

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to York County

J. Mark Hayes II, Circuit Court Judge

MARQUIS JAERIS SANTONI ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000785

APPENDIX

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1 armed robbery as well as the kidnapping due to the
2 defective indictments duplicitous and permissibly
3 duplicitous that prejudicially affects Mr. Robinson. The
4 conspiracy, kidnapping and the armed robbery.

5 THE COURT: And you're on the record. -If that being
6 your motion that motion is denied as to all three
7 indictments.

8 Is the State ready to proceed?

9 SOLICITOR SHELTON: The State's ready, Your Honor.

10 THE COURT: Ms. Burris, you ready to proceed?

11 MS. BURRIS: Your Honor, I think we have another issue
12 that came up yesterday.

13 MS. CRUZ: If I may, Your Honor. Yesterday during
14 Jared Crane's testimony it came out that he in fact had
15 marijuana in his pockets at the scene, at the incident.
16 And back in chambers it came out that the Assistant
17 Solicitor knew about that beforehand. Neither defense
18 attorney knew about that information and that information
19 was not subject to cross during the *Neil v. Biggers*
20 hearing. And you ruled that his in court photo
21 identification was proper without knowing that he could
22 have been under the influence of marijuana.

23 Now I understand that he was subject to cross on that
24 at trial before the jury, but I think that that would have
25 been appropriate and proper to have gone into during the

1 *Neil v. Biggers* hearing. And *Strickler versus Green* which
2 is a 527 U.S. 263 it talks about *Brady* violations that
3 warrant a mistrial. And it has to be information that's
4 favorable to the accused because it's exculpatory for
5 impeaching. It was suppressed by the State either
6 willingly or inadvertently and it prejudices the defendant.
7 And so we would also make a motion for a mistrial based on
8 the *Brady* violation.

9 SOLICITOR SHELTON: Your Honor, he had --

10 THE COURT: Mr. Smith, you join in that?

11 MR. SMITH: I do, Your Honor. I was unaware of that
12 and it did not come up prior to trial.

13 SOLICITOR SHELTON: Your Honor, he had told me that at
14 a meeting way back in the beginning or at least I think he
15 did. Ms. Burris said in chambers yesterday that I'm sure
16 that was a surprise to you and I said I believe he told me
17 that, I believe he did tell me that way back at another
18 meeting. He had said that he told law enforcement. I did
19 not specifically tell either one of them but we did go over
20 was he under the influence. At the time as far as the *Neil*
21 *versus Biggers* we did ask if he was under the influence at
22 the time which he denied which would be what you would need
23 to consider in the *Neil versus Biggers*.

24 At some point I don't know if I thought that it was in
25 one of the supplementals but I didn't willfully withhold

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1 it. I didn't think about telling them but I did not
2 specifically tell them that he had marijuana on him.

3 MS. CRUZ: Well, Your Honor, the rule says willfully
4 or inadvertently and back in chambers she said nothing
5 about whether she specifically told us. She said that she
6 knew about it and we both - both defense counsels stated
7 that they did not. And it is material to the *Neil v.*
8 *Biggers* hearing and it was something that you would have
9 needed to heard and make a judgment on. You made your
10 judgment without all the information and without us being
11 able to cross him on that. And his identification and the
12 identification in general and in this trial is tantamount
13 to guilt and so we would think that it is material
14 violation and it was inadvertently suppressed by the State
15 and we should be granted a mistrial.

16 THE COURT: Well I deny the motion. I don't find any
17 manifest necessity for the mistrial. The testimony in *Neil*
18 *versus Biggers* was very extensive as to whether or not he
19 had been on medication, whether he had any alcohol. I
20 don't remember a question about whether he had any drugs or
21 whether or not he had anything that would be mind altering
22 so to speak. He did testify that in front of the jury
23 about the marijuana. He testified he hadn't smoked it.
24 And if he testified he had been smoking that afternoon that
25 might change the way we have to approach the *Neil versus*

1 *Biggers*. We got to look at where we are now. It should
2 have been divulged. If it was known by the State it should
3 have been divulged. It could be exculpatory not just
4 possessing but the possession to lead to exculpatory - the
5 fact that he had marijuana in and of itself is not
6 exculpatory, the fact that the victim had drugs on him is
7 not exculpatory.

8 The fact that he had drugs on him could lead to a
9 questioning of him regarding his identification as to
10 whether or not he had ingested in him marijuana which may
11 have affected his ability to identify the defendants from
12 the photo ID. The - But the testimony has now revealed
13 that while he did have the marijuana he had not ingested
14 any of it and it would not have affected the outcome of
15 *Neil versus Biggers*.

16 Plus I find there is no prejudice because he knew Mr.
17 Marquis Robinson, your client, by face before the incident
18 occurred and identified him to the officers immediately
19 after the accident before he even saw any lineup. And you
20 may be arguing that the identification that night at the
21 scene was affected by his ingesting marihuana but there is
22 no evidence he ingested it so I find there is no manifest
23 necessity to grant a motion for a mistrial so it's denied.

24 MS. BURRIS: And if I may briefly, Your Honor. This
25 is another issue just so that it doesn't come up in front

1 of the jury. I noticed yesterday as I was cross examining
2 a particular witness --

3 THE COURT: You say a particular witness. You have to
4 tell me name.

5 MS. BURRIS: Any witness. The witnesses that I was
6 cross examining on yesterday for example Mr. Crane. Often
7 Ms. Shelton would object, object to answer the question.
8 And I was wondering exactly what I was doing wrong so of
9 course I went back and revisited the rule. And the rule
10 says of course I have a right to ask a witness about a
11 prior statement that they took under oath if it's
12 inconsistent. And the question is what are the
13 foundational requirements. You know, of course, on that
14 particular witness is testified the foundational
15 requirements is just ask the witness whether or not they
16 made a statement, you know --

17 THE COURT: No, no. You got to ask them whether or
18 not they made that statement. Not whether they made a
19 statement.

20 MS. BURRIS: Well one of my --

21 THE COURT: Wait just a minute. You ask him whether
22 or not he made statement A and he admits it then you can
23 impeach him by showing that when he made that former prior
24 inconsistent statement that he said B instead of A.

25 MS. BURRIS: Right. And that's exactly --

1 THE COURT: You don't start by just saying didn't you
2 in this statement say so and so. You've got to first
3 establish that he's testified differently at trial.

4 MS. BURRIS: Right. And that's what I did. I was
5 trying to be general, Your Honor, because Ms. Shelton
6 indicated that you stated we needed to make sure we didn't
7 say the word prior trial. That we just say you know at a
8 prior time so I was just making sure also to keep that
9 general. So that is what I was actually doing but I did
10 want to say prior trial.

11 THE COURT: You did it right. You did that right as
12 far as at a prior time. That's sufficient.

13 SOLICITOR SHELTON: I think the confusion was the
14 question before. What he's saying is you have to say -
15 you have to ask the question first.

16 MS. BURRIS: And that's what I did.

17 THE COURT: We got the ground rules. Let's go
18 forward. We're not gonna back track. If Ms. Shelton
19 objects I'll rule if I think she's wrong I'll tell her
20 she's wrong.

21 MS. BURRIS: Thank you, Your Honor.

22 THE COURT: If I think she's right I'll tell both of
23 you I think that she's right. And Ms. Shelton does
24 understand I'm sure that a great leeway is provided to the
25 defense on cross but that leeway does not extend to simply

1 reading into the record testimony or statements of prior
2 testimony. You've got to get there through a foundation.

3 Mr. Smith, you have joined in which motion. Make sure
4 we get it on the record.

5 MR. SMITH: I join in the motion concerning for a
6 mistrial due to failure to reveal the statement of
7 marijuana from the victim that didn't occur in any of the
8 discovery that was given me via police reports, anything
9 turned over by the Solicitor did not come in the prior
10 trial. But I was present when I was representing Mr.
11 Heath.

12 THE COURT: All right. Well again I find no manifest
13 necessity as to either defendant for the granting of a
14 mistrial based on that evidence. And that possibly a *Brady*
15 violation, again, I don't know if it is in and of itself on
16 it's face exculpatory, that it could lead to exculpatory
17 information, so the motion is denied.

18 You ready for the jury?

19 SOLICITOR SHELTON: The State's ready, Your Honor.

20 THE COURT: You ready for the jury?

21 MS. BURRIS: Yes, sir, Your Honor.

22 MR. SMITH: Yes, Your Honor.

23 THE COURT: Bring in the jury.

24 (JURY REENTERS COURTROOM AT 09:58 A.M..)

25 THE COURT: Detective Stokes is still on the stand

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1 subject to cross examination.

2 Ms. Burris.

3 MS. BURRIS: Thank you, Your Honor, may it please the
4 Court.

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 DETECTIVE CEDRIC STOKES BY MS. BURRIS:

8 Q. Good morning, Detective Stokes.

9 A. Good morning.

10 Q. Now yesterday you actually testified that you were
11 the lead investigator in this case. Right?

12 A. Yes, ma'am.

13 Q. And in fact you've actually been doing law enforcement
14 for - since '96?

15 A. That's right.

16 Q. Started in New Jersey and North Carolina and then you
17 made your way to South Carolina?

18 A. That's correct.

19 Q. Okay. And since you are the lead investigator, you
20 actually have what I call like the entire case file
21 summary?

22 A. I do.

23 Q. In fact you have pretty much everything in it that
24 pertain to this case. Right?

25 A. Okay. All of your notes. You testified you have your

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1 investigative notes.

2 Q. I have my stuff, yes. In my case folder, yes.

3 Q. And investigative notes you said yesterday.

4 A. Yes.

5 Q. Okay. And you testified yesterday that given that you
6 took the lead on this case as the leading investigator,
7 that you had gotten a call or a dispatch in regards to this
8 incident happening?

9 A. Yes, ma'am.

10 Q. And you also testified that it was your understanding
11 that the officers had actually conducted what you called a
12 preliminary investigation. Right?

13 A. Yes.

14 Q. Okay. And in that preliminary investigation, it was
15 your understanding they were given like the physical
16 descriptions and --

17 A. They identified the subject. Yes.

18 Q. That they had identified the subject. The physical
19 descriptions?

20 A. Yes.

21 Q. Yes?

22 A. Yes.

23 Q. Okay. And the car?

24 A. Yes.

25 Q. Yes. Okay. So you were given all that information in

1 the preliminary investigation and it was turned over to
2 you?

3 A. It was told to me at the scene. Yes.

4 Q. It was told to you at the scene?

5 A. Correct.

6 Q. Okay. And which officers actually told that to you?

7 A. Ma'am, I can't remember exactly which officer. It
8 was quite a few out there at the time.

9 Q. Okay. And do you remember what they said to you?

10 A. Just that the subject or suspect was Maquis Robinson
11 at the time.

12 Q. Uh-huh.

13 A. There were potentially three suspects ---

14 Q. Uh-huh.

15 A. --- and that there may have been a black Jeep involved
16 in the incident.

17 Q. Okay.

18 A. Something along the lines of, you know, his date of
19 birth. You know, they kind of just gave me general
20 information. But they may have had a date of birth form,
21 you know his general specifics at that time but nothing
22 extensive at the scene when I arrived. Just that general
23 information so that I had enough to go back and ---

24 Q. Do an investigation?

25 A. --- conduct my photo lineup. Correct.

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1 Q. Okay. So they gave you general information when you
2 arrived on June 8th of 2011. Right?

3 A. Yes, ma'am.

4 Q. The officers?

5 A. Yes, ma'am.

6 Q. Okay. And they gave you the name of a suspect?

7 A. Yes.

8 Q. Date of birth?

9 A. Yes, and general description of them, light skin,
10 black male.

11 Q. Light skin, black male. They said that it was three
12 males --

13 A. Possibly three. Possibly three and a black Jeep may
14 be involved.

15 Q. And was that a black, older style black Jeep Cherokee?

16 A. Black Jeep Cherokee. Correct.

17 Q. Okay. And did they also tell you that the three black
18 males driving this black, older style, Jeep Cherokee headed
19 north on Cherry Road?

20 A. No. I can't remember if they said which way they
21 headed. At this time I can't remember.

22 Q. And then so you had the opportunity as the lead
23 investigator on this case to look at the original incident
24 report and produce supplement reports from the original
25 incident report or based on your own individual

1 investigation. Right?

2 A. Supplemental reports, I'm sorry?

3 Q. Okay. Let me start over. I probably asked too many
4 questions in one.

5 A. Yes.

6 Q. You as the lead investigator had the opportunity,
7 because you are the lead investigator with the entire case
8 file summary, you actually looked at the original incident
9 report that was generated by the initial responding
10 officers. Right?

11 A. A day or so later, yes.

12 Q. You looked at it a day or so later. When did you
13 adopt the case as the lead investigator?

14 A. I adopted it once I arrived on the scene.

15 Q. You adopted it at the moment that you arrived on the
16 scene. You spoke to the initial responding officer that
17 gave you physical descriptions of the individuals.

18 Correct?

19 A. Correct.

20 Q. They also gave - told you that it was possibly three
21 black male subjects. Right?

22 A. That it was possibly three. Correct.

23 Q. Right. And these subjects are believed to be black
24 males in their twenties. Right?

25 A. Yes.

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1 Q. Okay. And that these suspects left the scene in a
2 black, older style, Jeep Cherokee. Right?

3 A. That's correct.

4 Q. Okay. And they also gave you a description and said
5 that one of the black males was approximately six feet, two
6 inches. Right?

7 A. Are you reading from an incident report, ma'am?

8 Q. Original incident report that you adopted the moment
9 you got to the scene.

10 A. Yes. One black male, six feet, two inches. Another
11 short and heavy set.

12 Q. Another short and heavy set. One black male, six feet
13 tall, two inches, and another male that was shorter and
14 heavy set. Right?

15 A. In the incident report. Yes.

16 Q. In the incident report. And so basically you arrived
17 there about how long after the incident happened? You were
18 also dispatched weren't you?

19 A. I was.

20 Q. Okay. And so do you actually, once you're dispatched
21 you get a call, there's a crime scene we need you to
22 immediately respond. Go to that crime scene. You answer
23 that call and you immediately get there as fast as you can.
24 Right?

25 A. Yes, ma'am.

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1 Q. All right. And so you were there almost immediately
2 after it happened. Right?

3 A. Well, let me see. The call to dispatched at 10:41. I
4 was paged at 10:50.

5 Q. And what are you reading from?

6 A. My operations report. CAD report.

7 Q. Okay. Your CAD report?

8 A. Yes. And --

9 Q. Did you turn that over in discovery?

10 A. This is my CAD report.

11 Q. Your CAD report. You have an entire case file summary

12 --

13 MS. BURRIS: Your Honor, right now --

14 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
15 THE JURY AT 10:05 A.M..)

16 THE COURT: Let me let the jury go to the jury room for
17 just a minute.

18 (JURY EXITS COURTROOM AT 10:06 A.M..)

19 THE COURT: Ms. Burris.

20 MS. BURRIS: Thank you, Your Honor. May it please the
21 court. At this time I'm going to make a motion for a
22 mistrial simply because the investigator, lead head
23 investigator, has actually testified there are two things
24 that the State has failed to actually disclose in their
25 evidence. One being his investigative notes, which I

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1 believe that we would definitely --

2 THE COURT: Don't go quite so fast.

3 MS. BURRIS: Yes, sir. That we would definitely be
4 entitled to in regards to the investigative notes in
5 regards to exculpatory information. Secondly, there is
6 information that he testified to in his CAD, which is his
7 communications report, which he testified to. This was
8 actually a dispatched all that actually came in, the
9 officer actually testified that he received. He was
10 dispatched to the initial scene, the crime scene. This of
11 course report, I don't know exactly what's on the report,
12 however he has testified that there is a communications CAD
13 report that is in his general case file summary and
14 anything that he has, of course, the state should have and
15 we are definitely entitled to it and it's my position that
16 there could be or there probably is exculpatory information
17 of course that would manifest a prejudice towards our
18 client, Mr. Maquis Robinson, and for that I would ask for a
19 mistrial because of the discovery violation of information
20 that we should have had that we do not have.

21 THE COURT: Mr. Smith?

22 MR. SMITH: Yes, Your Honor. I would also make a
23 motion for a mistrial adopting Ms. Burris' argument. But
24 additionally the information in these investigative notes
25 would have been valuable for me to cross examine the other

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1 witnesses because we've got discrepancies as to time and
2 certain information either were or weren't turned over to
3 law enforcement.

4 We had one witness blaming law enforcement saying that
5 he told them all these things and they never did anything
6 on it. Had I been armed with these notes, I could have
7 more fully cross examined that client or those witnesses
8 and I've not been afforded that opportunity and that damage
9 been done so I would add to Ms. Burris' motion on that
10 basis for a motion for mistrial.

11 THE COURT: Ms. Shelton.

12 SOLICITOR SHELTON: Your Honor, I've not seen his
13 notes or the CAD report so I can't affirmatively say that
14 there is anything exculpatory in either of those things,
15 just as I don't think that either defense can affirmatively
16 say there is anything exculpatory in either of those
17 things. I would say that the investigator's notes are work
18 product and they are not entitled to. The CAD report --

19 THE COURT: I can't buy that they are a work product.
20 He had not been provided an attorney.

21 SOLICITOR SHELTON: Yes, Your Honor. There are part
22 -- He takes those notes and makes it into his case summary
23 and until there is something that is in those notes
24 affirmatively established that is not in his case summary,
25 it's basically the same thing as his case summary and what

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1 he's previously testified to. The CAD report, both
2 investigator notes and CAD report are items that are not
3 secret and no one has, even though I did not seek them out
4 myself, no one has asked me if they could get them. I sent
5 Ms. Burris an email about discovery of what I had in my
6 file and what she, and what she had and if she thought she
7 needed anything else. She did not ask me for any
8 additional information. I think for them to - for there to
9 be a mistrial declared, they would have to show that there
10 was a exculpatory information in those things and that they
11 were withheld.

12 MR. SMITH: Your Honor, I can't show there is
13 something exculpatory in something I've never been
14 provided.

15 THE COURT: You're going to be provided them right
16 now. We'll have copies made and distributed to counsel and
17 we'll take a break and revisit this after the break.

18 All right. Hand 'em up. You get 'em. We got 'em
19 now. We'll make me a copy too. Make three, four copies.

20 Is this everything?

21 DETECTIVE STOKES: That's it.

22 THE COURT: All right. We'll take a break.

23 (COURT IN RECESS AT 10:11 A. M..)

24 (DEFENDANT'S REENTER COURTROOM AT 10:21 A.M..)

25 (COURT BACK IN SESSION AT 10:23 A.M..)

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1 THE COURT: Thank you. Take your seats.

2 Detective Stokes, please take the stand.

3 (WITNESS RETURNED TO THE WITNESS STAND.)

4 THE COURT: We're back on the record. Let's take care
5 of one issue first. Detective Stokes has given us the CAD
6 operations report which is three pages long.

7 DETECTIVE STOKES: Yes, sir.

8 THE COURT: And do you or do you not have any other
9 notes ---

10 DETECTIVE STOKES: No, sir.

11 THE COURT: --- with you or in any place on the face
12 of the earth ---

13 DETECTIVE STOKES: No, sir.

14 THE COURT: --- regarding this case?

15 DETECTIVE STOKES: No, sir.

16 THE COURT: All right. Now, as to the CAD report,
17 I've given copies to Ms. Burris and Mr. Smith. Glad to
18 hear from Ms. Cruz or whoever who wishes to follow up with
19 any motions.

20 MS. CRUZ: Yes, Your Honor. If it please the Court.

21 This is the same violation as before. It's a *Brady*
22 violation. This CAD report contains information that is
23 potentially could be used to impeach and - sorry, that
24 could have been used to impeach all the other witnesses --

25 THE COURT: So tell me what's on here that would be of

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1 impeachment value.

2 MS. CRUZ: Okay. It just goes to all the inconsistent
3 testimony.

4 THE COURT: No. Just tell me on here what's - what it
5 is.

6 MS. CRUZ: Absolutely. 6-8-2011, 22:46:18 there is
7 black Cherokee, three black males last seen headed towards
8 77. Older model Jeep Cherokee. The subject --

9 THE COURT: Quite a bit of questioning about three
10 males so that's nothing new.

11 MS. CRUZ: Sure. Subject talked to the police there,
12 talking to each other which goes to the issue we've been
13 trying to raise about them getting together and identifying
14 the --

15 THE COURT: That's not what this says. It says they
16 were talking and I think there was some testimony that
17 there was some conversation about have you heard or those
18 sort of things.

19 MS. CRUZ: I think this is all information that could
20 have been used --

21 THE COURT: Not all. You've got to be specific.

22 MS. CRUZ: Well the ones that I mentioned, Your Honor.

23 THE COURT: Well that's two and I've said that we
24 talked about there is no question that there has been
25 extensive examination about three as opposed to two. And

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1 they were asked about whether or not they had some
2 conversation. This doesn't say what the conversation is
3 but they were directly asked whether they had any
4 conversation and they admitted that they had, one or the
5 other had asked how the other was, so there is not question
6 that there are notes in the record that they had some
7 conversation.

8 MS. CRUZ: Right, Your Honor, but at least in the
9 conversation. This is a police document that has a lot of
10 weight that I think that the jury should have been --

11 THE COURT: Well, what weight does it have? It just
12 says that they are talking to each other. They admitted
13 that.

14 MS. CRUZ: That's documented by the police. They got
15 on the stand and testified that they were not talking to
16 each other ---

17 THE COURT: No.

18 MS. CRUZ: --- and it's documented by the police that
19 they were and we should have been able to use this to
20 impeach them.

21 THE COURT: All right. Mr. Smith.

22 MR. SMITH: Yes, Your Honor. I would point to the
23 line that begins with 6-8-2011, F-14 advised one of the
24 suspects possibly has a stab wound. I heard no testimony
25 about that. I think that would be clearly exculpatory. It

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1 could be a basis for the fight or whatever went on if they
2 stabbed one of the suspects first. it could lead to a self
3 defense claim or it could lead to something that neither of
4 these individuals have a stab wound.

5 THE COURT: Who is that, that says F-14 advised one of
6 the suspects possibly has a stab wound. Who is F-14?

7 MR. SMITH: I do not know because I was not provided
8 this document but it's clear that in a police document
9 there is an indication that one of the suspects possibly
10 had a stab wound. Had I been provided this, I could have
11 possibly searched that out or I could have tailored cross
12 examination to inquire from the witnesses who had talked
13 before.

14 And then two lines below 6-8-2011, I'm sorry, 20-11 it
15 says suspect is possibly Maquis Robinson. I would say that
16 possibly language is much different than any of the
17 testimony that we've heard from everyone saying there was
18 immediate identification of one of these two subjects so I
19 would say that would be exculpatory and/or used for
20 impeachment. We were not provided this and weren't able to
21 use it. And as far as - I know Your Honor's questioned
22 that there are no notes in existence today, but my
23 understanding from the questioning of the solicitor
24 yesterday where she asked Detective Stokes on to the stand
25 to refer to his notes then, and so I would suppose that

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1 they existed at some point in time and we weren't provided
2 with them and he's talking about writing things down --

3 THE COURT: Well, did you have notes yesterday?

4 DETECTIVE STOKES: No, sir.

5 THE COURT: Have you discarded or disposed of
6 secretive or done anything with any notes ---

7 DETECTIVE STOKES: No, sir.

8 THE COURT: --- since this trial started?

9 DETECTIVE STOKES: No, sir.

10 THE COURT: Before this started?

11 DETECTIVE STOKES: No, sir.

12 MR. SMITH: I would point that nothing hand written
13 that he has talked about while he was being examined.

14 THE COURT: What's the State - tell one more time.
15 There is a thing about stab wounds. The other - I don't
16 know how that's exculpatory other than that there has been
17 testimony of - Number one we have to decide who F-14 is.
18 You can't impeach Mr. Jordan or Mr. Crane unless they
19 happen to be F-14 about that information.

20 SOLICITOR SHELTON: I believe that would be a call
21 number.

22 THE COURT: I think so too but --

23 SOLICITOR SHELTON: We would have to check with
24 dispatch to see who was F-14 at that time. That person may
25 be a different person now, but this is - and again, Your

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1 Honor, this is the first time I've seen it as well. If you
2 look at the bottom, I think Detective Stokes had it printed
3 today, so it was not ever part of the file before so I
4 don't know who F-14 is. I would have to call dispatch and
5 ask. It may be one of the officers who is under subpoena.

6 THE COURT: Well, it is not either Mr. Crane or Mr.
7 Jordan.

8 SOLICITOR SHELTON: It is not. No, sir.

9 THE COURT: Mr. Crane or Mr. Jordan?

10 SOLICITOR SHELTON: No, sir.

11 THE COURT: Anything else?

12 MS. BURRIS: I do, Your Honor.

13 THE COURT: We had Ms. Cruz was arguing this. Are you
14 taking over?

15 MS. BURRIS: This is a different issue actually, Your
16 Honor.

17 THE COURT: Okay. Well let's take care this one
18 first. Let's do one at a time.

19 MS. BURRIS: Okay.

20 MS. CRUZ: I would just say that we agree with
21 everything that Mr. Smith has said. That's all.

22 THE COURT: Well, whether or not this has exculpatory
23 material on it is awful difficult for the court to
24 determine, but arguably it does. Arguably it should have
25 been provided, however, I find that there is no prejudice

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 to the defendants. Basically there is really no real
2 differences. This CAD report does talk about talking to
3 each other and they've admitted that there was some
4 conversation. This does not say what that conversation was
5 and this is not - this is all hearsay anyway. The whole
6 report's hearsay. I say it's not a verbatim recitation of
7 what was coming over the phone. Five, one of the suspects
8 possibly has a stab wound may have had some value but I do
9 not find that it is to the point of being sufficiently
10 prejudicial. The suspects were not arrested that night. I
11 know it goes to whether or not one of the defendants
12 possibly stabbed one of the suspects, one of the
13 defendants, but I find it hard to believe that the stabbing
14 and would have to be self defense. Two invaders would be
15 exculpatory of any of the crimes for which they are
16 charged. I think that's - I'm not going to say
17 disingenuous because that's not a good word to use
18 particularly against somebody, well anyway, but I don't see
19 how if one of the suspects did have a stab wound, I do not
20 see that that is exculpatory in any way whatsoever.

21 It may have given some more ammunition for some cross
22 examination as to something, but it's hard for me
23 particularly having viewed the videos where Mr. Smith's
24 client, who is the one who addressed that, throws the
25 defendant around like a rag doll, the victim around like a

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1 rag doll. I don't see where that if one of the suspects
2 ended up with a stab wound is exculpatory to any degree
3 whatsoever, so I deny the motions to mistrial on behalf of
4 Mr. Robinson and Mr. Heath.

5 And now a new issue, Ms. Burris?

6 MS. CRUZ: Just for the record, Your Honor, we would
7 believe that this would come under the business, business
8 records exception, but we accept your ruling on the motion.

9 THE COURT: How does it come under the business
10 record exception?

11 MS. CRUZ: Well, it's a CAD report right? So it's
12 something that is kept in the regular course of business by
13 the police department through the dispatch or the
14 communications section.

15 THE COURT: I don't understand what this has to do
16 with this issue. If you want to put this into evidence,
17 that's another issue but no body has offered to put it into
18 evidence. That's a different issue.

19 MS. CRUZ: Yes, Your Honor.

20 THE COURT: All right, Ms. Burris.

21 MS. BURRIS: Your Honor, it's just a minor issue to
22 address and as to the remedy for it, it's my understanding
23 as you ask the witness to not talk to anyone as to his
24 testimony because of course he is under oath. Now, I don't
25 know if it was just a reckless incident, but it's my

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1 understanding that the witness was actually at the
2 prosecution table talking to the prosecutor in regards to
3 his testimony and I just wanted to make sure that the
4 record reflects that.

5 SOLICITOR SHELTON: I did ask him if he had any notes,
6 Your Honor. I did and that was what we discussed.

7 THE COURT: Ms. Burris, do you find that that's
8 objectionable? We were trying to decide whether he had
9 notes or not. She asked him if he had notes.

10 SOLICITOR SHELTON: And I asked him about the
11 CAD report when he got it. I'm sorry.

12 THE COURT: Apparently trying to assist your concerns.

13 MS. BURRIS: I just wanted to note that for the
14 record, Your Honor.

15 THE COURT: What relief were you asking? You're noted
16 for the record and now what do you want?

17 MS. BURRIS: I'm not asking for a mistrial. I would
18 ask well of course she has disclosed the information as to
19 whether or not that's all that they were actually talking
20 about. We're not sure. However I know that she was
21 talking to him about apparently the CAD report and his
22 investigative notes.

23 THE COURT: So you think she is not being honest with
24 the court is what you're saying now?

25 MS. BURRIS: I don't know because I wasn't privy to

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 that conversation.

2 THE COURT: Well no, no. I know you don't know but
3 you're telling me Ms. Shelton as an officer of this court -

4 Do you want me to put her under oath?

5 MS. BURRIS: I mean, I don't know if it rises to that
6 level but what I'm saying is they were talking about --

7 THE COURT: Well no, you're telling me now you
8 dispute and doubt that she is telling me the truth. That's
9 exactly what you're saying is that you don't think Ms.
10 Shelton is telling me the truth. Do you want me to put her
11 under oath or do you accept what she says? I'll let you
12 cross examine her.

13 MS. BURRIS: Your Honor, again, I wasn't privy to the
14 conversation --

15 THE COURT: I understand that. We don't need to go
16 there. What do you want to do? She has told me something.
17 I know you don't know it and I don't know it. She has told
18 me what it was.

