T SEE ANY SHADOWS OR ANYTHING LIKE THAT?

15 A NO, BECAUSE WE WAS ALL SITTING WATCHING THE GAME AND

16 WHEN HE KNOCKED I SAID WHO IS IT, AND I JUST SAID COME IN.

17 Q NOW, WHEN Y'ALL WERE --- DO YOU REMEMBER WHO WAS

18 PLAYING THAT EVENING ON THE --- IN THE NBA FINALS?

19 A I CAN'T REMEMBER. I JUST WATCHED THE FINALS.

20 Q OKAY. DO YOU REMEMBER IF IT WAS TOWARD THE END OF

21 THE GAME OR BEGINNING OF THE GAME OR ---

22 A I CAN'T REMEMBER.

23 Q THIS HAPPENED, WHAT, ABOUT TEN THIRTY AT NIGHT?

24 A (INDICATING YES)

25 Q OKAY. HOW LONG HAD Y'ALL BE DRINKING?

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

103

1 A WE --- NOT THAT LONG, BECAUSE NELSON HAD JUST
2 RECENTLY CAME AND --- WE WASN'T DRINKING.

3 Q HAD Y'ALL BEEN DRINKING SINCE THE START OF THE
4 BASKETBALL GAME?

5 A NOT THE WHOLE GAME. (INDICATING NO)

6 Q OKAY. HAD Y'ALL BEEN SMOKING OR DOING ANYTHING ELSE
7 THAT EVENING?

8 A NO.

9 Q NOT SMOKING ANY KIND OF CIGARETTES OR ANYTHING?

10 A OH. THEY SMOKE CIGARETTES, BUT I DON'T.

11 Q NOTHING ELSE?

12 A NO.

13 Q NOW, YOU STATED WHEN HE --- WHEN YOU LET MR. JONES IN
14 THAT YOU SHUT THE SCREEN DOOR BEHIND HIM.

15 A HE JUST CLOSED THE DOOR UP.

16 Q OKAY. UM ---

17 A I DIDN'T GET UP AND OPEN THE DOOR; I JUST --- I JUST
18 SAID COME IN WHEN HE STATED HIS NAME.

19 Q OKAY. SO YOU JUST LET --- LET HIM WALK IN THE DOOR?

20 A I SAID COME IN, AND HE CAME IN AND PUSHED THE DOOR UP
21 BEHIND HIM.

22 Q OKAY. AND THEN YOU STATED THAT WHEN HE CAME IN, MR.
23 MOATES AUTOMATICALLY GOT UP?

24 A WHEN HE ASKED FOR WHAT HE WANTED, CHANGE, YES --- MR.
25 MOATES WAS STANDING UP AT THE TIME WHEN HE CAME IN. WHEN

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

104

1 HE WAS COMING IN, MR. MOATES STOOD UP AND WAS GOING TO
2 GRAB HIS WALLET.

3 Q OKAY. WHEN DID HE TELL YOU THAT HE WANTED CHANGE,
4 BEFORE HE CAME IN THE DOOR OR ---

5 A HE LIKE STUCK HIS HEAD IN THE DOOR AND SAID, Y'ALL
6 HAVE CHANGE. HE SAID IT SO FAST AND I WAS LIKE COME IN.

7 Q OKAY. SO HE ASKED YOU FOR CHANGE EVEN THOUGH THERE'S
8 A GAS STATION ABOUT ---

9 A YES.

10 Q --- A BLOCK DOWN THE ROAD. AND YOU SAID THAT MR.
11 MOATES WALKS IN FRONT OF MR. JONES INTO THE KITCHEN.

12 A YES.

13 Q OKAY, AND --- AND THEN WHEN MR. JONES GOT INTO THE
14 KITCHEN, THAT'S WHEN THE OTHER TWO PEOPLE SUPPOSEDLY CAME
15 IN AFTER THAT?

16 A YES.

17 Q AND WHAT DID THE --- WHAT DID THE TWO PEOPLE WITH THE
18 MASK ON AND BANDANNA ON, WHAT DID THEY SAY TO YOU?

19 A THEY WAS LIKE, YOU KNOW WHAT TIME IT IS, GET DOWN ON
20 THE FLOOR.

21 Q OKAY. SO DID EVERYBODY GET DOWN ON THE FLOOR?

22 A NO. EVERYONE EXCEPT FOR ME.

23 Q OKAY. SO KENDEAL JONES GOT ON THE FLOOR ---

24 A OH, I DON'T --- OH, HE WAS IN THE KITCHEN AT THE
25 TIME. HE WASN'T IN THE LIVING ROOM WITH US.

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

105

1 Q OKAY. BUT YOU STATED AT THE TIME HE HAD JUST --- HE
2 JUST BARELY HAD ONE FOOT IN THE ---

3 A YES, HE WAS --- HE WENT ON IN THE KITCHEN. WHEN HE
4 CAME --- WHEN THE GUNMAN CAME THROUGH THE DOOR, HE
5 AUTOMATICALLY WENT STRAIGHT ---

6 Q SO YOU DON'T KNOW IF HE WAS --- SO AS FAR AS YOU ---
7 AS FAR AS YOU KNOW, HE WAS ON THE FLOOR.

8 A WHO?

9 Q KENDEAL JONES?

10 A I CAN'T SAY IF HE WAS OR WASN'T, BECAUSE I COULDN'T
11 SEE BEHIND ME.

12 Q OKAY. NOW, YOU STATED THAT EARLIER THAT YOU --- I
13 THINK THE SOLICITOR ASKED YOU DID IT APPEAR THAT MR. JONES
14 WAS WITH THESE OTHER TWO INDIVIDUALS. HOW DID IT APPEAR
15 THAT HE WAS WITH THEM?

16 A BY THE TIME ALL THAT HAPPENED MY BROTHER AND HIS
17 GIRLFRIEND WAS ARRIVING AT THE TIME. LIKE I SAID, I WAS
18 EXPECTING FOR THEM TO COME TO THE GAME --- TO FINISH
19 WATCHING THE GAME, AND THAT'S WHEN MY BROTHER WAS LIKE ---
20 AND I WAS TELLING HIM WHAT HAPPENED --- WHEN HE SEEN THE
21 COMMOTION AND SEEN THE YELLING AND STUFF AND I WAS TELLING
22 HIM HOW THEY CALLED OUT KOOLAID NAME AND STUFF, HE WAS
23 LIKE, YES, THAT'S THE CAR THAT BE PARKED ACROSS THE
24 STREET. WHERE HIS KIDS STAY AT, THEY LIVE ACROSS THE
25 STREET, AND HE WAS LIKE, YES, PACMAN BE WITH KOOLAID AND

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

106

1 THEN HE WAS TELLING ME, YES, THAT'S THAT CAR THAT THEY BE
2 IN AND ---

3 Q THIS IS THE WHOLE CONVERSATION WHILE YOU'RE GETTING
4 ROBBED?

5 A NO, THIS WAS AFTERWARDS. I THOUGHT YOU SAID HOW DID
6 I --- AFTER IT HAPPENED ---

7 Q . OKAY.

8 A --- NOT THAT I ---

9 Q BUT AT THE TIME OF THIS INCIDENT YOU DIDN'T THINK HE
10 WAS INVOLVED IN THIS INCIDENT, DID YOU?

11 A NOT UNTIL HE CALLED OUT --- OTHER SUSPECT CALLED OUT
12 HIS NAME.

13 Q BUT YOU NEVER TOLD THE POLICE THAT YOU THOUGHT HE WAS
14 A PART OF THIS ---

15 A NOT AT THE TIME --- UNTIL --- RIGHT AT --- NOT AT THE
16 MOMENT, EXACT MOMENT.

17 Q NOW, YOU STATED EARLIER THAT YOUR BOYFRIEND, MR.
18 MOATES, CHASED --- WENT OUT THE DOOR AND CHASED AFTER
19 THEM. DO YOU --- DO YOU KNOW HOW FAR HE GOT OUT THE DOOR?

20 A I CAN'T REMEMBER.

21 Q WELL, WHEN YOU FIRST WENT OUT THE DOOR, WHERE WAS MR.
22 MOATES OUT?

23 A HE WAS WALKING BACK TOWARDS ---

24 Q I MEAN WHERE WAS HE AT IN RELATIONSHIP ---

25 A BACK ON THE ---

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

107

1 Q WAS HE AT THE ROAD OR ---

2 A ON THE SIDE. NO, HE WAS LIKE ON THE SIDE GOING
3 TOWARDS THE PARKING LOT WHERE THEY WAS PARKED OUT.

4 Q SO HE WAS ON THE SIDE OF YOUR APARTMENT?

5 A (INDICATING YES) LIKE WALKING BACK TOWARDS --- HE WAS
6 COMING FROM THE SIDE WALKING BACK TOWARDS THE APARTMENT
7 BUILDING.

8 Q OKAY, AND YOU STATED HE THREW THE BEER BOTTLE AT THE
9 TWO INDIVIDUALS THAT RAN OUT THE DOOR?

10 A (INDICATING YES)

11 Q THEN DID HE TELL YOU THE TWO INDIVIDUALS RAN DOWN
12 TOWARD THE BEACON?

13 A EXCUSE ME?

14 Q DIDN'T HE TELL YOU THAT THE TWO INDIVIDUALS RAN DOWN
15 TOWARD THE BEACON?

16 A HE TOLD ME THAT LATER ON --- LATER ON IN THE NIGHT.

17 Q OKAY. BUT HE TOLD YOU THAT HE WAS THROWING A BEER
18 BOTTLE AT THE TWO INDIVIDUALS NOT AT THE CAR.

19 A NO, WHEN I TOLD HIM THAT HE CALLED OUT KOOLAID NAME
20 AND THEN WHEN THEY RAN OUT THE DOOR, THAT'S WHEN MR.
21 MOATES WAS COMING OUT THE KITCHEN, HE WAS LIKE IN A
22 WALKWAY AT THE TIME AND THEY WAS STRUGGLING WITH THE GUN,
23 AND HE KEPT YELLING MY KIDS IN HERE, MY KIDS IN HERE, AND
24 THAT'S WHEN --- WHEN THEY FINALLY RAN OUT, HE RAN OUT
25 BEHIND THEM.

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

108

1 Q OKAY. AND YOU STATED EARLIER THAT MR. JONES --- YOU
2 DIDN'T HEAR HIM SAY A WORD WHILE HE WAS IN THE APARTMENT
3 EXCEPT FOR CHANGE FOR THE --- SUPPOSEDLY GETTING CHANGE.

4 A YES, I --- YES.

5 Q AND YOU SAY WHEN YOU WALKED OUT THE DOOR THAT YOU SAW
6 MY CLIENT, MR. JONES, PULLING AWAY IN HIS CAR AND YOU SAY
7 THE WINDOW WAS ROLLED DOWN?

8 A YES. ON THE ---

9 Q HOW FAR WAS ---

10 A --- THE PASSENGER SIDE. ALL THE WAY.

11 Q IT WAS ALL THE WAY DOWN?

12 A (INDICATING YES)

13 Q OKAY. BUT YOU DIDN'T SEE ANYBODY ELSE IN THE CAR
14 WITH HIM?

15 A AT THE TIME I THOUGHT SOMEONE WAS SITTING ON THE
16 PASSENGER SIDE, BUT I WAS AWARE THAT ---

17 Q BUT NOW YOU BELIEVE THAT YOU WERE MISTAKEN?

18 A HUH?

19 Q NOW YOU BELIEVE YOU WERE MISTAKEN, THAT THERE WAS
20 NOBODY ELSE IN THE CAR WITH MR. JONES?

21 A NOW THAT I BELIEVING IT NOW? UM, LATER ON THAT NIGHT
22 WHEN TERRANCE TOLD ME THAT WASN'T NOBODY ELSE IN THE CAR,
23 THAT THEY RAN ON DOWN TOWARDS BEACON STREET.

24 Q OKAY. SO NOW IS IT --- YOU BELIEVE THAT HE --- THAT
25 MR. JONES WAS IN THE CAR BY HIMSELF?

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

109

1 A YES.

2 Q AND HE WENT AWAY FROM BEACON STREET DOWN DANIEL ---
3 TOWARDS --- GOING DOWN DANIEL MORGAN AVENUE. CORRECT?

4 A YES, HE WENT THIS WAY, AND I ASSUME THE OTHER TWO RAN
5 THAT WAY.

6 Q WHILE THEY WERE --- WHILE THE OTHER TWO PEOPLE WERE
7 IN THERE, DID THEY EVER CALL OUT KENDEAL'S NAME OR HIS
8 NICKNAME PACMAN?

9 A NO.

10 Q NOW, YOU STATED EARLIER IN YOUR TESTIMONY THAT YOU
11 THOUGHT THE OTHER INDIVIDUAL THAT WASN'T WEARING A MASK
12 WAS WEARING A BLUE BANDANNA?

13 A YES.

14 Q BUT ACCORDING TO THE POLICE REPORT YOU SAID THAT HE
15 WAS WEAR A GREY BANDANNA.

16 A IT COULD'VE BEEN GRAY. IT JUST BEEN YEARS AGO. I
17 JUST --- I KNEW HE HAD A BANDANNA AROUND HIS NOSE.

18 Q OKAY. DID HE HAVE ANYTHING ELSE COVERING HIS FACE OR
19 HIS HEAD OR ANYTHING?

20 A HE HAD A HAT ON HIS HEAD.

21 Q OKAY. SO HE --- WOULD YOU SAY HE HAD LESS MATERIAL
22 COVERING HIS FACE THAN HE DID --- THAN SUPPOSEDLY MR.
23 PULLEN HAD COVERING HIS FACE?

24 A YES.

25 Q BUT YOU COULDN'T IDENTIFY THE THIRD INDIVIDUAL?

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

110

1 A ALL I KNEW WAS A NICKNAME.

2 Q OKAY. AND HOW'D YOU COME UP WITH THAT NICKNAME? I
3 MEAN HOW'D YOU THINK THAT WAS HIM?

4 A HOW DID I THINK THAT WAS DERRICK?

5 Q (NO RESPONSE)

6 A I DON'T KNOW.

7 Q HOW WELL DO YOU KNOW MR. PULLEN?

8 A I REALLY --- I NEVER LIKE HAD A CONVERSA ---
9 CONVERSATION WITH HIM. I JUST KNOW HIM AS GOING TO --- AT
10 THE TIME TERRANCE BROTHER WAS STILL IN HIGH SCHOOL AND
11 PLAYED FOOTBALL AND STUFF, I WAS GOING TO THE GAMES ---
12 JUNIOR HIGH SCHOOL I MEANT TO SAY --- AND THEY WAS LIKE ON
13 THE SAME TEAM AND WHEN I WAS IN WOODRUFF I MIGHT SEEN HIM
14 AND TERRANCE SPEAK OR SOMETHING. OTHER THAN THAT, I NEVER
15 --- I DON'T --- I NEVER HAVE A CONVERSA --- CONVERSATION
16 WITH HIM.

17 Q SO HOW MANY TIMES HAVE YOU RUN INTO MR. PULLEN?

18 A I DON'T KNOW. I'VE SEEN HIM AT BARBER SHOPS, BECAUSE
19 OUR KIDS --- HE WAS BRINGING HIS NEPHEW AND THEM UP THERE
20 AND GOT --- COUPLE OF TIMES WE DONE BUMPED HEADS AT THE
21 BARBER SHOP BEFORE. I'VE SEEN HIM AT THE LITTLE GAS
22 STATION BY MY HOUSE, BUT I DON'T KNOW HOW MANY TIMES I ---

23 Q HAVE YOU SEEN HIM LIKE ON A WEEKLY BASIS OR MONTHLY
24 BASIS OR ---

25 A JUST EVERY NOW AND THEN I MIGHT SEE HIM.

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

111

1 Q YOU SEEN HIM EVERY NOW THEN, YOU'RE CERTAIN THAT BY
2 LOOKING AT HIS EYES YOU THINK THAT THAT'S --- THAT'S HIM?

3 A I --- YES, I WOULD NEVER FORGET.

4 Q SO YOU PRETTY MUCH HAVE A PHOTOGRAPHIC MEMORY WHEN IT
5 COMES TO SOMEBODY'S FACE AND EYES WHEN YOU SEE THEM, EVEN
6 THOUGH YOU DON'T SEE THEM THAT OFTEN?

7 A YES, THE --- I REMEMBER YOUR FACE --- I CAN --- FROM
8 THIS --- MY FIRST TIME EVER SEEING YOUR FACE ---

9 Q WHAT ABOUT MR. GOGGINS?

10 A MR. --- I KNOW HIS FACE.

11 Q BUT YET YOU DIDN'T PICK HIM OUT WHEN HE WAS WEARING
12 LESS MATERIAL THAN MR. PULLEN WAS.

13 A THEY NEVER BROUGHT A MUG SHOT OF HIM. I DIDN'T KNOW
14 HIS REAL NAME AT THE TIME.

15 Q BUT YOU GAVE THEM HIS NICKNAME. CORRECT?

16 A YES.

17 Q OKAY. AND YOU STATE THAT MY CLIENT CAME OVER THERE
18 TO GET CHANGE FOR A FIVE DOLLAR BILL OR A TEN DOLLAR BILL?

19 A YES.

20 Q ARE YOU CERTAIN IT WASN'T FOR SOMETHING ELSE?

21 A NO.

22 Q ARE YOU CERTAIN IT'S NOT FOR MARIJUANA?

23 A NO.

24 Q OKAY. YOU EVER BEEN AROUND MARIJUANA?

25 A YES, I BEEN AROUND ---

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

112

1 MR. BULSA - OBJECTION, YOUR HONOR. THIS IS NOT
2 RELEVANT TO THIS CASE.

3 THE COURT - I'LL SUSTAIN THE OBJECTION.

4 Q NOW, LET'S GO OVER YOUR 9-1-1 CALL TO THE POLICE.
5 YOU STATED IN A 9-1-1 CALL THAT KENDEAL JONES WAS WITH
6 THESE TWO INDIVIDUALS --- WITH THESE OTHER TWO INDIVIDUALS
7 BUT YOU NEVER SAW THESE --- NEVER WITH THESE TWO OTHER
8 INDIVIDUALS, DID YOU, BESIDES INSIDE THAT APARTMENT WHEN
9 HE WAS --- WHEN MR. JONES WAS GETTING ROBBED.

10 A I'VE SEEN THEM BEFORE LIKE OVER THE YEARS.

11 Q I'M TALKING ABOUT THAT EVENING. YOU EVER SAW ---

12 A OH, NO.

13 Q --- THEM TOGETHER?

14 A NO.

15 Q BUT EVEN THOUGH YOU SAID --- YOU TOLD THE POLICE THAT
16 HE WAS WITH KENDEAL JONES, BUT YOU NEVER SAW THEM TOGETHER
17 OR TALKING TO EACH OTHER THAT EVENING.

18 A NO.

19 Q THEY WEREN'T IN THE SAME CAR; THEY DID NOT RUN OUT
20 THE FRONT DOOR TOGETHER.

21 A (INDICATING NO)

22 Q IS THAT A NO?

23 A YES.

24 Q YOU ALSO TOLD THE 9-1-1 THAT THEY BOTH HAD MASKS ON.
25 WERE YOU TELLING 9-1-1 THAT MY CLIENT HAD A MASK ON?

RHASHAWN MIDDLETON - CROSS BY MR. SINGLETON

113

1 A NO.

2 Q OKAY. NOW, ON YOUR WRITTEN STATEMENT THAT YOU GAVE
3 TO THE POLICE, YOU WROTE UP UNDER IT IN YOUR HANDWRITING
4 I GUESS, YOU SAID I LET KENDEAL COME IN. WHAT DO YOU MEAN
5 BY THAT YOU LET KENDEAL COME IN?

6 A HE --- I SAID HELLO --- I MEAN --- EXCUSE ME. I SAID
7 WHO IS IT, HE SAID PACMAN; I SAID COME IN.

8 Q OKAY. SO YOU DIDN'T OPEN THE DOOR FOR HIM. YOU JUST
9 LET HIM COME IN.

10 A YES, I YELLED COME IN AND HE CAME IN.

11 Q OKAY. AND YOU'RE NOT ALLEGING THAT MY CLIENT, MR.
12 JONES, HAD A GUN ON HIM. YOU'RE NOT --- I MEAN HE DIDN'T
13 TAKE ANYTHING FROM YOU OR ANYBODY ELSE IN THE APARTMENT.
14 IS THAT CORRECT?

15 A YES.

16 Q AND AS FAR AS YOU KNOW HE MAY OR MAY NOT HAVE GOTTEN
17 DOWN ON THE FLOOR WHEN THEY TOLD EVERYBODY IN THE
18 APARTMENT TO GET DOWN ON THE FLOOR. YOU DON'T KNOW THE
19 ANSWER TO THAT QUESTION?

20 A I DON'T KNOW.

21 Q OKAY. DID YOU EVER ASK MR. MOATES IF HE ---

22 A I ---

23 Q OKAY.

24 A I'VE NEVER REALLY ASKED HIM, NO.

25 Q AND YOU GAVE THE POLICE THE ADDRESS WHERE YOU BELIEVE

RHASHAWN MIDDLETON - RE-DIRECT BY MR. BULSA

114

1 MR. JONES WAS STAYING. IS THAT CORRECT?

2 A YES.

3 Q AND AS FAR AS YOU KNOW THEY NEVER WENT TO HIS HOUSE
4 THAT EVENING. DO YOU KNOW? IS THAT CORRECT?

5 A I DON'T KNOW.

6 MR. SINGLETON - ONE SECOND, YOUR HONOR. (PAUSE)

7 Q SO THE ONLY REASON YOU THINK MY CLIENT IS INVOLVED IN
8 THIS IS BECAUSE YOU THINK ONE OF THE PERSONS WEARING A
9 MASK WAS MR. PULLEN AND THEREFORE, YOU THINK SINCE HE'S
10 FRIENDS WITH MY CLIENT THAT HE HAD SOMETHING TO DO WITH
11 IT.

12 A COULD YOU REPEAT THAT, PLEASE?

13 MR. SINGLETON - STRIKE THE QUESTION, YOUR HONOR.

14 THE COURT - ANYTHING FURTHER?

15 MR. SINGLETON - NOTHING, YOUR HONOR.

16 THE COURT - ANY RE-DIRECT LIMITED TO WHAT THEY
17 WENT INTO?

18 MR. BULSA - YES, SIR.

19 RE-DIRECT EXAMINATION

20 BY MR. BULSA -

21 Q MS. MIDDLETON, WAS KENDEAL JONES INVOLVED WITH THE
22 TWO MEN THAT CAME IN?

23 A YES.

24 Q THEY COMMENTED ABOUT THE ALCOHOL USE. Y'ALL HAD BEEN
25 DRINKING SOME BEER?

RHASHAWN MIDDLETON - RE-DIRECT BY MR. BULSA

115

- 1 A WELL, I PROBABLY JUST HAD --- JUST --- I'M NOT A BEER
2 DRINKER. I'M LIKE JUST A LIGHT WINE DRINKER, SO I HADN'T
3 HAD THAT MUCH.
- 4 Q WAS ANYBODY INTOXICATED IN THE HOUSE?
- 5 A NO, SIR.
- 6 Q OKAY. DID THAT AFFECT YOUR ABILITY TO TELL WHAT WAS
7 GOING ON?
- 8 A NO, SIR.
- 9 Q WHEN THESE GUYS CAME IN, WHAT WAS YOUR ATTENTION
10 DRAWN TO?
- 11 A WHEN KENDEAL CAME IN, I WAS CALM AND RELAXED, BUT
12 WHEN THE OTHER TWO WALKED THROUGH THE DOOR, JUST SEEMED
13 LIKE THE WORLD WAS ABOUT TO END.
- 14 Q WHAT WERE YOU CONCERNED ABOUT AT THAT TIME?
- 15 A JUST GETTING THE --- MY SON AND OTHER LITTLE BOY OUT.
16 THAT'S ALL I KEPT ASKING, JUST LET THE KIDS EITHER RUN UP
17 OR RUN OUT. THAT'S ALL I WANTED.
- 18 Q AND WAS THE NICKNAME DUCK EVER CALLED OUT?
- 19 A NO, SIR.
- 20 Q OKAY. BUT KOOLAID DEFINITELY WAS.
- 21 A YES.
- 22 Q AND WHEN YOU SAW THE CAR LEAVING AND THE WINDOW
23 ROLLED DOWN, WHAT ACTION DID YOU --- YOU SAID YOU DROPPED
24 THE PHONE, BUT WERE YOU GETTING DOWN?
- 25 A HUH?

RHASHAWN MIDDLETON - RE-DIRECT BY MR. BULSA

116

1 Q WHAT WERE YOU DOING? WHAT MADE YOU DROP THE PHONE?

2 A I WAS --- HAD JUST DIALED 9-1-1 AND I WAS TALKING,
3 AND THEN WHEN I SEEN THE CAR, IT SCARED ME SO BAD, I GUESS
4 ALL MY NERVES JUST WENT DOWN AND THE PHONE JUST DROPPED.
5 WHEN I PICKED IT UP, IT WAS HUNG UP.

6 Q OKAY. SO YOUR ATTENTION WAS THEN DRAWN TO THE PHONE.

7 A (INDICATING YES)

8 Q TRYING TO GET IT BACK TO CALL AGAIN.

9 A YES.

10 Q HAVE YOU SEEN HIM --- SO HE NEVER CAME BY AGAIN, DID
11 HE?

12 A NO, HE NEVER CAME BY, NEVER CALLED.

13 Q HE BEING MR. JONES.

14 A HUH?

15 Q HE BEING KENDEAL JONES. NEVER CAME BY.

16 A NEVER CAME BY.

17 Q OKAY. NEVER CAME BY AND CHECK ON YOU AND SEE HOW YOU
18 WERE?

19 A HE NEVER CAME BY.

20 MR. BULSA - THANK YOU.

21 MR. HALL - JUST BRIEFLY.

22 THE COURT - LIMITED TO WHAT HE JUST ASKED.

23 MR. HALL - YES, SIR.

24 RE-CROSS EXAMINATION

25 BY MR. HALL -

RHASHAWN MIDDLETON - RE-CROSS BY MR. HALL

117

1 Q IN RESPONSE TO THE QUESTION FROM MR. BULSA, YOU SAID
2 WHEN KENDEAL JONES CAME IN I WAS --- I WAS KIND OF
3 RELAXED. WHY WASN'T --- WHAT ABOUT MR. JONES COMING OVER
4 THERE WOULD MAKE YOU ANYTHING OTHER THAN COMFORTABLE AND
5 RELAXED?

6 A NOTHING, HE'S --- LIKE I SAY, HE'S LIKE FAMILY. I
7 DIDN'T THINK NOTHING COULD COME OUT OF IT. HE JUST CAME
8 IN AND I WAS ---

9 Q BUT YOU DIDN'T SAY YOU WERE RELAXED OR COMFORTABLE.
10 YOU SAID I WAS KIND OF RELAXED.

11 A WELL, I WAS RELAXED AND COMFORTABLE, JUST CONTINUE ON
12 WATCHING THE GAME. I DIDN'T THINK NOTHING WAS GOING TO
13 HAPPEN OR NOTHING.

14 Q AND HE ASKED YOU THAT THE THREE WERE INVOLVED
15 TOGETHER. WHAT DOES THAT MEAN? WHEN YOU SAID YES THEY
16 WERE INVOLVED.

17 A YES. WHAT DID THAT MEAN WHEN I MEAN YES THEY WAS
18 INVOLVED?

19 Q (INDICATING YES)

20 A WELL, I BEEN HAVING SOME VISITORS AT THE --- AT THE
21 MOMENT ---

22 MR. BULSA - YOUR HONOR, COULD WE APPROACH?

23 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
24 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
25 REPORTED.)

RHASHAWN MIDDLETON - RE-CROSS BY MR. HALL

118

1 Q LET ME BE A LITTLE MORE SPECIFIC WITH --- DID YOU
2 MEAN AT THE TIME, THE EVENING, YOU SAID YOU BASICALLY KNEW
3 THEY WERE INVOLVED TOGETHER IN THIS? IS THAT WHAT YOU
4 SAID TO MR. BULSA?

5 A (NO RESPONSE)

6 Q I'M TALKING ABOUT THAT EVENING IN 2009 IN JUNE, THAT
7 IT WAS YOUR BELIEF THAT MR. PULLEN WAS THE GUY WITH THE
8 SKI MASK, MR. JONES WAS THE GUY WITHOUT AND THEN THERE'S
9 A GUY NAMED GOGGINS WITH THE BANDANNA, THAT THEY ALL THREE
10 WERE INVOLVED TOGETHER IN THIS SCHEME OR WHATEVER WAS
11 GOING ON. RIGHT?

12 A (INDICATING YES) YES.

13 Q BUT THAT'S JUST ASSUMPTION YOU MADE BECAUSE MR. JONES
14 CAME IN, THEN THESE GUYS CAME --- THEN THESE OTHER TWO
15 GUYS CAME IN WITH THE MASK.

16 A I DON'T UNDERSTAND WHAT YOU'RE SAYING.

17 Q YOU KNOW THAT MR. JONES KNOWS CHAVIS PULLEN, KOOLAID.

18 A YES.

19 Q HE KNOWS DUCK.

20 A YES.

21 Q SO WHEN YOU HEARD KOOLAID, YOU JUST ASSUMED THEY WERE
22 ALL --- THESE WERE THE PEOPLE AND THEY WERE ALL INVOLVED
23 TOGETHER?

24 A WELL, AT FIRST I DIDN'T THINK KENDEAL WOULD DO IT,
25 BUT THEN AFTER I STARTED --- YES, AT --- AFTERWARDS THEN

RHASHAWN MIDDLETON - RE-CROSS BY MR. SINGLETON

119

1 YES.

2 Q ALL RIGHT, HOW LONG AFTERWARDS?

3 A AFTER MY BROTHER ARRIVED AND INFORMED ME THAT THEY
4 ALL --- THAT'S THE CAR THAT THEY ALL BE IN AND ---

5 Q YOUR BROTHER BEING WHO?

6 A HE'S NOT --- TYWONE (PHONETIC) MIDDLETON.

7 Q OKAY, THIS IS ANOTHER BROTHER.

8 A YES.

9 Q OKAY. SO YOU MADE THAT --- THAT CONNECTION AFTER YOU
10 TALKED TO YOUR BROTHER --- WAS THIS AFTER THE POLICE WERE
11 GONE OR WHILE THE POLICE WERE THERE?

12 A THEY WAS THERE.

13 Q OKAY. DO YOU KNOW IF HE TALKED TO THE POLICE?

14 A I DON'T REMEMBER.

15 MR. HALL - ALL RIGHT. NOTHING FURTHER.

16 MR. SINGLETON - ONE QUESTION.

17 RE-CROSS EXAMINATION

18 BY MR. SINGLETON -

19 Q AGAIN, YOU'RE MAKING THIS ASSUMPTION JUST BECAUSE
20 KOOLAID AND MR. JONES KNOW EACH OTHER.

21 A YES.

22 Q THAT'S THE ONLY REASON YOU'RE MAKING THIS ASSUMPTION
23 AT THAT TIME.

24 A YES, I GUESS.

25 Q SO IT'S JUST A GUESS THAT YOU THINK THEY WERE

RHASHAWN MIDDLETON - RE-CROSS BY MR. SINGLETON

120

1 INVOLVED OR THAT THEY'RE THE ONES WHO DID THIS?

2 A THE WAY IT WENT DOWN AND HOW STUFF HAPPENED, YOU
3 WOULD SAY YES, IT WAS --- THEY WAS TOGETHER.

4 Q BUT IT'S JUST AN ASSUMPTION.

5 A I DON'T KNOW.

6 MR. BULSA - SHE'S ANSWERED THE QUESTION.

7 MR. SINGLETON - THAT'S ALL THE QUESTIONS, YOUR
8 HONOR.

9 THE COURT - I AGREE. ALL RIGHT, THANK YOU,
10 MA'AM. YOU MAY STEP DOWN. ALL RIGHT, LADIES AND
11 GENTLEMEN, WE'RE GOING TO TAKE OUR LUNCH-BREAK. I NEED TO
12 REMIND YOU THAT YOU CANNOT HAVE ANY DISCUSSIONS WITH
13 ANYONE ABOUT ANYTHING INVOLVED IN THE CASE. NOW, THAT
14 INCLUDES YOURSELF, FRIENDS, ANYBODY YOU RUN INTO. IF IT'S
15 NATURAL CURIOSITY, YOU GO HOME AND SOMEONE SAYS, WELL,
16 WHAT KIND OF CASE IS IT OR WHAT'S IT ABOUT, JUST TELL THEM
17 VERY POLITELY THAT THE JUDGE HAS BE UNDER INSTRUCTIONS
18 THAT I CAN'T TALK TO YOU AT ALL ABOUT ANYTHING INVOLVING
19 THE CASE. AFTER THE CASE IS OVER YOU CAN TALK TO THEM
20 UNTIL YOU'RE BLUE IN THE FACE, BUT NOW YOU CAN'T TALK AT
21 ALL WITH ANYONE. ALSO WANT TO REITERATE MY INSTRUCTIONS
22 TO YOU THAT YOU CANNOT DO ANY TYPE OF INDEPENDENT RESEARCH
23 OR INVESTIGATION INTO ANYTHING INVOLVING THE CASE. WE'VE
24 HEARD TESTIMONY NOW AND YOU'VE GOT A LOCATION AND, YOU
25 KNOW, DON'T GO OUT OF YOUR WAY TO RIDE BY ANYTHING. IF A

121

1 WORD HAS BEEN USED BY ANY OF THE LAWYERS OR BY ME THAT YOU
2 DON'T THINK YOU QUITE UNDERSTAND, MY INSTRUCTIONS TO YOU
3 IS THAT YOU CANNOT EVEN PULL A WEBSTER'S DICTIONARY OFF
4 THE SHELF AND LOOK THAT WORD UP. THE REASON BEING IS THAT
5 YOU HAVE TO BASE YOUR DECISIONS THAT YOU HAVE TO MAKE IN
6 THIS CASE BASED ON THE INFORMATION YOU RECEIVE IN THIS
7 COURTROOM. SO ALLOW THE LAWYERS AND I TO DO OUR WORK TO
8 INFORM YOU AS TO THE INFORMATION THAT YOU NEED TO KNOW AND
9 THEN YOU WILL USE THAT INFORMATION TO FORM THE BASIS OF
10 YOUR DECISION, SO DO NOT DO ANY TYPE OF INDEPENDENT
11 RESEARCH AS WELL. AT THIS TIME I'M GOING TO ASK IF YOU
12 WOULD BY THAT CLOCK ON THE WALL IT'S APPROACHING ONE
13 FIFTEEN --- TWO FIFTEEN --- I'M GOING TO ASK THAT YOU BE
14 BACK IN THE JURY DELIBERATION ROOM BY TWO FORTY-FIVE, BUT
15 YOU MAY GO WITH THE BAILIFF. THANK YOU VERY MUCH.

16 (JURY EXITS THE COURTROOM)

17 THE COURT - ANYTHING BEFORE I STEP DOWN?

18 MR. BULSA - NOTHING FROM THE STATE, YOUR HONOR.

19 THE COURT - ALL RIGHT, THANK YOU, I'M GOING TO
20 STEP DOWN.

21 (LUNCH RECESS)

22 THE COURT - OKAY, I BELIEVE THAT WE ARE NOW
23 READY. LET'S BRING THE JURY BACK.

24 (JURY RETURNS TO THE COURTROOM)

25 THE COURT - MR. FOREMAN, LADIES AND GENTLEMEN,

NELSON MIDDLETON - DIRECT BY MR. BULSA

122

1 WE WILL NOW RESUME THE PRESENTATION OF THE TESTIMONY.

2 MR. BULSA - STATE CALLS NELSON MIDDLETON.

3 THE COURT - SIR, COME RIGHT UP HERE AND ALLOW
4 THE CLERK THE OPPORTUNITY TO SWEAR YOU IN.

5 NELSON MIDDLETON, AFTER BEING FIRST DULY SWORN
6 TESTIFIES AS FOLLOWS -

7 MR. BULSA - SLIDE UP A LITTLE BIT SO WE CAN HEAR
8 YOU.

9 DIRECT EXAMINATION

10 BY MR. BULSA -

11 Q ALL RIGHT, MR. MIDDLETON, PLEASE INTRODUCE YOURSELF
12 TO THE LADIES AND GENTLEMEN OF THE JURY.

13 A MY NAME IS NELSON MIDDLETON.

14 Q AND HOW OLD ARE YOU, SIR?

15 A THIRTY-FIVE.

16 Q WHERE DO YOU LIVE?

17 A 326 WILLOUGHSBY (PHONETIC) AVENUE, SPARTANBURG, SOUTH
18 CAROLINA.

19 Q DO YOU WORK?

20 A I WORK AT MR. GHATTI'S.

21 Q HOW LONG HAVE YOU WORKED THERE?

22 A I WORKED THERE FOR A YEAR.

23 Q WHERE WERE YOU LIVING BACK IN JUNE OF 2009?

24 A I STAYED ON WOODVIEW AVENUE AND NORTH LIBERTY
25 STREET.

NELSON MIDDLETON - DIRECT BY MR. BULSA

123

- 1 Q WERE YOU WORKING BACK THEN?
- 2 A YES, SIR.
- 3 Q WHERE?
- 4 A I WORKING AT WILD WINGS CAFE, SPARTANBURG.
- 5 Q OKAY.
- 6 A WORKED THERE FOR FIVE YEARS.
- 7 Q ALL RIGHT. RHASHAWN'S YOUR SISTER?
- 8 A YES, SIR.
- 9 Q IS SHE OLDER THAN YOU OR YOUNGER THAN YOU?
- 10 A YOUNGER.
- 11 Q DO YOU REMEMBER GOING AND VISITING HER ONE NIGHT IN
- 12 JUNE?
- 13 A YES, SIR, I WAS GETTING OFF OF WORK AND GOING TO
- 14 WATCH GAME OVER AT HER HOUSE AND HAD A COUPLE OF DRINKS.
- 15 Q DID YOU GO BY YOURSELF?
- 16 A YES, SIR.
- 17 Q ARE YOU MARRIED?
- 18 A NO, SIR, SINGLE.
- 19 Q SO YOU GOT OFF WORK AND WENT OVER TO YOUR SISTER'S
- 20 HOUSE ---
- 21 A YES, SIR.
- 22 Q --- AND WATCHED THE GAME.
- 23 A YES, SIR.
- 24 Q WHO DO YOU REMEMBER BEING THERE?
- 25 A ME, MY SISTER, TERRANCE, HER SON AND HER LITTLE GIRL

NELSON MIDDLETON - DIRECT BY MR. BULSA

124

1 AND HER LITTLE BABY BOY AND THIS LITTLE BOY CAME BY TO
2 WATCH THE GAME WITH US.

3 Q ALL RIGHT, AND WHAT DO YOU REMEMBER HAPPENING?

4 A I WAS SITTING AND WATCHING THE GAME AND NEXT THING I
5 KNOW HEARD A KNOCK ON THE DOOR AND PACMAN WAS AT THE DOOR,
6 AND I THINK TERRANCE OPENED THE DOOR FOR HIM, LET HIM IN,
7 AND NEXT THING I KNOW WHEN THEY WENT TO GO CHANGE THE
8 CHANGE, THE OTHER TWO GUYS CAME IN BEHIND HIM AND AT
9 EVERYBODY AT GUNPOINT.

10 Q NOW, DID YOU KNOW PACMAN?

11 A YES, SIR.

12 Q DO YOU KNOW HIS REAL NAME?

13 A YES, SIR. KENDEAL JONES.

14 Q HOW LONG HAVE YOU KNOWN HIM?

15 A I KNOW HIM UH, SINCE I WAS GOING TO JUNIOR HIGH
16 SCHOOL ABOUT --- I'D SAY ABOUT TWENTY YEARS.

17 Q AND THE OTHER TWO MEN THAT CAME IN, DID YOU KNOW
18 EITHER ONE OF THEM?

19 A NO, SIR. I --- I KIND OF LIKE KNOWED DUCK A LITTLE
20 BIT, BUT I DIDN'T REALLY KNOW HIM LIKE THAT THOUGH. YES,
21 SIR.

22 Q COULD YOU TELL WHO THEY WERE AT THAT TIME?

23 A NO, SIR, I COULDN'T.

24 Q OKAY. WHAT'D YOU DO WHEN THEY TOLD EVERYBODY TO ---

25 A WHEN THEY TELL EVERYBODY TO GET DOWN, I BASICALLY

125 NELSON MIDDLETON - DIRECT BY MR. BULLSA

1 JUST TURNED AROUND AND JUST PANIC AND GOT DOWN ON THE
2 FLOOR. MY SISTER WAS LIKE TELLING ME NOT TO GET ON THE
3 FLOOR, BUT I GOT ON THE FLOOR.
4 Q DID YOU GET ON THE FLOOR IN THE LIVING ROOM?
5 A YES, SIR.
6 Q ALL RIGHT. AND THEN WHAT DO YOU REMEMBER HAPPENING?
7 A I REMEMBER SOMEBODY COMING BEHIND ME, SEARCH ME DOWN,
8 TOOK MY WALLET OUT OF MY POCKET AND THEN I REMEMBER
9 SOMEBODY GOING IN THE KITCHEN WITH TERRANCE AND NEXT THING
10 I KNOW I JUST HEARD A GUNSHOT AND HEARD A COUPLE OF
11 FOOTSTEPS AND THEY WAS OUT THE DOOR.
12 Q WHEN YOU WERE ON THE GROUND, WHERE WERE YOU LOOKING?
13 A I WAS LIKE FACE DOWN ON THE GROUND.
14 Q ALL RIGHT. DID THEY TAKE ANY MONEY OUT OF YOUR
15 WALLET?
16 A YES, SIR.
17 Q ABOUT HOW MUCH?
18 A I HAD LIKE TWENTY BUCKS ON ME.
19 Q DID YOU GET YOUR WALLET BACK?
20 A YES, SIR.
21 Q DO YOU REMEMBER HEARING ANYTHING, OTHER THAN THE ---
22 WRLT, WHAT DID YOU REMEMBER HEARING?
23 A I REMEMBER HEARING FOOTSTEPS AND I GUESS PEOPLE
24 RUNNING BACK AND FORTH AND NEXT THING I KNOW, I JUST HEARD
25 A GUNSHOT GO OFF AND THAT WAS IT.

