

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG 28 2018

APPEAL FROM GREENVILLE COUNTY
R. Keith Kelly, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No.: 2015-000517
2018-UP-147

The State,

Respondent,

v.

Courtney Ray Mitchell,

Petitioner.

**APPENDIX
FOR PETITION FOR CERTIORARI**

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ATTORNEYS FOR RESPONDENTS

August 23, 2018

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ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

APR 05 2017

SC Court of Appeals

Appellate Case No: 2015-000517

THE STATE

RESPONDENT,

v.

COURTNEY RAY MITCHELL

APPELLANT.

AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

) COURT OF GENERAL SESSIONS
) 2013-A-23-20602021
)
)
)

ORIGINAL

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.

) TRANSCRIPT OF RECORD
)
)

COURTNEY RAY MITCHELL)

DEFENDANT)

January 16, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

JAMES A. PRICE, ESQ.
Attorney for the State

DONALD L. SMITH, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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There were no witnesses.

There were no exhibits.

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Certificate of Reporter 8

1 THE COURT: All right, I'll be happy to hear
2 from you.

3 MR. SMITH: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. SMITH: Your Honor, I'm here on behalf of
6 Courtney Mitchell who is the Defendant in an
7 intimidation of a witness case. The case that he's
8 alleged to have intimidate the witness on is a breach
9 of peace case that was brought in Municipal Court in
10 Greenville.

11 THE COURT: Yes, sir.

12 MR. SMITH: That was a year and a half ago. I
13 requested a speedy trial but every time I talked to
14 Municipal Court, it had disappeared from their
15 records. I don't know why or how.

16 THE COURT: Yes, sir.

17 MR. SMITH: But I will say that I feel very
18 confident in that case. And I don't believe there
19 was probable cause for that case. And I don't
20 believe there's probable cause for this case based on
21 the fact, the breach of peace, no one ever told him
22 that they were offended by what he was talking about
23 or anything of this sort. In this case, no one --
24 the lady that's alleged to have been intimidated
25 never told her coworker, friend, that she didn't want

1 him texting or her calling her. So, if that's not
2 the case, I don't know how my client is to know that
3 he's not allowed to text her, not allowed to call
4 her. And when I say friend, I mean that's a term
5 that's used loosely. However, he had had a company
6 kind of picnic in which she was at his house two
7 weeks before. He had no reason to believe that he
8 was not allowed to call.

9 The whole purpose of this hearing, however, is
10 to simply stay the intimidation case until after the
11 breach of peace case. Because inherently the
12 witness -- the intimidation case says that there's
13 another case involved. And I believe it's highly
14 prejudicial. Second of all, there is no prejudice to
15 the State whatsoever in allowing the chronological
16 events to take place. I.E. either breach of peace
17 first and then the second being the intimidation
18 case. I don't see any reason why that can't be
19 accomplished.

20 THE COURT: Okay.

21 What's the position of the State?

22 MR. PRICE: Judge, Your Honor, first I can clear
23 up the breach of peace charge. It was originally
24 charged as breach of peace high and aggravated and it
25 was up in general sessions. You know, depending on

1 who you ask, breach of peace high and aggravated
2 either doesn't exist or it does but it's only a 30
3 day offense.

4 THE COURT: Yes, sir.

5 MR. PRICE: Anyway, that is still pending in the
6 solicitor's office. It's not in Municipal Court.
7 The State does not intend to go forward on the breach
8 of peace charge because it's only a 30 day offense
9 when we have the intimidation charge which is 10
10 years. Obviously, we're going to go after the bigger
11 fish.

12 THE COURT: Yes, sir.

13 MR. PRICE: On the breach of peace, just want to
14 let you know that we will dismiss it as part of a
15 plea agreement and try to kill two birds with one
16 stone so to speak. And in terms of the Defendant's
17 guilt or innocence in the breach of peace charge,
18 Judge, it doesn't matter. The fact that there was a
19 witness in a pending criminal charge against the
20 Defendant, he sent some threatening text and also
21 packet that -- with some items that the victim
22 determined to be threatening with him saying I have
23 guns and I know where you live and I know where your
24 family lives.

25 THE COURT: Okay. So, the solicitor's office is

1 prosecuting both the breach of peace and the
2 intimidating of a witness?

3 MR. PRICE: We have both cases up in general
4 sessions, Your Honor.

5 THE COURT: All right.

6 MR. PRICE: The solicitor's office has both but
7 we only intend to go forward on the --

8 THE COURT: I know --

9 MR. PRICE: Intimidation charge.

10 THE COURT: I understand.

11 MR. PRICE: I just want to clarify.

12 THE COURT: I understand exactly what you're
13 saying. But y'all are handling both cases?

14 MR. PRICE: Yes, sir.

15 THE COURT: Okay. All right. And I recognize
16 they can exercise that prosecutorial discretion and
17 what to proceed with and when to proceed with it.

18 Mr. Smith, I'm going to respectfully deny the
19 motion. You know, I do think that it's a matter of
20 prosecutorial discretion as to which case and what
21 order they bring it. Particularly, when they have
22 them both in general sessions court. I'm not
23 necessarily -- I don't necessarily disagree with the
24 way you would like to proceed. But I think
25 ultimately it's a matter of discretion by the

1 prosecution and what order they wish to proceed on
2 the outstanding charges.

3 MR. SMITH: I was under the impression from what
4 he just said that they're not pursuing the breach of
5 peace.

6 THE COURT: That's what I heard. That's what I
7 heard. And, you know, that may give you some
8 indication of which case you need to prepare on.

9 MR. SMITH: Yes, sir.

10 THE COURT: Okay. All right. Good luck to you,
11 sir.

12 MR. PRICE: Thank you, Your Honor.

13 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

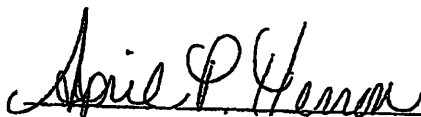
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 16th day of January, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 16, 2015



APRIL P. HERRON, Court Reporter

COURT OF GENERAL SESSIONS
2013-GS-23-08607

TRANSCRIPT OF RECORD

vs.

COURTNEY RAY MITCHELL,
DEFENDANT.

February 9, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE KEITH R. KELLY, JUDGE;

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

DONALD L. SMITH, ESQ.
Attorney for the Defendant

ANDREW MATHIAS, ESQ.
Attorney for UPS

CHERYL A. SMITH
Circuit Court Reporter

P R O C E E D I N G S

THE COURT: Mr. Smith, your motion.

MR. SMITH: May it please the Court.

THE COURT: Yes, sir.

MR. SMITH: The defendant has made ---

MR. MATHIAS: Your Honor, actually, I think it's my motion.

THE COURT: Oh, I'm sorry.

MR. MATHIAS: I don't believe he has anything pending.

THE COURT: Okay. All right. Your motion then.

MR. MATHIAS: I'll hand up a motion to quash filed by UPS on August 12, 2014. My name is Andrew Mathias from Nexsen Pruet on behalf of UPS.

THE COURT: Thank you.

MR. MATHIAS: I don't know what, if anything, you know about this matter.

THE COURT: I don't know anything about it.

MR. MATHIAS: Then I'll start at the beginning but be quick. Mr. Smith represents Courtney Ray Mitchell. Mr. Mitchell used to be employed by UPS. He went out on disability. At a lunch in the summer of 2013, he ate with four employees of UPS, and the allegations are that he threatened to kill the superiors and actually made threats against the people at the lunch and was disrupting the restaurant. He was arrested for breach of peace. I think

1 there was a mental evaluation done. He was released
2 sometime thereafter.

3 He sent a package -- the allegations are, again, he
4 sent a package to UPS directed to one of the individuals
5 that was at the lunch. That was part of the reason he was
6 arrested. It contained things such as a concealed weapons
7 permit, receipts from locations that were nearby the
8 individual's homes and some of the family members' homes.
9 He is going to be tried on Thursday this week February 12th
10 for intimidation of a state's witness. He was arrested for
11 that subsequent to sending the package to UPS.

12 If I can, I've had about three hours' notice for this
13 and I'm glad to be here, but there's quite a bit of history
14 to this issue of the subpoenas so I figured I'd distill it
15 down as much as possible. Right there you've got the trial
16 of this matter is on February 12th of this week, the
17 statute regarding the intimidation of a witness elements,
18 and then if you flip to the next page, this is sort of a
19 timeline.

20 On August 28th, that's just after I was retained to
21 represent the victims in this case, we petitioned for eight
22 restraining orders for the victims. Those were issued by
23 Judge Fisher on September 23rd. Two days later, Don Smith,
24 Mr. Smith, serves eight subpoenas directed to UPS,
25 purporting to serve them. I just received it in the mail.

1 I don't know if it went anywhere else.

2 And he asks for -- there's a description right there.
3 I don't need to go into it, but back on the first page
4 there's a description of all the information he is seeking.
5 And then he also filed a motion to vacate the orders of
6 protection. UPS filed a motion to quash. It seemed to me
7 that that was just harassment for having received the
8 restraining orders. I don't know what his motivations
9 were.

10 But then Mr. Smith filed a motion to compel, UPS filed
11 an amended motion to quash, that should say, and then the
12 defendant filed a second amended motion to compel. And
13 then there was a hearing held before Judge Miller on
14 July 11th. I'd be happy to hand up that entire transcript,
15 if you like, but I don't think I need to. Page 4 has the
16 pertinent excerpts from the transcript. That was where
17 Judge Miller took up Mr. Smith's motion to compel.

18 And if you'll just look at the bottom after Mr. Smith
19 explained why he wanted what he wanted, Mr. Galyean, who's
20 my co-counsel, said, "I think the defendants need to show
21 some sort of reasonable showing of why all these people's
22 401(k) information and things of that sort would have some
23 bearing on this case."

24 And the Court, Judge Miller, just said, "Yes. I would
25 agree with them. This is way overbroad, so I'm going to

1 deny your motion." That's the end of the transcript. I've
2 got the original if you want to see it.

3 Then 11 days later I got a letter with the same
4 subpoenas. The language has changed a little bit. Page 1
5 shows you the differences. And Mr. Smith represented to
6 me, I wasn't at the hearing, that pursuant to Judge Miller,
7 he is paring down his materials requested. I went back and
8 read the transcript. That's not in there anywhere. So I
9 filed the motion to quash on August 12, 2014, which is the
10 only pending motion. So that's why we're here on my
11 motion.

12 Then fast-forward to January 27th. I guess that was
13 two weeks ago. I know this case is set for trial this
14 coming Thursday. Again, I received just in the mail, not
15 will you accept service, nothing, just in the mail two
16 subpoenas, one which is the exact same subpoena he had
17 filed -- or not filed, he had sent to me for Gina Jones.
18 She's one of eight victims. And he's seeking the exact
19 same stuff in that subpoena that Judge Miller had before
20 him and he denied.

21 So I said, "That's off limits." And I e-mailed him
22 the day I received them, said, "That's off limits. I'm
23 confused. Tell me what's going on." And, again, if you
24 want to see the correspondence, you can flip to page 5 and
25 6. This is cut and pasted for your ease of reading.

1 But the day I received the subpoenas, knowing that the
2 trial was coming up fast, I said, "I got your subpoenas.
3 You -- still you have to serve them. Please let me know if
4 I'm missing something."

5 He e-mails back and says, "You do that, you're a joke.
6 I can't ask for the accuser's personnel file?" some more
7 uncivil stuff. He says that I'm a marionette.

8 I say in response to him 12 minutes later, "I remain
9 willing to discuss the issues."

10 He replies back, "There's no excuses this time."

11 I reply back, "Let's talk about Mitchell's file when
12 you've -- Mitchell's file, which you never asked for until
13 today." I then later said, "Please call me tomorrow to
14 discuss."

15 He says, "There's no negotiation with regards to these
16 two items. I care about one person and one person only.
17 Good night, sir." That was the 27th.

18 The subpoena purported to have a due date of
19 February 2nd, so I reached out to him again, said, "I'm
20 touching base," and lists, you know, UPS's position, the
21 third one being, "I'm ready, willing and able to discuss
22 the subpoena regarding Mitchell's personnel file but
23 haven't heard from you on that topic." And then there's
24 some more fairly uncivil banter. And he hasn't reached out
25 to me.

1 UPS is not standing in anybody's way. We're ready,
2 willing and able to discuss responding to validly issued
3 subpoenas seeking relevant information. The one, Gina
4 Jones, has already been ruled on. The Mitchell isn't --
5 well, his client, I just haven't gotten a call back.

6 THE COURT: All right.

7 MR. SMITH: May it please the Court. I appreciate
8 opposing counsel going through out interaction.

9 I'll begin by saying first there were nine motions
10 filed that Judge Miller ruled on, I believe, and his order
11 says "it." That's not plural. That's one. In addition,
12 when he said it was overbroad, I had subpoenaed Aetna, UPS
13 and all -- a lot of things that I believe are pertinent to
14 this, because I believe that this is backed by UPS and UPS
15 is the driving force behind it. I mean, the idea that this
16 particular arrest was performed by, oh, a Greenville
17 officer but who was working for UPS at that time, so
18 they're one and the same, the government and UPS, and I
19 want to see that.

20 So the breach of peace case that he spoke of earlier,
21 they never brought that to trial because there's no breach
22 of peace. And I've asked for speedy trials and everything
23 all along, never given the opportunity to do that. Now I
24 understand they're not going to bring that. So the case
25 that he's allegedly intimidating a witness they're not even

1 pursuing.

2 The victim, intimidation of a witness, is so --
3 there's nothing there. And, Your Honor, I've prepared some
4 excerpts from the preliminary hearing wherein the officer
5 says, "I don't know what the things meant," and then
6 there's ten pages of transcript. Reading this, this lady
7 goes off. I think she's been watching too much TV.
8 There's assertions that there may be a bomb in a leaf
9 blower, and on and on and on. There's a -- there was a
10 nursery card -- a business card that she alleged that she
11 lived in Anderson County ten years ago near that place, so
12 that means that he's coming to get me. It's so attenuated,
13 it's mind-boggling.

14 So with that in mind, no evidence, the officer says, I
15 don't know. It's all about what she says. The idea of not
16 being able to see what her personnel file is like, the idea
17 of maybe she's been passed over several times, never been
18 promoted, and now she's helping out the team getting rid of
19 a guy on disability.

20 Now, I've done research and research in cases. UPS is
21 not very pleased with ADA and things of that nature and
22 have a lot of suits going on with those. So that plays
23 into my idea that UPS is -- excuse me, please -- just put
24 -- backing this sham of a case. I mean, that's the way I
25 see it. Why would you need to intimidate a witness of a

1 breach of peace, meaning it's a ticket, first of all? I
2 mean, that's the logical question. But then when there's
3 other people that were involved and he specifically tells
4 them by letter and by no trespass, he says, "You're not my
5 friend anymore because you were part of that -- part of
6 those people that allegedly said I was breaching the
7 peace," and he doesn't send it to this person who he refers
8 to as his sister, where is the intimidation? There's no
9 one who can say anything. They don't know, so we'll just
10 charge him with intimidation of a witness. I'm ready to
11 try that case.

12 However, the idea that I can't see what's behind her
13 makes it impossible for me to defend. I mean, there's no
14 information, you know. And I believe that it's certainly
15 related to her position because my client was getting
16 commendations. She wasn't, you know. And so at the very
17 least, it's touching and concerning, and my client has a
18 right, I believe, of due process.

19 And I don't understand how anybody's going be
20 prejudiced by him having his own file -- his own file. And
21 I did request -- I subpoenaed his file when I subpoenaed
22 everybody else's file, so I don't know where that's coming
23 from. But ---

24 MR. MATHIAS: I don't believe that's true. I'm happy
25 to be corrected.

1 THE COURT: He's indicated -- and I'm not ruling, but
2 he's indicated that he's willing to discuss your client's
3 file, but he hasn't heard back from you. Is there a
4 problem with him getting his own personnel file?

5 MR. MATHIAS: I think UPS's hesitation -- and this is
6 a conversation I would have liked to have had -- is not
7 giving him his own personnel file. I think it's we don't
8 want to create a precedent of turning things over without
9 validly served subpoenas and things of that nature. It's
10 certainly the same scope that he was seeking for the other
11 employees, but I do recognize the distinction between his
12 own client's file and the witness's file.

13 I just want this put to bed so the trial can go
14 forward on Thursday. I wanted to talk. I have no idea
15 what to do.

16 THE COURT: Go ahead, Mr. Smith. I didn't mean to cut
17 you off.

18 MR. SMITH: First of all, I guess, the not serving
19 right, obviously, I'm ignorant. I've served them -- served
20 the subpoenas certified mail to the attorney for the people
21 he represents, so I guess I don't understand.

22 MR. MATHIAS: I never got anything certified. Do you
23 have a receipt?

24 MR. SMITH: I don't have it, but I did the last time.
25 I'll bring it to trial.

1 THE COURT: I'll tell you what to do. Anybody who
2 wants to give me anything, get it to me this afternoon or
3 tomorrow. We've already started the trial, and the jury's
4 back there behind the doors waiting on us right now. So if
5 anybody wants us to have anything, send it to Adrienne, my
6 law clerk, on the e-mail and I'll consider it and we'll get
7 you a decision one way or the other up or down. I guess if
8 you can get it by tomorrow -- you can hand up anything you
9 like, Mr. Smith, but make sure you give a copy to opposing
10 counsel.

11 MR. SMITH: I gave Mr. Price one earlier.

12 THE COURT: All right.

13 MR. MATHIAS: I think he meant me, Your Honor. What
14 is that?

15 THE COURT: It's called a motion to compel.

16 MR. MATHIAS: Is that a new one?

17 THE COURT: It looks like a subpoena. Looks like
18 several subpoenas and maybe a piece of a transcript.

19 MR. MATHIAS: Are these new subpoenas or are these ---

20 MR. SMITH: No. These are two that I just -- Mr. --
21 Ms. Jones.

22 That was part of my thing. I issue a subpoena, and he
23 wants to talk about it. Well, a subpoena is very clear. I
24 don't understand what we've got to talk about.

25 MR. MATHIAS: Mr. Smith, I can't just turn over UPS

1 documents without a validly served subpoena, and I was open
2 to talk about it.

3 MR. SMITH: Sure. Understood.

4 THE COURT: Well, more than that, Mr. Smith, I'm going
5 to go look, and as you well know, I was a criminal defense
6 lawyer for 25 years before coming to this job. But we
7 don't have discovery in state court. We have it in Federal
8 court for criminal defense, but you don't have discovery in
9 state court. Do you understand that? I mean, you don't
10 have subpoena power so that you -- I know I'm on the record
11 so I'm going to go out here, but I've got some good defense
12 lawyers in the back back here. You can subpoena something
13 through the courtroom, but you don't have -- you can't
14 subpoena documents in discovery as I'm aware of.
15 Gentlemen, you have to be careful with that.

16 Jake?

17 MR. ERWIN: Judge, I think we have clocked -- I don't
18 know. We take our subpoenas and get them clocked at the
19 clerk's office. I think they're valid once the clerk signs
20 off on them or if you sign off on them at that time.
21 That's all I got.

22 THE COURT: But not a signed by a lawyer. That's in
23 civil court, not in criminal court.

24 MR. SMITH: Those are clocked.

25 MR. MATHIAS: These were signed by the clerk.

1 THE COURT: The clerk? Okay. But even still, you
2 can't go out like -- anyway. I'll be quiet till I do some
3 research. Send it to me. But it's limited. It's very
4 limited in state court. It's not in Federal court. I
5 never understood why three streets down I can do a lot of
6 things I couldn't do in state court. I see the solicitor's
7 office smiling back there.

8 Can you get it to me by tomorrow?

9 MR. SMITH: Yes, sir.

10 THE COURT: No later than the end of the day. How
11 about that? I'll give you a little time here. And make
12 sure you swap back and forth anything. Whatever I get,
13 I'll look at tomorrow.

14 MR. SMITH: Yes, sir.

15 THE COURT: Anything else?

16 MR. SMITH: Thank you, sir.

17 *****END OF TRANSCRIPT OF RECORD*****
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF GREENVILLE)
5
67 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of General Sessions for
13 Greenville County, South Carolina, on the 9th day of
14 February, 2015.15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
1718 May 6, 2015
1920 
21

22 Cheryl A. Smith, CVR-M

23 Court Reporter
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25

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2013-GS-23-08607

STATE OF SOUTH CAROLINA,

vs.

COURTNEY RAY MITCHELL,
DEFENDANT.

TRANSCRIPT OF RECORD

February 12, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE KEITH R. KELLY, JUDGE; and a jury.

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

JAMES HARDY PRICE, IV, ESQ.
Assistant Solicitor

DONALD L. SMITH, ESQ.
Attorney for the Defendant

CHERYL A. SMITH, CVR-M
Circuit Court Reporter

STATE OF SOUTH CAROLINA VS COURTNEY RAY MITCHELL

	<u>E X H I B I T S</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
		(State's Exhibits)		
1				
2	S-1	CD	4	38
3	S-2	Manila Envelope	4	48
4	S-3	Alcatel Cell Phone	4	61
5	S-4	Casio Cell Phone	4	61
6	S-5	Samsung Cell Phone	4	61
7	S-6	Check	4	62
8	S-7	6/22/13 Letter To Ken Baca	4	62
9	S-8	6/22/13 Letter to Dwight Inman	4	62
10	S-9	Handwritten Address	4	62
11	S-10	Handwritten Note	4	63
12	S-11	7-Eleven Receipt	4	63
13	S-12	Whitten's Business Card	4	63
14	S-13	Concealed Weapon's Permit	4	63
15		(Defendant's Exhibits)		
16	D-1	6/22/13 Letter to Dwight Inman	74	124
17	D-2	Penetration and Conversion Territory Bid Growth Report	78	124
18	D-3	July Top Performer Certificate	79	124
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20	D-5	August Top Performer Certificate	79	124
21	D-6	Incident Report	99	99
22	D-7	Intimidation of Witness Testimony	112	124
23				
24				
25				

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1 jury. Mr. Smith knows that.

2 MR. PRICE: I just want to make it clear. I don't
3 think Mr. Smith would do that. It's just an issue that
4 we've seen in the 13th circuit.

5 THE COURT: Mr. Smith, you've talked to your client
6 about that, I'm sure, and you've talked to police officers
7 and everybody on your side, but I'm not going to have that
8 in my trial, okay?

9 MR. PRICE: They all know.

10 THE COURT: Anything else?

11 MR. PRICE: Nothing further from the State.

12 THE COURT: Okay. From the defendant?

13 MR. SMITH: Your Honor, with regard to the breach of
14 peace, I don't think it is connecting to the victim in this
15 case. I'd like to hear the voir dire or something where
16 she can tie it in, because there's nothing that ties the
17 two together. There's nothing ever pointed at her, no
18 previous statements against her, no negativity. So I don't
19 -- there's nothing there. So based on that, I don't think
20 it should be part of the intimidation charge.

21 THE COURT: Mr. Price?

22 MR. PRICE: Your Honor, the breach of peace is part of
23 the res gestae of the intimidation case. Just to give you
24 a little bit of background on this, the defendant and my
25 victim, along with two or three other co-workers, were out

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1 at lunch. This defendant started making racial remarks,
2 talked about how he's -- talked about hammering genitalia
3 and how he's going to go into the repo business of repoing
4 people. He also talked about how, if he were running
5 things, he'd have his boss carried out in a box, how we
6 first saw these military grade assault weapons, sniper
7 rifles and armor-piercing bullets. Roughly 30 days later,
8 my victim gets a packet that contains this defendant's
9 concealed weapons permit, a business card from a plant
10 nursery that was right up the road from where she used to
11 live, and a receipt from a 7-Eleven in Greenville County
12 that was right down the road from the victim's mother's
13 house. And the last contact she had with him was, you
14 know, I'm going to take the boss out, I've got all these
15 weapons.

16 When she saw it, she will testify that she thought
17 that the defendant was sending her a message saying, "I
18 have guns. I know where you live. I know where your
19 family lives." That's intimidation. There's no logical
20 reason to send someone your concealed weapons permit.

21 THE COURT: Assume that he offers that, Mr. Smith,
22 what's not admissible about that?

23 MR. SMITH: May it please the Court, first of all, it
24 was an expired permit. There were three phones. It was
25 simply the wrong thing that went to her. But she is the

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1 one that created this fantasy of some sort.

2 The nursery card that he's talking about was in
3 Anderson County, and she used to live by there 2001 to
4 2003, I believe she testified to. That's not even close.
5 Then the grandmother, she said one time it was next door
6 and then it's a quarter-mile. Well, Greenwood is five
7 times the size of Abbeville. So he was going to Columbia.
8 That's the way to get to Columbia.

9 So these things are just creations. There's no --
10 there's nothing in the breach of peace. He never said
11 anything negative to her, so I don't know where that's
12 coming from.

13 THE COURT: Well, let me say this. You guys help me.
14 You all are smarter than I am here, but I'm only ruling on
15 the admissibility. I'm not weighing the evidence. That's
16 for these 12 folks over here, right? Am I missing
17 something here? I'm sitting as the judge of the law, not
18 as the judge of the facts. I've got a jury for that.

19 MR. SMITH: Yes, sir. I understand that.

20 THE COURT: So it's admissible. I mean, I haven't
21 heard anything that makes it inadmissible. If you have a
22 rule on that, Mr. Smith, I'm happy to -- please, give me
23 that rule.

24 MR. PRICE: Your Honor, if I may, I have a case here,
25 State v. Pressler, that kind of touches on this issue.

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1 THE COURT: Okay. Please hand that up. I told you
2 you fellows are smarter than I am.

3 MR. PRICE: Your Honor, in this case, the defendant
4 was charged with criminal sexual conduct. He sent a letter
5 to the witness, and the Court found that the fact that he
6 was charged with criminal sexual conduct could come up. It
7 goes to the res gestae of the case of intimidation of a
8 witness and allows the witness to explain why she felt
9 intimidated, which is similar to this case. Ms. Jones
10 should be able to testify as to why she felt intimidated by
11 this concealed weapons permit and the business card and the
12 receipt.

13 THE COURT: Mr. Smith?

14 MR. SMITH: In this case, it was a criminal sexual
15 conduct, he said. It was against the same person that the
16 alleged intimidation was for. And in our case, we have a
17 very ambiguous breach of peace. There's nothing directed
18 to her at all, so it's not the same. All it is is a prior
19 bad act. And they have not brought that case, so that way
20 they could bring it in the back door. Well, they didn't
21 bring it, so I don't think it should come in. The only
22 reason it's being brought in is for the bad act part.

23 THE COURT: Well, let me ask this. Are you seeking to
24 bring in a prior charge or are you just seeking to bring in
25 the facts?

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1 MR. PRICE: Your Honor, we'll leave that to your
2 discretion to rule on. I mean, the fact that there was a
3 pending case against the defendant that the victim was a
4 witness to is relevant to the case. It's one of the
5 elements needed proven. Whether or not the State will
6 mention that it's a breach of peace or that will come out
7 is up to the Court to decide. But the State is not
8 planning to try that breach of peace here today in this
9 courtroom. It has to be referenced to as far as the res
10 gestae. That's about it. It will likely be touched,
11 just . . .