19 MS. BURRIS: I just wanted to make sure that the
20 record reflected that.

21 SOLICITOR SHELTON: And, Your Honor, just so it's
22 clear. What Detective Stokes and I were talking about, I
23 did ask him about the CAD report and I did ask him about
24 his notes, did he have any. Did he do anything with any?
25 Were there any in his file? I asked him about the

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 specifics of the CAD report. What is a CAD report? What
2 information is on the CAD report and those were the only
3 two issues that we talked about were the notes and the CAD
4 report.

5 THE COURT: All right. Anything else, Ms. Burris?

6 MS. BURRIS: No, sir, Your Honor.

7 THE COURT: Mr. Smith?

8 MR. SMITH: If we could just mark a copy of the CAD
9 report.

10 THE COURT: Yeah let's put the CAD report in. I've
11 got a copy here. I'm going to ask the clerk to hand it to
12 the court reporter and it will be a court's exhibit.

13 (WHEREUPON: COURT'S EXHIBIT NUMBER NINE, IDENTIFIED
14 AND MARKED, RECEIVED INTO EVIDENCE.)

15 THE COURT: The State ready to proceed?

16 SOLICITOR SHELTON: The State is ready, Your Honor.

17 THE COURT: Ms. Burris, you ready to proceed?

18 MS. BURRIS: Yes, sir, Your Honor.

19 MR. SMITH: Yes, Your Honor.

20 THE COURT: All right, bring in the jury.

22 (JURY REENTERS COURTROOM AT 10:37 A.M..) THE

23 COURT: You may proceed.

24 MS. BURRIS: Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

1

CROSS EXAMINATION - CONTINUED

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 DETECTIVE STOKES BY MS. BURRIS:

2 Q. So Detective Stokes, you were actually privy to
3 receiving a phone call to dispatch you to go to the crime
4 scene?

5 A. That's correct.

6 Q. Okay. So you received a phone call. You arrived
7 there about nine minutes later after you received the phone
8 call?

9 A. No, ma'am. I was paged at 10:50.

10 Q. Uh-huh.

11 A. And I'm not sure exactly what time I arrived but
12 within a twenty minute window I would have arrived on the
13 scene.

14 Q. Okay. Within a twenty minute window?

15 A. Yes.

16 Q. So when you arrived there, officers were there?

17 A. Correct.

18 Q. Okay. And so when you were actually speaking with
19 dispatch, and as in your investigative file summary, one of
20 the things that dispatch, according to your investigative
21 file, said that the suspect is possibly Maquis Robinson.
22 Right?

23 A. If you are talking about the CAD report that's what
24 they noted in the CAD report, yes.

25 Q. Okay. And when they dispatch or when they actually

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 call you and tell you, give you the information, we need
2 you to make sure you respond and you took on the role of
3 lead investigator, when they received a phone call they
4 would actually be recording exactly what they are hearing
5 when they receive the phone call. Correct?

6 A. They would either be recording what the phone call was
7 or what the radio traffic that was going out over the
8 radio.

9 Q. As it is actually coming from the incident site or the
10 person who is calling?

11 A. Correct. That's correct.

12 Q. Okay. And so they would have immediately gotten this
13 information to you, the suspect is possibly Maquis
14 Robinson, black Cherokee, three black males last seen
15 headed towards 77, older model Jeep Cherokee. Right?

16 A. That would have been the information that they relayed
17 either over the radio or they received on the phone. Not
18 necessarily to me.

19 Q. Okay. Okay. Okay. But according to you as the lead
20 investigator --

21 A. I am.

22 Q. Lead detective.

23 A. I am.

24 Q. Been in law enforcement since '96. Right?

25 A. That's correct.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Yeah. Then the CAD report, that communications report
2 in which you were making references to, it says the
3 subjects will not talk to EOC or police. They were talking
4 to each other. Right?

5 A. They're talking. That's correct.

6 Q. As in implying that the persons who called 9-1-1 were
7 there talking to each other as opposed to responding to the
8 9-1-1 pickup?

9 A. Yes.

10 Q. Okay. And according to this Communications Dispatch
11 Report, which would have been the first report generated
12 when the phone call was made, there is an address of [REDACTED]
13 [REDACTED]. Right?

14 A. Per a York County Deputy, they stated that the suspect
15 is not at that address.

16 Q. Was?

17 A. Not at that address.

18 Q. Okay.

19 A. Well, and located a vehicle. I'm sorry.

20 Q. They had located a vehicle?

21 A. Attempted to locate the suspect vehicle at that
22 address.

23 Q. Right. So they attempted to locate the older model
24 black Jeep Cherokee. Right?

25 A. Yes, ma'am.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. All right. So you testified earlier that when you
2 went to the scene as the lead investigator, the lead
3 detective, ---

4 A. Yes, ma'am.

5 Q. --- you automatically adopted that file sort of as
6 the supervisor. Right?

7 A. No not as the supervisor; as the detective.

8 Q. As the detective.

9 A. Yes.

10 Q. Sort of responsible for gathering all the evidence,
11 basically making sure everybody was in place, and you
12 pretty much lead that investigation. Right?

13 A. No, ma'am. I'm responsible for investigating the
14 crime.

15 Q. Right. So you were responsible for leading the
16 investigation?

17 A. I am responsible for investigating the crime.

18 Q. You would have all of the essential documents which is
19 essential in this case in your file. Correct?

20 A. You mean at that time?

21 Q. Now.

22 A. Yes. I have them.

23 Q. Okay. So - All right. So as the lead investigator,
24 you didn't look into the address of [REDACTED] [REDACTED]
25 did you?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 A. I would not have had that information at that time.

2 Apparently --

3 Q. Okay. So you indicated that you thought the officers
4 had pretty much done their preliminary investigation and so
5 you took this preliminary investigation information, you
6 automatically developed a lineup didn't you?

7 A. I developed a lineup from what I was being told once I
8 arrived at the scene who the suspect was. Yes, ma'am.

9 Q. Right. And that was enough - Let me back up for a
10 minute. You developed a photographic lineup from the
11 information you were told.

12 A. Yes.

13 Q. Possibly three black males.

14 A. From the information I was told that the suspect, one
15 of the suspects was Maquis Robinson. Correct. That's why
16 the photo lineup was developed.

17 Q. Now you testified earlier that some of the initial or
18 the first information you received was that it was three
19 black males?

20 A. Yes.

21 Q. Okay. All right. Just answer my question yes or no.

22 You testified earlier that the information you
23 received was an older model black Jeep Cherokee. Right?

24 A. Yes.

25 Q. And on the Communications CAD report, [REDACTED] [REDACTED]

1 [REDACTED]. Right? Yes?

2 A. I'm sorry, ma'am. Ask the question again.

3 Q. Yes. On the Communications CAD report, the address of

4 [REDACTED] [REDACTED] was on there. Right?

5 A. Yes.

6 Q. And you received information that this older model,
7 black Jeep Cherokee headed out towards 77 didn't you?

8 A. That's what the CAD report reflects. I wasn't told
9 which way they were headed.

10 Q. Okay. And the CAD report just reflects that whoever
11 called in they were talking to each other. Right?

12 A. Yes.

13 Q. Okay. Now, given that you testified earlier that as
14 soon as you arrived at the scene, you pretty much adopted
15 this case didn't you?

16 A. Yes. I was assigned as the lead investigator.

17 Q. And in fact the original incident report you actually
18 signed your name where it says follow up investigation.

19 A. No, ma'am, I didn't.

20 Q. Okay. I'm going to show you - Is this in your
21 file?

22 A. It's right here. Yes, ma'am.

23 Q. Okay. You didn't write that? You didn't write your
24 name?

25 A. No, ma'am.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Okay. So who actually wrote your name on the original
2 incident report?

3 A. The copy of the incident report says that it was
4 assigned for follow up investigation to the detective
5 division and they wrote Stokes on the bottom as the
6 investigator.

7 Q. They who wrote your name?

8 A. The supervisor.

9 Q. The supervisor wrote your name, hand wrote your name
10 on the bottom of the original incident report?

11 A. That's correct.

12 Q. But you pretty much had the opportunity to read over
13 this original incident report because you had to know
14 exactly what to do next. Right?

15 A. The original incident report I read a few days after
16 the incident. A day or two after the incident because we
17 don't have copies right at the time when I arrive on the
18 scene. It has to go through channels being checked off by
19 different supervisors before I receive that.

20 Q. Okay. So you read it a couple days later?

21 A. Day or so after. Correct.

22 Q. You didn't think - You had already been given this
23 information from one of the initial responding officers
24 though. Right?

25 A. Which information are you talking about, ma'am?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. That it was a black male. One was six foot two.
2 Black older style Jeep Cherokee. One was short and heavy
3 set. You had already been given this information?

4 A. Yes.

5 Q. Okay. And this was their preliminary investigation
6 that you relied upon?

7 A. Yes.

8 Q. In developing the lineup?

9 A. Yes.

10 Q. Did you ever think - Because there is such a thing as
11 - Once you arrive there at the scene, you can actually call
12 back to the communications department, get maybe if there
13 is an address, to see if anyone could do a BOLO to see
14 whether or not they can actually find that vehicle. That's
15 an investigation isn't it?

16 A. Well that goes - The answer to your question is yes
17 but that goes to why the York County deputy put the [REDACTED]
18 [REDACTED] because there was an address of Mr.
19 Robinson apparently listed or one of the suspects listed.
20 That's why he went there.

21 Q. Who? Who? Which deputy went?

22 A. I'm not sure. It just says per York County Sheriff's
23 Office deputy.

24 Q. So as the lead investigator for this case, you never
25 followed up with [REDACTED] [REDACTED] did you? No.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS.

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1 A. Not that night. No.

2 Q. Okay. You never followed up with the address of [REDACTED]
3 in this particular case investigating and it's been two
4 years at all did you?

5 A. No, ma'am.

6 Q. All right. So and isn't it true that you never, ever
7 thought about looking that particular night or having any
8 of the other investigators to look for an older model black
9 Jeep Cherokee did you?

10 A. Ma'am, it was BOLO'd out. If the York County
11 Sheriff's Office went to that address, it was BOLO'd out
12 prior to me getting there.

13 Q. Answer the question about the older model black Jeep
14 Cherokee headed towards 77. You never went to go
15 investigate that, did you, or have anyone else to go out?

16 A. You mean, did I ride down Cherry Road towards 77
17 looking for it?

18 Q. Did you call and dispatch any of the other officers to
19 see about this older model Jeep Cherokee headed towards 77?

20 A. Ma'am, no.

21 Q. No. Never in your investigation - Now isn't it true
22 that given that this happened 6-8-2011, there can be a
23 continuous investigation of this particular case if you
24 feel it necessary to add supplemental reports. Right?

25 A. That's correct.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Right. Okay. And so here we are in 2013, you never
2 thought it was necessary to go back and investigate neither
3 this address, this car, to see if any of these things ever
4 connected to Maquis Robinson did you?

5 A. I did not.

6 Q. No. Now, when you went - left the scene, you went
7 back to the police department to generate a photographic
8 lineup. Right?

9 A. That's correct.

10 Q. Right. And you testified at a prior time that when
11 you went to input the information, the physical
12 characteristics, the date of birth, the height, the weight,
13 the complexion, the hair, in this photographic lineup
14 imaging system ---

15 A. Yes, ma'am.

16 Q. --- you also placed a picture of Maquis Robinson in
17 that photographic lineup. Correct?

18 A. The computer placed the picture of Maquis Robinson.

19 Q. The computer placed a picture of Maquis Robinson.
20 Correct?

21 A. That's correct.

22 Q. Okay. And you were able to input information as to
23 physical characteristics, hair, date of birth, complexion,
24 all of that, into that system weren't you?

25 A. Yes. When I put his name in, ---

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Yes.

2 A. --- I'm able to put --

3 Q. Information.

4 A. Correct.

5 Q. All right. So you placed all that information in the
6 system and there is what we call a lineups image detail
7 that prints out. Right?

8 A. That's correct.

9 Q. Right. Okay. And that lineup image detail basically
10 has all of the physical characteristics of persons who look
11 like Maquis Robinson. Right?

12 A. Yes.

13 Q. Right. Okay. And typically you generate that
14 photographic lineup image detail. Right?

15 A. I generate the photo lineup and then the image detail
16 comes out.

17 Q. Right. It comes out afterwards. Right?

18 A. That's correct.

19 Q. And it comes out and it's usually a part of your case
20 file. Correct?

21 A. Not always.

22 Q. Not always?

23 A. No.

24 Q. But you do have a photographic lineup image of
25 Dantonyo Heath but all of a sudden Maquis Robinson's

1 photographic lineup image detail is missing. Right?

2 A. Yes.

3 Q. And you're not sure exactly where the photographic
4 lineup imaging detail that was produced out of this
5 computer generated system went to are you?

6 A. No, ma'am.

7 Q. All right. So, you after generating this photographic
8 lineup detail, you went to Piedmont Medical Center. Right?

9 A. After producing the lineup.

10 Q. After producing the lineup?

11 A. That's correct.

12 Q. Right. As the lead investigator. Right?

13 A. Yes.

14 Q. So you went into Piedmont Medical Center and you read
15 - Do you have the photographic lineup there?

16 A. I do not.

17 Q. And you actually read - Let me back up. You went into
18 Mr. Jordan's room. Right?

19 A. That's correct.

20 Q. Never knew whether he was under the influence of
21 anything did you?

22 A. No, ma'am.

23 Q. Okay. Never asked whether he was under the influence
24 of anything?

25 A. I didn't.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Didn't know if he actually had any IV's or anything on
2 him?

3 A. I can't remember if he did or not.

4 Q. Didn't know if he was under the influence of
5 medication?

6 A. No, ma'am.

7 Q. Didn't know if he was under the influence of
8 marijuana?

9 A. No, ma'am. I don't know.

10 Q. You didn't know if he was under the influence of any
11 drugs. Right?

12 A. I didn't know.

13 Q. All right. So you take this photographic lineup and
14 this form in there to Mr. Jordan. He is lying in the bed.
15 Right?

16 A. That's correct.

17 Q. Right. Okay. And you place it - you read this to
18 him. Right?

19 A. I did.

20 Q. Don't know whether he understood what you were saying
21 or anything do you?

22 A. Yes I did understand him. He acknowledged that he
23 understood it.

24 Q. How did he acknowledge that he understood you?

25 A. Do you understand what I'm saying? Yes.

1 Q. So he gave you a verbal or just shook his head?

2 A. I think both. I can't remember.

3 Q. You can't remember. Okay. So, Mr. Jordan is lying in
4 the bed and you show him a photographic lineup and you said
5 to him, the suspect is in one of these - the suspects may
6 be in one of these six photographs. The suspect may be in
7 one of these six photographic pictures, or lineup?

8 A. What I said was what the sheet reads. It says may or
9 may not.

10 Q. Okay. That's exactly what you said. You're sure you
11 said that the suspect may or may not be in this
12 photographic lineup because if the suspect is not in that
13 photographic lineup you don't want him to chose anyone
14 that's not the person he actually saw. You don't want him
15 to chose a wrong person. Right?

16 A. Nope. Correct.

17 Q. And you're sure that you said may or may not?

18 A. I'm not sure exactly but I know it was whatever I
19 read.

20 Q. Okay. May or may not, is it actually on that form?

21 A. No, ma'am. It says - Would you like me to read the
22 form?

23 Q. No. You don't necessarily have to read the whole
24 form. You read the form that night. My question to you ---

25 A. That's correct.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. --- is whether or not you said the suspect may or may
2 not --

3 A. I can't remember.

4 Q. Okay. So you cannot remember whether or not you said
5 the suspect may or may not be in this photographic lineup?

6 A. I can't remember.

7 Q. You remember testifying prior to this date don't you?

8 A. I do.

9 Q. And you remember testifying when you were actually
10 under oath. Correct?

11 A. I remember.

12 Q. And it was a time prior to today. Right?

13 A. Yes, ma'am.

14 Q. Is that your testimony?

15 A. Yes.

16 Q. And so your testimony prior to today was that, when
17 asked about the photographic lineup display and approaching
18 Mr. Ernest Jordan, did you say that the suspect is in one
19 of these six pictures and you said that you said, the
20 suspect may be in one of these pictures.

21 A. That's what it says.

22 Q. You didn't spend a lot of time with Mr. Jordan in that
23 hospital room did you?

24 A. No, ma'am.

25 Q. You actually went in there, got him to circle a

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 picture and you left out and you went to go find Detective
2 Smith didn't you?

3 A. Yes, ma'am.

4 Q. And you probably stayed in there all of less than five
5 minutes didn't you?

6 A. I would say five to ten minutes. Yes, ma'am.

7 Q. And three of those were spent just probably
8 identifying yourself. Right?

9 A. I guess. It was two years ago. I can't remember.

10 Q. Detective Stokes.

11 A. Ma'am.

12 Q. As a part of this investigation, when you went to the
13 rim shop there was a cell phone that was located. Right?

14 A. That was located by the forensics team.

15 Q. Located by the forensics team. Right?

16 A. Yes, ma'am.

17 Q. And you testified yesterday that you found it
18 necessary basically to retrieve the records from this cell
19 phone. Right?

20 A. That's correct.

21 Q. And you looked over basically all the content of the
22 cell phone records. Right?

23 A. Well, I was trying to identify whose cell phone it
24 was.

25 Q. Right. And so you looked over the content of the cell

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 phone records. Yes or no?

2 A. Yes.

3 Q. Yes. Okay. Now I see you getting in your file.

4 A. Yes, ma'am.

5 Q. All right. So when you - You actually issued a search
6 warrant in order to retrieve the contents of this cell
7 phone. Right?

8 A. I did.

9 Q. Yeah. And it was - And so basically the content of
10 the cell phone records basically just saw basically Big
11 Money Rims.

12 A. Well I don't know if it's Big Money or not.

13 Q. Rims.

14 A. Wheels? Yes.

15 Q. Wheels or rims? Wheels and rims?

16 A. Yeah. That's appropriate.

17 Q. Okay. And a picture of Ernest Jordan with a pair of
18 sun shades on holding a phone up looking. Right?

19 A. I'm sorry, I'm looking.

20 Q. That's okay.

21 A. Yes, ma'am.

22 Q. And another picture of Ernest Jordan just basically
23 flossing. Right?

24 A. I'm not sure what you mean.

25 Q. You don't understand the word flossing?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 A. I don't understand what you mean by flossing.

2 Q. Ernest Jordan with a black tee shirt on and white
3 writing. Are you looking at that?

4 A. Well I have different - which --

5 Q. Okay, I apologize. Is that the same thing you are
6 looking at?

7 A. Okay. Yes, ma'am.

8 Q. Okay. And basically Ernest Jordan with a chain on and
9 a cell phone --

10 SOLICITOR SHELTON: Objection, Your Honor. I don't
11 know the relevance.

12 MS. BURRIS: This is what's in --

13 THE COURT: This is cross examination.

14 Go ahead.

15 MS. BURRIS: Thank you.

16 Q. And you see Ernest Jordan with a black tee shirt and a
17 big chain on, it looks like a dew rag and some black sun
18 shades and a cell phone holding it up. Right? That's what
19 you see in your file.

20 A. Yes, ma'am.

21 Q. And you also see on the next page I believe 19 of 24
22 of your examination report.

23 A. Yes, ma'am.

24 Q. We on the same page?

25 A. That one?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Yeah. Just different cars and rims. Right?

2 A. Yes, ma'am. Pictures of cars.

3 Q. Yes. And also in your case file summary on one of the
4 photographs you actually see Ernest Jordan with his shades
5 on, and his big chain and his dew rag and his black tee
6 shirt with a money fan don't you?

7 A. Which page is that?

8 Q. Page 14 of 24, lots of money spread out.

9 A. Yes, but it's not a picture of Mr. Jordan.

10 Q. Just some money in a money box. Right?

11 A. It's a hand.

12 Q. A hand.

13 A. With money.

14 Q. And you received all these from Mr. Jordan's cell
15 phone?

16 A. This is what we retrieved from the cell phone.

17 Q. And also in regards to the cell phone, you see lots of
18 phone numbers, Lancaster, Charlotte, Atlanta, Big H Cats.
19 You see all of that don't you?

20 SOLICITOR SHELTON: Objection, Your Honor.

21 THE COURT: I sustain the objection. I sustain the
22 objection on relevance.

23 BY MS. BURRIS:

24 Q. Now, you indicated earlier in your testimony that
25 whenever I do a photo lineup, I usually try to do the same

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 hair style, skin complexion and body weight and I put these
2 lineups together, so you know...that's what you said,
3 right, or does the computer do it?

4 A. I do it. I put the pictures.

5 Q. You put the information in there as to the physical
6 characteristics of the person. Right?

7 A. Correct. Well, it all depends on if I put the
8 person's name in first ---

9 Q. Okay.

10 A. --- and it gives back pictures and one of the
11 pictures, the hair styles or something may be different, I
12 can input okay. If the picture has braids, I can put
13 braids on there and it will pull up those same
14 characteristics, you know, height, weight, in there.

15 Q. Okay. Now, you just testified that you were in the
16 hospital room with Ernest Jordan probably ten minutes or
17 less, five or ten minutes maybe?

18 A. That's correct. Wasn't much time.

19 Q. Correct.

20 A. Wasn't much time.

21 Q. Did you speak to Mr. Ernest Jordan about what type of
22 car he saw that night or --

23 A. No, ma'am.

24 Q. Okay. Didn't speak to him about what did he tell
25 dispatch?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 A. No, ma'am.

2 Q. Okay. Didn't really speak to him about the case at
3 all did you?

4 A. Not at that time.

5 Q. You just developed a picture in a photographic lineup,
6 gave it to him, he circles the picture and then you left
7 and went over to Mr. Crane's room with Detective Smith?

8 A. Right. I think I left because they were starting to -
9 the nurses were starting to do something with him so yeah,
10 I left and went to Mr. Crane's room where Detective Smith
11 was.

12 Q. And you went in there and how long had Detective Smith
13 actually been in Mr. Crane's room?

14 A. I'm not sure. We kind of split right when we got to
15 the hospital. She went in so I guess about the same time.

16 Q. About five to ten minutes?

17 A. Yes, ma'am.

18 Q. Now when you arrived - I'm kind of going a little
19 out of order. When you arrived at the scene, isn't it true
20 that you arrived there, basically the initial responding
21 officers told you that Mr. Jordan had a laceration on his
22 face?

23 A. Yes.

24 Q. All right. So now you're over to Mr. Jared Crane's
25 room with Detective Smith. Right?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 A. Okay. Yes.

2 Q. Yes. All right. So you're in there for about five to
3 ten minutes and then you all leave the hospital. Right?

4 A. She was in there about the same time and then I
5 believe we may have set up a time to interview but there
6 was no extensive investigation going on at that point.

7 Q. Okay. No extensive investigation going on. But don't
8 you think it's important to speak to Mr. Jordan and Mr.
9 Jared Crane to find out exactly what happened, that's the
10 best time to do it because it was right after the incident
11 allegedly happened?

12 A. No, ma'am. It wasn't the best time to do it because
13 they were in the hospital and they were being attended to
14 for their medical injuries.

15 Q. There wasn't a nurse in there when you were in there.
16 Right?

17 A. Not when I did the photo lineup. No.

18 Q. Right. And you are a police officer.

19 A. I am.

20 Q. You're a lead investigator with the Rock Hill Police
21 Department.

22 A. I am.

23 Q. Piedmont Medical Center will let you actually come in
24 there and do your job won't they?

25 A. They will let me come in ---

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Right.

2 A. --- there and do my job.

3 Q. Right. Absolutely. And you chose not to do a
4 thorough investigation that night. Right?

5 A. I chose not to take a statement that night.

6 Q. In fact, when you went into Mr. Jared Crane's room
7 with Detective Smith, you don't know whether Mr. Crane was
8 under the influence of anything do you?

9 A. I don't.

10 Q. Okay. Don't know if he was under the influence of
11 drugs?

12 A. No.

13 Q. Medication?

14 A. No.

15 Q. Anything?

16 A. No, ma'am.

17 Q. Now, you had the opportunity to see Mr. Jordan and Mr.
18 Crane again didn't you?

19 A. Collected their statements, yes.

20 Q. Right. So they then came to the Rock Hill Police
21 Department. Right?

22 A. Yes, ma'am.

23 Q. All right. And did they come at the same time?

24 A. No, ma'am.

25 Q. Okay. So they came at different times?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 A. Yes, ma'am.

2 Q. You ready?

3 A. Go ahead.

4 Q. Oh, okay.

5 A. Yes, ma'am.

6 Q. Thank you. Thank you. Okay. So you sat down with
7 Mr. Jordan and Mr. Jordan gives you a name Yodi. Right?

8 A. Yes, ma'am.

9 Q. Right. And told you, according to your case file
10 summary, that Yodi had relatives that lived in an apartment
11 on Crest Street in Rock Hill. Right?

12 A. Yes, ma'am.

13 Q. And Mr. Ernest Jordan gave you a description of the
14 apartment and he said the suspect's mother drives an older
15 model Buick and you testified yesterday that you went to
16 this home on Crest Street and you ran the tag number of
17 this older model Buick and it came back to Dantonyo Heath
18 and that's the person you arrested. Right?

19 A. What I testified to is that I ran that tag.

20 Q. Uh-huh.

21 A. Took the information to the photo lineup and then
22 that's when he was arrested after he was picked from the
23 photo lineup.

24 Q. From this older model Buick?

25 A. No. From the information gained from the older model

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Buick, I was able to develop Mr. Heath because the tag came
2 back to Mr. Heath.

3 Q. Okay. So it was alleged that Mr. Heath drives an
4 older model Buick basically?

5 A. You saying that his - At the time you say that Mr.
6 Heath's mother was known to drive that older model Buick.

7 Q. Okay. Now when - You sat down with Mr. Ernest Jordan
8 at the police department, right?

9 A. That's right.

10 Q. And you all sat down for some time. Right?

11 A. Yes.

12 Q. Did you ever ask Ernest Jordan as to or verify what
13 type of car the suspects was driving?

14 A. You mean the night of the incident?

15 Q. No. When you all sat down at the Rock Hill Police
16 Department and you all had some time to think about it and
17 investigate properly the case, you - Did you ask Ernest
18 Jordan just about the physical descriptions, the car? Just
19 ask him to sort of tell you what happened so that you could
20 make sure you do a thorough investigation.

21 A. I don't remember if I asked him or not.

22 Q. Okay.

23 A. If we spoke about it or not.

24 Q. Okay. All right. And you also had the opportunity to
25 sit down with Mr. Jared Crane didn't you?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 A. Yes, ma'am.

2 Q. Okay. And in sitting down with Mr. Jared Crane, was
3 his wife with him?

4 A. No, ma'am. She came --

5 Q. Later?

6 A. No. She came the same time but she was being
7 interviewed by Detective Smith at the same time I was
8 interviewing Mr. Crane.

9 Q. Okay. But you were sitting down. You all were at
10 your cubicle and there was you and Mr. Jared Crane and
11 things were pretty calm during that time. Right?

12 A. Yes.

13 Q. Okay. And as you were typing up the statement and Mr.
14 Jared Crane was speaking with you, Jared Crane kept saying
15 - because you are pretty skilled in documenting statements
16 coming from alleged victims aren't you?

17 A. Yes, ma'am.

18 Q. And you would say that you've been doing this for how
19 many years?

20 A. Since '96.

21 Q. Since '96.

22 A. Correct.

23 Q. And you've been going to accident and crime scenes.
24 Right?

25 A. I have.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Right. And you've been talking to victims, right,
2 interviewing them?

3 A. I have.

4 Q. Right?

5 A. I have.

6 Q. And you're used to sitting down with them and getting
7 them to give you physical descriptions, getting you to give
8 them - give you the detail of what happened on the night of
9 the incident. Right?

10 A. Yes, ma'am.

11 Q. Right. And you are used to just sitting down and
12 making sure that they give you all of the central
13 information so you can make sure that you fully and
14 thoroughly investigate the case. Right?

15 A. Yes, ma'am.

16 Q. Okay. All right. So Mr. Jared Crane, he sat down
17 with you. He gave you, he told you he worked at Five Star
18 Customs, a rim shop. Gave you date of birth, social
19 security, all that. Right?

20 A. Yes, ma'am.

21 Q. Okay. And in his statement he kept saying the guy
22 - He said the guy that I identified came running past me in
23 the bay, open bay area. Right?

24 A. He said the guy I identified last night came running
25 past me in the open bay area.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Yes, sir. That's what he said. Right?

2 A. That's correct.

3 Q. Okay. And he also said I don't remember if the door
4 was open or closed. Right?

5 A. That's what he said.

6 Q. Okay. And Jared Crane had the opportunity to read
7 this statement didn't he?

8 A. He did.

9 Q. He did. And Jared Crane had the opportunity - Did
10 you actually print it out for him and give it to him and
11 say, read that statement?

12 A. Before signing it to make sure everything that you
13 told me is correct.

14 Q. Is correct. That's right. And in Jared Crane's
15 statement, he kept saying "the guy." Right?

16 A. Yes.

17 Q. He didn't say ever Maquis or Maquis Robinson did he?

18 A. He didn't

19 Q. Never.

20 A. He didn't.

21 Q. Now, Detective Stokes, you - Isn't it true that - At
22 what point did you actually generate your main report?

23 A. Are you referring to my file summary?

24 Q. Your main file summary which should have everything in
25 it. What time did you generate that? When did you

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 generate that?

2 A. I usually generate it right after we - after
3 arrest.

4 Q. After arrest. Right. And close the case out. Right?

5 A. Yes. Well - yes.

6 Q. And isn't it true - and you answer my questions yes or
7 no - you didn't have to go out and get Maquis Robinson or
8 go find him did you? He in fact walked into the police
9 department on 6-14-2011; isn't that true?