NELSON MIDDLETON - CROSS BY MR. HALL

126

1 Q HEAR YOUR SISTER?

2 A YES, I HEARD MY SISTER CRYING FOR THE BABY --- FOR TO
3 GET HER BABY AND STUFF, FOR HER TO GET HER BABY, CRYING
4 FOR HER BABY. YES, SIR.

5 Q YOU REMEMBER HEARING ANY NICKNAME'S BEING CALLED?

6 A YES, SIR. I REMEMBER HEARING KOOLAID FROM THE LITTLE
7 SHORT DUDE THAT CAME IN BEHIND HIM.

8 Q OKAY.

9 A YES, SIR.

10 Q DID YOU SEE WHAT HAPPENED TO PACMAN OR KENDEAL JONES?

11 A NO, SIR, I --- I KNOW HE WENT IN THE KITCHEN AND
12 AFTER THAT I DIDN'T SEE NOTHING OR HEARD NOTHING ELSE FROM
13 HIM.

14 Q DID YOU SEE THE OTHER TWO GUYS LEAVE?

15 A NO, SIR, I DIDN'T.

16 Q IS THAT BECAUSE YOU WERE STILL FACING THE FLOOR?

17 A YES, SIR.

18 MR. BULSA - ALL RIGHT, THANK YOU, MR. MIDDLETON.

19 ANSWER ANY QUESTIONS EITHER DEFENSE ATTORNEY HAS.

20 CROSS EXAMINATION

21 BY MR. HALL -

22 Q YOU SAY YOU KNOW DUCK SOME.

23 A YES, SIR, I KNOW HIM FROM WHEN PACMAN COUSINS AND
24 THEM GETS TO HANG AROUND HIM. THEY USED TO BRING HIM TO
25 MY COUSIN HOUSE.

NELSON MIDDLETON - CROSS BY MR. HALL

127

- 1 Q OKAY. DO YOU KNOW A NAME FOR DUCK?
- 2 A NO, SIR, I JUST KNOW HIM BY DUCK.
- 3 Q WHAT DOES DUCK LOOK LIKE? HOW TALL IS HE ---
- 4 A HE'S LIKE FIVE THREE, FIVE FOUR, PROBABLY LIKE ONE
- 5 FORTY, ONE FIFTY AT THE MOST.
- 6 Q ARE YOU SAYING THAT ONE OF THE PEOPLE THAT CAME IN
- 7 WAS DUCK OR ---
- 8 A I'M PRETTY SURE IT WAS.
- 9 Q OKAY. THEN FROM THE DESCRIPTION OF FIVE THREE OR
- 10 FOUR, I ASSUME YOU MEAN THE ONE YOU REFERRED TO AS THE
- 11 SHORT DUDE?
- 12 A YES.
- 13 Q OKAY. AND YOU'RE PRETTY SURE THAT'S HIM?
- 14 A YES, SIR.
- 15 Q AND HOW LONG HAVE YOU KNOWN DUCK?
- 16 A I KNOWN DUCK PROBABLY LIKE A YEAR.
- 17 Q HOW DO YOU KNOW HIM? IS IT A ---
- 18 A THROUGH HIS COUSINS.
- 19 Q ALL RIGHT. BUT SOCIALLY OR WORK?
- 20 A JUST --- JUST TALKING, NOT WORKING OR --- WISE,
- 21 NOTHING LIKE THAT.
- 22 Q OKAY. NOW, HOW OFTEN HAD YOU BEEN AROUND DUCK IN
- 23 THAT YEAR THAT YOU'VE KNOWN HIM?
- 24 A UH, I'VE BEEN AROUND HIM PROBABLY LIKE ONCE OR TWICE
- 25 A WEEK PROBABLY.

NELSON MIDDLETON - CROSS BY MR. HALL

128

1 Q AND NOW YOU TOLD US THAT AT THIS TIME YOU LIVED ---
2 YOU GAVE US AN ADDRESS. WHAT WAS THAT ADDRESS WHEN THIS
3 HAPPENED IN 2009?

4 A UH, THE NORTH LIBERTY STREET?

5 Q OKAY. HAD YOU GIVEN THE POLICE A DIFFERENT ADDRESS
6 AT THAT TIME?

7 A WELL, I JUST RECENTLY MOVED TO THE ADDRESS I'M AT
8 RIGHT NOW, BUT I WAS LIVING ON LIBERTY STREET WHEN I ---
9 WHEN THE INCIDENT HAPPENED.

10 Q YOU WEREN'T LIVING AT BOOKER T --- 102 BOOKER T
11 WASHINGTON?

12 A NO, THAT MY SISTER ADDRESS. I --- I WAS STAYING WITH
13 HER --- I WAS STAYING WITH HER AT ONE POINT IN TIME AND
14 THEN WE FOUND MY OWN --- WE FOUND OUR OWN PLACE. WE JUST
15 MOVED OUT RECENTLY AND FOUND A LITTLE HOUSE.

16 Q BUT AT THE TIME ---

17 A YES, I WAS AT 102 BOOKER T WASHINGTON.

18 Q OH, SO YOU WERE AT BOOKER T WASHINGTON WHEN THIS
19 HAPPENED.

20 A YES, SIR. YES, SIR.

21 Q WHEN DID YOU MOVE TO THE OTHER ADDRESS?

22 A ABOUT A YEAR OR SO.

23 Q OH, OKAY.

24 MR. HALL - NO FURTHER QUESTIONS.

25 THE COURT - YES, SIR, MR. SINGLETON.

NELSON MIDDLETON - CROSS BY MR. SINGLETON

129

1 CROSS EXAMINATION

2 BY MR. SINGLETON -

3 Q HOW LONG HAVE YOU KNOWN MY CLIENT, MR. JONES?

4 A KNOWN HIM ABOUT TWENTY YEARS. I GREW UP WITH HIS
5 FAMILY. I KNOW HIS WHOLE FAMILY.

6 Q HOW LONG HAD YOU BEEN OVER AT THE APARTMENT THAT DAY,
7 AT YOUR SISTER'S APARTMENT?

8 A OH, MY SISTER HOUSE? WHEN I GOT OF WORK. I'D SAY
9 ABOUT --- NOT EVEN A HALF AN HOUR I BEEN OVER THERE.

10 Q OKAY. SO YOU'D BEEN THERE FOR ABOUT A HALF AN HOUR
11 BEFORE MR. JONES CAME IN?

12 A YES, SIR.

13 Q DID --- NOW YOU STATED MR. JONES WAS LET --- WAS HE
14 LET IN BY MR. MOATES OR WAS HE --- JUST WALK IN THE DOOR
15 ON HIS OWN?

16 A NO, THEY LET HIM HE. THEY --- THEY ASKED WHO IS IT,
17 THEN HE SAID HIS NAME PACMAN AND THEY TOLD HIM TO COME IN.

18 Q OKAY. DID HE STATE WHILE HE WAS AT THE DOOR WHAT HE
19 WAS THERE FOR?

20 A YES, HE SAID HE NEEDED SOME CHANGE.

21 Q OKAY. AND THEN WHAT HAPPENED WHEN HE CAME IN THE
22 APARTMENT? DID HE ---

23 A WHEN HE CAME IN, TERRANCE GOT UP AND THEY WENT TO THE
24 KITCHEN AND AFTER THAT THEY JUST BURST IN THE DOOR ROOM
25 (SIC) SAYING YOU KNOW WHAT TIME IT IS, GET DOWN ON THE

NELSON MIDDLETON - CROSS BY MR. SINGLETON

130

1 FLOOR.

2 Q OKAY. DO YOU KNOW IF THE DOOR WAS CLOSED BEHIND MR.
3 JONES AFTER HE CAME IN?

4 A I'M NOT REALLY SURE ABOUT THAT. I'M NOT REALLY ---

5 Q OKAY. IN YOUR STATEMENT YOU GAVE TO THE POLICE, ---
6 DO YOU KNOW WHERE MR. JONES WAS WHEN THEY CAME IN?

7 A WHEN THEY CAME IN?

8 Q YES, DO YOU KNOW ---

9 A THEY WAS IN THE KITCHEN.

10 Q HE WAS STILL IN THE KITCHEN?

11 A YES.

12 Q WITH MR. MOATES?

13 A YES, SIR.

14 Q OKAY. AND YOU STATED THAT IN YOUR STATEMENT TO THE
15 POLICE THAT THEY WENT IN THE KITCHEN, ASKED TERRANCE WHAT
16 YOU GOT, WHERE'S YOUR MONEY. HOW DO YOU KNOW THEY WEREN'T
17 ASKING KENDEAL THAT AS WELL?

18 A I DIDN'T HEAR THEM SAY NOTHING TOWARDS KENDEAL THAT
19 WAY.

20 Q WELL, HOW'D YOU ---

21 A I DIDN'T HEAR ANYTHING --- ANY KIND OF RESPONSE. THEY
22 DIDN'T SAY --- THEY DIDN'T REALLY SAY NOTHING TO KENDEAL.
23 KENDEAL JUST GOT --- I HEARD --- I MEAN --- I DON'T KNOW
24 IF HE GOT ON THE GROUND OR NOT, BUT --- I DON'T KNOW ---
25 I DON'T KNOW WHAT HAPPENED AFTER THAT WHEN HE --- WHEN HE

NELSON MIDDLETON - CROSS BY MR. SINGLETON

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1 GOT --- HOW HE GOT UP OUT OF THERE OR ANYTHING LIKE THAT.

2 Q WELL, HOW DO YOU KNOW THEY WERE SPEAKING TO TERRANCE
3 AND NOT TO BOTH OF THEM? DID THEY SAY, HEY, TERRANCE, YOU
4 GOT ANY MONEY ON YOU OR --- OR --- OR WHAT YOU GOT,
5 WHERE'S YOUR MONEY?

6 A WELL, THEY --- BASICALLY THEY WAS GOING TOWARDS
7 TERRANCE AND I COULD FIGURE WITH IT GOING TOWARD TERRANCE
8 --- I'M NOT SURE THOUGH.

9 Q OKAY, SO YOU DON'T KNOW WHO --- IF THEY WERE TALKING
10 TO BOTH OF THEM?

11 A NO, SIR.

12 Q OKAY. AND YOU'RE --- AT THIS TIME YOU'RE STILL
13 LAYING FACE DOWN?

14 A YES, YES.

15 Q OKAY, SO YOU COULDN'T SEE WHAT WAS GOING ON ---

16 A YES.

17 Q OKAY. SO YOU'RE JUST ASSUMING THAT THEY WERE TALKING
18 TO TERRANCE AND NOT BOTH OF THEM.

19 A YES, SIR.

20 MR. SINGLETON - OKAY. THAT'S ALL THE QUESTIONS
21 I HAVE, YOUR HONOR.

22 THE COURT - ANY RE-DIRECT LIMITED TO WHAT THEY
23 WENT INTO?

24 MR. BULSA - NO RE-DIRECT FOR MR. MIDDLETON.

25 THE COURT - THANK YOU, SIR. YOU MAY STEP DOWN.

TERRANCE MOATES - DIRECT BY MR. BULSA

132

1 STATE READY TO CALL THEIR NEXT WITNESS?

2 MR. BULSA - STATE CALLS TERRANCE MOATES.

3 THE COURT - COME ON AROUND, SIR. JUST COME
4 RIGHT UP HERE AND LET THE CLERK OF COURT SWEAR YOU IN.

5 TERRANCE MOATES, AFTER BEING FIRST DULY SWORN,

6 TESTIFIES AS FOLLOWS -

7 DIRECT EXAMINATION

8 BY MR. BULSA -

9 Q MR. MOATES, WOULD YOU INTRODUCE YOURSELF TO THE JURY?

10 A YES, MY NAME IS TERRANCE MOATES.

11 Q HOW OLD ARE YOU, SIR?

12 A I'M THIRTY-TWO.

13 Q WHERE DO YOU LIVE?

14 A WOODRUFF, SOUTH CAROLINA.

15 Q ARE YOU THE BOYFRIEND OF ---

16 A YES, SIR.

17 Q --- RHASHAWN MIDDLETON? HOW LONG HAVE Y'ALL BE
18 SEEING EACH OTHER?

19 A AROUND TWELVE YEARS.

20 Q Y'ALL HAVE THREE CHILDREN TOGETHER?

21 A YES, SIR.

22 Q ARE YOU EMPLOYED?

23 A YES, SIR.

24 Q WHERE?

25 A SOUTH CAROLINA SCHOOL FOR THE DEAF AND BLIND.

TERRANCE MOATES - DIRECT BY MR. BULSA

133

1 Q HOW LONG YOU BEEN THERE?

2 A I BEEN THERE SINCE SEPTEMBER.

3 Q WERE YOU WORKING BACK DURING THIS INCIDENT?

4 A THROUGH LABOR READY.

5 Q LABOR READY. OKAY. HOW LONG HAD YOU BEEN AT THE

6 HOUSE OR AT THE APARTMENT WHEN THIS OCCURRED?

7 A I WAS THERE ALL DAY.

8 Q WHAT DAY OF THE WEEK WAS THIS? DO YOU KNOW?

9 A NO, I CAN'T REMEMBER.

10 Q DON'T REMEMBER? OKAY. BUT YOU REMEMBER BEING THERE

11 ALL DAY.

12 A YES.

13 Q ALL RIGHT.

14 THE COURT - SIR, IF YOU WOULD, BEND THAT

15 MICROPHONE DOWN A LITTLE BIT CLOSER TO YOU. I'M HAVING

16 PROBLEMS HEARING YOU.

17 A (WITNESS COMPLIES)

18 THE COURT - THANK YOU.

19 Q DO YOU REMEMBER WHEN NELSON CAME OVER?

20 A YES.

21 Q DID ANYBODY ELSE COME OVER THAT DAY?

22 A NOT FROM MY RECOLLECTION.

23 Q OKAY. NELSON CAME OVER AFTER WORK, AND WHAT WERE

24 Y'ALL DOING?

25 A SITTING AROUND WATCHING THE GAME.

TERRANCE MOATES - DIRECT BY MR. BULSA

134

1 Q DO YOU RECALL THE SAME PEOPLE BEING THERE THAT YOUR
2 SISTER TOLD US ABOUT, OR EXCUSE ME, YOUR GIRLFRIEND TOLD
3 US ABOUT?

4 A YES, SIR.

5 Q OKAY. ALL RIGHT. AND WHAT'S THE FIRST THING YOU
6 REMEMBER HAPPENING THAT EVENING?

7 A WELL, KENDEAL JONES KNOCKED ON THE DOOR, CAME IN AND
8 I WENT IN TO GO GET HIM CHANGE AND WHILE WE WAS IN THE
9 KITCHEN I COULD JUST HEAR SOMEONE SAY YOU KNOW WHAT IT IS,
10 GET DOWN ON THE GROUND. YOU KNOW, AT FIRST I'M THINKING
11 MY BROTHER'S COMING BY TO PICK ME UP OR SOMETHING, YOU
12 KNOW, HE PLAYED LIKE THAT, BUT THAT AIN'T WHAT THE
13 SITUATION WAS.

14 Q DID YOU AND MR. JONES ACTUALLY MADE IT INTO THE
15 KITCHEN?

16 A YES, SIR.

17 Q ABOUT HOW BIG IS THAT LIVING ROOM?

18 A IT'S ABOUT FROM THAT TABLE TO THE DESK.

19 Q OKAY. SO IF SOMEBODY WALKED IN THE DOOR JUST BE THIS
20 LENGTH TO WALK TO THE KITCHEN?

21 A YES, SIR.

22 Q OKAY. NOW, HOW WELL DID YOU KNOW KENDEAL JONES?

23 A I BEEN KNOWING HIM SINCE HE WAS A KID, SINCE I WAS A
24 KID AND JUST BEEN A FRIEND OR ASSOCIATE AS FAR AS I KNEW.

25 Q OKAY. DID YOU SEE HIM OFTEN?

TERRANCE MOATES - DIRECT BY MR. BULSA

135

1 A NOT --- NOT THAT --- NOT IN A YEAR OR TWO LEADING UP
2 TO THAT SITUATION, BUT ---

3 Q ALL RIGHT, WERE YOU SURPRISED TO SEE HIM THAT NIGHT?

4 A NO, NOT REALLY. I MEAN NEVER SURPRISED TO SEE A
5 FRIENDLY FACE.

6 Q OKAY. ALL RIGHT. SO YOU WEREN'T SUSPICIOUS OF
7 ANYTHING WHEN HE CAME?

8 A NO, SIR.

9 Q ALL RIGHT. NOW, YOU WERE IN THE KITCHEN AND YOU ---
10 WHAT'D YOU ACTUALLY HEAR? SOMETHING GOING ON IN THE
11 LIVING ROOM?

12 A I HEARD LIKE --- HOW'D IT GO --- YOU KNOW WHAT IT IS,
13 GET DOWN ON THE GROUND OR SOMETHING, SOMETHING TO THAT
14 NATURE.

15 Q DID YOU HEAR HOW RHASHAWN REACTED?

16 A YES, I HEARD HER IN THERE SCREAMING AND SAYING LET
17 HER GET THE KIDS AND, YOU KNOW, I WAS IN THERE AND I TOLD
18 --- WHEN HE CAME THROUGH I TOLD HIM THAT, YOU KNOW, I
19 DON'T HAVE ANYTHING, MY KIDS IN THIS HOUSE, YOU NEED TO
20 GET OUT.

21 Q WHY'D YOU HAVE TO GO INTO THE KITCHEN?

22 A MY WALLET WAS IN THERE ON THE TABLE.

23 Q DID YOU ACTUALLY GET ANY MONEY OUT OF IT?

24 A YES, SIR, I GAVE HIM THE CHANGE AND I STILL HAD HIS
25 MONEY IN MY HAND WHEN EVERYTHING WENT OFF.

TERRANCE MOATES - DIRECT BY MR. BULSA

136

- 1 Q YOU GAVE WHO THE CHANGE?
- 2 A KENDEAL.
- 3 Q ALL RIGHT. OKAY. WHO CAME IN --- OR DID ANYBODY
- 4 COME INTO THE KITCHEN OTHER THAN KENDEAL?
- 5 A CHAVIS CAME IN.
- 6 Q ALL RIGHT, YOU'RE CALLING HIM CHAVIS. HOW DO YOU
- 7 KNOW IT WAS HIM?
- 8 A AFTER EVERYTHING HAD DIED DOWN AND --- WELL, WHEN I
- 9 WAS GETTING READY TO CHASE THEM OUT OF --- OUT THE HOUSE,
- 10 SHE SAID THAT THAT'S KOOLAID, AND THAT'S THE ONLY KOOLAID
- 11 THAT I KNOW. I NEVER HEARD ANYBODY ELSE WITH THAT NAME
- 12 EXCEPT FOR THE BIG RED KOOLAID MAN.
- 13 Q OKAY. AND DID YOU KNOW KOOLAID TO ASSOCIATE WITH
- 14 KENDEAL JONES?
- 15 A NO, SIR.
- 16 Q YOU DIDN'T KNOW THEM TO BE FRIENDS ---
- 17 A NO, I DIDN'T ---
- 18 Q --- OR ANYTHING? OKAY.
- 19 A I DIDN'T ASSOCIATE WITH THEM AT THAT TIME.
- 20 Q OKAY. ALL RIGHT. BUT YOU TOOK KOOLAID TO BE CHAVIS
- 21 PULLEN.
- 22 A YES, SIR.
- 23 Q ALL RIGHT. BUT WHEN HE FIRST CAME IN TO THE KITCHEN,
- 24 YOU DIDN'T KNOW WHO HE WAS.
- 25 A NO, SIR, I MEAN YOU GOT A GUN DRAWN ON YOU AND

TERRANCE MOATES - DIRECT BY MR. BULSA

137

1 SOMEBODY'S TELLING YOU TO GIVE IT UP, I MEAN YOU NOT GOING
2 TO KNOW TOO MUCH OF NOTHING AT THAT TIME.

3 Q OKAY. HOW WAS HE DRESSED? HOW WAS HE DRESSED?

4 A HE HAD ON A BLACK SKI MASK, T-SHIRT AND BAGGY ---
5 BAGGY RED SHORTS.

6 Q ALL RIGHT. AND WHAT DID YOU DO WHEN HE CAME IN THERE
7 DEMANDING MONEY?

8 A TOLD HIM I AIN'T GOT NOTHING.

9 Q AND THEN WHAT HAPPENED?

10 A HE KEPT SAYING GIVE IT UP, GIVE IT UP; TOLD HIM I
11 AIN'T GOT NOTHING, GIVE IT UP, TOLD HIM MY KIDS IN THE
12 HOUSE. GIVE IT UP, GIVE IT UP. I SAID I AIN'T GOT
13 NOTHING AGAIN. HE HIT ME WITH THE GUN. THE GUN GOES OFF;
14 I GO DOWN. I DON'T KNOW HOW LONG I WAS DOWN THERE, BUT
15 WHEN --- ONCE I GET UP AND START INCHING AWAY FROM THE
16 TABLE GOING OUT WHERE I CAN SEE THROUGH TO THE LIVING
17 ROOM, I COULD SEE THEM STANDING AT THE DOOR AND THEN THE
18 SHORT ONE CAME WALKING TOWARDS ME AND I'M STILL JUST
19 STANDING THERE. HE TOOK THE MONEY OUT OF THE HAND AND HE
20 WALKED BACK TO THE DOOR AND THEY STARTED MESSING WITH THE
21 GUN AGAIN, AND THAT'S WHEN I JUST, YOU KNOW, I HAD DONE
22 HAD IT, TOOK ENOUGH AND I JUST GRABBED A BOTTLE, BECAUSE
23 I FIGURED THEY COULDN'T DO NOTHING TO ME NO MORE RIGHT
24 NOW. I GRABBED THE BOTTLE AND JUST TOOK OFF RUNNING AFTER
25 THEM.

TERRANCE MOATES - DIRECT BY MR. BULSA

138

1 Q OKAY. SO THE MONEY YOU HAD YOU IN YOUR HAND, THAT
2 WAS STILL THE MONEY THAT MR. JONES HAD GIVEN YOU?

3 A YES, SIR.

4 Q WHAT HAPPENED TO KENDEAL JONES?

5 A WHEN HE CAME IN, KENDEAL WENT DOWN IN LIKE A DRAMATIC
6 FASHION. YOU KNOW, IT WAS LIKE IT WAS A ACT. HE WAS
7 DOWN, DON'T, DON'T --- AIN'T GOT NOTHING TO DO WITH IT,
8 DON'T HAVE NOTHING TO DO WITH IT, NO, NO, NO, AIN'T GOT
9 NOTHING TO DO WITH IT, BUT NEVER DID HE ONCE SAY ANYTHING
10 TO MR. JONES, BUT EVERYONE --- NO ONE ELSE COULD MOVE.

11 Q YOU'RE SAYING THE MASKED MAN NEVER SAID ANYTHING TO
12 MR. JONES?

13 A NO, NEVER. HE --- I DON'T EVEN THINK HE REALLY
14 LOOKED AT HIM.

15 Q OKAY. SO MR. JONES GOT ON THE GROUND. WAS THAT IN
16 THE KITCHEN?

17 A YES.

18 Q ALL RIGHT, AND DID YOU SEE WHAT HAPPENED TO HIM?

19 A HE JUST STARTED, I AIN'T GOT ANY --- CRAWLING TOWARDS
20 THE DOOR AND LIKE I SAID HE --- THE WHOLE TIME HE'S GOING
21 TOWARD THE DOOR, HE NEVER SAID A THING TO HIM, POINT THE
22 GUN AT HIM OR ANYTHING.

23 Q DID YOU SEE MR. JONES LEAVE OUT THE BACK DOOR?

24 A YES, SIR.

25 Q WAS THAT BEFORE OR AFTER YOU GOT STRUCK IN THE HEAD?

TERRANCE MOATES - DIRECT BY MR. BULSA

139

- 1 A BEFORE.
- 2 Q SO HE WAS ABLE TO GET OUT OF THE HOUSE BEFORE YOU
3 WERE STRUCK AND THE GUN WENT OFF.
- 4 A YES, SIR.
- 5 Q AND NOBODY SAID ANYTHING TO HIM.
- 6 A NO, SIR.
- 7 Q HOW FAR DID YOU CHASE THE MEN OUT OF THE HOUSE?
- 8 A I CHASED THEM TO THE SIDEWALK. I WAS --- ACTUALLY MY
9 BOOT CAME OFF. I HAD JUST CRACKED MY ANKLE ON BOTH SIDES
10 A WEEK BEFORE AND I WAS IN A BOOT AND HAD IT WRAPPED UP
11 AND I --- WHEN I RAN OUT THE DOOR AFTER THEM I --- THE
12 BOOT CAME A LOOSE AND EVERYTHING CAME OFF. I THREW THE
13 BOTTLE AT THE CAR; THEY RAN AROUND THE CAR LIKE THAT.
14 ONE WENT THAT WAY AROUND THE BACK OF THE CAR AND THE OTHER
15 WENT THAT WAY AROUND THE FRONT OF THE CAR.
- 16 Q AND THE CAR YOU'RE TALKING ABOUT WAS WHICH CAR?
- 17 A THE OLDSMOBILE. IT WAS A CREAM COLORED OLDSMOBILE.
- 18 Q WAS THERE SOMEONE IN THE CAR?
- 19 A YES. IT WAS RUNNING.
- 20 Q OKAY. WHO WAS IN THE CAR?
- 21 A KENDEAL.
- 22 Q KENDEAL WAS IN THE CAR, THE CAR WAS RUNNING AND THESE
23 TWO GUYS RAN AROUND IT?
- 24 A YES, TO --- FROM WHAT I COULD SEE, THE CAR WAS
25 SITTING THERE WAITING FOR THEM TO COME OUT, BUT AS I CAME

TERRANCE MOATES - CROSS BY MR. HALL

140

1 OUT BEHIND THEM IT WAS A SURPRISE, SO THEY DIDN'T --- THEY
2 DIDN'T HAVE TIME TO GET IN THE CAR, BECAUSE I WAS GIVING
3 CHASE, SO THEY RAN AROUND THE CAR, THEN THE CAR PULLED
4 OUT.

5 Q DID YOU HAVE TO GO TO THE HOSPITAL FOR YOUR INJURY?

6 A NO, SIR.

7 Q DID YOU EVER SEE OR HEAR FROM KENDEAL JONES AGAIN?

8 A NO, SIR.

9 MR. BULSA - THANK YOU. ANSWER ANY QUESTIONS
10 EITHER LAWYER HAS.

11 CROSS EXAMINATION

12 BY MR. HALL -

13 Q NOW, I WANT TO GET CLEAR ON WHAT WAS TAKEN OF YOURS
14 IN ROBBERY.

15 A WHAT WAS TAKEN OF MINE?

16 Q YES.

17 A MINE WAS MY TEN DOLLARS AND I HAD A CELL PHONE
18 SITTING ON THE FRONT ROOM TABLE AND TO CLEAR IT ALL UP,
19 THERE WAS A TOTAL OF THREE CELL PHONES ON THE FRONT ROOM
20 TABLE, TWO BELONGING TO MS. MIDDLETON AND ONE BELONGING TO
21 ME.

22 Q AND YOU HAD A CELL PHONE TAKEN ---

23 A YES, SIR.

24 Q --- AND SHE HAD TWO CELL PHONES TAKEN ---

25 A YES, SIR.

TERRANCE MOATES - CROSS BY MR. HALL

141

1 Q --- AND YOU HAD A TEN DOLLAR BILL TAKEN?

2 A YES. FIVE DOLLAR BILL WAS TAKEN OFF THE FRONT ROOM
3 TABLE WHICH WAS MY SON'S.

4 Q BUT I'M JUST TRYING TO GET IT CLEAR, BECAUSE YOU HAD
5 A FIVE DOLLAR BILL OR A TEN DOLLAR BILL THAT MR. JONES
6 WANTED CHANGE FOR?

7 A I HAD A TEN DOLLAR BILL. I NEVER SAID I HAD A FIVE
8 DOLLAR BILL.

9 Q BUT WHAT MONEY DID MR. JONES HAVE?

10 A HE HAD THE TEN DOLLAR BILL.

11 Q OKAY.

12 A THAT'S WHAT I CHANGED. THAT'S --- AND SO I WOULD'VE
13 HAD TO HAVE THE TEN IN MY HAND AFTER WE MADE THE
14 TRANSACTION.

15 Q BACK WHEN YOU GAVE A STATEMENT, DIDN'T YOU SAY
16 KENDEAL JONES WALKED IN THE DOOR, HE ASKED CHANGE FOR A
17 FIVE?

18 A NO, HE MUST'VE MISTAKEN ME. I SAID TEN.

19 Q BUT ---

20 MR. HALL - MAY I APPROACH THE WITNESS?

21 THE COURT - YES, SIR.

22 Q THIS IS THE COPY I GOT IN DISCOVERY. IF YOU WILL
23 JUST LOOK AT THAT FRONT ---

24 A YES, I SEE WHAT YOU'RE SAYING, SIR, BUT I SAID TEN;
25 IT COULD'VE BE A MISTAKE. I --- I COULD'VE SAID FIVE.

TERRANCE MOATES - CROSS BY MR. HALL

142

1 LIKE I SAY, I MEAN I JUST HAD A GUN WAVED IN MY FACE. I
2 WASN'T THINKING CLEARLY.

3 Q SO DID YOU LOSE ANY CASH MONEY?

4 A YES.

5 Q WHAT DID YOU LOSE?

6 A I LOSE --- I LOST TEN DOLLARS. I GAVE HIM CHANGE FOR
7 A TEN.

8 Q OKAY, SO SOMEBODY TOOK MONEY FROM MR. JONES, TOO?

9 A NO, HE HAD HIS MONEY. LIKE I SAY, HE WENT DOWN ---
10 WHEN THEY CAME IN, HE IMMEDIATELY WENT DOWN.

11 Q OKAY, I'M JUST TRYING TO BE CLEAR. IF YOU HAD THE --
12 - WHAT IS NOW THE TEN DOLLAR BILL IN YOUR HAND THAT --- OR
13 --- THAT MR. JONES HAD GOTTEN CHANGE FROM YOU, AND YOU
14 ALSO SAID THEY TOOK THE CHANGE MONEY --- THE TEN DOLLARS
15 YOU'D GIVEN HIM IN CHANGE ---

16 A NO, I DIDN'T SAY THAT.

17 Q OH, OKAY, I'M SORRY.

18 A I SAID HE TOOK THE TEN OUT OF MY HAND. MR. JONES WAS
19 LONG GONE WHEN THEY TOOK THAT.

20 Q OKAY. SO HE JUST SCOOTED OUT THE BACK DOOR?

21 A YES, EXACTLY LIKE YOU SAID, JUST SCOOTED OUT THE BACK
22 DOOR.

23 Q DID HE --- YOU SAID HE WENT DOWN. DID HE GO DOWN AND
24 STRAIGHT OUT THE BACK DOOR WHILE HE WAS DOWN?

25 A HE WENT DOWN; HE SAID, I AIN'T GOT NOTHING TO DO

TERRANCE MOATES - CROSS BY MR. HALL .

143

1 WITH, I AIN'T GOT NOTHING TO DO WITH, AND HE WAS JUST
2 SLIDING OVER TO THE DOOR AT THE SAME TIME, AND LIKE I SAY,
3 THE GUNMAN NEVER LOOKED AT HIM OR SAID ANYTHING TO HIM,
4 BUT NO ONE ELSE WAS ALLOWED TO LEAVE THE HOUSE, SO THAT
5 WOULD HAVE TO BE A LITTLE SUSPICIOUS.

6 Q BUT HE DIDN'T HAVE ANY TROUBLE GOING OUT THE BACK
7 DOOR.

8 A I COULDN'T TELL YOU THAT RIGHT ---

9 Q HE GOT OUT QUICK, DIDN'T HE, ---

10 A YES, HE GOT OUT.

11 Q --- FROM WHAT YOU SAID. BEFORE YOU EVER GOT THE
12 MONEY TAKEN FROM YOU ---

13 A I MEAN WASN'T PAYING ATTENTION TO HOW HE WAS GETTING
14 OUT THE DOOR WITH A GUN IN MY FACE LIKE I'M SAYING. I
15 DON'T KNOW WHO WOULD.

16 Q SO EVEN THOUGH YOUR STATEMENT SAYS CHANGE FOR A FIVE,
17 IT WAS ACTUALLY A TEN.

18 A YES, SIR.

19 Q WHAT KIND OF CHANGE DID YOU GIVE HIM? WAS IT ---

20 A I GAVE HIM TWO FIVES.

21 Q TWO FIVES. NOW, THIS WAS AT ELEVEN THIRTY, ELEVEN
22 FORTY --- EXCUSE ME --- TEN THIRTY, TEN FORTY IN THE
23 EVENING?

24 A I DON'T KNOW THE EXACT TIME, SIR.

25 Q ALL RIGHT, BUT DO YOU --- IS IT A COMMON PRACTICE

TERRANCE MOATES - CROSS BY MR. HALL

144

1 THAT YOU --- PEOPLE COME TO YOU AND GET CHANGE?

2 A NO, SIR.

3 Q THERE WERE STORES PRESUMABLY OPEN, WERE THERE NOT?

4 A SIR, I DON'T KNOW WHY HE DIDN'T GO BY A STORE. YOU
5 CAN'T ASK ME THAT QUESTION. I MEAN HE'S THE ONLY ONE THAT
6 CAN ANSWER THE QUESTION WHY HE DIDN'T GO TO A STORE.

7 Q BUT I --- WHAT I WAS ASKING YOU IS, DIDN'T YOU THINK
8 IT ODD THAT SOMEBODY WOULD COME TO YOU AND ASK FOR CHANGE
9 WHEN THERE'S STORES OPEN?

10 A NOT NECESSARILY. I MEAN HE --- HE'S NO --- WAS NOT
11 A THREAT OR ANYTHING TO ME. I MEAN --- YES, I MEAN I
12 DON'T KNOW IF HE COULD'VE BEEN WALKING UP THE STREET FOR
13 ALL I KNEW. I DIDN'T --- YOU KNOW ---

14 Q OKAY. NOW, YOU DIDN'T KNOW THE IDENTITY OF ANYBODY
15 EXCEPT KENDEAL UNTIL YOU TALKED TO MS. MIDDLETON. IS THAT
16 RIGHT?

17 A NO, I DIDN'T ACTUALLY TALK TO HER. WHEN I WAS GOING
18 OUT THE DOOR SHE HOLLERED AT ME, THAT'S KOOLAID.

19 Q UNTIL SHE SAID SOMETHING, YOU DIDN'T KNOW WHO THAT
20 GUY WAS THAT HAD THE GUN AND ---

21 A THAT'S CORRECT. YOU'RE CORRECT, SIR.

22 Q --- CLOSE ENOUGH TO YOU TO HIT YOU WITH THE GUN.

23 A THAT'S CORRECT.

24 Q NOW, DID --- YOUR WALLET WAS WHERE?

25 A IT WAS ON THE KITCHEN TABLE.

TERRANCE MOATES - CROSS BY MR. HALL

145

1 Q OKAY. YOU DIDN'T LIVE AT THIS APARTMENT. YOU LIVED
2 ELSEWHERE?

3 A NO, SIR.

4 Q I'M SORRY. MAYBE I JUST ASKED --- YOU DID NOT LIVE
5 WITH MS. MIDDLETON.

6 A NO, SIR.

7 Q OKAY. YOU SAID YOU WERE --- YOU HAD ON ONE OF THOSE
8 WALKING CAST. IS THAT WHAT YOU MEAN BY A BOOT?

9 A YES, SIR.

10 Q ALL RIGHT. AND HOW FAR --- YOU SAID YOU CHASED THEM
11 TO THE SIDEWALK. THERE'S A LITTLE WALKWAY FROM THE PORCH
12 TO THE SIDEWALK ON DANIEL MORGAN.

13 A NO, NOT THAT WAY, SIR.

14 Q ALL RIGHT.

15 A TO THE SIDEWALK BEFORE YOU GET TO THE PARKING LOT.
16 I CAME OUT THE FRONT DOOR, LEFT, STOPPED AT THE SIDEWALK
17 AND THREW THE BOTTLE.

18 Q ALL RIGHT. AND THE CAR, THE CREAM COLOR ---

19 A WAS WAIT --- JUST SITTING THERE WAITING.

20 Q AT THE EXIT TO IT OR BACK IN THE PARKING LOT OR ---

21 A JUST RIGHT THERE.

22 Q AT THE EXIT. WHERE A CAR WOULD STOP TO LOOK FOR
23 TRAFFIC AND THAT KIND OF THING.

24 A NO, NOT --- NOT AT THE EXIT. BACK UP --- THIS IS THE
25 EXIT. RIGHT HERE WAS WHERE YOU STOPPED TO LOOK FOR CARS.

TERRANCE MOATES - CROSS BY MR. HALL

146

1 HE WAS BACK HERE LIKE HE WAS WAITING FOR SOMEONE. YOU
2 KNOW HOW --- YOU KNOW YOU HAVE A RIDE WAITING FOR YOU?

3 Q I'M JUST TRYING TO GET CLEAR IN MY HEAD, BECAUSE IT
4 WASN'T --- I GET CONFUSED SOMETIMES, BUT WHICH DIRECTION
5 DID THE CAR GO IN? DID HE GO TOWARDS THE BEACON
6 RESTAURANT ---

7 A NO, SIR.

8 Q --- OR THE OTHER WAY?

9 A THE CAR WENT RIGHT AND THEN TURNED DOWN HIGHLAND
10 AVENUE.

11 Q WHICH WOULD BE ANOTHER RIGHT OR A LEFT?

12 A ANOTHER RIGHT.

13 Q OKAY. AND THE ROBBERS WENT DOWN TOWARDS THE BEACON?

14 A CORRECT, AND THEY RAN BEHIND THE HOUSES ON BEACON
15 STREET. THEY DIDN'T MAKE IT TO BEACON STREET. THEY CUT
16 THROUGH A PATHWAY AND WENT BEHIND THOSE HOUSES ON BEACON
17 STREET.

18 Q NOW, YOUR CHILDREN LIVE --- LIVED AT THIS APARTMENT.

19 A THAT IS CORRECT.

20 Q SO, ARE YOU FAIRLY FAMILIAR WITH THAT AREA?

21 A YES, I AM.

22 Q OKAY. I THINK YOU'RE ORIGINALLY FROM WOODRUFF.

23 A YES, I AM.

24 Q BUT THERE'S A LOT OF WALK PATHS IN THOSE APARTMENT
25 COMPLEX AND HOUSES AROUND THERE, AREN'T THERE? YOU SEE

TERRANCE MOATES - CROSS BY MR. HALL

147

1 WHERE PEOPLE --- KIND OF TRAILS ON THEM.

2 A I MEAN THEY HAVE A ---

3 Q CUT-THROUGHS.

4 A THEY HAVE A FENCE UP, SIR.

5 Q BUT --- I MEAN THERE'S ---

6 A THEY HAD A --- THEY HAD INSTALLED A FENCE RIGHT THERE
7 BECAUSE OF THE PATHWAYS AND STUFF THAT PEOPLE WAS RUNNING
8 FROM THE POLICE. THEY INSTALLED A FENCE THERE SO THAT YOU
9 COULDN'T ---

10 Q YOU TALKING ABOUT CAMMIE CLAGGETT?

11 A THAT'S CORRECT.

12 Q OKAY. SO THESE GUYS WENT AROUND THE FENCE OR THEY
13 WENT THROUGH ANOTHER PATH?

14 A YES, WENT AROUND --- AROUND A FENCE.

15 Q THEY WENT AROUND THE FENCE AND THEN --- HOW FAR AWAY
16 ARE THE HOUSES YOU TALKING ABOUT THEY RAN BEHIND?

17 A HOUSES IS RIGHT THERE SOON AS THEY TURNED.

18 Q OKAY.

19 A OKAY, IT'S APARTMENT HERE. THEY RAN UP FRONT OF THE
20 --- OUR APARTMENT --- THE APARTMENT WAS HERE. THE
21 APARTMENT WE'RE IN HERE, THEN THERE'S ANOTHER APARTMENT
22 BUILDING DOWN HERE.