12 THE COURT: Okay. I agree with Judge John Hayes over
13 in York County, and it looks like Judge Anderson wrote this
14 opinion. Am I reading that correctly, Mr. Price?

15 MR. PRICE: I believe you are, Your Honor.

16 THE COURT: Along with Judge -- now Justice Beatty,
17 then Judge Beatty on the Court of Appeals and Judge Short
18 is still there, Paul Short.

19 All right. I'm going to allow the State to touch on
20 it lightly, okay, the same as Judge John Hayes did
21 articulate that the defendant was charged without
22 mentioning any really of the details. Now, the facts are
23 the facts, okay? But let's don't belabor the point that
24 there was a charge.

25 MR. PRICE: All right. So is the State allowed to

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1 mention that the defendant was charged with breach of peace
2 or just leave it as he was charged with ---

3 THE COURT: I think you can say breach of peace, but
4 don't go past that. Just move right along.

5 MR. PRICE: Yes, sir.

6 THE COURT: Okay. Anything else, Mr. Smith?

7 MR. PRICE: Your Honor, also, a little more
8 clarification. How far is my witness going to be able to
9 go into the events of what occurred that day?

10 THE COURT: Well, now, your witness can testify to all
11 the events and all the facts that your witness chooses to
12 testify, but I think I agree with Judge Hayes and the Court
13 of Appeals in this 2005 opinion. You have to establish
14 that there was some charge, and in that case, it was a CSC.
15 This is a breach of peace. But I think, also, it may well
16 be limited there to just go off this very touching on it
17 light. There was a charge. Now, the facts, whatever
18 happened, I'm not limiting anybody to testify about what
19 happened. Those are facts.

20 MR. PRICE: Thank you, Your Honor.

21 THE COURT: Yes, sir. Mr. Smith?

22 MR. SMITH: I don't have anything further.

23 THE COURT: Nothing further? Here's what we're going
24 to do. We're going to take 15 minutes. We've been an hour
25 and a half now, so let's take 15 minutes, give everybody a

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1 chance to use the facilities, get that last phone call in,
2 whatever you need to do. We're going to come back in 15
3 minutes, and I'm going to speak to the jury for a few
4 minutes, and we're going to call the first witness, okay?
5 Thank you, gentleman.

6 MR. SMITH: Your Honor?

7 THE COURT: Yes, sir.

8 MR. SMITH: I filed a motion late in the game here, a
9 motion for dismissal.

10 THE COURT: I did see it. You want to argue that,
11 Mr. Smith?

12 MR. SMITH: I do, sir.

13 THE COURT: I'll tell you what. We'll argue when we
14 get back. Let's take 15 minutes.

15 (WHEREUPON, a recess is taken at 10:28 a.m.)

16 MR. SMITH: Yes, sir. This motion is based on
17 difficulties getting the discovery from the State. And to
18 point out specific instances where I was given a video,
19 let's see, on January 15th for something that occurred
20 July 26, 2013, and when I was provided it, there's gaps in
21 the video, and they didn't offer me the entire video. They
22 just gave me the gapped segments. Also, with regard to the
23 video surveillance, it was my understanding that because it
24 was UPS -- and it wasn't the State, but, of course, I did
25 get it, so why can't I get all of it?

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1 The other thing is, UPS is essentially an agent of the
2 State in this instance. The officer that got the warrant
3 for my client was working for UPS and was being paid by UPS
4 and did their bidding by offering or dealing with the
5 warrant on my client. So he also said in his deposition or
6 in the preliminary hearing that he, in fact, used that
7 video as a part of his investigation. So with that in
8 mind, it's clearly discoverable.

9 THE COURT: Mr. Price?

10 MR. PRICE: Yes, sir, Your Honor. The State had
11 actually requested that video long ago. It was not until I
12 was preparing for trial that I realized that I had not
13 received it since asking for it. I called up UPS. I asked
14 them for a copy of the video, and they gave it to me. And
15 as soon as I received a written copy of it, I turned it
16 over to Mr. Smith. It was not in the State's possession.
17 It was not in the solicitor's office possession. It was
18 not in the possession of law enforcement. It was in the
19 possession of UPS.

20 THE COURT: But he does have it now?

21 MR. PRICE: He does, Your Honor. He has the same
22 exact copy I have. He sees the same things I see. To my
23 knowledge, there is no other video out there and no other
24 information.

25 THE COURT: Okay. And he was given that on

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1 January 15, is that right, of 2015?

2 MR. SMITH: Your Honor, as I said, there's two gaps in
3 this four-minute video, and they are 48 and 49 seconds
4 apiece. Why do we have to take that out?

5 THE COURT: I don't know. Let me ask Mr. Price.

6 Mr. Price, is there some reason it has a gap in it?
7 Do you know that?

8 MR. PRICE: I don't know, Your Honor. I'm not
9 familiar with this system. I plan to put up a witness who
10 is familiar with it, and he can testify on cross to that.

11 THE COURT: Okay. But that's all you have. You're
12 not withholding anything?

13 MR. PRICE: No, sir, Your Honor.

14 THE COURT: I wouldn't think you would, Mr. Price. I
15 just have to ask you. You have given the defendant
16 everything that you have.

17 MR. PRICE: Yes, sir, Your Honor.

18 MR. SMITH: And staying with that, the officer who
19 testified at the preliminary hearing stated that he saw the
20 leaf blower and the package or whatever being exchanged.
21 That's not on that video.

22 THE COURT: Oftentimes testimony differs from the
23 video, but we'll get to the facts on that. That's a
24 factual issue. At this point, the motion is denied as to
25 the video. I mean, it certainly goes to the credibility of

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1 it and to the weight of it, and I'm going to allow you to
2 argue that, Mr. Smith, certainly.

3 MR. SMITH: Yes, sir.

4 THE COURT: All right.

5 MR. SMITH: I received a supplemental incident report
6 on February 10th for the incident that happened -- or that
7 was released, signed off on August 1, 2013.

8 THE COURT: Okay.

9 MR. SMITH: So 18 months it took him to give me the
10 rest of the incident report.

11 THE COURT: But tell me you do have it, though, right?

12 MR. SMITH: Sure. We got it 48 hours ago.

13 THE COURT: Got it how much?

14 MR. SMITH: 48 hours ago.

15 THE COURT: Okay. You've reviewed it?

16 MR. SMITH: Yes, I have.

17 THE COURT: Okay. Mr. Price?

18 MR. PRICE: Your Honor, just for clarification, the
19 exhibit that I have in my motion for Mr. Smith is the
20 original incident report, not the one we turned over. The
21 one that we turned over was actually the extraction report
22 that literally just says on July 29, 2013, two officers
23 picked up the listed subject from Abbeville County, and has
24 the starting and ending mileage. This was not in my
25 investigating officer's file. The Greenville City Warrant

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1 Division didn't even have a physical copy in their file.
2 It was in the computer system. Just I try to be very
3 diligent. As soon as I got a copy of that, I faxed it and
4 mailed it to Mr. Smith.

5 THE COURT: And that's the February 10th?

6 MR. PRICE: Yes, sir. And I can pass up a copy of
7 that to you if you'd like to see it just to review.

8 THE COURT: Well, he says he's had it and he's
9 reviewed it.

10 MR. PRICE: All right.

11 MR. SMITH: And it also says that my client was on
12 drugs.

13 THE COURT: Again, I don't know the testimony --
14 whatever the testimony is, you certainly can use it to
15 cross-examine.

16 MR. SMITH: I understand that, sir, but the idea of
17 having that discovery so I can do my own discovery, that
18 was just nonexistent. They keep it for a year and a half.
19 I don't care who has it. The State had it, and I don't.

20 THE COURT: Who says in the report that he was on
21 drugs?

22 MR. SMITH: The little check where it says "drugs."

23 THE COURT: Okay. And the check person on that report
24 is some kind of law-enforcement person, I'm assuming?

25 MR. SMITH: Yes, sir.

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1 THE COURT: And that person is going to testify,
2 Mr. Price?

3 MR. PRICE: No, sir, Your Honor. Not to the
4 extraction. This was the Warrant Division, so when the
5 Greenville City went up to Abbeville where this defendant
6 resides to get him and bring him down to Greenville, that's
7 all this report is.

8 THE COURT: Okay. But if that person is not going to
9 testify, then they're not going to be testifying about any
10 drugs, right?

11 MR. PRICE: That's correct, Your Honor.

12 THE COURT: Okay. So, Mr. Smith?

13 MR. SMITH: I understand, sir.

14 THE COURT: The jury is not going to hear that.

15 MR. SMITH: I understand. But once again, who says
16 it? I don't find anything discoverable if I don't receive
17 this stuff like I should have.

18 THE COURT: Okay. Well, I'm going to caution the
19 solicitor's office in the future to be a little more
20 diligent about getting things to the defense. But it's
21 still admissible. Now, it's not admissible if you don't
22 have a witness to that, Mr. Price.

23 MR. PRICE: I don't plan to introduce this, Your
24 Honor.

25 THE COURT: He's not going to introduce it, Mr. Smith.

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1 MR. SMITH: Yes, sir.

2 The idea that my client has spent like 246 days, I
3 believe, now, to me, that -- in jail, they wouldn't consent
4 to a bond until the Simpsonville mayor apparently tried to
5 intimidate someone, that he got a bond, so they felt like
6 they had to give my guy a bond. The reason I bring this up
7 is because these things that are just accidental or -- they
8 happen, and they're happening to my guy. To me, it goes a
9 long way in showing the purpose. That's probably too
10 strong a word. But the bottom line is, on all these
11 incidents, there's an excuse for every time. Why don't I
12 have this? Why don't I have this in discovery a year and a
13 half into the game?

14 THE COURT: I don't know anything about him not having
15 a bond or --

16 MR. SMITH: Yes, sir.

17 THE COURT: That's certainly not before me. He's on
18 bond now or no? I don't know.

19 MR. SMITH: No.

20 THE COURT: He's not on bond?

21 MR. SMITH: No, sir.

22 THE COURT: But one was set?

23 MR. SMITH: Yes, sir.

24 THE COURT: Okay. I don't have a thing to do with
25 that, but I'm sure a magistrate or a circuit court judge

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1 set that.

2 MR. PRICE: I can kind of fill in the blanks, if you'd
3 like, Your Honor.

4 THE COURT: Okay.

5 MR. PRICE: All right. This defendant was -- I
6 believe originally came before Judge Verdin asking for a
7 bond. That's when we had the -- it was held, a mental
8 health evaluation, competency evaluation. We got that and
9 we were in front of, I believe it was, Judge Gibbons. I
10 can't really remember. This was so long ago. I just know
11 it was a visiting judge. That judge denied bond. He was
12 held without bond until, I believe, April of 2014 when we
13 reached an agreement where he would be out on GPS
14 monitoring, agreed to take his medication follow-up. Well,
15 in, I believe, September of 2014, he was arrested for
16 discharging a firearm right outside a convenience store in
17 Anderson, after seeing this, made a motion to revoke his
18 bond and placed him on the trial docket as soon as
19 possible.

20 THE COURT: Okay. And obviously, that was granted.

21 MR. PRICE: That's correct, Your Honor.

22 THE COURT: Okay. All right. Mr. Smith, he was
23 before the Court on various times when he was not held
24 without being brought before the Court, right?

25 MR. SMITH: Certainly.

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1 THE COURT: Okay. So different judges along the way
2 have made rulings on that, and I'm in no position
3 whatsoever, nor would I ever second-guess one of my
4 brothers or sisters on the bench. That's totally
5 inappropriate.

6 MR. SMITH: I'm not questioning that a bit, sir. What
7 I'm saying is they consented, they could have consented all
8 along, and these accidental holes with regard to discovery,
9 I mean, at what point is it not an accident?

10 THE COURT: I understand some of your frustration
11 about discovery, Mr. Smith. As you well know, for 25 years
12 I was a criminal defense lawyer and tried many cases in
13 this very courthouse. But discovery in criminal court and
14 discovery in civil court are two different animals, as we
15 both know.

16 MR. SMITH: Yes, sir.

17 THE COURT: And I can't help you there. I call your
18 attention to State vs. Miller, State vs. Matthews, State
19 vs. Flood and a TCI case that Judge Mike Nettles heard
20 here. It was upheld. A very good discussion about that in
21 that case. I'm sorry. I can't remember the part of that
22 case. It doesn't matter. I reviewed that early one
23 morning. I was an early riser, and I did some research
24 about 5 a.m., 5:15 a.m. while I was drinking my coffee.
25 But I thought I was right on that, and I submit that I am.

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1 But if I'm not, somebody at some point can tell me that I'm
2 wrong. But I feel comfortable that I am.

3 That TCI case, Judge Mike Nettles was upheld after
4 somebody was indicted in Federal Court in Ohio and then
5 came here and filed a civil case for the purpose of using
6 the civil discovery rules to obtain information in e-mails,
7 as a matter fact, to be used in a criminal case. And our
8 court has said that was absolutely prohibited and
9 inappropriate.

10 So I understand your frustration to some level, but I
11 understand you have everything that Mr. Price has.

12 MR. SMITH: I guess.

13 THE COURT: Well, he certified that, and he's an
14 officer of the Court.

15 MR. SMITH: Yes, sir.

16 THE COURT: So if he withheld something and it comes
17 in, then Mr. Price will have to deal with that with Gervais
18 Street. But he's an officer of the Court, and I have no
19 reason to believe he's not telling me straight.

20 MR. SMITH: Yes, sir.

21 THE COURT: All right.

22 MR. SMITH: There's also -- there was communication
23 between the sheriff's office -- or the city police and the
24 psychiatrist. There were things submitted to the
25 psychiatrist that I wasn't privy to as well as a written

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1 statement -- a written note that referenced a
2 psychiatrist's evaluation. I didn't get that stuff.

3 MR. PRICE: As far as I know, Judge, I don't have it.

4 THE COURT: Well, what is it supposed to say?

5 MR. SMITH: It just says that it came from officer
6 so-and-so, a written note from him, and then there was
7 another one, as well. So both of these were taken into
8 account and are discussed in the doctor's evaluation, yet I
9 don't have them.

10 THE COURT: You don't have the note? You don't have
11 the note either, Mr. Price?

12 MR. PRICE: No, sir, Your Honor. Not that I know of.

13 THE COURT: Is the doctor going to testify?

14 MR. PRICE: The doctor is not going to testify. And
15 like I said, we're not even going to go into the
16 defendant's mental health.

17 THE COURT: Okay. The jury won't know anything about
18 that, Mr. Smith.

19 MR. SMITH: Yes, sir.

20 THE COURT: Are you challenging his competency?
21 Because if you are ---

22 MR. SMITH: I'm not challenging his competency, Your
23 Honor. I'm just challenging the fact that I didn't get
24 discovery.

25 THE COURT: Okay. Anything further?

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1 MR. PRICE: Nothing from the State.

2 THE COURT: Anything from defense?

3 MR. SMITH: No, sir.

4 THE COURT: Okay. We'll have our jury, please.

5 (WHEREUPON, the jury entered the courtroom at 11:00 a.m.)

6 THE COURT: Madam Forelady, any matters from the jury?

7 FORELADY: No, sir.

8 THE COURT: Everything's good?

9 FORELADY: Yes, sir.

10 INTRODUCTORY REMARKS

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, we are about to begin the case of the State of South
13 Carolina vs. Courtney Ray Mitchell. As I told you earlier,
14 Mr. Mitchell is charged with the offense of intimidation of
15 a witness and that this did occur in Greenville County,
16 South Carolina on or about the 26th day of July of 2013. I
17 will explain more about the elements of that offense later
18 in this trial.

19 I also remind you that the charging instrument is the
20 indictment, and that's all it is is a charging instrument.
21 It is of no evidence whatsoever against Mr. Mitchell. None
22 whatsoever. He has entered a plea of not guilty and he is
23 presumed not guilty as he sits here today and will be
24 presumed not guilty until the end of this trial and should
25 you find him guilty beyond a reasonable doubt.

1 sworn in. Place your left hand on the bible and raise
2 your right hand.

3 WHEREUPON,

4 KEITH ERNEST McNEEL

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you. You may be seated.

7 Would you please state your name for the record.

8 THE WITNESS: My name is Keith Ernest McNeel.

9 THE COURT: Solicitor?

10 MR. PRICE: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. PRICE:

13 Q Good morning, Mr. McNeel. How are you?

14 A I'm doing well, thank you.

15 Q Where are you currently employed?

16 A I'm employed with UPS.

17 Q And in what capacity are you employed with UPS?

18 A I'm the supervisor responsible for facilities, safety
19 and security.

20 Q All right. Can you elaborate on your duties and
21 responsibilities, please.

22 A As far as facility maintenance, making sure that the
23 facility is safe, as I also coordinate any security issues
24 or concerns. In addition, I'm also responsible for the IT
25 department.

1 Q All right. And where are UPS's offices currently
2 located?

3 A Currently we're located at 700 Executive Center Drive
4 in Greenville, 29615.

5 Q All right. And how long have they been there?

6 A We've been there since March 28th of 2014.

7 Q All right. And where were they located prior to that
8 date?

9 A Prior to that, we were in the Fluor Daniels Complex at
10 204 Halton Road.

11 Q Okay. And the location on Halton Road, does that
12 place have security cameras?

13 A It does.

14 Q All right. And were they working on July 26th of
15 2013?

16 A They were.

17 Q All right. And do you know who keeps that
18 information?

19 A That information is kept by the Fluor Daniel security
20 group.

21 Q All right. Were you able to obtain any information
22 from them regarding the security footage?

23 A I was. They -- in question I was asked to get video,
24 whatever video that was available for that morning, and I
25 did obtain that.

1 Q All right. And did you watch that video?

2 A I did.

3 Q All right. And what was on that video?

4 A The video showed on the day in question we actually
5 had a 9-1-1 call where we had to have EMS come in to pull
6 an employee who was having some difficulty. So you'll see
7 EMS coming in. It also contains an individual walking into
8 the building carrying a leaf blower and an envelope.

9 Q All right. And did you view this while it was on a
10 server or was it already burned to a CD? How did you see
11 it?

12 A No. This was sent to me, and it was put on a jump
13 drive.

14 Q All right. And was there a time stamp on there?

15 A There was on the video that I saw, yes.

16 Q All right. And were you physically in the office on
17 the morning of July 26, 2013?

18 A Yes, I was.

19 Q All right. And the video that you saw, was there a
20 time stamp that coincided with the events of that morning?

21 A Yes.

22 Q All right. Mr. McNeel, I'd like to show you what has
23 been premarked as State's Exhibit No. 1. Can you tell the
24 Court what that is?

25 A This is a video, and I have signed it, that shows the

1 images -- the video images that I received from the Fluor
2 security.

3 Q Does that contain the entire images you received from
4 Fluor security?

5 A Yes.

6 MR. PRICE: Your Honor, at this time I'd like to move
7 the CD into evidence as State's Exhibit 1 and publish it to
8 the jury.

9 MR. SMITH: Without objection.

10 THE COURT: It is admitted without objection. You may
11 post.

12 (WHEREUPON, State's Exhibit No. 1 was admitted into
13 evidence.)

14 MR. PRICE: Thank you, Your Honor.

15 (Pause in proceedings.)

16 MR. PRICE: I apologize for the delay, Your Honor.
17 This needs a little more time to warm up.

18 THE COURT: That's okay.

19 (WHEREUPON, a portion of State's Exhibit No. 1 was played
20 in open court.)

21 BY MR. PRICE:

22 Q Mr. McNeel, where is this in the office?

23 A This is the entry reception area in the lobby.

24 Q And you recognize the individual sitting down?

25 A I don't recognize the individual other than from the

1 this case?

2 A No.

3 MR. PRICE: All right. Thank you. Please answer any
4 questions defense counsel may have for you.

5 MR. SMITH: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. SMITH:

9 Q Did you write any statements regarding your
10 understanding of this incident?

11 A I did not.

12 Q With regard to this video, how long is it?

13 A You watched what I watched. I would say it's roughly
14 three or four minutes.

15 Q So if I said it was four minutes, you would agree with
16 that, roughly?

17 A Sure.

18 Q There are two gaps in it. Are you aware of that?

19 A That video is how I received it from the security
20 group.

21 Q Who is the security group?

22 A This is the building management.

23 Q Who is the building management?

24 A Fluor Daniels security.

25 Q Were you concerned about the fact there was a

1 48-second gap and a 49-second gap when there's only four
2 minutes of video?

3 A I was not. I didn't consider that a concern.

4 Q So what exactly did we see there?

5 A You saw a man walking into the facility, our building,
6 holding a leaf blower and an envelope in his hands, sitting
7 down. And then in another video, you see EMS coming
8 through, a woman walking out of an elevator, walking back
9 into an elevator.

10 Q The purpose of the ambulance personnel, that has
11 nothing to do with this case, right?

12 A No. It's just part of the video.

13 Q So you could have taken that out if you wanted to,
14 right?

15 A No. I didn't have any control on the video. The
16 video is the way I received it from the security group.

17 Q Or you could have cut that out?

18 A I don't have video editing equipment to do that. This
19 is exactly how I received it from the security group.

20 Q So that was just a -- I withdraw that.

21 When did you acquire the video?

22 A The -- it was probably within a day -- that day or
23 within a day. It's been a while. I was aware of the
24 incident, and I asked the security group, "We had a
25 situation this morning. Could you please get me video,

1 THE COURT: It was asked and answered. Yes, sir.

2 BY MR. SMITH:

3 Q Did you ask for the entire video or a certain segment?
4 Four hours of video that day? Or what did you ask for?

5 A No. I asked for video during -- we had an incident
6 that I needed some video from, and this is what I received.

7 Q And you had no further conversations with them asking
8 for more?

9 A I did not.

10 MR. SMITH: I have nothing further.

11 THE COURT: All right. Anything?

12 MR. PRICE: Nothing further from the State, Your
13 Honor.

14 THE COURT: Thank you, sir. You may step down.
15 Please be careful.

16 MR. PRICE: Your Honor, at this time, the State calls
17 Derrill Bailey.

18 THE CLERK: Mr. Bailey, if you'd come forward to be
19 sworn in.

20 WHEREUPON,

21 WILEY DERRILL BAILEY,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Please state your name for the record.

24 THE WITNESS: My name is Wiley Derrill Bailey.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

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BY MR. PRICE:

Q Hi, Mr. Bailey, how are you?

A Great.

Q Would you please tell the Court where you're employed.

A I work for UPS.

Q And how long have you worked there?

A Nine years.

Q All right. And what is your current position at UPS?

A I am an inside sales representative, and our job is to work with clients in different territories. My territory happens to be Pittsburgh, Pennsylvania.

Q Did you start there or did you have to work your way up?

A I started there.

Q All right. And as an inside salesman, what's your job exactly?

A My job is to maintain our customer base and then also add to the customer base, so provide them with more products and also service.

Q Okay. And were you working on the morning of July 26, 2013?

A I was.

Q All right. And where were you?

A I was at my desk at UPS on the sixth floor of the

1 Fluor Daniel building.

2 Q All right. And can you tell me about the events that
3 occurred that morning?

4 A Well, that morning, one of our HR representatives,
5 Judy, came to my desk and said --

6 MR. SMITH: Objection. Hearsay.

7 MR. PRICE: Your Honor, it's not being offered for the
8 truth of the matter asserted.

9 THE COURT: Not if it's hearsay. I sustain it.

10 BY MR. PRICE:

11 Q As a result of your conversation, what did you do?

12 A I went down to the lobby.

13 Q All right. And what did you see when you got down to
14 the lobby?

15 A There was a gentleman over in the area where the
16 chairs -- the reception area, sitting, and then he stood as
17 I came in.

18 Q Have you ever seen this person before?

19 A I have not.

20 Q All right. Did he have anything with him?

21 A The first thing I saw was a leaf blower.

22 Q And do you recognize that leaf blower?

23 A I did. It was my leaf blower.

24 Q Do you know how he came into possession of your leaf
25 blower?

1 A I was very surprised, but he had to have gotten it
2 from Ray Mitchell. He had taken it -- the leaf blower
3 earlier, and a friend of his was fixing it for me.

4 Q Why did Mr. Mitchell have your leaf blower originally?

5 A He helped me with a project quite a few weeks prior to
6 that. We cut some trees down in my backyard. And in
7 conversation, I was talking -- he mentioned that a friend
8 of his was very good at small engine repair. I said, "I
9 have a leaf blower I got from my father."

10 And he said, "Well, I'll take it to him and he can
11 probably fix it."

12 Q All right. And did this person have anything else
13 with him?

14 A As he left, he also handed me a manila envelope.

15 Q And as a result -- or did you speak to this guy?

16 A I did. You know, he told me had brought --

17 MR. SMITH: Objection, Your Honor. Hearsay.

18 THE COURT: Yes, sir.

19 BY MR. PRICE:

20 Q As a result of your conversation with him, what did
21 you learn?

22 A I learned that he had been sent by Ray with the leaf
23 blower, and then he handed me a manila envelope and said,
24 "You need to give" --

25 MR. SMITH: Objection, Your Honor. Hearsay.

1 THE COURT: Yes, sir.

2 BY MR. PRICE:

3 Q After speaking with this individual, what did you do
4 with the envelope?

5 A I took the envelope back upstairs, and I met with my
6 coach, Gina Jones. And I told her, I said, "We need to go
7 somewhere private." And we went to another office, and I
8 gave her the envelope.

9 Q All right. Before this incident, did you have any
10 prior contact with Mr. Mitchell?

11 A I talked to him on the phone approximately the day
12 prior.

13 Q All right. And what did he say to you?

14 A He said that he had my leaf blower. It was fixed, and
15 he wanted to bring it to me.

16 Q Did he say anything else to you?

17 A He did say, "Some of your friends will be surprised
18 from some papers I have for them. They won't be bothering
19 me on my property."

20 Q All right. And did you look through that envelope?

21 A I did.

22 Q And what did you see?

23 A I saw three cell phones; I saw a concealed weapons
24 card that had his -- Ray's picture on it; there was a
25 check, cash for \$50. I'm trying to think what else. Those

1 things for sure.

2 Q All right. I'm going to show you what is --
3 Mr. McNeel [sic], I'm going to show you what has been
4 premarked as State's Exhibit No. 2.

5 A Okay.

6 Q Can you identify this?

7 A Yeah. Definitely. It's the envelope. I'm sure it
8 is, yes.

9 Q All right. And where do you know that envelope from?

10 A From that -- that morning.

11 Q All right. And is it in the same condition that it
12 was in when you received it thereabouts?

13 A Yes, yes. It was open when it was received. It was
14 not sealed.

15 MR. PRICE: Your Honor, at this time, I would like to
16 move the envelope into evidence as State's Exhibit No. 2.

17 THE COURT: Any objection?

18 MR. SMITH: Oh, no sir.

19 THE COURT: Okay. It's in without objection.

20 (WHEREUPON, State's Exhibit No. 2 was admitted into
21 evidence.)