10 A. Yes.

11 Q. Okay. When you sat down with Jared Crane, you
12 assumed, and you believed, and you knew that the
13 information that you'd gotten when you had gone to the rim
14 shop that night because you believed that the initial
15 responding officers had done a thorough report. They'd
16 done their preliminary investigation and so you believed
17 that was sufficient to go get a photographic lineup, let's
18 get ready and close the case out. That's exactly what
19 happened. Correct?

20 A. No, ma'am. But I believe that there was an initial
21 investigation done at the scene and that there was a
22 suspect named at the scene.

23 Q. And that was enough for you?

24 A. And that was enough to go and generate a photo lineup,
25 not to close the case.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. You cannot testify under oath without a doubt that you
2 know that you arrested the right person once this person
3 walked in the police department, Maquis Robinson can you?

4 A. I'm sorry. Say that again.

5 Q. Let me break those three questions in--

6 A. Please, please do.

7 Q. You cannot testify under oath that given this
8 preliminary investigation that the officers did at the
9 scene, and you generated a photo lineup from this
10 preliminary investigation, you cannot testify under oath
11 that when Maquis Robinson walked himself into that police
12 department on 6-14-2011, that this is the right person
13 sitting here today. You can't say that under oath can you?

14 A. I can testify under oath that based upon the
15 information --

16 Q. Answer the question.

17 THE COURT: No. He's trying to. He's trying to.

18 A. The identification from the photographic lineups and
19 the statements that were given by the witnesses, that I
20 arrested Maquis Robinson for this case based upon those.

21 Q. And answer this question. So you believe that
22 generating an arrest warrant for Maquis Robinson when he
23 walked himself into that police department on 6-14-2011
24 that the description that was given to you by the initial
25 responding offices fit the description of Maquis Robinson

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 during that time because you had the opportunity to see him
2 when he turned himself in didn't you?

3 A. Ma'am, I wasn't there when he turned himself in.

4 Q. Okay. You believe that the fact that when you got a
5 dispatch call and they said oh it's possibly this person,
6 you believed that was enough --

7 A. Ma'am, I answered you before. No.

8 Q. Okay.

9 A. What I believe is based upon the fact that Maquis
10 Robinson's name was given as a potential suspect, the
11 witnesses both identified him out of a photographic lineup.
12 That was enough.

13 Q. And a potential suspect, or a possible suspect, is
14 enough to generate a photographic lineup and arrest someone
15 and charge them with these charges. Right?

16 A. The photo lineup, the positive I.D. from the photo
17 lineup by both victims of the crime was enough.

18 Q. And you can say that under oath.

19 THE COURT: He just did. Move on.

20 Q. And, Detective Stokes, given your investigation, you
21 can say under oath there was not anything additional that
22 you would have done to solidify to make sure that we had
23 all the facts and details in this case file?

24 A. Ma'am, I would say that there was always something
25 more you can do.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. There's always something more and you did not do that.
2 Right?

3 A. Not in this case.

4 Q. And it is your testimony that around 6-14-2011 you
5 never saw Maquis Robinson. Right?

6 A. I wasn't there when he came to the station.

7 Q. You were not there to see him at all?

8 A. Not when he turned himself in.

9 Q. Detective Stokes.

10 A. Ma'am.

11 Q. I have no further questions at this time.

12 A. Thank you.

13 THE COURT: Mr. Smith.

14 MR. SMITH: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Do you need a break?

17 We'll take a break. I see a hand, a break hand coming
18 up so we'll take about a ten minute refresher break.

19 (JURY EXITS COURTROOM AT 11:22 A.M..)

20 THE COURT: We'll take about a ten minute refresher
21 break and the same admonition to the Detective about not to
22 talk to --

23 DETECTIVE STOKES: Yes, sir.

24 (COURT IN RECESS AT 11:22 A.M..)

25 (COURT BACK IN SESSION AT 11:38 A.M..)

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 THE COURT: Thank you. You may take your seats.

2 Is the State ready?

3 SOLICITOR SHELTON: Yes, sir, Your Honor.

4 THE COURT: Ms. Burris?

5 MS. BURRIS: Yes, sir, Your Honor.

6 MR. SMITH: Ready, Your Honor.

7 THE COURT: Bring in the jury.

8 (JURY REENTERS COURTROOM AT 11:39 A.M..)

9 THE COURT: Mr. Smith.

10 MR. SMITH: May it please the Court, Your Honor.

11 CROSS EXAMINATION

12 DETECTIVE CEDRIC STOKES BY MR. SMITH:

13 Q. Detective Stokes, you've been ask about a number of
14 different reports and pages and items. I'll start with the
15 CAD Report if you want to get it.

16 A. Yes, sir. Yes, sir.

17 Q. And the CAD Report, is that basically a sort of
18 running summary of the radio correspondence that's going on
19 amongst law enforcement?

20 A. Radio correspondence as well as maybe a call in to the
21 police department.

22 Q. Okay. And you said you received that for the events
23 that occurred on June 8th of 2011; is that right?

24 A. This is it.

25 Q. Okay. And one of the earliest transmissions that's on

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 that CAD Report talks about one of the suspects and it says
2 one of the suspects possibly has a stab wound; is that
3 correct?

4 A. Yes.

5 Q. And there's no indication from anything you ever
6 seen or done in this case that my client Dantonyo Heath
7 ever had a stab wound; is that right?

8 A. No, sir.

9 Q. And then - I'm finished with that and I'll move to a
10 warrant. There is a warrant against my client for armed
11 robbery.

12 A. Yes, sir.

13 Q. Okay. And were you the affiant on the warrant?

14 A. Yes.

15 Q. Okay. And to clarify, affiant means the person that
16 goes before a judge and swears the basis of the warrant
17 that's been taken out; is that right?

18 A. Yes.

19 Q. And you did that on I believe June the 11th; is that
20 correct?

21 A. It was on June the 11th.

22 Q. And then on the 11th the warrant or warrants were
23 taken out for my client and then Mr. Heath turned himself
24 in to Rock Hill that very next day. I think that's either
25 in your summary or in a supplemental report.

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 A. I believe it was the 12th.

2 Q. Okay. And so he came up voluntarily to Rock Hill
3 Police Department and ---

4 A. Turned himself in.

5 Q. --- and these warrants would have been served on
6 him?

7 A. They were.

8 Q. And that's at Rock Hill and there is a Rock Hill
9 Police Department and a Rock Hill city court. That's where
10 his bond hearing would be held sometime that day or that
11 next day; is that right?

12 A. Yes, sir, either that day or the next day.

13 Q. Okay. And then subsequent to that would be when he
14 would be transported to Moss Justice Center?

15 A. Yes.

16 Q. Now, you spoke with and received information and a
17 statement from Amanda Crane; is that correct?

18 A. No. Detective Smith interviewed Ms. Crane.

19 Q. Okay. So you received a statement from her. Did you
20 ever speak to her at any point in time?

21 A. I did not.

22 Q. And she was never shown a photo lineup of my client
23 Dantonyo Heath; is that correct?

24 A. Sir, I can't recall if she was or not but I didn't. I
25 can't recall if I showed her one or not. Like I said it

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 was a while ago.

2 Q. And certainly you were never given information that
3 she could identify Dantonyo Heath were you?

4 A. No, sir.

5 Q. Okay. Cause if you thought there was something
6 relevant to the case you would have followed it up and done
7 a lineup or whatever needed to be - -

8 A. I can't remember if she stated that she could identify
9 who he was at that time.

10 Q. Okay. Let me ask you about the Supplemental Report
11 from July 1st.

12 A. Supplemental?

13 Q. Yes, sir.

14 A. Okay. Sorry, Mr. Smith, I got stuff all around.

15 Q. I know and I'm bouncing from page to page.

16 A. What's the date? The date, sir?

17 Q. July the 1st. She's got a copy if that's easier.

18 A. Yes.

19 Q. Okay. And I believe you indicated, and it may be self
20 evident from the title, but a Supplemental Report or when
21 new information is gathered that didn't make it into the
22 original report; is that - -

23 A. Information that may not made it into the original
24 report.

25 Q. Okay. And before the original report was written,

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 obviously Jared Crane had been spoken to; is that right?

2 A. Before the original incident report? Yes.

3 Q. Yes. And before your finalized report was written or
4 before the incident report was written he had actually
5 given a statement; is that right?

6 A. A sworn statement you mean?

7 Q. Yes.

8 A. Before the Summary was written or the Incident Report?

9 Q. This Summary. I should say Summary, not before the
10 Incident Report.

11 A. He had given a statement before the Summary.

12 Q. Okay. So this Supplemental Report is to add some
13 information that wasn't gotten at those prior two
14 occasions. Is that fair to say?

15 A. Yes.

16 Q. And what is added in this Supplemental Report is that
17 Mr. Crane reports that money and a phone were taken from
18 him; is that right?

19 A. Yes.

20 Q. And for the money how much does he say in the
21 Supplemental Report was taken from him?

22 A. Eleven Hundred Dollars.

23 Q. Not Eleven Hundred and Fifty?

24 A. It was Eleven Hundred Dollars in the Supplemental.

25 Q. Eleven Hundred. And the date again of that

1 Supplemental Report is July the 1st?

2 A. That's correct.

3 Q. Now, did he mention in the Supplemental Report that
4 a half ounce of marijuana was taken from him?

5 A. It's not in the report.

6 Q. Okay. And that's not in any report is it?

7 A. No, sir.

8 Q. Cause he didn't tell you that did he?

9 A. No. I can't recall if he did or didn't but I don't
10 think he did.

11 Q. And then back to the original armed robbery warrant
12 that you pulled.

13 A. Okay.

14 Q. And in that armed robbery warrant it sort of spells
15 out the allegations against Dantonyo Heath and it mentions
16 armed robbery and it mentions Mr. Jordan and Mr. Crane's
17 name; is that right?

18 A. Yes, sir.

19 Q. But then it describes the items that were taken. And
20 what does it say was taken?

21 A. Seven Thousand Dollars in cash.

22 Q. Seven Thousand in cash. Doesn't say Eleven Hundred or
23 Eleven Hundred and Fifty Dollars does it?

24 A. No, sir, it doesn't.

25 Q. And it says that the cash was taken from whom?

DETECTIVE CEDRIC STOKES: BY MR. SMITH
BY SOLICITOR SHELTON

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1 A. It has robbing the victims.

2 Q. Okay.

3 A. Or Ernest Jordan and Jared Crane.

4 Q. And then when it talks about the cash who does it
5 say it was taken from?

6 A. It just said and did take away Seven Thousand Dollars
7 in cash.

8 Q. It says the defendant was with Marquis Robinson who
9 used a weapon during the robbery and did take away Seven
10 Thousand in cash from the victim. Right?

11 A. Yes it does say that.

12 Q. And no mention of marijuana there?

13 A. No, sir.

14 MR. SMITH: No further questions.

15 SOLICITOR SHELTON: Just very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON:

18 Q. Detective Stokes, I'm gonna ask you to refer back to
19 your Incident Report.

20 A. Incident Report. The original?

21 Q. The very very first Incident Report.

22 A. This one.

23 Q. I believe prepared by Officer Studivent.

24 A. Yes, ma'am.

25 Q. And if you can remember a little time ago Ms. Burris

1 ask you to read a line. She ask you about a line in there
2 and she said you were told that a suspect was six two, I
3 believe she said. It's on the second page.

4 One male is approximately six foot two inches and then
5 she said another was short and heavy set. And you said
6 yes.

7 A. Correct.

8 Q. Is that what it says?

9 A. It says another was shorter and heavy set.

10 Q. So not just short, shorter?

11 A. Shorter.

12 Q. Shorter than who, if you read those two lines
13 together?

14 A. Shorter than the one that was approximately six foot
15 two inches.

16 Q. And there's more to that report that you were not
17 ask about; is that correct?

18 A. Yes.

19 Q. Is that the only information that was provided in that
20 Incident Report about the possible suspects?

21 A. No. No, ma'am. It's actually named - Jordan stated
22 that one of the males was Marquis Robinson and the other
23 one was known as Yodi.

24 Q. So not just a shorter heavy set black male. An actual
25 name.

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 A. It says that one of the males was Marquis Robinson and
2 the other was known as Yodi.

3 Q. And that report refers to Marquis Robinson as a
4 suspect. Correct?

5 A. Yes, ma'am.

6 Q. Was that report done before or after the lineup?

7 A. This report was done - The initial incident report
8 they gathered at the scene.

9 Q. So what does officers - So just the information known
10 to Officer Stivender at the time?

11 A. At the time.

12 Q. So based upon your training and experience, when would
13 someone go from being a suspect to someone wanted for a
14 crime?

15 A. Wanted is once you actually issue the warrants.

16 Q. And when would you issue warrants?

17 A. After they investigated the crime a little further to
18 get probable cause to get the warrants.

19 Q. And in this case what did you do to investigate
20 further other than having Marquis Robinson listed as a
21 suspect?

22 A. I actually went and spoke with both victims. Well I
23 generated photo lines, spoke with both victims at the
24 hospital and they both identified him.

25 SOLICITOR SHELTON: Thank you.

1 THE COURT: Recross?

2 MS. BURRIS: Just real brief.

3 CROSS EXAMINATION

4 DETECTIVE CEDRIC STOKES BY MS. BURRIS:

5 Q. Detective Stokes, ---

6 A. Ma'am.

7 Q. --- at the initial scene you spoke to the officer
8 who generated the original report, or one of the officers.
9 Right?

10 A. Yes, ma'am.

11 Q. And you heard - In court you said you were dispatched.
12 Right?

13 A. Paged, dispatched. Correct.

14 Q. Paged, dispatched to the location?

15 A. Yes, ma'am.

16 Q. And according to your testimony you said - The
17 information that was dispatched is that the suspect was
18 possibly Marquis Robinson. Right?

19 A. That's what was on the CAD. It said possibly on the
20 CAD.

21 Q. That's on the communications report when the call
22 first comes in. Right?

23 A. Yes, ma'am.

24 Q. Possibly. Right?

25 A. Yes, ma'am.

1 MS. BURRIS: I have no further questions.

2 Thank you.

3 THE COURT: Mr. Smith?

4 MR. SMITH: Nothing further, Your Honor.

5 THE COURT: Detective Stokes, you can step down.

6 Thank you.

7 DETECTIVE STOKES: Yes, sir.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

10 SOLICITOR SHELTON: Your Honor, the State would rest
11 at this time.

12 THE COURT: All right. Members of the jury panel, the
13 State is resting. That means the State has presented it's
14 case so we now have to take up some matters outside your
15 presence. It may take a little while and it's almost lunch
16 time so we'll go ahead and break; it's ten till twelve and
17 we're gonna break until 1:30. Please be back at 1:30.

18 Now even though the State is telling us it's presented
19 its case, you still aren't in a position to make up your
20 mind or discuss the case. We haven't reached that point.
21 Keep in mind I'll tell you when to start discussing the
22 case and when to discuss it jointly and return a unanimous
23 verdict. We're not there yet. Have a pleasant lunch and
24 we'll see you back at 1:30. Thank you.

25 (JURY EXITS COURTROOM FOR LUNCH AT 11:52 A.M.)

1 THE COURT: Anything from the State?

2 SOLICITOR SHELTON: Your Honor, we do have a matter if
3 the defense is not going to present any evidence.

4 THE COURT: First let's see if there are any motions
5 on behalf of Mr. Robinson.

6 MS. BURRIS: In regards to a motion for a directed
7 verdict, Your Honor, I'd just - -

8 THE COURT: I can't tell you what to do. I'm just
9 saying we've reached the point where the State has rested.
10 Do you have any motions?

11 MS. BURRIS: Right. Your Honor, we actually do have a
12 motion for a directed verdict. As to the elements within
13 the armed robbery, if you would give me a second here, Your
14 Honor.

15 (PAUSE.)

16 MS. BURRIS: The elements of course and I understand
17 that we are entitled to a directed verdict when the State
18 fails to produce evidence of the offense charged.

19 Of course one of the charges that Mr. Robinson is
20 charged with is robbery which the elements of that is a
21 person who commits robbery while armed with a pistol, dirk,
22 sling shot, metal knuckles, razor, or other deadly weapon
23 or while alleging either by action or words he was armed
24 while using the representation of a deadly weapon or any
25 object which a person present during the commission of a

1 robbery we believe is a deadly weapon.

2 Your Honor, we would ask for a finding - We would ask
3 for a directed verdict on this specific charge simply
4 because the State has failed to present any evidence as to
5 Mr. Robinson actually being armed with a pistol and
6 actually attempting to rob or take something from any
7 individual. There has not been any testimonial evidence in
8 regards to Mr. Robinson being armed with a weapon. And I
9 believe --

10 THE COURT: There was testimony he fired a pistol
11 while he was in the bathroom and Mr. Jordan said it grazed
12 him.

13 MS. BURRIS: Based on Mr. Jordan's testimony he
14 indicated - He didn't indicate that Mr. Robinson actually
15 fired a weapon. He indicated that he grabbed his hand and
16 the weapon actually went off. That was Mr. Jordan's
17 testimony.

18 THE COURT: He did have the weapon but the weapon went
19 off?

20 MS. BURRIS: Well he didn't indicate - There is no
21 testimony - -

22 THE COURT: I don't buy that. There is testimony from
23 which Mr. Robinson - the jury could determine Mr. Robinson
24 was armed with what could be considered a deadly weapon,
25 that is a pistol.

1 MS. BURRIS: And robbery, that he was attempting to
2 take something from somebody. I mean there was testimony
3 in regards to --

4 THE COURT: Say what? There was testimony he walked
5 him outside with a gun in his back. So - Go ahead.

6 MS. BURRIS: And again, I have a motion for a directed
7 verdict in regards to kidnapping - -

8 THE COURT: All right. That's the armed robbery. I
9 deny the motion for a directed verdict. I think there is
10 sufficient evidence from which the jury could determine
11 that the State has proven beyond a reasonable doubt - it's
12 not my job to find, but I find there is enough evidence
13 from which the State could convict Mr. Robinson as to the
14 armed robbery charge.

15 MS. BURRIS: Okay. And again, I have a motion for a
16 directed verdict in regards to the kidnapping. There was a
17 kidnapping and whoever shall unlawfully seize, confine, or
18 kidnap, abduct, or carry away any other person by any means
19 whatsoever with the authority of the law.

20 Your Honor, it's our position that given these
21 elements there's not any testimony as to Mr. Robinson
22 actually kidnapping or actually holding anyone against
23 their will whereas the statute and the elements actually
24 require that you unlawfully confine anyone kidnap or abduct
25 or carry away any individual as these two alleged victims.

1 There wasn't any testimony or evidence as to that and we
2 would ask for a directed verdict on those elements.

3 THE COURT: I deny that motion for a directed verdict.
4 I feel again there is sufficient evidence from which a jury
5 could determine that the State has proven beyond a
6 reasonable doubt the elements necessary to find Mr.
7 Robinson guilty of kidnapping.

8 MS. BURRIS: Okay. And, Your Honor, I do have another
9 motion for a directed verdict in regards to the attempted
10 murder. A person who with the intent to kill attempts to
11 kill another person with a malice afterthought either
12 expressed or implied commits the offense of attempted
13 murder. I do not believe that there has been any testimony
14 or any evidence that's actually been presented into the
15 record as to the charge of attempted murder. There was
16 evidence in regards to the injuries as a laceration and as
17 to the laceration to Mr. Jordan.

18 THE COURT: Wasn't there testimony about choking?

19 MS. BURRIS: There was testimony as to Mr. Robinson
20 according to Mr. Jordan's testimony that Mr. Robinson had
21 some type of pry bar and was trying to choke him but I
22 don't think that that actually rises to the level of what
23 these warrants and the elements of this particular charge
24 calls for.

25 THE COURT: That's up to a jury. I deny - Anything

1 else on the attempted murder?

2 MS. BURRIS: I do.

3 THE COURT: We're on attempted murder. Anything else
4 before we move on?

5 MS. BURRIS: Nothing else for attempted murder.

6 THE COURT: I deny the motion for a directed verdict
7 on attempted murder. I find that there is sufficient
8 evidence from which the jury could reach a conclusion that
9 the State has proven beyond a reasonable doubt that Mr.
10 Robinson still did that offense.

11 MS. BURRIS: I do have a motion for a directed verdict
12 in regards to the conspiracy. Understanding that the
13 substance of the conspiracy is the agreement in and of
14 itself. There has not been any testimonial evidence as to
15 whether or not Mr. Robinson and anyone else actually having
16 an agreement or they combined and agreed to actually go
17 accomplish an unlawful object. The statute actually calls
18 for an unlawful act. There wasn't any testimony as to Mr.
19 Robinson or anyone else having an agreement to actually go
20 to that particular place in order to commit a crime so for
21 that I would ask for a motion for a directed verdict on the
22 conspiracy simply because the substance of conspiracy is
23 the agreement in and of itself and there was no testimony
24 evidentiary or any other evidence as to conspiracy.

25 THE COURT: There doesn't have to be testimony so I

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1 find that there is substantial circumstantial evidence and
2 sufficient direct evidence from which the jury could
3 conclude that Mr. Robinson did conspire with another person
4 in the commission of those offenses and the jury could
5 believe that he did. Could find beyond a reasonable doubt
6 the State has carried it's burden of proof of proving Mr.
7 Robinson guilty of criminal conspiracy.

8 MS. BURRIS: And, Your Honor, for the record I also
9 make a motion for a directed verdict on the possession of a
10 firearm or a knife during the commission or attempt to
11 commit a violent crime. And I just make that motion in
12 regards to all the previous information that I have
13 submitted before the Court in regards to Mr. Robinson or
14 evidence actually being in the record as to Mr. Robinson
15 having the possession of a firearm or knife during the
16 commission or attempt to commit a violent crime.

17 Also, Your Honor, I would like to renew all of my
18 previous motions that were made --

19 THE COURT: Let me rule on that. I deny the motion
20 for a directed verdict as to the charge of possession of a
21 firearm during the commission of a violent crime. I find
22 again there is evidence in the record direct and
23 circumstantial evidence from which the jury could find that
24 Mr. Robinson did in fact or could find beyond a reasonable
25 doubt Mr. Robinson committed that offense.

1 MS. BURRIS: And, Your Honor, I would like to renew
2 all my previous motions that were actually made prior to
3 the jury being sworn. And all of the motions made after
4 the jury was actually sworn. In regard to the Motion to
5 Sever, the Motion to Quash the Indictments; specifically in
6 regards to the Motion to Dismiss and I had numerous others.
7 In regards to the motions made - numerous motions that was
8 made in regards to a mistrial. I would like to renew all
9 the previous objections and motions on the record.

10 THE COURT: All right. Those motions are all denied.
11 The earlier rulings are reaffirmed. Thank you.

12 MS. BURRIS: Thank you, Your Honor.

13 THE COURT: Mr. Smith.

14 MR. SMITH: Yes, Your Honor.

15 At this time I renew all my motions and motions for a
16 directed verdict concerning Mr. Dantonyo Heath on each of
17 the charges; attempted murder, armed robbery, possession
18 during the commission of a violent crime, criminal
19 conspiracy, kidnapping, to tell you that the State has
20 failed to prove even in the light most favorable the
21 elements of each of these offenses.

22 THE COURT: I deny those motions. I find as I did for
23 Mr. Robinson that there is a substantial circumstantial and
24 sufficient and direct evidence from which a jury could
25 determine the State has proven Mr. Heath guilty of one or

1 more or all of those offenses beyond a reasonable doubt and
2 the motion for a directed verdict is denied.

3 All right, anything else?

4 MS. BURRIS: I just need to take some time to speak
5 with my client in regards to whether or not he would like
6 to testify, Your Honor, so I can --

7 THE COURT: I want to talk to him in just a minute but
8 are there any more motions?

9 MS. BURRIS: No further motions, Your Honor, from Mr.
10 Marquis Robinson.

11 THE COURT: Mr. Robinson, Mr. Heath, would you please
12 listen to me. I want each of you to understand that each
13 of you have a right to testify. You have the right to
14 present evidence. You are not required to prove anything
15 so you do not need to present evidence. The State has to
16 prove your guilt beyond a reasonable doubt before the jury
17 could convict you or both of you.

18 Each of you are presumed innocent of the charges
19 against you, all the charges, the State has to prove as to
20 each charge the elements of each charge beyond a reasonable
21 doubt before the jury could convict you. You do not have
22 to present any evidence but you have a right to call
23 witnesses if you wish. You can call witnesses and present
24 a defense if you wish. You do not have to. Again you
25 don't have to defend yourself because the burden is on the

1 State to prove your guilt beyond a reasonable doubt.

2 You also have a right to testify but you also have a
3 right to remain silent.

4 I believe as to Mr. Robinson you determined there were
5 no impeachable offense?

6 SOLICITOR SHELTON: That's correct, Your Honor.

7 THE COURT: How about Mr. Heath? Do you know?

8 SOLICITOR SHELTON: Under the Court's prior ruling no
9 impeachable offenses.

10 THE COURT: All right. If you testify you will be
11 under oath and you will be ask questions about the
12 allegations of the charge and of course you will have to
13 answer them because you will be under oath. If you chose
14 to remain silent that is if you exercise your right to
15 remain silent I will tell the jury when I charge them they
16 cannot in any fashion use that against you. They cannot
17 discuss in the jury room the fact that you exercised your
18 right to remain silent. I will tell them they cannot
19 discuss it and they cannot factor it into their own
20 considerations.

21 I will remind them that you each are presumed innocent
22 to each of the charges against you. And I will remind them
23 that you do not have to prove your innocence the State must
24 prove your guilt beyond a reasonable doubt by proving each
25 charge separately as to each of you by proving beyond a

1 reasonable doubt each and every element of each offense.

2 Do you understand that, Mr. Robinson?

3 MR. ROBINSON: Yes, sir.

4 THE COURT: Do you have any questions about any of
5 that?

6 MR. ROBINSON: No, sir.

7 THE COURT: Do you understand that, Mr. Heath?

8 MR. HEATH: Yes, sir.

9 THE COURT: Do you have any questions about any of
10 that?

11 MR. HEATH: No, sir.

12 THE COURT: Ms. Burris, have you discussed this with
13 Mr. Robinson?

14 MS. BURRIS: I have not further, Your Honor. If you
15 will give me an opportunity -

16 THE COURT: I'm going to now. Just answer my
17 question. I'm like you now, we need a witness here if they
18 don't answer your question.

19 MS. BURRIS: Yes, sir.

20 THE COURT: I'm in the same boat.

21 MS. BURRIS: I have not, Your Honor, and I would like
22 to further discuss it. Thank you.

23 THE COURT: All right. Have you discussed it?

24 MR. SMITH: I have, Your Honor.

25 THE COURT: All right. Now, Mr. Robinson and Mr.

1 Heath, this decision is yours. It's not Ms. Burris' or Ms.
2 Cruz or Mr. Smith's or Mr. Belton. The right is each of
3 your individual right but you have the right to discuss the
4 situation if you wish to do with your attorney and anybody
5 else that you deem appropriate to discuss the matter with.
6 So we're going to break for lunch until 1:30 and you let me
7 know at that time whether you wish to testify each of you
8 Mr. Heath and Mr. Robinson. And we will also know at that
9 time whether or not either of you wish to bring a further
10 defense.

11 Do you understand that, Mr. Robinson?

12 MR. ROBINSON: Yes, sir.

13 THE COURT: Any questions about anything?

14 MR. ROBINSON: No, sir.

15 THE COURT: Mr. Heath?

16 MR. HEATH: Yes, sir.

17 THE COURT: Any questions?

18 MR. HEATH: No, sir.

19 THE COURT: All right. We'll take a short - We're
20 gonna break until 1:30. That's probably a little longer
21 than usual but I knew we had these motions. If I can just
22 see counsel for just one quick minute about the charges and
23 again you talk to your clients afterwards.

24 MS. BURRIS: Sure.

25 THE COURT: We'll be at ease until 1:30.

1 (COURT IN LUNCH RECESS AT 12:05 P.M..) .

2 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH
3 REENTER COURTROOM AT 01:38 P.M..)

4 (COURT BACK IN SESSION AT 01:39 P.M..)

5 THE COURT: Thank you. You may take your seats.

6 Is the State ready to proceed?

7 SOLICITOR SHELTON: The State's ready, Your Honor.

8 THE COURT: Defense?

9 MS. BURRIS: Yes, sir, Your Honor.

10 THE COURT: I'm sorry. Let's see if we can get Mr.
11 Smith in.

12 (ATTORNEY PHIL SMITH REENTERS COURTROOM.)

13 THE COURT: Mr. Smith, you ready to proceed?

14 MR. SMITH: I am, Your Honor.

15 THE COURT: Anything - The State indicated something
16 they wanted to put on the record.

17 SOLICITOR SHELTON: Yes, sir, Your Honor.

18 In preparation of Mr. Robinson testifying we have been
19 for some time listening to his calls from the Detention
20 Center. I was here last night listening to the calls that
21 he has made since Monday. And had he testified there were
22 certain things that we would have sought to impeach him on
23 as far as depending on that his testimony was. But there
24 was an issue that was of a particular concern for the
25 solicitor, Solicitor Brackett.

1 In phone conversations with his fiancé Kayla Higgs Mr.
2 Robinson did discuss a desire or an attempt to tamper with
3 the jury. There was mention of trying to figure out if
4 anybody knew anyone on the jury; that they could get that
5 list, there was a list of people to try to see if they
6 could figure out somebody they knew in order to try to talk
7 to those people - to someone on the jury and there was
8 discussions about that.