23 Q (INDICATING YES)

24 A THEY RAN IN FRONT OF THAT AND THEN RIGHT --- IT'S A
25 FENCE RIGHT BESIDE THE APARTMENT AND THEY TURNED RIGHT

TERRANCE MOATES - CROSS BY MR. HALL

148

1 BESIDE THERE AND WENT BACK BEHIND THE HOUSES ON BEACON
2 STREET.

3 Q OKAY. HOW DO YOU KNOW THEY WENT THAT WAY IF THERE'S
4 A BUILDING BETWEEN YOU AND THEM?

5 A I CAN SEE WHEN THEY TURNED AND I CAN SEE THAT THEY
6 DIDN'T GO ALL THE WAY DOWN TO THE ROAD, SO ---

7 Q ALL RIGHT, SO AT THIS POINT ---

8 A --- THE ONLY OTHER ---

9 Q --- ARE YOU ---

10 COURT REPORTER - I'M SORRY, THEY'RE TALKING AT
11 THE SAME TIME, JUDGE. I CAN'T GET A CLEAR RECORD.

12 MR. HALL - I APOLOGIZE.

13 THE COURT - WATCH THAT.

14 Q SO WHEN YOU'RE WATCHING HIM, WHERE ARE YOU STANDING?

15 A RIGHT THERE BY THE SIDEWALK WHERE I STOPPED.

16 Q OKAY. BUT YOU'RE NOT ON DANIEL MORGAN?

17 A NO, I'M NOT ON DANIEL MORGAN.

18 Q YOU'RE BACK IN THE PARKING LOT, CLOSER BACK TOWARDS
19 THE PARKING LOT ---

20 A YES.

21 Q --- AT THAT LITTLE SIDEWALK. OKAY. YOU SAW THEM
22 VEER TO THE ---

23 A YES, THE WAY THEY RAN, THEY RAN --- THEY WAS NOT ON
24 DANIEL MORGAN, BUT THEY WAS IN THE CAMMIE CLAGGETT IN
25 FRONT OF THE APARTMENT THAT'S --- ADDRESS IS DANIEL MORGAN

TERRANCE MOATES - CROSS BY MR. HALL

149

1 ADDRESS. IT'S FACING DANIEL MORGAN. THEY RAN PAST THAT,
2 TURNED LEFT BEHIND THE HOUSES ON BEACON STREET.

3 Q BUT AS SOON AS THEY TURNED PRETTY MUCH YOU LOST SIGHT
4 OF THEM, DIDN'T YOU?

5 A OH, I CAN'T SEE ANYMORE --- I MEAN UNLESS I WAS
6 SUPERMAN.

7 Q SO YOU DON'T KNOW, SUPERMAN OR NOT, WHETHER THEY WENT
8 PARALLEL WITH DANIEL MORGAN OR AWAY FROM DANIEL MORGAN AT
9 THAT POINT, DO YOU?

10 A PART THE WAY --- AIN'T GO PARALLEL WITH DANIEL MORGAN
11 BECAUSE I WOULD'VE SEEN THEM.

12 Q THROUGH THE BUILDING?

13 A THERE WAS NOWHERE TO GO RIGHT THERE, SIR. ONLY THING
14 THEY COULD'VE DID WAS JUMP THE FENCE AND BEEN AT THE
15 BEACON.

16 Q YOU LEFT --- YOU TURNED LEFT AND --- THEY TURNED LEFT
17 AND YOU LOST SIGHT OF THEM AND ---

18 A YES.

19 Q --- FROM YOUR KNOWLEDGE OF THE NEIGHBORHOOD, THE ONLY
20 THING THEY COULD DO IS CONTINUE TO THE LEFT.

21 A YES.

22 Q ALL RIGHT. BUT THERE'S NO DOUBT THE CAR WENT IN ONE
23 DIRECTION, THEY WENT THE OTHER.

24 A THAT'S CORRECT.

25 Q NOW, YOUR I.D. OF CHAVIS PULLEN AS KOOLAID WAS BASED

TERRANCE MOATES - CROSS BY MR. SINGLETON

150

1 --- WHAT I HEARD CORRECTLY WAS ON WHAT MS. MIDDLETON
2 YELLED, THAT'S KOOLAID.

3 A THAT'S CORRECT.

4 Q BUT YOU DIDN'T RECOGNIZE HIM INDEPENDENT OF THAT, DID
5 YOU?

6 A NO, SIR.

7 MR. HALL - ALL RIGHT, THANK YOU.

8 THE COURT - YES, SIR.

9 MR. SINGLETON - MAY IT PLEASE THE COURT.

10 CROSS EXAMINATION

11 BY MR. SINGLETON -

12 Q MR. MOATES, HOW --- WHAT TIME DID YOU GET TO THE
13 APARTMENT THAT DAY?

14 A I DON'T RECALL.

15 Q OKAY. DID YOU GET THERE BEFORE NOON?

16 A YES, IT'S --- PROBABLY WAS. I PROBABLY GOT THERE
17 BEFORE NOON.

18 Q OKAY. WERE YOU THERE WHEN MR. JONES CALLED AND SPOKE
19 TO YOUR GIRLFRIEND THAT DAY?

20 A I THINK SO.

21 Q DO YOU REMEMBER WHAT SHE SAID? DID SHE SAY ANYTHING
22 ABOUT THE PHONE CALL TO YOU?

23 A NOT REALLY.

24 Q DID SHE SAY THAT HE HAD CALLED OR DO YOU REMEMBER IF
25 HE HAD CALLED?

TERRANCE MOATES - CROSS BY MR. SINGLETON

151

1 A NOT REALLY.

2 Q OKAY. NOW YOU STATED THAT --- THAT MR. JONES KNOCKED
3 ON THE DOOR. WAS THE MAIN DOOR OPEN OR WAS IT CLOSED OR
4 BOTH DOORS CLOSED?

5 A I CAN'T RECALL IF THE DOORS WAS CLOSED OR OPEN, SIR.

6 Q OKAY. DID YOU LET HIM IN?

7 A NO, WE SAID COME IN.

8 Q OKAY, YOU SAY COME IN?

9 A (NO RESPONSE)

10 Q OKAY. EVEN THOUGH MR. MIDDLETON STATED THAT HE ---
11 THAT Y'ALL LET HIM IN.

12 A UH, THAT'S WHAT HE MEANT BY LET HIM IN.

13 Q OKAY. DID YOU SHUT THE DOOR BEHIND HIM?

14 A I DIDN'T GO TO A DOOR.

15 Q OKAY. WHEN YOU GOT UP --- WHEN HE CAME IN, WHAT WAS
16 SAID TO YOU WHEN HE CAME IN?

17 A NEEDED CHANGE; I WENT AND GOT THE CHANGE.

18 Q AND WHAT DID --- I MEAN HAVE CHANGE FOR WHAT?

19 A A TEN.

20 Q OKAY. AND THEN YOU GOT UP AND HE FOLLOWED YOU TO THE
21 KITCHEN?

22 A YES.

23 Q OKAY. NOW, MR. HALL ALREADY ASKED YOU THIS, BUT YOU
24 STATED THAT --- IN YOUR REPORT THAT YOU GAVE --- THAT HE
25 WANTED CHANGE FOR A FIVE DOLLAR BILL, BUT WHEN YOU WERE

TERRANCE MOATES - CROSS BY MR. SINGLETON

152

1 ROBBED YOU TOOK --- ALL YOU HAD WAS A TEN DOLLAR BILL IN
2 YOUR HAND.

3 A I COULD'VE GOT MY WORDS MIXED UP. LIKE I SAY, I HAD
4 JUST BEEN HAD A GUN POINTED AT ME, BEEN HIT WITH A GUN IN
5 THE BACK OF THE HEAD. MAYBE I SAID FIVE INSTEAD OF TEN,
6 BUT IT WAS A TEN.

7 Q OKAY. BUT YOU'RE SURE --- YOU'RE NOT SURE --- WERE
8 YOU MISTAKEN AT THE TIME THAT YOU GAVE THE STATEMENT THAT
9 IT COULD'VE BEEN A TEN OR COULD'VE BEEN A FIVE?

10 A AT WHAT TIME?

11 Q WHEN YOU GAVE YOUR STATEMENT TO THE POLICE. YOU SAID
12 YOU WERE MISTAKEN. WHEN WERE YOU MISTAKEN?

13 A YES, IT COULD'VE --- I COULD'VE SAID THAT WHEN THEY -
14 -- WHEN WE DID IT --- THAT --- LIKE I SAY I HAD JUST BEEN
15 ATTACKED, SO I MEAN ---

16 Q OKAY, SO YOU ---

17 A OF COURSE, I WASN'T THINKING CLEARLY WHEN YOU
18 QUESTIONING ME TWO OR THREE MINUTES AFTER SOMETHING
19 HAPPENED.

20 Q OKAY. BUT YOU WERE THINKING CLEARLY ENOUGH TO GIVE
21 THEM A DESCRIPTION OF WHAT THE TWO ROBBERS WERE WEARING,
22 SHOES, SHIRT, BANDANNA AND EVERYTHING LIKE THAT.

23 A YES.

24 Q BUT YOU WEREN'T CERTAIN OF WHAT WAS ACTUALLY PLACED
25 IN YOUR HAND.

TERRANCE MOATES - CROSS BY MR. SINGLETON

153

1 A THAT WASN'T OF THE MOST --- OF IMPORTANCE TO ME AT
2 THAT TIME.

3 Q ARE YOU POSITIVE THAT HE CAME IN JUST TO GET CHANGE
4 AND NOT FOR SOMETHING ELSE?.

5 A YES, I'M POSITIVE, SIR.

6 Q OKAY. NOW, YOUR STATEMENT GOES ON TO SAY THAT THEY
7 RAN OUT THE FRONT DOOR AND YOU RAN AFTER THEM WITH A BEER
8 BOTTLE. WHERE DID YOU THROW THE BEER BOTTLE AT THEM? I
9 MEAN WHERE WERE YOU --- AGAIN, TELL ME WHERE WERE YOU WHEN
10 YOU THREW THE BEER BOTTLE?

11 A I WAS AT THE EDGE OF THE SIDEWALK AND I JUST THREW
12 THE BOTTLE, BECAUSE I COULDN'T RUN ANYMORE.

13 Q BUT WHERE'D YOU THROW IT AT? DID YOU THROW IT ON ---
14 TOWARD DANIEL MORGAN OR TOWARD THE PARKING LOT?

15 A THE CAR WAS STILL IN THE PARKING LOT.

16 Q OKAY. AND ON YOUR STATEMENT YOU SAID THAT YOU THREW
17 THE BOTTLE AT THEM WHEN THEY RAN DOWN TO BEACON STREET.

18 A YES, SIR.

19 Q OKAY. YOUR STATEMENT SAYS NOTHING ABOUT YOU SEEING
20 KENDEAL IN THE CAR, NOTHING ABOUT THE CAR SITTING THERE
21 WAITING FOR THEM SUPPOSEDLY. YOUR STATEMENT SAYS NOTHING
22 ABOUT THE OTHER TWO INDIVIDUALS, WHOEVER THEY WERE, GOING
23 AROUND THE FENCE. NONE OF THAT'S IN YOUR STATEMENT. NONE
24 OF THAT'S IN ANY OF THE POLICE REPORTS.

25 A I STATED THAT THEY RAN TOWN AND TURNED UP BEACON

TERRANCE MOATES - CROSS BY MR. SINGLETON

154

1 STREET.

2 Q RIGHT.

3 A THAT'S --- THAT'S BASICALLY WHAT YOU JUST SAID TO ME.

4 Q YES, BUT YOU'RE GOING IN AND SAYING THAT MR. KENDEAL
5 JONES --- ALSO WAS NOT IN THE STATEMENT IS YOU SAY THAT
6 KENDEAL JONES BASICALLY CRAWLED OUT OF THE BACK OF THE
7 APARTMENT. THAT'S NOT IN YOUR STATEMENT. IT'S NOT IN ANY
8 OF THE POLICE REPORTS.

9 A NO ONE ASKED ME ABOUT THAT.

10 Q WOULDN'T YOU THINK THAT WOULD BE IMPORTANT TO KNOW TO
11 FIGURE OUT WHO DID THIS TO YOU?

12 A TO KNOW WHAT?

13 Q FOR THE POLICE TO KNOW THAT WHAT HAPPENED.

14 A LIKE I SAID, SIR, I HAD JUST HAD A GUN STUCK IN MY
15 FACE AND BEEN HIT IN THE BACK OF THE HEAD. I'M PRETTY
16 SURE A LOT OF STUFF I PROBABLY WON'T REMEMBER EVER AGAIN
17 ABOUT THAT TIME.

18 Q OKAY.

19 A I MEAN THAT'S JUST HUMAN NATURE.

20 Q WELL, IT'S ALSO NOT IN YOUR STATEMENT --- NOT ONLY
21 DID YOU NOT STATE IT TO THE POLICE OR ANYBODY FROM ---
22 UNTIL --- THIS IS THE FIRST TIME WE'VE HEARD ABOUT IT ---
23 THAT HE BASICALLY CRAWLED OUT OF THE BACK OF THE APARTMENT
24 BEFORE THE ROBBERS LEFT. YOU'RE NOW STATING THAT HE WAS
25 SUPPOSEDLY SITTING THERE WAITING IN HIS CAR IN THE PARKING

TERRANCE MOATES - CROSS BY MR. SINGLETON

155

1 LOT. IS THAT CORRECT?

2 A I DID NOT STATE THAT. I SAID THE CAR WAS SITTING
3 THERE.

4 Q WHO WAS IN THE CAR? COULD YOU TELL WHO WAS IN THE
5 CAR?

6 A NO, I COULDN'T.

7 Q OKAY. AND YOU ALSO LEFT OUT OF YOUR STATEMENT THAT
8 THE TWO ROBBERS --- YOU DIDN'T DESCRIPTIVELY DESCRIBE IT.
9 I MEAN YOU DIDN'T DESCRIBE HOW THEY LEFT THE APARTMENT.
10 YOU JUST SAID IN YOUR STATEMENT THEY RAN TO BEACON STREET.
11 NOW YOU'RE SITTING THERE SAYING THEY RAN TOWARDS BEACON
12 STREET DOWN A PATH TO THE LEFT AROUND THE FENCE.

13 A SIR, IF YOU --- IF YOU FAMILIAR WITH THE AREA, THERE
14 IS ONLY ONE WAY THAT YOU CAN RUN TO GO DOWN BEACON STREET
15 FROM THAT WAY, SO THEY RAN DOWN THAT WAY AND TURNED LEFT.
16 THEY HAD NO OTHER CHOICE BUT TO BE GOING DOWN BEACON
17 STREET.

18 Q RIGHT. THEY RAN DOWN --- THEY COULD GET TO BEACON
19 STREET BY RUNNING DOWN DANIEL MORGAN AVENUE. CORRECT?

20 A THAT'S CORRECT.

21 Q BUT YOU DIDN'T SAY ANYTHING IN YOUR REPORT OR YOUR
22 STATEMENT TO THE POLICE ABOUT THEM RUNNING DOWN A PATH.

23 A I TOLD THE POLICE THERE WHEN HE TALKED TO ME I TOLD
24 THEM WHICH WAY THEY RAN AND WHERE THEY TURNED AT.

25 Q OKAY. BUT THAT'S NOT IN YOUR REPORT.

TERRANCE MOATES - CROSS BY MR. SINGLETON

156

1 A (NO RESPONSE)

2 Q WHEN YOU --- DO YOU REMEMBER MS. MIDDLETON COMING
3 OUTSIDE?

4 A YES.

5 Q WHERE WERE YOU WHEN SHE CAME OUTSIDE?

6 A I WAS COMING BACK UP TO --- THE CAR WAS --- I WAS
7 STILL --- NO, I WAS STILL STANDING THERE. THE CAR WAS
8 COMING UP AND SHE DROPPED THE PHONE THINKING THAT SOMEBODY
9 WAS GOING TO SHOOT OUT OF THE CAR.

10 Q OKAY. SO HOW FAR AWAY FROM YOU --- WERE YOU STILL AT
11 THE SIDEWALK BY THE PARKING LOT?

12 A I WAS APPROXIMATELY --- I WAS AT THIS --- THE THING
13 AND SHE WAS PROBABLY AT THE DOOR BACK HERE.

14 Q OKAY. AND YOU STATED EARLIER THAT YOU HAD NOT SEEN
15 KENDEAL JONES IN ABOUT A YEAR OR TWO BEFORE THIS EVENING.
16 IS THAT CORRECT?

17 A THAT'S CORRECT.

18 Q WERE YOU NOT AT YOUR GIRLFRIEND'S APARTMENT THE WEEK
19 BEFORE WHEN THEY HAD A GATHERING?

20 A YES.

21 Q SO YOU DID SEE HIM THE WEEK BEFORE?

22 A THERE WAS A LOT OF PEOPLE IN THERE. I DIDN'T REALLY
23 GO AROUND LOOKING TO SEE WHO ALL WAS THERE.

24 Q OKAY. WERE Y'ALL DOING ANYTHING ELSE AT THE
25 APARTMENT BESIDES DRINKING BEER OR DRINKING ALCOHOL?

TERRANCE MOATES - CROSS BY MR. SINGLETON

157

- 1 A WATCHING THE GAME.
- 2 Q WERE Y'ALL SMOKING ANYTHING?
- 3 A CIGARETTES.
- 4 Q AND EVEN THOUGH YOUR STATEMENT SAYS ---
- 5 MR. SINGLETON - STRIKE THAT, YOUR HONOR.
- 6 Q WELL, WHEN YOU WERE --- LET'S GO BACK TO WHEN YOU AND
- 7 KENDEAL WERE IN THE KITCHEN TOGETHER. YOU SAID THAT HE
- 8 DID GET DOWN ON THE GROUND. CORRECT?
- 9 A THAT'S CORRECT.
- 10 Q OKAY. AND YOU STATED THAT SOMEHOW HE STARTED
- 11 CRAWLING TOWARD THE BACK DOOR.
- 12 A YES.
- 13 Q DID THAT NOT STRIKE YOU ODD AT THAT POINT IN TIME?
- 14 A AT THAT POINT IN TIME I STILL HAD A GUN IN MY FACE,
- 15 UH, NO, SIR.
- 16 Q OKAY. BUT DID IT STRIKE YOU ODD ABOUT FIVE MINUTES
- 17 LATER AFTER THEY HAD LEFT?
- 18 A NOT EVEN FIVE MINUTES LATER, SIR. I'M STILL UPSET. ;
- 19 Q OKAY. BUT YOU DO ACKNOWLEDGE THAT HE GOT DOWN ON THE
- 20 GROUND WHEN THEY SAID, EVERYBODY GET DOWN ON THE GROUND.
- 21 A OH, YES, HE GOT DOWN. HE GOT DOWN DRAMATICALLY.
- 22 Q WELL, WHAT DO YOU MEAN BY DRAMATICALLY?
- 23 A I MEAN DRAMATICALLY, LIKE IF YOU EVER SEE IT, YOU
- 24 WOULD KNEW IT WAS SOMETHING THAT SHOULD'VE BEEN ON T.V.
- 25 Q OKAY. BUT YET NONE OF THIS IS YOUR STATEMENT, THE

TERRANCE MOATES - CROSS BY MR. SINGLETON

158

1 DRAMATIC FALLING TO THE GROUND ---

2 A LIKE I SAY ---

3 THE COURT - GENTLEMEN, GENTLEMEN, DON'T TALK
4 OVER EACH OTHER. LET HIM ASK THE QUESTIONS. WAIT UNTIL
5 HE FINISHES. YOU ANSWER THE QUESTION. LET HIM ANSWER THE
6 QUESTION BEFORE YOU START ANOTHER ONE.

7 MR. SINGLETON - I'M SORRY, YOUR HONOR.

8 THE COURT - GO AHEAD.

9 Q SO THE FACT THAT HE FELL DRAMATICALLY TO THE GROUND,
10 SUPPOSEDLY, AND SUPPOSEDLY HIM CRAWLING OUT THE BACK DOOR
11 IS NOT IMPORTANT FOR YOU --- ENOUGH FOR YOU TO PUT IN THE
12 STATEMENT?

13 A LIKE I HAVE STATED BEFORE, I HAD A GUN POINTED AT MY
14 FACE. I DIDN'T KNOW IF I WAS GOING TO LIVE OR DIE THAT
15 DAY.

16 Q OKAY.

17 A IT'S KIND OF TOUGH TO GET YOUR MIND TOGETHER WHEN
18 YOU'VE BEEN PUT IN A SITUATION LIKE THAT, SIR.

19 Q OKAY. BUT YOU DIDN'T HAVE A GUN POINTED AT YOUR HEAD
20 AT THE TIME YOU GAVE THE STATEMENT TO THE POLICE, DID YOU?
21 YOU HAD TIME ---

22 A SIR ---

23 Q SO YOU HAD TIME TO THINK CLEARLY ABOUT WHAT ---

24 A NO, SIR, I DID NOT HAVE TIME TO THINK CLEARLY.

25 Q OKAY.

TERRANCE MOATES - CROSS BY MR. SINGLETON

159

1 A I WOULD THINK YOU WOULD NEED AT LEAST A DAY OR TWO TO
2 GET YOUR HEAD TOGETHER, SIR.

3 Q DID YOU EVER GO BACK TO THE POLICE AND TELL THEM ALL
4 THIS STUFF?

5 A NO, SIR. I TOLD --- I STATED IT TO MY SOLICITOR.

6 Q OKAY.

7 A TO MY PROSECUTOR.

8 Q BUT THERE'S NO --- BUT YOU NEVER THOUGHT TO GO TO THE
9 POLICE AND SAY I WANT TO AMEND MY STATEMENT AND TELL SOME
10 MORE THINGS THAT I THOUGHT OF OR REMEMBERED AND I NEED ---

11 A NO, SIR.

12 Q NOW, ALL OF A SUDDEN THEY'RE COMING OUT HERE IN
13 COURT.

14 A NO, SIR.

15 MR. SINGLETON - THOSE ARE ALL THE QUESTIONS I
16 HAVE, YOUR HONOR.

17 THE COURT - ANY RE-DIRECT LIMITED TO WHAT THEY
18 WENT INTO?

19 MR. BULSA - NO, YOUR HONOR.

20 THE COURT - THANK YOU, SIR. YOU MAY STEP DOWN.

21 MR. BULSA - STATE CALLS SONJA GIST. SHE'S
22 OUTSIDE.

23 THE COURT - LADIES AND GENTLEMEN, IF YOU WANT TO
24 STAND UP AND STRETCH YOUR LEGS WHILE THIS WITNESS WALKS
25 IN, YOU CAN, IF YOU FEEL THE NEED TO STRETCH FOR A MOMENT.

SONJA GIST - DIRECT BY MR. BULSA

160

1 (JURORS COMPLY)

2 THE COURT - MA'AM IF YOU WOULD ---

3 SONJA GIST, AFTER BEING FIRST DULY SWORN,

4 TESTIFIES AS FOLLOWS -

5 MR. BULSA - IT'S SENSITIVE, SO BE CAREFUL.

6 OKAY?

7 DIRECT EXAMINATION

8 BY MR. BULSA -

9 Q PLEASE INTRODUCE YOURSELF TO THE LADIES AND GENTLEMEN
10 OF THE JURY.

11 A MY NAME IS SONJA GIST.

12 Q WHERE DO YOU LIVE, MA'AM?

13 A I LIVE IN WHITNEY NOW, 795 OLD WHITNEY ROAD.

14 Q OKAY. AND ARE YOU EMPLOYED?

15 A I AM.

16 Q WHERE DO YOU WORK?

17 A HEAVENLY HEALTHCARE.

18 Q HOW LONG HAVE YOU BEEN DOING THAT?

19 A FOR ABOUT TWO YEARS NOW.

20 Q OKAY. DO YOU HAVE ANY CHILDREN?

21 A I DO.

22 Q HOW MANY?

23 A THREE.

24 Q DOES ANYBODY ELSE STAY WITH YOU?

25 A NO, JUST MYSELF AND MY THREE CHILDREN.

SONJA GIST - DIRECT BY MR. BULSA

161

- 1 Q DO YOU SUPPORT YOURSELF AND YOUR THREE KIDS?
- 2 A I DO.
- 3 Q MA'AM, DO YOU KNOW RHASHAWN MIDDLETON?
- 4 A I DO.
- 5 Q HOW DO YOU KNOW HER?
- 6 A THAT'S MY CHILDREN'S FATHER'S SISTER.
- 7 Q AND DO YOU KNOW EITHER ONE OF THESE GENTLEMEN SITTING
- 8 IN THE MIDDLE OF THIS TABLE?
- 9 A I DON'T KNOW THEM PERSONALLY, BUT I USED TO LIVE
- 10 ACROSS THE STREET FROM THEM.
- 11 Q DO YOU KNOW --- WHAT --- WHAT DID YOU KNOW THEM BY?
- 12 A I THINK KOOLAID AND PACMAN.
- 13 Q OKAY. WHICH ONE'S KOOLAID?
- 14 A THE GUY WITH THE BALDER HEAD WITH THE BLUE SHIRT ON.
- 15 Q OKAY. AND PACMAN WOULD BE THE ---
- 16 A THE GUY WITH THE STRIPES --- STRIPES ON.
- 17 Q OKAY. YOU SAID YOU USED TO LIVE ACROSS THE STREET
- 18 FROM THEM?
- 19 A I DID.
- 20 Q WHAT STREET WAS THAT?
- 21 A ALEXANDER AVENUE.
- 22 Q OKAY. AND WERE YOU LIVING ON ALEXANDER AVENUE BACK
- 23 IN JUNE OF 2009?
- 24 A I WAS.
- 25 Q DO YOU RECALL HOW LONG YOU LIVED ON THAT AVENUE?

SONJA GIST - DIRECT BY MR. BULSA

162

- 1 A TWO YEARS.
- 2 Q AND WHO WAS IT THAT ACTUALLY LIVED ACROSS THE STREET?
- 3 A I DON'T ACTUALLY KNOW WHO LIVED ACROSS THE STREET.
- 4 IT WAS --- I DON'T KNOW IF THAT WAS THEIR RELATIVES. IT
- 5 WAS FROM THE GRANDMOTHER TO THE GREAT-GRAND KIDS. I DON'T
- 6 ACTUALLY KNOW WHO STAYED THERE.
- 7 Q OKAY. HOW DID YOU SEE THEM OVER THERE?
- 8 A WELL, THEY USED TO COME OUT --- EVERY --- THEY USED
- 9 TO COME OUTSIDE IN A GROUP AND GET IN A CAR TOGETHER.
- 10 Q OKAY. WAS THAT A COMMON OCCURRENCE?
- 11 A I WOULD SAY IT WAS.
- 12 Q OKAY. ABOUT HOW OFTEN DO YOU RECALL SEEING THEM OVER
- 13 THERE?
- 14 A ONCE A DAY AT LEAST.
- 15 Q DO YOU REMEMBER WHAT KIND OF CAR THEY WERE IN?
- 16 A A THINK IT WAS A BEIGE --- A BUICK. (INDICATING YES)
- 17 Q BEIGE BUICK KIND OF CAR?
- 18 A YES, SIR.
- 19 Q NOW, DO YOU --- DID YOU LEARN ABOUT THE ROBBERY TO
- 20 MS. MIDDLETON AND MR. MOATES?
- 21 A YES, SIR, I DID.
- 22 Q HOW'D YOU LEARN ABOUT THAT?
- 23 A MS. MIDDLETON GAVE ME A CALL MAYBE THAT NIGHT ---
- 24 WELL, THE FOLLOWING DAY AND SHE ASKED ME IF SEEN ANY ONE
- 25 OF THEM COULD I CALL THE POLICE OR COULD I CALL HER.

SONJA GIST - DIRECT BY MR. BULSA

163

1 Q ALL RIGHT. AND YOU WOULD'VE BEEN OVER AT ALEXANDER
2 AVENUE AT THAT TIME.

3 A YES. YES, SIR.

4 Q DID YOU SEE ANY OF THOSE PEOPLE?

5 A I DID.

6 Q WHO'D YOU SEE?

7 A WELL, I SEEN BOTH OF THE DEFENDANTS ON A REGULAR
8 OCCASION BECAUSE I ---

9 Q I'M TALKING ABOUT AFTER THE PHONE CALL FROM MS.
10 MIDDLETON.

11 A YES, SIR, I SEEN BOTH OF THEM. YES, SIR.

12 Q DID YOU CALL THE POLICE?

13 A I DID NOT.

14 Q OKAY. WHY NOT?

15 A BECAUSE I --- I WOULD RATHER FOR THE POLICE TO DO
16 THEIR JOB, YOU KNOW. I LET THEM FIND THEM.

17 Q OKAY. WAS THERE EVER A TIME WHERE YOU STOPPED SEEING
18 EITHER OF THEM OVER AT THE HOUSE?

19 A WELL, AFTER THE ROBBERY I DIDN'T REALLY SEE PACMAN
20 ANYMORE. I DON'T THINK I SEEN KOOLAID EITHER, BECAUSE I
21 THINK HE WAS LOCKED UP. SO I DIDN'T SEE EITHER ONE OF
22 THEM ANYMORE.

23 Q OKAY. AND DO YOU REMEMBER WHEN YOU MOVED AWAY FROM
24 ALEXANDER AVENUE?

25 A YES, SIR, UM, I WOULD SAY 2010.

SONJA GIST - CROSS BY MR. HALL

164

1 Q DO YOU REMEMBER WHAT MONTH?

2 A IT WAS IN JUNE. IT WAS 2009, EXCUSE ME. 2009.

3 Q AND THIS HAPPENED IN JUNE OF 2009 NOW ---

4 A I'M SORRY. I JUST --- LET'S SEE --- I BEEN AT THE
5 PLACE --- THE RESIDENCE I'M AT NOW FOR ABOUT A YEAR. I
6 MOVED THERE IN JULY IN THE SUMMERTIME.

7 Q OKAY. SO YOU MIGHT'VE STAYED AT ALEXANDER AVENUE ONE
8 MORE YEAR.

9 A YES, SIR.

10 MR. BULSA - OKAY. THANK YOU. ANSWER ANY
11 QUESTIONS EITHER LAWYER HAS FOR YOU.

12 CROSS EXAMINATION

13 BY MR. HALL -

14 Q NOW, THIS GROUP THAT WOULD LEAVE TOGETHER ---

15 A YES, SIR.

16 Q --- ARE THEY LIKE FAMILY MEMBERS OR WHAT? I'M JUST

17 A LITTLE ---

18 A LIKE I SAID, I DON'T KNOW THEM PERSONALLY. I JUST
19 STAYED ACROSS THE STREET FROM THEM. I WOULD SEE A GROUP
20 OF GUYS GO TO THE CAR AND GET IN THE CAR TOGETHER.

21 Q AND WHEN MS. MIDDLETON CALLED YOU AND TOLD YOU WHAT
22 HAD HAPPENED ---

23 A RIGHT.

24 Q --- DID SHE JUST MENTION THE PACMAN AND KOOLAID OR
25 DID SHE MENTION ANYBODY ELSE?

SONJA GIST - CROSS BY MR. HALL

165

- 1 A SHE ALSO MENTIONED A GUY NAMED DUCK.
- 2 Q OKAY. AND DID YOU KNOW WHO THAT WAS OR ---
- 3 A I DON'T ACTUALLY KNOW THEM PERSONALLY. I JUST KNOW
- 4 OF THEM.
- 5 Q I DIDN'T --- DID YOU KNOW WHO THAT --- DUCK WOULD'VE
- 6 BEEN?
- 7 A YES, SIR. YES, SIR.
- 8 Q AND --- BUT YOU SAW THESE TWO AROUND ALEXANDER AVENUE
- 9 AFTER THIS OR NOT?
- 10 A I DID.
- 11 Q OKAY. BUT DIDN'T CALL THE POLICE OR ANYTHING?
- 12 A NO, SIR, I DIDN'T.
- 13 Q SO YOU WANTED THEM TO DO THEIR JOB. IT WASN'T FOR
- 14 ANY OTHER REASON?
- 15 A I DIDN'T CALL THE POLICE BECAUSE FIRST OF ALL, THEY
- 16 WERE MY NEIGHBORS, AND THAT'S MY CHILDREN'S FAMILY. I
- 17 DIDN'T WANT TO GET IN THE MIDDLE OF THAT. I FELT LIKE
- 18 THAT WASN'T ANY OF MY BUSINESS. I DIDN'T WANT CHAOS AT MY
- 19 RESIDENCE.
- 20 Q SO FOR PEACE IT WASN'T WORTH HELPING THE POLICE OR
- 21 HELPING MS. MIDDLETON.
- 22 A NO, SIR. I DON'T THINK THE POLICE WILL HELP ME.
- 23 MR. HALL - NOTHING FURTHER.
- 24 THE COURT - YES, SIR.
- 25 CROSS EXAMINATION

SONJA GIST - CROSS BY MR. SINGLETON

166

1 BY MR. SINGLETON -

2 Q HOW LONG DID YOU LIVE AT ALEXANDER AVENUE?

3 A I'D SAY APPROXIMATELY TWO TO THREE YEARS.

4 Q OKAY. YOU WEREN'T AT THE APARTMENT THE NIGHT THIS
5 INCIDENT OCCURRED, WERE YOU?

6 A NO, SIR, I WASN'T.

7 Q SO YOU HAVE NO CLUE WHAT WENT ON THAT NIGHT.

8 A NO, SIR.

9 Q AND AS FAR AS YOU KNOW IT'S NOT ILLEGAL FOR A GROUP
10 OF GUYS TO GET IN A CAR TOGETHER?

11 A NO, SIR, IT'S NOT.

12 MR. SINGLETON - THAT'S ALL THE QUESTIONS I HAVE,
13 YOUR HONOR.

14 THE COURT - ANY RE-DIRECT LIMITED TO WHAT THEY
15 WENT INTO?

16 MR. BULSA - NO, SIR.

17 THE COURT - THANK YOU, MA'AM. YOU MAY STEP
18 DOWN.

19 MS. BULSA - WE'D ASK THAT MS. GIST BE EXCUSED.

20 THE COURT - ANY OBJECTION TO THIS WITNESS BEING
21 EXCUSED?

22 MR. SINGLETON - NO, YOUR HONOR.

23 MR. HALL - NO OBJECTION.

24 THE COURT - MA'AM, THANK YOU. YOU MAY BE
25 EXCUSED AS WELL.

TERRI CARTER - DIRECT BY MR. BULSA

167

1 MS. GIST - OKAY.

2 MR. BULSA - TERRI CARTER.

3 THE COURT - MA'AM, JUST COME RIGHT UP HERE IF
4 YOU WOULD.

5 TERRI CARTER. AFTER BEING FIRST DULY SWORN.
6 TESTIFIES AS FOLLOWS -

7 DIRECT EXAMINATION

8 BY MR. BULSA -

9 Q ALL RIGHT, MS. CARTER, PLEASE INTRODUCE YOURSELF TO
10 THE JURY.

11 A MY NAME'S TERRISITA (PHONETIC) CARTER.

12 Q SLIDE UP A LITTLE BIT CLOSER TO THAT MIC. OKAY.

13 A TERRISITA (PHONETIC) CARTER.

14 Q YOU GO BY TERRI?

15 A (INDICATING YES)

16 Q ANSWER YES OR KNOW IF YOU WOULD.

17 A YES.

18 Q ALL RIGHT. ARE YOU EMPLOYED?

19 A YES.

20 Q WHERE?

21 A ENOREE MILLS, INMAN BILLS.

22 Q HOW LONG HAVE YOU WORKED FOR THEM?

23 A SIX MONTHS.

24 Q WHERE DO YOU LIVE?

25 A WHISPERING PINES APARTMENTS, SPARTANBURG.

TERRI CARTER - DIRECT BY MR. BULSA

168

- 1 Q ARE YOU MARRIED?
- 2 A I'M NOT.
- 3 Q YOU HAVE ANY KIDS?
- 4 A YES.
- 5 Q HOW MANY?
- 6 A THREE.
- 7 Q DO THEY LIVE WITH YOU?
- 8 A TWO OF THEM DO. ONE OF THEM DOESN'T.
- 9 Q ALL RIGHT. MS. CARTER, DID YOU USED TO LIVE AT
- 10 CAMMIE CLAGGETT APARTMENTS?
- 11 A YES.
- 12 Q ALL RIGHT, WHEN WERE YOU LIVING THERE?
- 13 A WHEN DID I --- HOW LONG I LIVED THERE?
- 14 Q YES, MA'AM.
- 15 A ABOUT THREE YEARS.
- 16 Q WERE YOU THERE BACK IN JUNE OF 2009?
- 17 A YES.
- 18 Q OKAY. YOU WEREN'T IN HERE, BUT WE PLAYED A 9-1-1
- 19 CALL THAT WAS MADE FROM A TERRI CARTER. DID YOU LISTEN TO
- 20 THAT PRIOR TO COMING TO COURT?
- 21 A YES.
- 22 Q AND THAT WAS YOU THAT CALLED?
- 23 A YES.
- 24 Q OKAY. I'M GOING TO ASK YOU QUESTIONS ABOUT WHAT YOU
- 25 SAW THAT EVENING. ALL RIGHT? DO YOU REMEMBER WHAT YOU

TERRI CARTER - DIRECT BY MR. BULSA

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1 WERE DOING WHEN YOU SAW SOMETHING THAT PROMPTED YOU TO
2 CALL 9-1-1?

3 A YES.

4 Q WHAT WERE YOU DOING?

5 A I WAS WALKING TO THE STORE.

6 Q OKAY. NOW, WHERE HAD YOU BEEN COMING FROM?

7 A FROM MY HOUSE.

8 Q AND ---

9 THE COURT - EXCUSE ME ONE SECOND. (PAUSE) I'M
10 SORRY, GO AHEAD.

11 Q WHAT APARTMENT WERE YOU LIVING --- STAYING AT?

12 A 531 DANIEL MORGAN AVENUE.

13 Q OKAY. I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER
14 2. YOU'VE SEEN THIS BEFORE. RIGHT?

15 A (INDICATING YES) YES.

16 Q OKAY. THE CHURCH WOULD BE HERE AT THE BOTTOM OF THE
17 PICTURE AND THE BUILDING DIRECTLY ACROSS THE STREET, IS
18 THAT WHERE MS. MIDDLETON LIVED?

19 A YES.

20 Q AND YOURS WOULD'VE BEEN ---

21 A HERE.

22 Q OKAY. ALL RIGHT, I'M GOING TO PUT THIS ON THE
23 SCREEN. I WANT YOU TO TAKE THIS POINTER HERE, PUSH THAT
24 RED BUTTON AND POINT TO THE BUILDING. ALL RIGHT, CAN YOU
25 SEE THAT FROM WHERE YOU ARE?

TERRI CARTER - DIRECT BY MR. BULSA

170

- 1 A (INDICATING YES) YES.
- 2 Q ALL RIGHT. POINT TO THE BUILDING WHERE YOU WOULD'VE
3 BEEN LIVING?
- 4 A THAT ONE. (WITNESS COMPLIES)
- 5 Q ALL RIGHT. YOU SAID YOU WERE WALKING TO THE STORE,
6 COULD YOU KIND OF TRACE YOUR PATH WITH THAT POINTER?
- 7 A I WOULD'VE --- I WOULD'VE COME CHECKED THE MAIL BOX
8 AND THEN I WALKED ACROSS THE STREET.
- 9 Q OKAY, THE MAIL BOX IS NEAR THE PARKING AREA?
- 10 A (INDICATING YES) YES.
- 11 Q AND AS YOU WERE WALKING, DID YOU NOTICE ANYTHING AT
12 MS. MIDDLETON'S APARTMENT?
- 13 A I JUST --- I WALKED ACROSS --- AS I --- WHEN I COME
14 FROM THE MAIL BOX, I WALKED ACROSS THE YARD, I LOOK OVER,
15 I SEE PEOPLE SITTING IN THE --- SITTING ON THE PORCH. I
16 SAY, HEY AND I KEEP WALKING.
- 17 Q OKAY. HOW MANY PEOPLE DID YOU SEE?
- 18 A THREE.
- 19 Q THREE? ARE THEY MEN OR WOMEN?
- 20 A THREE MEN.
- 21 Q ALL RIGHT. DID YOU NOTICE ANYTHING IN PARTICULAR
22 ABOUT THEM?
- 23 A NOTHING REALLY. I JUST --- THEY WERE JUST ---
- 24 Q DID THEY APPEAR TO BE TALKING TO EACH OTHER?
- 25 A THEY --- YES, JUST --- YES, THEY JUST SEEMED TO BE

TERRI CARTER - DIRECT BY MR. BULSA

171

1 TALKING.

2 Q OKAY. FROM YOUR PERSPECTIVE, DID IT APPEAR THAT THEY
3 WERE TOGETHER?

4 A YES.

5 Q ALL RIGHT. AND THEY WERE RIGHT NEAR MS. MIDDLETON'S
6 APARTMENT?

7 A YES, THEY WERE ON THE PORCH.

8 Q ACTUALLY ON THE PORCH.

9 A (INDICATING YES)

10 Q OKAY. ALL RIGHT, THIS IS WHEN YOU WERE ACTUALLY IN
11 THE GRASSY AREA LEADING TO THE SIDEWALK?

12 A YES.

13 Q ALL RIGHT. AND THEN WHAT IS THE NEXT THING YOU
14 RECALL HEARING OR SEEING?

15 A I --- I HEAR HER SCREAMING OUT, MY BABY, MY BABY.

16 Q WHERE WERE YOU WHEN YOU HEARD THOSE --- HEARD HER
17 SCREAMING? HAD YOU CROSSED THE STREET?

18 A YES, I CROSSED THE STREET, AM RIGHT IN THE PATH HERE
19 BESIDE THE CHURCH AND I HEAR --- I WASN'T THAT FAR AWAY
20 FROM THE STREET.

21 Q SO YOU DIDN'T GET VERY FAR AFTER YOU SAW THOSE THREE
22 MEN AT THE PORCH.

23 A RIGHT. YES.

24 Q WHEN YOU LOOKED BACK --- WELL, DID YOU LOOK BACK WHEN
25 YOU HEARD HER SCREAMING?

TERRI CARTER - DIRECT BY MR. BULSA

172

1 A I DID. (INDICATING YES)

2 Q DID YOU SEE ANYBODY OUTSIDE AT THAT TIME?

3 A (INDICATING NO) I SAW --- I SEE THE DOOR OPEN AND
4 CLOSING AND THEN I SEE THE --- THE DOOR, THE WHOLE DOOR,
5 NOT --- IT'S A SCREEN DOOR AND IT'S A DOOR, AND I SEE THAT
6 DOOR CLOSING.