22 MR. PRICE: Your Honor, in the interest of time, would
23 it be all right if I just pass this around?

24 THE COURT: Certainly.

25 MR. PRICE: Thank you.

DERRILL BAILEY - CROSS BY MR. SMITH

1 Q Did you ever find a reason to?

2 A Well, after I got the leaf blower and the envelope, I
3 did talk to the police officer.

4 Q You talked to the police officer?

5 A Yes.

6 Q Did you talk to Gina Jones about it?

7 A I don't remember his name. It's the gentleman that's
8 sitting at the defense table, Mr. Hop [phonetic].

9 Q Yes, sir. I'm speaking of your co-employee, your
10 co-worker, Gina Jones.

11 A Yes.

12 Q What did she tell you about that leaf blower?

13 A She knew nothing of the leaf blower.

14 MR. PRICE: Objection, Your Honor. Hearsay.

15 MR. SMITH: She's testifying.

16 MR. PRICE: She hasn't testified yet.

17 THE COURT: She's here to testify. Okay.

18 Yes, sir. Go ahead.

19 THE WITNESS: She knew nothing of the leaf blower.

20 BY MR. SMITH:

21 Q When do you believe you approached her?

22 MR. PRICE: Objection, Your Honor. That's
23 speculation.

24 THE COURT: Can you lay a foundation for that,
25 Mr. Smith?

1 MR. SMITH: I don't know when he approached her.
2 That's why I asked.

3 THE COURT: All right. Answer the question.

4 THE WITNESS: Clarify your question, please.

5 BY MR. SMITH:

6 Q What time did you go to Ms. Jones and ask her to go to
7 another room?

8 A After I came back inside. I put the leaf blower in my
9 car, and then I came back inside with the envelope.

10 Q So you had an opportunity to leave the envelope in
11 your car?

12 A No, I did not.

13 Q You did not have the opportunity to do that?

14 A I had the opportunity, but I did not.

15 Q Yes, sir. And so you took it back upstairs to
16 Ms. Jones?

17 A I did.

18 Q And how did that proceed with regard to opening up the
19 envelope and taking inventory?

20 A We went into a private office, and we opened the
21 envelope and looked at what was inside. And at that point,
22 Gina said she was going to take it downstairs to HR. And
23 she left to go down, and I went back to my desk.

24 Q And what was the necessity of taking it down to HR?

25 A Because this has information that was given to her

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1 WHEREUPON,

2 VELMA REGINA CHAPEL JONES

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please state your name for the record.

5 THE WITNESS: Velma Regina Chapel Jones.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. PRICE:

9 Q Hi, Ms. Jones. How are you?

10 A I'm okay.

11 Q You said your full name was Velma Regina Chapel Jones.
12 What name do you go by?

13 A Gina.

14 Q All right. And where are you currently employed?

15 A UPS.

16 Q All right. And what is your position at UPS?

17 A I'm an account manager in Florida.

18 Q All right. And how long have you been working as an
19 account manager in Florida?

20 A Since May of last year.

21 Q And where were you working on July 26th of 2013?

22 A At UPS inside sales in Greenville.

23 Q And what was your job title on that date?

24 A I was team coach.

25 Q As a team coach, what are your duties and

1 responsibilities?

2 A Just lead. I on-board new inside sales reps, train
3 them, kind of show them the ropes, walk them through
4 instructional navigation of the softwares, because there's
5 various softwares and things, listen to phone calls, help
6 instruct them to improve the call qualities and things that
7 UPS expects of them in the job function.

8 Q And do you know the defendant, Mr. Mitchell?

9 A I do.

10 Q All right. How do you know him?

11 A He came to my team as a new inside sales rep.

12 Q And what was his position? I'm not quite clear on
13 that. What is he responsible for?

14 A He had a territory, and he was responsible in calling
15 -- seeking new business, taking care of business, working
16 the phone system, exactly what Mr. Bailey does.

17 Q And work-wise, what was your relationship with
18 Mr. Mitchell?

19 A I was his coach, so it was my duty to get him up to
20 speed, to train him, to work with him side by side, come up
21 with strategies and things to help improve to the standards
22 that UPS sets for on-boarding reps and things like that,
23 help grow the business, take care of the business when we
24 retain UPS customers.

25 Q And did you and the defendant, Mr. Mitchell, ever

1 spend any time together outside of work?

2 A We actually had a couple of team lunches.

3 Mr. Mitchell was part of those team lunches. There was a

4 couple, two or three, just over the course of a year.

5 Q And were you working on July 26th of 2013?

6 A Yes.

7 Q All right. Were you at the office that morning?

8 A Yes.

9 Q All right. Will you please tell me about the events

10 that occurred.

11 A Early -- early that morning before work was -- I

12 received a text message from Ray.

13 Q And let me stop you. When you say "Ray," who do you

14 mean?

15 A Mr. Mitchell. I apologize.

16 Q That's all right.

17 A I received a text message. It was approximately

18 12:30, 1:00 in the morning on the 26th, statement [sic],

19 you know, Please accept \$80,000 offer from my attorney. If

20 any sister of mine had the balls to do -- I mean, it was

21 love the shark. Please send my belongings to Pecan Drive

22 in Abbeville. It's not word for word.. I apologize.

23 Q And how do you know that text message came from the

24 defendant?

25 A I had his number stored on my phone. All of my inside

1 sales reps have my cell phone number as a backup to the
2 supervisor so if they were unable to contact the
3 supervisor, they all could contact me if there was -- you
4 know, they were going to be late or had something going on
5 and they couldn't reach them, so they would notify me as
6 kind of a backup. Ray had done that, so when he had done
7 that, I keyed in his information. So when he sent the
8 message, it popped Ray Mitchell.

9 Q And when was the last time you had any contact with
10 Mr. Mitchell before that text message?

11 A There was a lunch, a group lunch, about a month before
12 that we went to. He wasn't with us at work at the time,
13 but he had reached out to have lunch, and the group agreed,
14 you know, let's check on him. And so he met us for lunch.
15 And he was very erratic at the lunch, said some things to
16 the extent of owning a new gun, discussion of his ---

17 Q Did he say what kind of gun he owned?

18 A He did. A military-grade sniper rifle with
19 armor-piercing bullets.

20 He made statements that his fixation was to carry --
21 for the director of inside sales to be -- to leave that
22 place in a box and corrected himself and said, "I mean with
23 a box and me beside him," and other derogatory statements.
24 I can go into the statements, if you like. Just very -- he
25 called people specific names. One of the managers was

1 called names. He referred to his -- her as Sister Madea.

2 He referred to another ISR as ---

3 Q And, sorry, what is an ISR?

4 A Sorry. An inside sales rep. Another one of the reps
5 on the team that was at the lunch. He referred to him as
6 an Arabic -- he was referring to the way he was driving,
7 and what he drove, and it was a slur.

8 He was very loud and very boisterous in the
9 restaurant. People at other tables actually moved away
10 from us. It was embarrassing. Tried to maintain through
11 the lunch, but Ray just left. I didn't hear him say
12 anything. But it was scary. It was -- what he did during
13 the lunch was very irrational behavior, and some of the
14 things that he said I was obligated to alert my management
15 team because he threatened the life of one of my
16 management. So I had to. I'm sorry.

17 Q That's okay. Do you need a few seconds?

18 A I'm okay.

19 Q All right. And what did you do after that lunch?

20 A Well, we went back to work and went to HR, human
21 resources, and notified them of what happened during that
22 lunch.

23 Q All right. And what happened after that?

24 A To my knowledge, Mr. Mitchell was arrested, and I
25 don't know the specifics of what happened to Ray after he

1 was arrested. There was a lot of police presence on-site,
2 and they dismissed us early.

3 MR. SMITH: Objection, Your Honor. Can I approach?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held off the record.)

6 THE COURT: That's overruled. Go ahead.

7 BY MR. PRICE:

8 Q Ms. Jones, were you expected to testify against the
9 defendant regarding that lunch incident?

10 A Yes.

11 Q All right. And do you remember when this lunch
12 incident occurred?

13 A It was June -- I believe it was the 22nd, a month
14 prior to the package.

15 Q All right. Now let's jump forward to the package.
16 Can you tell me the events, what happened when you received
17 that package?

18 A Yes. Well, from the text message earlier that
19 morning, I had came in and notified that I had received --
20 I had contact from -- from Mr. Mitchell, was instructed to
21 just go back to the floor, business as usual. We had a
22 recognition meeting going on, and it was some cite, you
23 know, good-job stuff happening.

24 After the meeting, Mr. Bailey approached me and said,
25 "Gina, a gentleman just brought back my leaf blower from

1 Ray and told me to give you this package, specifically,
2 give this to Gina Jones."

3 And I looked at Mr. Bailey and said, "Let's take this
4 off the floor, not around other people. Let's go into a
5 locked room. Let's see what this is."

6 And it was the manila envelope. It was rolled down on
7 the top. It wasn't sealed. I didn't dump it out on the
8 table or anything like that. I pulled it out piece by
9 piece.

10 Q And was that the same envelope that was admitted in
11 evidence as State's Exhibit 2?

12 A Yeah. It has -- it has her name on it. I didn't
13 recognize the name on the outside of the envelope. There's
14 a name.

15 Q Did you see the contents of that envelope?

16 A Yes, sir.

17 Q Do you recall what was in there?

18 A Yes, sir. There were three cell phones: two were
19 powered down, one was powered up; there were two trespass
20 notices to Dwight Inman, which is another inside sales rep
21 on my team, and to Ken Baca, which is the director, in
22 which he made the comments about him leaving in a box as to
23 that gentleman; a concealed weapons permit; Whitten's
24 Nursery business card; a note that referenced the text
25 message, the \$80,000 in the text message that came in that

1 morning, and it was on the letterhead of a hunting club;
2 and the receipt, the 7-Eleven down from my mother's house.

3 MR. SMITH: I object, Your Honor, as to relevancy.

4 THE COURT: It hasn't been offered at this time.

5 What do you got, Mr. Price?

6 MR. PRICE: Your Honor, I was going to show Ms. Jones
7 the three cell phones, have her identify them.

8 THE COURT: Yes, sir.

9 BY MR. PRICE:

10 Q Ms. Jones, I'm going to show you what has been
11 premarked as Exhibit 3, 4 and 5. Do you mind telling the
12 Court what these are?

13 A They are the cell phones that was in the package.

14 Q All right. And did you look through any of those cell
15 phones?

16 A I did later. I wouldn't power up these two, but the
17 one that was powered up I tried to -- I looked through for
18 any kind of message, tried to listen to a voicemail but it
19 said I had to buy minutes, see if there was a message
20 there.

21 MR. PRICE: Okay. Your Honor, at this time, I would
22 like to move these three cell phones into evidence.

23 THE COURT: Mr. Smith?

24 MR. SMITH: Without objection.

25 THE COURT: No objection. Without objection, they're

1 admitted.

2 (WHEREUPON, State's Exhibit Nos. 3, 4 and 5 were admitted
3 into evidence.)

4 MR. PRICE: Thank you Your Honor.

5 BY MR. PRICE:

6 Q Ms. Jones, I'd like to show you a few more items that
7 have been marked State's Exhibit -- for identification
8 purposes State's Exhibit 6, 7, 8 and 9. Would you mind
9 telling us what these are starting with this item, State's
10 Exhibit No. 6?

11 A Yes. So this is a -- this is the check. This was in
12 the envelope as well. I didn't mention it earlier, but it
13 was a check for \$50 written to cash.

14 Q All right. And do you recognize this?

15 A Yes, sir. This is the trespass notice to Ken Baca
16 that was in the envelope.

17 Q For the court reporter, that is, for identification
18 purposes, State's Exhibit No. 7.

19 I'll show you what's identified as State's Exhibit
20 No. 8.

21 A This is a -- this is a trespass notice, also in the
22 envelope, written to Dwight Inman, one of the ISRs on my
23 team. Inside sales reps. Sorry.

24 Q And one last item right now that's been premarked as
25 State's Exhibit No. 9, what is that?

1 A That is Derrill Bailey's address. It was also in the
2 envelope.

3 Q All right. And where did all those items come from?

4 A The -- the envelope that was delivered to me that
5 morning.

6 MR. PRICE: Your Honor, at this time, I'd like to move
7 these exhibits into evidence.

8 THE COURT: Any objection?

9 MR. SMITH: No, sir.

10 THE COURT: Without objection, they are admitted.

11 (WHEREUPON, State's Exhibit Nos. 6, 7, 8 and 9 were
12 admitted into evidence.)

13 BY MR. PRICE:

14 Q Ms. Jones, just a few more. I'm going to show you
15 what's been premarked for identification purposes as
16 State's Exhibit No. 10. Do you recognize that?

17 A Yes. This is the -- this is the note that referenced
18 the text message that came to me early that morning around
19 12:30, 1:00 with the hunt club at the top.

20 Q All right. And I'll show you what's -- recognize --
21 what's identified as State's Exhibit No. 11. Do you
22 recognize that?

23 A Yes, sir. I do. This is the receipt from the gas
24 station, the 7-Eleven that is down from my mother's home.
25 This was also in the package.

1 Q I'll show you one more that's been premarked as
2 Exhibit No. 12. What is that?

3 A This is the business card to the little small nursery
4 that was down on the same street, on the street from my old
5 apartment years ago.

6 Q And I'll show you one more item that's been premarked
7 for ID purposes as State's Exhibit No. 13. Can you tell us
8 what that is?

9 A That is the concealed weapons permit that was in the
10 package.

11 Q All right. And did all this come from the package?

12 A Yes.

13 MR. PRICE: All right. Your Honor, at this time I'd
14 like to move these items into evidence.

15 THE COURT: Any objection?

16 MR. SMITH: Absolutely not.

17 THE COURT: Without objection.

18 (WHEREUPON, State's Exhibit Nos. 10, 11, 12 and 13 were
19 admitted into evidence.)

20 MR. PRICE: Thank you, Your Honor.

21 BY MR. PRICE:

22 Q Ms. Jones, what went through your mind when you saw
23 these items?

24 A He's sending me a message.

25 Q And what is that message?

1 A That he has a gun, and he knows where I live, he knows
2 where my family lives.

3 Q All right. I've already said this before, and I
4 apologize. How did you arrive at that message?

5 A Because of the history with Mr. Mitchell, the
6 environment that we worked in was very close, so we talked
7 a lot. As a team, we talked a lot. And he knew things of
8 me. We talked about our family, we talked about things
9 that we did. And it's not just specifically with Ray, but
10 just as a team, just group camaraderie. And Ray was aware
11 of my favorite beer, which is on that receipt, Stella beer.

12 Q Ms. Jones, are you okay?

13 A I'm all right. I'm sorry. I'm just . . .

14 Q Let me know if you need to take a few minutes.

15 A No. I want to get this over with.

16 So he was aware of different things about me, that on
17 the receipt, you know, there's my favorite beer. I was
18 very upset that he took this method of trying to let me
19 know that he knew these things and it all was in relation
20 to the events that happened in June. He scared me. He
21 scared my family.

22 Q Ms. Jones, after receiving these items, were you
23 afraid to testify against the defendant?

24 A Yes.

25 Q All right.

1 your answer?

2 A I do not remember, sir.

3 Q Do you recall saying, "I know where -- I know where he

4 lives"?

5 A Yes. I knew where he lived.

6 Q That didn't answer my question.

7 A I visited his house.

8 Q That didn't answer my question, though, did it?

9 A I guess not. This question that you're asking me now?

10 Q Yes, ma'am. The nursery card, where is that from?

11 A Whitten's in Anderson.

12 Q Where do you live, county?

13 A Currently?

14 Q Yes.

15 A Brooksville, Florida.

16 Q Where did you live at the time of this incident?

17 A Anderson County.

18 Q How far away from that nursery did you live?

19 A At the time of the incident?

20 Q Yes.

21 A 15, 30 -- 20, 30 miles.

22 Q So you're not trying to tell us that because you lived

23 next to it, what, ten years prior to that?

24 A Yes.

25 Q And that's part of the message?

1 A Absolutely.

2 Q I know where you lived ten years ago?

3 A Absolutely.

4 Q So is there anyplace he could have gone and not been

5 close to you?

6 A Sure.

7 Q You did an incident report, right?

8 A Yes.

9 Q What did you say on that incident report about what

10 happened?

11 A For the incident of the package?

12 Q Yes.

13 A Do you want me to go into specific detail of the day?

14 Q Sure.

15 A Okay. So I received a text message, 12:30, 1:00 in

16 the morning from Mr. Mitchell on my cell phone in reference

17 to accepting an \$80,000 offer from his attorney. "I hope

18 you have the balls to give us a call, that any sister of

19 mine would have loved the shark. By the way, please send

20 my f'ing belongings to Pecan Drive in Abbeville."

21 Q Can I stop you right there, ma'am?

22 A Sure.

23 Q At this point, you're not scared, right?

24 A Actually, yes, I am. I had a long discussion with my

25 mother in the middle of the night as to why I've been

1 contacted by a gentleman 30 days after the incident.

2 Q I thought you were friends for over a year.

3 A I did not say we were friends. He was a co-worker of
4 mine, sir.

5 Q So you talked about personal things with a co-worker?

6 A Absolutely.

7 Q So what did you talk to your mother about? You built
8 your mother up with this story, didn't you? Is your mother
9 scared now?

10 A I built --

11 Q Is your mother scared now?

12 A Currently?

13 Q Yeah.

14 A No. She's in Florida.

15 Q Did she become scared?

16 A She'd become extra vigilant, and she was scared for my
17 safety.

18 Q Did you ever see him around your house ever?

19 A No.

20 Q You found two trespass notices, right, in the
21 envelope?

22 A Yes.

23 Q What did those trespass notices say?

24 A I don't know. To be honest, it wasn't given to me.
25 They weren't written to me.

1 A No. Because ---
2 MR. PRICE: Objection, Your Honor. I really don't see
3 a point in this.
4 THE COURT: He's on cross. He can make it relevant.
5 Go ahead.
6 THE WITNESS: No, it doesn't. Because I was making a
7 statement of what happened to me.
8 BY MR. SMITH:
9 Q Okay. So in this, do you talk about how people were
10 coming up to you and were concerned about you? Do you want
11 to refresh your memory?
12 A Absolutely. Please ask the question again, sir.
13 Q Were people coming up to you and asking how you were
14 doing? Were they concerned for you?
15 A In regards to this?
16 Q Yeah.
17 A That day? No.
18 Q No.
19 A Because no one was aware of what was going on except
20 for Mr. Bailey and my supervisor.
21 Q What color was that leaf blower?
22 A I have no idea.
23 Q Didn't you see it?
24 A I saw it on the video.
25 Q So you never saw it?

- 1 A Physically, no.
- 2 Q I thought it was a bomb. Was it a bomb?
- 3 A To my knowledge, it wasn't a bomb.
- 4 Q Did you think it was a bomb?
- 5 A Yes. I said there was the potential of it. That is
- 6 why I wouldn't power up the other two cell phones. I had
- 7 no idea what the purpose of the cell phones were.
- 8 Q Did you know about any of these things, what their
- 9 purpose was?
- 10 A Absolutely.
- 11 Q Based on what?
- 12 A Based on what I felt.
- 13 Q But what did Mr. Mitchell do to give you that feeling?
- 14 A He sent me the package.
- 15 Q What does this Whitten's card mean?
- 16 A That is a location near the home I used to live at.
- 17 Q When did you live there?
- 18 A Ten years ago.
- 19 Q Plaintiff's Exhibit 10, \$80,000 plus Blue Cross, Blue
- 20 Shield, what's that for?
- 21 A That's in reference to the text messages that he sent
- 22 to my cell phone at 12:30, 1:00 in the morning on the 26th.
- 23 Q Is this a threat?
- 24 A The text message was a threat. That is in relation to
- 25 it, not to mention the hunting club reference.

- 1 Q So did you create this or did he send that?
- 2 A I didn't create that.
- 3 Q 7-Eleven?
- 4 A Uh-huh.
- 5 Q And what's the importance of this?
- 6 A It's located near my mother's home.
- 7 Q What county does your mother live in?
- 8 A Greenwood.
- 9 Q Are you aware that Greenwood is five times the size of
- 10 Abbeville?
- 11 A Sure.
- 12 Q So you go to a bigger city, don't you?
- 13 A Sure.
- 14 Q How do you get to Columbia from Abbeville?
- 15 A There's multiple ways you can get to Columbia from
- 16 Abbeville.
- 17 Q Could you go through Greenwood?
- 18 A Certainly.
- 19 Q When did this come again? What date?
- 20 A The 26th of July.
- 21 Q This concealed weapons permit, when did it expire?
- 22 A I have no idea. Whatever is on the card, sir.
- 23 Q February 15, 2003?
- 24 A Okay.
- 25 Q So it was ten years old.

1 Cash for \$50, what's that mean?

2 A I have no idea what that was for.

3 Q So you weren't scared of that?

4 A No.

5 Q 401 Woolridge Way or something. Do you know what that
6 is?

7 A That's Mr. Bailey's address.

8 Q So Mr. Mitchell went out of his way or he made sure
9 that the leaf blower went back to Mr. Bailey, right?

10 A I assume so. I had nothing to do with the leaf
11 blower, sir.

12 Q Did the trespass notices scare you?

13 A No.

14 Q Were they a threat in any way?

15 A No.

16 Q So once again, what did Mr. Mitchell do to threaten
17 you?

18 A He sent me a package with a message.

19 Q Where's the message? I don't understand.

20 A The message is, is I have a gun, I know where you
21 live, I know where your family lives.

22 Q But he didn't know where you lived, did he?

23 A Yes.

24 Q You're sure?

25 A Yes.

- 1 Q The 7-Eleven was by your mother's house?
- 2 A It's down the road from my mother's house, yes.
- 3 Q Did you say before it was next door to your mother's
- 4 house?
- 5 A No. It's not next door to her house.
- 6 Q I didn't ask you that. Did you say that before?
- 7 A Not to my knowledge, sir. No.
- 8 Q Did he know where your mother lives?
- 9 A Yes. I know where my mother lives.
- 10 Q No. Did he?
- 11 A No. He's never -- I've never talked about my mother,
- 12 where she lives to Ray, so I do not know what Mr. Mitchell
- 13 knows as far as my mother's.
- 14 Q So he went to 7-Eleven and got beer. What's the
- 15 relevance of your mother if he doesn't know where she
- 16 lives?
- 17 A Because it's down the street from my house -- my
- 18 mother's house.
- 19 Q Did you turn on any of the cell phones?
- 20 A No. There was only one powered on. The other two
- 21 were powered down.
- 22 Q Do you remember the hearing we had for your order of
- 23 protection?
- 24 A I remember it. Not specific details of the hearing,
- 25 but I do remember the hearing, yes.

1 Q Do you remember saying that you went and powered up
2 the phones?

3 A I did not power up phones. One phone was powered up,
4 sir. Two were powered down.

5 MR. SMITH: Yes, ma'am. One moment, please.

6 May I approach the witness, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. SMITH:

9 Q You said you didn't power up the phones?

10 A I did not power up the phone.

11 Q Would you read line 11, please.

12 A Which line 11, sir? There's four.

13 Q Page 22.

14 A Here? "I went and powered up the phones because being
15 that it was a leaf blower I was like, you know, this thing
16 could be a bomb." Do you want me to keep reading?

17 Q No. That's fine. Thank you.

18 Are you sure you didn't say you didn't turn on the
19 phones?

20 A I did not turn on the phones. And the reason I did
21 not turn on the phones, because I was worried that the leaf
22 blower could have been a bomb and the phone could have been
23 a trigger. So why would I do that?

24 Q Mr. Mitchell never said anything negative to you, did
25 he?

1 A To me or about me, sir?

2 Q To you, ma'am.

3 A Yes. He said plenty of negative things to me.

4 Q Like what?

5 A Like repoing people; and carrying people out in a box,
6 and sniper rifles, and military grade, and how extensive my
7 sniper training is.

8 Q Did he talk about that at lunch?

9 A That's part of the negative things that he said to me,
10 yes.

11 Q But when you went to HR, went to the police, did you
12 tell them about your 9 millimeter?

13 A No.

14 Q But that was part of the discussion that day, wasn't
15 it?

16 A I don't recall.

17 Q You painted a pretty nice picture of Mr. Mitchell,
18 didn't you?

19 A Pardon?

20 Q You painted a nice picture of Mr. Mitchell, didn't
21 you?

22 A In regards to what, sir?

23 Q In regards to his tendencies, if you will.

24 A I spoke the truth, sir. So whatever that is is what
25 it is.

1 Q You spoke the truth about what?

2 A Whatever picture you're asking to paint, I spoke the
3 truth. So whatever I'm trying to do is tell the truth,
4 sir.

5 Q Was Derrill concerned about the envelope or the
6 contents of the envelope before he talked to you?

7 A I have no idea what Mr. Bailey did before he talked to
8 me.

9 Q Where did Mr. Bailey first see you with the envelope?

10 A He came to my desk.

11 Q Where is that located?

12 A On -- in inside sales on the team.

13 Q What floor?

14 A Sixth. Well, it was sixth.

15 Q So he was so concerned, he came up to the sixth floor
16 with this envelope?

17 A He came up with the envelope and said, "I was told to
18 give this to Ms. Gina Jones."

19 Q Did he take it to the police or the bomb squad?

20 A Not to my knowledge. I don't know what he did.

21 Q He referred to you as his sister. What does that mean
22 to you?

23 A I have no idea, sir, what that means to me. He --
24 Mr. Mitchell started to reference me as a little sister
25 months before this incident happened, which made me very

1 uncomfortable because I'm in a professional setting. So I
2 have no idea why he started calling me his little sister.

3 Q Did you believe that was negative?

4 A It made me uncomfortable. So yes, that would be
5 negative for me. Did I mean -- did I think that Ray was
6 being negative referring to me as a sister? No.

7 Q The lunch, how was his conduct? What was his conduct
8 like?

9 A He was very erratic. He was there when I arrived. he
10 was very loud. Multiple conversations going on at one time
11 between the group. It was embarrassing and unsettling.

12 Q And what did you tell him so he would relax?

13 A I don't recall.

14 Q You didn't tell him anything, did you?

15 A Not to my knowledge.

16 Q Nobody at that table said a word to him, did they?

17 A Not to my knowledge.

18 Q So tell me, how are they supposed to know that he's
19 not acting right?

20 A Because other tables moved away from us.

21 Q Where are they?

22 A I mean, he's an adult, sir. He's responsible for his
23 own actions.

24 Q Yes, ma'am.

25 Where are the people that moved away?

1 A Where are they?

2 Q Yeah.

3 A I have no idea. They were at the restaurant.

4 Q You recall doing the incident report?

5 A Yes.

6 Q There was no mention of families moving away from your
7 table, was there?

8 A In -- not in my recollection. Not in my incident
9 report, no. Not that I remember. I would have to read it
10 again.

11 Q Did anybody talk to anybody other than UPS people? Do
12 you know if there's any witnesses other than UPS people?

13 A Not to my knowledge.

14 Q And your position got elevated in May?

15 A May of this past year, yes, 2014.

16 Q How long -- prior to this incident, how long had you
17 been in your position?

18 A Three -- three years. Two and a half, three years, to
19 the best of my knowledge.

20 Q When you got back from the lunch, you felt it was your
21 duty to go to HR?

22 A Yes.

23 Q Why is that?

24 A Because that's the way we were trained.

25 Q Trained about what?

1 A About incidents in the workplace, incidents with
2 people, that basically we were trained if things were not
3 right or things that were said, that we were to report it
4 to HR and they handle it as they see fit.