9 I'm not asking for any specific remedy. Just wanted
10 to make that part of the record.

11 THE COURT: Ms. Burris, do you have any testimony to
12 present?

13 MS. BURRIS: I do not have any testimony to present,
14 Your Honor. I would just again I have no position, I have
15 no knowledge as to the conversation. I was not privileged
16 to that conversation and no testimony at all.

17 THE COURT: Now, Mr. Robinson, you're exercising your
18 constitutional right to remain silent?

19 MR. ROBINSON: Yes, sir.

20 THE COURT: Mr. Smith, do you have any evidence to
21 present?

22 MR. SMITH: I do not, Your Honor.

23 THE COURT: Mr. Heath, are you exercising your
24 constitutional right to remain silent?

25 MR. HEATH: Yes, sir.

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 THE COURT: All right. Neither defendant has
2 presented any evidence. The State will go first and then
3 Ms. Burris on behalf of Mr. Robinson and then Mr. Smith.

4 I don't set time limits but jury's kind of set their
5 own, kind of let me know where you've reached that point
6 where you said enough, but I'm not gonna stop anybody
7 unless it just goes excessively long. And we'll probably
8 take a break at some point maybe between some of the
9 arguments or at least before my charge. So with that we'll
10 bring in the jury.

11 SOLICITOR SHELTON: Your Honor, will the Defense rest
12 on the record before - Okay.

13 (JURY REENTERS COURTROOM AT 01:44 P.M..)

14 THE COURT: The jury is present so, Ms. Burris, on
15 behalf of Mr. Robinson do you have any witnesses or
16 evidence to present?

17 MS. BURRIS: No, sir, Your Honor. The defense rest.

18 THE COURT: Mr. Smith?

19 MR. SMITH: No, Your Honor.

20 THE COURT: Members of the jury panel, you now have
21 heard all of the evidence that will be presented and all
22 the exhibits are in that will be placed in the record, so
23 it is now time for the attorneys to make for you their
24 closing arguments.

25 Unlike the opening statements where the attorneys gave

1 you an outline or a blue print of the trial, at this time
2 they will be taking facts, testimony and exhibits, and
3 arguing to you why the law as I charge it to you, and I
4 have gone over with them the charge so they know the law
5 that I plan to charge, and they will tell you why applying
6 that law to the facts as you determine them to be should
7 lead you to reach a certain verdict.

8 Counsel.

9 SOLICITOR SHELTON: Thank you, Your Honor.

10 Ladies and gentlemen, we talked to you a little bit
11 about in opening statements that you heard a few days ago,
12 and you've heard a lot of testimony since then, have
13 listened patiently and attentively and there has been a lot
14 of information gone over the last couple of days, and I
15 want you all to think back to opening statements to
16 something that Ms. Burris said.

17 She said that she enjoys being a lawyer, a defense
18 attorney, because there is always more to the story and not
19 to judge a book by it's cover.

20 I read but I like movies more so the theme that made
21 me think of is movie trailers. You cannot judge a movie
22 by it's trailer either. But before my husband and I had
23 children, we have two small boys, we went to a lot of
24 movies. That was what we loved to do together and over
25 time I developed a theory about movies. But if you could

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 not tell what the movie was about by it's trailer there was
2 a problem. Opening statements are like movie trailers.

3 Think back to opening statements. If you couldn't
4 tell what the movie was about from the opening statement,
5 then there's a problem.

6 The other that she did say was she said there was more
7 to the story. Sometimes there's more to the story,
8 sometimes there's just two different stories. Sometimes
9 stories are fictional meaning they are not true and
10 sometimes their meaning that it's non-fiction, meaning that
11 it's true. Your job is decide what is true and what is not
12 true.

13 So in deciding what is true and what is not true, the
14 evidence that you have, ask yourself from viewing that
15 evidence what can you absolutely say. What you absolutely
16 know is true. One of the charges that both Mr. Heath and
17 Mr. Robinson are facing is armed robbery. The judge will
18 tell you the law that basically the law on armed robbery is
19 if a person commits an armed robbery while armed with a
20 weapon, or while pretending to be armed with a weapon, then
21 that's armed robbery.

22 This is a clip, I want you to watch it, look
23 specifically for a gun in the suspects hand. At this point
24 I'm just calling him the suspect because we're just talking
25 about what we know, that we can see is true.

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 (EXHIBIT PUBLISHED TO THE JURY.)

2 SOLICITOR SHELTON: It's just a still shot of that
3 video. And again, I'm going to ask you to look for that
4 gun.

5 (EXHIBIT PUBLISHED TO THE JURY.)

6 SOLICITOR SHELTON: See it?

7 Is this an armed robbery? What's the truth here?

8 The suspect had a gun. Mr. Jordan testified that
9 money was taken from him. Mr. Crane testified that money
10 was taken from him. The elements of armed robbery is, had
11 a weapon, and commit a robbery. Take something from
12 someone, then you are guilty of armed robbery.

13 Kidnapping: The judge will tell you about the law of
14 kidnapping, but basically it means to unlawfully seize,
15 confine, inveigle, decoy, kidnap, abduct, carry away
16 another person by whatever means you can without having the
17 law to do that. Seize or confine. Seize means grab, take
18 from. What do we know by looking at using your own eyes
19 happened in this case? Think about the previous clip that
20 you just watched where Ernest Jordan is dragged out of that
21 room off camera, forcibly removed and placed in that
22 bathroom.

23 And I'd ask you to watch this clip and pay attention
24 up here in the corner.

25 (EXHIBIT PUBLISHED TO THE JURY.)

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 SOLICITOR SHELTON: There's your second suspect.
2 There is Mr. Crane on the ground. He is completely
3 subdued. He is no longer fighting. This grown man is
4 going to crawl out of this room into that bathroom. There
5 is testimony that he was tied up in that bathroom. There
6 has been no testimony that any speaker wire was recovered
7 but Mr. Crane and Mr. Jordan testified that speaker wire
8 was used to tie him up. So I'm gonna ask you to watch the
9 video when you go back, and look particularly at the second
10 suspect who we'll later talk about being Dantonyo Heath.
11 Look for the part where you see him go and find that
12 speaker wire.

13 (EXHIBIT PUBLISHED TO THE JURY.)

14 SOLICITOR SHELTON: And then watch a little bit
15 further, look in his right hand. Do you see anything
16 there? Speaker wire, or some kind of wire, looks like
17 something in his hand. Watch for that part of the video.

18 So is this a kidnapping? Were Mr. Crane and Mr.
19 Jordan kidnapped by someone? What truth do we know there?
20 We know that Mr. Jordan was forced out of the room, dragged
21 by a man who had a gun into a bathroom. We know that Mr.
22 Crane was beaten into submission until he crawled on his
23 hands and knees into a bathroom where he was then tied up.

24 They were afraid. Mr. Jordan tried to be hard and say
25 I was scared, I was a little scared. He was scared, said

1 he was scared for his life. They were both afraid. They
2 both testified, specifically Mr. Jordan testified that he
3 did not feel like he could leave; that he just couldn't
4 walk out. That's kidnapping.

5 This is where it's gonna be complicated for you all.

6 Attempted murder: This is why I say it's gonna get
7 complicated because not only will you have to decide if
8 someone is guilty of attempted murder, if you don't feel
9 like they're guilty of attempted murder, you have to weigh
10 all the different assaults. We have ABHAN, Assault and
11 Battery First Degree, Assault and Battery Second Degree and
12 Assault and Battery Third Degree. And you can find that
13 either one of - either Mr. Heath or Mr. Robinson is guilty
14 of one of those separately or together.

15 The State is alleging that they are guilty of
16 attempted murder. What does the State have to prove for
17 that? It's the first lines "Attempt to Kill: Attempts to
18 kill another person with malice and aforethought." And
19 we'll talk a little bit later what malice and aforethought
20 is. You will have other options under that.

21 The next option under that is Assault and Battery High
22 and Aggravated: "Means great bodily injury, substantial
23 risk of death, serious permanent disfigurement or
24 impairment of a bodily member of function and it's
25 accomplished by means that could produce great bodily

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 injury or death." And then I'm only going to argue down as
2 low as assault and battery first degree because I think
3 that's where it stops as far as this case is concerned.

4 Assault and Battery First Degree, the third one down.

5 "Injures another person, any injury during the
6 commission of a robbery, burglary or kidnapping." The
7 reason why I say I'm gonna stop there is because both Mr.
8 Crane and Mr. Jordan were injured. Mr. Crane had a broken
9 nose, had a cut under his eye, his ear was swollen, the
10 inside of his ear was black. His knees were black and
11 bruised, he had a cut on his arm. They had injuries. Mr.
12 Jordan had a busted nose, cut under his eye.. He testified
13 he has some other cuts on his body. You did not see
14 pictures of those, he testified that he had scars there.
15 There were injuries. And the State's position is this was
16 a robbery and a kidnapping so that's why I'm gonna stop
17 arguing there. But first and foremost I submit to you
18 ladies and gentlemen, this was an attempted murder.

19 The judge will tell you that any weapon can be a
20 deadly weapon. He will tell you that this can be a deadly
21 weapon, that a gun can be a deadly weapon, and ordinary
22 common objects can be a deadly weapon. Jared Crane
23 testified that he was hit so hard his ears were ringing.
24 That he lost sight in one eye that he could not focus. He
25 testified that he was choked repeatedly that he thought he

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 was going to die, he was fighting for his life.

2 Ernest Jordan said he thought he was shot. He may not
3 have been shot, that eye might have been busted open but a
4 gun went off by his head. He thought he was shot, he
5 thought he was going to die. He also testified that he was
6 choked with a crow bar. The judge will tell you that a
7 ordinary common objects can be a deadly weapons.

8 This can be deadly weapons. I ask you to watch this
9 video carefully.

10 (EXHIBIT PUBLISHED TO THE JURY.)

11 SOLICITOR SHELTON: Do you see how he's pulling,
12 pulling. Mr. Crane's feet have left the floor a couple of
13 times.

14 (EXHIBIT PUBLISHED TO THE JURY.)

15 SOLICITOR SHELTON: Ladies and gentlemen, from
16 watching the video you will have the entirety of all three
17 cameras back in the jury room with you. When you watch
18 those videos, without even thinking about who the people
19 are, who the suspects are, first decide is this an
20 attempted murder? Is this a kidnapping? Is this an armed
21 robbery? And based on this evidence I submit to you that
22 that should be a pretty easy question to get there first.

23 Ernest Jordan testified he thought he was going to
24 die. So what did Mr. Jordan look like after the assault?

25 (PHOTOS PUBLISHED TO THE JURY.)

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 SOLICITOR SHELTON: Jared Crane testified he was
2 fighting for his life. His wife testified he had been
3 cleaned up there, but that's what he looked like at the
4 hospital after the assault. On the legal side of attempted
5 murder one of the things the judge will tell you that you
6 have to find to find anyone guilty of attempted murder is
7 that they acted with malice and aforethought. How do you
8 know that? You can't look into someone's brain before this
9 happened and know what they were thinking. But you can
10 look at clues, at evidence of what's been presented to you
11 that would lead you to believe that this was with malice
12 and aforethought. Meaning done intentionally and thought
13 about beforehand. What evidence do we have of that?

14 And this is just specifically to the attempted murder
15 and not to the other charges. They had their faces covered
16 up.

17 (EXHIBIT PUBLISHED TO JURY.)

18 SOLICITOR SHELTON: Why would you have your face
19 covered up if you didn't plan to do something you weren't
20 supposed to do? Something bad why cover your face if
21 you're just going into the business to do business?

22 Mr. Robinson, or suspect number one, had a gun in his
23 right hand. Why would you come to a business with a gun if
24 you didn't plan to do something bad?

25 Suspect Number Two, Mr. Heath, lurks, and if you watch

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 the video he lurks behind one of the cars sort of stalking
2 Mr. Crane. He paces back and forth, dunked down, waiting
3 for the right moment to attack Mr. Crane. Why would you do
4 that if you weren't doing something wrong.

5 The judge will also tell you the law of the hand of
6 one the hand of all , which means basically if you feel
7 that one suspect is guilty of any of these charges, and the
8 other suspect was with him, then he is also guilty of those
9 charges. Marquis Robinson, suspect number one, had a gun.
10 If you believe that; believe he had that with him, then you
11 can hold that against suspect number two.

12 Suspect number two tied Jared Crane up with stereo
13 wire. There has been testimony that suspect number one,
14 Marquis Robinson, told him to do that, you can hold that
15 against both of them. That's what hand of one hand of all
16 means.

17 Criminal conspiracy charge, is a combination between
18 two or more persons for the purpose of accomplishing an
19 unlawful object or lawful object by unlawful means. Go
20 back again to that malice aforethought slide. This was
21 planned. What that means is that two people planned to do
22 something and carried out together. This was planned.
23 They came there together, they had their faces covered up
24 together, they left together. They conspired with each
25 other to do this.

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 And the last charge you will be asked to consider is
2 possession of a weapon during the commission of a violent
3 crime. Crimes that Mr. Heath and Mr. Robinson are charged
4 with, the kidnapping, armed robbery, attempted murder are
5 what's considered as violent crimes. If you believe that
6 they committed those crimes while armed with a weapon, then
7 you can find them guilty as charged. That's all that
8 means.

9 I talked a little bit to you about the evidence and
10 evidence that you didn't hear about. You heard from
11 Investigator Buchannan from the Forensic's Service Unit
12 otherwise known as FSU. And during his testimony and
13 between direct and cross examination you heard a lot of
14 words passed around. Trace evidence, touch DNA, collected
15 evidence, processed evidence, real evidence. Investigator
16 Buchannan was pretty clear that there is trace evidence
17 everywhere and I think he said several times that if you
18 breathe you could be releasing DNA.

19 They were at that scene that night never having talked
20 to the victims not knowing details about speaker wire or
21 crow bars or anything like that. They knew that there was
22 an assault, a robbery, they could tell from visually
23 looking at the scene that there appeared to be substances
24 that looked like blood; that a mirror was broken, that
25 there was a struggle. But that was about all they knew

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 when collecting that evidence.

2 Could there be more evidence there that they didn't
3 get? Yes. We can always play Monday morning quarterback.
4 We can always look back, always in anything that we do in
5 life and go we could have done that or we should have done
6 that or we could have done this better. And Investigator
7 Buchannan kind of admitted that he probably - they probably
8 didn't do all they could have done because there were known
9 suspects. But also it's not realistic to think that they
10 can put a big evidence bag around the whole building and
11 send it all of to SLED. At that time they collected what
12 they thought was important to this case.

13 And from his testimony they didn't ignore evidence.
14 There wasn't fingerprint impressions around everywhere that
15 they just decided we're not gonna get. There wasn't blood
16 around everywhere that they said we're not gonna test this.
17 They collected everything that they thought was important
18 to the case. Every piece of blood that they saw they
19 swabbed. Everything that they thought might be blood they
20 swabbed.

21 Before I go into and talk specifically about the
22 evidence against Mr. Robinson and Mr. Heath, the defense is
23 going to get to talk to you after me and you will hear from
24 me again, they will get the last word. I have no idea what
25 they're going to say and I try not to let that bother me.

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 But I can guess at certain things that they are gonna point
2 out based on the testimony that they solicited from the
3 witnesses. And I like to call that the magic show. The
4 reason I call it that is because magicians use smoke and
5 mirrors because they want you to look at something else
6 instead of looking at what you should be looking at or what
7 the State wants you to look at.

8 And certain things that I think that they may try to
9 make an issue of, or a big deal of, for a lack of a better
10 term I'll call that the magic show. How much money was
11 stolen? There's been no testimony from anyone - I should
12 say it this way. Jared Crane or Ernest Jordan did not come
13 up here and say oh I lied they didn't steal any money from
14 me. Jared - Mr. Crane testified on the stand that it was
15 Eleven Hundred and Fifty Dollars. He reported back in June
16 or July of 2008 that it was Eleven Hundred Dollars.

17 Ernest Jordan reported both back in June and July he
18 said Seven Thousand and Ten Thousand. He said about Ten
19 Thousand in his statement but initially the officers on the
20 scene the testimony was that he said Seven.

21 Two years ago when this happened his statement was
22 that it was in an envelope. Yesterday or the day before -
23 I lost track - but when he testified he said it might have
24 been loose or in a rubber band. It's been two years. He
25 accounted where the money came from that it was from a rim

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 job that he was going to take it - that he had not had a
2 chance to deposit it in the bank, that's why it was in his
3 truck. The amount has varied however because he really
4 didn't know. And whether or not it was an envelope or
5 loose has varied but it's been two years, over two years.
6 Does that mean no money was taken? Why else would two
7 people come and beat two men like that if they were gonna
8 get nothing out of it? Or at least attempt to get
9 something out of it. You can see him on the video emptying
10 out his pockets just before they take him outside. If you
11 go back and watch the video, as they are walking Mr. Jordan
12 out the bay door, they stop, he is clearly going into his
13 pockets.

14 What did the victims tell the police on the scene?
15 I think it is without question as far as the testimony that
16 at some point the victims on scene said Marquis Robinson
17 did this. And that a second suspect named Yodi did this
18 and gave a physical description of Yodi 6'2", slender, dark
19 skinned, taller than the other guy. That was said on the
20 scene.

21 From that incident report there were a lot of
22 specifics that were left out that seem to be that were
23 testified to later on or put into more detailed statements.
24 The money that was taken from Mr. Crane was later added.
25 The knife that was found on the scene was later - Mr. Crane

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 later testified was his knife. The fact that both Mr.
2 Crane and Mr. Jordan lost their hats. At that time Mr.
3 Jordan thought he had been shot and still says he's been
4 shot but law enforcement thinks it was a laceration. That
5 initial incident report is information gathered in the
6 moment right after something happens. It is not intended
7 to be a detailed record of everything that happens.

8 Who is around during the lineups? There has been some
9 testimony kind of all over the place about whether or not
10 wives were around, both Mr. Crane's wife and Mr. Jordan's
11 wife. Law enforcement remembered it one way, the victims
12 remembered it another way, but everybody remembered that no
13 one said anything, or did anything, to influence who they
14 suggested the person was in the lineup. That would be the
15 only reason that that would matter. Again, it's been two
16 years. Details like that will be fuzzy as to be able to
17 remember exactly who was in the room.

18 The 9-1-1- call. You don't have it, you're not gonna
19 have it. Mr. Jordan testified he called 9-1-1- and
20 reported the crime. Does it mean it didn't happen if we
21 don't have the 9-1-1- call that he didn't make that call,
22 that officers never came or that they just magically showed
23 up? [REDACTED] [REDACTED]. Detective Stokes was ask about
24 this a lot. Did you follow up with that address, did you
25 follow up with that address? No, because the victims had

1 already identified Marquis Robinson. Why would he follow
2 up with an address when the victims had already identified
3 Marquis Robinson from the lineup?

4 Color of the bandanna. Was it blue or black? It was
5 dark, it was a dark color, dark blue, dark - or black with
6 spots. Jared Crane who had the most contact with Dantonyo
7 Heath face to face being beaten by him has always said it
8 was black.

9 Three suspects. Big one. Were there three suspects?

10 Watch the video, do you see three suspects? Do you
11 see a third person? That question was ask over and over
12 and over again, this third suspect. Mr. Jordan testified
13 that initially the only time you will see that third
14 suspect was in that incident report. He thought it was the
15 get away driver.

16 How long or how often had the victims known or seen
17 Marquis Robinson and Dantonyo Heath? Ernest Jordan I
18 believe testified this week three or four years. Ms.
19 Burris ask him did you previous testify five or six years,
20 five or seven years. It's years, its not three or four
21 days versus five or six years. He's known him for years.
22 This is not someone he has seen one or two times. Jared
23 Crane said he had seen him a few times. Two or three,
24 three or four. He had seen him, he had had a face to face
25 conversation with him. The exact number of times doesn't

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 really matter it didn't impact his identification. He
2 wasn't less sure because he had only seen him four times as
3 opposed to two times.

4 The same thing with Dantonyo Heath. Mr. Crane said he
5 had never seen him. Amanda Crane said she had never seen
6 him so that's a good one, there is no inconsistency there.

7 Ernest Jordan, five or six, three or four. He had
8 seen him. He knew what he looked like, he knew his
9 nickname..

10 The image detail report. You heard testimony that
11 when law enforcement does a lineup they print out this
12 report that goes with a lineup. You heard plenty of
13 testimony that what's included in that report is personal
14 information about a number of people. And that that report
15 is never shown to the victims.

16 Missing evidence. What I mean by this is things that
17 don't exist at the scene. Particularly for Ms. Burris
18 questioned Investigator Buchannan and Ms. Galman from SLED
19 about DNA from Marquis Robinson or fingerprints from
20 Marquis Robinson. The answer is no. But again you cannot
21 make DNA appear out of thin air. There was no blood
22 recovered from him, there is no - there is no pools of
23 blood there that are unaccounted for, there is no spit
24 that's on the floor that's unaccounted for. You can't make
25 evidence exist that's not there or that wasn't collected.

1 The testimony from Mr. Buchannan is that he didn't
2 collect any evidence that could be linked back to Marquis
3 Robinson. It doesn't mean he wasn't there. Clearly there
4 were two other people there; a first suspect there, that
5 there is not some unaccounted DNA that's out there that
6 could be this other person. There is nothing.

7 So I want to talk specifically about each suspect.

8 I'm gonna talk about Marquis Robinson. Ernest Jordan
9 knew him, that's the testimony. And what's the best
10 evidence that that is true? Watch Mr. Jordan's face.

11 (EXHIBIT/VIDEO PUBLISHED TO THE JURY.)

12 SOLICITOR SHELTON: A person comes up to you with some
13 of their face covered and what appears to be a gun in their
14 hand, are you gonna smile at them if you don't know them?
15 Are you gonna smile at them and walk toward them like
16 they're your friend if you don't know them? He knew him,
17 he knew him well enough to walk up to him with a smile on
18 his face while he had a gun in his hand. That was his
19 friend. He would never have imagined that his friend would
20 do this to him.

21 You can use your own eyes to decide whether this is
22 Marquis Robinson. He didn't even bother to cover up his
23 face. And if you watch the video and watch it closely look
24 at his face. I would say look at his build but he's lost
25 weight. Several witnesses have testified that he lost

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 weight. You will have his photo back there from back in
2 June, you will be able to look at it yourself. Look to see
3 that his hair is longer, his face if fuller, his shoulder's
4 are broader. Detective Stokes I think estimated thirty
5 pounds or more. He's lost weight. So look at the person
6 on the video and imagine them heavier. Or imagine Marquis
7 Robinson heavier and ask yourself does that look like the
8 same person to me.

9 Both Mr. Jordan and Mr. Crane had a good chance to get
10 a good look at him. Bright lights in the shop. They were
11 both face to face with him. This isn't like out in the
12 back alley in the dark fleeting glance ID. This is face to
13 face over a thirty minute period in bright lights. They
14 both picked him out of a lineup separately in separate
15 rooms not together.

16 I'm gonna guess that Ms. Burris is going to argue that
17 Jared Crane never said Marquis Robinson at the scene that
18 night; that he did not say the suspects name. He adamantly
19 stuck to his story that he said Marquis Robinson at the
20 scene. But I'm gonna assume that Ms. Burris is gonna say
21 that he didn't do that, that only Ernest Jordan knew
22 Marquis Robinson's name if she even says that. But even if
23 he didn't know his name at the scene, he picked him out of
24 a lineup by himself, not with Ernest Jordan sitting there
25 beside him going that's him, that's him right there.

1 They both identified him in court. They both looked
2 at him, that's him right there. That man right there is
3 the one that did this. He's a little smaller, he looks a
4 little different but that's him, I would know him anywhere.

5 Dantonyo Heath. A little trickier. They didn't know
6 him. Only one of them identified him. He was at least
7 smart enough to keep his face covered the majority of the
8 time. He didn't use his tee shirt as his mask.

9 Let's talk about the DNA. And I got lost yesterday
10 during Ms. Gallman's cross examination so I'm not gonna go
11 into great detail of that but I do want to talk about it.
12 Ms. Gallman testified that Dantonyo Heath could not be
13 excluded which means she couldn't say its not him. And she
14 testified that the probability - from her report - the
15 probability of randomly selecting an unrelated individual
16 who could have contributed to the mixture of his DNA with
17 Jared Crane's DNA is one in one hundred and eleven. It's
18 not a big number. Its actually a very very small number
19 when you compare it to Jared Crane's DNA which was one in
20 eleven hundred quadrillion. But she also testified that
21 Jared Crane's DNA was the major contributor and it over
22 whelmed the other DNA and it was hard to pull out that
23 profile to get a complete reading.

24 She did the best she could. Mr. Smith cross examined
25 her on allele drop out and chacastic effect or all these

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 other terms and she testified she had accounted for all
2 that in coming up with her number.

3 I want you to think about a couple of things with that
4 DNA. Remember where Ms. Butler told you that swab came
5 from or that scraping came from? The neck of Jared Crane's
6 shirt. How would DNA possibly relating and possibly
7 relating to Dantonyo Heath and end up around in the collar
8 of Jared Crane's shirt? She said they scraped both inside
9 and outside. On and off for about eight minutes Dantonyo
10 Heath's arm was around Jared Crane's neck pulling and
11 rubbing and scraping on his neck. That's how the DNA could
12 end up there.

13 I also had her testify if she ever had not a match.
14 If she could have said Dantonyo Heath was not a match is
15 that what her report would have said? She said yes. And
16 in her twenty-three years plus experience has she done
17 reports where she has reported not a match? Yes. That is
18 not her finding in this case. He cannot be excluded.

19 But, ladies and gentlemen, if this was a DNA case and
20 just a DNA case, I submit to you the State would be in
21 trouble. But it's not just a DNA case. Ernest Jordan also
22 identified Dantonyo Heath. He testified he had seen Heath
23 in the past. He testified he was able to get a good look
24 at him and that he did not have his bandanna on at some
25 point.

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 And, ladies and gentlemen, I submit to you that if you
2 go back and watch the video when Mr. Jordan is at that back
3 bay door with Marquis Robinson and Dantonyo Heath it
4 appears that that bandanna is not - it's gone, you cannot
5 see the dangling part of the tip down around his chin any
6 more so it appears that it is not there. You have to use
7 your own judgment to judge that. But if it is not dangling
8 there that would support Mr. Jordan's testimony that he was
9 able to get a look at his face.

10 He heard the nickname Yodi and he knew Dantonyo Heath
11 to go by the nickname Yodi. He picked him out of a lineup.
12 And he identified him in court. Now again I don't know
13 what the defense is gonna say but Mr. Smith may say that
14 Ernest Jordan picked Dantonyo Heath out of that lineup
15 because he looked like size, skin color, as the same person
16 that he had seen Marquis Robinson with. The suspect number
17 two fit that same size, shape and description as Dantonyo
18 Heath and the only time that Ernest Jordan had ever seen
19 Dantonyo Heath was Marquis Robinson so he made that leap,
20 that leap that Mr. Smith talked about in opening statement.

21 That was not Mr. Jordan's testimony yesterday. When
22 he pointed him out in the courtroom he was a hundred
23 percent sure that that's who did it after having a good
24 look at his face on that video. During the time that this
25 was all going on he was a hundred percent sure when he

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 picked him out of that lineup two days after the assault.

2 Jared Crane, really just Amanda Crane's testimony is
3 that Mr. Heath came over to Amanda's car, leaned up on the
4 side and looked over ask her for her phone, that the
5 interior of her car light was on and that the street - the
6 lights from the business across the street were on and that
7 she was able to see his face. Her testimony was that it
8 seemed like a long time, three of four minutes but it could
9 have been as short as thirty-five seconds but to her it
10 seemed like a long time but she was sure she had a good
11 look at his face.

12 Mr. Smith questioned her about well you've seen him
13 since then, you've looked at him on the Detention Center
14 web site and you've seen him in court. Her response was
15 yes. She didn't deny that. Yes I have. I've also seen
16 his face in my dreams. Think about her demeanor when she
17 said that. Did she seem like a person who was unsure of
18 what she was saying when she said I'm absolutely certain
19 that he did this? She was not unsure, she was not
20 questioning her decision, she was positive.

21 Again I'm sure that that's leap that Mr. Smith is
22 talking about, that because she sees him in here in this
23 courtroom she's making that leap. But Amanda Crane would
24 not say she was making that leap because she sees him in
25 her dreams, her nightmares.

1 I went back - I want to go back to me saying this is
2 not a DNA case and go back to that number of one in one
3 hundred and eleven. Mr. Smith and Ms. Gallman went back
4 and forth on the issue of DNA. If we filled this room with
5 nine hundred and ninety-nine people, that's as high as I'm
6 gonna go because after that math gets fuzzy for me, but
7 nine hundred and ninety-nine people nine of them could not
8 be excluded. Nine. But of those nine and I don't know the
9 answer to this, this is something that you have to ask
10 yourself, of those nine how many of those people would be
11 six foot twoish, slender, darker skinned, same size, shape
12 and build as Dantonyo Heath that you can see on the video?
13 I don't know the answer to that. But I know how many of
14 those nine would have been picked out of a lineup by Ernest
15 Jordan. And how many of those nine people would have been
16 identified here in court by Amanda Crane. Just one. And
17 that's Dantanyo Heath.

18 So even though this is not a DNA case it narrows the
19 playing field and supports the identification that Ernest
20 Jordan made.

21 I talked to you about jobs in the courtroom. The
22 defense has a job and go back to opening statements. In
23 her opening statement Ms. Burris had two things that she
24 vehemently argued to you. I think she pounded on here and
25 yelled about it.

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 (SOLICITOR SHELTON POUNDED ON JURY BENCH.)

2 SOLICITOR SHELTON: She was a strong advocate for
3 justice. She is an advocate for her client and her
4 client's name is not justice. His name is Marquis
5 Robinson. She is not a strong advocate for justice and
6 that is not her job. She also said she wanted to search
7 for the truth. Again that's not her job. Her job is to
8 represent her client Marquis Robinson. Just like Mr.
9 Smith's job is to represent his client.