7 Q OKAY. AND THEN WHAT'S THE NEXT THING YOU SAW OR
8 HEARD?

9 A I'M ON THE PHONE WITH THE POLICE AND THEN I SEE TWO
10 GUYS COME OUT RUNNING DOWN THE STREET, DOWN DANIEL MORGAN
11 AND THEY WOULD'VE --- AND THEN THEY RAN UP ---

12 Q CAN YOU TRACE WHERE YOU SAW THEM?

13 A THEY COME OUT THE PORCH AND THEN THEY JUST RAN ACROSS
14 THE PARKING LOT INTO THE YARD AND ALL THE WAY DOWN. THEY
15 WOULD'VE --- THIS WOULD'VE BEEN BEACON STREET SOMEWHERE --
16 - AND THEY RUN UP BEACON STREET.

17 Q SO YOU SAW THEM TURN LEFT UP BEACON STREET IN THAT
18 AREA.

19 A (INDICATING YES)

20 Q NOW, THE TWO MEN THAT YOU SAW COME OUT, DID THEY
21 APPEAR TO BE TWO OF THE THREE MEN YOU SAW ON THE PORCH
22 WHEN YOU PASSED BY?

23 A YES.

24 Q NOW, WE KNEW YOU CALLED 9-1-1. WHAT DID YOU DO AFTER
25 YOU CALLED 9-1-1?

TERRI CARTER - DIRECT BY MR. BULSA

173

1 A WELL, I WAS --- I WAS NERVOUS, SO I JUST --- I JUST
2 STOOD THERE FOR A LITTLE WHILE AND I WENT ACROSS THE
3 STREET AND I DIDN'T REALLY GET TOO CLOSE TO WHAT WAS GOING
4 ON. I MEAN I WAITED UNTIL EVERYTHING WAS OVER BEFORE I
5 WENT TO SEE IF EVERYBODY WAS ALL RIGHT.

6 Q DID YOU SEE THE POLICE ARRIVE?

7 A I DID SEE POLICE ARRIVE. (INDICATING YES)

8 Q DID YOU GO TALK WITH THE POLICE?

9 A (INDICATING NO) NOT RIGHT AT --- (INDICATING NO)

10 Q WHY NOT?

11 A EVERYTHING WAS GOING ON, SO I JUST STOOD THERE AND
12 WAITED UNTIL THEY COME TO ME REALLY, SO ---

13 Q AND DID ANYBODY COME TO YOU?

14 A NOBODY COME TO ME THAT NIGHT.

15 Q DID SOMEBODY FIND YOU LATER?

16 A YES. (INDICATING YES)

17 Q WAS THAT DETECTIVE BURGESS?

18 A I WOULD SAY SO, YES. I CAN'T REMEMBER.

19 Q DID YOU KNOW ANY OF THE MEN YOU SAW OUTSIDE?

20 A NO.

21 Q DO YOU REMEMBER SEEING A CAR DRIVE AWAY?

22 A NO, I DON'T REMEMBER.

23 MR. BULSA - THANK YOU, MA'AM. ANSWER ANY
24 QUESTIONS EITHER LAWYER HAS.

25 CROSS EXAMINATION

TERRI CARTER - CROSS BY MR. HALL

174

1 BY MR. HALL -

2 Q NOW, YOU HEARD ALL THE SCREAMING AND YOU CALLED 9-1-

3 1. IS THAT RIGHT?

4 A YES.

5 Q AND THAT'S JUST FOR THE TIME IT TOOK YOU TO CROSS

6 OVER THE STREET.

7 A RIGHT.. YES.

8 Q AND GET A LITTLE BIT INTO THAT PATH.

9 A YES.

10 Q YOU WERE HEADED TO WHAT STORE?

11 A THIS --- IT'S A CONVENIENCE STORE UP THE STREET.

12 Q WHERE IS THAT?

13 A IT'S ON REIDVILLE ROAD. RED --- IT'S CALLED THE RED

14 DIAMOND I BELIEVE.

15 Q IS THAT JOHN B. WHITE BOULEVARD?

16 A YES.

17 Q THAT THE BEACON'S ON.

18 A YES.

19 Q HOW FAR --- IS IT TOWARDS SPARTANBURG FROM THE BEACON

20 OR AWAY FROM SPARTANBURG?

21 A IT'S UP FROM THE BEACON.

22 Q TOWARD SPARTANBURG LIKE YOU'RE GOING BACK TOWARDS

23 MAIN STREET.

24 A RIGHT, YES.

25 Q IT'S JUST A SHORT DISTANCE; YOU CAN WALK.

TERRI CARTER - CROSS BY MR. HALL

175

1 A YES.

2 Q OKAY. NOW, HOW CLOSE DID YOU GET TO THE APARTMENT
3 WHERE THOSE THREE GUYS WERE AROUND THAT SPOT WHEN YOU
4 CALLED?

5 A BEFORE I CALLED?

6 Q NO. WHEN YOU PASSED BY AND SAW THE THREE GUYS ---

7 A I WAS JUST RIGHT IN THE YARD. THE --- THERE'S THE
8 MAIL BOX RIGHT IN THERE AND I WOULD'VE COME ACROSS RIGHT
9 IN THE YARD THAT WAY, BUT JUST COME ACROSS THE ---

10 Q IF THERE WAS FOR WHAT --- WHAT --- I ASSUME WAS SOME
11 TREES ---

12 A THE TREES ARE THERE.

13 Q --- BUT UNDER THOSE TREES IS A PARKING LOT.

14 A UNDER THE TREES WILL BE THE YARD ITSELF. THE PARKING
15 LOT IS MORE OVER IN HERE.

16 Q OKAY. SO YOU WENT ACROSS THE YARD.

17 A RIGHT.

18 Q ALL RIGHT. DID THE POLICE ASK YOU TO DESCRIBE THOSE
19 MEN YOU SAW?

20 A NO. DID THEY ASK ME TO DESCRIBE THEM? WHAT THEY
21 WERE WEARING MAYBE, YES.

22 Q DO YOU REMEMBER WHAT THEY WERE WEARING?

23 A I --- I KNEW THEY HAD ON WHITE SHIRTS. I WOULD SAY
24 THEY HAD ON WHITE SHIRTS.

25 Q BUT BEYOND THAT YOU COULDN'T GIVE OTHER DESCRIPTION?

TERRI CARTER - CROSS BY MR. HALL

176

- 1 A NOT WHAT THEY LOOKED LIKE, NO. (INDICATING NO)
- 2 Q AND YOU SPOKE TO THEM, HEY, OR ---
- 3 A YES.
- 4 Q ONE MALE SITTING AND TWO STANDING.
- 5 A YES.
- 6 Q COULD YOU HEAR THEM TALKING, NOT NECESSARILY WHAT
- 7 THEY WERE SAYING BUT ---
- 8 A YES.
- 9 Q DID THEY RESPOND TO YOU, SAY, HEY THERE?
- 10 A YES. (INDICATING YES)
- 11 Q AND --- OKAY. AND WHEN YOU'RE SEEING THE DOOR
- 12 CLOSING --- YOU SAID THAT --- WHEN YOU TURNED BACK AROUND,
- 13 WAS THAT AFTER THE SCREAMING OR BEFORE THE SCREAMING?
- 14 A THAT WOULD'VE BEEN AFTER THE SCREAMING.
- 15 Q AND YOU SAY DOOR CLOSED. YOU TALKING ABOUT THE STORM
- 16 DOOR OR THE REGULAR DOOR?
- 17 A THE DOOR --- THE --- WELL, I WOULD SAY BOTH OF THEM
- 18 AT --- YES, THE DOOR AND THE SCREEN DOOR.
- 19 Q OKAY. SO WHEN YOU HEARD THE SCREAMING, YOU TURNED
- 20 AROUND, THE DOORS APPARENTLY WERE OPEN AND THEN YOU SAW
- 21 THEM CLOSE.
- 22 A YES.
- 23 Q OKAY. NOW, IF THESE --- TWO OF THESE GUYS HAD THEIR
- 24 FACE COVERED WITH MASK OR SOMETHING, YOU WOULD'VE
- 25 RECOGNIZED --- SEEN THAT, WOULDN'T YOU?

TERRI CARTER - CROSS BY MR. SINGLETON

177

1 A I WOULD'VE SAW THAT. I THINK I WOULD.

2 Q HOW ABOUT HATS, WEARING HATS OR ANYTHING LIKE THAT?

3 A YES, I WOULD'VE SAW THAT TOO.

4 MR. HALL - OKAY. NOTHING FURTHER.

5 THE COURT - YES, SIR.

6 CROSS EXAMINATION

7 BY MR. SINGLETON -

8 Q WHEN YOU WERE GOING --- WALKING TO THE STORE, MS.
9 CARTER, WERE YOU TRYING TO CUT ACROSS THE STREET AND GO
10 THROUGH THE CHURCH PARKING LOT, CUT THROUGH THE CHURCH TO
11 GET TO THE STORE?

12 A YES.

13 Q OKAY. AND YOU STATED WHEN YOU WERE COMING UP FROM
14 THE MAIL BOX CROSSING THE --- AND YOU LOOKED TO YOUR RIGHT
15 AND YOU SAW THREE INDIVIDUALS SITTING ON THE PORCH.
16 CORRECT?

17 A YES.

18 Q WAS THERE A LIGHT ON?

19 A IT WAS LITTED. I COULD SEE THEM.

20 Q OKAY. WELL, THERE --- COULD YOU HEAR THEM CARRYING
21 ON A CONVERSATION BEFORE YOU GOT THERE, BEFORE YOU SAID
22 ANYTHING TO THEM?

23 A I COULD --- I COULD HEAR SOMEONE AROUND THERE.
24 (INDICATING YES)

25 Q OKAY. DID IT SEEM TO YOU LIKE THEY WERE JUST HANGING

TERRI CARTER - CROSS BY MR. SINGLETON

178

1 OUT, JUST ---

2 A YES.

3 Q --- TALKING TO EACH OTHER?

4 A (INDICATING YES)

5 Q OKAY. WHEN DID THE POLICE --- WHEN DID YOU GIVE A
6 STATEMENT TO THE POLICE?

7 A THE NEXT DAY.

8 Q THE NEXT DAY? SO THEY DIDN'T COME ---

9 A I ---

10 Q I'M SORRY.

11 A YES. THE NEXT DAY.

12 Q OKAY. AND YOU STATED YOU SAW THE TWO --- TWO
13 INDIVIDUALS RUN ACROSS THE YARD, ---

14 A YES.

15 Q --- DOWN THE SIDEWALK TOWARD THE BEACON STREET?

16 A YES.

17 Q DID YOU SEE HOW FAR THEY WENT DOWN TOWARDS THE BEACON
18 STREET?

19 A I SAW THEM GO UP BEACON STREET. I DIDN'T SEE
20 ANYTHING AFTER THAT --- I ---

21 Q SO NOW YOU SAW --- I'M SORRY.

22 A I COULDN'T SEE --- THERE'S --- THERE'S BUSHES. YOU
23 CAN'T SEE TOO FAR UP THE STREET WITHOUT GOING ON THE
24 STREET ITSELF.

25 Q OKAY. SO AND DID YOU SEE YOU THEM RUN TO THE

TERRI CARTER - CROSS BY MR. SINGLETON

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1 STOPLIGHT?

2 A NO. THERE'S NOT A STOPLIGHT ON ---

3 Q OR STOP SIGN?

4 A THEY WENT UP --- THEY RAN UP THE STREET.

5 Q OKAY, SO THEY RAN ---

6 A RAN ---

7 Q --- DOWN DANIEL MORGAN AVENUE TO A STOP SIGN AND THEN

8 UP BEACON STREET ---

9 A RIGHT.

10 Q --- IN FRONT OF THE BEACON.

11 A YES.

12 Q OKAY. DID YOU SEE ANYTHING ELSE THAT EVENING? DID

13 YOU SEE ANYTHING IN THE PARKING LOT THAT EVENING WHILE YOU

14 WERE THERE?

15 A NO, I --- NO. EVERYTHING HAPPENED SO FAST.

16 Q OKAY. DO YOU REMEMBER SEEING ANYBODY COMING OUT OF

17 THE APARTMENT THROWING A BEER BOTTLE OR YELLING ANYTHING

18 AT ANYBODY?

19 A NO.

20 MR. SINGLETON - OKAY. THAT'S ALL THE QUESTIONS

21 I HAVE, YOUR HONOR.

22 THE COURT - ANY RE-DIRECT LIMITED TO WHAT THEY

23 WENT INTO?

24 MR. BULSA - NO, YOUR HONOR.

25 THE COURT - THANK YOU, MA'AM. YOU MAY STEP

JOHN BURGESS - DIRECT BY MR. BULSA

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1 DOWN.

2 MR. BULSA - COULD WE ASK THAT SHE BE EXCUSED?

3 THE COURT - ANY OBJECTION TO THE WITNESS BEING
4 EXCUSED?

5 MR. HALL - NONE, YOUR HONOR.

6 MR. SINGLETON - NONE, YOUR HONOR.

7 THE COURT - THANK YOU, VERY MUCH. MARTHA, YOU
8 WANT TO GET THE LIGHTS?

9 MR. BULSA - STATE CALLS JOHN BURGESS.

10 THE COURT - COME ON UP HERE, SIR.

11 JOHN BURGESS, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 DIRECT EXAMINATION

14 BY MR. BULSA -

15 Q MR. BURGESS, PLEASE INTRODUCE YOURSELF TO THE JURY.

16 A MY NAME'S JOHN BURGESS.

17 Q WHO ARE YOU EMPLOYED BY?

18 A WORK FOR THE CITY OF SPARTANBURG POLICE DEPARTMENT.

19 Q IN WHAT CAPACITY?

20 A I WORK IN THE CRIMINAL INVESTIGATION DIVISION WHICH
21 IS PUBLIC SAFETY.

22 Q HOW LONG HAVE YOU BEEN A POLICE OFFICER?

23 A I BEEN AT CITY A LITTLE OVER EIGHT YEARS, WORKED FOR
24 THE COUNTY OF GREENVILLE PRIOR TO THAT FOR FOUR YEARS SO
25 ALMOST THIRTEEN YEARS.

JOHN BURGESS - DIRECT BY MR. BULSA

181

- 1 Q HOW LONG HAVE YOU BEEN IN INVESTIGATIONS?
- 2 A 2004. I WOULD SAY 2004.
- 3 Q OKAY.
- 4 A IT'S BEEN SEVERAL YEARS.
- 5 Q OKAY. WERE YOU ON CALL THE EVENING OF JUNE 11TH,
- 6 2009?
- 7 A I WAS ACTUALLY WORKING THAT EVENING. I WAS ON SECOND
- 8 SHIFT.
- 9 Q ALL RIGHT. SECOND SHIFT AS A DETECTIVE?
- 10 A YES.
- 11 Q AND DID YOU GET A CALL TO GO TO THIS LOCATION?
- 12 A I WAS ACTUALLY OUT RIDING AROUND AND I HEARD THE CALL
- 13 COME OVER VIA THE RADIO.
- 14 Q AND WHAT'D YOU DO?
- 15 A WENT TO THE AREA TO TRY TO LOOK FOR THE SUSPECTS AT
- 16 FIRST.
- 17 Q ALL RIGHT, WHAT DO YOU MEAN BY THAT?
- 18 A INFORMATION WAS GIVEN OUT THAT THEY FLED ON FOOT AND
- 19 POSSIBLE SOME NICKNAMES THAT WERE GIVEN OUT OVER THE
- 20 RADIO, AND WE WENT TO THE AREA AND BASICALLY TRY TO ---
- 21 TRY TO FIND THE ONES THAT FLED FROM THE SCENE.
- 22 Q AND WHAT AREAS DID YOU LOOK?
- 23 A HIGHLAND, DANIEL MORGAN, SOUTH FORK, BASICALLY THE
- 24 SOUTH SIDE OF TOWN. IF THEY FLED BACK TOWARDS BEACON
- 25 STREET THEN THEY COULD EASILY BE OVER AT 221 ALL THE WAY

JOHN BURGESS - DIRECT BY MR. BULSA

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1 OVER TO 26, SO IT'S KIND OF WIDE AREA.

2 Q . OKAY. WE'VE GOT A PICTURE UP HERE ON THE SCREEN,
3 STATE'S EXHIBIT NUMBER 2. THAT SHOWS THE LOCATION OF THE
4 APARTMENT IN QUESTION? IT'S RIGHT IN FROM OF THE STAR?

5 A YES, SIR, THIS SAYS --- ACTUALLY FOUR APARTMENTS HERE
6 AND IT'S THE CORNER ONE.

7 Q ALL RIGHT. DID YOU GO TO THAT LOCATION?

8 A I DID.

9 Q WAS THAT AFTER YOU SEARCHED THE AREA?

10 A I DID, YES.

11 Q AND WHAT WAS TAKING PLACE WHEN YOU GOT THERE?

12 A BASICALLY STILL TRYING TO SORT OUT EXACTLY WHAT HAD
13 HAPPENED, A LOT OF CONFUSION, LOT OF INFORMATION BEING
14 GIVEN OUT AND MULTIPLE SUSPECTS AND VICTIMS.

15 Q NOW, BACK THIS OUT, THIS APARTMENT SITS ON A BLOCK
16 BETWEEN HIGHLAND STREET AND BEACON STREET. IS THAT RIGHT?

17 A THAT'S CORRECT. THIS IS HIGHLAND AVENUE AND THIS IS
18 GOING TO BE BEACON STREET AND THEN THE BEACON RESTAURANT'S
19 GOING TO BE RIGHT HERE TO THE RIGHT OF THAT.

20 Q OKAY. I'M GOING TO SHOW YOU A FURTHER VIEW, STATE'S
21 EXHIBIT NUMBER 1. IT'S ACTUALLY A BLOCK, HIGHLAND STREET,
22 BEACON STREET, BUNKER STREET AND DANIEL MORGAN.

23 A YES, SIR.

24 Q IS THAT RIGHT? IS THERE A ONE-WAY STREET OR TWO-WAY
25 TRAVEL?

JOHN BURGESS - DIRECT BY MR. BULSA

183

1 A THESE ARE ALL TWO-WAY TRAVELS. THE ONLY ONE-WAY ---
2 ONLY ONE-WAY STREET IS IN NORRIS RIDGE EXCEPT WHICH IS
3 GOING TO BE DOWN HERE IN THE CORNER, BUT YOU'D HAVE TO GO
4 THROUGH THE COMPLEX TO GET TO THAT, BUT ALL THESE ARE
5 CONNECTED VIA JUST BASICALLY --- IT CUTS RIGHT THROUGH THE
6 PATH LIKE THEY WERE DESCRIBING WHERE YOU CAN JUST CATCH
7 ANY OF THESE ROADS. THIS SOUTH FORK WHICH IS GOING TO
8 TAKE YOU ALL THE WAY UP TO 221 AND THEN THIS IS JOHN B.
9 WHITE THAT'S GOING TO TAKE YOU ALL THE WAY UP TO 26.

10 Q THE BUSINESS DOWN BELOW BEACON STREET, IS THAT THE
11 BEACON?

12 A YES, THAT'S GOING TO BE THE BEACON.

13 Q NOW, ARE THERE ANY FENCE LINES IN THIS AREA?

14 A THERE'S A FENCE LINE THAT RUNS DIRECTLY ON THIS SIDE
15 BETWEEN THE BEACON AND BEACON STREET. IT'S PRETTY HIGH.
16 IT'S GOING TO STOP AT THE STOP SIGN HERE, THEN ALSO ON THE
17 CORNER HERE THEY ENDED UP PUTTING A LITTLE SHORT CHAIN-
18 LINK FENCE UP RIGHT HERE, SO WHEN THEY SAID THEY HAD TO GO
19 AROUND THE FENCE, WHAT THEY'RE MEANING IS THEY GO AROUND
20 THIS FENCE AND THEN YOU CAN CUT BACK BEHIND THESE HOUSES.

21 Q SO IF SOMEONE IN A VEHICLE DRIVING, TAKING A RIGHT ON
22 HIGHLAND STREET CAN MEET UP WITH SOMEONE FLEEING ON BEACON
23 STREET.

24 Q OH, YES, ABSOLUTELY, JUST A COUPLE HUNDRED YARDS
25 AWAY.

JOHN BURGESS - DIRECT BY MR. BULSA

184

1 Q DID YOU DRIVE THESE STREETS AS YOU'RE LOOKING FOR THE
2 SUSPECTS?

3 A YES.

4 Q DID YOU SEE ANYTHING?

5 A COULDN'T FIND ANYTHING. INFORMATION WAS GIVEN OUT
6 THAT A CAR WAS INVOLVED, SO IT'S PRETTY --- PRETTY EVIDENT
7 THAT THEY PROBABLY GOT INTO A VEHICLE AT SOME POINT AND
8 LEFT, I MEAN IF A VEHICLE WAS INVOLVED IN IT.

9 Q WHAT KIND OF LIGHTING IS THERE OUT IN THE STREET WAY
10 IN THE APARTMENTS?

11 A HIGHLAND'S LIT UP PRETTY WELL. DANIEL MORGAN SO-SO.
12 THE CHURCH IS LIT UP, BUT YOU HAVE THESE TREES. PARKING
13 LOTS, PLACES ARE DARK, UM, AND THEN THEY HAVE A --- THEY
14 HAVE A PORCH LIGHT TOO, BUT IT'S --- I MEAN --- YOU WOULD
15 THINK THAT WOULD BE FAIRLY LIT UP ON A MAJOR ROAD, BUT
16 IT'S --- I MEAN IT'S --- IT'S NOT THAT WELL.

17 Q OKAY. SO DO YOU RECALL THE PORCH LIGHT BEING ON AT
18 THE APARTMENT IN QUESTION?

19 A I COULDN'T TELL YOU IF IT WAS.

20 Q YOU DON'T REMEMBER?

21 A NO, SIR.

22 Q ALL RIGHT, SO WHEN YOU ACTUALLY GOT TO THE SCENE, DID
23 YOU --- WHO DID YOU SEE THERE?

24 A OFFICER MATHIS AT FIRST AND THEN BEGAN TO SPEAK WITH
25 EACH VICTIM.

JOHN BURGESS - DIRECT BY MR. BULSA

185

1 Q AND ASK YOU THIS QUESTION --- JUST FOR THE RECORD,
2 THIS IS ALL WITHIN THE CITY OF SPARTANBURG?

3 A YES.

4 Q OKAY. IN SPARTANBURG COUNTY.

5 A YES.

6 Q OKAY. WHAT WAS THE Demeanor OF THE VICTIMS AS YOU
7 SAW THEM?

8 A OH, THEY WERE FRIGHTENED. IT'S OBVIOUS THAT
9 SOMETHING HAPPENED INSIDE THE APARTMENT, HAVE A BULLET
10 HOLE INSIDE THE WALL, VERY NERVOUS AND AFRAID.

11 Q DID YOU LEARN OF ANY SUSPECTS THAT EVENING?

12 A YES.

13 Q WHO?

14 A YOU GET NICKNAME --- IF YOU CAN IDENTIFY SOMEBODY
15 THROUGH THEIR NICKNAME YOU COULD PROBABLY FIND OUT WHO
16 THEY ARE, BUT WE WERE GIVEN THE INFORMATION OUT AS PACMAN
17 AND KOOLAID AND DUCK. WASN'T SURE HOW KOOLAID WAS
18 INVOLVED JUST AS FIRST, BECAUSE HE WASN'T --- OR EXCUSE
19 ME, PACMAN, BECAUSE HE WASN'T COVERED HIS FACE AFTER ---
20 AFTER WE LEARNED HIS IDENTITY.

21 Q DIDN'T THE FIRST OFFICER GET THE NAME OF KENDEAL
22 JONES FOR PACMAN?

23 A THAT'S CORRECT.

24 Q SO WE KNEW HIS IDENTITY, BUT YOU WEREN'T SURE OF HIS
25 INVOLVEMENT BECAUSE HE DIDN'T HAVE HIS FACE COVERED. IS

JOHN BURGESS - DIRECT BY MR. BULSA

186

1 THAT WHAT YOU'RE SAYING?

2 A OF KENDEAL?

3 Q YES, SIR.

4 A THAT'S CORRECT.

5 Q OKAY. DID YOU HAVE AN ADDRESS FOR MR. JONES?

6 A I LEARNED THAT THEY COME OUT OF THE WOODRUFF AREA,
7 BUT THEN THEY HAD SOME FAMILY ON ALEXANDER AVENUE.

8 Q OKAY. AND BASED ON INFORMATION YOU KNEW HE WAS AT
9 THE SCENE AT THE TIME OF THE INCIDENT.

10 A YES.

11 Q DID YOU GO ANYWHERE TO LOOK FOR HIM?

12 A SEVERAL LOCATIONS. UM, ONE OF THE LOCATIONS I WENT
13 TO WAS ALEXANDER AVENUE. WASN'T SURE IF IT WAS 275 OR 277
14 ALEXANDER, SO WE WENT TO BOTH LOCATIONS AND TRIED TO
15 LOCATE EITHER ONE OR ALL THREE OF THE PEOPLE INVOLVED AND
16 WENT TO A ---

17 Q LET ME ASK YOU FIRST, WHEN YOU WERE ON ALEXANDER DID
18 YOU FIND ANYBODY?

19 A SPOKE TO A LADY BY THE NAME OF NIKITA (PHONETIC)
20 JONES.

21 Q DO YOU KNOW WHO THAT WAS?

22 A (PAUSE) I DON'T HAVE HOW HER RELATIONSHIP WAS AS FAR
23 AS THE PEOPLE INVOLVED BUT OBVIOUSLY SHE KNEW THEM BECAUSE
24 WHEN I ASKED HAD DUCK BEEN THERE, SHE KNEW WHO I WAS
25 TALKING ABOUT.

JOHN BURGESS - DIRECT BY MR. BULSA

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1 Q WAS SHE AN OLDER LADY?

2 A NO, SHE WAS --- FROM WHAT I CAN REMEMBER MAYBE
3 TWENTIES, MAYBE EARLY THIRTIES, NOT VERY OLD.

4 Q SO SHE WASN'T QUITE OLD ENOUGH TO BE MR. JONES'S
5 MOTHER?

6 A NOT THAT I CAN REMEMBER, NO. SHE --- I THINK SHE WAS
7 FAIRLY --- FAIRLY YOUNG.

8 Q OKAY. SO YOU WENT TO ALEXANDER AVENUE AND LOOKED AND
9 DIDN'T FIND ANYBODY. WHERE ELSE DID YOU LOOK?

10 A WENT TO THE DAYS INN ON NORTH CHURCH STREET.

11 Q DID YOU FIND ANYBODY THERE?

12 A SPOKE TO A COUPLE INDIVIDUALS, BUT DIDN'T FIND THE
13 PEOPLE OVER THERE WE WERE LOOKING FOR.

14 Q WHERE ELSE DID YOU LOOK?

15 A I DON'T HAVE IT DOCUMENTED, BUT I'M SURE THEY
16 WOULD'VE WENT TO EACH DEFENDANT'S LAST KNOWN ADDRESS.
17 THAT'S JUST TYPICAL.

18 Q NOW, YOU WENT UP TO SIGN THE WARRANTS FOR TWO
19 INDIVIDUALS.

20 A YES, SIR.

21 Q PACMAN, AKA KENDEAL JONES.

22 A YES, SIR.

23 Q AND KOOLAID BY THE NAME OF CHAVIS PULLEN.

24 A YES, SIR.

25 Q ALL RIGHT. SO AT SOME POINT YOU WERE ABLE TO PUT A

JOHN BURGESS - DIRECT BY MR. BULSA

188

1 NAME WITH KOOLAID.

2 A YES.

3 Q DID YOU DOCUMENT WHAT NAME MS. MIDDLETON GAVE YOU FOR
4 KOOLAID?

5 A (PAUSE) YOU SAID KOOLAID?

6 Q YES, SIR.

7 A GOT THE INFORMATION THE NAME OF KENDEAL JONES.

8 Q KOOLAID.

9 A WELL, PACMAN WAS --- IT'S VERY CONFUSING THERE.
10 PACMAN IS KENDEAL JONES. KOOLAID WAS CHAVIS AND SHE SAID
11 SHE KNEW BOTH OF THEM OR HAD ACQUAINTANCE OF BOTH OF THEM,
12 I'M SORRY.

13 Q OKAY. AND THROUGH YOUR INVESTIGATION YOU LEARNED
14 KOOLAID WAS CHAVIS PULLEN?

15 A YES, GIVEN THAT --- CHAVIS OR CHAVIS SHELTON AT
16 FIRST, AND THEN AFTER DOING SOME RESEARCH WE FOUND CHAVIS
17 PULLEN.

18 Q OKAY. AND IN YOUR INFORMATION, YOUR INVESTIGATION,
19 IS HE CONNECTED TO A SHELTON?

20 A YES.

21 Q WHO?

22 A I BELIEVE HIS MOTHER IS A --- IS A SHELTON.

23 Q OKAY. NOW, THE DEFENSE ATTORNEYS HAVE ASKED --- OR
24 LEAST THEY ASKED MS. MIDDLETON ABOUT SOME PHOTO LINE-UPS.

25 A YES.

JOHN BURGESS - DIRECT BY MR. BULSA

189

1 Q DID YOU PREPARE ANY PHOTO LINE-UPS?

2 A THEY WERE DONE. NOT NECESSARY BY --- BUT THEY WERE
3 DONE AT MY DIRECTION.

4 Q OKAY. AND WHAT WAS THE PURPOSE OF THESE PHOTOGRAPHIC
5 LINE-UPS?

6 A LINE-UPS ARE DONE JUST TO MAKE SURE WE'RE TALKING
7 ABOUT THE SAME SUBJECT BASICALLY. THEY'LL PUT HIM IN ---
8 IN A --- COULD BE SIX, COULD BE TEN OTHER PEOPLE AND IT'S
9 SHOWN TO WITNESSES OR VICTIMS JUST TO MAKE SURE THEY'RE
10 (SIC) POSITIVELY IDENTIFIED THE SUBJECT.

11 Q OKAY. SO BECAUSE YOU HAD THE NAME OF KOOLAID, YOU
12 LINKED THEM TO A CHAVIS PULLEN, BUT YOU (SIC) THEN SHOWED
13 THE LINE-UPS OF CHAVIS PULLEN TO ANY OF THESE THREE
14 INDIVIDUALS?

15 A THEY WERE SHOWN, YES..

16 Q OKAY. AND WERE THEY ABLE TO IDENTIFY A PERSON THEY
17 KNEW AS KOOLAID AS THE PERSON YOU IDENTIFIED AS CHAVIS
18 PULLEN?

19 A HAVE TWO COPIES OF THESE BEEN (SIC) IDENTIFY THEM.
20 I'M NOT SURE --- I'D HAVE TO LOOK THROUGH ALL OF THEM BUT
21 HE WAS IDENTIFIED, YES.

22 Q DO WE KNOW WHO IDENTIFIED HIM?

23 A I HAVE MS. MIDDLETON --- LET ME GET THE ORIGINAL
24 HERE. (PAUSE) TERRANCE MOATES AND MS. MIDDLETON LIKE I
25 SAID.

JOHN BURGESS -- DIRECT BY MR. BULSA

190

1 Q OKAY, SO TWO OF THE THREE --- TWO THAT SAID THEY KNEW
2 HIM AND IDENTIFIED HIM.

3 A YES, SIR.

4 Q OKAY. WHEN WAS CHAVIS PULLEN ARRESTED?

5 A GIVE ME ONE SECOND. (PAUSE) MR. PULLEN WAS ARRESTED
6 ON JUNE THE 14TH, 2009.

7 Q THAT WAS THREE DAYS AFTER THIS INCIDENT.

8 A THAT'S CORRECT.

9 Q BASED ON THE IDENTIFICATION AND THE INFORMATION YOU
10 HAD ABOUT KOOLAID'S INVOLVEMENT.

11 A THAT'S CORRECT.

12 Q OKAY. DURING THOSE THREE DAYS --- OR I CAN SAY ---
13 WAS IT THE DAY AFTER THAT YOU WENT AND FOUND MS. CARTER?

14 A YES. IT WAS ON JUNE THE 12TH.

15 Q HOW DID YOU ACTUALLY FIND HER?

16 A CANVASSED THE NEIGHBORHOOD LOOKING FOR OTHER PEOPLE
17 THAT MIGHT BE A WITNESS OR COULD'VE BEEN A VICTIM, TOO.

18 Q WHAT DO YOU MEAN BY CANVASS THE NEIGHBORHOOD?

19 A GO KNOCK ON DOORS, SEE WHAT INFORMATION YOU CAN FIND.

20 Q OKAY. SO YOU KNOCKED ON HER DOOR AND YOU LEARNED SHE
21 SAW SOMETHING?

22 A I BELIEVE SHE WAS ACTUALLY SITTING OUTSIDE AND I
23 WALKED UP TO HER, BUT I WAS HEADING TO HER HOUSE.

24 Q OKAY. AND YOU GOT HER STATEMENT?

25 A YES, SIR.

JOHN BURGESS - DIRECT BY MR. BULSA

191

1 Q CONSISTENT WITH WHAT SHE TESTIFIED TO?

2 A YES, SIR.

3 Q OKAY, FROM THAT INFORMATION DID YOU SEEK ADDITIONAL
4 WARRANTS ON MR. JONES?

5 A YES, THAT PUT THEM ALL THREE THERE TOGETHER PRIOR TO
6 THE INCIDENT. IT'S NOT LIKE ONE PERSON ENTERED IN AND
7 THEN TWO OTHER PEOPLE JUST SHOWED UP. THEY WERE ALL THREE
8 TOGETHER AND STANDING IN FRONT OF THE APARTMENT, SO TO ME
9 THAT MADE HIM NOT A --- NOT A VICTIM ANYMORE. THAT MADE
10 HIM A SUSPECT.

11 Q DID YOU CONTINUE TO LOOK FOR HIM?

12 A PULLEN OR JONES?

13 Q JONES.

14 A ACTUALLY RECEIVED A PHONE CALL. I'D LEFT CARDS. I
15 LEFT CARDS AT THE DAYS INN BECAUSE THEY WERE FREQUENT
16 THERE. I LEFT CARDS THERE FOR THEM TO CALL ME. LEFT
17 CARDS ON ALEXANDER AVENUE, AND THEN I RECEIVED A CALL ON
18 JUNE THE 15TH, 2009 AT EIGHT FORTY-ONE IN THE MORNING.
19 THE CALLER SAID THAT SHE WAS KENDEAL'S MOTHER. IF YOU
20 WANT ME TO SAY WHAT SHE TOLD ME, I ---

21 Q NO, DON'T --- DON'T TELL US WHAT SHE TOLD YOU.
22 THAT'D BE HEARSAY, BUT YOU HAD A CONVERSATION WITH HER?

23 A YES.

24 Q AND WHAT DID YOU TELL HER?

25 A I TOLD HER THAT IF HE'S A VICTIM HE NEEDS TO COME SEE

JOHN BURGESS - DIRECT BY MR. BULSA

192

1 ME.

2 Q AND DID HE EVER COME SEE YOU?

3 A NO.

4 Q WHEN, IN FACT, WAS HE ARRESTED?

5 A MR. JONES WAS ARRESTED JANUARY 18TH, 2010.

6 Q WE'VE HEARD INFORMATION ABOUT A DUCK SUSPECT.

7 A THAT'S CORRECT.

8 Q HAVE WARRANTS BEEN SIGNED ON HIM?

9 A THEY HAVE NOT.

10 Q WHY NOT?

11 A UM, REALLY COULD NOT POSITIVELY IDENTIFY HIM AT THE
12 TIME FROM BACK IN --- FROM ON THE JUNE 11TH, INCIDENT.

13 Q HIS NICKNAME WAS NOT MENTIONED, WAS IT? INSIDE THE
14 HOUSE.

15 A NOT THAT I'M AWARE OF.

16 Q OKAY. SO YOU WERE LOOKING FOR SPECIFIC INFORMATION
17 AND IDENTIFICATION.

18 A ON KOOLAID?

19 Q ON ALL OF THEM.

20 A OH, YES.

21 Q OKAY. AND YOU DIDN'T HAVE ENOUGH FOR THIS DUCK
22 FELLOW. EVEN THOUGH HE WAS A SUSPECT, YOU COULDN'T
23 POSITIVELY IDENTIFY HIM.

24 A THAT'S CORRECT.

25 Q OKAY. NOW, I WANT TO COVER A COUPLE OF THINGS THAT

JOHN BURGESS - CROSS BY MR. HALL

193

1 DEFENSE ASKED SOME OF THE WITNESSES. THEY COMMENTED ABOUT
2 WHETHER YOU'D DONE A LINE-UP WITH PEOPLE WITH MASKS ON.
3 IS THAT A FEASIBLE THING TO DO?

4 A NO, I'VE NEVER HEARD OF IT BEING DONE.

5 MR. BULSA - I THINK THAT'S ALL I HAVE AT THIS
6 TIME. ANSWER ANY QUESTIONS EITHER DEFENSE ATTORNEY MAY
7 HAVE.

8 CROSS EXAMINATION

9 BY MR. HALL -

10 Q TO YOUR KNOWLEDGE WAS THAT BULLET EVER RECOVERED FROM
11 THE WALL?

12 A IT WAS NOT.

13 Q IS THERE A REASON?

14 A COULDN'T FIND IT.

15 Q THEY CUT INTO THE WALL OR JUST ---

16 A NO.

17 Q --- SAY CAN'T FIND IT.

18 A WE'RE GOING TO BASE IT ON HOW MUCH DESTRUCTION'S DONE
19 TRYING TO RECOVER A BULLET VERSUS, YOU KNOW, TRYING TO
20 ACTUALLY LOCATE IT.

21 Q BUT HAD YOUR INVESTIGATION BEEN MORE SUCCESSFUL WHERE
22 OR I MEAN YOU'D CAUGHT SOMEBODY WITH A GUN OR FOUND A GUN
23 THAT WOULD'VE HELPED.

24 A POSSIBLY.

25 Q NOW, WITH MS. CARTER, SHE WAS, AS WE'VE LEARNED

JOHN BURGESS - CROSS BY MR. HALL

194

1 TODAY, THE FIRST ONE THAT CALLED 9-1-1.

2 A YES, I BELIEVE.

3 Q WHEN DID YOU TALK TO HER?

4 A ON JUNE THE 12TH, 2009 AT --- IT WAS AFTER SIX
5 O'CLOCK THAT EVENING I THINK.

6 Q SIX FORTY-THREE P.M. I BELIEVE, WASN'T IT?

7 A SIX FORTY-THREE, YES, SIR.

8 Q AND YOU REFERRED TO THE PHOTO LINE-UP WHERE MR.
9 MOATES AND MS. MIDDLETON PICKED OUT MY CLIENT, MR. PULLEN.
10 DID YOU DO THOSE --- THAT SHOW-UP TO THEM OR --- THAT
11 LINE-UP?

12 A I WOULD'VE BEEN THERE. I'M NOT SURE WHO ACTUALLY
13 PRESENTED THE LINE-UP, BUT I WOULD'VE BEEN THERE.

14 Q AND IF YOU WOULD TELL US WHAT DATE THAT WAS. THAT
15 WAS THE NEXT DAY OR THE ---

16 A ON PULLEN?

17 Q YES.

18 A JUNE THE 12TH, 2009 FOR MR. MOATES AND JUNE THE 12TH,
19 2009 FOR MS. MIDDLETON.

20 Q AT APPROXIMATELY WHAT TIME DID THEY IDENTIFY THOSE
21 TWO INDIVIDUALS?

22 A SIX FORTY-TWO AND SIX FORTY-TWO.

23 Q DID THEY --- WERE THEY SHOWN THESE LINE-UPS TOGETHER?

24 A NO, THEY WERE IN SEPARATE AREAS. NEVER SHOW ANYBODY
25 TOGETHER.

JOHN BURGESS - CROSS BY MR. HALL

195

1 Q AND WHERE DID THIS TAKE PLACE?

2 A 507 SOUTH DANIEL MORGAN AVENUE.

3 Q WERE THEY BOTH DOWNSTAIRS AT 507 ---

4 A I COULDN'T TELL YOU IF THEY WERE BOTH DOWNSTAIRS.
5 ONE MIGHT'VE BEEN OUTSIDE, BUT THEY WERE NEVER SHOWN
6 TOGETHER.

7 Q I'M TRYING TO FIGURE OUT HOW FAR APART THEY WERE,
8 BECAUSE THEY APPARENTLY, FROM WHAT WE HAVE SHOWN --- MADE
9 THE IDENTIFICATION AT THE EXACT SAME TIME, SIX FORTY-TWO
10 P.M.

11 A I'VE --- I CAN'T REMEMBER FOR SURE. I MIGHT'VE
12 PHYSICALLY SHOWN THEM AND INVESTIGATOR JAMES MIGHT HAVE --
13 -

14 Q ARE THOSE THE ORIGINAL LINE-UPS?

15 A YES, BUT WE WERE THERE TOGETHER.

16 Q BUT BOTH OF THEM SIX FORTY-TWO, SIX FORTY-TWO.

17 A THAT LOOKS LIKE MY HANDWRITING UNDER MS. MIDDLETON
18 AND THAT'S NOT MY HANDWRITING ON MR. MOATES.

19 Q AND DID YOU TAKE THE STATEMENT FROM MS. CARTER?

20 A I WROTE IT FOR HER, YES.

21 Q NOW, YOU SAY YOU'VE NEVER HEARD OF BEING ABLE TO PUT
22 MASKS ON PEOPLE FOR A LINE-UP?

23 A ME PERSONALLY, NO.

24 Q DID YOU THINK THAT MAYBE IT WAS SOMETHING TO CHECK
25 INTO IN A CASE LIKE THIS WHERE SOMEBODY --- THE ONLY ONE

JOHN BURGESS - CROSS BY MR. HALL

196

1 THAT JUST SAID I KNOW THAT WAS KOOLAID, CHAVIS PULLEN OR
2 CHAVIS --- WHATEVER THE OTHER NAME WAS --- MS. MIDDLETON.
3 RIGHT?