5 Q So he got three months in a row employee of the month.
6 And you weren't going anywhere, right, in your job track or
7 whatever? It's been three years.

8 A Actually, I had transferred different -- different
9 jobs from different teams.

10 Q But now you're at a higher position?

11 A Yes.

12 Q And once again, at that lunch, no one felt a need to
13 say anything to him, but then you went back to HR and told
14 on him?

15 A We did not say anything to him. He was already
16 erratically -- he was acting erratic and agitated --
17 extraordinarily agitated enough. Why would any -- I mean,
18 personally, I think you're responsible for your own
19 actions. I'm not a babysitter. I'm not going to -- you
20 know, you're embarrassing yourself when you're doing these
21 things in public. That's your choice. But it was my
22 responsibility as a worker at UPS to report what
23 Mr. Mitchell said at that lunch.

24 Q And then you couched it as him threatening Ken Baca;
25 is that right?

1 A He directly threatened Ken Baca.

2 Q What was the direct threat again?

3 A "My soul fixation is for that man to leave there in a
4 box -- I mean, with the stuff beside me carrying a box."

5 Q He said "my soul fixation"?

6 A To the best of my recollection. I can read my
7 statement through, if you want.

8 Q And the text message was threatening, and it talked
9 about \$80,000 or what?

10 A No. The text message was out of the blue after I
11 hadn't heard anything, and -- at 12:30, 1:00 in the
12 morning, and he referenced himself as the shark, which is
13 not necessarily a friendly animal. It was menacing.

14 Q Did you know what he meant at all?

15 A Pardon?

16 Q Did you know what he meant at all?

17 A I mean, I knew -- I had no idea what the
18 attorney/\$80,000 thing is. I had nothing to do with any of
19 that. I knew what he meant by sending his belongings
20 because his stuff was at work from when he went out on
21 disability.

22 Q How do you know what his intent was?

23 A I only know the perception of what the package that
24 was given to me stated by Mr. Bailey that he was instructed
25 to give to me said to me. I have no idea what his

1 intention was. I know what the result of it was.
2 Q Did Courtney hand you that?
3 A No.
4 Q Do you know if that was the right package you were to
5 get?
6 A I do not know what transpired other than what was on
7 the video between Mr. Bailey and Mr. Mitchell.
8 Q Is Courtney a giving sort, give away three phones?
9 A Not to my knowledge.
10 Q What did you and your co-workers call Courtney?
11 A Ray.
12 Q Is that all?
13 A I did not refer to Ray other than anything but Ray. I
14 didn't call him Courtney. I called him Ray.
15 Q Was the leaf blower a bomb?
16 A Not to my knowledge.
17 Q Were the phones in any way mechanisms of bombs?
18 A Not to my knowledge.
19 Q So did anybody else think these things but you?
20 A I have no idea. When Mr. -- when Mr. Bailey -- when
21 we went in the room and the concealed weapons permit, I
22 laid it on the table, Mr. Bailey looked at me and said,
23 "Should I be afraid?" So he obviously was unsettled. When
24 I took the package downstairs to HR and -- which is
25 Mr. Owens, when he emptied out the package on his desk,

1 Honor.

2 THE COURT: Thank you.

3 Ma'am, you may step down. Please be careful.

4 MR. PRICE: Your Honor, at this time, would it be all
5 right if we take about a ten-minute break?

6 THE COURT: Well, let's see the lawyers. We haven't
7 been going 50 minutes here.

8 (WHEREUPON, a bench conference was held off the record.)

9 THE COURT: Okay. Call your next witness, Solicitor.

10 MR. PRICE: Your Honor, at this time the State calls
11 Detective Greg Wood.

12 THE CLERK: Detective Wood, if you would please take
13 the stand.

14 WHEREUPON,

15 GREGORY SCOTT WOOD

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Would you please state your name for the
18 record.

19 THE WITNESS: My name is Gregory Scott Wood.

20 DIRECT EXAMINATION

21 BY MR. PRICE:

22 Q Good afternoon, Detective. How are you?

23 A Doing well.

24 Q Where are you currently employed?

25 A Greenville Police Department.

1 Q And how long have you been employed there?

2 A I was hired in May of 2009.

3 Q All right. And what's your current rank?

4 A I'm currently a detective. I investigate auto theft
5 related incidents.

6 Q All right. And what kind of training did you receive?

7 A From the beginning, I attended nine weeks of the
8 Criminal Justice Academy in South Carolina. On a yearly
9 basis, we receive what we call legal updates to maintain
10 our certification through law enforcement. I've had basic
11 investigation classes, interviewing techniques, things like
12 that.

13 Q All right. And were you working on July 26, 2013?

14 A I was.

15 Q All right. And what time were you working?

16 A I don't remember the exact start time. It was either
17 6:00 in the morning or 7:00 in the morning. I think I was
18 scheduled until about 2 p.m. for this location.

19 Q All right. And what was your rank at that time?

20 A I was a patrol officer, just what they consider a
21 Police Officer I.

22 Q All right. And where were you working on the morning
23 of July 26, 2013?

24 A Yes. I was working special assignment at 204 Halton
25 Road in Greenville.

1 Q And what was the special assignment?

2 A My understanding was is when there are special
3 assignments available for us to work, sometimes there's
4 information about it, sometimes there's not. For this
5 assignment, there was some information that went along with
6 it basically stating that an employee had made a threat to
7 another employee, and that it was -- appeared to be a
8 credible threat. That was pretty much all I knew going in
9 to work in the special assignment.

10 Q Okay. And can you please tell me about the events
11 that occurred on July 26, 2013.

12 A That morning arriving, we, as special assignment
13 officers, were to arrive before most employees did. They
14 wanted us on the scene first to maintain a secure
15 environment for the employees to arrive. Again, not
16 remembering what time I was supposed to start that morning,
17 I do remember a little bit before 9:00 I overheard on my
18 radio that they were sending an officer to my location in
19 reference to an EMS assist. There was an individual on
20 the, I think, fifth floor that was having some
21 complications.

22 I notified dispatch at that time that I was already on
23 the scene, that I would handle the situation. And I then
24 went up to the fifth floor to check on that individual.

25 And from what I recall, mostly, I guess, it was about

1 30 to 40 minutes between getting the call, EMS getting
2 there, taking the subject away before going back
3 downstairs.

4 Q Okay. And so what happens after you went downstairs?

5 A I don't remember the time frame. I was downstairs for
6 a bit, but then I was notified by Keith McNeel about the
7 phone call that ---

8 MR. SMITH: Objection. Hearsay.

9 THE COURT: Well, I don't know where -- Solicitor?

10 MR. PRICE: Your Honor, I think there's actually a
11 case law that says an officer can testify as to why he did
12 something.

13 THE COURT: Okay.

14 MR. PRICE: I have that case law, if you'd like to see
15 it.

16 THE COURT: No, sir. I'm familiar with that. Just
17 don't get into what somebody said.

18 MR. PRICE: We won't.

19 THE COURT: Go ahead.

20 THE WITNESS: Keith McNeel advised that Mr. Mitchell
21 had contacted Mr. Bailey by phone the previous day and also
22 advised that Ms. Jones and Mr. Batista had received text
23 messages, I guess, the morning of this incident in the
24 early morning hours. He approached with that just to say,
25 "Hey, we need to discuss this further." It was at that

1 time I made a couple of phone calls, I guess, to outside
2 security for UPS that wanted to talk to me.

3 At that time, I really wasn't sure what the text
4 messages said or what the phone call was about. They were
5 just concerned that he intended to make contact with
6 current employees after the original incident from the
7 luncheon.

8 Some more time had passed, and then I don't remember
9 who notified me about the package had been delivered. At
10 that time, I was taken upstairs to Mr. Baca's office where
11 the package was laying on the table. And at that time, I
12 was informed of what was in the package and began to
13 discuss what -- at that time, I really had no idea about
14 the previous incident. That's where I began to learn more
15 about the whole situation.

16 Q All right. Did you examine that package?

17 A I did.

18 Q All right. And what did you see in it?

19 A I saw three cell phones, two being the flip style that
20 I believe were turned off. The one, either a slider phone
21 or just one that's not flip style, was turned on. I saw
22 the concealed weapons permit, the check for \$50, 7-Eleven
23 receipt, the nursery business card, and the letters
24 addressed to Mr. Inman and Mr. Baca for the trespass
25 notice.

1 MR. SMITH: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. SMITH:

5 Q So what did you base this case on?

6 A Could you please clarify.

7 Q Did you talk to Ms. Jones?

8 A I did, yes, sir.

9 Q Did she tell you what happened?

10 A Briefly, yes.

11 Q What is your understanding what happened based on that
12 conversation?

13 A Like I said, I had many people in this office talking
14 to me and kind of fill me in as to what originally
15 occurred. I was made aware of the conversation at the
16 luncheon and the reason for the officer's presence at the
17 location to begin with.

18 Ms. Jones did get upset talking to me as she began to
19 realize what she felt it meant to her about the package. I
20 did sense some fear in her. At that time, I wasn't sure if
21 she would be the sole victim. I also felt like UPS, as a
22 whole, was a victim just because of what it was doing to
23 their work process. Many people throughout this incident
24 day were interrupted in their normal work, you know, to
25 deal with this situation.

1 BY MR. SMITH:

2 Q Are you aware that after he's arrested, they stopped
3 that disability?

4 A Outside of my scope, sir.

5 Q So you're a detective?

6 A Since November 2014. I'm sorry. November 2013.

7 Q Do you know if anyone went to the restaurant to talk
8 to try to find the people that moved away based on
9 Mr. Mitchell's actions?

10 A I do not know. That was a separate case I was not
11 part of.

12 Q Did you comment on it?

13 A I don't recall making any comments on it.

14 Q You were working for UPS on that day, right, on the
15 day of the 26th of July?

16 A Yes, sir.

17 Q So basically, they paid you and you arrested
18 Mr. Mitchell, right?

19 A I did not arrest Mr. Mitchell.

20 Q Did you get a warrant on him?

21 A I did.

22 Q Did that cause his arrest?

23 A Yes. That would be no different than any other
24 special assignment, whether it's a bar downtown or anything
25 like that.

1 Q How did Mr. Mitchell threaten Ms. Jones?

2 A When I look at the culmination of everything, when I
3 look at -- take the jury, for example. If I make a
4 statement to them, each one can take it -- the statement
5 differently. When I have to look at making charges, things
6 like no stalking harassment charges, there's a sense of
7 fear from the victim. Her sense of fear may be different
8 than her neighbor sitting beside her. I have to take
9 everything that I was trying to learn that day that
10 occurred at the luncheon, the -- trying to understand why
11 that package, along with the leaf blower, was delivered
12 when I believe Mr. Bailey stated that he asked Mr. Mitchell
13 to do it another time.

14 Q You were in here. He didn't testify to that, did he?

15 A I think he did.

16 Q Did he?

17 A Seeing everything as a whole picture and after
18 speaking to Ms. Jones, I do feel there was some fear in
19 her. I knew that UPS had a definite fear, or else we
20 wouldn't be working there.

21 Q And you believe that fear was reasonable?

22 A Absolutely.

23 Q Right. How was that leaf blower once you inspected
24 it?

25 A When I inspected the leaf blower, I didn't see that

1 any of the screws had appeared to have been tampered with
2 even to fix anything. I did have the sergeant who came out
3 on scene with me to look at it as well. He concurred. And
4 then I did give it back to Mr. Bailey.

5 Q Do you think it's possible that Ms. Jones inflamed the
6 situation?

7 A I don't believe so.

8 Q There is no evidence whatsoever of Mr. Jones [sic]
9 attempting to intimidate her through words or anything
10 else. Can you tell me what his reasoning for trying to
11 intimidate her would be?

12 MR. PRICE: Your Honor, speculation.

13 THE COURT: Yes, sir.

14 MR. PRICE: Thank you.

15 BY MR. SMITH:

16 Q Do you know of anything that Ms. Jones had said or
17 done to Mr. Mitchell that would make him want to intimidate
18 her?

19 A The only thing I was aware of on that day was the
20 lunch. I knew that she was part of the reason that he had
21 been charged to begin with.

22 Q But she didn't get a trespass notice, right?

23 A Not that I'm aware of.

24 Q So I guess she could still come on his property?

25 A You'd have to ask him that.

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1 Q What force did he use to try to intimidate her?

2 A Psychological force.

3 Q Could you explain that to me?

4 A The intimidation of the package that was received with
5 the contents. There was no rhyme or reason for any of
6 those things to be delivered that day.

7 Q Do you think that the belief that the nursery business
8 card is somehow related to this action?

9 A I had no thought of the matter until Ms. Jones made it
10 aware that it was near a family member's house or her
11 house.

12 Q Ten years ago?

13 A I had no idea at that time.

14 Q Oh, she didn't show you that?

15 A No, sir.

16 MR. SMITH: I have nothing further, Your Honor.

17 THE COURT: Anything from the State?

18 MR. PRICE: Nothing further from the State, Your
19 Honor.

20 THE COURT: Thank you. Sir, you may step down.
21 Please be careful.

22 MR. PRICE: Your Honor, at this time, the State rests.

23 THE COURT: Okay. Madam Forelady and ladies and
24 gentlemen, the State has now rested a case meaning it has
25 put forth its evidence in what's called a case in chief.

1 There are a couple of things that I have to take up before
2 we go any farther in this trial, and it would be improper
3 for you to be here. This would be one of those moments
4 where I have to deal with the lawyers outside of your
5 presence. But it is a good time to take our 15-minute
6 break. I was going to shoot for about 15 minutes till the
7 hour, and we're about 17 or 18 till, so we're right on the
8 money, so to speak.

9 Madam Forelady, when you take the jurors out, please,
10 everyone note this case is not at an end; therefore
11 beginning deliberations, even among yourselves or within
12 your own mind, would be improper, so please do not do that.
13 Enjoy your break. Expect to be back here no later than the
14 top of the hour. But if we can get back at five till, we
15 will so we can continue with this case. But I don't want
16 to rush you. But take your 15-minute break.

17 Madam Forelady.

18 (WHEREUPON, the jury exits the courtroom at 2:41 p.m.)

19 THE COURT: Anything from the State?

20 MR. PRICE: Nothing from the State, Your Honor.

21 THE COURT: Okay. From the defense?

22 MR. SMITH: The defense moves for a directed verdict
23 at this time based on the fact there's been no offering of
24 threat. I mean, the bag -- there is no showing of intent.
25 There's no intent whatsoever. They get a bag, and she

1 believes that's for her, and the ten years. I mean, that's
2 just part of the -- I don't even -- I don't even know how
3 one arrives at that. But if Mr. Mitchell would have sent a
4 postcard, that would have meant something, too, or if he
5 would breathe the air in South Carolina. It's not -- it's
6 too attenuated. There's no threat there. He had no reason
7 to threaten her. That was her -- his friend. And two
8 other people he sent trespass notices, don't come to my
9 house again. She didn't get anything. He called her his
10 sister in a -- I think a friendly manner.

11 Of course, she says he's not her friend, but they were
12 talking about their kids and difficulties they were having
13 having children and what have you. It just doesn't -- and
14 I understand about the weight and so forth, but I don't
15 think there's any weight other than the creation because
16 she wasn't singled out according to herself at the
17 restaurant. So there's nothing to form a basis for a
18 threat. There's no reason for her to do that -- for him to
19 do that, because he hadn't done it before.

20 THE COURT: Solicitor?

21 MR. PRICE: Your Honor, the State believes that
22 there's enough here. I mean, just sending your concealed
23 weapons permit to someone randomly alone sends a pretty
24 strong message, coupled with the fact that the receipt and
25 business card, plus adding into the fact that the last time

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1 Ms. Jones had contact with the defendant, he was talking
2 about killing co-workers. He had a whole bunch of
3 firearms, armor-piercing bullets.

4 THE COURT: Thank you, sir.

5 MR. PRICE: Thank you, Your Honor.

6 THE COURT: Mr. Smith, motion is denied. As we all
7 know, this court does not weigh the evidence and does not
8 give credibility one way or the other. That is the job of
9 the jury. They are the finders of fact. This court is
10 only concerned with whether or not there is any evidence
11 known as a scintilla of evidence, and the record is replete
12 with a scintilla of evidence, more than enough to go to the
13 jury. So we'll let the finders of fact decide that.

14 Any other motions, Mr. Smith?

15 MR. SMITH: Not from defense.

16 THE COURT: Okay. We're going to start promptly at
17 about two minutes till if our jury is ready, but I want
18 everybody else to be ready, if we can.

19 All right. Mr. Smith, let me ask you this if you
20 know. You indicated in opening statement that your client
21 did not intend to testify.

22 MR. SMITH: No.

23 THE COURT: He is not?

24 MR. SMITH: No.

25 THE COURT: Okay. We've got to put that in our jury

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1 charge. That's why I'm asking. Let me ask you this. When
2 we come back, before I bring the jury in, do you want me to
3 have a colloquy with him about that on the record or is
4 your statement sufficient?

5 MR. SMITH: My statement is sufficient.

6 THE COURT: Your statement is sufficient. Okay.

7 Sir, when we come back, I will ask you to rise and I
8 will have you sworn. Madam Clerk, don't let me forget
9 that. And then I will simply ask you if your lawyer is
10 answering for you, and if that's correct, then maybe if
11 he's asked you -- he's informed you of all your rights.
12 And that's as far as I will go because you have a right to
13 remain silent under state and Federal constitution, and
14 this court will protect that.

15 Mr. Smith, also, this is nuts and bolts now, you've
16 got nine potential witnesses listed. Are they here ready
17 to go?

18 MR. SMITH: Your Honor, there won't be any witnesses.

19 THE COURT: You will not have any witnesses?

20 MR. SMITH: No.

21 THE COURT: So you intend to rest when we come back?

22 MR. SMITH: Yes, sir.

23 THE COURT: Well, I'll tell you what we'll do. Let's
24 turn this break into a little bit longer here. I always
25 have a charge conference with the lawyers. Adrienne's been

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1 putting my jury charge together. That way, when they come
2 back, you will know what we're going to charge the jury.
3 Once you rest, we will go straight into jury closings and
4 charge. Okay?

5 MR. SMITH: Yes, sir.

6 THE COURT: Adrienne, are you working on that?

7 MS. BERRY: I have it finished.

8 THE COURT: You have it finished. Okay. You've got
9 the statute, you've got him not testifying. Okay. Can we
10 get somebody to help us print that?

11 THE CLERK: Yes, sir.

12 THE COURT: Would it be you?

13 THE CLERK: If you send it to me, I'll send it to ---

14 MS. BERRY: Okay. I'll do that.

15 THE COURT: Okay. We don't have a way to print. We
16 have to rely on the clerk here. We don't have printers.
17 Okay. All right. Well, let's take about -- it might
18 turn into about 20, 25 minutes, but I want to see the
19 lawyers. Once we get a copy of that, Adrienne, let the
20 lawyers have it so we can take a look at it.

21 (WHEREUPON, a recess was taken at 2:45 p.m.)

22 THE COURT: Mr. Mitchell, I'm going to ask you to
23 stand, please, be sworn, please.

24 THE CLERK: Do you swear or affirm to tell the truth,
25 the whole truth and nothing but the truth, so help you God?

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1 DEFENDANT MITCHELL: So help me God.

2 THE COURT: Mr. Mitchell, remain standing, please.

3 I'm just going to ask you a couple of questions here on the
4 record. Your lawyer has indicated that he's discussed with
5 you your right to testify, your right not to testify. I'm
6 not going to ask you the questions I usually ask because he
7 says he has answered for you. He's your representative, an
8 officer of the Court, so I'm just going to inquire. He's
9 explained all of your rights as to testify or not testify;
10 is that true?

11 DEFENDANT MITCHELL: Yes, Your Honor.

12 THE COURT: All right. And you understand those
13 rights?

14 DEFENDANT MITCHELL: Yes, Your Honor.

15 THE COURT: And you are not under the influence of any
16 medication or any substance that affects your reasoning and
17 thinking ability?

18 DEFENDANT MITCHELL: No, Your Honor.

19 THE COURT: All right. And is it your decision and
20 not your parents' decision, not a friend's decision or your
21 lawyer's, but yours alone not to testify?

22 DEFENDANT MITCHELL: My decision, Your Honor.

23 THE COURT: Your decision. Thank you, sir. Have a
24 seat.

25 Now, Mr. Price and Mr. Smith, I understand that you

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1 have seen the proposed jury charge, and I generally -- I
2 always, not generally. I always share that with the
3 lawyers ahead of time. Have you seen that?

4 MR. PRICE: Yes, sir, Your Honor.

5 THE COURT: Is there any objection?

6 MR. PRICE: No objection.

7 MR. SMITH: No, sir.

8 THE COURT: Any additions or deletions?

9 MR. SMITH: No, sir.

10 MR. PRICE: No, sir.

11 THE COURT: Okay. And have you seen the -- I don't
12 send the indictment back. I send the jury -- we've got to
13 change that. It says "jury charge," but it's the verdict
14 form, which is up or down one way or the other. We're
15 going to change that one word right there.

16 Any objection to the jury form?

17 MR. SMITH: No, sir.

18 MR. PRICE: No, Your Honor.

19 THE COURT: All right. Mr. Smith, I understand that
20 you've got to rest. I want you to do that in front of the
21 jury. You probably want to do that in front of the jury, I
22 would think.

23 MR. SMITH: Yes, sir.

24 THE COURT: And your exhibits, they're in evidence.
25 You want them in evidence? You put them up here. Is there

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1 a question about that?

2 MR. SMITH: No, sir.

3 THE COURT: No, sir, there's no question or you don't
4 want them in evidence?

5 MR. SMITH: I've already spoken with the court
6 reporter. I think we addressed it.

7 THE COURT: She's unclear. That's why I'm asking.
8 That's how I know about this. She's unclear. Did you mark
9 them for ID purposes or you marked them as exhibits?

10 MR. SMITH: Well, I marked them as exhibits, but I
11 believe there was one or two I didn't necessarily care if
12 they went in or not. I know that doesn't help you one bit.

13 THE COURT: Well, let's do this before my jury comes
14 in. Let's be clear on the record. Which exhibits are you
15 proposing to be in and which are you proposing to be out?
16 I want to have a clean record.

17 MR. PRICE: Your Honor, if the State may be heard on
18 this.

19 THE COURT: Yes, sir.

20 MR. PRICE: I believe the copy of the incident report
21 is in evidence.

22 THE COURT: That incident report is in evidence. It
23 certainly is.

24 MR. PRICE: I don't know about the other ones.

25 THE COURT: So Defendant's 1 about the letter to

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1 Mr. Inman, No. 2 about the guide for a coach, Mr. Smith,
2 are those in?

3 MR. SMITH: Your Honor, I was under the impression
4 they were in. As the court reporter knows, I didn't follow
5 up with that. I thought I had.

6 THE COURT: I'm giving you a chance.

7 MR. SMITH: I want them in.

8 THE COURT: Okay. That's what I'm saying. I'm giving
9 you a chance before the jury gets here. I don't want to be
10 unclear about that. So you want them all in.

11 MR. SMITH: Yes, sir.

12 THE COURT: He is moving for all of them to be in,
13 Mr. Solicitor?

14 MR. PRICE: Your Honor, the State is all right with
15 that. No objection.

16 THE COURT: No objection. Okay. Madam Court
17 Reporter, they are all in.

18 (WHEREUPON, Defendant's Exhibit Nos. 1, 2, 3, 4, 5 and 7
19 were admitted into evidence.)

20 THE COURT: Any other housekeeping matter at this
21 time?

22 MR. SMITH: Not from the defense.

23 THE COURT: Okay. All right. We're going to go
24 straight to Mr. Smith who will then rest, then we will
25 begin with our closing. Now, Mr. Smith, you'll be first,

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1 followed by Mr. Price, and then I will charge.
2 Okay. Any questions?
3 MR. SMITH: No, sir.
4 THE COURT: All right. Let's have our jury.
5 On charge -- I mean on Jury closing, about 20, 25
6 minutes each side?
7 MR. PRICE: That's fine with the State, Your Honor.
8 THE COURT: If my minister can say it in 20 minutes,
9 you can say it in 20 minutes.
10 (WHEREUPON, the jury entered the courtroom at 3:10 p.m.)
11 THE COURT: Madam Forelady, any matters from the jury?
12 FORELADY: No, sir.
13 THE COURT: All right. Mr. Smith?
14 MR. SMITH: May it please the Court.
15 THE COURT: Yes, sir.
16 MR. SMITH: Your Honor, at this time, the defense
17 rests.
18 THE COURT: Defense rests.
19 MR. SMITH: Yes, sir.
20 THE COURT: All right, sir.
21 Madam Forelady, the defense has now rested its case in
22 this matter. The State rested previously. The defense has
23 now rested at this point in time. So at this point, we
24 will move to closing statements by the lawyers. All right.
25 ///

1 why he singled her out.

2 Ladies and gentlemen, the defendant was trying to
3 bully Ms. Jones into not testifying against him in his
4 breach of peace trial. By being here today and testifying,
5 Ms. Jones has said, "I am not going to be a victim. I'm
6 going to stand up. I'm not going to let you bully me
7 anymore."

8 This defendant sent a message to Ms. Jones that said,
9 "I have a gun. I know where you live. I know where your
10 family lives," because she was going to testify against
11 him. I ask that you send a message back to him saying that
12 this type of behavior is not allowed. We'll not let you
13 get away with this. I ask that you send that message by
14 way of a verdict of guilty. Thank you.

15 THE COURT: Thank you, Solicitor.

16 CHARGE ON THE LAW

17 THE COURT: Madame Forelady and ladies and gentlemen
18 of the jury, you have seen and heard the evidence presented
19 as well as the arguments of the lawyers, and it is now my
20 duty and obligation to instruct you on the law in this
21 case. It will then be your duty and obligation to begin
22 your deliberations through which process you will decide
23 the facts, apply the law as I instruct it, and render a
24 fair and impartial decision.

25 It is your exclusive duty to determine what the facts

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1 are in this case. You do that based on your own common
2 sense examination and evaluation of the testimony and other
3 evidence received during the trial of this case. You 12
4 jurors and you 12 jurors alone will decide the value and
5 the weight to be given to any particular testimony or other
6 evidence received. Quite simply, ladies and gentlemen,
7 your ultimate goal is to find the truth in this case, and
8 by doing so, you will have fulfilled your obligations as
9 jurors in giving both the State and the defendant a fair
10 and impartial trial based on the evidence presented and the
11 law as I gave it to you.

12 The indictment charges the defendant with the offense
13 of intimidation of a witness. I remind you that the fact
14 the defendant was arrested, charged and indicted in this
15 case is not evidence and cannot be considered by you as
16 evidence of guilt, nor does it create any presumption or
17 inference of guilt. The document is simply a formal
18 written instrument which contains the charges made against
19 the defendant. It is the formal document which brings the
20 case before this court.