10 The prosecution, that's what I do, my job is to decide
11 what cases to prosecute, what evidence to bring to court,
12 what to present to you all, to this jury, what witnesses'
13 to call, what evidence to bring forward. That's my job.
14 Back in January when I was trying a case I was out a lot
15 that week so my son who was two at the time ask me Mommy,
16 what do you do? And how do you explain to a two year old
17 what a prosecutor does? So my response was Mommy fights
18 the bad guys and I do it with words.

19 And, ladies and gentlemen, I submit to you that if you
20 believe that Dantonyo Heath and Marquis Robinson committed
21 these offenses, then they are the bad guys.

22 Judge, he told you at the beginning of the trial he is
23 order in the courtroom. He gives you the law, that law
24 that you have to follow. The facts have been presented to
25 you, you apply the facts that have been presented to you to

1 the law that the judge is gonna give you. So what's your
2 job? Remember, Ms. Burris told you on Tuesday that it was
3 her job to seek the truth. That's your job. It's your job
4 to decide what has been true and what's not been true and
5 what you believe and what you don't believe. You have to
6 do that together.

7 So how do you do that? I ask you to watch the video.
8 I invite you to do it as many times as Mr. Smith said to do
9 it. Do it over and over and over again if that's what you
10 need to do in order to get to the truth. Watch it until
11 each of you are satisfied as to your decision.

12 Look at the lineups. Think about the testimony.
13 Think about the evidence. Think about the injuries that
14 the victims received whether or not that's consistent with
15 the facts that they - that has been presented. Look at
16 where their testimony was consistent and inconsistent.
17 Little things have changed. Amounts of money, times of
18 things, where they were, what they said. Where they have
19 been consistent throughout that no one has changed what
20 they said is who did this.

21 For the most part the rest of the details you can seek
22 for yourself. What do you think happened? Who do you
23 think is involved?

24 The judge is gonna tell you that you have to make
25 these decisions beyond a reasonable doubt and he'll give

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 you a lengthy definition of what that is. In deciding the
2 guilt or innocence of Mr. Robinson and Mr. Heath you have
3 to be convinced beyond a reasonable doubt. That is not all
4 doubt, that does not mean that you can't have a
5 disagreement about some of the facts and talk about it and
6 think about it. You can have a doubt. But it has to be
7 reasonable to be able to find them not guilty. Questioning
8 things and talking about things is not reasonable doubt.

9 If you are firmly convinced then you have found them
10 guilty beyond a reasonable doubt. Search for the truth of
11 what happened that night. And then I would ask you to do
12 justice. And I would submit to you that in this case
13 justice for Mr. Jordan and justice for Mr. Crane, justice
14 for what happened to them that night and for how it has
15 affected their lives, is that you will find both Marquis
16 Robinson and Dantonyo Heath guilty of the things they did
17 that night. Thank you.

18 THE COURT: Ms. Burris.

19 MS. BURRIS: Thank you, Your Honor. May we approach
20 please?

21 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OR
22 THE JURY AT 02:36 P.M..)

23 THE COURT: We'll take about a ten minute refresher
24 break.
25

CLOSING ARGUMENT: BY MS. BURRIS

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1 (JURY EXITS COURTROOM AT 02:36 P.M..)

2 (DEFENDANT'S EXIT COURTROOM.)

3 (COURT IN RECESS AT 02:36 P.M..)

4 (DEFENDANT'S REENTER COURTROOM AT 02:46 P.M..)

5 (COURT BACK IN SESSION AT 02:47 P.M..)

6 THE COURT: Bring in the jury.

7 (JURY REENTERS COURTROOM AT 02:48 P.M..)

8 THE COURT: Ms. Burris.

9 MS. BURRIS: Thank you, Your Honor. May it please the
10 court.

11 THE COURT: Yes, ma'am.

12 MS. BURRIS: The suspect. The guy. The suspect.

13 I first want to tell you that I understand that
14 Wednesday night June 8th of 2011, was not a good night for
15 Jared Crane and Ernest Jordan. My grandmother used to tell
16 me you have great compassion, you care about people and I
17 sympathize with them because I care about people. Even
18 though when they testified when they went to the hospital
19 they stayed for three or four hours and had lacerations,
20 bruises and cuts, I care and I sympathize.

21 When I stood before you on yesterday I told you to
22 never judge a book by it's cover. Never judge a book by
23 it's cover. This is not about me, this is not about
24 Assistant Solicitor Shelton, this is about the evidentiary
25 facts of what has been presented. I have the honor and

CLOSING ARGUMENT: BY MS. BURRIS

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1 privilege to serve as a prosecutor. I know what the job of
2 a prosecutor is. Never judge a book by it's cover. Do not
3 assume because Marquis Robinson is sitting between myself
4 and Heather and I that he is guilty of anything. Never
5 judge a book by it's cover.

6 Now these are some pretty serious crimes or offenses.
7 Attempted murder, armed robbery, conspiracy, kidnapping,
8 possession of a weapon during the commission of a violent
9 crime. They are, they're serious. Marquis Robinson is
10 actually sitting in this courtroom today facing these
11 charges because the Rock Hill Police Department lead
12 investigator, Detective Stokes, who told you that he
13 responded shortly after he received a call from dispatch.
14 Received a phone call, went to the scene, spoke with the
15 people or the officers there, name was written on the
16 bottom of a report, he adopted the case as the lead
17 detective and investigator.

18 So the one who actually had been in law enforcement
19 since 1996 in South Carolina and North Carolina and New
20 Jersey and he tells us that he received a 9-1-1- call or a
21 BOLO. They called him need you to get to the incident
22 scene. And what does he hear from the communications
23 report? The address at [REDACTED] [REDACTED], three black
24 male subjects, an older model Jeep Cherokee. That's what
25 he received when he received the phone call to get to the

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1 rim shop and he goes to the rim shop. Two or three other
2 officers already there investigating the scene. Shortly
3 thereafter forensic investigators all come and they
4 investigate the scene.

5 In his case file summary he told you he spoke, you
6 know, to the other officers that were there. In the case
7 file summary it had in it three male subjects. One was six
8 two or six three. Another was short or shorter and heavy.
9 That's the information he received.

10 A black Cherokee headed toward 77. And if you're
11 familiar with Cherry Road headed toward 77 means headed 77
12 north toward Charlotte. That's what he told you. And he
13 took this information and I ask him on cross examination
14 about the investigation. You are the lead detective
15 assigned to this case. And so I began to ask him he says I
16 presume they already done a preliminary investigation.
17 Assume, presume, there was an investigation already done.

18 And so what did you do? First of all why do we not
19 hear the 9-1-1- call? Why do we not have a 9-1-1- call?
20 Detective Stokes told you that one hundred and sixty days
21 after the call comes in he has the opportunity to retrieve
22 that 9-1-1- call. We wouldn't all be here wondering would
23 we? We would know the physical descriptions, what was said
24 on the 9-1-1 call wouldn't we? But we don't have that.
25 One hundred and sixty days after the case is over to get

CLOSING ARGUMENT: BY MS. BURRIS

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1 the 9-1-1 call and no 9-1-1 call.

2 On direct he testified that he has everything that's
3 in his case file summary. Where are the investigative
4 notes? Now he testified that he went to the scene, had an
5 opportunity to talk to the other officers involved. The
6 forensic people were there. And he thought it was enough
7 to go generate a lineup and place Marquis Robinson's face
8 in a lineup. What did he tell you that dispatch called?
9 We do know about the communication with dispatch but why
10 can't you hear the 9-1-1 tape? The communication just as
11 he told you the suspect is possibly - possibly Marquis
12 Robinson. That's what he told you and that's what he
13 heard. And he thought it was necessary to go back to that
14 Rock Hill Police Department and generate the photographic
15 lineup. And so I began to ask him questions in regard to
16 the computer generated lineup and the image details.

17 And I ask him about putting the information in there,
18 the hair and the complexion, you know the size, date of
19 birth, height. He said, yeah, you know I put all that in
20 the computer system. And I ask him in regards to where are
21 your lineup image detail notes. Did you turn them over to
22 the State - the solicitor the lineup image details? Well
23 you have them for Dantanyo Heath where are the lineup image
24 detailed notes that were generated by the computer in your
25 file? I don't know.

1 But what we do know? Remember I said never judge a
2 book by it's cover. What we do know as part of his
3 investigation there was a cell phone retrieved from the
4 ceiling and I began to question him in regard to that
5 telephone or the cell phone and the content and the text
6 messages of that cell phone. What we do know is that he is
7 aware of what's on the cell phone. And it wasn't Marquis
8 Robinson's cell phone. It was the cell phone of Ernest
9 Jordan. I began to ask him what did you see within the
10 content of the cell phone that you served a search warrant
11 on or retrieved? Ernest Jordan, rims, cars, money spent,
12 money, money, money. He has his black tee shirt on and his
13 sun shades. That's what Detective Stokes testified to.
14 That's what was in the file.

15 Let's go into another chapter of the book. Now,
16 Ernest Jordan. You had the opportunity to hear from him.
17 Who is Ernest Jordan? Chapter Number Two, who is Ernest
18 Jordan? I began to ask Ernest Jordan questions about the
19 monies that were reported. When the initial responding
20 officers came to the scene he was talking about he said
21 that he had money taken, Seven Thousand Dollars. Seven
22 Thousand Dollars taken from Ernest Jordan.

23 It was Seven Thousand Dollars one day, Ten Thousand
24 Dollars another day, over Ten Thousand Dollars another day.
25 Jared Crane never said anything about any money being taken

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1 from him. But later he remembered One Thousand, One
2 Hundred and Fifty Dollars was taken from me. I don't know
3 about you but that's a lot of money. So I began to ask
4 Ernest Jordan about the money and how it was wrapped up and
5 where was it. Part of his testimony he said it was on his
6 person then he said it was in his car. I began to ask him
7 was it in an envelope, did it have a rubber band on it?
8 Was it loose? And he answered three or four different
9 ways. And I began to ask him about the money and where did
10 the money come from. First he said one transaction with
11 one person. Then he said no, there was some rims that I
12 was gonna special order and then two persons came in and
13 they paid Thirty-five Hundred Dollars a piece. He
14 testified so many different ways about money. Who is
15 Ernest Jordan, the owner of the rim shop?

16 Now, we don't really have to guess, we can reach the
17 climax of this chapter at least turn the page. We don't
18 really have to guess. And Jared Crane told you a little
19 bit about this rim shop. He testified, he told you on his
20 shift they were working late that night, buy marijuana,
21 buying drugs. He told you, he let you in - -

22 SOLICITOR SHELTON: Objection, Your Honor. He never
23 testified about drugs at the rim shop.

24 THE COURT: He testified that he did buy marijuana
25 from somebody who came by the rim shop. That's my - -

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1 Members of the jury panel, you remember the testimony.
2 It's not up to me or Ms. Shelton or even Ms. Burris. You
3 remember what the testimony is.

4 Go ahead.

5 MS. BURRIS: Thank you, Your Honor.

6 He told you exactly what goes on in that rim shop.
7 And so as I began to question Ernest Jordan about who comes
8 in and out, how many people come in the rim shop, you know,
9 per day so a lot of people come in there. A lot of people
10 come in the rim shop. Even Jared Crane said you know some
11 people come in the back door, his friends. Some come
12 through the front door but you have the back and you have a
13 front of this rim shop and, you know, people come in and
14 out. I remember some people - I don't remember talking
15 about rims but lots of people in and out of this rim shop.

16 But apparently you can go to, and if you're employed
17 there, marijuana and drugs.

18 SOLICITOR SHELTON: Objection, Your Honor.

19 THE COURT: Yeah, I sustain the objection. The only
20 one thing testified to regarding marijuana - and we just
21 went over that.

22 Just disregard that argument.

23 You may proceed.

24 MS. BURRIS: Thank you, Your Honor.

25 Now, Investigator Stokes, this lead investigator, he

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1 told you that he spent - I ask him about the record lineup
2 and taking a photographic lineup into the hospital and he
3 had actually placed the photographic - about six
4 photographs in a single sheet of paper and he actually had
5 gone and presented that photograph to these - Mr. Ernest
6 Jordan and Jared Crane. Ernest Jordan, Jared Crane did
7 tell you that they were kind of out of it. But Ernest
8 Jordan he presented it to Ernest Jordan so I began to ask
9 Detective Stokes about how long did you spend with them?
10 You know did you know that they were under the influence of
11 medication, drugs or anything? No. How long did you stay
12 with him? I ask about five minutes. Well less than ten
13 minutes.

14 And I showed him the photographic lineup, he circled
15 it, he said okay. Possibly or he said - Mr. Jordan said,
16 Marquis Robinson. And so I began to ask him and so you
17 didn't actually follow up and speak to him and do an
18 investigation and talk to him? It just happened, spent
19 some time with him. You're the lead investigator. And so
20 I ask him what did you do next? He indicated Detective
21 Smith had a lineup and that she was in the room with Jared
22 Crane and that he actually left for Ernest Jordan's room
23 where he stayed in there five or ten minutes. And then he
24 went to the room of Jared Crane.

25 Did you sit down with Jared Crane and ask him you know

CLOSING ARGUMENT: BY MS. BURRIS

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1 about the physical descriptions? You know what you
2 received in dispatch. Did you ask him you know questions
3 at first and just gather some more information and some
4 evidence as to what happened, who was it? Did you talk to
5 him? No. No.

6 So you left out of the hospital and this was the
7 investigation basically that you did. He told you at the
8 end there could have been more investigation.

9 Now according to the testimony of Detective Stokes,
10 and the communications report, one of the suspects - the
11 suspect - the guy, or whatever you want to call him had
12 gotten stabbed. And that one of them had gotten shot.

13 And in regards to Jared Crane's testimony I began to
14 ask him isn't it true that while you were at the incident
15 scene talking, you know, to Ernest Jordan for something had
16 just happened, you know weren't you and Ernest actually
17 talking about what had happened? No. Ernest Jordan is a
18 grown man he can handle himself, I was going to take care
19 of my wife. They didn't talk.

20 But you heard the testimony from Detective Stokes, the
21 communications call that came in and it says suspects I
22 can't hear them they're not talking to police, they're
23 talking to each other. Each other. But Jared Crane says
24 no, we didn't talk about it.

25 Now, I ask Detective Stokes when you took that

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1 photographic lineup to Ernest Jordan, what did you tell
2 him? He says, I read the sheet that was actually on top of
3 the photographic lineup and he showed him the photo - the
4 piece of paper that had six photographs on it - and it said
5 suspect may be in here. And when I began to talk to Ernest
6 Jordan yesterday, he actually testified that he knew the
7 guy that was under the photo of Marquis Robinson. And I
8 began to ask him how do you know him? He's come in the rim
9 shop. He's come in the rim shop.

10 Now, it's very important that you pay attention to the
11 details. So we have a BOLO or a communications call coming
12 in. Older black Jeep Cherokee. And Detective Stokes told
13 you that he heard the name Yodi and found out that Yodi's
14 mother lives on Crest Street. And he went to this home,
15 saw a black Buick and he took the tag number of the black
16 Buick and came back registered to Dantonyo Heath. The
17 black Jeep Cherokee, black Buick.

18 Now, you have to ask yourself if you know somebody or
19 if you say somebody's name long enough, and you see that
20 person's picture in a lineup - Ernest Jordan said when I
21 ask him you know why Marquis Robinson he's jealous, he's
22 jealous I guess. Jealous. Say a name long enough it
23 begins to resonate.

24 I have an older cousin, her name is Sabrina Love-
25 Sloan, she's an attorney, she does civil work. We planned

CLOSING ARGUMENT: BY MS. BURRIS

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1 a family reunion. She's actually three generations away
2 but she and I get together and we plan family events
3 together. And to this day some of our elderly family
4 members can't even distinguish the two of us. People in
5 the community can't distinguish between the two of us.
6 They often tell me I have you on my refrigerator in regards
7 to a magnet. There you go. That's not me. That's my
8 cousin Sabrina. Misidentification, that's what we're
9 dealing with. Misidentification.

10 Now, let's talk about this. Forensics: I was
11 speaking to Mr. Buchannan, works for Forensics, and I began
12 to ask him about the pry bar and crow bar and the
13 fingerprints and the DNA. One of the things he told you we
14 had in regards to the crow bar he didn't test it for any
15 DNA because when he got there it looked like it was in the
16 same place it was supposed to be by the tire machine. No
17 DNA.

18 I began to ask him so in the bathroom which according
19 to Ernest Jordan it's a fairly small bathroom, so I kept
20 asking him was there broken glass in there and I began to
21 ask him about fingerprints on broken glass. No DNA says
22 the forensics. No DNA, no hair, no trace DNA, no blood, no
23 fingerprints, that matches to Marquis Robinson.

24 Now Ernest Jordan told you even though he told you
25 that basically there were lacerations on his face, but he

CLOSING ARGUMENT: BY MS. BURRIS

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1 told you that you know there was in the bathroom there was
2 a struggle. Even though he told you basically you know he
3 was able to grab the hand of the guy and he had I think
4 knocked the clip out of the gun. He told you there was
5 quite a struggle in the bathroom.

6 I submit to you that each of you have an obligation.
7 You're judges of the facts. Each of you have an obligation
8 to ensure that the State has proven to you beyond a
9 reasonable doubt, any doubt, or the cause for a reasonable
10 person to hesitate to act. There is a presumption of
11 innocence....

12 You have listened intently to the testimony, you have
13 been able to assess the credibility of the witnesses', you
14 have served as jurors. You do not owe anyone any favor but
15 to make sure when you go back to that jury room and find a
16 verdict that speaks the truth.

17 Now, I want you to understand you cannot convict
18 someone on possibly, maybe, presume, assume. You cannot
19 convict someone on possible, presume, assume. You cannot.
20 The law is the law. I call that the spaghetti allegation.
21 The law is the law and you deserve better than that.

22 Again, I want to thank you for your service as these
23 are extremely serious charges. Thank you for your time and
24 your attention and I ask that you return to this courtroom
25 with a verdict of not guilty of Marquis Robinson.

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1 Thank you for your time.

2 THE COURT: Mr. Smith.

3 MR. SMITH: I need to set up some equipment, Your
4 Honor.

5 THE COURT: Okay.

6 (PAUSE AT 03:22 P.M..)

7 MR. SMITH: You've read it. Again the mind sort of
8 fills in those blanks, you know, somebody projects
9 something and you automatically think I ought to read it.
10 And some of you have filed in what it says. Now some of
11 you have said hold on that's where he started so let me
12 wait and see where he's gonna try to go before I fill
13 anything in. Again, because your mind fills in gaps.

14 But from the Pledge of Allegiance "with liberty and
15 justice for all" for all here in this courtroom, for
16 citizens, and as I'm speaking to you certainly for Dantonyo
17 Heath.

18 The evidence against Mr. Heath. Solicitor said "this
19 one's a little tricky" when she got to Dantonyo Heath. Did
20 you catch that? She gave you all the way up to mention Mr.
21 Robinson and then she said well this one's a little
22 trickier, okay. That should have set off a flag to you, a
23 buzzer. Uh-huh, a uh, oh. Sounds like that trailer is
24 talking about a problem that's gonna be in this movie.
25 That's your little trailer of the problem that's gonna

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1 exist in this movie. A little trickier.

2 Now what are they saying? Evidence against Dantonyo
3 Heath. Do we take it in it's entirety, all the evidence
4 that they have? Well there's Ernest Jordan's
5 identification and they give you that. And they give you
6 Amanda Crane's identification, they give you DNA, and they
7 give you a video. Four things. All right.

8 I'll sort of go through them backward because I guess
9 I sort of started backward when I went remember I started
10 with the video and I said that might surprise you. Then I
11 talked about DNA. Well, the solicitor's would have told
12 you about the DNA. But I want to talk about
13 identifications for a moment. With Mr. Jordan's
14 identification he claimed he recognized immediately the man
15 that was ducked down behind the vehicle.

16 I'm gonna submit to you when you view the evidence
17 that that just cannot be so. So as a matter of fact there
18 is no way that Mr. Jordan could have recognized who it was
19 ducked behind the vehicle immediately, but because he
20 claimed he did, that's how Dantonyo Heath ends up on trial.
21 That's the original leap that sets everything in motion.

22 Ms. Crane: She made claims about what went on.
23 Again, if you look at the video you're gonna see it can't
24 be so. Not to say that she doesn't believe it because she
25 had been through a very emotional and traumatic situation.

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1 But what she is remembering in her head just cannot be and
2 just in fact isn't true. It's what he mind has filled in
3 and it started with Mr. Jordan's leap to something that
4 could not be true.

5 And then there's this. Why does Ms. Crane pick
6 Dantonyo Heath? Cause before she was ever given an
7 opportunity to view a photo lineup she saw him in an orange
8 prison suit at a bond hearing having bond set for either
9 one that attacked and beat her husband. Wouldn't you
10 expect her to therefore and forever identify the man who
11 walked in in that suit Dantonyo Heath? And that's what
12 she's gonna do. And may well now dream about that as well.
13 It's not as what she originally saw, it's because of what's
14 happened since.

15 The DNA. The very bottom line they don't say it's a
16 match. Now they can try to dance around that and hide
17 that, but the DNA isn't a match, period, over.

18 The video: Let's watch just the video. Watch just
19 the video as much as you've seen it and as much as you're
20 going to see, ask yourself watching it, could you after
21 having watched that video with confidence pick out the
22 individual with his face covered with any group of a
23 hundred other six foot tall, mid to dark complexed black
24 males with any confidence? I submit to you you couldn't.
25 And you can't because each of these pieces of evidence have

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1 a fatal flaw. And it's a little more than just a little
2 tricker. What it is is Dantonyo Heath is not guilty. And
3 when you try to prove somebody guilty who is not guilty
4 it's a little tricky and there are gonna be problems.

5 So what leaps are being made? The very first one Mr.
6 Jordan says as soon as I saw him duck down I knew exactly
7 who it was. And you can't even see his face at that point.
8 If you think he ever sees his face. Jared Crane sort of
9 let it slip as well. He said once I seen the name with the
10 face he knew who Dantonyo was. The name with the face,
11 where would that be? The end of the line. That's what
12 gets people so certain that they can come to the stand and
13 act sure about their identification.

14 And then with the crime scene, it was our
15 understanding that the suspects were known. You see the
16 crime scene took that leap that was given to them by Mr.
17 Jordan. And because of that law enforcement processed this
18 entire case differently than they would have if he would
19 have admitted to not knowing who that other person was.

20 What does the video show? Well that's the person with
21 the mask on, whoever that mask man is you know he doesn't
22 have gloves on. No doubt, clearly, cause everything that
23 that mask man does inside that building there is a good
24 chance of prints, of DNA, of whatever being around. Watch
25 the video, watch it as many times as you want, as many

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1 angles, as many cameras, as many parts as you want to
2 because I think it won't prove to you what really happened
3 and what should be there if what they now claim happened
4 had really happened.

5 In other words if they're movie were a documentary,
6 what real proof would exist? Or is their movie a fictional
7 block buster? From the video alone can you make a
8 reasonable identification of anyone particularly of
9 Dantonyo Heath? No. It just can't be done because he's
10 wearing a mask.

11 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

12 MR. SMITH: Fighting, struggling, falling, touching
13 the ground with that bare palm with no glove. If their
14 movie were a documentary, we'd have a palm print of
15 Dantonyo Heath. Its fiction so you don't, you won't, and
16 you can't. No prints from Dantonyo Heath in that entire
17 scene.

18 Leaning up against the pole struggling there, no DNA
19 matching Dantonyo Heath found on that pole. Right here,
20 Mr. Crane reaching back clawing, gouging with anything he
21 can to get out of this choke hold. Anything about any sort
22 of fingernail scrapings, anything like that from Mr. Crane
23 at the hospital matching Dantonyo Heath? No. If this
24 movie were a documentary, there would - Not a single hair
25 anywhere matching Dantonyo Heath located. No shoe prints

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1 matching Dantonyo Heath found at this scene. No money, no
2 cell phone, no clothing, nothing et cetera found with
3 Dantonyo Heath linking him to this scene.

4 Not from the ground here, not from the items they
5 claim this person is touching. Not from this bay door that
6 is being opened and closed by the man in the mask. Not one
7 single fingerprint of Dantonyo Heath there. Why? Because
8 it wasn't him.

9 The car outside. Part of the crime scene. Watch the
10 video. The man in the mask touches the car, has the
11 conversation with Ms. Crane, opens the car door reaches in,
12 closes the car door. Any fingerprint from Dantonyo Heath
13 found on that car anywhere? No. Why? Because it's not
14 him.

15 Then there's this. What do you see? Probably at
16 first you see an individual being walked out, escorted,
17 forced out, whatever language you want to use, by another
18 person. What else do you notice?

19 (EXHIBIT CONTINUED TO BE PUBLISHED TO JURY.)

20 MR. SMITH: A cup. How did Mr. Jordan say he got that
21 cup? The man in the bandana gave it to him. Or this Yodi
22 person whoever Yodi is gave it to him. What would be on
23 that cup if Dantonyo Heath had touched it? His
24 fingerprint. And you got to remember the director of the
25 Multi-jurisdictional Forensic Service's Unit had been by

1 the hospital before he comes to the crime scene. So don't
2 let them just slough off and say well we didn't know what
3 to look for and those kind of things. No. They had all
4 the information they needed to figure out whether or not
5 its Dantonyo Heath and the reason they don't have proof is
6 it wasn't him. No prints recovered from Dantonyo Heath and
7 were eliminated or any DNA from that cup. That's the
8 video.

9 Let's talk about DNA. Was it odd to you that the DNA
10 expert needs courses in statistics? Do you think DNA
11 science is not actually projected in saying what things
12 would be in calculations that you learned who it is? DNA
13 extracted from a small source and then amplified. But
14 amplified doesn't mean turned up and made bigger.
15 Amplified means makes a whole bunch of copies. But they
16 don't like to use that word copied or that word cloned so
17 they just pick their own words and call it amplified. And
18 always in that sort of last thing she sort of sheepishly
19 say when talking about all these results she would say well
20 I cannot exclude. Okay. It didn't match Dantonyo Heath.

21 And how about this. SLED, no we don't have an error
22 rate. Well we kind of do. What do you mean? Well
23 somebody thought we needed one and so they just assigned
24 one. They didn't really look to see if there were errors.
25 They just assigned an error rate? Yeah. Is that

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1 acceptable for the State Law Enforcement Division? Is that
2 acceptable for evidence that's being brought to you by the
3 State asking you to convict a man of attempted murder,
4 kidnapping, some of the most serious crimes we have in this
5 state?

6 And there is a partial profile from a minor
7 contributor. Partial profile as in didn't get it all. As
8 in half of it might match somebody but if we had the whole
9 thing it might be somebody totally different. That's your
10 trouble. One in eleven quadrillion on one of the results
11 she had gotten, that's eleven with those fifteen zeros.
12 The other one is six hundred and fifty quadrillion, that's
13 6-5-0 to fifteen more zeros and then what they want to
14 bring to you is evidence against Mr. Heath one in one
15 hundred and eleven. Looks a lot different doesn't it?
16 Population she said the world's eight billion, that would
17 mean seven hundred and twenty million others would be
18 expected to be included with the level of evidence of DNA
19 result that exist for Dantonyo Heath.

20 Ms. Shelton wants to tell you what if we did one
21 hundred and ninety nine in here. Well that would be nine.
22 Yeah, nine. Nine, nine others from this room. Shouldn't
23 that trouble a prosecutor? She said but how many of nine
24 would Amanda Crane identify. Well how many of them are you
25 gonna let her see in an orange jumpsuit at a bond hearing

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1 before you let her do the identification? That might
2 change the odds a little bit. But we will never get to
3 know because she didn't look at a lineup. She knew about
4 lineup proceedings. She just jump on the internet and saw
5 a picture and went to a bond hearing.

6 If this was just a DNA case the state would be in
7 trouble. At least the solicitor admitted that. I would
8 hope that if this were just a DNA case they wouldn't
9 dismiss it. But apparently not. We'd still be here in
10 front of the jury with having to being troubled, trouble
11 for the state and still risk some innocent person might be
12 convicted. But that's lawyer speak for this DNA evidence
13 is no good. Doesn't work. The video doesn't prove, the
14 DNA doesn't prove.

15 Amanda Crane the next thing they say. She first
16 claims they were carrying Neal out of the building. I ask
17 you to watch the video. It's just not what's there. It's
18 just not what happened. And it doesn't mean she doesn't
19 believe it as she sits here today because her mind will
20 fool her and make that night horrible as it was to her.
21 But just because she believes something does not make it
22 so.

23 They were not carrying Neal out of the building. If
24 you will watch the man in the mask, whoever he is, not only
25 does not carry Neal out of the building, but turns and

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1 closes the bay door as Neal is coming out of the door. She
2 had been testifying that she was able to observe for three
3 to four whole minutes. But that changed once I asked her,
4 or told her, the video showed her with him outside only
5 thirty-five seconds. And if you'll take the time to watch
6 you'll see that there is no way she could even seen Neal in
7 that entire thirty-five seconds. Probably less than ten.
8 Seemed longer, I'm sure it did. I'm sure it did. And
9 that's what the mind does when it deals with these
10 traumatic situations. The mind works the senses, makes
11 things seem longer than they are and makes things that
12 aren't true seem believable. But that's not your job.
13 Your job is to find the actual truth.