4 A I'M SORRY, WHAT WAS THE QUESTION?

5 Q MS. MIDDLETON'S THE ONE WHO SAID I KNOW THE PERSON
6 THAT CAME IN WITH THE GUN WAS KOOLAID.

7 A YES, SHE SAID SHE RECOGNIZED HIM THROUGH HIS EYES.

8 Q EXACTLY. EVEN THOUGH HE HAD ON A MASK, SHE
9 RECOGNIZED THE EYES, BUT YOU DIDN'T INQUIRE ABOUT CAN YOU
10 DO THAT KIND OF LINE-UP?

11 A NO.

12 Q NOW, DID MR. MOATES JUST SAY, YES I KNOW THIS IS
13 CHAVIS PULLEN, OR DID HE SAY, THIS IS THE GUY THAT CAME
14 IN?

15 A HIS WAS MORE OF THIS IS MR. PULLEN.

16 Q THIS IS THE GUY I KNOW AS CHAVIS PULLEN.

17 A CHAVIS --- YES, CHAVIS PULLEN.

18 Q NOW, WHAT DID YOU HAVE --- WELL, DO YOU HAVE A NAME
19 FOR DUCK?

20 A GOT DERRICK GOGGINS.

21 Q ALL RIGHT. AND JUST FOR MY EDIFICATION, WHAT DID YOU
22 HAVE MORE ON CHAVIS PULLEN THAN YOU HAD ON DERRICK
23 GOGGINS?

24 A MS. MIDDLETON SAYING THAT SHE RECOGNIZED HIM.

25 Q RECOGNIZED HIS EYES.

JOHN BURGESS - CROSS BY MR. HALL

197

1 A AND HIS VOICE I BELIEVE SHE SAID.

2 Q OKAY, HIS VOICE. DID YOU --- HAVE YOU EVER HEARD OF
3 MAKING RECORDINGS OF PEOPLE'S VOICES AND SAY, CAN YOU ---
4 WE'RE GOING TO GET SOMEBODY TO SAY SOMETHING AND CAN YOU
5 PICK OUT HIS --- THE ONE THAT IS THE PERSON WHO ROBBED
6 YOU?

7 A I NEVER --- NO.

8 Q YOU'VE NEVER HEARD OF IT OR NEVER DONE IT?

9 A CERTAINLY NEVER DONE IT. AS FAR AS I KNOW, I'VE
10 NEVER SEEN IT OR NEVER HEARD OF IT HERE IN SPARTANBURG
11 BEFORE.

12 Q IT'S A BIG WORLD OUT THERE, THOUGH.

13 A THAT'S ME PERSONALLY.

14 Q ALL RIGHT. NOW, CAN --- IF I CAN GO BACK TO THE
15 LINE-UP. WERE YOU INVOLVED IN THE --- ANY OF THE LINE-UPS
16 FOR MR. JONES, ALSO?

17 A YOU KNOW, I THINK HIS WAS DONE THAT NIGHT. I
18 WOULD'VE BEEN THERE, BUT I DON'T KNOW --- LIKE I SAID, I
19 DON'T KNOW IF I PHYSICALLY SHOWED HIM OR IF SOMEBODY ELSE
20 PHYSICALLY WOULD'VE SHOWED HIM. DOESN'T LOOK LIKE ANY OF
21 MY HANDWRITING, HOWEVER, I MIGHT'VE BEEN PRESENT.

22 Q THEY WERE DONE THAT NIGHT.

23 A JUNE THE 11TH, JUNE THE 11TH AND JUNE THE 11TH, 2009.

24 YES, SIR.

25 Q OKAY. WAS THERE SOME REASON YOU DIDN'T DO THE OTHER

JOHN BURGESS - CROSS BY MR. HALL

198

1 LINE-UP THAT NIGHT, WAITED UNTIL THE NEXT EVENING?

2 A BECAUSE WE GOT CHAVIS SHELTON AND COULDN'T CONFIRM
3 THE IDENTITY, LATER LEARNED OUT (SIC) IT WAS CHAVIS
4 PULLEN.

5 Q ARE THOSE THE LINE-UP ON MR. --- ORIGINAL LINE-UP ON
6 MR. JONES?

7 A MR. JONES, YES.

8 Q AND YOU'RE SURE THESE WERE DONE ON JUNE 11TH?

9 A JUNE THE 11TH, 2009.

10 Q WHAT'S THE PRINT DATE ON THOSE? DOWN AT THE ---
11 RIGHT BELOW THAT. DOESN'T IT SAY JUNE 12TH? IS THAT THE
12 DATE THE THING WAS --- THE LINE-UP WAS PRINTED OUT?

13 A IT DOES, BUT I'M NOT THE ADMINISTRATIVE COMPUTER AND
14 IT'S --- COULDN'T TELL YOU WHAT TIME THE COMPUTER SAYS.
15 I COULD TELL YOU IT WAS DONE ON JUNE THE 11TH, 2009 AT
16 ELEVEN FIFTY FOUR HOURS.

17 Q ALL RIGHT, AND IF YOU'LL PULL OUT MR. PULLEN'S LINE-
18 UP ---

19 A YES.

20 Q IS IT (SIC) HAVE A DATE AT THE BOTTOM LIKE IT'S
21 PRINTED OUT ON JUNE 12TH?

22 A SAME DATE, JUNE 12TH, 2009.

23 Q AND IT'S DATED JUNE 12TH AS THE I.D. AT SIX FORTY-TWO
24 P.M.

25 A SIX FORTY-TWO P.M., YES, SIR.

JOHN BURGESS - CROSS BY MR. HALL

199

1 Q THAT'S JUST THE --- YOUR COMPUTER ALWAYS PRINTED OUT
2 JUNE 12TH?

3 A THIS --- BACK THEN IT WAS SET UP WITH ONE COMPUTER
4 SYSTEM. ONE --- ONE COMPUTER HAD THE SOFTWARE TO DO IT,
5 HOWEVER, SINCE THEN EACH INDIVIDUAL COMPUTER HAS THEIR OWN
6 CAPABILITY.

7 Q SO YOUR COMPUTERS HAVE JUST RANDOM DATES ON THEM OR -
8 -- I'M JUST TRYING TO FIGURE OUT WHY THEY'RE --- SOMETHING
9 THAT LOOKS LIKE IT'S PRINTED ON JUNE 12TH BUT IT WAS
10 ADDITIONAL ON JUNE 11TH.

11 A LIKE I SAID, BACK THEN IN 2009 ONE COMPUTER HANDLED
12 ALL THE PHOTO LINE-UPS. SINCE THEN EACH DESK HAS A
13 NETWORK AND THAT EVERYBODY HAS ACCESS TO IT. I CAN'T TELL
14 YOU, YOU KNOW, WHY IT HAS JUNE THE 12TH. I CAN TELL YOU
15 THAT IT WAS SHOWN ON JUNE THE 11TH, 2009.

16 Q NOW, MS. CARTER, THE FIRST PERSON TO CALL 9-1-1, YOU
17 DIDN'T GO TO HER UNTIL THE NEXT EVENING.

18 A I DIDN'T KNOW SHE HAD CALLED 9-1-1. I DIDN'T KNOW
19 SHE WAS OUT THERE.

20 Q NOW, IT'S A LITTLE UNCLEAR WHEN YOU SAID YOU WENT TO
21 TALK TO HER. WERE YOU GOING DIRECTLY TO HER BECAUSE SHE
22 CALLED 9-1-1 OR IT WASN'T UNTIL YOU GOT TO HER THAT YOU
23 FOUND OUT SHE CALLED 9-1-1?

24 A I DIDN'T KNOW SHE HAD CALLED 9-1-1. AFTER A INCIDENT
25 LIKE THIS HAS HAPPENED, I JUST CAN'T GO GET 9-1-1 CALLS.

JOHN BURGESS - CROSS BY MR. HALL

200

1 THEY HAVE TO GO THROUGH A --- COMMAND STAFF HAS TO SIGN
2 OFF ON SOMETHING, GO PICK IT UP, AND THEN THEY'RE --- I
3 LEARNED WHO HAS ACCESS, WHO'S CALLED 9-1-1 TO GET
4 PRINTOUTS AND COPIES AND LIKE THAT. I CAN CALL AND SAY,
5 HEY, WHAT NUMBER DID YOU HAVE, BUT I WASN'T CONCENTRATING
6 ON THAT BECAUSE I'D GOT INFORMATION ABOUT THE SUSPECTS.
7 AND THEN WHEN I WENT TO GO CANVASS THE NEIGHBORHOOD,
8 THAT'S WHEN I FOUND MS. CARTER.

9 Q OKAY, BUT THE REASON MY QUESTION --- THAT'S WHAT I
10 THOUGHT YOU HAD TESTIFIED TO BEFORE, WAS YOU JUST HAPPENED
11 UPON HER IN YOUR CANVASSING THE NEIGHBORHOOD.

12 A THAT'S CORRECT.

13 Q BUT YOU SAID SOMETHING --- YOU HAVE TO GO UP THE
14 CHAIN OF COMMAND TO GET 9-1-1? YOU CAN'T JUST REQUEST IT
15 YOURSELF?

16 A THAT'S CORRECT.

17 Q EVEN IN SOMETHING AS SERIOUS AS THIS.

18 A THAT'S CORRECT. I CAN LISTEN TO THE 9-1-1 CALLS,
19 HOWEVER, I CAN'T GET COPIES AND CAD REPORTS.

20 Q AND DO YOU RECALL ASKING HER DID --- COULD SHE
21 DESCRIBE THESE MEN SHE SAW OR ANYTHING?

22 A I THINK SHE PUT IN HER STATEMENT WHAT THEY WERE
23 WEARING. SHE HAD TOLD ME THAT --- SHE'S NOT IN HERE (SIC)
24 WHAT THEY LOOK LIKE, BECAUSE I THINK I'D ALREADY ASKED HER
25 THAT, CAN YOU DESCRIBE TO ME, BUT SHE KNEW WHAT THEY WERE

JOHN BURGESS - CROSS BY MR. HALL

201

1 WEARING.

2 Q SHE COULDN'T PICK THEM OUT.

3 A NO.

4 Q AND SO YOU SAID YOU COULD CALL AND FIND OUT IF OTHER
5 PEOPLE HAD CALLED, THAT WOULD GET YOU A PHONE NUMBER
6 IMMEDIATELY TO CALL AND SEE WHO ELSE HAD CALLED.

7 A YES, THAT'S CORRECT.

8 Q BUT THAT WASN'T DONE IN THIS CASE.

9 A LIKE I SAID, I DIDN'T KNOW SHE HAD CALLED, SO I
10 DIDN'T CHECK ON THAT.

11 Q BUT WE HAVE FROM MS. MIDDLETON, SHE'S YELLING,
12 THERE'S A GUNSHOT AND YOU DIDN'T CHECK TO SEE IF ANYBODY
13 ELSE HAD CALLED 9-1-1?

14 A NOT AT THAT PARTICULAR TIME, NO.

15 Q AND YOU DIDN'T CHECK UNTIL THE NEXT EVENING WHEN YOU
16 SAW MS. CARTER, YOU HAPPENED UPON HER.

17 A THERE'S A PROCEDURE YOU HAVE TO FOLLOW. YOU HAVE TO
18 SUBMIT A LETTER TO THE 9-1-1 TO GET COPIES AND RECORDINGS.
19 THAT'S NOT DONE AUTOMATICALLY. THAT'S SOMETHING THAT YOU
20 DO AFTER YOU HAVE TIME TO TAKE A BREAK FOR A SECOND TO
21 REALIZE WHAT'S GOING ON, THEN YOU SUBMIT THE 9-1-1, THE --
22 -

23 Q I'M ASKING ABOUT MAKING PHONE CALL AND SAYING I'M
24 ASSIGNED THIS CASE, CAN YOU GET ANY OF THE 9-1-1 CALLS
25 ABOUT THIS.

JOHN BURGESS - CROSS BY MR. SINGLETON

202

1 A I DID NOT DO THAT.

2 MR. HALL - NO FURTHER QUESTIONS.

3 THE COURT - YES, SIR, MR. SINGLETON.

4 MR. SINGLETON - MAY IT PLEASE THE COURT.

5 CROSS EXAMINATION

6 BY MR. SINGLETON -

7 Q INVESTIGATOR BURGESS, YOU STATED YOU WENT DOWN TO
8 ALEXANDER AVENUE THAT --- OR THAT EVENING OR THE NEXT DAY?

9 A THAT EVENING.

10 Q OKAY. DID YOU EVER GO BACK TO ALEXANDER AVENUE?

11 A NO, I DON'T BELIEVE SO.

12 Q OKAY. DID YOU EVER GO TO ANY OTHER ADDRESSES BESIDES
13 THE ALEXANDER AVENUE AND THE HOTEL? DID YOU EVER GO TO
14 ANY OTHER ADDRESSES IN WOODRUFF OR ANYWHERE ELSE TO TRY TO
15 FIND MR. JONES?

16 A ME PERSONALLY, NO.

17 Q OKAY. DO YOU KNOW IF ANYBODY ELSE INVESTIGATING THE
18 CASE DID THAT?

19 A I WOULD GIVE A TEAM OF PEOPLE TO GO DO IT, BUT I
20 DON'T KNOW WHICH ADDRESS THEY'D ACTUALLY WENT TO AND WHICH
21 ONES THEY DIDN'T, NO, SIR.

22 Q SO YOU JUST WENT TO THAT ONE AREA THAT EVENING TO
23 LOOK FOR MR. JONES OR LOOK FOR MR. PULLEN OR WHOEVER ELSE
24 YOU WERE LOOKING FOR AND THAT'S IT, NO OTHER SEARCHES FOR
25 THE INDIVIDUALS.

JOHN BURGESS - CROSS BY MR. SINGLETON

203

- 1 A JUNE THE 16TH, 2009 I WENT TO SPEAK TO CHAVIS.
- 2 Q YOU WENT WHERE?
- 3 A SPEAK TO CHAVIS, WENT TO THE COUNTY JAIL.
- 4 Q YOU WENT TO THE JAIL. I MEAN HE WAS AT JAIL; YOU
- 5 KNEW WHERE HE WAS AT.
- 6 A THAT'S CORRECT.
- 7 Q OKAY, BUT YOU DIDN'T GO OUT CANVASSING THE AREA ---
- 8 I MEAN CANVASSING THE NEIGHBORHOOD AS FAR AS MR. PULLEN --
- 9 - MR. JONES LIVED OR HANG OUT OR ANYTHING LIKE THAT?
- 10 A ME PERSONALLY, NO. A TEAM --- DIFFERENT PEOPLE
- 11 WOULD'VE --- WOULD'VE DONE THAT, BECAUSE I HAVE TO ANSWER
- 12 OTHER CALLS, OTHER INVESTIGATIONS.
- 13 Q DO YOU KNOW IF ANYBODY DID THAT?
- 14 A WELL, I'M SURE THEY WOULD'VE DUE TO THE SERIOUSNESS
- 15 OF THE CHARGE.
- 16 Q BUT THERE'S NO EVIDENCE THAT THEY DID THAT, NO ---
- 17 A I SIMPLY HAND THEM A PHOTO AND ADDRESS AND SAY HERE,
- 18 GO FIND THEM.
- 19 Q OKAY. REGARDING THE LINE-UP OF --- THE PHOTO LINE-UP
- 20 YOU DID OF MR. JONES --- I MEAN YOU DID IT THAT EVENING --
- 21 - THAT DOESN'T REALLY MEAN MUCH BECAUSE HE --- EVERYBODY
- 22 KNEW HE WAS THERE.
- 23 A KENDEAL?
- 24 Q YES.
- 25 A THAT'S CORRECT.

JOHN BURGESS - CROSS BY MR. SINGLETON

204

1 Q OR PACMAN OR WHATEVER THEY CALL HIM. I MEAN THEY
2 KNEW HE WAS THERE, SO THERE'S NO HIDING THAT HE WAS THERE
3 OR NOT.

4 A THAT'S CORRECT.

5 Q SO THAT WAS --- THAT LINE-UP ASSURES YOU THAT HIS
6 NAME WAS KENDEAL JONES. CORRECT?

7 A MAKE SURE WE HAVE THE RIGHT PICTURE WITH THE NAME.

8 Q NOW, YOU STATED REGARDING THE LINE-UP OF MR. PULLEN
9 YOU DIDN'T THINK IT WAS FEASIBLE TO DO A PHOTO LINE-UP OF
10 SIX INDIVIDUALS WEARING MASKS?

11 A LIKE I SAID, I NEVER HEARD THAT. I'VE NEVER SEEN IT
12 DONE. I CAN'T TELL YOU THAT I'VE EVER SEEN IT DONE IN
13 SPARTANBURG.

14 Q WELL, WHY IS IT NOT FEASIBLE? I MEAN WHY IS IT NOT
15 FEASIBLE?

16 A WELL, FIRST YOU HAVE TO FIND FIVE OTHER WILLING
17 PARTICIPANTS TO PUT ON A MASK AND SIT THERE AND LET US
18 TAKE PICTURES OF THEM.

19 Q OKAY. WELL, YOU KNEW WHO YOU WERE LOOKING FOR.
20 CORRECT? YOU KNEW YOU WERE LOOKING FOR MR. PULLEN.
21 CORRECT?

22 A UH, YES, SIR.

23 Q SUPPOSEDLY.

24 A (NO RESPONSE)

25 Q AND MR. PULLEN WAS AT THE JAIL ON THE 16TH.

JOHN BURGESS - CROSS BY MR. SINGLETON

205

1 A THAT'S CORRECT.

2 Q ALSO, YOU COULD FIND FIVE WILLING INDIVIDUALS AT THE
3 DETENTION CENTER IF YOU KNEW WHO YOU WERE LOOKING FOR,
4 BECAUSE ALL THEY HAD TO DO IS IF THEY PICKED OUT MR.
5 PULLEN FROM A MASK, HIS EYEBALLS ---

6 A NO, THAT'S NOT FEASIBLE.

7 Q WHY IS THAT NOT FEASIBLE?

8 A WE'RE TALKING ABOUT COMMON SENSE HERE. I MEAN IT'S
9 KIND OF HARD TO ROUND UP FIVE OTHER DETAINEES AND PUT
10 MASKS ON THEM AND HAVE PICTURES TAKEN OF THEM. THAT'S
11 SOMETHING YOU JUST DON'T DO.

12 Q OKAY. NOW, YOU STATED IN YOUR STATEMENT THAT TERRI
13 CARTER STATED --- YOU PUT TERRI'S --- TERRI CARTER'S
14 STATEMENT PROVES THAT ALL THREE SUSPECTS WERE TOGETHER
15 PRIOR TO THE HOME INVASION.

16 A THAT'S CORRECT.

17 Q YOU WERE HERE --- YOU HEARD WHAT SHE SAID EARLIER
18 TODAY AND YOU TOOK HER STATEMENT. IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q HOW DOES WHAT SHE SAID PROVE THAT THEY WERE TOGETHER?

21 A ALL THREE OF THEM WERE STANDING OUT IN FRONT OF HER -
22 -- HER PORCH AND THEN ---

23 Q I DIDN'T HEAR THAT.

24 A PRETTY SURE THAT SHE SAID ALL THREE WERE STANDING AND
25 MAYBE ONE WAS SITTING ON THE PORCH.

JOHN BURGESS - CROSS BY MR. SINGLETON

206

1 Q BUT SHE DIDN'T IDENTIFY MR. PULLEN. SHE DIDN'T
2 IDENTIFY MR. JONES AS THE ONES THAT WERE SITTING OUT THERE
3 AND SHE WAS A FEW FEET AWAY.

4 A MR. JONES HAS ALREADY BEEN IDENTIFIED AS BEING IN THE
5 APARTMENT.

6 Q YES, WE'RE NO DOUBT (SIC) THAT HE'S THERE.

7 A HE'S THERE, THEREFORE, HE WAS WITH THE OTHER TWO
8 INDIVIDUALS RIGHT BEFORE YOU HEAR SCREAMING.

9 Q OKAY. PLUS SHE DIDN'T IDENTIFY MR. JONES; SHE DIDN'T
10 IDENTIFY MR. PULLEN AND SHE DIDN'T IDENTIFY ANYBODY. IS
11 THAT CORRECT?

12 A FROM HER TESTIMONY SHE DIDN'T --- COULDN'T SEE THEM
13 OR RECOGNIZE THEM OR --- YES, THAT'S CORRECT.

14 Q EVEN THOUGH THE PORCH WAS LIT UP.

15 A YOU'RE ASSUMING THAT. I DON'T KNOW. I DON'T
16 REMEMBER THE PORCH LIGHT BEING ON.

17 Q WELL, THAT'S WHAT SHE STATED, THE PORCH WAS LIT UP.

18 A THEN THAT'S TRUE. ALL RIGHT, THEN.

19 Q SHE SAID THAT THEY WERE HAVING CONVERSATION WHEN THEY
20 CAME UP, WHEN SHE CAME UP ON THEM.

21 A THAT'S WHAT SHE SAID, YES, SIR.

22 Q LOOKED LIKE THEY WERE JUST HANGING OUT, HAVING A GOOD
23 TIME.

24 A YES, SIR.

25 Q AND YOU ALSO HEARD THE TESTIMONY OF MR. MOATES. IS

JOHN BURGESS - CROSS BY MR. SINGLETON

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1 THAT CORRECT? WHILE YOU WERE SITTING HERE TODAY?

2 A YES, SIR.

3 Q AND HE MADE SOME STATEMENTS THAT AREN'T ANYWHERE IN
4 THE EVIDENCE ABOUT MR. JONES BASICALLY CRAWLING OUT THE
5 BACK DOOR. WAS THAT EVER TOLD TO YOU?

6 A NOT AT THAT PARTICULAR TIME.

7 Q OKAY. WELL, THIS IS THE FIRST I'VE HEARD OF IT.
8 WHEN WERE YOU TOLD ABOUT IT?

9 A (NO RESPONSE)

10 Q IT'S NOT IN YOUR POLICE REPORT.

11 A INFORMATION IN FOLLOW-UPS ARE STILL DONE ALL THE WAY
12 UP TO THE DAY OF COURT, SO I COULDN'T TELL YOU EXACTLY
13 WHEN I FIRST FOUND OUT ABOUT IT ---

14 Q SO YOU DON'T --- I'M SORRY.

15 A --- AND HE --- MR. MOATES WOULD BE CORRECT BY SAYING
16 THAT PEOPLE REMEMBER STUFF AFTER THE FACT, SO I MEAN ---

17 Q OKAY. NOW, YOU SAY THAT YOU WENT AND CANVASSED THE
18 NEIGHBORHOOD OR THE APARTMENT COMPLEX WHERE THIS INCIDENT
19 HAPPENED THE NEXT DAY. IS THAT CORRECT?

20 A YES, THE NEXT DAY.

21 Q DID YOU GO BY AND VISIT THE SAME APARTMENT THAT HAD
22 JUST BEEN ROBBED? DID YOU GO BY AND VISIT THEM THE NEXT
23 DAY?

24 A LINE-UP WAS DONE THEN, YES.

25 Q OKAY. DID ANYBODY SAY ANYTHING TO YOU THAT EVENING

JOHN BURGESS - CROSS BY MR. SINGLETON

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1 OR THAT AFTERNOON ABOUT MY CLIENT SUPPOSEDLY CRAWLING OUT
2 THE BACK DOOR? I MEAN THAT SEEMS LIKE IT'S PRETTY
3 SIGNIFICANT TO TELL THE POLICE.

4 A MS. MIDDLETON STATED THAT --- I DON'T KNOW IF SHE
5 TESTIFIED TO IT THE FIRST TIME --- THAT SUBJECT WAS
6 WEARING A MASK, BUT SHE COULD SEE HIS EYES, LISTEN TO HIS
7 VOICE AND HAD A VERY DISTINCT FACE SHAPE THAT SHE KNEW IT
8 WAS CHAVIS. SHE SAID THE THIRD SUSPECT ALSO TOLD --- ALSO
9 STATED OR CALLED HIM BY KOOLAID AND SHE KNEW THIS TO BE
10 CHAVIS ALSO. SHE HAD KNOWN CHAVIS FOR TEN YEARS.
11 CANVASSED THE NEIGHBORHOOD AND FOUND A WITNESS TO THE
12 INCIDENT WHICH WAS MS. CARTER. BUT I DON'T --- I DON'T
13 SEE NOTHING IN HERE ABOUT HIM CRAWLING OUT THE BACK DOOR,
14 NO.

15 Q OKAY. AND WHEN DID YOU ARREST MR. JONES? WHEN WAS
16 MR. JONES ARRESTED FOR THIS INCIDENT?

17 A JANUARY THE 18TH, 2010.

18 Q OKAY. IS IT COMMON FOR --- IS IT COMMON FOR
19 INDIVIDUALS NOT TO COOPERATE WITH THE POLICE SOMETIMES?

20 A YOU TALKING ABOUT VICTIMS OR WITNESSES OR SUBJECTS?

21 Q ANY OF THEM. I MEAN YOU'RE SAYING THAT --- BASICALLY
22 THE SOLICITOR IS TRYING TO SAY THAT HE WAS --- HE COULDN'T
23 BE FOUND FOR SIX MONTHS.

24 MR. BULSA - OBJECTION, YOUR HONOR, IT'S
25 ARGUMENTATIVE.

JOHN BURGESS - CROSS BY MR. SINGLETON

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1 THE COURT - I'LL SUSTAIN THE OBJECTION.

2 Q OKAY. WAS IT UNCOMMON FOR VICTIMS OR IS IT COMMON
3 FOR VICTIMS NOT TO COOPERATE WITH THE POLICE?

4 MR. BULSA - OBJECTION AS TO THE RELEVANCE IN
5 THIS CASE.

6 THE COURT - ALL RIGHT, I'LL SUSTAIN THE
7 OBJECTION.

8 Q WELL, DID YOU GET A PHONE CALL FROM MR. JONES'S
9 MOTHER OR IS THAT THE OTHER OFFICER?

10 A I GOT A PHONE CALL FROM A LADY CLAIMING TO BE HIS
11 MOTHER.

12 Q OKAY. AND SHE SAID THAT HE WAS A VICTIM. CORRECT?

13 MR. BULSA - OBJECTION, IT'S CALLING FOR HEARSAY.

14 THE COURT - I'D HAVE TO SUSTAIN THAT. YOU WANT
15 TO REPHRASE THE QUESTION?

16 Q WHAT DID SHE TELL YOU?

17 MR. BULSA - OBJECTION.

18 THE COURT - I'LL HAVE TO SUSTAIN THE OBJECTION,
19 UNLESS SHE'S HERE TO TESTIFY.

20 MR. BULSA - NOT FROM THE STATE, YOUR HONOR.

21 MR. SINGLETON - THAT'S ALL THE QUESTIONS I HAVE,
22 YOUR HONOR.

23 THE COURT - ANY RE-DIRECT LIMITED TO WHAT THEY
24 WENT INTO?

25 MR. BULSA - NO RE-DIRECT, YOUR HONOR.

1 THE COURT - THANK YOU, SIR. YOU MAY STEP DOWN.

2 MR. BURGESS - THANK YOU.

3 THE COURT - WOULD THE LAWYERS APPROACH A MOMENT?

4 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
5 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
6 REPORTED.)

7 THE COURT - THE STATE ---

8 MR. BULSA - YOUR HONOR, AT THIS TIME THE STATE
9 WOULD REST.

10 THE COURT - ALL RIGHT, THANK YOU, SIR. LADIES
11 AND GENTLEMEN, WE'RE GOING TO TAKE THE EVENING BREAK AT
12 THIS TIME. I NEED TO REITERATE TO YOU THE IMPORTANCE OF
13 MY INSTRUCTIONS AND CHARGE TO YOU WHICH IS THAT YOU'RE NOT
14 TO HAVE ANY DISCUSSIONS WITH ANYONE ABOUT ANYTHING
15 INVOLVING THE CASE, ESPECIALLY NOW WHEN YOU GO HOME YOUR
16 FAMILY AND YOUR FRIENDS ARE GOING --- MIGHT FIND THAT IT'S
17 EXCITING THAT YOU'VE BEEN SELECTED TO BE ON A JURY,
18 THEY'RE GOING TO WANT TO KNOW WHAT IT'S ABOUT, AGAIN, JUST
19 VERY POLITELY TELL THEM THAT YOU CANNOT HAVE ANY
20 DISCUSSIONS WITH THEM AND YOU LET THEM KNOW YOU'LL TALK AS
21 MUCH AS THEY WANT TO KNOW AFTER IT'S OVER, BUT UNTIL THEN
22 IT'S --- YOU CAN'T HAVE ANY DISCUSSIONS WITH THEM. ALSO,
23 AGAIN, DO NOT DO ANY TYPE OF INDEPENDENT RESEARCH OR
24 INVESTIGATION INTO ANYTHING THAT INVOLVES THE CASE. I
25 WANT TO REMIND YOU OF MY CHARGE, THAT'S IN EVENT YOU ARE

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1 PROHIBITED FROM GOOGLING OR FACEBOOKING OR WHATEVER IT IS,
2 EVEN THE PARTICIPANTS THAT HAVE BEEN IN THIS COURTROOM
3 TODAY. YOU CAN'T DO ANYTHING LIKE THAT, BECAUSE AGAIN IT
4 IS --- YOU HAVE TO MAKE THE DECISIONS THAT YOU HAVE TO
5 MAKE IN THIS CASE BASED SOLELY ON THE INFORMATION THAT YOU
6 RECEIVE DURING THE COURSE OF THIS TRIAL, BUT I WANT TO
7 THANK YOU FOR YOUR WORK TODAY. I'M GOING TO ASK IF YOU
8 WOULD TO --- GIVE ME JUST ONE SECOND, I'M GOING TO NEED TO
9 ASK THE LAWYERS SOMETHING. LAWYERS APPROACH.

10 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF
11 THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
12 REPORTED.)

13 THE COURT - ALL RIGHT, IF YOU WOULD, LADIES AND
14 GENTLEMEN, I'M GOING TO ASK THAT YOU RETURN BACK TO THE
15 JURY DELIBERATION ROOM TOMORROW BY TEN O'CLOCK. THAT'LL
16 GIVE US HERE AN OPPORTUNITY TO CONVENE EARLIER TO TRY TO
17 TAKE CARE OF THOSE MATTERS --- WE HAVE TO TAKE CARE OF
18 MATTERS OF LAW, SO MAYBE WE WON'T HOLD YOU IN THE BACK
19 VERY LONG, SO IF YOU WILL BE BACK BY TEN O'CLOCK, BUT
20 THANK YOU VERY MUCH. YOU MAY GO WITH THE BAILIFF.

21 (JURY EXITS THE COURTROOM)

22 THE COURT - ALL RIGHT, WE WILL STEP DOWN AND WE
23 WILL RECONVENE AT NINE THIRTY.

24 (COURT IN RECESS FOR THE DAY AT 5:00 P.M.)


25 (END OF TRANSCRIPT)

CERTIFICATE

I, SHIRLEY G. BROOM, THE UNDERSIGNED COURT REPORTER, HEREBY CERTIFY THAT THE FOREGOING 212 PAGES CONSTITUTE A TRUE RECORD OF PROCEEDINGS TAKEN IN THE CASE OF STATE OF SOUTH CAROLINA VS. KENDEAL JONES, AS TAKEN BY ME AT THE TIME AND PLACE STATED.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT AS STATED, THAT I AM NOT OF COUNSEL FOR, RELATED TO, OR IN THE EMPLOYEE OF ANY OF THE PARTIES TO THIS ACTION AND THAT I HAVE NO INTEREST WHATSOEVER IN THE OUTCOME OF THIS CASE.

THIS THE 31st DAY OF Oct., 2012.


SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS
 3) 2009-GS-42-5465, 5484, 5485
 4)
 4 State of South Carolina) TRANSCRIPT OF RECORD
 5 vs)
 6 Chaves Odell Pullen)
 7 -----)

8 March 10, 2011
 8 Spartanburg, South Carolina

9 B E F O R E:

10 THE HONORABLE MARK HAYES, Judge

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

12 DERRICK BULSA, Esquire
 13 Assistant Solicitor
 13 Attorney for the State

14 ROBERT HALL, Esquire
 14 Attorney for Defendant Kendal Jones

15 MAX SINGLETON, Esquire
 16 Attorney for Defendant Chavis Pullen

17
 18 Caroline Hiskell
 19 Circuit Court Reporter

20
 21 (Please note the following proceedings was transcribed to
 22 the best of her abilities but not taken by the reporter
 23 listed above.)
 24
 25

State versus Chavis Pullen

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I N D E X

CLOSING ARGUMENTS

E X H I B I T S

IDENTIFICATION	ID	IN EVD
Court's Exhibit No. 1	51	51
Court's Exhibit No. 2	52	52

State versus Chavis Pullen

P R O C E E D I N G S

1
2 THE COURT: Everyone ready to proceed?

3 MR. JONES: Yes, Your Honor.

4 MR. SINGLETON: Yes, sir.

5 THE COURT: Ladies and gentleman, the parties
6 have now presented all of the evidence that will be
7 presented as part of the case. It is now time for the
8 attorneys to make what is called closing arguments to you.
9 The arguments of the attorneys are not evidence in this
10 case. Their statements and arguments to you are meant to
11 help you understand the evidence and apply the law to that
12 evidence.

13 You should disregard any remark, statement or
14 argument which is not supported by the evidence presented
15 during the trial or the law that I will explain to you
16 after the arguments.

17 At this time I will receive the closing
18 arguments from the attorneys.

19 MR. BULSA: Thank you, Your Honor.

20 You got change? Yeah, come on in. Those
21 words became a nightmare for these three people over here,
22 two children, and some babies upstairs. June 11, 2009
23 about 10:40 in the evening they were sitting down as a
24 group, family and friends, watching a basketball game.

25 A man they know comes over asking to make

State versus Chavis Pullen

1 change. Does that sound unusual? I submit to you that it
2 is because it was a ruse. It was deception to gain entry
3 into the home to put them at ease while his two buddies
4 came in behind him armed with masks to steal from them.
5 This is a home invasion.. Kendeal Jones is the doorman,
6 Chavis Pullen is the gunman. There's a third person we
7 know but he was not charged because his name wasn't called
8 out; pretty suspicious that his name wasn't called out. A
9 slip of the tongue, a call of a name identifies the name
10 Koolaid. Koolaid is Chavis Shelton Pullen.

11 Koolaid is a known associate of Kendeal
12 Jones. Koolaid left on a daily basis with Kendeal Jones
13 from Alexander Avenue. Terri Carter saw three men outside
14 that apartment just moments before she heard screams from
15 a young mother, screams for her baby. Moments later she
16 sees two of those same three men exit out of the front
17 door. Those three men were operating together. They were
18 accomplices. They were parties to the crime. The hand of
19 one is the hand of all. The doorman gains entry, the
20 gunmen come in and does the deed. The doorman sneaks out
21 the back door, gets to the car and waits for them but
22 doesn't go right inside.

23 The three people don't give up so easy.
24 Dustin gets on the floor. Momma gets defensive,
25 protective, angry for her babies. Daddy is in the room

State versus Chavis Pullen

1 with the first man. He gets a gun pointed at his face,
2 hit upside the head and thrown into a wall. Kendeal Jones
3 scoots out the back door.

4 Does he go get help? No. Does he go call
5 the police? No. The lady who walked across the street
6 heard screaming. Her first reaction is to call the
7 police. Kendeal Jones scoots out the back door. His
8 first reaction was to flea and remain fled for seven
9 months. He never went to the police, never called them.
10 His momma did. Police told momma have him come in. Did
11 he? No.

12 These two men went to that home to commit a
13 crime, to steal, to rob. They are both guilty of burglary
14 and armed robbery, and because Mr. Pullen slapped T.M.
15 upside the head with the gun, he's guilty of the assault.

16 The Judge is going to charge you as he
17 instructed you in his opening words the elements of each
18 offense. Burglary is the unlawful entry into a dwelling
19 without consent and then there's a series of other
20 elements that you can chose between. I submit to you they
21 all fit. They don't all have to. They went in with a
22 gun. They went in with a gun making threats. They hit
23 somebody and caused injury while they were there. This
24 was in the night time.

25 I told you at the beginning, Kendeal Jones

State versus Chavis Pullen

1 gain consent but he did it by trickery. The Judge will
2 read you that language in the law. The crimes were
3 committed. You got two questions I submit to you, was
4 Kendeal Jones involved? It should be clear that he was.
5 Was Chavis Pullen Koolaid? It should be clear that he is.
6 I submit to you that you should be firmly convinced that
7 these two men, acting in concert, committed these crimes.

8 When you go back and review the evidence and
9 you're going to talk about all the witnesses, I want you
10 to think about the perception that each witness had.
11 Everybody is not going to tell the same story. Everybody
12 doesn't see things or hear things the same way. They were
13 at different positions in the house. They react
14 differently when somebody puts a gun to them.

15 You weigh their testimony and decide if you
16 believe what they were telling you. They were telling you
17 about what they saw or heard. Nelson is to the ground
18 with a gun to his back, his attentions are on himself. He
19 had money taken out of his wallet. We talked about
20 Rashawn, the momma and how she reacted. Most mothers will
21 react in the same fashion. She was probably the most
22 alert of all of them because she's got babies to worry
23 about, to try to protect.

24 And then T.M. is in the back room. He
25 doesn't know exactly what's going on in the front room.

State versus Chavis Pullen

1 He knows a man comes and sticks a gun in his face and hits
2 him upside the head and knocks him to the ground. he's
3 going to have a different perspective. And then there's
4 another man in the room, Mr. Jones who is basically
5 scooting out the back door.

6 You have Terri Carter who is walking to the
7 store. She sees three men and she doesn't think
8 anything's up. She says hello. And then she gets just
9 about across the street and she hears screaming. That's
10 just seconds ladies and gentlemen. Those three men she
11 saw was the same men that went in and the same men that
12 came out of the apartment; the same men that came out.
13 She commits to call 911. The lady she knows as Na-na(ph)
14 she heard screaming. She sees the men run towards Beacon
15 Street and turn up Beacon Street. The car rides out of
16 the parking lot, turned up Highland Street, could have
17 easily picked up a man running down Beacon Street.

18 The police went to Alexander Street from the
19 information they had where Mr. Jones would have been. Was
20 he there? No. He never went back, it sounds like.

21 And you heard from Sonja Gist. She lived
22 across the street. She saw these men on a regular basis
23 leaving in cars together. Did she see them again after
24 she learned of this crime? No. Because they committed
25 the crime.

State versus Chavis Pullen

1 Ladies and gentlemen we have the two officers
2 who testified. Officer Mathis, who spoke with these
3 individuals who described what they had stolen from them.
4 He took the descriptions, physical descriptions. I
5 believe the defense is going to argue he wrote down 6 foot
6 4, and Mr. Pullen is only 5 foot 11. He also wrote down
7 180. Officer Mathis testified it's not unusual or
8 uncommon for people to get the height wrong for suspects.
9 The fact is that he documents that she heard the word
10 Koolaid. Koolaid is an associate of Kendeal Jones.

11 Officer Burgess went back and talked to her
12 the next day and told him she could tell by the eyes that
13 it was the same Koolaid that she knew. They acted
14 together, they ran together, they commit crimes together.

15 Investigator Burgess set out to make sure he
16 had the right matches to the faces. He shows the line-
17 ups. Is it silly that he didn't put together a line-up of
18 masks? Use your common sense ladies and gentlemen.

19 He identified Ms. Carter as an initial
20 witness. He looked for Mr. Jones and if he was truly a
21 victim and truly merely a witness, where was he for seven
22 months? He is guilty of this crime.

23 I thought I was going to speak more on this
24 but y'all get the idea on this case and I think you can
25 see what happened. You paid good attention. The nick-

State versus Chavis Pullen

1 names were called out. Don't get confused. Packman is
2 Kendeal Jones, Koolaid is Chavis Pullen. Remember that
3 911 call that came from Rashawn Middleton.

4 You'll have the diagrams, you'll have these
5 911 calls if you want to listen to them again. All of
6 this will be going back with you to the jury room.

7 (Whereupon, recording was played in open
8 court.)

9 Koolaid and Kendeal Jones was with him.
10 They're guilty of this crime and we ask that you find them
11 guilty.

12 Thank you.

13 THE COURT: Yes, sir.

14 MR. HALL: If it pleases the Court,
15 solicitor, ladies and gentlemen of the jury, I want to
16 thank you again for serving. Our system could not work if
17 we couldn't bring jurors up here to hear cases and make
18 decisions. As I told you in my opening statement
19 yesterday, the system doesn't work if you don't pay
20 attention and I asked you to pay attention. That's what I
21 asked you to do and it appears to me that y'all have been
22 attentive and I thank you for that. This is not easy and
23 we couldn't give these young men and even the State a fair
24 trial without you being here to serve so I do thank you.

25 The burden of proof in any criminal case is

State versus Chavis Pullen

1 beyond a reasonable doubt and that burden of proof is on
2 the State to prove the guilt of the defendants, Kendeal
3 Jones and Chavis Pullen, guilty beyond a reasonable doubt.
4 The Judge is going to explain to you what that means.

5 I'd like to discuss what I seen in this case
6 and try to highlight some things for you. We do know that
7 something happened on June 11, 2009 at Kings County Court.
8 Rashawn Middleton was there with her children. She had
9 some teenage visitors there about 14 years old watching
10 the game. Rothchild was there. I don't know if anybody
11 talked to him. We didn't hear about that.