21 The defendant has pled not guilty to the indictment,
22 and that plea puts the burden on the State of South
23 Carolina to prove him guilty. A person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove himself innocent. I charge you that it

1 is a cardinal, important and vital rule of law in a
2 criminal trial. No matter what the seriousness of the
3 charge may be for which he stands charged, the defendant is
4 always presumed to be innocent of the crime for which the
5 indictment was issued unless guilt has been proven by
6 evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 The presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt. The presumption of innocence is like a
13 robe of innocence placed about the shoulders of the
14 defendant which remains with him from the moment of his
15 arrest and continues until it has been stripped from his
16 shoulders by evidence satisfying you of his guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not mere legal theory
19 or a legal phrase. It is a substantial right to which
20 every defendant is entitled unless you 12 jurors are
21 satisfied from the evidence of his guilt beyond a
22 reasonable doubt.

23 I remind you that during this trial, you and I have
24 certain duties to perform. As the trial judge, it is my
25 responsibility to preside over this trial, and I also have

1 the duty to rule on the admissibility of evidence offered
2 during the trial.

3 You are to consider only the competent evidence before
4 you. You are to consider only the testimony which has been
5 presented from the witness stand, any exhibits which may
6 have been made a part of the record, and any stipulations
7 of counsel.

8 I have the additional duty to charge you the law in
9 this case. As the presiding judge, I am the sole judge of
10 the law, and it is your duty as jurors to accept it and
11 apply it as I now state it to you. If you have any idea as
12 to what the law is or what the law ought to be or what the
13 law should be and it does not agree with what I now tell
14 you the law is, you must abandon your idea because you are
15 sworn to accept the law and apply it exactly as I state it
16 to you.

17 In every case tried in this court before a jury, you
18 the jury become the sole judge of the facts in this case.
19 A trial judge cannot intimate, state, comment on or make
20 any statement to a trial jury about the facts in a case.
21 You the jury are the sole judge of the facts in this case,
22 and you are not to infer from what I have said during the
23 progress of this trial in ruling upon the admissibility of
24 evidence or otherwise or anything that I say now during the
25 course of my instructions to you that I have an opinion

1 about the facts in this case. The law of the State of
2 South Carolina does not allow me to have an opinion about
3 the facts in this case. This is a matter solely for you,
4 Madame Forelady, ladies and gentlemen, to determine. As
5 jurors, it is your duty to determine the effect, value,
6 weight and truth of the evidence presented.

7 The State has the burden of proving the defendant
8 guilty beyond a reasonable doubt. Ladies and gentlemen,
9 proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt. There are very
11 few things in this world that we know with absolute
12 certainty, and in criminal cases, the law does not require
13 proof that overcomes every possible doubt.

14 A reasonable doubt may also be described as the kind
15 of doubt that would cause a reasonable person to hesitate
16 to act. If you have such a doubt as to the guilt of the
17 defendant, he would be entitled to a verdict of not guilty.
18 Reasonable doubt may arise from evidence which is in the
19 case or from the absence or lack of evidence in a case.

20 Based on your consideration of the evidence, if you
21 are firmly convinced that the defendant is guilty of the
22 crime charged, you must find him guilty. If, on the other
23 hand, you think there is a real possibility he is not
24 guilty, you must give him the benefit of the doubt and find
25 him not guilty. You alone, you 12 alone, must make the

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1 determination of whether or not reasonable doubt exists as
2 to the guilt of the defendant.

3 There are two types of evidence which are generally
4 presented during a trial: direct evidence and
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who claims to have actual knowledge of a fact
7 such as an eyewitness. It is evidence which immediately
8 establishes the main fact to be proved.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances indicating the existence of a fact. It
11 is evidence which immediately establishes collateral facts
12 from which the main fact may be inferred. Circumstantial
13 evidence is based on inference and not on personal
14 knowledge or observation.

15 The law makes absolutely no distinction between the
16 weight or value to be given either direct or circumstantial
17 evidence, nor is a greater degree of certainty required of
18 circumstantial evidence than on direct evidence.

19 You should weigh all of the evidence in this case, and
20 after doing so, if you are not convinced of the guilt of
21 the defendant beyond a reasonable doubt, you must find him
22 not guilty.

23 Under the constitution of South Carolina, you are the
24 finders of the facts. Necessarily, you must determine the
25 credibility of witnesses who have testified. Credibility

1 simply means believability. It becomes your duty as jurors
2 to analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth.

4 In determining the believability of witnesses who have
5 testified, you may believe one witness over several, or
6 several witness over one. You may believe a part of the
7 testimony of a witness and reject the remaining part of
8 that same witness' testimony. You may believe the
9 testimony of a witness in its entirety or reject the
10 testimony of a witness in its entirety. You may consider
11 whether a witness has exhibited to you any interest, bias,
12 prejudice or other motive in this case. You may also
13 consider the appearance and manner of a witness while on
14 the witness stand. Simply put, ladies and gentlemen do you
15 believe the witness was telling the truth?

16 You may consider how the witness came to know the
17 facts to which he or she testified and whether or not the
18 witness had an opportunity to hear, observe or perceive a
19 fact by means of their senses. Whatever your good judgment
20 and common sense tells you is the most believable testimony
21 is the testimony that you should accept and reject the
22 testimony which you find not to be credible or believable.

23 I instruct you and emphasize the fact the defendant
24 did not testify is not a factor to be considered by you in
25 any way in your deliberation and in your consideration of

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1 the question of guilt or innocence of the defendant. It
2 must not be considered by you in any manner whatsoever. A
3 defendant has the constitutional right to remain silent,
4 and the assertion of this right must not be considered by
5 you in your deliberations. I repeat, under your oath, you
6 are to draw no conclusion whatsoever from the fact the
7 defendant in this case did not testify. The fact that this
8 defendant did not testify should not be discussed in the
9 jury room, as the burden of proof, as I have told you, is
10 on the State of South Carolina. The defendant is not
11 required to prove his innocence. The burden of proof
12 remains on the State to prove guilt beyond a reasonable
13 doubt.

14 Criminal intent is a necessary element of each crime
15 that must be proved by the State beyond a reasonable doubt.
16 Criminal intent is always a matter that must be determined
17 by the jury from the circumstances surrounding the
18 situation. There is no way to prove intent to a
19 mathematical certainty. There is no way medical science
20 can dissect a person's brain and determine what he or she
21 had in mind. The law says that criminal intent may be
22 inferred from the circumstances shown to have existed.
23 This is how a jury makes a determination whether or not the
24 element requiring intent was present.

25 Criminal intent is a state of mind which operated

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1 jointly with an act is the commission of a crime. Criminal
2 intent is a state of mind and conscious wrongdoing, so it
3 is up to you the jury to determine what the defendant
4 intended to do based on the circumstances shown to have
5 existed. I tell you that the State must prove criminal
6 intent beyond a reasonable doubt, just as they must prove
7 every element beyond a reasonable doubt as I previously
8 explained.

9 It is not necessary to establish intent by direct and
10 positive evidence, but intent may be established by
11 inference in the same way as any other fact by taking into
12 consideration the acts of the parties and all the facts and
13 circumstances of the case. While the State may prove
14 motive, it is unnecessary that the State do so. However,
15 the State must prove criminal intent.

16 I have instructed you that the defendant is charged
17 with the offense of intimidation of a witness, specifically
18 that Courtney Ray Mitchell did, in Greenville County, South
19 Carolina, on or about July 26, 2013, by threat or force
20 intimidate or impede or attempt to intimidate or impede
21 Thelma Jones, a witness or a potential witness in a
22 criminal case in the discharge of her duty and/or did
23 destroy, impede or attempt to obstruct or impede the
24 administration of justice in a court, all in violation of
25 the code of laws of this state.

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1 I will now read to you in part Section 16-9-340 of the
2 South Carolina Code of Laws which says, "It is unlawful for
3 a person by threat or force to intimidate or impede a
4 judge, magistrate, juror, witness, or potential juror or
5 witness, arbiter, commissioner, or a member of any
6 commission of this State or any other official of any
7 court, in the discharge of his or her duty as such; or
8 destroy, impede, or attempt to instruct or impede the
9 administration of justice in any court."

10 In order to convict the defendant of this offense, the
11 State must prove beyond a reasonable doubt that he, by
12 threat or force, intimidated or impeded a witness or
13 attempted to intimidate or impede a witness.

14 Ladies and gentlemen, you have been selected as fair
15 and impartial jurors sworn to impartially try and determine
16 the facts of this case, and when you comply with your oath
17 to do so, you will have fully discharged your duty as
18 jurors. You are to decide this case according to the
19 testimony that you have heard from this witness stand along
20 with the other evidence that has been introduced.

21 During your deliberations, you may only discuss the
22 case in the jury room with your fellow jurors because they
23 have seen and heard the same evidence you have seen and
24 heard. However, you must not discuss this case with anyone
25 else until you have returned a verdict and the case is at

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1 an end.

2 Ladies and gentlemen, I further tell you that in the
3 event a juror takes a break for whatever reason, get a
4 drink of water, go to the restroom, you must stop your
5 deliberations until all 12 are present and discuss the
6 matter together.

7 Ladies and gentlemen, your verdict must be a unanimous
8 verdict. Madam Forelady, when the jury agrees on the
9 verdict, you will indicate your verdict in the space
10 provided on the verdict form and sign your name as the
11 forelady of the jury, then knock on the jury room door and
12 inform the bailiff that you have reached a verdict. At
13 that time, we will return you to the courtroom and receive
14 your verdict.

15 Madam Forelady, this is the verdict form of which I
16 speak. It's a sheet of paper. It has the caption of the
17 case and the case number, and it reads, "We, the jury,
18 unanimously find the defendant, Courtney Ray Mitchell, on
19 the charge of intimidation of a witness, not guilty or
20 guilty. I certify this decision was the unanimous decision
21 of the jury." It has a line for the foreperson to sign,
22 today's date in Greenville, South Carolina on it.

23 I tell you, there is no significance to the term "not
24 guilty" being placed above "guilty" or "guilty" being
25 placed above "not guilty." This is simply a form that's on

1 the computer we use at every case. So it is simply a form.
2 There's no significance to that. You choose whichever.
3 You sign this, put the mark by the correct verdict of the
4 jury once all 12 agree. Again, it has to be unanimous.
5 Madame Forelady, you're the only person who has to sign
6 this form.

7 Now, Madam Forelady and ladies and gentlemen, I'm
8 going to send the exhibits back to you. You notice that
9 the exhibits were marked as they were handed up with
10 stickers, and Madam Court Reporter has recorded them, and
11 we have to account for them. They're laying on that table,
12 but I see some here. And I also tell you that lawyers are
13 famous for walking back to a table with one. Over the
14 years, I did it myself.

15 So when we send you back to the jury room, do not
16 begin your deliberations. All 14 of you are going back to
17 the jury room at this time. I'm going to ask the lawyers
18 to come up to Madam Court Reporter and go over those
19 exhibits by number, one by one, to determine they're all
20 there. They belong to you. You can do anything you want
21 with them, review them as much as you like. If you want to
22 see a video or something, we will bring you back here. I
23 will not send a computer back there. I will bring you back
24 to the courtroom, I'll return it here and we'll watch it
25 from here.

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1 Once the lawyers are satisfied all the exhibits are
2 there, nothing is missing, I will then send all of the
3 exhibits back to the jury room with this sheet, Madam
4 Forelady. When he or she comes to the jury room with the
5 exhibits and this form, the two alternate jurors will leave
6 at that time, and, Mr. Bailiff, if you'll segregate those
7 two. They have to be segregated during this process. He
8 will then leave only the 12. Once they leave the room and
9 you have the exhibits, that is your cue to begin your
10 deliberations.

11 Anything at this point before I send them out?

12 MR. PRICE: Nothing from the State, Your Honor.

13 MR. SMITH: Nothing from defense, Your Honor.

14 THE COURT: Madam Forelady, at this time, I'm going to
15 let you go back there, all 14 at this point in time. Be
16 right with you.

17 (WHEREUPON, the jury exits the courtroom at 3:45 p.m.)

18 THE COURT: Exceptions or deletions from the State?

19 MR. PRICE: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. SMITH: None from the defense, Your Honor.

22 THE COURT: Okay. Gentlemen, if you will kindly come
23 up and ensure we have everything.

24 (Pause in proceedings.)

25 THE COURT: Let's put on the record that the lawyers

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VERDICT

THE CLERK: Yes, sir, Your Honor. Your Honor, this is Case No. 2013-GS-23-8607, the State vs. Courtney Ray Mitchell. We, the jury, unanimously find the defendant, Courtney Ray Mitchell, on the charge of intimidation of a witness, guilty. I certify this decision was a unanimous decision of the jury. Signed Tracy Holmesley, foreperson.

If this is your verdict, please raise your right hand.

(WHEREUPON, the jury raised their hands.)

THE CLERK: Thank you.

THE COURT: Polling of the jury from the State?

MR. PRICE: The State does not request that, Your Honor.

THE COURT: From the defense?

MR. SMITH: I'll request it, please.

THE COURT: Okay. Madam Clerk.

THE CLERK: Ladies and gentlemen, the verdict that has just been published was the verdict you reached in the jury room. I ask you, was it your verdict then and is it your verdict now? As I call your names, please answer "yes" or "no," starting with foreperson Tracy Holmesley.

FORELADY: Yes.

THE CLERK: Thank you. Patrick Spadafora.

JUROR: Yes.

THE CLERK: Thank you. Mametta Bainter.

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1 class or prior sergeant first class educated with PTSD and
2 a story to tell. I don't know if you're prior military or
3 not. I am. I'm an old Army captain. Got a couple of set
4 of jump wings and three berets to go with all of that, and
5 you know what color they are, too, don't you?

6 DEFENDANT MITCHELL: Yes.

7 THE COURT: What color are they?

8 DEFENDANT MITCHELL: Black.

9 THE COURT: That's one of them. What's the next one?

10 DEFENDANT MITCHELL: Red.

11 THE COURT: And what -- well, maroon. What's the
12 next one?

13 DEFENDANT MITCHELL: Green.

14 THE COURT: Yes, sir. It sure is.

15 SENTENCING

16 THE COURT: So this court makes a finding of the fact
17 that you are a dangerous individual with a present and
18 clear ability to carry that out.

19 2013-8607, you are confined to the State Department of
20 Corrections for a period of ten years. Good luck to you.
21 Give you credit for time you have served.

22 MR. PRICE: Thank you, Your Honor.

23 THE COURT: Thank you. That concludes this hearing.
24 We're at recess till 9:00 tomorrow morning.

25 (WHEREUPON, court is recessed at 5:17 p.m.)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
FILED-CLERK OF COURT
GREENVILLE IN THE COURT OF GENERAL SESSIONS
PAUL B. WICHENSIMER
2014 AUG 12 PM 3:34
TEENTH JUDICIAL CIRCUIT

State of South Carolina,

Plaintiff,

vs.

Courtney Ray Mitchell,

Defendant.

Case No. 2013-A2320602021

**UNITED PARCEL SERVICE'S
MOTION TO QUASH DEFENDANT'S
SUBPOENAS**

United Parcel Service (hereinafter "UPS"), by and through their undersigned counsel, respectfully move this Court to quash ten (10) subpoenas recently directed to UPS by Courtney Ray Mitchell (hereinafter "Mitchell" or "Defendant") and his attorney, Donald L. Smith. (See subpoenas attached hereto as Exhibit A). This is the third round of subpoenas directed to UPS by Defendant's counsel. This Court declined to enforce the previous subpoenas, and should likewise quash these subpoenas for the same reasons: because they seek irrelevant documents, are intended to harass and intimidate the victims and witnesses in this case, and were not served properly¹.

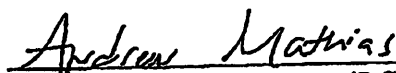
Furthermore, in Defendant's counsel's cover letter transmitting the subpoenas to undersigned counsel he states: "Pursuant to Judge Miller, I have pared down the materials requested to include the complete contents of each personnel file." (See letter attached hereto as Exhibit B.) Undersigned counsel does not recall this Court requesting that counsel "pare[] down the materials requested," but rather thinks that the Court simply denied Mitchell's motion to

¹ Without asking whether service would be accepted, the subpoenas were simply mailed to undersigned counsel. This is not effective service of process under Rule 13(a), South Carolina Rules of Criminal Procedure.

compel compliance with the subpoenas. Undersigned counsel has ordered a copy of the hearing transcript to clarify what this Court did—or did not—order.

Accordingly, UPS respectfully requests that this Court quash the subpoenas and grant any other relief this Court believes is necessary and appropriate under the circumstances. This motion is based upon the statutory and case law of the State of South Carolina, the South Carolina Rules of Criminal Procedure and any affidavits or other evidence which may be submitted by UPS prior to a hearing on the instant motion as well as any argument advanced by counsel.

Respectfully submitted,


James D. Galyean (S.C. Bar No. 15955)
Andrew A. Mathias (S.C. Bar No. 76220)
NEXSEN PRUBT, LLC
55 East Camperdown Way, Suite 400 (29601)
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Greenville, South Carolina 29603-0648
864.370.2211

Attorneys for United Parcel Service

August 12, 2014
Greenville, South Carolina

13-8607

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

State of South Carolina,
Plaintiff,

vs.

Courtney Ray Mitchell,
Defendant.

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

Warrant No.: 2013A2320602021

MOTION FOR A STAY

FILED
JAN 14 AM 9:09
CLERK OF COURT
JAMES E. WILSON
GREENVILLE, SC

TO: JAMES A. PRICE, ASSISTANT SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT
YOU WILL PLEASE TAKE NOTICE THAT the undersigned will move before the
Presiding Judge of the Thirteenth Judicial Circuit for an order of the Court granting the following
relief:

1. For an Order granting the defendant a stay in this case, which is the alleged intimidation of a witness in a Breach of Peace case that is being prosecuted in Municipal Court against the same defendant. Forcing the defendant to try a case in which he is alleged to have intentionally intimidated, or attempted to intimidate, a witness in another crime is highly prejudicial. The charge itself relates to the defendant being a defendant in another case. The prejudicial effect far outweighs the need to try this case first.
2. The State is bringing this case first so as to taint the jury with the charge of breach of peace. The undersigned requested a speedy trial in the municipal case well over a year ago. Court administration said that the case had been removed from that venue. The defendant deserves the right to have the cases tried in chronological order. If there is no crime, there is no witness. Thus, whether the defendant is guilty of the initial charge is a necessary prerequisite to trying this case.

WHEREFORE, the undersigned counsel respectfully requests that a trial date be stayed until such time as the municipal court charge can be resolved.

Respectfully Submitted,



Donald L. Smith
Attorney for the Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@email.com

Anderson, South Carolina
January 14, 2015.

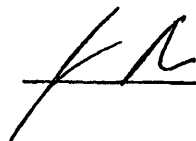
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
INTIMIDATION OF A WITNESS

At a Court of General Sessions, convened on **OCT 21 2014** the Grand Jurors of Greenville
County present upon their oath:

That COURTNEY RAY MITCHELL did in Greenville County, on or about the 26th day of July 2013, by threat or force, intimidate or impede, or attempt to intimidate or impede, VELMA JONES, a witness or potential witness in a criminal case, in the discharge of her duty, and/or did destroy, impede or attempt to obstruct or impede the administration of justice in a court. This is in violation of §16-9-0340 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

one WITNESSES

G S Wood

Greenville Police Department

7/29/2013

ARREST WARRANT NUMBER
2013A2320602021

ACTION OF GRAND JURY
TRUE BILL

Ricky T. Hall

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

2-1

Tracy Holmsted
Foreperson of Petit Jury
Date:

2-12-15

DOCKET NO. 2013-GS-23-
JHP

008607

✓ The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2013 *July*

THE STATE

vs.

COURTNEY RAY MITCHELL

✓ Indictment for

2451

INTIMIDATION OF A WITNESS

VIOLATION § 16-09-0340

ENTERED
ACCT. *mx*

FILED

CCT 03 2013

Clerk of Court
Greenville County

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No: 2015-000517

RECEIVED

APR 05 2017

SC Court of Appeals

THE STATE

RESPONDENT,

v.

COURTNEY RAY MITCHELL

APPELLANT.

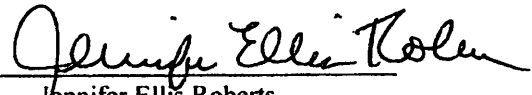
CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
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Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 5, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Court of General Sessions

R. Keith Kelly, Circuit Court Judge

RECEIVED

MAR 21 2017

SC Court of Appeals

Appellate Case No.: 2015-000517

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

APPELLANT'S FINAL BRIEF

March 16, 2017



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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE STATE PROVED THE ELEMENTS OF INTIMIDATING A WITNESS BEYOND A REASONABLE DOUBT**
- II. WHETHER THE TRIAL COURT ERRED BY FAILING TO DECLARE THAT APPELLANT'S ARREST FOR BREACH OF PEACE WAS UNCONSTITUTIONAL**
- III. WHETHER THE TRIAL COURT FAILED TO HOLD THAT THE CHARGE FOR INTIMIDATION OF A WITNESS WAS "FRUIT OF THE POISONOUS TREE"**
- IV. WHETHER THE TRIAL COURT ERRED BY DENYING APPELLANT HIS RIGHT TO DUE PROCESS**
- V. WHETHER THE TRIAL COURT ERRED BY DENYING APPELLANT HIS RIGHT TO A SPEEDY TRIAL**

STATEMENT OF THE CASE

The following is Appellant's Amended Initial Brief in support of the reversal of his criminal conviction for Intimidation of a Witness.

Appellant was initially arrested for Breach of Peace on June 21, 2013, hours after an incident that occurred when he was at lunch with four co-workers from United Parcel Service (UPS). The Breach of Peace that was alleged, occurred despite the fact that the reporters who took issue with Courtney's comments, *never* cautioned him that his conduct was breaching their peace. Furthermore, there were no witnesses, independent of those offered by UPS, that witnessed a breach of peace. He was put on trespass notice in conjunction with the Breach of Peace charge.

He had a couple of items delivered to UPS on July 25, 2013, one of which was a leaf blower he had gotten from a co-worker in an effort to have it repaired by one of his friends; and, the other was a slightly torn envelope containing a number of nondescript items. Appellant was arrested for Intimidating a Witness on July 29, 2013. This appeal stems from Appellant's

conviction for Intimidation of a Witness, and his receipt of the maximum sentence therefore, as a result of jury trial on February 12, 2015. Appellant's Motion for Reconsideration and Motion for New Trial were denied on February 24, 2015. Appellant timely served his Notice of Appeal on March 5, 2015.

STATEMENT OF FACTS

On June 21, 2013, at around 12:30 p.m., Appellant, who was on short term disability at the time, met four of his co-workers from UPS for lunch. At the lunch, Appellant made a number of odd statements that were not the norm for him and were arguably the result of an episode caused by his mental illness. His co-workers recognized that Appellant was "not himself" during the incident. One comment that Appellant made during the lunch was that he wanted to see Ken Baca, a manager at UPS, "leave in a box." He immediately corrected and rephrased his statement, and said that he wanted to see Baca "carrying his box of stuff walking out beside me."

Hiss breach of peace charge states that Appellant threatened co-worker Ken Baca by saying that he wanted to see him being carried out in a box. It is understood that the coworkers at the lunch did not move, nor did they ask Appellant to change his behavior or otherwise suggested that he was being disruptive. No other witnesses stepped forward (nor were any sought) to offer any supporting statements to the contentions of Appellant's coworkers at UPS. The investigation began and ended at the UPS location on Halston Road. UPS called the police. The police came to UPS and took down the facts. At the direction of UPS, the police constructed a warrant for Breach of Peace. Appellant was arrested based solely on the word of UPS (his co-workers).

On July 25, 2013, Appellant, who had been put on a no trespass notice, had to return a co-worker's leaf blower that he had in his possession. He had recognized that the instrument

was not running smoothly; and, he had taken the leaf blower to a friend to have it repaired. He also dropped off a partially torn envelope containing three cell phones, and a number of other nondescript items. The envelope was to be given to Velma Jones, though there was nothing in the envelope that was her property. Moreover, there wasn't anything *within* the envelope directed to her, or with her name on it. The envelope, and its contents, formed the basis of the charge of Intimidation of Witness. The officer who brought the intimidation of a witness charge also worked for, and was paid by, UPS.

Jones, the purported victim of Intimidation of a Witness, had an obtuse explanation for every item in the package. Whereas, Darryl Bailey took the leaf blower that was returned to him and simply placed it in his car (R. 39), Jones believed the leaf blower was a bomb capable of being detonated with a cell phone. (R. 46). Despite the fact that Appellant did not know where her mother lived (R. 49), Jones believed that Appellant was sending her the message because he went to a convenience store that was located in the same county as her mother's house. At trial, she told the jury that the receipt was a threat because it showed a purchase of her favorite beer. (R. 41). She said that a business card from a nursery in Anderson, South Carolina, was a threat against her well-being, because the nursery is near a house in which she had lived-over ten years ago. (R.43). The fanciful explanations of the subject events concocted by Jones and the other purported "victims" has exposed Appellant to a number of disastrous chain of events, as outlined below.

ARGUMENTS

I. THE STATE FAILED TO PROVE THE ELEMENTS OF INTIMIDATION OF A WITNESS BEYOND A REASONABLE DOUBT.

The trial court erred when it held that the State proved the elements of intimidation of a witness beyond a reasonable doubt. In South Carolina, intimidation of a witness is a statutory

offense that consists of (1) an unlawful threat of force to (a) intimidate or impede a witness in the discharge of his duty, or to (b) destroy, impede, or attempt to obstruct or impede the administration of justice in any court. S.C. Code Ann. § 16-9-340(A); State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (2005). The term “threat” is defined as “a communicated intent to inflict harm or loss on another.” Black’s Law Dictionary 1519 (8th ed. 2004). Further, “intimidation” has been defined as “caused by an act knowingly and intentionally done or statement knowing and intentionally made by the defendant, which was done or made in such a manner or under such circumstances that would produce such a reaction or such fear of bodily harm in a reasonable person.” U.S. v. Crosby, 416 Fed. Appx. 776 (10th Cir. 2011).

Intimidation in the constitutional sense is a type of true threat, where a speaker directs a threat to a person with the intent of placing the victim in fear of bodily harm or death; true threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. See Virginia v. Black, 538 U.S. 343, 360 (2003). To support a conviction under § 16-9-340, there must be evidence that a defendant’s actions were an attempt to prevent the purported victim from continuing her activity. See Tucker v. Cherokee Cty. Veterans Affairs Office, No. 7:09-cv-193-HMH, 2009 U.S. Dist. LEXIS 66749, at *6 (D.S.C. 2009).

In the case at bar, Appellant did not use any threat of force, nor did he intimidate Jones or attempt to impede her in the discharge of her duties as a witness. At the time the package was sent, Appellant was unaware that Jones would be called as a witness to the breach of peace charge. Further, the State failed to establish that Appellant made any threat to Jones. There was no note or letter directed to Jones containing any threatening statement. The envelope which Jones received contained trash.