14 She claims she wasn't in the room when Jared was read
15 the disclaimer's for the lineups. But Jared, and now
16 Sergeant Smith, said she was. Now why is that important?
17 Well we'll get to those disclaimers and see what those
18 disclaimers talk about. And I think you'll see that they
19 talk about some of the things that end up later tainting
20 her lineup. She saw Dantonyo Heath on the Moss web site,
21 Moss Justice web site. And what does that tell you?

22 That's even after the bond hearing. Because remember
23 Detective Stokes said yeah well he was arrested over in
24 Rock Hill where he turns himself in and that's where he has
25 his bond hearing. And then later he's transported to Moss

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1 Justice Center. So wait a minute. When she sees his
2 picture on the web sites is when she knows who he is?
3 That's after she had already seen him at a bond hearing.
4 So is there any surprise that she can come in the courtroom
5 now and he still sits at the defense table identify him.
6 Wouldn't you be surprised if she did anything less?

7 In an orange jump suit. Talk about that with the
8 photo line ups, but would it be fair if one of the persons
9 in this photo lineup were wearing an orange jump suit that
10 said York County Detention Center in it and they picked
11 that person? Would that be a fair lineup? Would that be a
12 lineup you would feel comfortable basing a conviction on?
13 I submit to you no. But now, in court, she can make an
14 identification and they ask you to use that as valid
15 evidence against Dantonyo Heath. That evidence is simply
16 not credible.

17 But they did one other thing with Ms. Crane. They had
18 her introduce those photographs. They brought a wife whose
19 husband had been beaten, put her on the witness stand, and
20 made her identify the photos of his injuries. Why would
21 they do that? You saw them. To cause the natural reaction
22 that any wife would have when confronted with seeing the
23 pictures of her husband that was that traumatic to get that
24 emotion out of her on this stand hoping that you will then
25 be clouded by it and just skip over the other problems with

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1 her testimony. That ought to bother you. The officer who
2 took the photos could have introduced these photos. Mr.
3 Crane himself could have introduced these photos. But they
4 chose to have his wife Amanda Crane get up there and break
5 down in front of you to show you those pictures.

6 Ernest Jordan when he testified said some interesting
7 things. He talked about a gun going off twice. No, didn't
8 happen. Might happen in the big block buster movie, but in
9 the documented truth didn't happen. One bullet fragmented
10 into two pieces. That's it. Said he's only ever seen
11 Dantonyo Heath with Mr. Robinson. Seen him a couple of
12 times with Mr. Robinson coming up to the shop asking
13 something about putting wheels on this vehicle that he
14 believes is his mothers. Well that's important cause that
15 tells you when he thinks he sees Mr. Robinson he associates
16 another person with him and who might it be? That Yodi
17 fellow. That's where the leap starts. Claims he
18 recognizes him immediately when he's ask. But do you
19 notice when he testified at one point he said Dantonyo
20 Robinson - I mean Dantonyo Heath. One of those little
21 slips, doesn't mean a whole lot, but it sort of shows he
22 associates Mr. Heath with Mr. Robinson. But the evidence
23 doesn't.

24 He also told you I don't do not kind of drugs. He had
25 a conviction that was introduced to allow you to weigh his

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1 credibility and it involved some kind of drugs. But I
2 think he said that's a long story. He says he was shot
3 despite what the officers and the medical evidence proves.
4 Says to this day I think I got shot. Does it make sense?

5 Look at the photo. Look where the wound is that he
6 believes is a shot. Look at the angle. Could the shot
7 have come from this direction here, well no, because it
8 would have gone through his nose. Could the shot have come
9 from this direction here? Well no, it would have hit his
10 nose. That one is not a shot. Still a wound. It
11 shouldn't have happened to him and it's awful but it's not
12 that he got shot. Again, maybe in a block buster
13 production, but not in a documentary. That's why the
14 officer said it is not serious, it's no bullet, and that's
15 why they said it's a laceration and not a gun shot wound in
16 the hospital. To this day he believes he got shot. He
17 does. But it's simply not true. But the mind can allow
18 you to believe things that aren't true. But that's not the
19 role of you as jurors.

20 All of this evidence against Dantonyo Heath doesn't
21 add up. Each and every item has a leap or a problem,
22 something that it skips, something that it lacks.

23 Well let's talk about what you would expect to find.
24 This long struggle with hats fallen off and phones flying
25 off and wire and bay doors being opened, and water, and

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1 cars touched, phones being taken. Where is the piles of
2 evidence or the results you would expect to have seen from
3 this? If any of it matched Dantonyo Heath you'd see it,
4 boxes of it. But you don't because it wasn't him.

5 Something else you didn't see. The responding
6 officers. A whole line of questions about what was told to
7 the first police officers that get there. Well hold on
8 I'll check the report. What did he say was told to the
9 first police officer? Well hold on didn't you tell him?
10 Oh we just called the first police officers. Why didn't
11 the state bring them in and swear them and put them on the
12 stand? If they would have helped their case you would have
13 heard from them but you didn't. Yet you're being ask to
14 make a decision where you're given all the information you
15 need to make that decision. No. Why? Because all that
16 information doesn't help their case.

17 The 9-1-1 call. Where is it? The original
18 description that was given out. A hundred and sixty days
19 later it had been erased. But don't hold it against them.
20 Really? What should we hold against them? Don't hold it
21 against them and some how make a leap that there would have
22 been evidence exculpatory or good for us? No. We needed
23 that evidence, you needed that evidence, they didn't bring
24 it to you. Yet they called us the magic show. Did I tell
25 you to look anywhere other than that evidence. Am I

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1 telling you to avoid any piece? I'm the one showing you
2 pictures on the rail. I started out by saying show the
3 video. But they're gonna call me the magic show.

4 Early they said no no, the magic show is with this
5 money. That's just a magic show, that's just a diversion.
6 Okay, let's look at it. Right now how much money was
7 taken? Anybody know? Any of you feel confident that right
8 now based on the testimony of Mr. Jordan and Mr. Crane you
9 could swear how much money was taken? Money taken, the
10 basis of an armed robbery charge against these gentlemen.
11 She wants to talk the magic show to set down historic
12 numbers. Okay. Well let's see. Seven Thousand Dollars.
13 Does anybody want to say that one. That one has been
14 testified to. Ten Thousand Dollars. Anybody want to say
15 that one? But that one's been testified to. Over Ten
16 Thousand Dollars. Anybody want that one? That one's been
17 testified to. Eleven Hundred Dollars. Anybody want that
18 one? That one's been testified to. Eleven Hundred and
19 Fifty Dollars. Anybody want that one? That one's been
20 testified to.

21 Beyond a reasonable doubt is anybody confident how
22 much money was taken? No. Why? Cause that story kept
23 changing because you got inconsistent testimony from
24 multiple individuals and even from the same and that should
25 bother you.

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1 Let's talk about lineups. Mr. Robinson's was done
2 with this cover sheet. Tells the viewer you will be asked
3 to look at a group of photos. The fact that the photos
4 shown to you should not influence your judgment in any way.
5 You should not conclude nor guess that the photographs
6 contain the picture of the person who committed the crime.
7 You do not have to identify anyone. It is just as
8 important to keep free innocent persons from suspicion as
9 to identify guilty parties. That is important to be read
10 to anyone who is shown a lineup. That's why this form was
11 created, that's why it's required as Sergeant Smith
12 explained.

13 It's a lot different than having somebody go on a web
14 site and look at one photo or go to a bond hearing and see
15 somebody. And it's a lot different than when you show a
16 photo lineup - And folks, we forgot the cover sheet. Just
17 didn't have it with me. Had it for these others, just
18 didn't have it for the one that identifies Dantanyo Heath.
19 And remember when that photo lineup was shown? Detective
20 Stokes went and met Mr. Crane half way between Lancaster
21 down there at the line and all of a sudden he looks at it.
22 We don't know if he was shown that front copy of the form
23 or not. He looks at it and says Naw, I can't ID the guy in
24 there. Uh-oh. Well let's just get on the phone and go
25 call now Mr. Jordan and get him to rush out and meet us.

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1 You're on the way to the beach, hold on, I'll meet you
2 anyway. I meet you outside Bojangles. I'll go meet you at
3 Bojangles and show you and we don't do that cover form and
4 they are shew, he picks Dantonyo.

5 Are you shocked? Wonder why it was missing that
6 sheet? Mr. Heath had no cover sheet. None of this
7 safeguard was done with Amanda Crane. She was in the room
8 and heard those warnings when her husband was shown. But
9 she was never given those warnings on the other form and
10 yet they let her come take the stand and try to give you
11 what they would say was is a valuable identification here
12 in the courtroom. I say this form is for a purpose; that's
13 why it's witnessed, that's why it's signed. That's what
14 should have been done and the reason that it was never done
15 in any identification that's picked Dantonyo Heath out is
16 because he's not the person who was there.

17 How many pictures should they show? Well they show at
18 least six. Can't be dressed differently, you have to all
19 look the same. Can't be walking somebody in at a bond
20 hearing. Mr. Jordan said no the person in the lineup he
21 knew. Remember? And Ms. Burris began asking him well how
22 did you know that person? And he said, well they bought
23 tires and either then or when Ms. Shelton ask him on direct
24 said, well it was since this time.

25 But when I was showing him you know I knew but he's

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1 come in since this time that lineup was done. If you knew
2 that person, he knew this other person that night, but
3 again the mind starts putting together things that just
4 can't be true. In his mind since he recognized the man in
5 a bandanna immediately as Yodi. How when he claims the
6 bandanna was only there when the man was outside. There is
7 the man in the bandanna. Here is where he comes, ducking
8 down behind the car.

9 (EXHIBIT/VIDEO PUBLISHED TO THE JURY.)

10 MR. SMITH: Anyway, immediately he would know who that
11 is. Anyway, immediately he know that's the man he's only
12 seen a couple of times. Or would it be more likely he
13 makes an assumption based on someone he thinks he's seen
14 that person with. Obviously it's an assumption.

15 Jury instructions. The judge is gonna give you jury
16 instructions. I ask you to listen carefully to all of
17 them. But in particular he's gonna talk to you about the
18 credibility of the witnesses, the believability, how you
19 judge their testimony. He's gonna tell you you can believe
20 part of it, all of it, or none of it. You have the right
21 to believe none of the testimony of one or all of the
22 witnesses. And one of the ways, the tools, that he's gonna
23 give you to judge that is to look at the ability to know
24 the things about which they testified. Do you see a face
25 that ducks down when all you see is this much? No. Use

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1 that to judge credibility.

2 Demeanor: How persons act on the stand. Use that to
3 judge. And did they testify consistently. How much was
4 taken? If they didn't then you can discard their
5 testimony. You won't be given instructions that say well
6 just speculate. Just look past something and make an
7 assumption or just leap over some of these games. You'll
8 never gonna be told that cause it's not your role. And
9 you've got to fight against it because it's something the
10 mind tends to want to do. So to uphold your oath you've
11 got to make sure you don't do that. You were given an
12 instruction already. You were told not to go look on the
13 internet. Why? It wouldn't be fair. But how did Ms.
14 Crane make her identification? Went and jumped and looked
15 on the internet at one photo of a person she had seen at a
16 bond hearing who was already been arrested and in prison.
17 It's just not fair, it's just not. It's a leap and it's
18 not true.

19 There is the shirt, Item 11, from which the DNA comes
20 that we get the one in one hundred and eleven. I don't
21 know where the shirt comes from, but this marker signifies
22 it at the scene, at the shop. A couple of things to
23 notice. First, would have been nice if we would have had
24 somebody measure these footprints or these impressions to
25 see what size shoe's there are to see if they match

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1 somebody. Don't know what you or don't know about shoes
2 but they don't look like Nike Air Macs treads to me.

3 Another thing is the shirt is found laying at the
4 shop. A shop where they say Dantonyo Heath had been by at
5 some point maybe on a couple of occasions from a forensic
6 unit agent who says was just going by somewhere where would
7 have been most hundreds of people DNA and DNA can be there
8 from breathing on it. The shirt didn't come off Jared
9 Crane. This is where the shirt was found. That's why that
10 cone is placed there. At the time this shirt is found,
11 Jared Crane is here in the hospital with a white tee shirt.

12 She's already told you DNA doesn't mean much in this
13 case. I agree. But I think there's an explanation of some
14 things going on. And it's interesting that Betty Butler
15 said she was testing for a question of ownership is why she
16 did the collar scrape. If they were telling you hold on
17 this is Jared Crane's shirt that he just took off why would
18 they send it to SLED and say we got a question about
19 ownership? Why would she test the collar area where she
20 said the wearer is most likely to have left DNA? Something
21 doesn't make sense.

22 The openings for the trailer of the case, Solicitor
23 Newkirk told you there was one man with a gun, one man with
24 a bandanna on his face. That's true. He's got a bandanna
25 on his face any time you could see him in that video. Now

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1 they're gonna try to say there is some other times you
2 might can speculate or their witnesses may say but their
3 trailer told you what's really provable in that movie. A
4 man with a bandanna on his face. And did you notice in
5 their trailer, their opening, they didn't mention any items
6 being taken from Jared Crane. No money, no marijuana.
7 Why? If he had been robbed why wouldn't they talk about
8 that? Sounds like a problem with the trailer.

9 And they described Ms. Crane's opportunity to observe
10 as a brief encounter. There is something in the trailer
11 that lets know there's a problem with the movie.

12 What crimes were committed? You're gonna be given a
13 bunch of different indictments that you're gonna have to
14 make a decision from. I won't go through them all but I'll
15 tell you this. Whoever the man in the bandanna is, he
16 prevents any potential murder. You've heard that from the
17 testimony. You heard Mr. Crane say I was being told to go
18 to sleep, drop the knife. That knife never used with him,
19 he's never stabbed with that knife or anything like that.
20 You heard Mr. Jordan say "it was the man in the bandanna"
21 or "Yodi" as he calls him who stopped the fighting in there
22 in the bath room.

23 He said originally he thinks he only got involved
24 because Jared was coming into the bathroom. In other words
25 the man in the bandanna who's ducked behind the car would

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1 have never gotten involved period if Jared hadn't -
2 unluckily happened to go walk to hear what the noise was.
3 That's Ernest Jordan's testimony. And he also said "I
4 think if it wasn't for Yodi I think it probably would have
5 been over." Whoever Yodi is, whoever the man in the
6 bandanna is, prevented Ernest Jordan from being killed that
7 night. And the man in the bandanna is not the one who took
8 Ernest Jordan's money. That's what he testified to.

9 Yodi. They make a big deal about Yodi. You know this
10 nickname Yodi, this nickname Yodi. Where is the proof that
11 any man named Yodi applies to Dantonyo Heath? Anybody hear
12 a witness? Friends, family, coworkers, cohorts, anybody
13 come in and say Yodi is the nickname that Dantonyo Heath is
14 know by. No. They just throw out a nickname Yodi and hope
15 that you'll make that leap. It doesn't exist. If it were
16 true, there would have been a lot of witnesses. You didn't
17 get them. There is no evidence that Mr. Heath's nickname
18 is Yodi.

19 Agent Buchannan started off by saying it's just like
20 CSI on TV. He ended up backing off that and later saying
21 it's not like TV. But that's how he began his testimony.
22 And he also told you Dantonyo Heath willingly gave his DNA.
23 Take my DNA and compare it to whatever you got at that
24 scene. Willingly. Does that sound like a guilty man?

25 There were four agents there. The director of the

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1 unit had gone to the hospital first. DNA probably being
2 left on papers that are up there being breathed on by
3 Attorney Burris. Three to four agents processing this
4 whole scene, see all the fluids, what could be prints, what
5 could be impressions, all these things that could go on,
6 and what they bring you are sixteen items. Is that enough?
7 Enough to make you feel comfortable with your decision?
8 And of those sixteen items, none match. There is one in
9 one one hundred and eleven can exclude Dantonyo Heath but
10 none match.

11 Jared Crane testified that money was taken from his
12 pocket. He said he knew the amount exactly because of
13 Family Court. But he'd forgotten he had purchased a half
14 ounce of marijuana earlier that day. He was very sure
15 about one thing. Grey, neon, yellow and white, Nike Air
16 Max. And I said "Air Max?" And he said, "Air Max '95
17 sneakers." Any testimony that any shoes like that had ever
18 been seen on Dantonyo Heath? Did you find them in his
19 property, find them at his house? Anything? No. Why not?
20 It wasn't him.

21 His testimony broke at some point. On the stand he
22 said that somebody told him "goons will be back for him."
23 Or that there were threats made to his wife. And it's got
24 to feel that way to him. But when you look at what was
25 actually told to law enforcement at the time it just didn't

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1 sound right. I'm sure it feels worse than even now in his
2 mind but it just isn't what happened. But even Mr. Crane
3 couldn't pick Dantonyo Heath out of a lineup when he was
4 shown him, not in an orange jumpsuit, but in a six person
5 spread. The person who had the most contact with the man
6 in the bandanna says no, no. And he never points in this
7 courtroom to Dantonyo Heath and says that's him.

8 [REDACTED]. The GPS on the phone ever linked
9 to Dantonyo Heath? No. Detective Stokes testified that
10 there was no physical description of Heath at the scene.

11 Three black males. Solicitor says well that's no big
12 deal, just three black males. There wasn't nothing about
13 three black males, may have seen 'em in a car. No big
14 deal? Really? Well how about in their twenties? Might
15 that be an important description? Hum. Is that how
16 Dantonyo Heath would be described by someone who just saw
17 him?

18 Tried to locate a vehicle at [REDACTED]. Jeep Cherokee.
19 They said well, no, no, because they identified Mr.
20 Robinson so why did it matter. Well it matters because
21 there is no evidence for Dantonyo Heath that there is any
22 tie to that address. Or, to that Jeep Cherokee. None.

23 Detective Stokes said Dantonyo Heath turned himself in
24 the next day, the day after the warrant was drawn up. He
25 said that per the CAD report one of the suspects possibly

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1 had a stab wound. Dantonio Heath never had a stab wound.
2 The evidence they have against Dantonio Heath they claim is
3 Mr. Jordan's identification, Ms. Crane's identification,
4 DNA and a video. None of those are credible. Look at them
5 individually, look at them together, look at them up, look
6 at them down. Look to see if they have no credibility
7 evidence against Dantonio Heath. Why? Because Mr. Heath
8 is not guilty.

9 And that should be the curtain on the movie.

10 THE COURT: We'll take about a ten minute break before
11 I give you the charge on the law. But don't start
12 discussing the case yet, we're not quite there.

13 Take about a ten minute break.

14 (JURY EXITS COURTROOM AT 04:09 P.M..)

15 (COURT IN RECESS AT 04:09 P.M..)

16 (COURT BACK IN SESSION AT 04:21 P.M..)

17 THE COURT: Thank you. You may take your seats.

18 Is the State ready?

19 SOLICITOR SHELTON: State's ready, Your Honor.

20 THE COURT: Ms. Burris?

21 MS. BURRIS: Yes, sir, Your Honor.

22 THE COURT: Mr. Smith?

23 MR. SMITH: Ready, Your Honor.

24 THE COURT: Bring in the jury.

25 (JURY REENTERS COURTROOM AT 04:22 P.M..)

CHARGE TO THE JURY

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1 THE COURT: Members of the jury panel, I appreciate
2 your attention you've given all of us at this point. It's
3 now my job to charge you the law that you are to apply to
4 the facts in this case. Your job to apply what the law is
5 as I charge it.

6 I'm going to go over now and at the end of the trial I
7 will in summary go over this again because there are five
8 charges against each defendant. The five charges are the
9 same - charge the same offenses but there are a little
10 different wrinkles to the charges and I'm going to try to
11 distinguish them now, and I will at the end.

12 Each, both Mr. Robinson and Mr. Heath, are charged
13 with kidnapping. Mr. Robinson is charged with kidnapping
14 Mr. Jordan. Mr. Neal - Heath is charged with kidnapping
15 Jared Crane, so they both are charged with kidnapping but
16 it's two different alleged victims.

17 They both are charged with armed robbery. Mr.
18 Robinson is charged with armed robbery regarding the victim
19 Ernest Jordan. Mr. Heath is charged with armed robbery of
20 both Ernest Jordan and Jared Crane.

21 Both are charged with attempted murder. Mr. Robinson
22 is charged with attempted murder of Ernest Jordan. And Mr.
23 Heath is charged with attempted murder of Jared Crane.

24 As to the other two charges, they are basically
25 identical. They are charged with possessing a pistol

CHARGE TO THE JURY

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1 during the commission of a violent crime. The violent
2 crimes stated in the indictments are attempted murder and
3 robbery. Both are charged with offense.

4 They both are charged with conspiracy. Both are
5 charged with conspiring with another person to commit armed
6 robbery or attempted murder or kidnapping. So while the
7 charges are all the same as far as the title of the charge
8 basically attempted murder, et cetera, there are some
9 little differences. And the reason I tell you that is
10 because when I charge you the law - and I'll tell you more
11 about this in just a minute - it makes a difference in your
12 consideration as to how you analyze the evidence, because
13 you've got to know who the alleged victim is as to a
14 particular perpetrator, and make a determination as to
15 whether or not the State as to that particular person and
16 as to that particular charge, has convinced you of that
17 person's guilt beyond a reasonable doubt.

18 I charge you that in this case, as I said, the law and
19 the evidence must be considered separately as to each of
20 the defendants individually, and your verdict does not have
21 to be the same as to each defendant, or as to each of the
22 separate charges.

23 In fact you may find one of the defendant's guilty or
24 not guilty. You should not control your verdict as to the
25 other defendant or as to a particular charge. Where

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1 individuals are charged in a joint situation, the jury must
2 determine whether or not as to the particular person
3 whether the State has proven that person's guilt beyond a
4 reasonable doubt. And this depends on your view of the
5 testimony, the evidence and the exhibits, and the charge on
6 the law.

7 Again, you consider the evidence as to each and write
8 a verdict as to what you determine unanimously as to a
9 particular defendant and as to a particular charge.

10 Again, each indictment charges a separate and distinct
11 defense, and that's why I went through them just a moment
12 ago. You must decide each indictment separately on the
13 evidence and the law applicable to it uninfluenced by your
14 decision as to any other indictment. A defendant may be
15 convicted or acquitted on any, or all, of the offenses
16 charged. I will at the end go over the verdict forms and
17 ask you to write separate verdicts of guilt or not guilty
18 as to each indictment as to each defendant.

19 Now the fact that Mr. Heath and Mr. Robinson have been
20 arrested, the fact that they have been charged, the fact
21 that they have been indicted, and the fact that they are on
22 trial is not evidence. You cannot consider the fact that
23 they are on trial as being any evidence of their guilt. It
24 does not create the fact that they are on trial any
25 presumption or inference of guilt. The fact that they have

1 been charged, arrested, and indicted is just the way our
2 system works. The indictments - and you will not have
3 those back in the jury room with you, but I want to explain
4 what they are.

5 The indictments are written instruments which contain
6 the charges against an individual. The indictments are the
7 formal charges and constitutes the paperwork by way of
8 which this case is processed and ultimately will be where
9 the jury's unanimous verdict is enrolled.

10 I told you earlier I am the sole judge of the law in
11 this case and you must take, accept and apply the law as I
12 charge it. I remind you that I told you that this is true
13 even if you think I charge the law in error, or even if you
14 think the law should be different. Your oath requires you
15 to take, accept and apply the law as I charge it.

16 You are not to infer from anything that I have said or
17 done as being an indication of an opinion of mine on the
18 facts. Our law does not allow a trial judge to formulate
19 or express to a jury any opinion on the facts. It is
20 solely your job. And it is solely your job as the trial
21 jury in this case to examine the evidence, and give to the
22 evidence the effect, the value, the weight, and the truth
23 you believe it should have. In doing this you may believe
24 one witness as opposed to several. Several witnesses as
25 opposed to one.

CHARGE TO THE JURY

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1 You may believe all, part, or none of a witnesses'
2 testimony. Use your common sense, your sense of logic,
3 your sense of reason. Use your experiences in life as you
4 analyze the evidence. As judges of the facts you must
5 necessarily judge the credibility of the witnesses' who
6 have testified. In judging credibility use those things I
7 have just talked about. And you use those things that you
8 find in your day to day life as being indicators of
9 truthfulness.

10 When accessing credibility, believability, of a
11 witness you can use such things as their demeanor, how they
12 act on the stand, whether they have any criminal record.
13 You can consider the opportunity the witness had to know
14 the things to which they testified. Look at the
15 consistencies and inconsistencies of a witness testimony
16 and when the testimony is given at trial or when compared
17 with other testimony. And as to the demeanor of a
18 witness, also, consider whether they respond hesitantly or
19 straightforward. All these things you consider to
20 determine the true facts, again, and you'll be able to
21 return a verdict that speaks the truth.

22 Now in this case we've had experts testify. Generally
23 individuals can only testify as to something they've
24 observed with one of their five senses. Most of the time
25 its something somebody has seen or heard but it could be

1 taste, touch, or smell. However, where an individual has
2 certain training and experience, knowledge and education in
3 a certain area that person can be qualified by the court as
4 an expert and allowed to take facts and render an opinion.

5 My best example of that is a physician, of course we
6 didn't have a physician in this case, but if have a child
7 and that child is feverish, I feel the heat, the child may
8 be throwing up, I can see that. The child may be groaning
9 and complaining, I can see that. The child may not be able
10 to sleep, I can see that. I can come in and testify to all
11 of those things, but I couldn't tell you what's wrong with
12 the child. However, if I take that child to a physician
13 the physician could see the exact same things that I just
14 talked about and render an opinion. In medicine it's
15 usually called a diagnoses. But that's what an expert
16 does, they take facts and because of their training they
17 are able to reach an opinion based on those facts.

18 Now expert testimony is allowed into evidence to
19 assist you, it is not binding on you. You look at the
20 testimony of an expert just as you look at the testimony of
21 any other witness. Use all those criteria I've already
22 gone over. Additionally as to an expert look at that
23 person's qualifications. I determined they were qualified
24 to give an opinion but it is up to you to determine whether
25 you think they were qualified to render an opinion. And

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1 you may also when examining the opinion of an expert look
2 at the underlying reasons which lead to the expert to the
3 opinion they reached. The opinion of experts are allowed
4 into evidence to assist you, they are not binding on you.
5 They are only to assist you and you may accept them or
6 reject them in whole or in part just like you may any other
7 witness.

8 Each of the defendant's, Mr. Heath and Mr. Robinson,
9 have entered pleas of not guilty. This places on the State
10 the burden of proving their guilt beyond a reasonable
11 doubt. Each of these defendants is presumed innocent. A
12 person charged with any offense in our legal system is
13 presumed innocent until the State proves, if it can, that
14 person's guilt beyond a reasonable doubt.

15 This is an important rule of law, it is not just a
16 legal theory or a mere legal phrase. A presumption of
17 innocence is a substantial right. A presumption of
18 innocence attaches to an individual, again Mr. Robinson and
19 Mr. Heath, at the time of their arrest and remains with
20 them as their case is processed through our court system.
21 The presumption of innocence remains in their favor even
22 now as I speak. And even as you deliberate. The
23 presumption of innocence remains in each defendant's favor.
24 The presumption of innocence is removed if and when, and
25 only, if and when you determine the State has convinced you

1 of a defendant's guilt as to a particular offense, beyond a
2 reasonable doubt.

3 Now the State is not required to prove one's guilt
4 beyond all or beyond every doubt, but beyond a reasonable
5 doubt. Our court's have described a reasonable doubt -
6 defined reasonable doubt as the kind of doubt that would
7 cause a reasonable person to hesitate to act.

8 The State has the burden of proving as to each
9 defendant each element of an offense beyond a reasonable
10 doubt before you could convict that defendant.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of someone's guilt. If based on your
13 consideration of the evidence you are firmly convinced that
14 one or both of the defendants are guilty of one or more of
15 the offenses you would find them guilty. On the other hand
16 if you think there is a real possibility that one is not
17 guilty of one or more of the offenses, or both, are not
18 guilty of one or more of the offenses, you would give them
19 the benefit of the doubt and return a verdict of not
20 guilty.

21 In cases such as this there are generally two types of
22 evidence which are presented, direct and circumstantial
23 evidence. Direct evidence is the testimony of someone who
24 claims to have actual knowledge of a fact such as someone
25 who is an eyewitness or someone who says they have heard

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1 something. Direct evidence is evidence which immediately
2 establishes the main fact which is sought to be proven.

3 Circumstantial evidence is proof of a chain of facts
4 and circumstances which indicate the existence of a fact.
5 Circumstantial evidence is evidence which immediately
6 establishes collateral facts from which the main fact may
7 be inferred. Circumstantial evidence is based on inference
8 and not on personal knowledge or observation. Our law
9 makes absolutely no distinction between those two types of
10 evidence.

11 Our law does not require a greater degree of certainty
12 to circumstantial evidence as opposed to direct evidence.
13 What you should do in this case is weigh all the evidence.
14 After weighing all the evidence, if you are not convinced
15 of an individuals guilt as to an offense you would give him
16 - beyond a reasonable doubt you would find him guilty.

17 I instruct you and emphasize the fact that either
18 defendant testified is not a factor to be considered by you
19 in any way whatsoever in your deliberations or in your
20 consideration of the question of their guilt or innocence.
21 It must not be considered by you in any manner whatsoever.

22 Any defendant in our system has a constitutional right
23 to remain silent. And the assertion of that right must not
24 be considered by you in your deliberations. You are to
25 draw no conclusion from the fact that a defendant did not

1 testify.

2 The fact that the defendant's did not testify cannot
3 be even discussed by you in the jury room, and it cannot be
4 used in your own mental consideration as what verdict to
5 return. That is, in no way can the fact that they chose to
6 exercise their constitutional right to remain silent
7 mitigate against them in any way.

8 I remind you, they both are presumed innocent of all
9 the charges against them, and the State has the burden of
10 proving their guilt beyond a reasonable doubt.