12 The boyfriend T.M. was there. He
13 had been there all day. The brother Nelson was there and
14 then Kendeal Jones arrived from what Ms. Middleton said
15 for the second time that day. He came presumably to get
16 some change or something. We know Terri Carter was
17 walking to a store that was presumably still open and very
18 close. She was the first caller to 911.

19 We had Officer Mathis who was our first
20 witness. He responded to the initial report, got there
21 pretty quick, got information quickly, and there is no
22 doubt this 6 foot 4, 180 pounds is of some issue. You've
23 seen my client, Chavis Pullen. Is he 6 foot 4, 180
24 pounds? No. It's interesting that Officer Mathis said he
25 doesn't recall any evidence of drinking. I remember one

State versus Chavis Pullen

1 of the first things Ms. Middleton said is yeah, we were
2 drinking. We had some bottles. We weren't trying to
3 drive drunk or anything so they had some alcoholic
4 beverages there. The officer missed that.

5 She's known Kendeal Jones for pretty much
6 most of her life. He had been there during that day and
7 he said can I come in, I need change or whatever. She
8 testified as T.M. was going into the kitchen to get
9 his wallet to get change and as Kendeal was about the
10 reach the kitchen, I think she kept saying, two other
11 people came in, she said. One guy had a ski mask and was
12 6 foot 4, 180 pounds. Again, you see Chavis Pullen.

13 She heard that nickname, Koolaid and she
14 associated that with the person she knows as Koolaid, the
15 one person she knows, and that's Chavis Pullen. She said
16 he had a distinctive face. Because of the way she
17 described the ski mask, I assume, it was something
18 distinctive in his eyes.

19 They had these line-ups in this case and they
20 showed her. They showed Mr. T.M. They showed
21 Mr. Middleton. Basically they said could you pick out the
22 guy you said you knew. I asked did you try to do a line-
23 up where the guys were wearing a ski mask that pretty much
24 covered up everything on the face. They never thought
25 about it, didn't know we could do that, didn't have that

State versus Chavis Pullen

1 technology. Seems to me -- I've got a legal pad and a
2 pen. Sometimes I'm old fashioned and it doesn't take a
3 whole lot of technology to cut up a little piece of paper,
4 blacken things out, put some Scotch tape and that's common
5 sense but that was never done.

6 He had a distinctive voice, didn't even think
7 about it, didn't contemplate trying voice recorders to
8 pick him out and say he had a distinctive voice. Even
9 without taking the time or effort, what was distinctive
10 about his face or his eyes? Never occurred to them.

11 Any time somebody testifies you have to judge
12 their credibility. You have to judge them by what they
13 say, how they appear to you and those type things. Now,
14 she made the point about clearing the damn guns or
15 something and she said I must have learned that, if that's
16 what he was doing, I guess, from watching tv. I reminded
17 her that her statement says that he was trying to clear
18 guns and she said: Oh, I must have learned that before
19 this from watching tv.

20 She told you that the back door was stuck and
21 the other testimony from T.M. was that the person that
22 he says was Kendeal Jones, was able just to wiggle out,
23 scoot out, crawl out that back door without any problem.
24 The door was stuck and had to work with it but he got
25 right up and was gone.

State versus Chavis Pullen

1 She told you and told the police I saw the
2 car leave, Kendal was driving it and one of the guys with
3 the masks covering his face was in the car. Oh, I really
4 didn't see that. T.M. told me that the two guys ran
5 around the car and one of those guys went the other way
6 and went down Beacon Street. She changed her story not
7 just between the time of the event and the trial but here
8 on the stand.

9 She told you, if I'm not mistaken, that
10 T.M. threw the bottle but then she said, no, I saw him
11 walking back, not going out and chasing him, but walking
12 back. There are differences in her story.

13 This is important, she made an assumption
14 Koolaid, the only Koolaid I know, is Chavis Pullen. This
15 must be Chavis Pullen. That's the only person I know by
16 that nickname. Their case is build on that assumption and
17 other assumptions but that's the primary assumption.

18 Now, the next witness we heard from is
19 Nelson. Nelson did what a lot of people would do, he got
20 down on the ground and kept his head down. He heard some
21 things but he didn't see a whole lot. I think that's
22 understandable. Somebody comes in with a gun, you get
23 down, that's what a lot of us would do, it makes sense.
24 He felt his wallet being removed. Somebody took the money
25 out and then dropped his wallet. Didn't hear anything

State versus Chavis Pullen

1 else about that wallet. Did they try to do anything?
2 Check it for fingerprints, any kind of DNA. If somebody
3 picked it up, I didn't hear anything about they were
4 wearing gloves. They knew nothing about that wallet; knew
5 nothing about it. He was a little confused about a few
6 things but it's been some time ago, but he did say that he
7 just down and tried to protect himself.

8 Then you got T.M. who said he was
9 there all day. Rashawn said he had been there all day. He
10 was going in the kitchen to get change for Kendael Jones.
11 People come in and he does stuff like that. Everybody
12 reacts differently when they see a gun. He got on the
13 floor and Mr. Jones got out of that stuck door without any
14 problem.

15 He was mistaken when he said he came in for
16 change for a \$5.00 and then he changed that to a \$10.00
17 bill but he said that's what he had on him at that time.
18 At some point he couldn't answer it and the officers
19 couldn't answer it but he added to the statement that the
20 guy ran around the car, the car was in the parking lot and
21 he assumes was waiting for him. I don't know but some
22 people get excited when they're nervous or scared, they
23 put it in drive but -- I don't know what to call it -- but
24 he ran around and he sees the car and he tells it that
25 night but he adds to it and nobody could tell us why.

State versus Chavis Pullen

1 He told the police Chavis Pullen was the man.
2 On the stand he said I don't even know this was him until
3 Rashawn said it was him so I said it was him based on her
4 assumption. We got another statement saying Chavis Pullen
5 was involved based on her assumption.

6 The State talks about, even though they went
7 in separate directions, they could have hooked up the way
8 it looked like the car went and the way they ran. That's
9 an assumption. We don't know that. Maybe that car turned
10 right and then turned back around. We don't know if those
11 guys went back on the other side of Beacon and down and
12 then went back towards the boulevard and went down in
13 there, but they assume they picked them up.

14 They said Ms. Gist said Kendéal Jones and
15 Mr. Pullen were together crossing Alexander Avenue before
16 and after this event that she took so serious when her
17 children's father's sister called and said I think these
18 people were involved and they live across the street from
19 me. She said she saw them and nothing else. Basically,
20 your sister-in-law says I need your help, if you see these
21 people let us know and let the police know. I don't think
22 she took it serious. One thing she never did was place
23 Chavis with these two guys. I never heard that testimony.

24 Terri Clark, the first caller. She wasn't
25 spoken to until about 20 hours, I think it was, after

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1 these events. She saw three men, a couple of them in
2 t-shirts and some jeans in Spartanburg, South Carolina.
3 You see a lot of men in t-shirts. She was walking to a
4 store and if you cut go here and go towards Belcher and
5 you can go into the store. She saw men on the porch, they
6 responded, but she did not see any masks, bandanna, hats.
7 She hears the screams so much so that she calls 911 and
8 she's watching. She said she seen the doors open and
9 close.

10 The guys weren't there when she heard the
11 screams. We don't know if the guys on that porch heard
12 that scream and ran or the three guys went in. We don't
13 know. They assume the three guys on the porch went in.
14 Three guys talking on the porch, the people are inside,
15 you can't hear. The testimony was that they were there
16 according to Ms. Clark, and she watches, and she hears the
17 screaming and she calls 911. She saw the two guys run
18 out, she's still there.

19 Now, you have Investigator Burgess who said
20 he had been an investigator since 2004 and he said he's
21 been in the Greenville County Sheriff's Department several
22 years. He did what I would assume was a quick
23 investigation. He didn't do anything about that book. He
24 did the line-ups that evening and the next day. Can you
25 point that person out of a line-up of Kendal Jones to

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1 make sure we got the right person and Chavis Pullen.
2 These are pretty useless line-ups. Did you ever do a mask
3 line-up? I never thought about it. Didn't know we could
4 do that. Did he have distinctive eyes? What was
5 distinctive? Didn't hear anything about that. Didn't
6 hear anything from Ms. Middleton about that here in court.

7 A distinctive voice, well, I don't know what
8 was distinctive about his voice either. That wasn't
9 presented. Did you think about voice recordings of people
10 and see if she could pick that person out just to be sure?
11 No.

12 They arrested Mr. Pullen a few days later.
13 We had Ms. Clark call 911. Investigator Burgess was
14 canvassing the neighborhood when he came across her and
15 found out she was the 911 caller. Can't you check with
16 dispatch and see if any one else called? Oh, no -- can't
17 you pick up the phone and say I'm investigating and this
18 is my name or whatever you need to identify yourself if
19 anybody else made calls about this? Yeah, we can do that
20 but I didn't do it, I was looking for the guys that robbed
21 them and he didn't have time to do it.

22 He assumed from what Ms. Carter could tell
23 him about these three guys in t-shirts that the three
24 people on the porch went in that house to rob the people.
25 She couldn't describe them any further than three males.

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1 He assumed they met up in the road together.
2 We don't know where that car was. Did it turn right or
3 left or circle back around, we don't know. Did those guys
4 run down Beacon Street and back to the right or did they
5 cut through some more woods or go on down beside Beacon
6 and head down that way. We don't know. We assume.

7 All this started with Mr. Pullen and an
8 assumption. Koolaid. Koolaid was Chavis Pullen. Well,
9 Chavis Pullen is not 6 foot 4. Look at him. Do you think
10 he's 180 pounds? That nickname did nothing to confirm.
11 Maybe she made a mistake. He had distinctive facial
12 features that she could pick out of that mask. Couldn't
13 do a line-up to show or tell us what those specific facial
14 features were.

15 They had a simple line-up, quick
16 investigation and a lot of assumptions. The line-ups, I
17 was confused about those after the testimony of the
18 officers. Two of the line-ups identifying Mr. Jones were
19 dated a time on the evening on June 11th but it was
20 printed out on June 12th. Well, the computer must have
21 been a little off. Well, the next day it's still printing
22 out saying June 12th. At 6:42, he's there and those
23 individuals who are separate and they both identify them
24 but they were separate at 6:42.

25 When you look at this, it creates some

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1 suspicion that Chavis Pullen was involved but the reality
2 is it's all working off of an assumption and nobody did
3 anything else to verify or eliminate that assumption.

4 Mr. Foreman, ladies and gentleman, when you
5 look at all of that there is a reasonable doubt that
6 Mr. Chavis Pullen was involved in this. The State has not
7 carried the burden of proof and ask that you find him not
8 guilty. Thank you.

9 THE COURT: Mr. Singleton.

10 MR. SINGLETON: May it please the Court. I
11 want to reiterate the solicitor said and Mr. Hall said,
12 thank you for being here and being attentive. I want to
13 apologize a little bit if I overlap what Mr. Hall said,
14 but like he said it is very important to listen to all the
15 evidence presented here yesterday and that you pay
16 attention to the pictures, the evidence and also the
17 testimony.

18 What do we know about my client, Mr. Pullen?
19 We know that he was there that night and we know that he
20 left. That's all we know. He came in the front door
21 asking for change and was led into the kitchen following
22 Mr. T.M. While he was there, two masked men came in
23 the front door. Again, I reiterate what Mr. Hall said
24 Ms. Middleton stated up here in her testimony she is
25 saying that because they called out Koolaid that that was

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1 Chavis Pullen. And she said she knew that Chavis Pullen
2 was Koolaid and Mr. Jones was there, she assumed that
3 somehow my client had some kind of involvement although
4 she had no proof of that involvement.

5 So this whole case is based on assumption.
6 Now, I want to go over the witnesses just like Mr. Hall
7 did but maybe in a little bit different order starting
8 with Ms. Middleton's testimony, she said she felt relaxed
9 when she saw Kendal come in the front door, didn't make
10 anything of it. She states then he went to the kitchen
11 and then basically all hell broke loose.

12 She states she calls 911 and says that she
13 sees my client leaving -- driving his car in front of the
14 apartment complex and she states one of the masked robbers
15 was in the car with him. But then she states here on the
16 stand that she was mistaken because T.M. told her
17 later on that evening that, no, there was nobody in the
18 car with him, that the other two people ran down towards
19 Beacon Street.

20 But what she did testify to on the stand is
21 that what T.M. said he admitted in his statement he
22 told her that they were not in the car with Kendal, but
23 he didn't tell her about my client supposedly scooting out
24 the back door, that my client was sitting in his car
25 supposedly waiting on the individuals.

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1 He didn't tell them that he threw a beer
2 bottle at them, the two people went around the car, around
3 the bend, down a path and down to Beacon Street. He
4 didn't tell her any of that stuff or at least she didn't
5 testify to it here and it wasn't in her statement to the
6 police and it wasn't in her testimony before you
7 yesterday. The only thing she told you that he told her
8 was that they were not in the car with my client. They
9 were not in the car with my client because he had no
10 involvement with this.

11 She states that he turned down right to go
12 down Highland Avenue and the police said, well, it's easy
13 for him to go down Highland Avenue to connect with these
14 two people on Beacon Street. It's also easy for him to
15 take a left on Bethlehem Drive, get back on South Forest
16 Street and get the heck out of there. That's just an
17 assumption the police made that that's what he thought he
18 did. There's no proof of that. Assumption is not equal
19 to beyond reasonable doubt.

20 She states that they kept asking Rashawn and
21 T.M. if my client came back around after that. Why
22 would he come back around? He's just been accused of
23 armed robbery by assumption, why would he come back
24 around. He was accused of burglary, why would he come
25 back around. They knew where to find him. He was at

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1 Alexander Avenue. He was there the next day according to
2 Ms. Gist but she didn't call the police because she didn't
3 want to help the police out. And then they said why
4 didn't my client call the police? Maybe he didn't want to
5 help the police out just like Ms. Gist said on the stand,
6 she didn't want to help the police out because they didn't
7 help her out.

8 Again, they made an assumption that they
9 couldn't find him for seven months because he was running.
10 Ms. Gist testified yesterday that he was at Alexander
11 Avenue the next day. Did they go there the next day? No.
12 They went that evening and he wasn't there that evening so
13 they must assume that he's on the run. Did they go any
14 time before his arrest seven months later? They didn't it
15 sounds like from what Investigator Burgess says. Did they
16 go to Woodruff to look for him? It doesn't sound like it
17 from what the investigator said. That's when they closed
18 their investigation after 24 hours.

19 Now, regarding Mr. T.M. he gives a
20 statement to the police and he was very specific about
21 what the robbers were wearing. He described it to a "t"
22 what he thinks they were wearing. As you heard, he left a
23 lot out of that statement that he had 21 months to correct
24 or supplement. He didn't go back to the police and say,
25 oh, I remember now that Mr. Jones supposedly scooted out

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1 the door and Ms. Middleton had just testified that it was
2 stuck and it was hard to get open, but somehow it was easy
3 for him to get open when he was scooting out on his knees
4 somewhere. I submit that he didn't scoot out because it
5 didn't happen that way.

6 He say he got down in dramatic fashion but
7 that was left out of his statement. If I was trying to
8 find out who did this to me, I would make sure the police
9 knew every significant evidence whether I remember the
10 next day or a week later, but he had 21 months to make
11 another report to the police and he didn't.

12 He states that he was mistaken -- he states
13 that \$10.00 was taken and that was the \$10.00 he got from
14 my client to make change for but yet he just stated
15 earlier that my client gave him \$5.00 bills and that he
16 was mistaken. So basically everything he stated to the
17 police that night seems to be incorrect or a lot of it is
18 left out when he had 21 months to think about and 21
19 months to tell the police about.

20 Now, regarding Nelson Middleton, basically
21 his testimony was he got down on the ground when they came
22 in and didn't see anything. He had no clue who was
23 wearing the masks. That was his testimony that he had no
24 clue who the individuals were wearing the masks. And he
25 also stated, if you remember, Ms. Middleton saying

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1 T.M. is the one who let my client in the front door.

2 T.M. and Ms. Middleton stated he came in on his own;
3 again, different testimonies.

4 You have to look and see if his testimony is
5 equal and make sense. Again, this whole case is based on
6 an assumption. Like Mr. Hall said it's based on the
7 assumption that Ms. Middleton stated up here and testified
8 that this is Koolaid and it's Chavis Pullen. We don't
9 know if it's Koolaid. It could be the wrong nickname, but
10 did the police go back and see if Koolaid -- if there was
11 any other Koolaid in their database? They didn't see if
12 there was any other in their database. Did they go see if
13 there was some Koolaid nicknames in the surrounding
14 counties? It doesn't look like it.

15 It doesn't look like it to me that their
16 investigation ended in about 24 hours because Investigator
17 Burgess got the call, see if he could find anything, went
18 to the scene talked to the witness and went to Alexander
19 Avenue and couldn't find either my client or Mr. Jones.
20 The next day he comes back to the apartment complex and
21 talks to Ms. Carter.

22 In the statement he thinks that Ms. Carter is
23 the one that connected everything to him together. I
24 still don't understand how she connected everything to him
25 together when she walked across the yard, beside the

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1 apartment, saw them to her right, I guess, looked at them,
2 heard them talking before she even got there. She looked
3 at them, was a few feet away, they said hey to her and she
4 said hey to them and she kept on walking. She didn't
5 notice anything out of the ordinary. She never ID' d my
6 client as the one who was out on the porch.

7 She never indicated to the police that she
8 saw a gun or guns or she saw any masks. These people wore
9 masks. They were sitting there having a good old time and
10 just having a conversation. The porch is probably a
11 little bit longer than this table.

12 She also stated after -- Ms. Carter -- when
13 she got across the street after all of this happened that
14 she saw two men run out the front door, run down
15 (inaudible) and run down to Beacon Street. She didn't say
16 there was only two people or two or three people out on
17 the porch. She never stated that because she didn't know
18 who they were. She also said she never heard anybody throw
19 any beer bottles. She never heard any of that. She say
20 she saw a car leave the parking lot. She doesn't know
21 these people. She wasn't involved in this but she was the
22 one who clearly saw what going on not inside the apartment
23 but outside of the apartment.

24 It was also said that he had somehow gained
25 access to the apartment but he was let into the apartment

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1 by Ms. Middleton and Mr. T.M. He's not alleged to
2 have a gun and he's not alleged to have stolen anything so
3 the only way you can convict beyond a reasonable doubt
4 that Mr. Pullen is the one who committed this robbery,
5 you'd have to believe that my client knew about the
6 robbery. There's no evidence that my client knew about
7 the robbery. There's no evidence that my client knew
8 about any kind of robbery. All they've got is the
9 assumption that since my client hangs out with Chavis
10 Pullen and that somehow he was involved, but just because
11 you hang out with somebody doesn't mean you're involved
12 with a robbery or do whatever they do. Just because
13 someone goes to the store and buys a pair of pants, does
14 that mean my client goes and buys a pair of pants also.
15 They are not joined at the hip.

16 The solicitor asked Ms. Gist how she knew my
17 client and she said they hung out across the street at
18 Alexander Avenue and the guys would come over there and
19 get in the car together. Is there a crime against a group
20 of guys going out together and having some fun or doing
21 whatever they're doing?

22 Again, these are assumptions. Just because
23 they hang out together doesn't mean they're involved in
24 everything they do together.

25 Again, this whole case comes down to

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1 assumptions. The solicitor wants to harp on my client was
2 on the run for seven months, he wasn't on the run. His
3 family lives here. He's got children that live here.
4 They always knew where Alexander Avenue was or his momma's
5 house. He wasn't on the run. They didn't find him in
6 Columbia, South Carolina or Atlanta, George or
7 Massachusetts. They found him here.

8 Heck, he was there at Alexander Avenue the
9 next day less than 24 hours according to Mr. Gist, but she
10 didn't call the police because she didn't want to help him
11 out. Like I said my client found out he's been accused of
12 armed robbery or burglary, what's in it for him. So I
13 don't think it's out of the realm or unusual for him not
14 to have any contact with the police.

15 They said he was on the run but he was not on
16 the run if he went back to Alexander Avenue less than 24
17 hours later according to Ms. Gist, but they just didn't go
18 back there 24 hours later. They decided to go back to the
19 apartment complex.

20 I want you to just pay attention to the
21 evidence. I know you've been paying attention and just
22 take everything into account. I also want you to take
23 everything that myself and Mr. Hall said that this case is
24 based on assumption and you can not convict somebody on
25 assumption. Assumption is not equal to beyond a

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1 reasonable doubt.

2 This is a very serious case and these are
3 very serious charges. This is not some petty crime that
4 they are accused of so I want you to look at the facts and
5 look at the testimony and see that it's based on
6 assumption and that's not equal to beyond a reasonable
7 doubt, and that you find my client not guilty of all of
8 the charges. Thank you.

9 THE COURT: Thank you, sir.

10 Ladies and gentlemen, I am now going to
11 instruct you on the law applicable to the case. If you
12 would, I'd ask you to stand for a few moments and stretch
13 your legs before I give you these instructions.

14 Thank you, ladies and gentlemen.

15 I remind you that during this trial, you and
16 I had certain duties to perform. As the trial judge, it
17 is my responsibility to preside over the trial of this
18 case and I also had the duty to rule upon admissibility of
19 evidence offered during this trial.

20 You are only to consider competent evidence
21 that has been presented before you. If there has been any
22 testimony ordered stricken from the record, you must
23 disregard that testimony. You are to consider only the
24 testimony which has been presented from the witness stand
25 and any exhibits which have been made part of the record

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1 of this case.

2 Now, I have the additional duty to charge you
3 the law applicable to this case. As the presiding judge,
4 I am the sole judge of the law in this case and it is your
5 duty as jurors to accept and apply the law as I now state
6 it to you. If you already have any idea as to what the
7 law is or what the law ought to be and does not now agree
8 with what I tell you the law is, you must abandon the idea
9 because you are now going to accept the law and apply the
10 law exactly as I state it to you.

11 In every case in this court that is tried
12 before a jury, the jury becomes the sole and exclusive
13 judge of the facts in a case. A trial judge can not
14 inanimate, state, comment on, or make any statements to a
15 trial jury about the facts in a case.

16 Since you the jury are the sole judges of the
17 facts in a case, you are not to infer from what I have
18 said during the progress of this trial in ruling upon the
19 admissibility of evidence or otherwise or anything that I
20 say now during the course of the instructions to you that
21 I have an opinion about the facts in this case. The law
22 does not allow me to have an opinion about the facts in
23 this case. This is a matter solely for you the jury to
24 determine.

25 As jurors it is your duty to determine the

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1 effect, value, weight and truth of the evidence presented
2 during the course of this trial.

3 I remind you that the fact that the
4 defendants in this particular case have been rested
5 charged and indicted is not evidence in this case and
6 cannot be considered by you as evidence in this case nor
7 should it create any assumption or inference of guilt.
8 The indictment, these documents, are simply the formal
9 written instrument which contains the charges that are
10 made against the defendant. They are the formal documents
11 by which this case is brought to court.

12 Now, the indictments in this case allege
13 several different offenses against each of the defendants.
14 The charges against Chavis Pullen are burglary, assault
15 and battery of a high and aggravated nature and three
16 counts of armed robbery that involve T.M.
17 Rashawn Middleton and Nelson Middleton.

18 As to Kendal Jones, the charges are burglary
19 in the first degree and three counts of armed robbery as
20 to T.M. Rashawn Middleton and Nelson
21 Middleton.

22 Now, each indictment charges a separate and
23 distinct offense against each defendant. You must decide
24 each charge separately as to each defendant and based on
25 the evidence and the law applicable to it uninfluenced by

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1 your decision as to any of the other charges. The
2 defendants may be convicted or acquitted on any or all of
3 the offenses charged. You will be asked to write a
4 separate verdict guilty or not guilty on each of the
5 defendants on each of the charges.

6 Each of the defendants have pled not guilty
7 to the charges and that puts the burden on the State to
8 prove the defendant not guilty. Ladies and gentlemen, a
9 person charges with committing a criminal offense in South
10 Carolina is never required to prove himself innocent. I
11 charge you that it is an important rule of law that the
12 defendant in a criminal trial no matter what the
13 seriousness of the crime or the charge may be, will always
14 be presumed to be innocent of the crime for which the
15 indictment was issued unless guilt has been proven by
16 evidence satisfying you of that guilt beyond a reasonable
17 doubt.

18 This presumption of innocence does not end
19 when you begin your deliberations but it accompanies the
20 defendants throughout the trial until you reach a verdict
21 of guilt based on evidence satisfying you of that guilty
22 beyond a reasonable doubt.

23 The presumption of innocence is like the robe
24 of righteousness placed about the shoulders of the
25 defendant until it has been stripped from the defendant by

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1 evidence satisfying of the defendant's guilt beyond a
2 reasonable doubt. Presumption of innocence is not mere
3 legal theory. It is not just a legal phrase. It is a
4 substantial right to which every defendant is entitled
5 unless you the jury are satisfied of the evidence of the
6 defendant's guilty beyond a reasonable doubt.

7 What is reasonable doubt in the law? A
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act. The State has the
10 burden of proving the defendants guilty beyond a
11 reasonable doubt. Now, some of you may have served as
12 jurors in civil cases where you were told it was only
13 necessary to prove that a fact is more likely true than
14 likely true such as by the greater weight of the
15 preponderance of the evidence. In criminal cases, the
16 State's proof must be more powerful than it. It must be
17 beyond a reasonable doubt.

18 Proof beyond a reasonable doubt is proof that
19 leaves you firmly convinced of the defendant's guilt.
20 There are very few things in this world that we know with
21 absolute certainty. In criminal cases, the law does not
22 require proof that overcomes every possible doubt. If,
23 based on your consideration of the evidence, you are
24 firmly convinced the defendant is guilty of the crime
25 charged, you must find the defendant guilty. If, on the

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1 other hand, you think there is a real possibility that one
2 of the defendants is not guilty, you must give the
3 defendant the benefit of the doubt and find him not
4 guilty.

5 There are two type of evidence that are
6 generally presented during a trial, direct evidence and
7 circumstantial evidence. Direct evidence is the testimony
8 of a person who claims to have actual knowledge of the
9 facts such as an eyewitness. It is evidence which
10 immediately establishes the main fact to be proved.
11 Circumstantial evidence is proof of a chain of facts and
12 circumstances indicating the existence of a fact. It is
13 evidence which immediately establishes collateral facts
14 for which the main facts may be inferred.

15 Now, circumstantial evidence is based on
16 inference and not on personal knowledge or observation.
17 The law makes absolutely no distinction between the weight
18 or value to be given either direct or circumstances
19 evidence nor is a greater degree of certainty required of
20 circumstantial evidence than of direct evidence. You
21 should weigh all of the evidence in the case.

22 After weighing all of the evidence, if you
23 are not convinced of the guilt of a defendant beyond a
24 reasonable doubt, you must find that defendant not guilty.

25 Necessarily you must determine the

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1 credibility of witnesses who have testified during the
2 course of this trial. Now credibility simply means
3 believability. It becomes your duty as jurors to analyze
4 and to evaluate the evidence and determine which evidence
5 convinces you of the truth. In determining the
6 believability of witnesses who have testified in this
7 case, you may believe one witness over several witnesses
8 or several witnesses over one witness. You may believe a
9 part of a testimony of a witness and reject the remaining
10 part of the testimony of that same witness.

11 You may believe the testimony of a witness in
12 its entirety or reject the testimony of a witness in its
13 entirety. You may consider whether any witness has
14 exhibited to you any interest, bias, prejudice, or other
15 motive in the case. You may also consider the appearance
16 and the manner of the witness while on the witness stand.

17 If a crime is committed by two or more people
18 who are acting together in committing the crime, the act
19 of one is the act of all. A person who joins with another
20 to commit an unlawful act is criminally responsible for
21 everything done by the other person which happens as a
22 probable or natural consequence of the act done in
23 carrying out the common plan and purpose.

24 For example, two people can be guilty of
25 killing another person when only one of the two had a gun.

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1 There was only one bullet and only one of the two fired
2 the shot that caused the death. If two or more people are
3 together, acting together, assisting each other in
4 committing the offense, the acts of one is the act of all.
5 or as it is sometimes said, the hand of one is the hand of
6 all.

7 Prior knowledge that a crime is going to be
8 committed without more is not sufficient to make that
9 person guilty of that crime. Mere knowledge that another
10 person is going to commit a crime even if the defendant is
11 present when a crime is committed, is not sufficient to
12 convict the defendant as a principal. Guilt as a
13 principal is shown by actual or constructive presence at
14 the scene as a result of a prior arrangement. Therefore,
15 a finding of a prior arranged plan or common scheme is
16 necessary for a finding of guilt as a principal.

17 The State must prove beyond a reasonable
18 doubt by competent evidence the theory of the hand of one
19 is the hand of all.

20 A principal in a crime is one who either
21 actually commits the crime or who is present aiding,
22 abetting or assisting in committing the crime. When a
23 person does an act in the presence of or with the
24 assistance of another, the act is done by both for two or
25 more acting with a common plan or intent are present at

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1 the commission of a crime, it does not matter who actually
2 commits the crime, all of guilty. The hand of one is the
3 hand of all.

4 Presence at the commission of a crime means
5 to be sufficiently near to aid and abet and assist, in the
6 commission of a crime; however, mere presence at the scene
7 of a crime is not sufficient to convict one as a principal
8 on the theory of aiding and abetting. Intent is also a
9 necessary element for there must have been a common design
10 or intent to commit the crime and the crime must have been
11 committed pursuant thereto with the person aiding and
12 abetting by some overt act.

13 Intent means intending the result which
14 actually occurs, not accidentally or involuntary. Intent
15 may be shown by acts and conduct of the defendant and
16 other circumstances from which you may naturally and
17 reasonable infer intent. The State must prove these
18 elements beyond a reasonable doubt.

19 Again, mere presence at the scene is not
20 sufficient to prove someone guilty of a crime. A
21 defendant's presence where a crime is being committed or
22 mere association with a person who commits the crime, does
23 not make the defendant an accomplice or an aider or an
24 abetter of the person committing the crime. The burden is
25 on the State to prove every element of the crime charged.

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1 If you find after reviewing all of the evidence that the
2 State has proven that the defendant was only present at
3 the scene of the crime and that they had not proved beyond
4 a reasonable doubt any other participation in the crime,
5 you must find that defendant not guilty. The law is that
6 proof the defendant was at the scene of the crime is not
7 sufficient to find someone guilty.

8 Ladies and gentlemen, I instruct you and
9 emphasize that the fact that the defendants did not
10 testify is not a factor to be considered by you in any way
11 in your deliberations and in your consideration of the
12 guilt or innocence of the defendants. It must not be
13 considered by you in any manner whatsoever.

14 A defendant has a Constitutional right to
15 remain silent and the assertion of this Constitutional
16 right must not be considered by you in your deliberation.
17 I repeat. Under your oath you are to draw no conclusion
18 whatsoever from the fact that the defendant in this case
19 did not testify. The fact that the defendant did not
20 testify should not even be discussed in the jury room.
21 The burden of proof as I have stated to you is on the
22 State. A defendant is not required to prove himself
23 innocent. The burden of proof remains on the State to
24 prove guilt beyond a reasonable doubt.

25 An issue in this case is identification of

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1 one of the defendants as the person who committed the
2 crime charged. The State has the burden of proving
3 identity beyond a reasonable doubt. You must be satisfied
4 beyond a reasonable doubt of the accuracy of the
5 identification of a defendant before you may convict a
6 defendant.

7 Identification testimony is an expression or
8 belief or impression by a witness. You must determine the
9 accuracy of the identification of the defendant. You must
10 consider the believability of each identification witness
11 in the same way as any other witness. You may consider
12 whether the witness had an adequate opportunity to observe
13 the offender at the time of the offense. This will be
14 affected by things like how long or short a time was
15 available, how far or close the witness was, the lighting
16 conditions, or whether the witness had a chance to see or
17 know the person in the past.

18 Once again, I instruct you the burden of
19 proof is on the State as to each and every element of the
20 crime charged and this specifically includes the burden of
21 proving beyond a reasonable doubt the identity of the
22 defendant as the person who committed the crime. If after
23 examining the testimony you have reasonable doubt as to
24 the accuracy of the identification, you must find the
25 defendant not guilty.

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1 The defendants are charged with armed
2 robbery. In order to prove this offense, the State must
3 prove beyond a reasonable doubt that the defendant took
4 personal property from the person or presence of another
5 person. Property is in the presence of a person if it is
6 within the reach, inspection, observation or control so
7 that a person could if not overcome with violence or
8 prevented by fear keep possession of the property.

9 The State must also prove beyond a reasonable
10 doubt that the defendant carried the property away
11 intending to permanently deprive the owner of the property
12 and to keep the property for the defendant's own use. The
13 slightest removal of the property or the complete
14 possession of the property even for an instant by a
15 defendant is sufficient to show a taking and carrying away
16 of that property.

17 The taking and carrying away of the property
18 must have been done with violence or by putting the owner
19 of the property in fear of violence.

20 Finally, the State must prove beyond a
21 reasonable doubt that the defendant was armed with a
22 deadly weapon during the robbery. A deadly weapon is any
23 article, instrument, or substance which is likely to cause
24 death or great bodily harm. Whether an instrument had
25 been used as a deadly weapon depends on the facts and

State versus Chavis Pullen

1 circumstances of each case.

2 The following are examples of instruments
3 which may be deadly weapons; a pistol, a shotgun, a
4 rifle, a dart, dagger, a knife, a slingshot, metal
5 knuckles, or razor, gasoline, fire bomb, or malitoff
6 cocktail. A gun may be a deadly weapon even if it is not
7 operating.

8 Assault and battery of a high and aggravated
9 nature is an unlawful act of violence or injury to the
10 person of another accompanied by circumstances of
11 aggravation.

12 An assault occurs when a person unlawfully
13 attempts or offers to commit a violent injury upon another
14 person and has the present ability to complete the
15 attempted injury. An assault is the intentional creation
16 of a reasonable fear of immediate bodily harm. It is not
17 necessary that the attempted injury or harm actually takes
18 place. For example, if I walk up to you and we are within
19 arms reach, I draw back to hit you, that is an assault.

20 A battery is the unlawful touching of another
21 person by a person who has committed the assault. An
22 unlawful touching can be caused by a part of the accused
23 body or by any object that the accused puts in motion. A
24 battery is a completion of the assault by using or
25 applying force to another person however slight in a rude

State versus Chavis Pullen

1 angry or resentful manner without legal justification for
2 doing so. Using my earlier example, if I carry through
3 the assault by hitting you then that is a battery.

4 The State must also prove a circumstance of
5 aggravation. Circumstances of aggravation includes the
6 use of deadly weapon, the intent to commit a felony, the
7 infliction of serious bodily injury, a great disparity
8 between the ages or physical conditions of the parties, a
9 difference of the genders of the parties, the taking of
10 indecent liberties or familiarity with a female through
11 the use of force, the purposeful infliction of shame and
12 disgrace and resistance to lawful authority. These are
13 only examples of circumstances of aggravation.

14 The defendants are also charged with first
15 degree burglary. The State must prove beyond a reasonable
16 doubt that the defendant entered a dwelling without
17 consent of the person in lawful possession of the
18 dwelling. A dwelling is any building or portion of a
19 building in which a person ordinarily sleeps. A building
20 constructed as a dwelling that has never been occupied can
21 not be considered a dwelling for purposes of burglary, but
22 a building is a dwelling even if the residents are
23 temporarily absent from the building.

24 In order to prove that the defendant entered
25 the dwelling, the State does not have to show that the

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1 defendant's entire body entered the building. The
2 smallest entry is sufficient. It may be any part of the
3 body such as a hand or a foot or even an instrument such
4 as a hook or other instrument. In addition, the State
5 does not have to prove that force was used to gain entry.

6 If a person enters a building by using
7 deception, artifice, trickery or misrepresentation to get
8 consent to enter, this is an entry without consent.

9 Next, the State must prove beyond a
10 reasonable doubt that the defendant intended to commit a
11 crime either a felony or misdemeanor at the time of the
12 entry. The mere entry into a dwelling without consent is
13 not a burglary. If the intent to commit a crime is formed
14 after the entry, it is not a burglary. On the other hand,
15 if the defendant intended to commit a crime at the time of
16 the entry, it is a burglary even if the intent was
17 abandoned after the entry. It does not matter that the
18 intended crime was not completed.

19 Intent may be shown by acts and conduct of
20 the defendant and other circumstances for which you may
21 naturally and reasonably infer intent. Finally the State
22 must prove beyond a reasonable doubt that while entering
23 while in the dwelling or when fleeing, defendant or an
24 accomplice was armed with a deadly weapon or explosive. A
25 dead weapon is any article, instrument, or substance which

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1 is likely to cause death or great bodily harm.

2 Whether an instrument has been used as a
3 deadly weapon depends on the facts and circumstances of
4 each case. Again, the following examples of instruments
5 which may be considered as deadly weapons, a pistol, a
6 shotgun, a riffle, a dart, dagger, knife, slingshot, metal
7 knuckles, gasoline, fire bomb, malitoff cocktail and
8 lighter fluid. A gun maybe a deadly weapon even if it is
9 not operating; when entering or while in the dwelling or
10 while fleeing, the defendant or an accomplice caused
11 physical harm to anyone not participating in the crime;
12 when entering or while in the dwelling or fleeing, the
13 defendant or an accomplice used or threatened to use a
14 dangerous object; when entering, while in the dwelling or
15 while fleeing, the defendant or an accomplice displayed
16 what was or appeared to be a knife, a pistol, revolver,
17 shotgun or machine gun or other fire arms.

18 The defendant entered the dwelling in the
19 night time. Night time is the period between sunset and
20 sunrise during which there is no sufficient daylight to
21 recognize a person's face accept by artificial light or
22 moonlight.

23 Mr. Foreman, ladies and gentlemen, I have
24 prepared verdict forms for your use back in the jury room.
25 I have prepared a verdict form involving each of the

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1 defendants and I have listed each charge that involves the
2 defendant. Now, I have had to list these in a certain
3 order but because I had to list them in a certain order,
4 please do not give them any more or less important than
5 the other charges. It is simply that I had to do one
6 after another so I just set them up in this fashion.

7 Mr. Foreman, ladies and gentlemen, the
8 decisions that you make in the determination of not guilty
9 or guilty, your decisions can not be based upon any
10 passion or sympathy towards anyone. The decisions that
11 you make can not be arbitrary or capricious. The
12 decisions that you make has to be made solely on the facts
13 that have been presented to you during the course of this
14 trial.

15 Mr. Foreman, the decision that is made by
16 the jury on each of these charges has to be unanimous.
17 That means all 12 members of the jury have to agree. When
18 you are conducting your deliberations, you should conduct
19 your deliberations only when all 12 members are in the
20 jury room. For some reason one of them has to leave to
21 restroom or make a telephone call, then deliberations has
22 to cease and they do not begin again until all 12 of the
23 jurors have returned.

24 Once you have reached your decision,
25 Mr. Foreman, you will complete the verdict form and you

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1 will sign on the line where it says signature and date it.
2 One more important thing, be sure to knock on the door and
3 let the bailiff know when you are finished your
4 deliberations. I had a jury one time just sat back there
5 and sat back there on what we thought was a relatively
6 simple case and hours past and finally I sent the bailiff
7 back to check on them. They had made their decision a
8 long time ago but I never told them to knock and let the
9 bailiff know when the decision was made. Do not forget
10 the bailiff know when the decision is made.

11 Mr. Foreman, ladies and gentlemen, I want to
12 ask that you retire to the jury deliberation room now but
13 do not begin your deliberation until the bailiff brings
14 you the evidence and instructs you to begin.

15 (Whereupon, jury exits the court room.)

16 Any exceptions from the State or the defense
17 as to the charge.

18 MR. BULSA: None from the State.

19 MR. HALL: None from the defendant.

20 MR. SINGLETON: None from the defendant.

21 THE COURT: Please look at all the exhibits
22 and make sure we have them..

23 MR. BULSA: They are all here, Your Honor.

24 THE COURT: Mr. Bailiff, you will take the
25 verdict form and the evidence and tell them to begin.

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1 Now, the alternate, y'all want me to have her
2 sequestered elsewhere and then have her here until it
3 becomes a need to have her dismissed or will we all agree
4 in advance that if an emergency occurs with one of the
5 jurors to go with less than 12?

6 MR. BULSA: We can go with less than 12.

7 MR. HALL: Mr. Jones agrees.

8 MR. SINGLETON: Mr. Singleton agrees as well.

9 THE COURT: Okay. Mr. Bailiff, will you tell
10 the jury to begin their deliberations and then bring the
11 alternate out and I'll dismiss the alternate.

12 Ms. Jarvis, I want to thank you for serving
13 on this jury. Fortunately, we did not have any jurors get
14 sick or have an emergency so your service in this trial
15 has now concluded. But again please accept me
16 appreciation for your work. We have your lunch and I
17 believe it's in the back. Now, you're more than welcomed
18 to stay and hear the jury verdict. It might be 10 minutes
19 or 10 hours or 10 days, I don't know, but you're more than
20 welcomed to stay, but you are also free to leave if you
21 would like.

22 Actually, I think your lunch is right outside
23 the door if you would like to go and get it and thank you
24 very much.

25 (Alternate dismissed.)

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1 (Jury deliberations begin at 11:54 a.m.)

2 THE BAILIFF: Please be seated.

3 THE COURT: We have a question from the jury.

4 The question is, "On the charge of armed robbery is the
5 law hand of one, of all, regardless of who has the
6 weapon?" That's the question.

7 I am of the opinion I should bring the
8 fore person out and tell him I received his question and I
9 could not answer such a direct question but I could
10 recharge him on the law that applies the hand of one, the
11 hand of all if he would like for me to charge the jury on
12 that. Comments? Sometimes it results in, oh, no, we
13 don't want you to charge that.