There was a 2003 handgun license that had been expired for some time. Appellant had never told *anyone* the purpose of the envelope. The individual who delivered the leaf blower and envelope was not called as a witness and, therefore, did not offer anything regarding what he understood was to be delivered. The owner of the leaf blower put the leaf blower in his car without a second thought. He testified that he is a reasonable person. (R. 50). On the same token, Ms. Jones' belief that a receipt for beer from a convenience store in the county where her mother resided (even though it was undisputed that Appellant did not know where she lived) and a nursery card from a nursery that she lived near over ten years ago, were not reasonable.

The State offered no evidence that Appellant threatened to physically injure the person or property of anyone, let alone Jones. No reasonable person could interpret receipts and a leaf blower as threatening or intimidating. Jones, the alleged victim, believed that the leaf blower was a bomb, and that three cell phones found in the envelope were detonators. Darryl Bailey, Jones and Appellant's coworker and the owner of the leaf blower, did not believe the leaf blower was a bomb; he nonchalantly placed it in his vehicle. Jones had a theatrical explanation for each item in the package, and even stated that she felt the leaf blower was a bomb because of something she had seen in the news.

In short, Appellant did not threaten to harm the person or property of any person, including Jones, nor did he attempt to impede the discharge of any witness's duties. Appellant did not communicate an intent to "inflict harm or loss" upon Jones. Jones and Darryl Bailey had very different reactions to the leaf blower. Bailey placed the leaf blower in his vehicle (R. 40); Jones believed that the leaf blower was a bomb capable of being detonated remotely using a cell phone. She based this belief on things she had seen in the news, not due to anything Appellant had said or done. Basing one's purported fear of bodily harm on what is seen on television, as

opposed to observations of the alleged intimidator, does not pass muster to get a conviction under § 16-9-340. There was never any evidence of the activity that Appellant was attempting to prevent her from *continuing*, presented. For these reasons, the elements of the crime are not met; and, the conviction should be reversed.

II. THE TRIAL COURT ERRED BY FAILING TO DECLARE THAT APPELLANT'S ARREST FOR BREACH OF PEACE WAS UNCONSTITUTIONAL.

Breach of peace is a violation of public order, a disturbance of tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order. State v. Poinsett, 250 S.C. 293, 297, 157 S.E.2d 570, 571 (1967). Before one may be punished for spoken words, there must be evidence that the words tended to incite a person to respond in a violent manner. Downs v. State of Maryland, 366 A.2d 41, 46 (Md. Ct. Spec. App. 1976). The government is not permitted to assume that every expression of a provocative idea will incite a riot, but must determine whether the expression is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Tex. v. Johnson, 491 U.S. 397, 409 (1989). Words may convey anger and frustration without rising to a level such as to provoke violence. Lewis v. City of New Orleans, 415 U.S. 130, 135 (1974) (Powell, J., concurring). It is not enough that the words merely arouse anger or resentment. Skelton v. City of Birmingham, 342 So.2d 933, 937 (Ala. Crim. App. 1976).

The basis of the charge against Appellant for intimidation of a witness stemmed from a prior breach of peace charge against him. On June 26, 2013, Appellant was charged with breach of peace for making allegedly threatening statements against a member of management at UPS. Appellant was at a lunch with four co-workers outside of UPS property. During the lunch, he expressed his displeasure with a member of management named Ken Baca. Appellant said that

he “would like to see him go out in a box.” He immediately corrected himself and said that he would like to see his things go out in a box, with Baca walking next to it. Appellant and the co-workers finished their lunch without any evidence of concern about Appellant’s behavior. Upon returning to work, the co-workers went to human resources at UPS and told them about what Appellant had said. It was reported to police that Appellant threatened an individual who was not present. It was reported that Appellant threatened to kill someone for an offhand remark that was a mistake, with a subsequent contemporaneous correction.

To summarize, there is no basis in fact to establish that Appellant’s conversation with his co-workers was a breach of peace. No statement by Appellant was intended to incite violence by any co-worker or any person at the restaurant. He simply made a statement that he wanted to see a manager take his belongings out in a box. Not one of the four co-workers ever expressed any discomfort regarding Appellant’s conduct to him. They did not move from the table. No independent third party was a witness to anything breaching anyone’s peace, or at least the State never provided such an individual. Most importantly, Appellant was not arrested at the scene of the alleged breach of peace, but at a later time and at a different location.

Therefore, this Court should declare that Appellant’s arrest for breach of peace was unlawful and in violation of his constitutional rights.

III. THE TRIAL COURT FAILED TO HOLD THAT THE CHARGE FOR INTIMIDATION OF A WITNESS WAS “FRUIT OF THE POISONOUS TREE.”

The “fruit of the poisonous tree” doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality. State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (S.C. 1996). The doctrine applies to both primary evidence obtained as a direct result

of an illegality, and to evidence discovered and found to be derivative of an illegality. See Segura v. United States, 468 U.S. 796, 804 (1984). It extends as well to the indirect as the direct products of unconstitutional conduct. *Id.* Appellant contends that the intimidation of a witness charge is but the “fruit of the poisonous tree” that is the breach of peace charge. As detailed above, Appellant’s arrest for breach of peace was unconstitutional. Appellant contends that this case is distinguishable from cases such as State v. Nelson.

In Nelson, the Supreme Court of South Carolina held that the defendant’s charges were not “fruits of the poisonous tree,” but resulted from new and distinct criminal acts. State v. Nelson, 336 S.C. 186, 195, 519 S.E.2d 786, 790 (S.C. 1999). In that case, the court assumed, *arguendo*, that the police’s initial attempt to stop the defendant driver was unlawful. *Id.* At 194. After the police initially attempted to stop him, the defendant proceeded to run a stop sign and speed through a residential neighborhood. *Id.* At 189. The court reasoned, essentially, that running a stop sign and speeding were crimes committed independently of the attempted initial stop, and thus “purged the taint” of the attempted illegal stop. *Id.* At 195. Therefore, because running a stop sign and speeding “purged the taint” of the attempted illegal stop, the court held that those charges were not “fruit of the poisonous tree,” but were new and distinct crimes. *Id.*

This Court should distinguish the holding in Nelson and hold that Appellant’s charge of intimidation of a witness was “fruit of the poisonous tree.” Like in Nelson, where the police’s initial attempt to stop the defendant was illegal, Appellant’s initial charge of breach of peace was illegal, as detailed above. However, unlike Nelson, where running a stop sign and speeding were crimes independent of the attempted initial stop, Appellant’s charge for intimidation of a witness is not independent of the breach of peace charge. Whereas running a stop sign and speeding are crimes regardless of the circumstances, there can be no charge for intimidation of a witness

charge without a prior charge. Without the illegal breach of peace charge, there would be no “witness” to “intimidate.” Thus, without the illegal breach of peace charge, forwarding an envelope containing things traditionally found on a vehicle floorboard, and a borrowed leaf blower, would not constitute “intimidating a witness,” as the individual receiving the package would not have been a “witness” to a crime.

This Court should distinguish the reasoning in Nelson, which essentially held that the crimes committed by the defendant subsequent to the attempted illegal stop were independent of said stop, and thus “purged the taint” of the stop, and hold that Appellant’s intimidation of a witness charge was by definition dependent upon the illegal breach of peace charge, and thus could not have “purged the taint” of the charge. Therefore, because Appellant’s intimidation of a witness charge did not “purge the taint” of the illegal breach of peace charge, this Court should hold that the intimidation of a witness charge was “fruit of the poisonous tree,” and reverse Appellant’s conviction thereof accordingly.

In conclusion, this Court should hold that Appellant’s charge of intimidation of a witness was the “fruit of the poisonous tree.” The initial charge for breach of peace of was illegal. The charge of intimidation of witness, by definition, is dependent upon the illegal breach of peace charge; without the illegal breach of peace charge, there would be no “witness” to “intimidate.” The intimidation of witness charge was not independent of the illegal breach of peace charge, and thus did not “purge the taint” of the illegal charge. Therefore, the intimidation of a witness charge was the “fruit of the poisonous tree,” and Appellant’s conviction thereof should be reversed.

IV. THE TRIAL COURT ERRED BY DENYING APPELLANT HIS RIGHT TO DUE PROCESS.

Appellant contends that the trial court erred by denying him his right to due process, by failing to compel the discovery of Velma Jones' personnel file, which had previously been subpoenaed, on February 9, 2015. (R. 3-16). In addition, the Court refused to dismiss the case against Appellant due to the failure to adhere to Brady and its progeny. The motion was argued immediately prior to trial on Thursday, February 12, 2015. (R. 17-28).

It should be noted that if the State should object to either of these issues as having been waived by not addressing them in trial, Appellant puts forth the Futility Doctrine as justification. In particular, the Court was of the belief that discovery issues were not relevant if the issues were not going in front of the jury. The Futility Doctrine was applied in Higginbottom wherein, "the tone and tenor of the trial judge's remarks concerning her gender and conduct were such that any objection would have been futile." State v. Higginbottom, 344 S.C. 11, 542 S.E.2d 718 (2001). In the case at hand, the Court's dismissive remarks concerning Appellant's objections to the manner in which the State provided discovery in light of Brady, were such that any further objection would have been futile.

Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either through examination of the witness or by evidence otherwise adduced. Rule 608(c), SCRE. Anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded to his or her testimony. State v. Baker, 390 S.C. 56, 66, 700 S.E.2d 440, 444 (S.C. Ct. App. 2010).

The trial court granted UPS's Motion to Quash discovery of the personnel file of Velma Jones, sought by Appellant. He had originally sought the personnel files of the co-workers that were present at the lunch, based on the fact that the Breach of Peace was not devised until the co-

workers had returned to UPS and counseled with their superiors. Based on the fact that the State only intended to call Ms. Jones, the alleged victim in this intimidation charge, Appellant moved only to acquire her personnel file. Appellant believes that there is evidence that would show that Jones was being passed over for promotion at UPS, and initiated the Intimidation of a Witness to cause people to feel sorry for her and, perhaps give further thought to promoting her. Jones became a victim in order for UPS to overlook whatever it was that was preventing her advancement.

As discussed above, Jones likened the return of the leaf blower to a terroristic act, with an allegation that the leaf blower contained a bomb (despite the fact that she never saw it). She fed her co-workers' fear of potential terroristic acts, with baseless claims. Her vivid imagination provided an explanation for every useless piece of paper found in the envelope, ultimately relating them to herself. She created a furor by announcing that a leaf blower, that had been safely placed in a vehicle by its owner, was a bomb. She then stated that Appellant purposefully put three cell phones in the envelope because they were detonators. None of the outrageous claims that she made proved to be true. It can logically be deduced that the claims were not made by a reasonable person because prior to her announcement of terrorist activities, everyone was moving forward without hesitation.

Based on the baseless claims, of Ms. Jones, it became necessary to look into what might be driving her to make such claims. Her failure to advance at UPS, demonstrated a possible motive for pursuing the charge. She maintained an employment relationship with UPS. She had helped to get the original Breach of Peace charge against Appellant, even though she did absolutely nothing to indicate to him that he was doing *anything* wrong during the course of the lunch. Without her personnel file, he was unable to review her employment history to derive

whether there was something that illustrated bias. Based on the fact that her claims were not credible in any way, it was necessary to have her file.

It is Appellant's belief that Jones's personnel file would shed some light on her motivation for concocting such wild allegations. Much like the plaintiff in Yoho v. Thompson, 336 S.C. 23, 518 S.E.2d 286 (2000), Appellant deserved the opportunity to thoroughly cross-examine Ms. Jones to uncover any bias that she may have. Without her personnel file, the jury was only able to see an individual insulated from any true inquiry into a potential motive.

Appellant was also denied the opportunity to get *his* personnel file. He is able to get his personnel file in a Workers' Compensation case involving money damages. However, the Court refused to allow him to show that the claims regarding his ineptitude by Ms. Jones-no less, were less than credible. It is not logical that an individual may collect his or her personnel file to perfect a Workers' Compensation claim, but is unable to collect the personnel file that may be the difference between freedom and a ten-year sentence.

Appellant moved for a dismissal of the charge due to the State's failure to provide discovery in a manner that reflects the idealistic intention of Brady, to safeguard the ability to defend oneself, as extolled by the Constitution.

In addition, the State has a duty to disclose evidence favorable to a defendant. See generally Brady v. Maryland, 373 U.S. 83 (1963). Suppression of evidence favorable to an accused violates due process where the evidence is material. Id. At 87. There are three categories of Brady violations: (1) cases involving nondisclosed evidence or perjured testimony about which the prosecutor knew or should have known; (2) cases in which the defendant specifically requested the nondisclosed evidence; and (3) cases in which the defendant made no request or only a general request for Brady material. State v. Moses, 390 S.C. 502, 516-17, 702

S.E.2d 395, 403 (S.C. 2010). Evidence considered favorable to the defendant includes both exculpatory and impeachment evidence, and extends to evidence that is not in the actual possession of the prosecution, but also to evidence known by others acting on the government's behalf, including the police. Id. To show prejudice resulting from the exclusion of evidence, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or lack thereof. State v. Lyles, 379 S.C. 328, 334, 665 S.E.2d 201, 204 (S. C. Ct. App. 2008).

A defendant has a right to all evidence that could prove his innocence. Respondent withheld Brady evidence. Respondent offered Appellant the supplemental incident report on February 10, 2015 (two days before trial), or nearly a year and a half after the incident. Respondent offered a video of the July 25, 2013 incident on January 16, 2015. The video was roughly three minutes and fifty seconds long. There were two blank areas of film that were forty-eight and forty-nine seconds, respectively-nearly half the video was missing. Respondent hid evidence behind UPS by saying it "didn't have control" of UPS, despite the fact that the video was played for law enforcement and was used to arrest Appellant.

UPS gave Respondent what it wanted. In essence, UPS was given a deputy's badge, similar to the sheriff's auxiliary in some jurisdictions. It is suspect that so much evidentiary material was withheld from Appellant. There is no reason for two blank areas in the video. Similar to the eighteen and one-half minute gap in the Nixon White House Tapes, Respondent appears to have been hiding something. Where there is smoke, there is fire.

In sum, Appellant was deprived of evidence critical to his defense. Employee records of UPS personnel would have shed light on a possible conspiracy to oust Appellant from the company. Particularly, Jones's records would have shed light on a possible conspiracy to oust

Appellant from the company, or to simply bolster her efforts to secure elevation within the company. Particularly, Jones's records would have shed light on the outlandish story that she told regarding the leaf blower.

Respondent entirely withheld some evidence, including portions of the video of the subject incident. Police statement(s) that were given to the State psychiatrist who was assessing Appellant's competency, but not given to the defense. Part of the supplement to the Incident Report was withheld until February 10, 2015 (2 days prior to trial), when it had been signed off by the necessary supervisor in August of 2013. Other evidence was withheld for so long as to prevent Appellant from incorporating it in his defense, such as the parts of the video that were actually provided and the supplement to the incident report. Appellant was prejudiced by these illegal withholdings. Therefore, this Court should reverse his conviction for intimidation of a witness, based on the State's, in conjunction with UPS, willful and wanton failure to provide complete discovery at the time that it became available to the State, and/or its agent, UPS.

V. THE TRIAL COURT ERRED BY DENYING APPELLANT HIS RIGHT TO A SPEEDY TRIAL

The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution, and is further imposed by the Due Process Clause of the Fourteenth Amendment. Barker v. Wingo, 407 U.S. 514, 515 (1972). A reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: (1) length of the delay; (2) reason for the delay; (3) defendant's assertion of the right; and, (4) prejudice to the defendant. State v. Evans, 386 S.C. 418, 423, 688 S.E.2d 583, 586 (S.C. Ct. App. 2009). The four factors must be considered along with any other relevant circumstances. Id. If the defendant shows actual prejudice, the court must consider the prosecution's reasons for the delay and balancer the justification for delay with any prejudice to the defendant. State v.

Brazell, 325 S.C. 65, 72, 480 S.E.2d 64, 68-69 (S.C. 1997). Showing actual substantial prejudice only requires a reasonable probability that, absent the delay, the result of the proceeding would have been different. Jones v. Angelone, 94 F.3d 900, 908 (4th Cir. 1996). An indictment should be dismissed if a delay was an intentional device by the State to gain a tactical advantage. State v. Brazell, 325 S.C. at 72. If a court concludes that a defendant's right to a speedy trial has been violated, dismissal of the charges is the only possible remedy. State v. Langford, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (S.C. 2012).

The basis for Appellant's intimidation of a witness charge was the unlawful breach of peace charge. As discussed above, there was no basis for the breach of peace charge. It focused on Appellant's statement that he would like to see UPS manager carrying his belongings in a box. Such a statement certainly would not tend to incite others to commit violence or any other illegal act. There was no reaction by the witnesses to Appellant's conduct that day at lunch. Clearly, if the conduct did not produce a single objection from four people, there is no way that it could be considered as being conduct that tends to incite others to commit violence or other illegal acts.

Despite conceding that breach of peace is not a general sessions charge (R. 5), the State removed the charge from the municipal court's jurisdiction. The State gave no further explanation for the interference. The State knew that the breach of peace charge was baseless, and did not want the charge to be tried before the intimidation of a witness charge. If Appellant were exonerated of the breach of peace charge, the State's case for the intimidation of a witness charge would have fallen apart. The State was manipulating the docket to fit its own end. It refused to prosecute, despite Appellant's requests for a speedy trial. Appellant was prejudiced by

the denial of a speedy trial because he had to defend himself against a charge-intimidation of a witness-which would have been without merit had he been exonerated of breach of peace.

In conclusion, Appellant's right to a speedy trial was violated. The State maintained that Appellant was attempting to intimidate a witness for a simple breach of peace charge, a charge that the defense believed would be dismissed prior to the empaneling of a jury. The State did not show that Appellant was aware that Ms. Jones was a witness to anything given the fact that she did not make any direct or circumstantial statement regarding his conduct at the lunch. Additionally, the State did not show that Appellant somehow knew that Ms. Jones met with the UPS hierarchy, along with her co-workers, to provide the impetus for the Breach of Peace charge. The police, who were being paid by UPS, manufactured a breach of peace charge from the lunch event, despite the fact that the lunch had disbanded hours before without incident.

The breach of peace charge was removed from the jurisdiction of the municipal court, for the sole purpose of preventing it from reaching trial. If Appellant had been exonerated of the breach of peace charge, it would have shown that once and for all that there existed no reason to intimidate anyone. The State disallowed the breach of peace charge from reaching trial in order to gain a tactical advantage over Appellant, a reason for the delay that the Supreme Court of South Carolina has explicitly denounced as prejudicial to a defendant. Therefore, because Appellant was prejudiced in his defense of the intimidation of a witness charge by the State's unreasonable denial of his right to a speedy trial, this court should reverse his conviction of same.

CONCLUSION

Jones assumed that Appellant was intending to deter her from testifying against him in the Breach of Peace case, by sending the envelope with the leaf blower. There is no way that he

would have known that she was part of a quest to have him arrested. First, she (nor did anyone else at the table) did not say anything negative to him about his conduct at the lunch. In fact, she “may” have spoken to him about her 9 mm at the lunch, which invited him to continue to speak of guns. Second, and most importantly, Jones never corresponded with Courtney again, following the lunch.

Jones and the rest of team UPS went to Human Resources following the lunch, which is where the Breach of Peace charge was hatched. Courtney was not privy to anything that was said or done at the Halston Road location. When he was charged with the Breach of Peace, it was understood that carrying Ken Baca out in a box, and referring to Dwight Inman as a towel-head taxi driver, formed the basis for the charge. Hence, he sent them both trespass notices in which he said they were no longer his friends, and that they needed to stay away from him and his family.

His failure to send anyone else a like declaration indicates that he had no knowledge of anyone else’s involvement. Gina “Velma” Jones was Courtney’s friend. He had absolutely no reason to believe that she would attempt to have him prosecuted. Without the knowledge that Velma was instrumental in the creation of the Breach of Peace charge, there is *absolutely nothing* that supports him having a reason to intimidate her for a peace that she herself, with her inaction at the lunch, verified that he did not breach.

In summary, the State did not prove Appellant’s the elements of intimidation of a witness, with the use of hot phrases and catch words. Appellant neither threatened nor intimidated Jones. In determining whether a defendant’s acts did in fact cause intimidation, courts employ a reasonable person standard, and determine whether the acts would produce a fear of bodily harm in a reasonable person. The alleged victim, Jones, stated that the borrowed

leaf blower was a bomb, and three cellphones, or at least one of them, was a detonator. She subsequently said that she realized this scenario due to her television viewership. Such a belief was not based on Appellant's statements (whether direct or circumstantial) or actions. A reasonable person would not have been overcome with fear of bodily injury with knowledge of the presence of a leaf blower, as evidenced by the owner summarily dismissing the leaf blower to his car upon receipt.

Additionally, Appellant's arrest for breach of peace was unlawful. The statements that Appellant made regarding his desire to see a UPS manager carry his belongings out in a box was not directed to any of the co-workers present when the statement was made. None of the co-workers that heard the statements expressed any discomfort as the statements were being made. Such statements would not tend to incite violence or the commission of other unlawful acts by those who heard them. Essentially, Appellant was arrested for a lawful exercise of his First Amendment rights. Furthermore, Appellant was not arrested for the alleged breach of peace until hours after the statements were made.

The intimidation of a witness charge that followed the unconstitutional breach of peace charge was "fruit of the poisonous tree." By definition, the intimidation of a witness is dependent upon the prior commission of a crime. As opposed to a new and distinct crime, which would be committed independently and "purge the taint" of the illegal police activity, Appellant could only be charged with intimidation of a witness because of the existence of the breach of peace charge. Without the breach of peace charge, there would not have been a "witness" to claim to have been "intimidated."

Finally, the trial court erred in denying Appellant his right to due process. The trial court refused to enforce subpoenas and a Brady request that sought materials critical to Appellant's

defense. The subpoena sought UPS employee records of Jones, which may have shed light on issues such as the motive which drove Jones to concoct such imaginary suspicions of leaf blowers and cellphones. The State failed to produce the entire surveillance video of the drop-off of the leaf blower and envelope. Police statements which were given to Appellant's psychiatric competency evaluator, were withheld by the State. Respondent withheld other crucial evidence, such as the supplemental incident report and snippets of the video, until it was too late to incorporate the materials in Appellant's defense. Further, Appellant was prejudiced by the denial of his right to a speedy trial. The State manipulated the dockets and removed the breach of peace charge from the municipal court's jurisdiction, knowing that Appellant's exoneration of the charge would eliminate the grounds for the intimidation of a witness.

Therefore, for the reasons stated herein, this Court should hold that the trial court erred by: (1) holding that the State did not prove the elements of the Intimidation of a Witness; (2) failing to declare Appellant's arrest for breach of peace unconstitutional; (3) failing to declare that Appellant's intimidating a witness charge was "fruit of the poisonous tree" (4) denying Appellant his right to due process; and, (5) denying Appellant his right to a speedy trial. Accordingly, this Court should reverse Appellant's conviction for intimidating a witness.

Respectfully submitted,



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Anderson, South Carolina
March 16, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In The Court of General Sessions

R. Keith Kelly, Circuit Court Judge

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MAR 21 2017

SC Court of Appeals

Appellate Case No.: 2015-000517

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that the Appellant's Final Brief in the above-captioned matter contains all materials proposed to be included by the parties, and not any other material.



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Appellant.

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STATEMENT OF ISSUES ON APPEAL

I.

Appellant's argument that the State failed to prove his guilt of intimidation of a witness beyond a reasonable doubt is not a proper issue for appellate review and cannot be a trial court error because the trial court did not make such a holding during trial. However, to the extent the Court may construe Appellant's argument as one regarding the denial of his directed verdict motion, the trial court correctly denied that motion based on the evidence presented.

II.

Appellant's argument that the trial court erred by failing to declare that his arrest for breach of peace was unconstitutional is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

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Appellant's argument that the trial court erred by failing to hold that the intimidation of a witness charge was the "fruit of the poisonous tree" is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

IV.

The trial court provided Appellant his right to due process in regard to discovery and enforcing the State's obligation to disclose all material, exculpatory, and impeachment evidence to the defense.

V.

Appellant's argument that the trial court erred by denying his right to a speedy trial is not preserved for appellate review because, in regard to the charge for which he was convicted and challenges in this appeal, it was neither raised to nor ruled upon by the trial court.

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Appellant for intimidation of a witness. (R. 124-125) On February 12, 2015, Appellant proceeded to a trial before the Honorable R. Keith Kelly and a jury. Donald L. Smith, Esquire, represented Appellant, and Assistant Solicitor James Hardy Price, IV, Esquire, represented the State. The jury found Appellant guilty, and Judge Kelly sentenced him to ten years' imprisonment. (R. 119.)

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On or about June 22, 2013, Appellant met with the team he used to work with at UPS for a lunch gathering. (R. 61, lines 9–14; R. 63, lines 11–14.) He made erratic and derogatory statements and told the group he had a new military-grade sniper rifle with armor-piercing bullets. (R. 61, lines 15–19.) He also told the group “his fixation was to carry—for the [UPS] director of inside sales to be—to leave that place in a box and corrected himself and said, ‘I mean with a box and me beside him.’” (R. 61, lines 20–25.) His former team coach, Gina Jones, reported the incident to her Human Resources department at UPS and Appellant was arrested for breach of peace. (R. 25, lines 13–23; R. 62, lines 19–24.) She was expected to testify against him. (R. 63, lines 8–10.)

On July 26, 2013, before the breach of peace case was called for trial, a man dropped off a package at the UPS office for Derrill Bailey, an inside sales representative. The package contained Bailey’s leaf blower, which he had given to Appellant to have repaired. (R. 50, lines 21–25; R. 52, line 14–R. 53, line 8.) Along with the leaf blower, the man gave Bailey an envelope for Gina Jones. He delivered it to Jones and they both looked through it, finding three cell phones; a check written to cash for \$50; two trespass notices; a concealed weapons permit (CWP); a Whitten’s Nursery business card; a note referencing an earlier text message Jones had received from Appellant, which was written on the letterhead of a hunting club; and a receipt from a 7-Eleven near Jones’s mother’s house. (R. 50, line 21–R. 54, line 1; R. 63, line 15–R. 65, line 2; R. 88, lines 10–11; R. 90, lines 8–15.) After Bailey reported the incident to a police officer and Jones reported it to Human Resources, a warrant was issued for Appellant’s arrest on the charge of intimidation of a witness. (R. 55, line 2–R. 56, line 23; R. 92, lines 14–25; R. 124–125.)

Appellant subsequently filed a motion to vacate orders of protection and a motion to compel and served them on UPS, and on February 9, 2015, Appellant's attorney and the attorney for UPS went before Judge Kelly regarding UPS's motion to quash these motions. (R. 12, lines 2–17.) Judge Miller previously held a hearing on July 11, during which he denied Appellant's motion to compel information regarding 401(k) information. (R. 12, lines 12–23.) Appellant again sent subpoenas asking for the same information, and UPS filed a motion to quash. (R. 13, lines 3–11.) Appellant then sent two more subpoenas, including one for Gina Jones, seeking the exact same information Judge Miller denied. (R. 13, lines 12–20.)