11 An issue in this case is the identification of one of
12 both of the defendants as the individuals who committed the
13 charged crimes. The State has the burden of proving
14 identify beyond a reasonable doubt. You must be satisfied
15 beyond a reasonable doubt of the accuracy of the
16 identification of a defendant before you could convict that
17 defendant.

18 Identification testimony is an expression of belief or
19 impression by a witness. You must determine the accuracy
20 of the identification of the defendant by the witness. You
21 must consider the believability of each identification
22 witness in the same way as you look at any other witness's
23 testimony. You may consider whether a witness had an
24 adequate opportunity or capacity, to observe the offender
25 at the time of the offense. This will be affected by

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1 things like how long or short a time was available, how far
2 or close the witness was. You can consider the lighting
3 conditions and whether the witness had a chance to see or
4 know the person prior to the alleged offense. You may
5 consider whether the identification is a product of the
6 witness's own recollection. The burden of proof extends to
7 the State on each element of the crime charged and
8 specifically includes identifying or proving beyond a
9 reasonable doubt the identity of a defendant as the person
10 who committed a particular offense.

11 If after examining the testimony, you have a
12 reasonable doubt as to the accuracy of an individual's
13 identification of a defendant you would find that defendant
14 not guilty.

15 In our state we have a theory or concept and that
16 applies to cases such as this called the hand of one is the
17 hand of all, or accomplice liability. If a crime is
18 committed by two or more people who are acting together in
19 committing a crime, the act of one is the act of all. A
20 person who joins with another to commit an unlawful act is
21 criminally responsible for everything done by the other
22 person which happens as a probable or natural consequence
23 of the acts done in carrying out the common plan and
24 purpose.

25 If two or more people are together, acting together,

1 assisting each other in committing the offense, the act of
2 one is the act of all. Again, sometimes as referred to as
3 "the hand of one is the hand of all."

4 Prior knowledge that a crime is going to be committed,
5 without more, is not sufficient to make a person guilty of
6 that crime. Mere knowledge that another person is going to
7 commit a crime, even if the a defendant is present when the
8 crime is committed, is not sufficient to convict a
9 defendant as a principle. The mere presence at the scene
10 where an incident occurs is not sufficient to prove
11 accomplice liability.

12 Guilt as a principal is shown by actual or
13 constructive presence at the scene as a result of prior
14 arrangement. Therefore, a finding of a prior arranged plan
15 or common scheme is necessary for a finding of one being
16 guilty as a principal. The State must prove beyond a
17 reasonable doubt by competent evidence this theory, the
18 theory of the hand of one being the hand of all.

19 A principal in a crime is one who either actually
20 commits the crime or one who is present aiding and
21 abetting, or assisting in committing a crime. When a
22 person does an act in the presence of and with the
23 assistance of another, the act is considered to have been
24 done by both. Where two or more are acting with a common
25 plan or intent, are present at the commission of a crime,

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1 it does not matter who actually commits the crime, all are
2 guilty. The hand of one, again, is the hand of all.

3 Present at the commission of a crime means to be
4 sufficiently near to aid, abet and assist in the commission
5 of the crime. However, as I've already stated, mere
6 presence at the scene of a crime is alone insufficient to
7 convict one as a principal under this theory.

8 Intent is also a necessary element, for there must
9 have been a common design or intent to commit the crime and
10 the crime must have been committed pursuant thereto with
11 the person aiding and abetting by some overt act. That is
12 the person who is considered to be a principal by virtue of
13 this theory. Intent means intending the result which
14 actually occurs. Something intentional is something that
15 is not accidental or involuntary. Intent may be shown by
16 acts and conduct of a defendant and from other
17 circumstances from which you may naturally and reasonably -
18 from which you may naturally and reasonably infer intent.
19 The State must prove this theory of the hand of one is the
20 hand of all, accomplice liability, beyond a reasonable
21 doubt.

22 The first charge I'm gonna go over is that of
23 attempted murder. Mr. Robinson is charged with attempted
24 murder of Ernest Jordan. Mr. Heath is charged with
25 attempted murder of Jared Crane. In order to prove that

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1 one of the or both of the defendants are guilty of
2 attempting - attempted to kill - I'm sorry, attempted
3 murder, the State must prove that a defendant attempted to
4 kill another person with malice aforethought, either
5 expressed or implied.

6 Malice is hatred, ill will, or hostility towards
7 another person. Malice is the intentional doing of a
8 wrongful act without just cause or excuse and with an
9 intent to inflict an injury or under circumstances from
10 which the law will infer an evil intent.

11 Malice aforethought does not require that malice
12 exists for any particular time before the act is committed,
13 but malice must exist in the mind of a defendant just
14 before and at the time an act is committed. Therefore,
15 there must be a combination of the previous evil intent and
16 an act.

17 Malice aforethought may be "expressed" or "inferred".
18 These terms do not mean different kinds of malice but
19 merely the manner in which malice may be shown to exist.
20 That is either by direct evidence or by inference from the
21 facts and circumstances which the State has proven beyond a
22 reasonable doubt. Expressed malice is shown when a person
23 speaks words which express hatred or ill will for another
24 or when a person prepares beforehand to do the act which is
25 later accomplished.

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1 Malice may be inferred from conduct showing a total
2 disregard for human life. Inferred malice may also arise
3 when a deed with a deadly weapon. A deadly weapon is any
4 article, or instrument, which is likely to cause death or
5 great bodily harm. Whether an instrument has been used as
6 a deadly weapon depends on the facts and circumstances of
7 each case. A pistol is considered a deadly weapon.

8 If facts are proven beyond a reasonable doubt
9 sufficient to raise an inference of malice to your
10 satisfaction, this inference would simply be an evidentiary
11 fact to be considered by you as the trial jury in this
12 case.

13 A specific intent is not an element of attempted
14 murder but there must be a general intent to commit serious
15 bodily injury. Excuse me one minute.

16 (PAUSE.)

17 THE COURT: Another example of what you may consider
18 to be a deadly weapon based on the circumstances and facts
19 of the case would be any ordinary object including - I also
20 charge you that a fist, depending upon the circumstances on
21 which it is used, may be considered a deadly weapon.

22 A specific intent to kill is not an element of
23 attempted murder but there must be at least general intent
24 to commit serious bodily injury. Intent means intending
25 the results which actually occurs. Again, I mentioned this

1 a moment ago, but something intentional is not something
2 that's accidental or involuntary. Intent may be shown by
3 acts and conducts of a defendant and other circumstances
4 from which you may naturally and reasonably infer intent.

5 Evidence of the character of the act, the character of
6 the instrument used, the manner in which any instrument was
7 used, the purpose sought to be accomplished, and the
8 resulting wounds or injuries, if any, may be considered in
9 determining the intent with which an act was committed.
10 Intent may also be inferred when it is demonstrated that
11 the defendant voluntarily and willfully committed an act,
12 the natural tendency of which is to destroy another
13 person's life.

14 Now the State must prove the charge of attempted
15 murder beyond a reasonable doubt as I have defined it
16 before you could convict either one or both of these
17 defendants of attempted murder.

18 Now I believe it was mentioned by the Solicitor that
19 there are lesser included offenses of attempted murder. I
20 can best describe what this means by asking you to think
21 about the stair steps and you have the top step which is
22 the highest. And you step down you have the next step down
23 which is a little lower. Step down, one is a little lower.
24 And just like with the steps these lesser included offenses
25 are steps down. They are lesser offenses even though they

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1 are not set forth in the indictment our law incorporates
2 them as possibilities that a jury can consider under the
3 charge of attempted murder.

4 They all involve assault and battery, so I will define
5 assault and battery. An assault occurs when a person
6 unlawfully attempts or offers to commit a violent injury
7 upon another person and has the present ability to complete
8 the attempted injury. An assault is the intentional
9 creation of a reasonable fear of immediate bodily harm. It
10 is not necessary that the attempted injury or harm actually
11 take place. I always use this example. If I am close
12 enough to strike you and I rare back my fist in a rude and
13 angry manner, I'm close enough to strike you, and I put you
14 in fear that you are to be - may be struck, that is an
15 assault.

16 A battery is the unlawful touching of another person
17 by one who has committed an assault. An unlawful touching
18 can be caused by part of an accused's body or by objects
19 which an accused has put into motion. A battery is the
20 completion of the assault by using or applying force to
21 another person, however slight, in a rude, angry, or
22 resentful manner without legal justification for so doing.

23 In my earlier example if I rare back and commit an
24 assault and I follow through and I strike you, no matter
25 how slight, I have committed an assault and then I have

1 committed a battery. The battery is the touching.

2 If you find the State has not proven as to a defendant
3 that person's guilt beyond a reasonable doubt as to
4 attempted murder you may consider whether or not the State
5 has proven beyond a reasonable doubt that that individual,
6 that defendant, committed assault and battery of a high and
7 aggravated nature.

8 The State must prove beyond a reasonable doubt that
9 there was an assault and a battery and that it was
10 accompanied by aggravating circumstances in order for you
11 to find the defendant guilty of this lesser included
12 assault and battery of a high and aggravated nature.

13 Circumstances of aggravation include the use of a
14 deadly weapon, the intent to commit a felony, the
15 infliction of serious bodily injury, a great disparity
16 between the ages or a great disparity between the ages or
17 physical conditions of the parties. These are only
18 examples of what you may consider as aggravating
19 circumstances. You as the trial jury it is up to you to
20 determine what if any circumstances you may think fall into
21 the category of being an aggravating circumstance.

22 If the State has not proven this second step down,
23 assault and battery of a high and aggravated nature, you
24 may consider whether or not the State has proven one or
25 both of the defendant's guilty of assault and battery in

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1 the first degree. A person commits the offense of assault
2 and battery in the first degree if the person unlawfully
3 injures another person and the act occurred during the
4 commission of a robbery, burglary, or kidnapping.

5 A person may also commit the offense of assault and
6 battery in the first degree if that person unlawfully
7 offers or attempts to injure another person with the
8 ability to do so, and the act is either accomplished by
9 means likely to produce death or great bodily injury; or
10 occurred during the commission of a robbery, burglary or
11 kidnapping.

12 Great bodily injury means bodily injury which causes a
13 substantial risk of death or which causes serious,
14 permanent disfigurement or protracted loss or impairment of
15 the function of a bodily member or a bodily organ.

16 The next step down from assault and battery in the
17 first degree is assault and battery in the second degree.
18 If you find the State has failed to prove either of the two
19 higher offenses you may consider whether or not the State
20 has proven beyond a reasonable doubt that a defendant
21 committed assault and battery in the second degree.

22 A person commits the offense of assault and battery in
23 the second degree if the person unlawfully injures another,
24 or offers or attempts to injure another with the present
25 ability to do so, and moderate bodily injury to another

1 person results or moderate bodily to another person could
2 have resulted.

3 I used the term moderate bodily injury. This term is
4 defined by our legislature. They have defined moderate
5 bodily injury to mean physical injury requiring treatment
6 to an organ system of the body other than the skin,
7 muscles, and connective tissues of the body, except when
8 there is penetration of the skin, muscles, and connective
9 tissues that require surgical repair of a complex nature or
10 when treatment of the injury requires the use of regional
11 or general aesthetics.

12 Drop down to the last of the degrees of the lesser
13 included offenses under attempted murder and that is
14 assault and battery in the third degree. If you find the
15 State has not proven the defendant's guilty of assault and
16 battery in the first degree, or assault and battery in the
17 second degree, you must then determine whether the state
18 has proven one or both of the defendant's guilty of assault
19 and battery in the third degree.

20 A person commits the offense of assault and battery in
21 the third degree if the person unlawfully injures another
22 or offers or attempts to injure another with the present
23 ability to do so.

24 Now each defendant is charged with armed robbery. The
25 armed robbery charge against Mr. Robinson is as to the

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1 victim Ernest Jordan. The armed robbery charge as to Mr.
2 Heath is to Ernest Jordan and Jared Crane.

3 In order to prove this offense the State must first
4 prove beyond a reasonable doubt that the defendant took the
5 personal property from the person or presence of another
6 person. Property is in the presence of a person if it is
7 within that person's reach, inspection, observation, or
8 control so that that person could, if not overcome with
9 violence or prevented by fear, keep possession of the
10 property.

11 As to armed robbery the State must also prove beyond a
12 reasonable doubt that the defendant carried the property
13 away intending to permanently deprive the owner of the
14 property and to keep that property for their own use. The
15 slightest removal of the property or the complete
16 possession of the property, even for an instant, by the
17 defendant is sufficient to show a taking and carrying away
18 of the property.

19 The taking and carrying away of the property must have
20 been done with violence or by putting the owner of the
21 property in fear of violence.

22 Finally, the State must prove beyond a reasonable
23 doubt that a defendant committed this robbery while armed
24 with a deadly weapon. A deadly weapon is any article or
25 instrument which is likely to cause death or great bodily

1 harm. I've already defined for you deadly weapons to
2 include a pistol, a fist, or ordinary objects. Whether an
3 instrument has been used as a deadly weapon depends on the
4 facts and circumstances of each case.

5 Now as to Mr. Heath, and as to Mr. Heath only, there
6 is a lesser included offense on this charge.

7 And this will be, Mr. Foreman, on the verdict forms.
8 Hopefully it will help you keep all of this straight. But
9 of course if not you can always come back in and I'll
10 recharge you and reexplain anything with which you are
11 having difficulty.

12 The lesser included of armed robbery which applies
13 only to Mr. Heath is what's called common law or strong
14 armed robbery. In order to prove this the State must prove
15 beyond a reasonable doubt all the elements of armed robbery
16 except for they need not prove that the person committing
17 the robbery was armed with a deadly weapon. It is simply a
18 robbery effected by use of force but without a deadly
19 weapon.

20 The defendant's are charged with conspiracy. Here the
21 State must prove beyond a reasonable doubt that a defendant
22 combined with one or more purpose - one or more persons for
23 the purpose of committing an unlawful act or committing a
24 lawful act by unlawful means.

25 There must be a mutual understanding, agreement, or

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1 common intention and plan. Mere passive knowledge of or
2 consent to the criminal conduct of another is not enough to
3 make a person a conspirator. One must be - there must be
4 guilty knowledge of a participant for that participant to
5 be guilty as a conspirator.

6 The mere fact that a defendant may have associated
7 with another person or met with another person and
8 discussed common aims and interests is not of itself
9 establish proof of the existence of a conspiracy or prove
10 that a defendant was involved in a conspiracy.

11 On the other hand it is not necessary that any
12 agreement be a formal one. It is not required that it be
13 in writing or that the individuals hold meetings and
14 expressly state the terms of the common plan, or an
15 agreement. The agreement need not be stated in words
16 between them. An agreement of a criminal conspiracy may
17 come into being through an implied, mutual understanding.
18 The willful, intentional, and knowing adoption by two or
19 more persons of a common plan is sufficient.

20 NO overt act needs to be shown to establish a
21 conspiracy. And a conspiracy may be shown by
22 circumstantial evidence and by the conduct of the parties.

23 IN order to convict a defendant of conspiracy, the
24 State must prove beyond a reasonable doubt not only that
25 the defendant knew of the unlawful conduct, but that the

1 defendant agreed to combine with the other person for the
2 purpose of committing the unlawful conduct. Again, the
3 State must prove that beyond a reasonable doubt.

4 Next, the defendants are charged with kidnapping. Mr.
5 Robinson is charged with kidnapping Ernest Jordan. Mr.
6 Heath is charged with kidnapping Jared Crane. Here the
7 State must prove beyond a reasonable doubt that a defendant
8 knowingly and unlawfully seized, confined, kidnapped
9 another person without the authority of law.

10 To do a thing unlawfully is to do it willfully and
11 against the law.

12 To do something knowingly means that it was done
13 knowing with knowledge and that it was done consciously and
14 not accidentally.

15 Seize means to take hold - Excuse me. Seize means to
16 take hold of suddenly or forcibly.

17 Confine means to limit, restrict, or enclose within
18 bounds, imprison, or shut or keep in.

19 Kidnap means removing a person against their will by
20 unlawful force or by fraud.

21 The State does not have to prove that the defendant
22 did all of these things. The state must prove beyond a
23 reasonable doubt that a defendant did at least one of these
24 before you could convict the defendant - a defendant guilty
25 of kidnapping.

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1 Something done without authority of law is something
2 which our law does not sanction, permit, allow, condone, or
3 provide justification for.

4 The kidnapping does not have to be for any personal or
5 monetary gain or for any illegal purpose, but may be for
6 any reason whatsoever.

7 The last charge is that the defendant's possessed
8 weapons during the commission of, or attempt to commit, a
9 violent crime. Here each defendant is charged with
10 possession of a weapon during the commission of or the
11 attempt to commit a violent crime. The State must prove
12 beyond a reasonable doubt the defendant was in possession
13 of the firearm or visibly displayed what appeared to be a
14 firearm during the commission of a violent crime. A pistol
15 is a firearm.

16 In order to find a defendant guilty of possession of a
17 weapon during the commission of a violent crime, you must
18 first find the defendant guilty of either committing a
19 violent crime or attempting to commit a violent crime.

20 Attempted murder and robbery are violent crimes. The
21 State must prove beyond a reasonable doubt that the weapon
22 furthered, advanced, or helped in the commission of one or
23 both of these crimes.

24 Again, the State must prove that charge beyond a
25 reasonable doubt.

1 I'm going to go over the verdict forms with you in
2 just a moment. Your verdict must be unanimous, all twelve
3 jurors must agree before the jury foreman can write on the
4 jury's behalf the verdict. The verdict may not be - Your
5 verdict may not be based on sympathy, passion, prejudice,
6 public opinion, public feeling, or matters outside the
7 record.

8 While you are deliberating if you have any questions,
9 Mr. Foreman, write them down and send them out. Write them
10 down on a piece of paper and send them out. I will discuss
11 the note with the attorneys and respond. It may be that I
12 can write an answer on the note. And if I send back in to
13 you any notes, please keep them and turn them in with the
14 evidence because they have to be part of the record.

15 The State - I'm sorry, not the State. I will make
16 arrangements for you to have the video to watch the videos
17 that are in evidence. If you have trouble with that we
18 have technical people and we will have to figure out a way
19 to handle that and try doing that.

20 Again if you have any questions send them out by way
21 of a note. If you want testimony replayed we can do that.
22 We can have testimony replayed. If you want me to go over
23 my charge with you, in South Carolina we do not usually
24 send in a written charge on the law. If you want me to go
25 over any part or all of the charge on the law, please come

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1 back out - let me know, and come back out and I will
2 recharge you any part, or all, of the law.

3 When you've reached a verdict knock on the door and
4 tell the bailiff and the bailiff will come and get us and I
5 will send for you as promptly as I can. When you go into
6 the jury room at this time, after I go over the verdict
7 forms, do not start deliberating. We haven't gotten there
8 yet. I have to go over my charge with the attorneys. If I
9 have made an error, an omission, or an improper addition, I
10 have to bring you back in and correct it cause you were
11 mandated to apply the law as I charge it so I must make
12 sure that I have not made an error.

13 Ms. Kimble and Mr. Lamb, you will remain in this time
14 and you will not go out with the jury since you are the
15 alternates.

16 Mr. Foreman, I have the verdicts forms for you as to
17 the various offenses. I have them in two separate
18 packages. One for Mr. Heath, and one for Mr. Robinson. As
19 to the kidnapping, first, on the page they are in a certain
20 order; one is above the other. Or where there are several
21 one is above the others. The order they are in is of no
22 importance. I have to put them in some order and this is
23 the order in which I always put them.

24 As to kidnapping as to Mr. Robinson, the first line
25 says "We find the defendant guilty of kidnapping Ernest

1 Jordan." The second "We find the defendant not guilty."

2 As to Mr. Heath, kidnapping says "We find the
3 defendant guilty of kidnapping." And "We find the
4 defendant or we find the defendant not guilty."

5 You will, Mr. Foreman, depending on what the unanimous
6 verdict of the jury is, put a check or an X in front of the
7 form - in front of the verdict that the jury unanimously
8 adopts. As to armed robbery as to Mr. Robinson there are
9 two choices. As to Mr. Heath there are three. As to Mr.
10 Robinson you will either find the defendant guilty of armed
11 robbery or not guilty of armed robbery, putting a check in
12 front of the appropriate line. As to Mr. Heath you have
13 the option of the defendant being guilty of armed robbery
14 if you so find unanimously. Or you may if you determine
15 the State has not proven him guilty of armed robbery,
16 consider, and if you do so find, find him guilty of a
17 lesser included charge of strong armed robbery. That is
18 robbery by force without being armed.

19 Also the third choice there, and again, the order they
20 are in is of no importance, is "We find the defendant not
21 guilty."

22 The verdict form on attempted murder are identical
23 except for the fact that you would keep in mind that the
24 attempted murder charge as to Mr. Robinson deals with Mr.
25 Ernest Jordan being the victim. And the attempted murder

1 charge on Mr. Heath being that of Mr. Jared Crane.

2 Again they are in no particular order. I have set
3 forth the various options which the jury may consider to
4 determine on your view of the evidence and whatever verdict
5 the jury finds you will put an X or a check in front of
6 that line. As to both of the defendant's the options are
7 "We find the defendant guilty of attempted murder." Then
8 the step down would be the finding of the defendant guilty
9 of the lesser included charge of assault and battery of a
10 high and aggravated nature. Or a step down and a finding
11 of guilty of assault and battery in the first degree. A
12 step down, find the defendant guilty of assault and battery
13 in the second degree. Or the third - I'm sorry, the next
14 option of the lesser included charges would be a finding of
15 the defendant guilty of assault and battery in the third
16 degree. And of course if you find the State has not proven
17 a defendant guilty of any of those charges beyond a
18 reasonable doubt you would mark the line that says "We find
19 the defendant not guilty.

20 As to the possessing a firearm during the commission
21 of a crime the verdict forms are the same for each. There
22 are two lines one saying "We find the defendant guilty of
23 possessing a firearm during the commission of a violent
24 crime." The other says "We find the defendant not guilty."

25 The same is true for the verdict forms on criminal

1 conspiracy, they are the same, "We find the defendant
2 guilty of criminal conspiracy." Or "We find the defendant
3 not guilty." Marking again with a check or an X the jury's
4 unanimous verdict as to that charge.

5 Now I'm gonna let you go to the jury room but do not
6 start deliberating yet.

7 Ms. Kimbel, Mr. Lamb, please stay with us.

8 (JURY EXITS COURTROOM AT 05:05 P.M..)

9 THE COURT: I'll be with the two of you in just a
10 minute.

11 Anything from the State?

12 SOLICITOR SHELTON: Nothing from the State, Your
13 Honor.

14 THE COURT: Ms. Burris?

15 MS. BURRIS: No, sir, Your Honor. I just want to look
16 at the verdict forms, that's all.

17 THE COURT: Okay.

18 MR. SMITH: No, Your Honor.

19 THE COURT: All right. Well look at the verdict
20 forms, check the exhibits and make sure they are right and
21 we'll send them in.

22 And, Ms. Kimball and Mr. Lamb, you are through for the
23 week. You can certainly stay around and see what the jury
24 does, in just a moment I will send back the exhibits and
25 the verdict forms and the bailiff will tell the jury to

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1 start deliberating. If they deliberate for a while and
2 need us to order a meal we will feed the jury tonight. If
3 you stay around to see what the verdict is we will feed you
4 too. And we'll make sure you have a comfortable place.
5 But you are free for the week. We appreciate your
6 assistance.

7 So we're gonna send the exhibits and the verdict forms
8 back and we'll be at ease.

9 (COURT AT EASE AT 05:12 P.M..)

10 (WHEREUPON: COURT'S EXHIBITS NUMBER TEN, IDENTIFIED
11 AND MARKED, RECEIVED INTO THE RECORD, TIME IS 06:35 P.M..)

12 (COURT BACK IN SESSION AT 08:47 P.M..)

13 THE COURT: We've got a note that says "Are there any
14 transcripts of Mr. Jordan and Mr. Crane that we can listen
15 to?"

16 I've written "We can play the testimony for you in the
17 courtroom. Is there any particular part you wish to hear?
18 Mr. Jordan's testimony is two hours; Mr. Crane's testimony
19 is one hour."

20 Any objection to me sending that in?

21 MS. BURRIS: No, sir, Your Honor.

22 SOLICITOR SHELTON: No, Your Honor.

23 THE COURT: Go for it. We'll wait on the note.

24 (PAUSE.)

25 (DEFENDANT'S REENTER COURTROOM.)

1 (COURT BACK IN SESSION AT 08:55 P.M..)

2 THE COURT: Get the defendant's in. Oh, their in.

3 Okay. We received a note from the jury, actually a
4 couple of notes. They say that they want to hear the part
5 where Mr. Jordan said he heard "him" - doesn't say who -
6 heard "him" call Yodi name. We've isolated that and I'll
7 bring the jury in and we'll play that.

8 Anything before we get the jury in from the State?

9 SOLICITOR SHELTON: Nothing from the State, Your
10 Honor.

11 THE COURT: Ms. Burris?

12 MS. BURRIS: No, sir, Your Honor.

13 THE COURT: Mr. Smith?

14 MR. SMITH: No, Your Honor.

15 THE COURT: All right, bring in the jury.

16 (JURY REENTERS COURTROOM AT 09:00 P.M..)

17 THE COURT: We've isolated what we believe to be the
18 testimony which you wish to hear concerning some testimony,
19 we'll play it for you now.

20 (DIRECT TESTIMONY OF ERNEST JORDAN REPLAYED FOR THE
21 JURY/TIME, ONE MINUTE, FOUR SECONDS.)

22 THE COURT: Is that the portion you wanted to hear?

23 I'm getting an indication that that's what the jury
24 wanted to hear so we'll let you go back. If you want to
25 hear more just let us know.

1 (JURY EXITS COURTROOM AT 09:02 P.M..)

2 THE COURT: Anything from the State?

3 SOLICITOR SHELTON: Nothing from the State, Your
4 Honor.

5 THE COURT: Ms. Burris?

6 MS. BURRIS: No, sir, Your Honor.

7 THE COURT: Mr. Smith?

8 MR. SMITH: No, Your Honor.

9 THE COURT: We'll be at ease again.

10 (COURT IN RECESS AT 09:03 P.M..)

11 (WHEREUPON: COURT'S EXHIBIT NUMBER ELEVEN, IDENTIFIED
12 AND MARKED, RECEIVED INTO EVIDENCE AT 09:24 P.M..)

13 (COURT BACK IN SESSION AT 09:52 P.M..)

14 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH
15 REENTER COURTROOM.)

16 THE COURT: Take your seats.

17 All right, we've received two - a note, two messages.
18 One says "Can we have the definition of attempted murder?"
19 Again obviously we can do that very easy. The second
20 question is "Do we have to give a verdict tonight?"

21 I have - I would suggest it's five 'till ten, that if
22 they wish to reconvene in the morning when they are fresh
23 that we give them that option.

24 But before I do that, what does the State have to say
25 about that?

1 SOLICITOR SHELTON: Is there any way we can ask them
2 if hearing the definition of attempted murder - -

3 THE COURT: No. No. We can't ask them if -

4 SOLICITOR SHELTON: I would say wait a little bit
5 longer. I'd ask to wait a little bit longer before going
6 home.

7 THE COURT: For how long?

8 SOLICITOR SHELTON: Hour.

9 THE COURT: All right. What's - Ms. Burris, what's
10 your position on it?

11 MS. BURRIS: Your Honor, I would actually rather just
12 ride it out tonight also. As long as possible.

13 THE COURT: Okay.

14 MR. SMITH: I have no position, Your Honor.

15 THE COURT: All right.

16 MS. BURRIS: So, Judge, are you actually gonna respond
17 to their note?

18 THE COURT: Oh, yeah, I always respond to their note.

19 MS. BURRIS: I just wanted to know what the actual
20 response is gonna be. That's all.

21 THE COURT: Ain't decided yet. You're the first to
22 know. Or a moment ago hadn't decided.

23 (PAUSE.)

24 THE COURT: Well I can sequester them. Your
25 objection, we'll keep 'em here.

RECHARGE TO THE JURY:

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1 All right, bring in the jury.

2 MS. BURRIS: Your Honor, just let me make sure I
3 articulate my client's position. May I do so?

4 THE COURT: Yeah.

5 MS. BURRIS: Okay. Thank you. My client's position
6 is that he would actually rather send them home.

7 THE COURT: What about you, Mr. Smith?

8 MR. SMITH: I still have no position, Your Honor.

9 THE COURT: What about the State?

10 SOLICITOR SHELTON: We'll leave it to the Court's
11 discretion, Your Honor.

12 THE COURT: Go tell them - -

13 MADAME COURT REPORTER: I got it, Judge.

14 (JURY HELD AT COURTROOM DOOR.)

15 MADAME COURT REPORTER: Right here at the door, Judge.

16 THE COURT: Well let me go ahead and recharge them and
17 we'll keep them here for a little while and then see what
18 we can do.

19 SOLICITOR SHELTON: Thank you, Your Honor.

20 THE COURT: All right. Bring in the jury.

21 And we'll be checking into a way to put them up for
22 the night.

23 (JURY REENTERS COURTROOM AT 09:59 P.M..)

24 THE COURT: Members of the jury panel, I'm going to
25 recharge you on attempted murder. Regarding whether or not

RECHARGE TO THE JURY:

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1 you have to reach a verdict tonight, an answer is kind of
2 yes and no. It's no you don't have to but according to our
3 rules of court if you don't reach a verdict I cannot let
4 you go home. What I would have to do - and I can make
5 arrangements to do it - is put you up in a hotel over
6 night, what you hear on TV all time called sequester. It
7 won't be that long and if we do that we can certainly make
8 arrangements to have someone in your family come to
9 wherever you are and bring you fresh clothes or whatever.