14 MR. HALL: That's a lengthy charge.

15 THE COURT: Okay. Bring the fore person out.

16 (Whereupon, the foreman re-enters the
17 courtroom.)

18 Mr. Williams, thank you for submitting the
19 question to us. In response to your question, the way
20 that I can answer your question is that I could bring the
21 entire jury panel back out here and I could recharge the
22 jury on that particular section of the law if you feel
23 like that's what the jury would want me to do. In other
24 words, I would bring the jury back out and I would
25 recharge them on the law that related to that theory of

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1 the hand of one is the hand of all. Do you want to ask
2 them if they would like to do?

3 MR. FOREMAN: Yes, sir.

4 THE COURT: Okay. You may go ask them.

5 (Whereupon, the Foreman exits the courtroom.)

6 (Foreman re-enters.)

7 MR. FOREMAN: They would like to hear the
8 charge again that applies to the armed robbery
9 (inaudible).

10 THE COURT: I was just going to charge them
11 on that one section.

12 MR. FOREMAN: If you could read it them
13 again.

14 THE COURT: Let me find it.

15 I believe that the charge that I give them
16 would encompass what the State is trying to accomplice.
17 I'd rather not deviate from my charges that I gave
18 previous in fear of opening up things that we have not had
19 a chance to contemplate and talk about, but I believe what
20 the State wishes to accomplice is contained in the
21 charges.

22 You can go ahead and bring them out.

23 (Jury re-enters the courtroom.)

24 Ladies and gentlemen, I will now recharge you
25 on that part of my charge that dealt with the hand of one.

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1 If a crime is committed by two or more people
2 who are acting together in committing the crime, the act
3 of one is the act of all. A person who joins with another
4 to commit an unlawful act is criminally responsible for
5 everything done by the other person which happens as a
6 probable or natural consequence of the act done in
7 carrying out the common plan and purpose.

8 For example, two people can be guilty of
9 killing another person when only one of the two had a gun.
10 There was only one bullet and only one of the two fired
11 the shot that caused the death. If two or more people are
12 together, acting together, assisting each other in
13 committing the offense, the acts of one is the act of all
14 or as it is sometimes said, the hand of one is the hand of
15 all.

16 Prior knowledge that a crime is going to be
17 committed without more is not sufficient to make that
18 person guilty of that crime. Mere knowledge that another
19 person is going to commit a crime even if the defendant is
20 present when a crime is committed, is not sufficient to
21 convict the defendant as a principal. Guilt as a
22 principal is shown by actual or constructive presence at
23 the scene as a result of a prior arrangement. Therefore,
24 a finding of a prior arranged plan or common scheme is
25 necessary for a finding of guilt as a principal.

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1 The State must prove beyond a reasonable
2 doubt by competent evidence the theory of the hand of one
3 is the hand of all.

4 A principal in a crime is one who either
5 actually commits the crime or who is present aiding,
6 abetting or assisting in committing the crime. When a
7 person does an act in the presence of or with the
8 assistance of another, the act is done by both for two or
9 more acting with a common plan or intent are present at
10 the commission of a crime, it does not matter who actually
11 commits the crime, all of guilty. The hand of one is the
12 hand of all.

13 Presence at the commission of a crime means
14 to be sufficiently near to aid and abet and assist, in the
15 commission of a crime; however, mere presence at the scene
16 of a crime is not sufficient to convict one as a principal
17 on the theory of aiding and abetting. Intent is also a
18 necessary element for there must have been a common design
19 or intent to commit the crime and the crime must have been
20 committed pursuant thereto with the person aiding and
21 abetting by some overt act.

22 Intent means intending the result which
23 actually occurs, not accidentally or involuntary. Intent
24 may be shown by acts and conduct of the defendant and
25 other circumstances from which you may naturally and

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1 reasonable infer intent. The State must prove these
2 elements beyond a reasonable doubt.

3 Okay. Ladies and gentlemen, you may retire
4 back to the jury room and continue your deliberations.
5 Thank you.

6 (Jury exits courtroom).

7 We've made the jury's note a Court exhibit
8 for the record.

9 (Jury note marked as Court's Exhibit No. 1
10 for identification and admitted into evidence.)

11 THE BAILLIFF: All rise, the court will come
12 to order, please. The Honorable Mark Hayes presiding.
13 Please be seated.

14 THE COURT: We'll go on the record. The jury
15 previously had a question a request that they wanted to
16 hear the 911 tapes. I met with the lawyers in chambers
17 and they have graciously consented to allow us to take the
18 computer back to the jury and let them play it and that
19 note will be marked as a Court's exhibit.

20 I have been informed that we now have a
21 verdict. Anything before we bring the jury back?

22 MR. BULSA: Nothing from the State.

23 MR. SINGLETON: Nothing from the defense.

24 MR. HALL: Nothing for the defendant.

25 THE COURT: Bring them back.

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1 (Jury question was marked as Court's Exhibit
2 No. 2 for identification and admitted into evidence.)

3 (Jury re-enters the courtroom at 2:36 p.m.)

4 Mr. Foreman, I am informed the jury has a
5 verdict. Is that correct?

6 MR. FOREMAN: Yes, sir.

7 THE COURT: Will you please give the verdict
8 form to the bailiff.

9 Madam Clerk, if you would please publish the
10 verdict.

11 THE CLERK: The State of South Carolina
12 versus Kendal Jones, Case No. 2010-GS-42-2629 and 2630,
13 as to the charge of burglary in the first degree, we the
14 jury unanimously find Kendal Jones guilty. As to the
15 charge of armed robbery as to T.M. we the jury
16 unanimously find Kendal Jones guilty.

17 As to the charge of armed robbery concerning
18 Rashawn Middleton we the jury unanimously find Kendal
19 Jones guilty. As to the charge of armed robbery
20 concerning Nelson Middleton, we the jury unanimously find
21 Kendal Jones guilty. Signed by the fore person, dated
22 March 10th, 2011.

23 State of South Carolina versus Chavis Pullen,
24 Case No. 2009-GS-42-5465, 5484, 5485 as to the charge of
25 burglary in the first degree, we the jury unanimously find

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1 the defendant guilty.

2 As to the charge of assault and battery high
3 and aggravated nature, we the jury unanimously find Chavis
4 Pullen guilty. As to the charge of armed robbery as to
5 T.M. we the jury unanimously find Chavis
6 Pullen guilty. As to the charge of armed robbery
7 concerning Rashawn Middleton, we the jury unanimously find
8 Chavis Pullen guilty. As to the charge of armed robbery
9 concerning Nelson Middleton, we the jury unanimously find
10 Chavis Pullen guilty, signed by the fore person, dated
11 March 11, 2011.

12 THE COURT: Madam Clerk, if you will, pole
13 the jury and pole them separately as to each of the
14 defendants.

15 THE CLERK: Members of the jury if this your
16 verdict you have reached, please raise your right hand.

17 THE COURT: Ask them as to one of the
18 defendants first.

19 THE CLERK: As to Kendeal Jones, ladies and
20 gentleman I will ask you to stand individually and to my
21 question and the question being is this your verdict
22 rendered.

23 Juror No. 146, Jennifer Lark?

24 JURY 146: Yes.

25 THE CLERK: Juror 278, Kale White?

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1 JURY 278: Yes, ma'am.
2 THE CLERK: Juror 35, Anthony Cabeza?
3 JURY 35: Yes, ma'am.
4 THE CLERK: Juror 138, Roy Ketner?
5 JURY 138: Yes, ma'am.
6 THE CLERK: Juror 215, Jollene Priester?
7 JUROR 215: Yes, ma'am.
8 THE CLERK: Juror 209, Wesley Pierce?
9 JUROR 209: Yes, ma'am.
10 THE CLERK: Juror 282, Adam Williams?
11 JUROR 282: Yes, ma'am.
12 THE CLERK: Juro 287, Carolyn McDowell?
13 JUROR 287: Yes, ma'am.
14 THE CLERK: Juror 37, Stacy Camp.
15 JUROR 37: Yes, ma'am.
16 THE CLERK: Juror 264, Stanley Topick?
17 JUROR 264: Yes, ma'am.
18 THE CLERK: Juror 270, Crystal Waddell?
19 JUROR 270: Yes, ma'am.
20 THE CLERK: Juror 65, Anthony Dawkins.
21 JUROR 65: Yes, ma'am.
22 THE CLERK: As to Chavis Pullen, Juror No.
23 146, Jennifer Lark?
24 JURY 146: Yes, ma'am.
25 THE CLERK: Juror 278, Kale White?

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1 JURY 278: Yes, ma'am.

2 THE CLERK: Juror 35, Anthony Cabeza?

3 JURY 35: Yes, ma'am.

4 THE CLERK: Juror 138, Roy Ketner?

5 JURY 138: Yes, ma'am.

6 THE CLERK: Juror 215, Jollene Priester?

7 JUROR 215: Yes, ma'am.

8 THE CLERK: Juror 209, Wesley Pierce?

9 JUROR 209: Yes, ma'am.

10 THE CLERK: Juror 282, Adam Williams?

11 JUROR 282: Yes, ma'am.

12 THE CLERK: Juro 287, Carolyn McDowell?

13 JUROR 287: Yes, ma'am.

14 THE CLERK: Juror 37, Stacy Camp.

15 JUROR 37: Yes, ma'am.

16 THE CLERK: Juror 264, Stanley Topick?

17 JUROR 264: Yes, ma'am.

18 THE CLERK: Juror 270, Crystal Waddell?

19 JUROR 270: Yes, ma'am.

20 THE CLERK: Juror 65, Anthony Dawkins.

21 JUROR 65: Yes, ma'am.

22 THE COURT: Anything from the State or the
23 defense before I dismiss the jury?

24 MR. BULSA: No, sir.

25 MR. HALL: No, sir.

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1 MR. SINGLETON: Nothing from the defense.

2 THE COURT: Mr. Foreman, ladies and gentlemen
3 of the jury, I'd like to extend my appreciation and thanks
4 to you for your service during this trial. I know that
5 when we started this case, I gave you an instruction on
6 the fact of this trial is not for entertainment. This
7 trial is an essential part of our democracy in this
8 county, and not very many people have the opportunity to
9 actually sit through a trial as you have done. But I want
10 you to understand that my preliminary charges to you about
11 it being important to our democracy is very true because
12 there are people like you in every county in every court
13 house in this country that has gone through the process
14 that you have gone through for the last two days.

15 Without people like you to serve on a jury,
16 our democracy would actually be meaningless. I want to
17 thank you for that.

18 It's often said that outside of military
19 service on behalf of our country, the hardest service that
20 a citizen will do for our country is to serve on a jury
21 the way you have done for the last two days, so thank you.

22 The county has a small check for you. The
23 clerk needs to get some information from you and the money
24 doesn't represent the burden and the sacrifices you've
25 made for the last couple of days, but it is a small way of

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1 saying thank you.

2 At this time, you are free to go with the
3 bailiff. You are more than welcomed to stay with us and
4 sit through the sentencing phase, but your service for
5 this trial is over.

6 Mr. Foreman, please wait in the back. The
7 clerk needs to get you to sign something.

8 (Whereupon, the jury was dismissed.)

9 Come on up. What would you like to tell me
10 about Mr. Pullen.

11 MR. SINGLETON: Your Honor, at this point,
12 the jury has spoken. Mr. Pullen spends time in
13 Spartanburg. He has three children, two years old, four
14 years old and five years old, I believe. The children
15 live down there and spent time down there prior to his
16 incarceration. He worked in Burger King and McDonalds.

17 He does have his brother here and some other
18 family members in support of him. He's got some criminal
19 record and I don't think it's really bad. We ask that you
20 give some consideration to a sentence that ranges as short
21 as you can. You heard the testimony and the evidence that
22 has been presented.

23 THE COURT: Before I hear from Mr. Pullen,
24 let me hear the record.

25 MR. BULSA: Yes, Your Honor, in 2006, he's

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1 had two convictions for breaking into a motor vehicle;
2 2007 possession of stolen vehicle, two counts of unlawful
3 carrying of a weapon; 2008 malicious injury to personal
4 property and 2008 reckless driving.

5 THE COURT: I know that the victim's have
6 testified. Is there anything else they wish to say?

7 MR. BULSA: No, sir.

8 THE COURT: Mr. Pullen, please rise. Sir,
9 how old are you?

10 DEFENDANT PULLEN: Twenty-three.

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

12 DEFENDANT PULLEN: Eleventh grade.

13 THE COURT: Did you ever obtain your GED?

14 DEFENDANT PULLEN: No, sir.

15 THE COURT: Married or single?

16 DEFENDANT PULLEN: Single.

17 THE COURT: Have you ever served in the
18 military?

19 DEFENDANT PULLEN: No, sir.

20 THE COURT: Now, how long has he been in jail
21 on these charges?

22 MR. BULSA: Since June 14 of 2009.

23 THE COURT: Mr. Pullen, is there anything you
24 would like to say or like for me to know or consider?

25 DEFENDANT PULLEN: No, sir.

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1 THE COURT: The range of 0 to 10 on the
2 assault and battery of a high and aggravated nature?

3 MR. BULSA: Yes, sir.

4 THE COURT: The armed robbery?

5 MR. BULSA: 10 to 30.

6 THE COURT: Thank you, sir, you may be
7 seated.

8 Mr. Jones, prior record.

9 MR. BULSA: Drug convictions in March 2002,
10 he received a YOA sentence it appears on two separate
11 accounts. He had parole revocations on that YOA on two
12 separate occasions 2005 and July of 2007. In 2009 he had
13 a possession of marijuana.

14 THE COURT: Did the victim's wish to address
15 the court on Mr. Jones?

16 MR. BULSA: No, sir.

17 THE COURT: Anything else from the State on
18 Mr. Jones?

19 MR. BULSA: No, sir.

20 THE COURT: Mr. Hall.

21 MR. HALL: Mr. Jones, is 28 years old and has
22 two children, one is about 11 months old and he also have
23 a three year old. He is single. He's last work at CR
24 Brand and he's also worked with Adidias. His highest
25 level of education is the 10th grade and he's never

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1 obtained his GED. His ties to this area is his mother and
2 is here in the courtroom. Obviously Mr. Jones and his
3 mother are unhappy with the verdict, but we ask you to be
4 as lenient as possible with Mr. Jones taking into account
5 that he does have two small children.

6 THE COURT: How long has he been in jail?

7 MR. HALL: I think around 14 months. And also
8 I would ask that all sentences be run concurrent.

9 THE COURT: Mr. Jones, please rise. Have you
10 ever served in the military?

11 DEFENDANT JONES: No, sir.

12 THE COURT: Is there anything you would like
13 to say or would like for me to know or consider?

14 DEFENDANT JONES: No, sir.

15 THE COURT: Thank you, sir, you may be
16 seated.

17 In regards to the charges against Mr. Pullen,
18 the burglary in the first degree, armed robbery, three
19 armed charges, all of these sentences will be concurrent
20 sentences. It will be a life sentence under each charge.
21 Sentence of the Court is that the defendant will be
22 confined to the State Department of Corrections for a
23 period of 25 years. It will be a 10 year sentence on
24 assault and battery of a high and aggravated nature which
25 will also run concurrent with the other charges.

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1 On the charges involving Mr. Jones, these
2 will all be concurrent sentences, 25 year sentence and
3 they will run concurrent with each other.

4 Mr. Pullen will get credit since June 14,
5 2009 and Mr. Jones will receive credit for the 14 months
6 he's already served. Good luck to you both.

7 ---END OF TRANSCRIPT RECORD---

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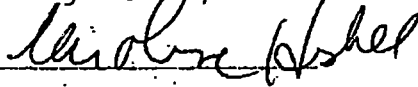
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State versus Chavis Pullen

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Spartanburg County, South Carolina on
8 the 10th day of May, 2011.

9 I do further certified that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 August 13, 2011

14 

15 Caroline Hiskell
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THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Judge

Case No.
(To Be Assigned)

RECEIVED

DEC 19 2017

S.C. SUPREME COURT

Kendeal Jones, #282575 Appellant

v.

State of South Carolina, Respondent

NOTICE OF INTENT TO APPEAL

Appellant appeals the decision of the Honorable Judge J. Derham Cole signed December 12, 2017 which was placed in the mail by Valerie Garcia Giovanoli to appellant's counsel on December 12, 2017, and received by appellant's counsel on December 15, 2017.

Counsel for applicant received written notice of the Order on December 15, 2017, and files this Notice by regular mail today, December 15, 2017.



CHARLES LOGAN ROLLINS, ESQUIRE
HAWKINS LAW FIRM
P.O. Box 5048
Spartanburg, South Carolina 29304
(864) 574-8801
ACTING APPOINTED ATTORNEY FOR PCR PETITIONER

Other Counsel of record:
Valerie Garcia Giovanoli
Assistant Attorney General
S.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211

THE SOUTH CAROLINA SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Derham Cole, Judge

RECEIVED

DEC 19 2017

S.C. SUPREME COURT

Case No.
(To Be Assigned)

Kendael Jones, #282575Appellant

v.


State of South Carolina,Respondent.

PROOF OF SERVICE

I certify that the foregoing was served on the persons listed below by placing same in the U.S. Mail postage prepaid this day, December 15, 2017.

Valerie Garcia Giovanoli
Assistant Attorney General
S.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission of Indigent Defense
P.O. Box 11433
Columbia, S.C. 29211-1433



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HAWKINS LAW FIRM
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(864) 574-8801
ACTING APPOINTED ATTORNEY FOR PCR PETITIONER

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2391
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

December 12, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Kendal Jones
Applicant # *282570*

7TH JUDICIAL CIRCUIT

CASE # *2011CP42-5486*

Shel
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Order of Dismissal*
in this action dated *12-12-2017* on *12-12-17*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Vahuri Constantin
Lindsay McCoy
Charles Rollins

12-12-17
(Date)

Corie Seay
(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

KENDEAL JONES, #282575

Applicant,

v.

STATE OF SOUTH CAROLINA,

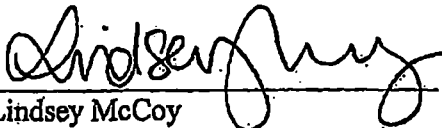
Respondent.

CERTIFICATE OF SERVICE

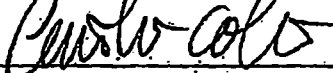
The undersigned hereby certifies that a true copy of the Order of Dismissal Granting White v. State Appeal has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Charles Logan Rollins, II, Esquire
The Hawkins Law Firm
Post Office Box 5048
Spartanburg, South Carolina 29304

This 12th day of December, 2017.


Lindsey McCoy
Legal Assistant

SWORN to before me this 12th day of December, 2017.


Notary Public for South Carolina.
My Commission Expires: 5/20/2023

2011 CP 02-5486

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Spartanburg)

Kendeal Jones, 282575)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Respondent)

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 McCormick Correctional Institution
306 Redemption way McCormick, SC 29889
2. Name and location of Court which imposed sentence Spartanburg
Courthouse
3. Name(s) of co-defendant(s) (if any) Chavis Pullen
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-4202629
 - (b) 2010-GS-4202630

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SPARTANBURG COUNTY
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- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3/10/11
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty Yes
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
NA

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. NA
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. NA
 - iii. _____

- (c) the date of each such result:
 - i. NA
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NA
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Trial Counsel failed to informed me my Right to Notice of Appeal.
 - (b) _____

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(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) see attachment support law

(b) Post-Conviction Relief

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) see attachment support law

(b) Post-Conviction Relief

(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? NA

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA

(d) any other petitions, motions or applications in this or any other Court? NA

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. NA

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. NA

ii. _____

iii. _____

iv. _____

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(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NA

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NA
- ii. _____
- iii. _____

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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) see attachment support Law
- (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? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. MAX Singleton - MEMBER of S.C BAR
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL
 - ii. _____
 - iii. _____

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19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)
County of MCCORMICK)

VERIFICATION

I, Kendal Jones, 282575, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Kendal Jones

SWORN to and subscribed before me this 5 day of Dec, 2011.

Jolene L Young (L.S.)
Notary Public

My Commission Expires: 10-11-2021

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SPARTANBURG COUNTY
M. HOPE BLACKLEY
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APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Kendal Jones, 282575, 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.

Kendal Jones
Applicant

SWORN or affirmed to and subscribed before me this

5 day of Dec, 2011

Joyce L Young
Notary Public

My Commission Expires: 10-11-2021

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SPARTANBURG COUNTY
2011 DEC -9 PM 1:57
M. HOPE BLACKLEY

Mr. Kendeal Jones, #282573
386 Redemption Way
McCormick, S.C. 29899

Date 12/5 2011

Case No. # 2010-GS-4202629
2010-GS-4202630

Dear Ms. M. Hope Blackley:

Enclosed please find for filing within your office of Clerk of Court for Spartanburg County. I request a clocked-stamped-dated copy be returned to me.

Respectfully submitted,

s/ Kendeal Jones

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M. HOPE BLACKLEY

cc: K.J.

cc: M.H.B.

State of South Carolina
County of Spartanburg

In The Court of Common Pleas

Kendael Jones, #282573)
Applicant,)
vs.)
State of South Carolina)
Respondent.)

Case No. # 2010-GS-4202629
2010-GS-4202630

PROOF OF SERVICE

To Respondent:

I certify that Kendael Jones, #282573 has served an original true copy of Post-Conviction Relief Application upon the Clerk of Court for Spartanburg County — Ms. Hope Blackley, Post Office Box 3483, Spartanburg, S.C. 29304-3483. By placing a copy in the United States mail.

sl Kendael Jones

Sworn to and Subscribed before me
this 5 day of Dec. 2011.

Joseph A Young
Notary Public for South Carolina

My Commission Expires: 10-10-2021

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 DEC -9 PM 1:56
M. HOPE BLACKLEY

State of South Carolina
County of Spartanburg

In The Court of Common Pleas

Kendeal Jones, #282573)
Applicant,)
vs.)
State of South Carolina)
Respondent.)

Case No. # 2010-GS-4202629
2010-GS-4202630

SUMMONS

To Respondent:

You are hereby Summoned and required to service upon the Applicant Kendeal Jones, #282573, whose address is listed below, an answer to the Post-Conviction Relief which is herewith served upon you, within (90) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, a judgment by default will be taken against you in this cause of action.

Date 12/5 2011

s/ Kendeal Jones

Kendeal Jones #282573
386 Redemption Way
McCormick, S.C. 29899

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M. HEPPEBLACKLEY
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State of South Carolina
County of Spartanburg

In The Court of Common Pleas

Kendeal Jones, #282573)
Applicant,)
)
vs.)
)
State of South Carolina)
Respondent.)

Case No. # 2010-95-4202629
2010-95-4202630

MEMORANDUM OF LAW IN SUPPORT
OF POST CONVICTION RELIEF

To Respondent:

Now comes the Applicant moving before this Honorable Court pursuant to S.C. Code of Law 17-27-10 §17-27-90.

Statement of the Case

Applicant and his co-defendants were charged with Armed Robbery while armed or allegedly armed with a deadly weapon and Burglary first on June 11, 2009, in the county of Spartanburg, South Carolina.

Argument 1

Trial Counsel was ineffective assistance of counsel for failing to file timely Notice of Appeal.

In the applicant's case before bar, trial counsel was required to file timely Notice of Appeal which client had requested counsel to seek Notice of Appeal within the South Carolina Supreme court; which the Applicant may challenge his judgement conviction on record of appeal for belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35(1974). Applicant before bar did not knowingly and intelligently waive his right to appeal. Also, see Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052(1984).

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Argument 2

Trial Counsel was ineffective assistance of counsel for failing to conduct and investigate due to the armed robbery and burglary 1st degree.

Applicant does admit that he went to the residence of victim on June 11, 2009, requesting for change for a \$5.00 dollar bill and this residence was a drug residence that sold drugs and there were several intruders that came to the victim's residence when the defendant was trying to get change for the \$5.00 dollar bill; the intruder also took Mr. Jones' money and ordered him to hit the floor. The defendant, Mr. Jones, had an outstanding warrant on him and he left the residence before the police came. The records do not show any kind of statement that the defendant, Mr. Jones, was involved linking the defendant to the crime and defendant was innocent of the crimes of armed robbery and burglary. Counsel's duty was to take the best interest into the defendant's case to prepare for trial.

Therefore, if counsel had investigated the crime scene of the residence of the victim and there is no evidence stating that the defendant played a roll in this armed robbery and burglary of the victim's residence. Therefore, statement given by the victim included that the intruders were wearing masks on their faces and Mr. Jones was standing in the home (in the victim's eyesight) when this armed robbery and burglary was committed.

For an Applicant to be granted PCR as a result of reasonably effective assistance of counsel, he must show both; (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms and (2) that he was prejudiced by his counsel's ineffective performance, Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984). The Applicant alleges ineffective assistance of trial counsel for failing to investigate. When an ineffectiveness claim is presented, the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the defendant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient, Strickland v. Washington at 694. The Applicant submitted that trial counsel's degree of skill, knowledge and professional judgement, that is expected of an attorney who practices criminal law, State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750(1977); Strickland Supra; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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 SPARTANBURG COUNTY
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 JUDGE
 11-1-11 1:57 PM

The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing when a true adversarial criminal trial has been conducted -- even if defense counsel may have made demonstrable errors.

*Footnote 18... the kind of testing envisioned by the six amendment has occurred cite at United States v. Cronin, at 104 S.Ct. 2039 (1984).

Argument 3

Trial Counsel was ineffective for failing to investigate co-defendant Derrick Goggins records that was awarded immunity by the Solicitor's office.

Therefore, records shows that there was a co-defendant that was involved in this crime of armed robbery and burglary 1st first; due to the records before bar, co-defendant Derrick Goggins' charges were dismissed by the Respondent.

Counsel was ineffective for failing to thoroughly investigate as well as notify client that material evidence existed that would have assisted client in whether he would have went forth for trial had counsel advised client that co-defendant received immunity as part of his deal agreement in which counsel withheld this Brady material, by counsel informing client concerning the immunity before trial because the law of South Carolina would have excluded testimony against him, cite at State v. Broome, 232 S.E.2d 324 (1977).

See Strickland v. Washington, 466 U.S. 690 cite as 104 S.Ct. 2052 (1984)

*Footnote (13)... These standards require no special amplification in order to define counsel's duty to investigate, the duty at issue in this case. In an ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances applying a heavy measure of deference to counsel's judgments.

Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information.

In short, inquiry into counsel's conversation with the defendant may be critical to a proper assessment of counsel's investigation decisions; just as it may be critical to a proper assessment of counsel's other litigation decisions.

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BLACKLEY

Conclusion

WHEREFORE applicant "must" and "shall" be granted that after PCR court appointed counsel Supreme Court Rules 50(5) and 71.1(d) must and shall amend his PCR for applicant and the applicant requests relief by vacating his conviction and sentence.

Date: 12/5 2011

s/ Kevleal Jones

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Kendeal Jones, #282575,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 IN THE SEVENTH CIRCUIT

2011-CP-42-5486

RETURN

In response to the post-conviction relief application filed on December 9, 2011, the Respondent would show this Court:

1.

The Applicant 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 Applicant at the May 2010 term of General Sessions for first degree burglary (10-GS-42-2629) and three counts of armed robbery (10-GS-42-2630, counts one, two and three). The Applicant was represented by Max B. Singleton, Esquire. The Applicant proceeded to a jury trial and was convicted on March 10, 2011. The Honorable J. Mark Hayes, II sentenced the Applicant to confinement for a period of twenty-five (25) years for each charge, to run concurrent.

On March 21, 2011, a timely Notice of Appeal was served on the Respondent. However, upon information and belief, the Notice of Appeal was never filed properly and an appeal was never perfected.

Attached herewith and incorporated herein are the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections' records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; in that,
 - a. Counsel failed to file a timely Notice of Appeal, and
 - b. Counsel failed to investigate.

III.

Respondent submits 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 his 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 Applicant claims he was denied effective assistance of counsel because his trial counsel did not appeal his conviction. The decision of the South Carolina Supreme Court in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds even though a post conviction court finds an Applicant did not voluntarily and intelligently abandon his right to direct appeal of his criminal conviction, the court has no jurisdiction to grant a belated appeal. However, when an Applicant establishes that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post conviction relief decision, will review the trial record and pass upon all issues raised and argued as if the direct appeal had been perfected.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

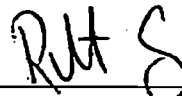
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE WHITE
Assistant Attorney General

By:



Attorneys for the Respondents

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

November 27, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Kendcal Jones,)

2011-CP-42-5486

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:

C. Logan Rollins, II, Esquire
 The Hawkins Law Firm
 P. O. Box 5048
 Spartanburg, South Carolina 29304


 Anne A. Mueller
 Legal Assistant for the Respondent

DATED this 27th day of November, 2012.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
 3 Kendeal Jones,)
 4 Applicant,) TRANSCRIPT OF RECORD
 5 -vs-) 2011-CP-42-5486
 6 The state.) October 2, 2013
 7) Spartanburg, South Carolina

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B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

CHARLES LOGAN ROLLINS, II, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

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WITNESSES

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KENDEAL JONES (AW)

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
A-1	Copy of indictment		14

1 MS. WHITE: Your Honor, this is the case of Kendeal
2 Jones vs. the State. It's case No. 2011-CP-42-5486.

3 Mr. Jones was indicted May of 2010 for a burglary
4 first degree charge and three counts of armed robbery.
5 Proceeded to trial represented by Mr. Max Singleton. He
6 was convicted May 10th -- excuse me -- March 10th of 2011.
7 Received concurrent sentences of 25 on all charges.

8 He filed this application December 9th of 2011
9 alleging ineffective assistance of counsel for counsel's
10 failure to file a proper notice of appeal and counsel's
11 failure to investigate.

12 And I do believe -- I spoke with Mr. Logan Rollins who
13 is his attorney at this time. And the state does consent
14 that the notice of appeal was not properly filed or served
15 and that he would be entitled to a review of his direct
16 appeal issues pursuant to White vs. State.

17 At this time I will turn it over to Mr. Rollins.

18 MR. ROLLINS: Thank you.

19 Your Honor, Mr. Jones originally filed his P.C.R.
20 application and noted, as Ms. White has stated, failure to
21 file and perfect a timely appeal, failure to investigate.

22 And I would also move at this time to add some
23 additional issues, primarily evidentiary issues. And there
24 are basically three.

25 The first is that his trial counsel asserted an

1 incorrect burden of proof. He stated several times during
2 the trial that the burden that the state had was by a
3 preponderance of the evidence rather than beyond a
4 reasonable doubt.

5 Failure to object to inadmissible evidence of an
6 explained flight. And I do have a case, and I can give
7 Your Honor a copy. It's State vs. Robinson which is 360
8 S.C. 187. And according to that case there must be a nexus
9 between the flight and the offense charged.

10 And I believe Ms. White stipulates that there was an
11 outstanding drug charge for which Mr. Jones was being
12 investigated that related to a January 22nd of 2009
13 distribution of crack.

14 And I guess we can put this in as an exhibit if
15 possible. I don't know if we need to do that now but --

16 THE COURT: Well, what's the state's position on the
17 amendment?

18 MS. WHITE: Your Honor, we did just see it this
19 morning, but it appears to be -- to have been a true
20 billed -- oh, on the amendment. I'm sorry.

21 I talked with Mr. Rollins about that earlier. And,
22 obviously, the state's position is normally to object to
23 any amendments filed on the day of the hearing based upon
24 the fact that we've had plenty of time. This has been
25 continued, you know, once before. I think whether or not,

1 you know, the case -- some of the issues he has raised are
2 just based in the transcript and it's not necessarily
3 related to things counsel could or could not have done. So
4 it's more of an issue of law. But as it relates to
5 anything that we need to address or would need to provide a
6 research on, we would ask for additional time for that if
7 Your Honor allows them to go forward on those.

8 THE COURT: Well, I'm not inclined to allow an
9 amendment at this stage. But if it's something that you're
10 prepared to respond to, then there's really no prejudice to
11 the state. So I will leave it up to you.

12 MS. WHITE: Well, I just heard about them this
13 morning, and so I have not had a chance to research or
14 prepare anything on those and even really look at the
15 transcript as to the references that he makes particular.

16 THE COURT: Well, I guess my question is this. I will
17 allow you time to submit a memorandum in response if you
18 wish to. But is there anything that's going to be amended
19 that would require you to develop testimony or find a
20 witness or something that you would be at a disadvantage if
21 we presented it today?

22 MS. WHITE: Probably not, Your Honor. So we could --
23 we can proceed as long as if there is additional research,
24 we would need to --

25 THE COURT: Well, let's hear what the three amendments

1 are, and then you can decide. You let me know if you
2 object or not. I have one. The first one was that counsel
3 misstated the burden of proof.

4 MR. ROLLINS: On several occasions he stated that
5 Mr. Jones needed to be convicted by a preponderance of the
6 evidence.

7 THE COURT: All right. And the second was that he
8 failed to object to what?

9 MR. ROLLINS: To evidence of an explained flight. And
10 the case that I'm citing in support of that is State vs.
11 Robinson, 360 S.C. 187.

12 And quoting from that case: "Case law recognizes that
13 the relevance of a flight -- of flight evidence is premised
14 on a nexus between the flight and the offense charged."
15 And then it cites a couple of 4th Circuit opinions that
16 found that evidence of flight is inadmissible where a
17 defendant flees after commencement of an investigation
18 unrelated to the crime charged.

19 And Mr. Jones was under investigation for a possession
20 with intent to distribute crack cocaine charge that arose
21 from a January 22nd of 2009 incident, the incident for
22 which he was on trial.

23 The burglary charge is related to a June 11th of 2009
24 incident.

25 The possession with intent to distribute crack charge

1 was nolle prossed in -- on March the 29th of 2011, so
2 during the -- because he was incarcerated.

3 So that charge was still pending against him
4 throughout the course of the alleged crime or the burglary
5 that occurred that he alleges he was not a part of up to
6 the time he was actually imprisoned for about a year and a
7 half.

8 So throughout that whole time his failure to cooperate
9 with the police, he alleges, is related to the fact that he
10 had this outstanding criminal charge possessed --
11 possession with intent to distribute crack cocaine, which
12 was totally unrelated to the armed robbery.

13 THE COURT: All right.

14 MR. ROLLINS: And his counsel did not raise the issue
15 that he had an excuse for not cooperating with the police
16 or not coming forward for him. And that was really -- the
17 entire case was predicated on his failure to cooperate with
18 the police.

19 The prosecution alleged it several times in opening
20 and closing argument. That was the foundation of their
21 argument.

22 His argument is he had this crack charge and that's
23 why he wasn't cooperating with the police and didn't come
24 forward beforehand.

25 The third evidentiary issue -- and this comes from

1 Rule 104 of the Rules of Evidence, as well as the case,
2 which is State vs. Cheatham. That's C-H-E-A-T-H-A-M. The
3 cite for that is 349 S.C. 101. It's a 2002 case.

4 The second contention of the state in Mr. Jones'
5 trial, after the fact that he didn't cooperate with the
6 police, was that there were three persons outside of the
7 apartment where the crime took place before the crime took
8 place.

9 A witness named Terri Carter testified that she saw
10 three men outside. She did not testify as to who any of
11 those three men were. She just said they were three males.
12 She couldn't identify Mr. Jones in particular.

13 It's our contention that under Rule 104 and under
14 State vs. Cheatham Mr. Singleton should have asked for an
15 in-camera review as to whether Ms. Carter would be allowed
16 to offer any testimony, any identification testimony, when
17 she could not have specifically identified who any of these
18 three people were.

19 So the state's contention was that the circumstantial
20 evidence was that there were three men outside. Mr. Jones
21 we admit was inside at the time of the robbery. His
22 contention is that he went into the premises to buy drugs
23 from the residents of the dwelling who were known drug
24 dealers from whom he had purchased drugs before. And then
25 two armed men came in and robbed the place. He had no

1 connection with them and didn't even know who they are.
2 His contention is to this today he still does not know who
3 those two armed men were. They wore masks. But the two --
4 and one of them according to the state was a Mr. Pullin who
5 was subsequently convicted, along with Mr. Jones.

6 So those are our three evidentiary issues -- failure
7 to investigate, which Mr. Jones did allege in his original
8 application.

9 And the last issue that he wishes me to assert is
10 actual innocence. And, obviously, it's my position -- and
11 Ms. White hasn't necessarily conceded it -- but I don't
12 think -- the burden is for her to produce some prejudice to
13 the state.

14 I don't think any additional witnesses are necessary
15 if she can get from Mr. Singleton whatever testimony she
16 will need if he had some reason that he didn't -- didn't
17 engage -- didn't make these objections or didn't raise
18 these issues.

19 So that's all that I have as far as amendments, Your
20 Honor.

21 THE COURT: All right. Ms. White.

22 MS. WHITE: Your Honor, you know, I think the first
23 amendment obviously is just basically something based on
24 reading in the transcript. So we -- you know, I don't
25 think we would be able to contest or need additional

1 witnesses to testify as to whether or not that was actually
2 said or how that effected.

3 The only question I would have with regards to No. 2
4 and 3 is whether or not the state would need following
5 testimony additional time to -- to do any kind of research
6 or posttrial memo. But at this point I think that we won't
7 need any additional witnesses and we could proceed.

8 THE COURT: Okay. So you have no objection to the
9 amendments?

10 MS. WHITE: No objection, Your Honor.

11 THE COURT: All right. With the caveat that you get
12 to submit a memo in response?

13 MS. WHITE: Yes, Your Honor.

14 THE COURT: Okay. All right. Mr. Rollins.

15 MR. ROLLINS: Mr. Jones would like to testify.

16 THE COURT: Let me make one thing clear.

17 The appeal, the failure to perfect an appeal, has been
18 agreed upon. So the state is agreeing he has a right to
19 have that reviewed.

20 MS. WHITE: Yes, Your Honor.

21 THE COURT: All right. And then the second allegation
22 was failure to investigate.

23 Have you stated, Mr. Rollins, all of the allegations
24 regarding ineffective assistance of counsel that you intend
25 to present evidence as to?

Kendeal Jones
Direct examination by Mr. Rollins

1 MR. ROLLINS: I have, Your Honor.

2 THE COURT: Okay.

3 KENDEAL JONES, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. ROLLINS

6 MR. ROLLINS: Your Honor, I would like to reserve my
7 right to recall Mr. Jones after Mr. Singleton testifies.

8 THE COURT: Okay.

9 Q Kendeal, could you state your name and age?

10 A Kendeal Jones, 30 years old.

11 Q Okay. Now, did you have any previous criminal record
12 prior to these allegations that led to your being
13 incarcerated?

14 A Yes.

15 Q What were those criminal charges?

16 A Possession of crack.

17 Q Okay. Were all of your previous charges related to
18 drugs?

19 A Yes.

20 Q Okay. And do you admit that you were guilty of some
21 drug charges in the past?

22 A Yes.

23 Q Now, with regard to June the 11th of 2009, could you
24 tell the court why it is you went to the residence of the
25 victims?

Kendeal Jones
Direct examination by Mr. Rollins

- 1 A To buy marijuana.
- 2 Q And how did you -- why did you think the victims would
3 have marijuana?
- 4 A Because I was told that they sold pot.
- 5 Q Who told you that?
- 6 A Nakita Jones.
- 7 Q And who is that?
- 8 A My cousin.
- 9 Q Did you get the contact information of the victims from
10 your cousin?
- 11 A Yes.
- 12 Q She -- what did she give you?
- 13 A Ms. Rhashawn Middleton's phone number.
- 14 Q Okay. And did you call Ms. Middleton?
- 15 A Yes.
- 16 Q And what did the two of you agree to during that phone
17 conversation?
- 18 A Buy marijuana.
- 19 Q How much were you going to buy?
- 20 A Five dollars worth.
- 21 Q And could you just explain to the judge what you did
22 leading up -- go into as much of the detail, and just tell
23 the judge how you went there to buy marijuana and what
24 happened.
- 25 A Well, June 11th of 2009 I was given a phone number for

Kendeal Jones
Direct examination by Mr. Rollins

1 Rhashawn Middleton about buying marijuana.

2 AS I arrived at her apartment Ms. Rashan Middleton,
3 which is in the courtroom, let me into the apartment. I met
4 with her boyfriend, Terrance Motes.

5 He produced the marijuana. As I was leaving the
6 apartment two guys came in and robbed us. I was -- I had
7 the gun pointed at my face. I got down on the floor. At
8 the scene, the crime scene, went on and then two was left, I
9 left outta the back door assuming that I had warrants on me
10 from previous -- previous charges. So I left.

11 Q And what was the previous charge that you thought you
12 had a warrant for?

13 A Driving no license, uninsured vehicle and reckless
14 driving.

15 Q Did you also have a drug charge outstanding as you
16 understood it?

17 A Yes, sir.

18 MR. ROLLINS: Can I mark this as an exhibit, Your
19 Honor?

20 (Copy of indictment marked Applicant's Exhibit No. 1.)

21 Q And does this document -- is that the drug charge to
22 which you're referring?

23 A Yes, sir.

24 Q And when did that drug charge -- when was the
25 occurrence of that drug charge arose from?

Kendeal Jones
Direct examination by Mr. Rollins

1 A Meaning?

2 Q When did you get caught with drugs?

3 A Oh, around January of 2009.

4 Q And when did this armed robbery happen?

5 A June of 2009.

6 Q Okay. Do you admit that you had those drugs in your
7 possession?

8 A Yes, I do.

9 Q Okay. And your testimony is that you went to this
10 house in June of 2009 to get drugs as well.

11 A Yes.

12 Q Okay. At your trial -- well, first of all, how did you
13 know -- did you know the victims other than buying drugs
14 from them on this night?