Appellant argued Judge Miller's earlier ruling used the word "it" and, thus, he did not know which of the motions Judge Miller was ruling on. (R. 15, lines 9–19.) He also told Judge Kelly he had requested a speedy trial on the breach of peace charge. (R. 15, lines 20–23.) Appellant then stated his understanding was that the breach of peace charge was not going to trial. (R. 15, lines 23–24.) He argued the intimidation of a witness charge was based on a charge that was no longer there. (R. 15, line 24–Tr. 8, line 3.) He then stated he had subpoenaed both his own and Jones's personnel files. (R. 16, lines 14–19; R. 17, lines 12–23.) Judge Kelly asked Appellant and UPS to get anything to him by the next day so that he could review and consider it before the trial started. (R. 19, lines 1–10.)

On February 12, 2015, Appellant proceeded to trial before Judge Kelly and a jury. Defense counsel did not mention the subpoenas or ask for a ruling on his motion to compel. He also did not mention the personnel files. Defense counsel argued pretrial that nothing connected the victim in this case to the breach of peace charge and, therefore, no evidence concerning the alleged breach of peace should be allowed. The State argued the breach of peace charge was part of the *res gestae*. (R. 25, line 13–R. 26, line 20.) After the State listed the evidence it would present and defense counsel argued about why it should not be admissible, the trial court ruled

the evidence was admissible. (R. 26, line 21–R. 27, line 23.) The trial court then asked whether the State would bring in the prior charge or just the facts of the incident. (R. 28, lines 23–25.) The trial court determined the State could both mention that Appellant was charged with breach of peace and call witnesses to testify to the facts regarding that incident. (R. 30, lines 3–19.)

Next, defense counsel argued a motion for dismissal based on alleged difficulties getting discovery from the State. (R. 31, lines 8–17.) Specifically, he argued he was given a UPS security video on January 15 that had “gaps” in it. (R. 31, lines 17–25.) The solicitor explained he had requested the video long ago but did not receive it until recently and gave a copy to defense counsel as soon as he got it from UPS. (R. 32, lines 10–19.) After determining the State had the exact same video with gaps, and that the State had given defense counsel everything it had, the trial court denied Appellant’s motion to dismiss. (R. 33, lines 5–25; R. 40, lines 10–21.)

The case then proceeded to trial. First, the State called Keith McNeel, the UPS supervisor responsible for facilities, safety, and security. (R. 43, lines 4–25.) He verified the security cameras were working on July 26, 2013, and that he was able to obtain video from the security footage for that morning. (R. 44, lines 11–25.) He identified State’s Exhibit No. 1 as the video, and it was admitted into evidence without objection and played for the jury. (R. 45, line 19–R. 46, line 20.) On cross-examination, defense counsel asked if McNeel was concerned there were two gaps of forty-eight and forty-nine seconds in the four-minute video. (R. 47, line 25–R. 48, line 2.) McNeel stated he was not concerned, that he did not have any control over the video, and that he could not have cut out any portions; rather, he left it just as he received it from the security group. (R. 48, lines 3–19.)

Next, the State called Wiley Derrill Bailey, an inside sales representative for UPS, who testified that on July 26, 2013, he saw a man in the lobby of UPS with the leaf blower he had

previously given to Appellant to have repaired. (R. 49, line 21–R. 52, line 11.) Bailey also testified the man had a manila envelope with him, which Bailey looked through with Gina Jones. (R. 52, line 12–R. 53, line 21.) Inside the envelope were three cell phones, a concealed weapons card with Appellant's picture on it, a check for cash in the amount of \$50, and possibly some more items. (R. 53, line 22–R. 54, line 1.) Bailey talked to a police officer about it, and Jones took the envelope to Human Resources. (R. 55, lines 2–5; R. 56, line 20–R. 57, line 2.)

Gina Jones testified next, explaining she was a team coach at UPS on July 26, 2013, and that Appellant was previously an inside sales representative on her team. (R. 58, line 3–R. 59, line 11.) She recalled that early that morning, around 1:00 a.m., she received a text message from Appellant concerning an \$80,000 offer from an attorney, in which he referred to Jones as his sister and told her to send his belongings to an address in Abbeville. (R. 60, lines 11–25.) She testified that approximately a month before that date, she and her team had gone to lunch with Appellant, who was no longer working with them at the time. (R. 61, lines 9–14.) During the lunch, Appellant behaved erratically, told everyone about owning a new military-grade sniper rifle with armor-piercing bullets, and said his fixation was for the director of inside sales to leave that place in a box. (R. 61, lines 15–22.) She testified Appellant had then corrected himself and said he meant leave with a box and beside him. (R. 61, lines 22–23.) Appellant also made derogatory statements, used racial slurs, and called specific UPS employees names. (R. 61, lines 23–25.) Jones stated he was very loud and boisterous and that it was both embarrassing and scary. (R. 62, lines 8–12.) She felt obligated to alert her management team because Appellant threatened the life of one of her managers, so she notified Human Resources when she returned to work from lunch. (R. 62, lines 12–22.)

Jones then testified again regarding July 26, 2013, the day she received the envelope. (R. 63, line 15–R. 64, line 2.) She testified that inside the envelope were three cell phones; two

trespass notices for Dwight Inman (another inside sales representative at UPS) and Ken Baca (the director of inside sales); a CWP; a Whitten's Nursery business card; a note referencing the text message she had received from Appellant earlier that morning that was written on the letterhead of a hunting club; and a receipt from the 7-Eleven near her mother's house. (R. 64, line 15–R. 65, line 2.) At that point, Appellant objected on the basis of relevancy, but the trial court advised him the contents had not been offered into evidence yet. (R. 65, lines 3–5.) The solicitor then showed each item to Jones, had her identify it, and moved them all into evidence without objection by Appellant. (R. 65, line 6–R. 68, line 19.) Jones testified that when she saw the items, and based on things Appellant knew about her from working closely together (such as her favorite beer which was listed on the receipt), she felt he was sending her a message that “he has a gun, and he knows where I live, he knows where my family lives.” (R. 68, line 22–R. 69, line 11.) She stated, “I was very upset that he took this method of trying to let me know that he knew these things and it all was in relation to the events that happened in June. He scared me. He scared my family.” (R. 69, lines 17–21.) When asked if she was afraid to testify against Appellant after receiving the items, she said she was. (R. 69, lines 22–24.)

Lastly, the State called Detective Gregory Scott Wood of the Greenville Police Department, who was working at UPS on special assignment on July 26, 2013. (R. 86, line 10–R. 87, line 25.) He testified he found out from Keith McNeel that Appellant had contacted Bailey by phone and Jones and another employee by text. (R. 89, lines 20–25.) Detective Wood related that there was concern Appellant might make contact with current employees after the incident from the lunch. (R. 90, lines 3–7.) Wood was notified that a package had been delivered so he went to Mr. Baca's office to examine it and learn more about the situation. (R. 90, lines 8–17.) He testified the package contained three cell phones, a CWP, a check for \$50, a

receipt from the 7-Eleven, a nursery business card, and the letters to Inman and Baca for trespass notice. (R. 90, lines 19–25.)

On cross-examination, Detective Wood testified he spoke to Jones and sensed fear in her. (R. 91, lines 18–20.) He stated that he believed her fear was absolutely reasonable. (R. 92A, lines 17–22.) When asked if he knew of anything that would make Appellant want to intimidate Jones, he testified he knew Jones was part of the reason Appellant had been charged with breach of peace for the lunch incident. (R. 93, lines 16–21.) When asked what force Appellant used to try to intimidate Jones, he testified, “Psychological force.” (R. 94, lines 1–2.)

The State rested, and Appellant moved for a directed verdict arguing “there’s been no offering of threat” and “no showing of intent.” (R. 94, line 22; R. 95, lines 22–25.) The State argued enough evidence existed between sending one’s CWP, along with the receipt and business card, combined with Appellant’s talking about killing a co-worker and having firearms and armor-piercing bullets. (R. 96, line 21–R. 97, line 3.) The trial court denied the motion, reminding Appellant the court does not weigh the evidence but rather is only concerned with whether any evidence exists. (R. 97, lines 6–13.) Defense counsel introduced various exhibits and then rested without calling any witnesses or having Appellant testify. (R. 97, line 19–R. 104, line 18.)

After closing arguments and the jury charge, the jury found Appellant guilty and the trial court sentenced him to ten years’ imprisonment. (R. 118, lines 1–7; R. 119, lines 19–20.)

ARGUMENT

I.

Appellant's argument that the State failed to prove the elements of intimidation of a witness beyond a reasonable doubt is not a proper issue for appellate review and cannot be a trial court error because the trial court did not make such a holding during trial. However, to the extent the Court may construe Appellant's argument as one regarding the denial of his directed verdict motion, the trial court correctly denied that motion based on the evidence presented.

Appellant argues “[t]he trial court erred when it held that the State proved the elements of intimidation of a witness beyond a reasonable doubt.” (App.Br.4.) However, the trial court made no such “holding.” Rather, the trial court thoroughly charged the jury on the State’s burden of proof, the presumption of innocence, and the elements of the offense (R. 105–117), and *the jury* found the State had proved its case beyond a reasonable doubt when it found Appellant guilty. (R. 118, lines 2–7.) To the extent Appellant’s argument could be generously construed as one based on the denial of Appellant’s directed verdict motion, the trial court properly denied that motion based on the existence of the evidence presented. Consequently, Appellant’s stated issue is not proper for appellate review, and in any event the trial court correctly denied his directed verdict motion.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not with its weight. State v. Pearson, 415 S.C. 463, 469, 783 S.E.2d 802, 805 (2016). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. at 470, 783 S.E.2d at 806. The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. Id. at 469, 783 S.E.2d at 805. A defendant is

entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. (citations omitted).

Section 16-9-340 of the South Carolina Code provides:

(A) It is unlawful for a person by threat or force to:

- (1) intimidate or impede a judge, magistrate, juror, witness, or potential juror or witness, arbiter, commissioner, or member of any commission of this State or any other official of any court, in the discharge of his duty as such; or
- (2) destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

S.C. Code Ann. § 16-9-340 (2015).

Appellant argues Appellant did not use any threat or force. He argues the State failed to establish Appellant made any threat to Jones and specifically points out “[t]here was no note or letter directed to Jones containing any threatening statement.” (App.Br.5.) However, the State elicited testimony from both Jones and Detective Wood that the combination of the previous threat regarding a co-worker and the contents of the envelope, which included Appellant’s CWP and personal information about Jones and her family, were enough to cause Jones to feel threatened. Jones testified that when she saw the items, and based on things Appellant knew about her from working closely together (such as her favorite beer which was listed on the receipt), she felt he was sending her a message that “he has a gun, and he knows where I live, he knows where my family lives.” (R. 68, line 22–R. 69, line 11.) She stated, “I was very upset that he took this method of trying to let me know that he knew these things and it all was in relation to the events that happened in June. He scared me. He scared my family.” (R. 69, lines

17–21.) When asked if she was afraid to testify against Appellant after receiving the items, she said she was. (R. 69, lines 22–24.) When Wood was asked how Appellant threatened Jones, he testified that based on everything he knew about what happened the day of the lunch, combined with the package and the leaf blower, he sensed fear in Jones and found her fear to be absolutely reasonable. (R. 92A, lines 1–22.) When asked what force Appellant used to try to intimidate Jones, he testified, “Psychological force.” (R. 94, lines 1–2.)

One tactic Appellant takes in his brief is to repeatedly claim that Jones is not a reasonable person and to offensively claim she gave theatrical explanations for the items in the envelope. However, Appellant’s sweeping generalization that “no reasonable person could interpret receipts and a leaf blower as threatening or intimidating” (App.Br.5.) ignores the most troubling items and Jones’s direct testimony that she interpreted the sending of the items as a message that “he has a gun, and he knows where I live, he knows where my family lives.” (R. 68, line 22–R. 69, line 11.) Furthermore, even if Appellant believes a “reasonable person” would not have interpreted the items the way Jones did, that would be a decision for the jury, not Appellant or the trial judge. In any event, it is not a standard appearing anywhere in the language of the statute, nor for reviewing a directed verdict motion. The trial court could only base its directed verdict ruling on the existence of evidence from which a reasonable juror could find Appellant guilty, not on whether the victim’s reaction was reasonable. See Pearson (quoting State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016) (“[T]he court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.”)). Indeed, only the jury was tasked with determining whether Jones was reacting in a reasonable manner when it determined the State met its burden in proving the elements of the crime.

Because the State presented evidence Jones was intimidated by Appellant's implied threat to her and her family, and additionally feared testifying against Appellant after receiving the package, sufficient evidence did exist reasonably tending to prove the guilt of Appellant so that the case should go to the jury. The trial court properly denied Appellant's directed verdict motion, and this Court should affirm.

II.

Appellant's argument that the trial court erred by failing to declare that his arrest for breach of peace was unconstitutional is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

Appellant argues the trial court erred by failing to declare that his arrest for breach of peace was unconstitutional. However, this issue was neither raised to nor ruled upon by the trial court. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”); see also State v. Langford, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012) (“Constitutional questions must be preserved like any other issue on appeal.”). Therefore, it is not preserved for appellate review.

Appellant argues, for the first time in this case, that “there is no basis in fact to establish that [Appellant]’s conversation with his co-workers was a breach of peace.” (App.Br.7.) He claims, “He simply made a statement that he wanted to see a manager take his belongings out in a box.” (App.Br.7.) This statement is disingenuous, however, because Jones’s testimony was that Appellant *first* said his fixation was for the director of inside sales to “*leave that place in a box*” and only then did he correct himself and say he meant “*with a box*” with him beside the director. Appellant admits he made the original statement but asks this Court to consider only the portion made after he “corrected” himself. (App.Br.7.) Appellant also claims none of the other co-workers expressed any discomfort regarding his statements at the lunch and that he did not say anything about or to the co-workers who were there. Finally, he claims he was not arrested at the scene of the incident.

None of the above claims, or the argument as a whole, in any way demonstrate an error by the trial court regarding a failure to declare the breach of peace arrest unconstitutional,

particularly where that arrest did not lead to the conviction that is the subject of this appeal.

Appellant never asked the trial court to make a determination that his underlying conviction was unconstitutional, so he cannot argue now that the trial court erred in failing to dismiss his current charge on that basis.

In any event, Appellant has failed to articulate any valid grounds to support the notion that his arrest for breach of the peace was in fact unconstitutional. His argument amounts to a challenge to the factual basis for the arrest, not a claim that any particular constitutional provision was violated. As such, it is without merit and must be denied and dismissed.

III.

Appellant's argument that the trial court erred by failing to hold that the intimidation of a witness charge was the "fruit of the poisonous tree" is not preserved for appellate review because it was neither raised to nor ruled upon by the trial court.

Appellant argues the trial court erred by failing to hold that the intimidation of a witness charge was the "fruit of the poisonous tree." This issue was not raised to or ruled upon by the trial court and, thus, it is not preserved for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."). Furthermore, the State submits Appellant has misconstrued the "fruit of the poisonous tree" doctrine.

"The fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality." State v. Copeland, 321 S.C. 318, 323, 468 S.E.2d 620, 624 (1996) (citing Wong Sun v. United States, 371 U.S. 471 (1963)) (internal quotations omitted). "However, the challenged evidence is admissible if it was obtained from a lawful source independent of the illegal conduct." Id. (internal citations omitted).

Here, Appellant seems to equate the "fruit of the poisonous tree" doctrine, concerning the suppression of evidence, with an argument about the propriety of criminal charges. He argues the underlying breach of peace charge is unconstitutional and, therefore, the resulting intimidation of a witness charge cannot stand because "[w]ithout the illegal breach of peace charge, there would be no 'witness' to 'intimidate.'" (App.Br.9.) The rationale behind the "fruit of the poisonous tree" doctrine and the judicially created exclusionary rule is to penalize police who use illegal actions by suppressing evidence discovered as a result of those illegal actions. See State v. Adams, 409 S.C. 641, 653, 763 S.E.2d 341, 348 (2014) ("The exclusionary rule is a

judicially created remedy for a Fourth Amendment violation [and its] primary rationale is to deter police misconduct. Where there is no misconduct, and thus no deterrent purpose to be served, suppression of the evidence is an unduly harsh sanction.”). In this case, not only were there no illegal actions by police, but there is no articulated evidence Appellant was trying to suppress. Thus, in addition to being unpreserved for appellate review, this doctrine is inapplicable to the case at hand.

Appellant argues this Court should distinguish this case from the holding in State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999), where the Supreme Court determined Nelson’s charges were not “fruits of the poisonous tree” but rather new and distinct criminal acts. In Nelson, a police officer was driving behind the defendant and flashed his high beam lights to get the defendant’s attention. The defendant drove through a stop sign and the officer conducted a traffic stop. After stopping the vehicle, the officer smelled alcohol, but the defendant refused to participate in field sobriety tests. On appeal, the Supreme Court held that even if the initial attempt to stop the defendant would have violated the Fourth Amendment, the officer was justified in making the stop after the defendant committed the subsequent traffic infractions, rationalizing that a strong policy reason exists for holding that “a new and distinct crime, even if triggered by an illegal stop, is a sufficient intervening event to provide independent grounds for arrest.” Id. at 194, 519 S.E.2d at 790.

Appellant argues this case is different from Nelson because intimidation of a witness is not a new and distinct crime but rather depends on the earlier crime of breach of peace. He urges this Court to find that Appellant’s intimidation of a witness charge did not “purge the taint” of the allegedly illegal breach of peace charge, consider it “fruit of the poisonous tree,” and reverse his conviction.

To the extent this Court finds Appellant has sufficiently articulated an argument about whether the intimidation of a witness charge can stand based on his understanding that the breach of peace charge was later dismissed, federal cases provide some guidance in this area. Generally, courts have determined intimidation of a witness to a pending charge is still a crime even if the charge is later dismissed. United States v. White, 256 F. App'x 333 (11th Cir. 2007). "Accepting [the] position [that it is not] would only encourage witness intimidation." Id. at 340. See also United States v. Griffin, 463 F.2d (10th Cir. 1972) (finding charge involving threats and force to intimidate witnesses applies to *prospective* witnesses, where witness is defined as one who knows, or is supposed to know, material facts and is expected to testify). Thus, even if the breach of peace charge was dismissed two days after this trial, it was an indicted charge at the time of trial and its subsequent dismissal has no impact on the validity of Appellant's conviction.

IV.

The trial court provided Appellant his right to due process in regard to discovery and enforcing the State's obligation to disclose all material, exculpatory, and impeachment evidence to the defense.

Appellant argues the trial court denied him his right to due process by failing to enforce his subpoenas and discovery requests. Specifically, Appellant argues that in violation of Brady v. Maryland, 373 U.S. 83 (1963), he was unconstitutionally deprived of three pieces of evidence that he claimed were in possession of the State: employee personnel records of witnesses and his own personnel record, portions of a security video consisting of two “gaps,” and the supplement to an incident report.

Personnel Files

Pretrial, on February 9, 2015, defense counsel and counsel for UPS met. At that time, they discussed defense counsel's motion to compel and UPS's motion to quash subpoenas defense counsel had served in an attempt to compel UPS to produce personnel records. (R. 11, lines 20–25; R. 12, line 1–R. 13, line 11.) UPS argued the subpoenas were not properly served. (R. 13, line 12–R. 15, line 5; R. 18, lines 5–12; R. 19, line 25–R. 20, line 2.) Appellant argued he needed to see Jones's personnel file to see if she had been passed over or not promoted and that he also needed to see his own file. (R. 16, lines 15–19; R. 17, lines 12–23.) Defense counsel claimed he served the subpoenas through certified mail and had a receipt that was not with him at the hearing but that he would bring to trial. (R. 18, line 18–25.) The trial judge informed both parties they could give him anything they wanted him to review before trial and asked that they get it to him by the following day. (R. 19, lines 1–10; R. 21, lines 8–16.) When the trial started three days later on February 12, 2015, defense counsel did not mention the motion to compel, the subpoenas, or anything concerning UPS personnel records. Thus, the trial

court made no ruling on the materiality of any personnel records and was never asked to make such a ruling by defense counsel.

Accordingly, any issue as to the personnel files is not preserved for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”). Even if preserved, Appellant suffered no prejudice because the Rules of Evidence do not appear to support admission of the personnel records under the circumstances of this case. Although not articulated at trial, Appellant presumably would have sought to use the personnel records to attack Jones’s credibility under Rule 608, SCRE. In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court’s factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice. State v. Kromah, 401 S.C. 340, 349, 737 S.E.2d 490, 494-95 (2013).

Nothing in the record indicates that information in the personnel file would contain evidence of Jones’s bias, prejudice, or motive to misrepresent as to Appellant; therefore, the records would not have been admissible under Rule 608(c), SCRE. Also, Appellant has given no such explanation that anything in the personnel file would be relevant or show any bias toward him. His argument that the file could have shown bias on the part of Jones due to her being passed up for a promotion is pure speculation, particularly where Appellant failed to show or

even allege a nexus between Jones not being promoted and himself. Also, to the extent Appellant might claim he would have attempted to use specific instances of Jones's conduct for the purpose of attacking her credibility during cross-examination under Rule 608(b), SCRE, extrinsic evidence in the form of the personnel file could only be used as proof "in the discretion of the court." Thus, there is no way to know whether the trial judge would have admitted it if a Rule 608(b) argument had been made, and the judge would have certainly been within his discretion to exclude it even in that circumstance. The trial judge's failure to order full disclosure of the file suggests he also would have exercised his discretion by not allowing Appellant to introduce the records during cross-examination of Jones. Finally, any statements, opinions, or findings included in the personnel records would be hearsay as defined by Rule 801, SCRE, and therefore inadmissible. For all of these reasons, the State submits Appellant failed to demonstrate plausible admissibility, which undercuts any claim of prejudice from nondisclosure of the personnel records. This is particularly true in the broader context of the trial as a whole and Appellant's exercise of his right to cross-examine Jones.

As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed on appeal absent a manifest abuse of discretion. State v. Gracely, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012); State v. Quattlebaum, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000). Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses. State v. Aleksey, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71

(Ct. App. 2004), aff'd as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE (“Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.”). “This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination.” Aleksey, 343 S.C. at 33-34, 538 S.E.2d at 255; see also State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655, 659 (Ct. App. 2008) (finding the scope of cross-examination rests in the trial judge’s sound discretion). “On the contrary, ‘trial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness’ safety, or interrogation that is repetitive or only marginally relevant.’” Aleksey, 343 S.C. at 34, 538 S.E.2d at 255 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)). “The limitation of cross-examination is reversible error if the defendant establishes he was unfairly prejudiced.” State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). “A criminal defendant may show a violation of the Confrontation Clause ‘by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby “to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.”’” State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting Van Arsdall, 475 U.S. at 680).

Here, Appellant was given a thorough opportunity to cross-examine Jones. Thus, Appellant’s constitutional right to confront her and to conduct a meaningful cross-examination of her concerning bias was fully protected. U.S. Const. amend. VI; Gracely, supra; Aleksey, supra; Gillian, supra. Since the records would not likely have been admissible even if they had been disclosed, the trial court did not err in declining to order their disclosure. Additionally, to the

extent Appellant contends the trial court's ruling impacted his ability to cross-examine Jones, it also was not error. "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Gillian, 360 S.C. at 450, 602 S.E.2d at 71 (emphasis added). Here, the trial court simply did not interfere with Appellant's opportunity for effective cross-examination.

Security Video

As to the issue of the UPS security video, Appellant argued for dismissal based on the fact that he was not given a copy until January 15 and the copy had gaps in it. (R. 31, lines 17–25.) The State explained it had requested the video long ago but did not receive it from UPS until close to trial and immediately gave a copy to defense counsel. (R. 32, lines 10–19.) The State stated that the video with the gaps was the same one it received from UPS and that it would call a witness at trial to explain the gaps. (R. 31, lines 8–25; R. 33, lines 2–25.) After determining the State had the exact same video with the gaps, and that the State had given defense counsel everything it had, the trial court denied Appellant's motion to dismiss. (R. 33, lines 5–25; R. 40, lines 10–21.) This was the proper ruling. The Brady disclosure rule requires that the prosecution provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused **and** material to guilt or punishment. Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012); State v. Anderson, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct. App. 2014). An individual asserting a Brady violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence, or was impeaching. Kyles v. Whitley, 514 U.S. 419 (1995); Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006). These requirements have not been met here. Indeed, the State disclosed to Appellant all available portions of the security video. The trial court's ruling should be affirmed.

Supplemental Incident Report

Finally, Appellant complains he did not receive a supplemental incident report until February 10, 2015, eighteen months after the incident. The trial judge discussed the report with both parties and when the State informed the court it would not introduce the supplemental report, Appellant seemed to drop the issue. As with the personnel files, the trial judge did not make a ruling on the allegedly late disclosure and Appellant did not pursue such a ruling. Accordingly, the issue as to the supplemental incident report is not preserved. In any event, where Appellant was given the supplemental incident report before trial, he completely fails to make the requisite four-part showing to demonstrate a Brady violation in regard to the supplemental incident report.

In conclusion, Appellant's right to due process was provided by the trial court. The State committed no Brady violations in regard to the UPS personnel records, the security video, or the supplemental incident report. Appellant's conviction should be affirmed.

V.

Appellant's argument that the trial court erred by denying his right to a speedy trial is not preserved for appellate review because, in regard to the charge for which he was convicted and challenges in this appeal, it was neither raised to nor ruled upon by the trial court.

Appellant argues the trial court erred by denying him his right to a speedy trial, yet this issue was never brought before the trial court. The only mention in the record of a speedy trial motion was what Appellant told Judge Kelly on February 9, 2015, during the hearing with UPS counsel. Thus, this issue was not raised to or ruled upon by the trial court and is not proper for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 (“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.”).

Furthermore, Appellant never argued either at trial or at the pretrial hearing with UPS that he was being denied a speedy trial on the charge now on appeal. Rather, he brought it up in the larger context of arguing to the court that because the breach of peace charge seemed not to be going forward, the intimidating a witness charge was based on nothing. Appellant stated, “So the breach of peace case that he spoke of earlier, they never brought that to trial because there’s no breach of peace. And I’ve asked for speedy trials and everything all along, never given the opportunity to do that. Now I understand they’re not going to bring that. So the case that he’s allegedly intimidating a witness they’re not even pursuing. . . . [T]here’s nothing there.” (R. 15, line 20–R. 16, line 3.) (emphasis added.) Appellant continues this argument on appeal. (App.Br.14–16.)

Based on Appellant’s statements above and in his appellate brief, it is clear that any speedy trial motions he may have made were in reference solely to the breach of peace charge, not the charge in this case. Nothing in this record indicates he made any such motion on the intimidation of a witness charge now on appeal before this Court. Thus, for an additional reason

this issue is not preserved for the Court's review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge.").

CONCLUSION

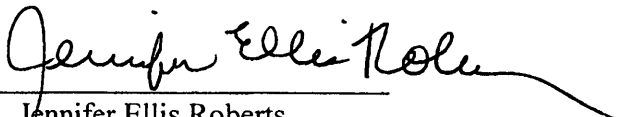
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
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ATTORNEYS FOR RESPONDENT

April 5, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2015-000517

RECEIVED

APR 05 2017

SC Court of Appeals

THE STATE,

Respondent,

v.

COURTNEY RAY MITCHELL,

Appellant.

CERTIFICATE OF COUNSEL

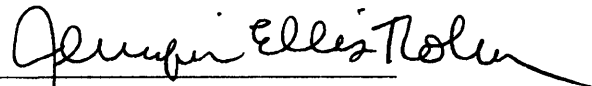
The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),
SCACR.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY:



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ATTORNEYS FOR RESPONDENT

April 5, 2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Courtney Ray Mitchell, Appellant.

Appellate Case No. 2015-000517

Appeal From Greenville County
R. Keith Kelly, Circuit Court Judge

Unpublished Opinion No. 2018-UP-147
Submitted February 1, 2018 – Filed April 11, 2018

AFFIRMED

Donald Loren Smith, of Attorney Office of Donald
Smith, of Anderson, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

PER CURIAM: Courtney Ray Mitchell appeals his conviction for intimidation of a witness, arguing the circuit court erred in (1) declining to find the State failed to prove the elements of witness intimidation beyond a reasonable doubt, (2) failing

to declare unconstitutional his arrest on the underlying charge from which his indictment for witness intimidation arose, (3) failing to hold the charge of witness intimidation was the fruit of the poisonous tree, (4) depriving him of his right to due process, and (5) denying him a speedy trial. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to Issue 1: *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) ("On appeal from the denial of a directed verdict, [the appellate court] views the evidence and all reasonable inferences in the light most favorable to the State."); *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) ("If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to the jury.").

As to Issues 2, 3, and 5: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].").

As to Issue 4: *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); Rule 5(a)(1)(C), SCRCrimP (allowing a defendant access only to materials in the State's possession, custody, or control); *State v. Kennerly*, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (stating the prosecution is constitutionally required to disclose evidence "in its possession" that is favorable to the defendant and "material to guilt or punishment").

AFFIRMED.¹

SHORT, THOMAS, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517
2018-UP-147

RECEIVED

APR 30 2018

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Petitioner.

PETITION FOR REHEARING

April 26, 2018

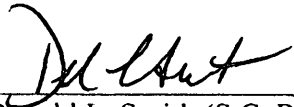

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517
2018-UP-147

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Petitioner.

PETITION FOR REHEARING

Pursuant to the provision of Rule 221 (a), Appellant (hereinafter Petitioner), through his undersigned counsel, respectfully petitions this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended as set forth herein.

**On whether the state submitted sufficient and relevant evidence
that established the offense of witness intimidation.**

When ruling on a motion for directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. *State v. Cherry*, Op. No. 25902 (S.C. Sup. Ct. filed Nov. 29, 2004) (Shearouse Adv. Sh. No. 46 at 28); *State v. Wilds*, 355 S.C. 269, 584 S.E.2d 138 (Ct. App. 2003); *State v. McLauren*, 349 S.C. 488, 563 S.E.2d 346 (Ct. App. 2002). However, this evidence must be relevant to the subject matter of the case.

Petitioner is charged with Intimidation of Witness. The elements of this offense are: (1) an unlawful threat of force to (a) intimidate or impede a witness in the discharge of his duty, or

to (b) destroy, impede, or attempt to obstruct or impede the administration of justice in any court. S.C. Code Ann. § 16-9-340(A); State v. Preslar, 364 S.C. 466, 613 S.E.2d 381 (2005).

Petitioner contends that the State failed to introduce substantial and relevant evidence that he is guilty of the offense, beyond reasonable doubt. In State v. Logan, S.C. Op. No. 27296, the Court held:

“ There are two types of evidence which are generally presented during a trial—direct evidence and circumstantial evidence. Direct evidence directly proves the existence of a fact. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact

Crimes may be proven by circumstantial evidence. The law makes no distinction between the weight or value to be given to either direct or circumstantial evidence, however, to the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other, and when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. This burden rests with the State regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.”

The evidence that the State presented to charge Petitioner are the following: a handgun license, a leaf blower, three cellphones, a receipt of beer from a convenience store. Taken individually and collectively, these items do not directly establish the criminal offense of intimidation of a witness. None of the aforementioned items can inflict physical injuries to Jones or her colleagues. No reasonable person could, and would interpret the leaf blower was a bomb, the cellphones as detonators, nor the receipt as proof of Jones' residence.

Neither can these items be considered circumstantial evidence.

Petitioner submits the State failed to establish the elements of the crime of intimidation of witness.

Firstly, the Petitioner was not even aware that Jones, whom he considered as a friend, would be a witness in a case against him. Without this prior knowledge by Petitioner, the motives attributed by Jones as to the reason for the returned items, are not substantiated.

Secondly, the State failed to allege specific overt acts that may be interpreted as an intent to hurt, intimidate, threaten or scare Jones. The State failed to introduce any letter, note nor any message in whatever form, that contained any threatening statement. Thus, the first element of the offense was not established.

The State also failed to present evidence to show that Petitioner performed acts of physical violence, verbal or non-verbal communication of threats, emotional manipulation, pressure or intimidation to attempt to or did prevent, dissuade or influence Jones from testifying. Intimidating a witness requires the offender to have the specific intent to coerce the witness or victim not to testify or report, without this intent, there is no criminal intimidation.

As to the trespass notices that the State presented, these notices were sent to Mr. Ken Baca and Michael Battista, respectively, whom he thought were responsible for the breach of peace charge. The content of the trespass notice was non-threatening, just informing the Baca and Battista, that they were in trespass notice and to not come near him. Jones did not even receive any trespass notice, a clear indication that Petitioner did not know that Jones was the person who reported on him to the management. Petitioner was unaware of the direct participation of Jones in the filing of the breach of peace charge, much less of her potential role as a witness against him.

The critical factor to the admissibility of evidence of witness intimidation is whether the totality of the evidence creates an inference that the Petitioner had knowledge that Jones was a witness to a case, and that he intended to prevent or dissuade her from performing her duties as a witness. That Jones testified that she felt intimidated or scared is not sufficient to charge Petitioner with witness intimidation when the State and its witnesses failed to show Petitioner's intent. In summary, the State's failure to establish intent and to present relevant evidence to prove the elements of the crime of witness intimidation, entitles the Petitioner with a reversal of his conviction.

On Petitioner's Arrest for Breach of Peace Charge

The issue of breach of peace was raised in this case, initially during the hearing for Petitioner's motion to quash (R. 106) and subsequently during the February 12, 2015 trial. (R.106). The State itself sought the inclusion of this issue and the trial court allowed the witnesses to testify as to facts regarding the incident. (R. 107).

Petitioner's arrest for Breach of Peace was based solely on testimonies of biased witnesses, all agents/employees of the company. The arrest was effected without investigating employees and management of the restaurant where the acts of breach of peace allegedly occurred. The State presented no witnesses other than the UPS employees. And none of these UPS employees made any comments to him about her alleged erratic or violent behavior at lunch.

Petitioner contends that the State failed to show reasonable grounds for Petitioner's arrest as it was not able to establish any act by the Petitioner that is tantamount to inciting violence. Petitioner avers that his arrest was unlawful and in violation of his constitutional rights.

On the charge of witness intimidation as fruit of poisonous tree

On the hearing for Petitioner's Motion to Stay, Petitioner's counsel sought to have the charge of witness intimidation deferred pending the resolution of the breach of peace charge. Petitioner believed that the State had insufficient evidence to prove the breach of peace and Petitioner's arrest was unconstitutional. As such, Petitioner asserted that the mention of the breach of peace charge was prejudicial in his trial for the case on witness intimidation. Despite objections from the Petitioner, the judge allowed the introduction of evidence and witness testimonies for the breach of peace charge in the trial hearing. Petitioner insists that in objecting to the inclusion of the breach of peace charge, that it raised the present issue to the trial court, which the latter ruled against him.

In this case, Petitioner avers that the breach of peace charge as well as testimonies of witnesses establishing the same, was considered as an evidence in the witness intimidation charges. The breach of peace charge having been instituted without basis, was illegal, and any thing that was derive from the same was illegal. Without the illegal breach of peace charge, there would be no "witness" to intimidate.

On The Denial Of Due Process

Petitioner reiterates that the State's failure to produce, on time, Jones' and Petitioner's personnel files, the video of the July 25, 2013 incident and the Supplemental Incident Report, denied him of his right to due process.

The Brady doctrine provides that prosecutors have the obligation to disclose exculpatory evidence that is material to the guilt or sentencing of the defendant. Brady v. Maryland, 373 U.S. 83 (1963).

Petitioner has succinctly shown that the requested materials were relevant to his case. Petitioner believes that Jones' personnel file would show motive on her part, to resort into concocting the baseless allegations against Petitioner. Jones has been in the company for years and has been passed for up for promotions. Petitioner contends that subsequent to Jones' testifying against Petitioner, she was promoted by the company.

Petitioner's personnel file was relevant in the light of the Court allowing Jones to testify on his alleged ineptitude. Jones was allowed to cast aspersion on his work performance and to paint a negative impression of Petitioner. His personnel file, when presented, would show that he had received commendations for his performance in the years prior to this incident.

Petitioner demanded the complete video of the July 25, 2013 incident, which the company presented as evidence to the law enforcement for Petitioner's arrest on the breach of peace charge. The video was roughly three minutes and fifty seconds long. The video provided to him had blank areas that were forty-eight and forty-nine seconds long, respectively—nearly half of the video was missing. The UPS Company, through the State, has an obligation to produce the video at the early stage of the case to afford the Petitioner time to formulate its defense.

The same thing happened with the Supplemental Incident Report, which the State presented on February 10, 2015, two days before the trial (a year and a half after the incident).

Furthermore, Petitioner believed that prosecutors have an independent ethical obligation with respect to disclosure. Under ABA Model Rule 3.8(d), which has been adopted in South Carolina, a prosecutor shall "make timely disclosure of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating

information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal”. cited in Nathan M. Crystal, “*Disclosure Obligations of Prosecutors*”, South Carolina Lawyer 8, September 2010.

This article explained that the ethics rule for disclosure does not require that the exculpatory information be material, nor be admissible in evidence. American Bar Association, Formal Opinion #09-454, July 8, 2009, as cited in *Crystal*, Id. p. 9. This rule also requires “timely” disclosure. Id.

Thus, Petitioner believed that in denying Petitioner’s motion to compel the production of the requested materials, the trial court abused its discretion, and denied Petitioner his right to due process.

On the violation of Petitioner’s Right to Speedy Trial

The State instituted the breach of peace charge knowing it has no leg to stand on. It dragged this case, despite a motion for speedy trial, for the sole purpose of being able to try the witness intimidation case, which imposes a more severe penalty. Two days into the hearing for the witness intimidation case, the prosecutors dismissed the breach of peace charge. While this goes into the matter of prosecutorial discretion, this was clearly abused in this case to the detriment of Petitioner. The State knew that the breach of peace will not hold. It refused to resolve the same because it knew that if exonerated of said charges, then its witness intimidation charge would have fallen apart. Petitioner is presently serving a sentence of 10 years for a crime the basis of which was a charge of misdemeanor, which is penalized with fines or imprisonment for thirty-days. *SC Code § 22-3-560 (2012)*. Petitioner is serving a harsh penalty for a crime, which would have no basis had the court allowed him a speedy trial for the breach of peace

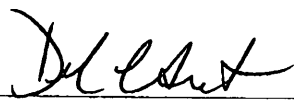
charge. Appellant was extremely prejudiced in his defense of the witness intimidation charge, and in the interest of justice, this Court should reverse his conviction of the same.

Conclusion

The totality of the evidence presented by the State did not create an inference that the Petitioner had knowledge that Jones was a witness to a case, and that he intended to prevent or dissuade her from performing her duties as a witness. As such, the State failed to prove the elements of the crime of witness intimidation, beyond reasonable doubt. Taken together with the denial of his right to a speedy trial for the underlying charge of breach of peace, it is clear that he was denied his right to due process. Petitioner's conviction should be reversed.

Based upon the foregoing, the Court should grant the petition for rehearing, vacate the opinion dated April 11, 2018, and either reverse Petitioner's judgment of conviction or schedule the case for re-argument.

April 26, 2018


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Attorney for Petitioner

**FORM 7
PROOF OF SERVICE
PETITION FOR REHEARING**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

Keith Ralph Kelly, Circuit Court Judge

Appellant Case No.: 2015-000517
2018-UP-147

RECEIVED
APR 30 2018
SC Court of Appeals

The State of South Carolina,

Respondent,

v.

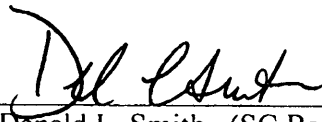
Courtney Ray Mitchell,

Petitioner.

PROOF OF SERVICE

I certify that I have served copies of Petitioner's Petition for Rehearing and a proof of service of the same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia SC 29211 and, Mr. Alan McCrory Wilson, Attorney General and Ms. Jennifer Ellis Roberts, Assistant Attorney General, at the Office of the Attorney General, located in PO Box 11549 Columbia SC 29211, and Mr. William Walter Wilkins, III, Solicitor, Thirteenth Judicial Circuit, at 305 East North Street, Suite 325, Greenville, SC 29601, by depositing a copy in the United States Mail, postage prepaid, on April 26, 2018 to the addresses listed above.

April 26, 2018


Donald L. Smith, (SC Bar#6699)
122 N. Main Street
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Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Petitioner

FORM 8
LETTER TO THE APPELLATE COURT CLERK
FILING PETITION FOR REHEARING

April 26, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

RE: The State v. Courtney Ray Mitchell
Appellate Case No. 2015-000517
2018-UP-147

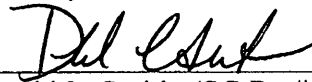
RECEIVED
APR 30 2018
SC Court of Appeals

Dear Ms. Kitchings:

Please find enclosed the following materials for filing in the above-referenced Appellate matter:

- (1) An Original and Six (6) copies of Petition for Rehearing; and,
- (2) Proof of Service for same.

Sincerely,



Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Petitioner

cc: Mr. Alan McCrory Wilson, Attorney General
Ms. Jennifer Ellis Roberts, Assistant Attorney General
Mr. William W. Wilkins, Solicitor, Thirteenth Judicial Circuit

The South Carolina Court of Appeals

The State, Respondent,

v.

Courtney Ray Mitchell, Appellant.

Appellate Case No. 2015-000517

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Shortz Jr. J.
Paul C. Thomas J.
Paul L. J.

Columbia, South Carolina

FILED

cc:

Donald Loren Smith, Esquire
Jennifer Ellis Roberts, Esquire
Alan McCrory Wilson, Esquire
William Walter Wilkins, III, Esquire

May 25, 2018



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
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July 06, 2018

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Courtney Ray Mitchell
Lower Court Case No. 2013GS2308607
Appellate Case No. 2015-000517

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny Abbott Kitchings".

CLERK

Enclosure

cc: Donald Loren Smith, Esquire
Jennifer Ellis Roberts, Esquire
Alan McCrory Wilson, Esquire
William Walter Wilkins, III, Esquire

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING MOTION TO RECALL REMITTUR
AND REINSTATE THE APPEAL

July 11, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211

RE: The State v. Courtney Ray Mitchell
Appellate Case No. 2015-000517

RECEIVED

JUL 16 2018

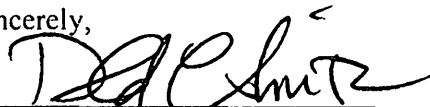
SC Court of Appeals

Dear Ms. Kitchings::

Please find enclosed the following materials for filing in the above-referenced Appellate matter:

- (1) One (1) original and six (6) copies of Appellant's Motion to Recall the Remittur and Reinstate the Appeal; and,
- (2) Proof of Service for same.

Sincerely,



Donald L. Smith, (SC Bar#6699)

122 N. Main Street

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

attorneydonaldsmith@gmail.com

Attorney for Appellant

cc: Mr. Alan McCrory Wilson, Attorney General
Ms. Jennifer Ellis Roberts, Assistant Attorney General
Mr. William W. Wilkins, Solicitor, Thirteenth Judicial Circuit

**FORM 7
PROOF OF SERVICE
APPELLANT'S MOTION TO RECALL THE REMITTUR
AND REINSTATE THE APPEAL**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

Keith Ralph Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

RECEIVED
JUL 16 2018
SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

PROOF OF SERVICE

I certify that I have served copies of Appellant's Motion to Recall the Remittur and Reinstate the Appeal, and a proof of service of the same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, PO Box 11629, Columbia SC 29211 and, Mr. Alan McCrory Wilson, Attorney General and Ms. Jennifer Ellis Roberts, Assistant Attorney General, at the Office of the Attorney General, located in PO Box 11549 Columbia SC 29211, and Mr. William Walter Wilkins, III, Solicitor, Thirteenth Judicial Circuit, at 305 East North Street, Suite 325, Greenville, SC 29601, by depositing a copy in the United States Mail, postage prepaid, on April 26, 2018 to the addresses listed above.

July 11, 2018



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517

RECEIVED
JUL 16 2018
SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Appellant.

**APPELLANT'S MOTION TO RECALL THE REMITTITUR
AND REINSTATE THE APPEAL**

Appellant Courtney Ray Mitchell respectfully moves this court for an order recalling the remittitur and permitting him to reinstate his appeal in this case. In support of this motion, Appellant shows the following:

- 1) This Honorable Court rendered its opinion and judgment in the *State of South Carolina v. Courtney Ray Mitchell*, Appellate Case No. 2015-000517 on April 11, 2018.
- 2) Appellant thereafter petitioned for rehearing of the abovementioned case on April 30, 2018.
- 3) Appellant anticipated a Return from the Respondent.

- 4) On July 3, 2018, after the prescribed period for the filing of a Return has elapsed, Appellant verified the status of the case from the South Carolina Appellate Case Management System.
- 5) Upon checking, Petitioner found that his Petition for Rehearing was denied on May 25, 2018.
- 6) Appellant and his counsel did not receive a written copy of the said denial.
- 7) Under Rule 242 (c) of South Carolina Appellate Rules Procedure, Petitioner may file a certiorari to the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals.
- 8) The thirty-day period to file for petition for certiorari has lapsed.
- 9) On the same day, July 3, 2018, Appellant communicated his non-receipt of a written copy of the Order dated May 25, 2018 to this Honorable Court as well as the Supreme Court.
- 10) Upon recommendation, Appellant filed a motion to relax the time for filing a Petition for Certiorari with the Supreme Court on July 3, 2018. (Exhibit A).
- 11) Due perhaps to the holiday season, (it being the Fourth of July week), the Supreme Court acknowledged that it received Appellant's motion on July 9, 2018.
- 12) On July 10, 2018, Appellant received a copy of the Remittur, dated July 6, 2018.
- 13) On July 11, 2018, Appellant received a letter from the Supreme Court, stating that it cannot take action on Appellant's motion due to the Remittur having been sent to the lower court. (Exhibit B).

- Appellant has not received a written copy of the May 25, 2018 Order of Denial, and as such, was unable to file his Petition for Certiorari within the prescribed period. Appellant, upon

consultation with the Honorable Court, immediately undertook steps to address the issue and exerted all efforts to comply with the law. In the interest of justice, Appellant respectfully invokes this Honorable Court's sense of fairness to exercise its unusual power to recall the remittur and allow him to reinstate his appeal. Appellant expressed his intent to file for Certiorari, and sincerely believes in the merits of his case. He submits that Motion is not filed manifestly for delay, and that no party will be prejudiced by the granting of this action.

July 11, 2018

Respectfully submitted by



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Court of General Sessions

R. Keith Kelly, Circuit Court Judge

Appellate Case No.: 2015-000517
2018-UP-147

RECEIVED

JUL 16 2018

SC Court of Appeals

The State of South Carolina,

Respondent,

v.

Courtney Ray Mitchell,

Petitioner.

**MOTION TO RELAX TIME FOR FILING
PETITION FOR CERTIORARI**

Petitioner respectfully moves this Honorable Court to allow Petitioner to file his Petition for Certiorari. In support of this motion, Petitioner shows the following:

- 1) The Court of Appeals rendered its opinion and judgment in the State of South Carolina v. Courtney Ray Mitchell, Appellate Case No. 2015-000517 on April 11, 2018.
- 2) Petitioner thereafter petitioned for rehearing of the abovementioned case on April 30, 2018.
- 3) Petitioner anticipated a Return from the Respondent.
- 4) On July 3, 2018, after the 30-day prescribed period for the filing of a Return has elapsed, Petitioner verified the status of the case online in the South Carolina Appellate Case Management System.

- 5) Upon checking, Petitioner found that his Petition for rehearing was denied on May 25, 2018.
- 6) Petitioner and his counsel did not receive a written copy of the said denial.
- 7) Under Rule 242 (c) of South Carolina Appellate Rules Procedure, Petitioner may file a certiorari to the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals.
- 8) The thirty-day period to file for petition for certiorari has elapsed.

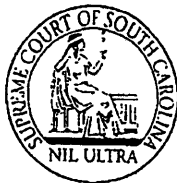
Therefore, Petitioner prays that this Honorable Court grant this motion to relax the time for filing a Petition for Certiorari and allow Petitioner to file his Certiorari considering that he did not receive a written copy of the denial of the petition for rehearing. Counsel for Petitioner has conferred with the Office of Attorney General, who did not object to this request. This motion is not filed for the purpose of delay, and no party will be prejudiced by the granting of this action.

Respectfully submitted by



Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Petitioner

July 3, 2018



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
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July 09, 2018

Donald Loren Smith, Esquire
Attorney Office Of Donald Smith
122 N. Main St.
Anderson SC 29621

Re: The State v. Courtney Ray Mitchell
Appellate Case No. 2018-001256

Dear Counsel:

This Court has received your motion to relax dated July 3, 2018, today. Please be advised that the South Carolina Court of Appeals sent the remittitur in this case¹ on July 6, 2018. Since the sending of the remittitur ended appellate jurisdiction over this case,² no action will be taken on your motion by this Court.

Very truly yours,

CLERK

cc: Jennifer Ellis Roberts, Esquire
Alan McCrory Wilson, Esquire
William Walter Wilkins, III, Esquire

¹ Before the Court of Appeals, the Appellate Court Case Number was 2015-000517.

² *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 642 S.E.2d 551 (2007).



ALAN WILSON
ATTORNEY GENERAL

July 17, 2018

RECEIVED
JUL 17 2018
SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Courtney Ray Mitchell
Appellate Case No: 2015-000517

Dear Ms. Kitchings,

The State is in receipt of Appellant's Motion to Recall the Remittitur and Reinstate the Appeal. Please accept this letter in lieu of a formal return. The State submits the proper standard for consideration of the motion was set forth in Wise v. S.C. Dep't of Corr., 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter. The only exception to this rule is when the remittitur is sent down by mistake, error or inadvertence of the Court."). The State takes no position and leaves the decision whether to recall the remittitur and reinstate the appeal to the wise discretion of the Court.

Sincerely,

William M. Blitch, Jr.
Senior Assistant Attorney General
S.C. Bar: 15608

cc: Donald L. Smith, Esquire

The South Carolina Court of Appeals

The State, Respondent,

v.

Courtney Ray Mitchell, Appellant.

Appellate Case No. 2015-000517

The Honorable R. Keith Kelly
Greenville County
Trial Court Case No. 2013GS2308607

ORDER

This Court's remittitur was sent to the Clerk of Greenville County on July 6, 2018. It is now necessary for this Court to recall the remittitur. The Clerk of Greenville County is, therefore, directed to return the remittitur to the Clerk of the South Carolina Court of Appeals within ten (10) days from the date of this order.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire
Alan McCrory Wilson, Esquire
William Walter Wilkins, III, Esquire
William M. Blich, Jr., Esquire
The Honorable Paul B. Wickensimer

FILED

July 31, 2018
212

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

AUG 06 2018

SC Court of Appeals

The State, Respondent,

v.

Courtney Ray Mitchell, Appellant.

Appellate Case No. 2015-000517

Appeal From Greenville County
R. Keith Kelly, Circuit Court Judge

Unpublished Opinion No. 2018-UP-147
Submitted February 1, 2018 – Filed April 11, 2018

AFFIRMED

Donald Loren Smith, of Attorney Office of Donald
Smith, of Anderson, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

PER CURIAM: Courtney Ray Mitchell appeals his conviction for intimidation of
a witness, arguing the circuit court erred in (1) declining to find the State failed to
prove the elements of witness intimidation beyond a reasonable doubt, (2) failing

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PAUL WICKENSIMER
2018
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Date 8/2/18
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to declare unconstitutional his arrest on the underlying charge from which his indictment for witness intimidation arose, (3) failing to hold the charge of witness intimidation was the fruit of the poisonous tree, (4) depriving him of his right to due process, and (5) denying him a speedy trial. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

As to Issue 1: *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014) ("On appeal from the denial of a directed verdict, [the appellate court] views the evidence and all reasonable inferences in the light most favorable to the State."); *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000) ("If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to the jury.").

As to Issues 2, 3, and 5: *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].").

As to Issue 4: *Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693 ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); Rule 5(a)(1)(C), SCRCrimP (allowing a defendant access only to materials in the State's possession, custody, or control); *State v. Kennerly*, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct. App. 1998) (stating the prosecution is constitutionally required to disclose evidence "in its possession" that is favorable to the defendant and "material to guilt or punishment").

AFFIRMED.¹

SHORT, THOMAS, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

18 AUG 2 PM 1:24
Paul Wickensimer COC BIL SC

The State, Respondent,

v.

Courtney Ray Mitchell, Appellant.

Appellate Case No. 2015-000517

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AUG 06 2018

SC Court of Appeals

The Honorable R. Keith Kelly
Greenville County
Trial Court Case No. 2013GS2308607

ORDER

This Court's remittitur was sent to the Clerk of Greenville County on July 6, 2018. It is now necessary for this Court to recall the remittitur. The Clerk of Greenville County is, therefore, directed to return the remittitur to the Clerk of the South Carolina Court of Appeals within ten (10) days from the date of this order.

FOR THE COURT

BY *V. Christian Allen, Secretary*
CLERK

Columbia, South Carolina

cc:

Donald Loren Smith, Esquire

Alan McCrory Wilson, Esquire

William Walter Wilkins, III, Esquire

William M. Blich, Jr., Esquire

The Honorable Paul B. Wickensimer

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AUG 06 2018

The South Carolina Court of Appeals SC Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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July 06, 2018

The Honorable Paul B. Wickensimer
Courthouse
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: The State v. Courtney Ray Mitchell
Lower Court Case No. 2013GS2308607
Appellate Case No. 2015-000517

FILED - CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENSIMER
2018 JUL 14 3
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Date 8-2-18 Int. MY

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Kitchings".

CLERK

Enclosure

cc: Donald Loren Smith, Esquire
Jennifer Ellis Roberts, Esquire
Alan McCrory Wilson, Esquire
William Walter Wilkins, III, Esquire

AP: ✓
EXD: ✓

AFTER FIVE DAYS RETURN TO

PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH STREET
GREENVILLE, SOUTH CAROLINA 29601

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08/03/2018

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SC Court of Appeals

South Carolina Court of Appeals
V. Claire Allen, Deputy Clerk
P.O. Box 11629
Columbia, SC 29211

38 FRDUNMP 29211

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