15 A Yes.

16 Q How many other times had you contacted them?

17 A Once before this incident took place.

18 Q Did you know -- you mean the time that you bought drugs
19 from them?

20 A Yes.

21 Q But did you know them by sight before that?

22 A Yes.

23 Q Did you have any close relationship with them before
24 that?

25 A Well, we grew up in the same, like friends, close

Kendeal Jones
Direct examination by Mr. Rollins

- 1 friends.
- 2 Q Okay. So they knew who you were when you came there?
- 3 A Yes.
- 4 Q And you knew who they were?
- 5 A Yes.
- 6 Q Okay. And you knew their names apart from the drug?
- 7 A Yes.
- 8 Q Now, what about the other defendants? Your codefendant
- 9 was Chavis Pullen, is that correct?
- 10 A Chavis Pullen.
- 11 Q Okay. How did you know him?
- 12 A I knew him, but not know of him. We -- we -- we hung
- 13 around sometimes but not like all the time.
- 14 Q Okay. Is it your opinion that he's the person who
- 15 robbed the house that night?
- 16 A I can't say.
- 17 Q Why can you not say?
- 18 A He had a mask on.
- 19 Q Okay. So it's your testimony that you have no idea who
- 20 robbed the house that night?
- 21 A No, sir.
- 22 Q And did you see any people outside of that apartment
- 23 before you went in on that night?
- 24 A Yes, sir.
- 25 Q Do you know who they were?

Kendeal Jones
Direct examination by Mr. Rollins

- 1 A No, sir.
- 2 Q Were they wearing masks when you saw them?
- 3 A No, sir.
- 4 Q How close were you to them? why couldn't you see them?
- 5 A Because it was dark and they was up under a tree.
- 6 Q How close to the apartment were they?
- 7 A Probably from here to the door.
- 8 Q So 50 feet maybe?
- 9 A Probably so.
- 10 Q Could you tell what race they were?
- 11 A African-Americans.
- 12 Q And how many were there?
- 13 A Two.
- 14 Q What were they doing?
- 15 A Just standing there.
- 16 Q Okay. Do you believe that those are the two men who
- 17 came in and robbed?
- 18 A I can't say.
- 19 Q Okay. So from your perspective it just happened
- 20 suddenly and you don't know.
- 21 A Yes, sir.
- 22 Q Okay. Now, how did you get in touch with your
- 23 attorney, Max Singleton?
- 24 A Through a friend.
- 25 Q Had you ever used Max Singleton as your attorney before

Kendeal Jones
Direct examination by Mr. Rollins

1 this?

2 A No, sir.

3 Q Had you retained an attorney for that drug charge that
4 we discussed a minute ago?

5 A No, sir.

6 Q So you -- you paid Max Singleton money?

7 A Yes, sir.

8 Q How much money did you pay him?

9 A \$5,500.

10 Q Did you pay the entire bill?

11 A Yes, sir.

12 Q How many times did you meet with him before your trial?

13 A Probably once or twice.

14 Q What did you discuss in those meetings?

15 A Basically, about me being innocent.

16 Q Did you always tell him that you were innocent of this
17 crime?

18 A Yes, sir.

19 Q Did you give him the same explanation for what happened
20 you've given here today?

21 A Yes, sir.

22 Q Did you ever discuss any guilty plea with him?

23 A No, sir.

24 Q Do you know whether the state ever made an offer that
25 you could serve a certain prison sentence if you pled

Kendeal Jones
Direct examination by Mr. Rollins

1 guilty?

2 A No, sir.

3 Q So did you discuss with him what his theories about how
4 he should try the case were?

5 A Yes, sir.

6 Q And what did you discuss?

7 A Basically -- can you repeat that?

8 Q How did he -- how did he explain this trial to you?
9 what did he say was going to happen?

10 A Basically, he told me I was looking at 25 years.

11 Q For what charge?

12 A For armed robbery and burglary first.

13 Q And he said that you had to try the case. He never
14 gave you the opportunity to enter a guilty plea?

15 A No, sir.

16 Q Could you explain to the court what it is you think he
17 did wrong?

18 A Basically, he did not object to anything or failure to
19 investigate or failure to file timely notice of appeal.

20 Q What specifically do you think he did not investigate
21 that you wanted him to investigate?

22 A The crime scene and why Derrick Goggins was never
23 charged.

24 Q Who is Derrick Goggins?

25 A The person they said is the third suspect.

Kendeal Jones
Direct examination by Mr. Rollins

- 1 Q Who is they? Who said he was the third suspect?
- 2 A The victims, Rhashawn Middleton and Nelson Middleton
- 3 and Terrance Motes.
- 4 Q Okay. So it's your understanding that at some point
- 5 somebody thought a person other than Chavis Pullen may have
- 6 been one of the gunmen?
- 7 A Yes, sir.
- 8 Q Okay. And how do you think that would help your case?
- 9 A Because Derrick Goggins -- I figured they saying that
- 10 if he was the third person he should have been charged, but
- 11 he was given amenity -- immunity.
- 12 Q Okay. What was he given immunity for?
- 13 A They never say.
- 14 Q Okay. So you just think there's something going on
- 15 that your attorney didn't look into?
- 16 A Yes, sir.
- 17 Q Okay. Did you explain to Max Singleton that you had
- 18 this crack cocaine distribution charge hanging over you?
- 19 A No, sir.
- 20 Q You didn't tell him that you had a crack charge?
- 21 A I never knew about it until I got convicted.
- 22 Q Convicted of what?
- 23 A Of armed robbery and burglary.
- 24 Q Okay. What is it you thought you were going to be
- 25 arrested for? Tell me why -- why didn't you come forward?

Kendeal Jones
Direct examination by Mr. Rollins

1 You waited about seven months to come forward after this
2 armed robbery happened, didn't you?

3 A I was arrested.

4 Q Okay. Why did you not cooperate with the police or go
5 to the police and say that this robbery had occurred?

6 A Because I thought I had four traffic tickets.

7 Q Okay. So you thought it was traffic tickets.

8 A Yes, sir.

9 Q Okay. And had you also been arrested for this drug
10 charge?

11 A Yes, sir.

12 Q Okay. So you had some other criminal issues going on?

13 A Yes, sir.

14 Q And you didn't want to raise a specter of trouble for
15 yourself? Is that it?

16 A Yes, sir.

17 Q And did you explain to Max Singleton that that's why
18 you didn't go to the police?

19 A Yes, sir.

20 Q Did you ask him to raise that issue at trial?

21 A Yes, sir.

22 Q And did he give you any reason why he didn't?

23 A No, sir.

24 Q Now, is it your understanding that the prosecution in
25 your trial argued that Terri Carter -- is that her name?

Kendeal Jones
Direct examination by Mr. Rollins

- 1 A Yes, sir.
- 2 Q That she testified that you were outside the house, or
3 is that what the prosecution tried to prove?
- 4 A Yes, sir.
- 5 Q Did you -- is it your position that you were not one of
6 three men standing outside of that house?
- 7 A Yes, sir.
- 8 Q And do you believe that Mr. Singleton should have
9 objected when Terri Carter testified that she couldn't
10 identify you specifically outside the house?
- 11 A Yes, sir.
- 12 Q Okay. And is it also your position that you are
13 actually innocent of this crime?
- 14 A Yes, sir.
- 15 Q Okay. Is there anything else you would like to tell
16 the judge?
- 17 A Yes, sir, there is. Well, as in my transcript they
18 saying that Judge Hayes denied the direct verdict for a
19 motion. But in my transcript there never was a direct
20 verdict, even motion for it, so I wondered if he did not
21 have a direct verdict, what was the motion that he was
22 denying it on.
- 23 Q So you're -- you're unhappy because the directed
24 verdict motion is not in the transcript?
- 25 A Yes, sir. And the transcript still is incomplete, I

Kendeal Jones
Direct examination by Mr. Rollins

1 figure, because at the top of the transcript that was sent
2 to me, said Chavis Pullen. And my name is Kendeal Jones.

3 Q Okay. Is there anything else that you want to tell the
4 judge?

5 A No, sir.

6 Q Now, at the time this armed robbery happened you said
7 you came in the front door. They let you in the door, is
8 that correct?

9 A Yes, sir.

10 Q And after they let you in the door your testimony is
11 that you paid them \$5 for marijuana.

12 A Yes, sir.

13 Q And then the men came in.

14 A Yes, sir.

15 Q Which door did you leave by?

16 A The back door.

17 Q And your testimony is that a man stuck a gun in your
18 face?

19 A Yes, sir.

20 Q Why did you leave out the back door?

21 A Because I -- as I say, I had the warrants. I'm
22 thinking they was on me, so I left because I didn't want to
23 go to jail when they came to investigate the crime scene.

24 Q Were you afraid when these men came in?

25 A Yes, sir.

Kendeal Jones
Cross-examination by Ms. Jones

- 1 Q What were you afraid of?
- 2 A Being shot.
- 3 Q What was your physical condition? Did you have any
- 4 health issues at the time of this?
- 5 A Well, I had a brace on my knee from a motorcycle wreck
- 6 that I -- with a screw in my knee.
- 7 Q Okay. Do you remember at the trial when one of the
- 8 witnesses testified that you dramatically got on the floor
- 9 when the men came in with the gun?
- 10 A Yes. I remember.
- 11 Q And is it your testimony that your knee issues caused
- 12 you to fall in a strange way?
- 13 A It could have.
- 14 Q Anything else you want to tell the judge?
- 15 A No, sir.
- 16 MR. ROLLINS: No further questions.
- 17 CROSS-EXAMINATION
- 18 BY MS. WHITE
- 19 Q Mr. Jones, at the trial your attorney actually was able
- 20 to get the police officer, Brenda Mathis, to actually say
- 21 that there was no evidence, physical evidence, or anything
- 22 like that that actually connected you to the crime other
- 23 than your presence, is that right?
- 24 A Yes, ma'am.
- 25 Q Okay. And, in fact, Ms. Middleton when she testified,

Kendeal Jones
Cross-examination by Ms. Jones

1 she testified that she had talked to you that day earlier
2 just as you said, that you came over and that she didn't
3 hear you say a word, you didn't have a gun, but you left and
4 went to the kitchen and out. She assumes out the back door
5 once the people in the mask came in, is that right?

6 A Yes, ma'am.

7 Q Okay. But her testimony was you didn't say a word, you
8 didn't threaten her, you didn't threaten anybody, is that
9 right?

10 A Yes, ma'am.

11 Q Okay. And Ms. Carter that testified, she didn't
12 identify you, did she?

13 A No, ma'am.

14 Q Okay. So her testimony was there were three men
15 outside the house. But she couldn't positively say if you
16 were one of them ever.

17 A No, ma'am.

18 Q Okay. And you said the reason you didn't stay around
19 or didn't call the police until you were actually arrested
20 for your participation is because of your driving warrants,
21 because you were already indicted for the drug charge at the
22 time this was happening, is that right?

23 A Yes, ma'am.

24 Q Okay. And did you ever talk with your attorney about
25 the fact that if you wanted to explain why you had not come

Kendeal Jones
Redirect examination by Mr. Rollins

1 forward or why you were running from the police that night
2 that maybe you would have to testify at trial?

3 A Yes, ma'am.

4 Q Okay. And what was his advice to you about that?

5 A He really gave me none.

6 Q Did you talk about the fact with your past record and
7 charges that that would possibly come out to the Court?

8 A Yes, ma'am.

9 Q Okay. And so ultimately did you decide not to testify?

10 A Yes, ma'am.

11 Q Okay.

12 MS. WHITE: Just one moment, please, Your Honor.

13 (Pause.)

14 MS. WHITE: Your Honor, I think that's all the
15 questions I have for this witness at this time.

16 MR. ROLLINS: Just one thing in followup.

17 REDIRECT EXAMINATION

18 BY MR. ROLLINS

19 Q Do you remember Mr. Singleton stating that the jury had
20 to prove you were guilty by a preponderance of the evidence?

21 A Yes, sir.

22 Q Okay. Do you know what the standard that the jury has
23 to prove you guilty is?

24 A No, sir.

25 Q Have you heard beyond a reasonable doubt?

Kendeal Jones
Redirect examination by Mr. Rollins

1 A Yes, sir.

2 Q Okay. Did Mr. Singleton say that in his opening
3 argument?

4 A Yes, sir.

5 Q You think he did?

6 A Did he say that?

7 Q In his opening argument he said you had to be proved
8 guilty by a preponderance of the evidence, didn't he?

9 A Oh, no.

10 Q Okay. Max Singleton did say in his opening argument
11 that you had to be proven guilty by a preponderance of the
12 evidence, didn't he?

13 A Yes, sir, yes, sir, yes, sir.

14 Q And you know that you have to be proven guilty by
15 beyond a reasonable doubt.

16 A Yes, sir.

17 Q Okay.

18 MR. ROLLINS: No further questions, Your Honor.

19 THE COURT: Step down.

20 Have you got any other witnesses?

21 MR. ROLLINS: Just Mr. Singleton.

22 MS. WHITE: Your Honor, I have not received any
23 communication back at this time.

24 THE COURT: All right. Let me see y'all just a
25 minute, please.

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(Bench conference held off the record.)

THE COURT: We'll be in recess in this matter until we
can locate Mr. Singleton and be back in touch.

END OF REQUESTED TRANSCRIPT OF RECORD

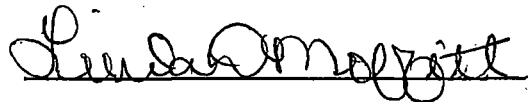
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CERTIFICATE

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 the Common Pleas Court for Spartanburg County, South Carolina, on the 2nd day of October 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 2, 2015



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 07 2009 , the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Kendeal Jones did in Spartanburg County on or about January 22, 2009, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Cocaine Base and/or Crack Cocaine, a schedule II controlled substance under provisions of § 44-53-375, *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.

David M. Fink

ASSISTANT SOLICITOR

WITNESSES
Ronald E. Richard

WOODRUFF POLICE DEPT

SENTENCE MADE

REPORT ENDED

CARD PULLED

INDEXED

CHECKED WARRANTS
Computer
 ARREST WARRANT NUMBER

CHECKED SIGNATURE

ASSESSMENT AND FINE CARD MADE
 M085853

TRAFFIC VIOLATIONS COPY

ACTION OF GRAND JURY

Tava Bill

Foreperson of Grand Jury
 Date: 5-7-09

VERDICT

Foreperson of Grand Jury
 Date:

328

DOCKET NO. -
09-GS-42-2581
 The State of South Carolina

County of Spartanburg
Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS
 MAY 11 2009
 TERM

THE STATE
 vs.

KENDEAL JONES

~~W.A. Bench warrant to remain active.
 by *[Signature]* - Ryan F. McCarty, Asst. Solicitor
 9/19/09~~

Indictment for
 POSSESSION WITH INTENT TO DISTRIBUTE
 COCAINE BASE AND/OR CRACK COCAINE

SC Code: 44-53-375
 CDR Code:
 Class MIS/A

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2011 MAR 30 AM 8:39
 SPARTANBURG COUNTY
 M. HOPE BLACKBURN
 SEP 21 AM 10:03
 MARC KITCHENS

*Nolle prosequi. Dis
 serving 25 years in
 DOC*

[Signature]

*Ryan F. McCarty
 Asst. Solicitor
 3-29-11*

MARC KITCHENS
 2009 MAY 13 PM 4:36
 SPARTANBURG COUNTY
 FILED
 CLERK OF COURT

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
 3 Kendeal Jones,)
 4 Applicant,) TRANSCRIPT OF RECORD
 5) 2011-CP-42-5486
 6 -vs-)
 7 The State.) January 22, 2014
 8) Spartanburg, South Carolina
 9)

10 B E F O R E:
 11 HONORABLE J. DERHAM COLE, JUDGE
 12

13 A P P E A R A N C E S:
 14 CHARLES LOGAN ROLLINS, II, ESQUIRE
 15 Attorney for the Applicant
 16 SUZANNE H. WHITE, ESQUIRE
 17 Attorney for the State
 18

19
 20
 21
 22 Linda D. Moffitt
 23 Circuit Court Reporter
 24
 25

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Max B. Singleton
Direct examination by Mr. Rollins

1 THE COURT: All right. Ms. White.

2 MS. WHITE: Thank you, Your Honor.

3 We're back before the Court in the case of Kendeal
4 Jones vs. the State. It's case No. 2011-CP-42-5486.

5 And just as a brief reminder about the case, Mr. Jones
6 was indicted for first degree burglary and three counts of
7 armed robbery.

8 He was represented and proceeded to trial, and
9 represented by Mr. Max Singleton. Judge Hayes sentenced
10 the applicant to 25 years on each charge to run concurrent.

11 A timely notice of appeal was filed, but it was never
12 perfected. And he's alleged various claims of ineffective
13 assistance of counsel.

14 And I'll turn it over to his attorney, Mr. Logan
15 Rollins.

16 THE COURT: Mr. Rollins.

17 MR. ROLLINS: I will just call Mr. Singleton.

18 MAX B. SINGLETON, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. ROLLINS

21 Q Mr. Singleton, do you recall representing Mr. Jones in
22 his trial in March of 2011?

23 A Yes, sir.

24 Q And do you admit that you did not properly perfect his
25 appeal?

Max B. Singleton
Direct examination by Mr. Rollins

1 A From what his wife told me, that's correct.

2 Q Okay. Is it --

3 A I didn't order the transcript.

4 Q You didn't order the transcript. Is it correct that
5 you didn't actually file an appeal with the Court of
6 Appeals.

7 A I believe I filed a notice of appeal.

8 Q Okay. Do you know what the process is to properly
9 file a notice of appeal with the Court of Appeals?

10 A You file a notice of appeal with the clerk of the
11 court and then drop -- then give a copy to the solicitor's
12 office and then send it to the Court of Appeals.

13 Q Okay. And did you ever send it to the Court of
14 Appeals in this case?

15 A I believe I did.

16 Q Okay. But if Ms. White says you didn't -- okay.

17 (Pause for discussion with Ms. White.)

18 Q That's not really a big issue.

19 With regards to the trial itself, are you aware of
20 what the appropriate burden of proof is for the prosecution
21 in a criminal case?

22 A Beyond a reasonable doubt.

23 Q Okay. And do you recall in Mr. Jones' trial telling
24 the jury that they had to prove his case, quote, by a
25 preponderance of the evidence?

Max B. Singleton
Direct examination by Mr. Rollins

1 A If I did that that was by mistake. I apologize.

2 Q Okay. Do you recall doing that? A second time during
3 your opening argument you told the jury, quote, "We have to
4 listen to the evidence and see if they've proven by a
5 preponderance of the evidence."

6 A If that's what I said, I apologize. I mean, I know
7 it's by a preponderance, I mean, beyond a reasonable doubt.

8 Q Okay. So you didn't have any strategy when you said
9 they had to prove their case by a preponderance of the
10 evidence?

11 A No.

12 Q That was just a mistake?

13 A Yes, Your Honor, I mean, yes, sir.

14 Q Now, do you recall whether or not Mr. Jones had any
15 pending criminal charges against him other than the
16 burglary for which you represented him?

17 A I believe at the time of this incident he believed --
18 he was under the impression that he had warrants out for
19 his arrest.

20 Q Okay. So you discussed. How many meetings did you
21 have with him?

22 A I say we probably had close to ten meetings all
23 together over the course of time of me representing him.

24 Q And he informed you that he had some other charges
25 against him?

Max B. Singleton
Direct examination by Mr. Rollins

1 A He said that's why he left the scene of the incident.

2 Q Okay. Did you discuss with him whether you should
3 present evidence at trial about his -- about the reasons
4 that he left the scene of the incident?

5 A Offhand, I can't remember if we -- if we discussed
6 that or not. I'm pretty sure we did, but I'm not sure if
7 we did off the top of my head.

8 Q Okay. Do you recall the solicitor in this case in
9 both his opening and closing arguments -- would you agree
10 that he primarily relied on the fact that if you -- and I'm
11 quoting -- if he was innocent, where was he for seven --
12 where was he for seven months if he was innocent? Do you
13 recall the solicitor relying on that information in his
14 opening and closing argument?

15 A If that's what he said in opening. I don't recollect
16 off the top of my head what happened in the trial.

17 Q Okay. Are you still a member of the South Carolina
18 Bar?

19 A Yes.

20 Q I assume you were at this time.

21 A Yes.

22 Q Did you have access to any programs that would allow
23 you to research legal cases?

24 A Yes.

25 Q And were you familiar with any case law that said that

Max B. Singleton
Direct examination by Mr. Rollins

1 and explained why it could not be used against a defendant
2 in a criminal case?

3 A I can't remember off the top of my head. I believe
4 so.

5 Q Okay. So you were aware that there was case law that
6 said if Mr. Jones could explain his flight, then the flight
7 cannot be used by the solicitor in its case against him?

8 A I believe so. Mr. Jones didn't want to testify or
9 anything.

10 Q Okay. You had the opportunity -- the arresting
11 officer was -- testified in this case, didn't he?

12 A I guess if that's what the record says.

13 Q You cross-examined him, didn't you?

14 A Right.

15 Q And did you ever ask him if Kendeal had any
16 outstanding warrants or outstanding arrest against him?

17 A If it's not in the transcript, then I did not.

18 Q So that's one way that you could have gotten in the
19 reasons that Kendeal did not cooperate with the police
20 during this investigation, isn't it?

21 A Yes, sir.

22 Q But you made no attempt to do that.

23 A If that's what the transcript says.

24 Q And that was -- was that a strategic decision for you
25 not to bring up those issues, or did you just not do it?

Max B. Singleton
Direct examination by Mr. Rollins

1 A I can't remember off the top of my head what -- you
2 know, our strategy at that point was that Mr. Jones
3 admitted that he was there and that he -- but he had no
4 idea what was happening, that he was not a part of the, I
5 guess the, burglary or whatever, that he was there to buy I
6 think \$5 or \$10 worth of marijuana.

7 Q Okay.

8 A And that since he heard the commotion he dropped to
9 the floor and left and that he didn't have no idea what was
10 going in the other room.

11 Q So did he consistently tell you that he was innocent
12 of this crime?

13 A Yeah, when he said he had no idea what was going in
14 the other room.

15 Q His testimony -- his testimony was that he was there
16 to purchase drugs?

17 A Yes.

18 Q And did you attempt to get into evidence the fact that
19 he was there to purchase drugs?

20 A I believe so, because I think there was -- I believe
21 I -- I think the person he was purchasing the drugs for --
22 I can't remember the name, the man's name. But I believe I
23 tried to get into the questioning at that end, but I don't
24 if it got in with the judge or the solicitor's office
25 objected or not.

Max B. Singleton
Direct examination by Mr. Rollins

1 Q And did you have a discussion with Kendeal about
2 whether he should testify?

3 A Yes.

4 Q And why did you decide that he should not?

5 A I left it up to him. It's his decision whether he
6 wanted to testify or not. I always leave it up -- tell
7 them, you know, if they're going to bring up, these are the
8 possible questions they could ask and that they're going to
9 bring up his past history and everything. And I left it up
10 to him if he wanted to -- to testify or not.

11 Q So this case's past history consisted of some charges
12 that could have explained his reason for not cooperating
13 with the police during this investigation, didn't it?

14 A I'm sorry? Say that again.

15 Q His past history in Mr. Jones' case, the previous
16 arrest that he had, could have explained to the jury why he
17 didn't cooperate in the investigation.

18 A Well, his belief that he had bench warrants out for
19 his arrest.

20 Q Okay.

21 A I think there was like a driving under suspension or
22 something like that.

23 Q And you didn't get any of that into evidence, is that
24 correct?

25 A If that's what the transcript says.

Max B. Singleton
Direct examination by Mr. Rollins

1 Q And I believe a Ms. Carter identified some men outside
2 of the house. Do you recall that?

3 A If she was the lady that was across the street in the
4 church -- well, she wasn't in a church. She was I think
5 across the street from the apartment complex. There's a
6 sidewalk that borders a church, I believe. And she was
7 walking down that sidewalk and observed some men either
8 going into the apartment or leaving the apartment, but she
9 couldn't identify them.

10 Q Before she testified did you ask the Court for a
11 hearing to determine whether her identification testimony
12 should be admitted into evidence?

13 A No, because she couldn't identify. I mean, from what
14 my understanding was, she couldn't identify anybody.

15 Q Okay. So did you object to the relevance of that
16 testimony if she couldn't identify who those people were?

17 A Where it's in the transcript, if I didn't, then the
18 reason I didn't is because I would state to the jury in
19 closing argument she couldn't identify. So there was no
20 need to, you know, listen to her testimony, because she
21 couldn't identify who they were, because I think she said
22 that there was three people leaving. And my client left by
23 himself, so obviously he wasn't one of the three people
24 that was leaving in that group of people or whatever.

25 MR. ROLLINS: If I could have just a second, Your

Max B. Singleton
Cross-examination by Ms. White

1 Honor.

2 (Pause.)

3 MR. ROLLINS: No further questions, Your Honor.

4 MS. WHITE: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. WHITE

7 Q Mr. Singleton, in regards to explaining the flight,
8 you said that the defendant would have had to have
9 testified.

10 Is that to be able to have his story explained? What
11 other options were there other than having him testify, or
12 were there any other options?

13 A I guess if there's some way you can show that he
14 had -- actually get somebody to testify that he had actual
15 bench warrants out for his arrest, which would require
16 somebody from, I guess, the clerk's office or the police
17 department.

18 Q Is that something that when you're representing
19 someone on a charge of armed robbery you would want to
20 bring out the fact that they have other charges pending?

21 A No, no, ma'am.

22 Q And you wouldn't want to bring out the fact that he
23 thought he might have warrants or that he had been indicted
24 on prior charges if you brought him out to testify, is that
25 right?

Max B. Singleton
Cross-examination by Ms. White

1 A Right.

2 Q In regards to strategy to try to point out that he was
3 only there to purchase drugs, you did try to cross-examine
4 Ms. Middleton who I believe was the homeowner about the
5 fact that they said he was there just to get change for a
6 \$10 bill and how ludicrous that sound -- sounded?

7 A Correct, right.

8 Q And in regards to -- but there were no drugs found at
9 the house that night to your knowledge, were there?

10 A I guess if it's not like in the reports to the police,
11 I mean, I'm not sure if she was the person -- that I'm not
12 sure if I asked this in the -- in the trial, but I think
13 that lady was the one that he knew, and he had contacted
14 her earlier about coming over there to get drugs.

15 Q But she -- she denied that they were selling drugs.

16 A Right.

17 Q Is that right?

18 A Right.

19 MR. ROLLINS: I'm going to have to object to the
20 leading, Your Honor.

21 MS. WHITE: I'm on cross, Your Honor.

22 MR. ROLLINS: The rule is if it's an adverse witness
23 you can lead, but not if it's her witness.

24 THE COURT: Overruled.

25 Go ahead.

Max B. Singleton
Cross-examination by Ms. White

1 MS. WHITE: Thank you.

2 Q And so she did deny that there were drugs or drug
3 selling?

4 A I believe so if that's what the transcript says.

5 Q Okay. Ms. Carter identified the men outside of the
6 house but identified them solely by saying she saw three
7 men, is that right?

8 A Yes, ma'am. And my -- my client stated that he was in
9 the kitchen when this happened.

10 I think when you go into the apartment there's a
11 stairways that goes straight upstairs. And there's the
12 living room and then there's the kitchen back there. He
13 and the other male individual were in the kitchen.

14 And he stated that when he heard the commotion that he
15 got on the floor and then exited the apartment and got in
16 his car and left, and that she said that there was just
17 three individuals. And I can't remember if she said she
18 saw them enter the apartment and leave the apartment. I
19 believe she said she saw them leave the apartment on foot
20 and go towards the restaurant, the Beacon restaurant, on
21 foot.

22 Q Your client never denied being in the house that day,
23 right?

24 A No.

25 Q And everyone agreed that they knew him, that he was

Max B. Singleton
Redirect examination by Mr. Rollins

1 there in the house.

2 A Yes.

3 Q Okay. So the only defense he really had was that he
4 didn't know the people coming in later were going to rob?

5 A Right.

6 Q Okay.

7 MS. WHITE: Your Honor, I think that's all I have at
8 this time of Mr. Singleton.

9 REDIRECT EXAMINATION

10 BY MR. ROLLINS

11 Q You were asked about Mr. Jones' previous criminal
12 history and whether it should be brought in or not. And
13 you testified that generally you don't want to bring
14 previous criminal history in, is that correct?

15 A Correct.

16 Q In this case you testified that his previous criminal
17 history consisted of some traffic tickets basically.
18 Didn't it?

19 A I think that's what he thought the bench warrants were
20 for.

21 Q So if we're looking at --

22 A And it may have been a drug charge. I'm not sure. I
23 mean, I'm not sure.

24 Q Maybe it was a simple possession.

25 A Yes.

Max B. Singleton
Recross-examination by Ms. White

1 Q So if you weigh traffic tickets and a simple
2 possession, of the sentences those things carry and the
3 prejudice that might result from that versus armed robbery,
4 do you think it would be advisable to maybe bring in those
5 previous charges that can explain why he didn't cooperate
6 in an armed robbery investigation?

7 A Well, obviously, they're lesser charges than the armed
8 robbery.

9 Q Okay.

10 MR. ROLLINS: No further questions.

11 MS. WHITE: Just to follow up.

12 RECROSS-EXAMINATION

13 BY MS. WHITE

14 Q You did talk with him about whether or not he wanted
15 to testify and go before the Court, is that right?

16 A Yes.

17 Q And he did not.

18 A Yes.

19 MS. WHITE: That's all I have.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you, Your Honor.

22 MR. ROLLINS: Nothing further from us, Your Honor.

23 MS. WHITE: Nothing further from the state, Your
24 Honor.

25 THE COURT: Does Mr. Jones wish to provide any

1 rebuttal testimony to Mr. Singleton?

2 MR. ROLLINS: He does not, Your Honor.

3 THE COURT: Okay. Thank you. Can I see y'all just a
4 minute, please?

5 (Bench conference held off the record.)

6 END OF REQUESTED TRANSCRIPT OF RECORD

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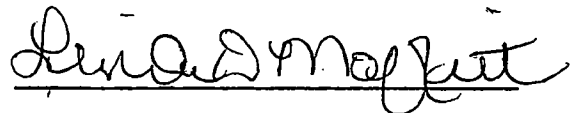
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CERTIFICATE

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 the Common Pleas Court for Spartanburg County, South Carolina, on the 22nd day of January 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 2, 2015



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Kendeal Jones,)
 SCDC #282575,)
) Applicant,)
)
 v.)
)
 State of South Carolina,)
)
) Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT
 2011-CP-42-5486
**ORDER OF DISMISSAL
 GRANTING WHITE V. STATE
 APPEAL**

CLERK OF COURT
 SPARTANBURG COUNTY
 2013 DEC 17 PM 12:55
 HOPE BLAUGLEY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Kendeal Jones (Applicant) on December 9, 2011. The State (Respondent) made its return on November 27, 2012, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on October 2, 2013 and again on January 22, 2014 at the Spartanburg County Courthouse. Applicant was present and represented by Charles Logan Rollins, II, Esquire. Suzanne H. White, Esquire, represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Max B. Singleton, Esquire, also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the records of this PCR action, and the trial transcript, including missing portions that were later submitted by the State.

PROCEDURAL HISTORY

Applicant 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 Applicant at the May 2010 term of General Sessions for first degree burglary (10-

¹ White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

GS-42-2629) and three counts of armed robbery (10-GS-42-2630, counts one, two and three). Applicant was represented by Max B. Singleton, Esquire. Assistant Solicitor Derrick Balsa represented the State. Applicant proceeded to a jury trial and was convicted on March 9, 2011. The Honorable J. Mark Hayes, II, sentenced Applicant to confinement for a period of twenty-five (25) years for each charge, to run concurrent.

On March 21, 2011, a timely Notice of Appeal was served on Respondent. However, upon information and belief, the Notice of Appeal was never filed properly and an appeal was never perfected.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; in that:
 - a. Counsel failed to file a timely Notice of Appeal, and
 - b. Counsel failed to investigate.

At the evidentiary hearing, Applicant moved to amend his application to include the following allegations:

1. Ineffective Assistance of Counsel; in that:
 - a. Counsel misstated the correct burden of proof twice during opening statements as the "preponderance of the evidence."
 - b. Counsel failed to object to inadmissible evidence of an explained flight. See State v. Robinson, 360 S.C. 187 (2004).
 - c. Counsel failed to object to inadmissible testimony of Terri Carter who testified she saw three men outside of the victim's residence prior to the burglary and armed robbery, but could not identify any of them. See State v. Cheatam, 349 S.C. 101 (2002).

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 M. HOPE BLACKLEY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, the 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), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625,

2017 DEC 12 PM 12:55
 M. HOPE BLANKLEY

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. Failure to file notice of appeal

This Court finds Applicant did not knowingly and intelligently waive his right to a direct appeal. Counsel must ensure that a criminal defendant is made fully aware of his appeal rights. *White v. State*, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by *Anders v. California*, 386 U.S. 738 (1967). *Id.* Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive their appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to *White v. State*. See Rule 243(i)(1), SCACR; *Davis v. State*, 288 S.C. 290, 291 n.1, 342 S.E.2d 60, 60 n.1 (1986) ("Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a *White v. State* review.").

In the present case, the State consents to a belated review of Applicant's trial pursuant to *White*. *Id.* As such, the Court finds Applicant did not knowingly and voluntarily waive his appellate rights and is entitled to an appeal from his conviction. Applicant's lack of an appeal shall be remedied pursuant to *White v. State*. *Id.*

A. Failure to properly investigate

This Court finds Applicant has not met his burden to prove Counsel was ineffective by failing to properly investigate his case. To show ineffective assistance in this regard, Applicant

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 MHOPE BLACKBERRY

must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) (“Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

First, Applicant has failed to present evidence to show what Counsel could have discovered had he more fully investigated. To the extent Applicant is alleging he should have investigated the reason Applicant did not cooperate with law enforcement prior to being arrested for the burglary and armed robberies, this Court finds Applicant’s testimony contradicts such an allegation. Applicant testified credibly that he told Counsel about his outstanding traffic tickets being the reason he did not come forward to the cops sooner. Furthermore, the record shows Counsel discussed the case with Applicant as Counsel had a full grasp of the evidence and the facts at the time of trial. Counsel understandably cannot recall details almost three years after the trial. Counsel also testified credibly he met with Applicant close to ten times. It is unreasonable to think those meetings were not used to discuss the case and prepare for trial, which are both part and parcel of a defense attorney’s investigation.

This Court having found Applicant has failed to prove either prong of Strickland, finds this allegation meritless. Therefore, this claim is denied and dismissed with prejudice.

B. Stating incorrect burden of proof

This Court finds Counsel was not ineffective for misstating the appropriate burden of proof by which the State had to prove their case. While this Court finds Counsel's mistake was error amounting to deficiency under Strickland, Applicant cannot prove prejudice. Counsel errantly stated twice the State's burden of prove was a "preponderance of the evidence" in his opening statements. I find the error harmless. Not only did the trial judge, the Assistant Solicitor, and Applicant's co-defendant's counsel thoroughly articulate and explain the correct burden of proof, Counsel stated the correct burden of proof in his closing argument. There is no reasonable likelihood Counsel's misstatement affected the outcome of Applicant's trial.

As such, this Court finds that Applicant has failed to meet his burden in proving he was prejudiced by this error as required by Strickland. Therefore, this allegation is denied and dismissed with prejudice.

C. Failure to object to evidence of an explained flight

This Court finds Applicant has failed to meet his burden in proving that Counsel was ineffective for failing to object to evidence presented by the State that Applicant left the scene of the crime and never came forward to cooperate with law enforcement until he was arrested for the crimes. Applicant testified he did not go to law enforcement about the crime because he had four outstanding traffic tickets.² He also testified he told Counsel this. Counsel also testified credibly he was aware of Applicant's concern regarding his outstanding warrants for his arrest from his traffic violations. However, he explained he left the decision up to Applicant whether he wanted to testify to present that evidence after advising him of the pros and cons of testifying.

² PCR counsel argued in opening it was an outstanding arrest for distribution of crack and submitted a copy of the indictment as Court's exhibit 1. However, Applicant credibly testified he did not even know about the distribution charge until he got convicted of burglary and armed robbery.

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Additionally, Applicant argues State v. Robinson, 360 S.C. 187 (2004) precluded the State from admitting evidence regarding Applicant's failure to come forward to law enforcement after the crime of which he claim to be a victim. However, Robinson is distinguishable because it dealt with a defendant actually fleeing from law enforcement during an investigation. Regardless, Robinson simply reiterated the rule that evidence of flight must be relevant in that there must exist a nexus between the flight and the offense charged. "Evidence of flight should be excluded when the flight is clearly linked to a separate offense for which the defendant is not on trial." Id. 360 S.C. at 195.³

In this case, the State established the requisite nexus through witness testimony that he was present during, and likely part of, the crimes. Applicant himself admitted to being present during the burglary and armed robbery, both to Counsel and during the PCR hearing. Therefore, this Court finds he was fully aware of the crime having occurred and the investigation which would flow therefrom when he fled the scene and later never came forward to law enforcement. Additionally, even if Applicant were to have testified at trial regarding his traffic tickets, his testimony still would not have "clearly linked" the flight to "a separate offense for which [he] was not on trial." Id. Not to mention the plethora of risks and consequences associated with a defendant testifying.

The State was entitled to present evidence of flight against Applicant at his trial. Any objection would have been futile and overruled. I find Applicant has failed to meet his burden under Strickland to prove Counsel was either deficient or that his deficiency prejudiced the Applicant's trial, this claim is denied and dismissed with prejudice.

³ Although PCR counsel said during his questioning of Counsel at the PCR hearing that there was case law that says if Applicant could explain his flight, then the flight cannot be used by the solicitor in the case against him, this Court finds that to be an incorrect statement of the law.

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D. Failure object to testimony from eye witness

This Court finds that Applicant has failed to prove his burden of proving Counsel was ineffective for failing to object to the testimony of an eye witness. At trial, Terri Carter testified she lived in the same apartment complex as the victim. She testified she was leaving her house to go to the store when she saw three men on the porch outside the victim's residence who appeared to be talking. She continued to walk and heard the victim yell, "my baby, my baby!" When she looked back, she saw two of the men come out of the victim's residence and run down the street.

Applicant argues Counsel should have objected to Carter's testimony because she could not identify Applicant as one of the three men she saw outside the victim's residence. Applicant relies on State v. Cheatham, 349 S.C. 101 (2002). However, Cheatham involved the challenge to the actual identification of the defendant by a State's witness. Cheatham is simply inapplicable to the facts of this case. Carter was an eye witness to the moments before, during, and after the alleged crime. Because she could not identify the three men she saw prior to the burglary and robberies did not give rise to a basis to challenge her testimony. To the extent Applicant argues her testimony is irrelevant because she could not identify Applicant as one of the men, this Court finds such a contention meritless. Of course the testimony of a witness who saw and/or heard the crime is relevant, notwithstanding the fact she could not identify the burglars. Once again, any objection by Counsel would have been futile and overruled.

Applicant has failed to show any deficiency on the part of Counsel or that he was prejudiced by any alleged deficiency. Therefore, this Court finds Applicant has failed to meet his burden under Strickland. Therefore, this allegation is denied and dismissed with prejudice.

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CONCLUSION

Based on all the foregoing, this Court grants Applicant a belated review of his conviction pursuant to White v. State. With regard to all other claims, this Court finds Applicant has not established any violations that would require this Court to grant further relief. Counsel is presumed to have rendered effective assistance and Applicant cannot overcome that presumption. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.


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IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Within **thirty (30) days** of service of this Order, counsel for Applicant must file a notice of appeal to secure the appropriate review of Applicant's conviction. Counsel and Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986), and Rule 243(i), SCACR, for the appropriate procedure for securing appellate review; and
3. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12th day of December, 2017.



 J. DERHAM COLE.
 Presiding Judge
 Seventh Judicial Circuit

_____, South Carolina

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 M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

December 12, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Kendal Jones
Applicant # *282575*

7TH JUDICIAL CIRCUIT

CASE # *2011CP42-5486*

vs
Shel
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Order of Dismissal*
In this action dated *12-12, 2017* on *12-12-17*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valeri Giordano
Lindsay McCoy
Charles Rollins

12-12-17
(Date)

Carrie Seay
(Signature)

357

WITNESSES

Spartanburg Department of Public Safety

- 1. SENTENCE MADE
- 2. REPORT MADE
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURE
- 7. ASSESSMENT FINALS MADE **ARMED ROBBERY**
- 8. TRAFFIC VIOLATION COPY

Count one-M088031
Count two & three- Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 5-6-10

VERDICT

Guilty Guilty Guilty

Adam Williams 3-10-11
Foreperson of Petit Jury
Date:

DOCKET NO.

10-GS-42-2630(A)(B)

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 17 2010

TERM

THE STATE
vs.

Kendeal Jones

Indictment for

COUNT ONE, TWO, & THREE -ARMED
ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAY 10 PM 1:40

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 06 2010, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE-ARMED ROBBERY

That the Defendant, Kendeal Jones, did in Spartanburg County, on or about June 11, 2009, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, 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 feloniously take from the person or presence of Terrance Moates, by means of force or intimidation goods or monies of Terrance Moates, described as follows: cash and/or cell phone, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

COUNT TWO-ARMED ROBBERY

That the Defendant, Kendeal Jones, did in Spartanburg County, on or about June 11, 2009, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, 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 feloniously take from the person or presence of Rashawn Middleton, by means of force or intimidation goods or monies of Rashawn Middleton, described as follows: cash and/or cell phone, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

COUNT THREE-ARMED ROBBERY

That the Defendant, Kendeal Jones, did in Spartanburg County, on or about June 11, 2009, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, 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 feloniously take from the person or presence of Nelson Middleton, by means of force or intimidation goods or monies of Nelson Middleton, described as follows: cash and/or a cell phone, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), 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.


 DEPUTY SOLICITOR