10 But the rules state pretty clearly that that's my only
11 option. And I don't mind doing it, I've done it before but
12 that's the rules that I have to operate on. So the answer
13 is no you don't have to reach a verdict tonight. But the
14 only other option would be that you get to spend the night
15 on the county.

16 Now as to the attempted murder, the defendant's are
17 both charged with that offense and as I told you we have
18 the stair steps down with the lesser included's.

19 In order to prove attempted murder the State must
20 prove that one or both of the defendant's attempted to kill
21 another person with malice aforethought either expressed or
22 implied. Malice is hatred, ill-will, or hostility towards
23 another person. It is the intentional doing of a wrongful
24 act without just cause or excuse and with intent to inflict
25 an injury or under circumstances from which the law will

RECHARGE TO THE JURY:

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1 infer evil intent.

2 Malice aforethought does not require that malice exist
3 for any particular time before the act is committed, but
4 malice must exist in the mind of the defendant just before
5 and at the time the act is committed. Therefore, there
6 must be a combination of the previous evil intent and the
7 act.

8 Malice aforethought may be expressed or inferred.
9 These terms do not mean different kinds of malice but
10 merely the way in which malice may be shown to exist. That
11 is either by direct evidence or by inference from the facts
12 and circumstances which are proven.

13 Expressed malice is shown when a person speaks words
14 which express hatred or ill will for another or when the
15 person prepared beforehand to do the act which was later
16 accomplished. Malice may be inferred from conduct showing
17 a total disregard for human life. Inferred malice may also
18 arise when the deed is done with a deadly weapon. A deadly
19 weapon can be any article, instrument, or substance which
20 is likely to cause death or great bodily harm. Whether an
21 instrument has been used as a deadly weapon depends on the
22 facts and circumstances of each case. A pistol, a fist,
23 and ordinary objects can be considered under your
24 determination to be a deadly weapon.

25 If facts are proven beyond a reasonable doubt

1 sufficient to raise an inference of malice to your
2 satisfaction, this inference will simply be an evidentiary
3 fact to be considered by you along with the other evidence
4 in the case, and you may give it the weight you decide it
5 should receive.

6 A specific intent to kill is not an element of
7 attempted murder but there must be a general intent to
8 commit serious bodily injury. Intent means intending the
9 result which actually occurs. Intent is something that is
10 not accidental or involuntarily. Intent may be shown by
11 acts and conduct of a defendant and from other
12 circumstances from which you may naturally and reasonably
13 infer intent. Evidence of the character of the act, the
14 character of the instrument used, the manner in which it
15 was used, the purpose to be accomplished, and the resulting
16 wounds or injuries may be considered in determining the
17 intent with which an act has been committed. Intent may
18 also inferred when it is demonstrated that the defendant
19 voluntarily and willfully commits an act, the natural
20 tendency of which is to destroy another's life.

21 I told you that the State must prove those elements
22 beyond a reasonable doubt before you could convict either
23 of the defendant's of attempted murder.

24 The next step down it told you get into the category
25 of assaults. And I explained to you that an assault occurs

RECHARGE TO THE JURY:

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1 when a person unlawfully attempts or offers to commit a
2 violent injury upon another person and had the present
3 ability to complete the attempted injury. An assault is
4 the intentional creation of a reasonable fear of immediate
5 bodily harm. It is not necessary that the attempted injury
6 or harm actually take place.

7 I gave you my example about raring back my fist.

8 A battery is the unlawful touching of another person
9 by a person who has committed an assault. An unlawful
10 touching can be caused by a part of the accused's body or
11 any object which an accused has put into motion. A battery
12 is the completion of the assault by using or applying force
13 to another person, however slight, in a rude, angry, or
14 resentful manner without legal justification for doing so.

15 Using my earlier example, I have assaulted you if I
16 come forward and actually touch you with my fist I have
17 committed a battery. An assault and battery.

18 If you find the State has failed to prove beyond a
19 reasonable doubt one or - a defendant guilty of attempted
20 murder you may consider assault and battery of a high and
21 aggravated nature which would be the first step down.

22 Assault and battery of a high and aggravated nature is
23 an assault and battery - which I've already talked about
24 just now - with an accompanying aggravating circumstance.
25 So the State must prove an assault and battery and

RECHARGE TO THE JURY:

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1 accompanying aggravating circumstance beyond a reasonable
2 doubt before you could convict either defendant of assault
3 and battery of a high and aggravated nature.

4 Circumstances of aggravation include the use of a
5 deadly weapon and I told you a pistol, fist, or other
6 ordinary objects may be considered deadly weapons. In
7 addition to an aggravating circumstance involving the use
8 of a deadly weapon, also a circumstance of aggravation
9 would include such things as the intent to commit a felony,
10 the infliction of serious bodily injury, a great disparity
11 between the ages or physical conditions of the parties or
12 any other circumstance you deem to be an aggravating
13 circumstance under the facts as presented.

14 If you find the State has failed to prove attempted
15 murder or assault and battery of a high and aggravated
16 nature, you may consider whether the State has proven a
17 defendant guilty of assault and battery in the first degree
18 beyond a reasonable doubt.

19 A person commits the offense of assault and battery in
20 the first degree if the person unlawfully injures another
21 person, and the act occurred during the commission of a
22 robbery, burglary, kidnapping. A person may also commit
23 the offense of assault and battery in the first degree if
24 the person unlawfully offers or attempts to injury another
25 person with the present ability to do so, and the act

RECHARGE TO THE JURY:

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1 either is accomplished by means likely to produce death or
2 produce great bodily injury; or if it occurred during the
3 commission of a robbery, burglary, or kidnapping.

4 Great bodily injury means bodily injury which causes a
5 substantial risk of death or which causes serous, permanent
6 disfigurement or protracted loss or impairment of the
7 function of a bodily member or of a bodily organ.

8 The next degree down would be assault and battery in
9 the second degree. If you find that the State has not
10 proven Mr. Heath or Mr. Robinson guilty of one of the
11 greater offenses you could consider whether or not the
12 State has proven one or both guilty of assault and battery
13 in the second degree.

14 A person commits the offense of assault and battery in
15 the second degree if the person unlawfully injures another
16 person, offers or attempts to injure another person with
17 the present ability to do so, and moderate bodily injury to
18 another person results or moderate bodily injury to another
19 person could have resulted.

20 Moderate bodily injury means physical injury requiring
21 treatment to an organ system of the body other than the
22 skin, muscles, and connective tissues of the body, except
23 when there is penetration of the skin, muscles, and
24 connective tissues that require surgical repair of a
25 complex nature or when treatment of the injuries require

RECHARGE TO THE JURY:

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1 the use of a regional or general anesthetic.

2 The third degree burglary which is the last rung on
3 that - not a rung but a step on that stair step of degrees
4 of lesser degrees under attempted murder. Here you may
5 consider if the State has not proven one of the higher
6 degrees of assault and battery or attempted murder, you can
7 determine whether or not the State has proven beyond a
8 reasonable doubt one or both of the defendants being guilty
9 of assault and battery in the third degree.

10 A person commits the offense of assault and battery in
11 the third degree if the person unlawfully injures another,
12 or offers or attempts to injure another person with the
13 present ability to do so.

14 Now of course if you find the State has failed to
15 prove any of those attempted murder or the lesser
16 included's down to third degree assault and battery beyond
17 a reasonable doubt you of course would find a defendant not
18 guilty.

19 So, I'm going to allow you to go back to the jury
20 room.

21 (JURY EXITS COURTROOM TO CONTINUE DELIBERATING AT
22 10:09 P.M..)

23 (WHEREUPON: COURT'S EXHIBIT NUMBER TWELVE AND
24 THIRTEEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 THE COURT: Anything from the State?

RECHARGE TO THE JURY:

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1 SOLICITOR SHELTON: Your Honor, I don't - I don't mean
2 to necessarily throw a wrench into the thing and I didn't
3 catch it the first time around but I think the ABHAN charge
4 was incorrect. I think it was charged under the old ABHAN,
5 if I heard correctly, and I may not have.

6 THE COURT: It's the one I've used several times
7 before.

8 SOLICITOR SHELTON: I will leave it up to the defense
9 to object. I may be wrong.

10 THE COURT: What's the difference?

11 SOLICITOR SHELTON: I have a printout of the ABHAN
12 stature if you would like a copy of it.

13 THE COURT: Let me see.

14 SOLICITOR SHELTON: And I apologize, I did not catch
15 it the first time. And I may be wrong.

16 (DOCUMENTS RECEIVED UP BY THE COURT.)

17 THE COURT: What do you say about that, Ms. Burris?

18 MS. BURRIS: Your Honor, I actually do not have a copy
19 of my charge.

20 SOLICITOR SHELTON: Be glad to share a copy, Your
21 Honor.

22 THE COURT: I believe you are right.

23 SOLICITOR SHELTON: I am sorry I did not catch it the
24 first time. I was zoned out I guess.

25 THE COURT: The only thing I know to do is bring them

RECHARGE TO THE JURY:

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1 back in and tell them to disregard what I told them; that
2 this is the correct...

3 Look under 16-3-29(b)(1), and then it refers back up
4 to great bodily injury with a definition.

5 (PAUSE.)

6 (JURY NOTE RECEIVED UP BY THE COURT AT 10:15 P.M..)

7 THE COURT: We've been sent a note. Apparently we're
8 using a templet from a former trial. We got a - and I just
9 noticed this.

10 Which one is it?

11 LAW CLERK: Criminal conspiracy.

12 THE COURT: On criminal conspiracy on the Indictment
13 that's numbered for Mr. Heath somehow a different
14 defendant's name got put on there. We can correct that.

15 All right, what do you say, Ms. Burris, about the
16 charge?

17 MS. BURRIS: Your Honor, the Indictments weren't
18 actually sent back there, right?

19 THE COURT: No. I'm talking about the verdict form.

20 MS. BURRIS: The verdict forms? Oh, okay.

21 In regards to - I know that the elements for this
22 charge - for the ABHAN charge it looks like the elements
23 were the ones that you actually charged were actually
24 incorrect so if you could recharge them.

25 THE COURT: I agree. Not only now but it's been long

RECHARGE TO THE JURY:

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1 enough that the law's changed and I charged enough that I
2 don't know how we all missed that.

3 But bring the jury back in.

4 (WHEREUPON: COURT'S EXHIBIT NUMBER FOURTEEN,
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 (JURY REENTERS COURTROOM AT 10:18 P.M..)

7 THE COURT: I apologize for the error on the forms.
8 We'll get that fixed up. It's just with all the paperwork
9 we've been processing that just got inadvertently the wrong
10 name on it.

11 But I also charged you what I call the old law on
12 assault and battery of a high and aggravated nature. The
13 legislature has changed the definition of assault and
14 battery of a high and aggravated nature. And quite frankly
15 I charged it wrong and nobody caught it until now and I
16 apologize. I don't want to cause confusion but this
17 applies only to what I charge you. I charged you assault
18 and battery of a high and aggravated nature which was
19 assault and battery accompanied by circumstances of
20 aggravation. Forget everything I said about that.
21 Disregard that.

22 Our legislature has defined assault and battery of a
23 high and aggravated nature - and these are the elements
24 which must be proven by the State beyond a reasonable doubt
25 before you could convict either Mr. Heath or Mr. Robinson

1 of assault and battery of a high and aggravated nature,
2 that second tier down from attempted murder.

3 The legislature has stated that a person - and this is
4 what this offense is - a person commits the offense of
5 assault and batter of a high and aggravated nature if the
6 person unlawfully injures another person and either great
7 bodily injury to that person results; or, the act is
8 accompanied - accomplished by means likely to produce death
9 or great bodily injury.

10 You recall I used the term moderate bodily injury when
11 I was talking about second degree, first degree requires
12 great bodily injury. This section of law defines great
13 bodily injury to mean bodily injury which causes a
14 substantial risk of death or which causes serious,
15 permanent disfigurement or protracted loss or impairment of
16 the function of a bodily member or organ.

17 So you got attempted murder, then assault and battery
18 of a high and aggravated nature which requires either great
19 bodily injury to another person or an act accomplished by
20 means likely to produce death or great bodily injury. And
21 as to that great bodily injury is defined as an injury
22 which causes a substantial risk of death or which causes
23 serious, permanent disfigurement or protracted loss or
24 impairment of the function of a bodily member.

25 So that's the definition that applies to assault and

1 battery of a high and aggravated nature rather than the one
2 I gave earlier. And I apologize greatly for me error but
3 it was my error and nobody else's.

4 I'll let you go back to deliberating. And we'll send
5 in the corrected forms in just a moment.

6 (JURY EXITS COURTROOM TO CONTINUE DELIBERATING AT
7 10:21 P.M..)

8 THE COURT: Anything from the State?

9 SOLICITOR SHELTON: No, sir, Your Honor.

10 THE COURT: Ms. Burris?

11 MS. BURRIS: No, sir, Your Honor.

12 THE COURT: Mr. Smith?

13 MR. SMITH: No, Your Honor.

14 THE COURT: All right, we'll be at ease again.

15 (COURT AT EASE AT 10:22 P.M..)

16 (WHEREUPON: COURT'S EXHIBIT NUMBER FIFTEEN,
17 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

18 (COURT BACK IN SESSION AT 11:37 P.M..)

19 THE COURT: Thank you. I understand the jury has
20 reached a verdict. If we could get the defendant's in.

21 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH
22 REENTER COURTROOM.)

23 THE COURT: Is the State ready?

24 SOLICITOR SHELTON: The State is ready, Your Honor.

25 THE COURT: Ms. Burris?

VERDICTS:

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1 MS. BURRIS: Yes, sir, Your Honor.

2 THE COURT: Mr. Smith?

3 MR. SMITH: Yes, sir.

4 THE COURT: Bring in the jury.

5 And while they are bringing in the jury, I do not of
6 course know what the verdict is but we do not tolerate any
7 outburst of anyone who believes whatever the verdict will
8 be may upset them for any reason I suggest they if they
9 believe they cannot control their emotions they will have
10 to leave now because if they don't and we have any outburst
11 of anyone doing so will be - certainly will find themselves
12 being in contempt of court.

13 (JURY REENTERS COURTROOM AT 11:40 P.M..)

14 THE COURT: Mr. Foreman, I understand the jury has
15 reached verdicts.

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Hand them to the bailiff and he will hand
18 them up to me.

19 (VERDICTS RECEIVED UP BY THE COURT.)

20 THE COURT: All right, the note about the verdicts
21 indicate the mistake was on one of the sheets marked wrong
22 and had been initialed. I've seen that and I instruct the
23 clerk to read the verdict that is not initialed and I don't
24 think there will be any problems.

25 MADAME CLERK: Indictment 2011-GS-46-2905 the State

VERDICTS:

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1 versus Marquis Robinson indictment for attempted armed
2 robbery we find the defendant guilty of armed robbery of
3 Ernest Jordan signed by the Foreperson dated today's date.

4 Indictment 2011-GS-46-2908 the State versus Marquis
5 Robinson indictment for kidnapping we find the defendant
6 guilty of kidnapping Ernest Jordan signed by the Foreperson
7 dated today's date.

8 Indictment 2011-GS-46-2906 the State versus Marquis
9 Robinson indictment for attempted murder we find the
10 defendant guilty of the lesser included charge of assault
11 and battery in the second degree signed by the Foreperson
12 dated today's date.

13 Indictment 2011-GS-46-2907 the State versus Marquis
14 Robinson indictment for criminal conspiracy we find the
15 defendant guilty of criminal conspiracy signed by the
16 Foreperson dated today's date.

17 Indictment 2011-GS-46-2909 the State versus Marquis
18 Robinson indictment for possession of a firearm during the
19 commission of a violent crime we find the defendant guilty
20 of possession of a firearm during the commission of a
21 violent crime signed by the foreperson dated today's date.

22 Indictment 2011-GS-46-2898 the State versus Dantonyo
23 Heath indictment for armed robbery we find the defendant
24 guilty of the lesser included charge of strong armed
25 robbery signed by the Foreperson dated today's date.

VERDICTS:

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1 Indictment 2011-GS-46-2901 the State versus Dantonyo
2 Heath indictment for kidnapping we find the defendant
3 guilty of kidnapping signed by the Foreperson dated today's
4 date.

5 Indictment 2011-GS_46-2899 the State versus Dantonyo
6 Heath indictment for attempted murder we find the defendant
7 guilty of the lesser included charge of assault and battery
8 in the second degree signed by the Foreperson dated today's
9 date.

10 2011-GS-46-2900 the State versus Dantonyo Heath
11 indictment for criminal conspiracy we find the defendant
12 guilty of criminal conspiracy signed by the foreperson
13 dated today's date.

14 Indictment 2011-GS-46-2902 the State versus Dantonyo
15 Heath indictment for possession of a firearm during the
16 commission of a violent crime we find the defendant not
17 guilty signed by the Foreperson dated today's date.

18 Ladies and gentlemen of the jury, if that be your
19 verdict so say you all by raising your right hand.

20 Let the record show all jurors affirmed this verdict.

21 (ALL JURORS AFFIRMED BY RAISING RIGHT HAND.)

22 THE COURT: Obviously let counsel for both sides look
23 at the verdict form. The verdict form that had a mistake
24 on it was the one that was ultimately a not guilty finding
25 and possession of a firearm they are marked out.

VERDICTS:

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1 Anything else before the jury is dismissed.

2 SOLICITOR SHELTON: Nothing from the State, Your
3 Honor.

4 THE COURT: Ms. Burris, anything before - -

5 MS. BURRIS: Not from the Defense, Your Honor.

6 MR. SMITH: We request a poll, Your Honor.

7 THE COURT: All right. Members of the jury panel, the
8 Clerk is gonna ask you a question about your verdicts but
9 it's just an affirmation of whether or not these are your
10 verdicts. If you will please follow the Clerk's
11 instructions.

12 MADAME CLERK: If you all would please stand.

13 (JURY STOOD.)

14 MADAME CLERK: When I call your juror number if you
15 will just raise your right hand.

16 Juror Number 264, is this your verdict?

17 A. Yes, ma'am.

18 MADAME CLERK: Is this still your verdict.

19 A. Yes, ma'am.

20 MADAME CLERK: You may have a seat.

21 Number 52, is this your verdict?

22 A. Yes.

23 MADAME CLERK: Is this still your verdict?

24 A. Yes.

25 MADAME CLERK: You may have a seat.

VERDICTS:

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1 Number 252, is this your verdict?
2 A. Yes.
3 MADAME CLERK: Is this still your verdict?
4 A. Yes.
5 MADAME CLERK: You may have a seat.
6 Number 25, is this your verdict?
7 A. Yes, ma'am.
8 MADAME CLERK: Is this still your verdict?
9 A. Yes, ma'am.
10 MADAME CLERK: You may have a seat.
11 Number 235, is this your verdict?
12 A. Yes.
13 MADAME CLERK: Is this still your verdict?
14 A. Yes.
15 MADAME CLERK: You may have a seat.
16 Number 17, is this your verdict?
17 A. Yes.
18 MADAME CLERK: Is this still your verdict?
19 A. Yes.
20 MADAME CLERK: You may have a seat.
21 Number 130, is this your verdict?
22 A. Yes, ma'am.
23 MADAME CLERK: Is this still your verdict?
24 A. Yes, ma'am.
25 MADAME CLERK: You may have a seat.

VERDICTS:

1 Number 117. Sorry, that's the alternate.
2 Number 83, is this your verdict?
3 A. Yes.
4 MADAME CLERK: Is this still your verdict?
5 A. Yes.
6 MADAME CLERK: You may have a seat.
7 Number 182, is this your verdict?
8 A. Yes.
9 MADAME CLERK: Is it still your verdict?
10 A. Yes.
11 MADAME CLERK: You may have a seat.
12 Number 169, is this your verdict?
13 A. Yes.
14 MADAME CLERK: Is it still your verdict?
15 A. Yes.
16 MADAME CLERK: You may have a seat.
17 Number 85, is this your verdict?
18 A. Yes, ma'am.
19 MADAME CLERK: Is this still your verdict?
20 A. Yes, ma'am.
21 MADAME CLERK: You may have a seat.
22 Number 78, is this your verdict?
23 A. Yes, ma'am.
24 MADAME CLERK: Is this still your verdict?
25 A. Yes, ma'am.

1 MADAME CLERK: You may have a seat.

2 THE COURT: Anything else from the State?

3 SOLICITOR SHELTON: Nothing from the State, Your
4 Honor.

5 THE COURT: Ms. Burris?

6 MS. BURRIS: No, sir, Your Honor.

7 MR. SMITH: No, Your Honor.

8 THE COURT: I appreciate all your hard work and it was
9 a hard case and you put in a long hard day and a long week
10 so I'm gonna let you go without giving you anything other
11 than our heart felt thanks and telling you that you will be
12 mailed a check. And it should come next week and that's
13 only a small token of our appreciation and the hard work
14 you've done.

15 Now the foreman, Mr. Taylor, the Clerk is gonna have
16 you sign the verdicts on the indictments because that is
17 ultimately the record we keep so she will step across the
18 hall with you to the library.

19 Everyone else is free to leave. We appreciate your
20 help, thank you.

21 (JURY DISMISSED AT 11:51 P.M..)

22 THE COURT: Anything from the State? The jury has
23 been dismissed.

24 SOLICITOR SHELTON: Nothing, Your Honor. I'm getting
25 the sentencing sheets. I have them here, I'm just

SENTENCING:

-822-

1 finishing signing.

2 THE COURT: Ms. Burris, anything now that the jury has
3 been dismissed?

4 MS. BURRIS: No, sir, Your Honor.

5 THE COURT: Mr. Smith?

6 MR. SMITH: Your Honor, we renew our earlier motions
7 and ask for a judgment notwithstanding the verdict or in
8 the alternative a new trial.

9 THE COURT: All right. Motion is denied.

10 Now since we've - -

11 MS. BURRIS: Your Honor, I apologize. On behalf of my
12 client I would like to join in on the motion judgment not
13 withstanding the verdict. Thank you.

14 THE COURT: All right. The motion is denied.

15 If you'll bring the defendant's around for sentencing.

16 And, Mr. Newkirk.

17 SOLICITOR NEWKIRK: Sir?

18 THE COURT: The two of you are working together, if
19 either of you would you check with the victims and see if
20 either of them wish to make any further statements before
21 sentencing?

22 SOLICITOR NEWKIRK: Yes, sir.

23 THE COURT: You may go ahead and the sentencing sheets
24 are being filled out be glad to hear from Ms. Burris in
25 regard to any kind of mitigation.

SENTENCING:

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1 MS. BURRIS: Thank you, Your Honor, May it please the
2 court. Standing beside me of course is Mr. Marquis
3 Robinson. Mr. Robinson is actually thirty years of age.
4 He actually has six children. He is supported in the
5 courtroom by his mother, his sister, a close friend as well
6 as his wife.

7 Your Honor, his six children are actually very young.
8 He actually attended public schools of Rock Hill. Prior to
9 this incident he was working at ADC which is actually
10 located in York, South Carolina. They actually operate
11 assembly military parts. Your Honor, we respectfully ask
12 for your leniency in this case, in this particular case.
13 Mr Robinson is still very young I would say. I definitely
14 believe that, you know, once he is actually released from
15 South Carolina Department of Corrections he still has a
16 life ahead of him. He still has a family that he will
17 definitely have to take care of. We respectfully ask that
18 you will sentence him no more than fifteen years.

19 Your Honor, of course you had the opportunity to hear
20 the facts in this particular case. Mr. Robinson throughout
21 the trial has been extremely and in trial preparation has
22 been extremely humbled throughout this situation. I think
23 it's definitely a situation where, you know, in sitting in
24 the detention center he's been concerned and conscientious
25 about, you know, what's happening and what's going on with

SENTENCING:

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1 the victims.

2 So, Your Honor, I just respectfully ask that you take
3 all things into consideration and the fact that he's thirty
4 years of age, has young children, and, Your Honor, we'd
5 like to be able to see him get out and be able to take care
6 of his children and live a productive life.

7 THE COURT: How long has he had - How many days has he
8 had in jail?

9 MS. BURRIS: I'll get that calculation for you, Your
10 Honor. He's been actually back and forth.

11 THE COURT: I just want the total number.

12 While she's calculating that, Ms. Shelton.

13 SOLICITOR SHELTON: Yes, Your Honor, I'm sorry.

14 THE COURT: Anything you want to say in regard to
15 sentencing?

16 First, Mr. Newkirk, you checked with the victims,
17 either one -

18 SOLICITOR NEWKIRK: Yes, sir, Mr. Crane does wish to
19 address the court. Mr. Jordan does not.

20 THE COURT: Have Mr. Crane come around please.

21 Yes, sir, stand right there and tell me what - -

22 MR. CRANE: Well, Your Honor, as you and everyone else
23 in this courtroom witnessed, you seen the video of what
24 happened to us. I understand he has children, I have
25 children too. I begged to be let go that night, told them

SENTENCING:

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1 I would leave and wouldn't say anything else about it, that
2 was a problem between him and Mr. Jordan. I wasn't given a
3 chance for any leniency. I was beat several times. Ask to
4 stop, ask for him to make the guy stop. I was given no
5 mercy. I ask that you give no mercy on these people, none
6 whatsoever.

7 THE COURT: Thank you.

8 Did you figure out how many days?

9 MS. BURRIS: A total of three hundred and one days,
10 Your Honor.

11 THE COURT: Three hundred and one?

12 MS. BURRIS: Uh-huh. Yes, sir.

13 THE COURT: All right, anyone want to speak on ---

14 MS. BURRIS: Mr. Robinson?

15 THE COURT: --- Mr. Robinson?

16 MS. BURRIS: Yes, sir.

17 THE COURT: All right. Have them come forward and
18 tell me what --

19 THE COURT: Yes, ma'am, your name?

20 A. My name is Kayla Higgs.

21 THE COURT: Okay.

22 MS. HIGGS: The man that was in that video how he was
23 portrayed is not Marquis Robinson. It is very hard and
24 emotional but we do have children and I do ask that you do
25 have leniency on him for our babies please.

SENTENCING:

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1 THE COURT: I understand. Thank you.

2 Mr. Robinson, anything you want to say?

3 Anything you want to say?

4 MR. ROBINSON: No, sir.

5 THE COURT: Did you get that? He said no, sir.

6 MADAME COURT REPORTER: Yes, sir.

7 THE COURT: All right. Mr. Smith.

8 MR. SMITH: Thank you, Your Honor, may it please the
9 court.

10 Your Honor, Mr. Heath by my calculation has been in
11 Seven hundred and seventy-five days. He never made bond
12 from his arrest date of June 12th of 2011. He's had a
13 difficult stay in the detention center. He last worked for
14 Allied, he is from Rock Hill, did go to Rock Hill High. He
15 does have a son, his mother has been in contact with me
16 throughout my representation of him.

17 Your Honor, obviously you have a lot of discretion and
18 potential sentences that you give. We would ask for the
19 mercy of some reflection of the reduction that the jury
20 gave both in the charges that Mr. Heath faced and in the
21 disparity of those faced from amongst the two. Throughout
22 the process Your Honor has seen Mr. Heath begin a trial
23 without me and go forward some with me and then with me the
24 entire time. He has always been respectful to this court
25 and to this process. It's been difficult for him as would

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1 be anyone in his position but we would ask Your Honor to
2 show some mercy to him for that. And he is simply here to
3 ask for the mercy of the court.

4 THE COURT: All right, anyone want to speak on his
5 behalf?

6 MR. SMITH: Only Mr. Heath, Your Honor.

7 THE COURT: All right, Mr. Heath, I'll be glad to hear
8 from you now. Anything you want to say?

9 MR. HEATH: Yes, sir. I feel that if they feel that I
10 did this I apologize but I didn't do this crime, Your
11 Honor. So if they feel I did it I apologize to them.

12 THE COURT: All right, these are all to run
13 concurrent.

14 Mr. Robinson, I'll give you credit for Three Hundred
15 and One days. Your sentence are as follows:

16 The kidnapping, thirty years.

17 On armed robbery, thirty years.

18 On criminal conspiracy, five years.

19 On possession of a weapon during the commission of a
20 violent crime, five years.

21 On assault and battery second degree, three years.

22 Do you understand that, Mr. Robinson?

23 MR. ROBINSON: Yes, sir.

24 THE COURT: Mr. Heath, on your charges these are all
25 to run concurrent and given you credit for Seven hundred

SENTENCING:

-828-

1 and Seventy-five days.

2 On kidnapping, thirty years.

3 On strong armed robbery, fifteen years.

4 On criminal conspiracy, five years.

5 And on assault and battery second degree, three years.

6 Do you understand that?

7 MR. HEATH: Yes, sir.

8 THE COURT: Thank you.

9 SOLICITOR SHELTON: Thank you, Your Honor.

10 MS. BURRIS: Thank you, Your Honor.

11 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH
12 ESCORTED FROM COURTROOM.)

13 THE COURT: Anything else for the record in this case
14 from the State?

15 SOLICITOR SHELTON: No, sir, Your Honor.

16 THE COURT: Anything for the record, Ms. Burris?

17 MS. BURRIS: Your Honor, I just wanted to make sure I
18 renew all of my previous motions.

19 THE COURT: Mr. Smith?

20 MR. SMITH: No, Your Honor.

21 THE COURT: All right, again, thank everybody for
22 their courtesies. We'll stand at ease. We've got
23 sheriff's deputies if anybody wants somebody to accompany
24 them to their car we can make arrangements to do that.
25 Just let 'em know.

1 All right, that's it for the night. We'll see you at
2 ten in the morning.

3 (COURT IN RECESS AT 12:00 P.M..)

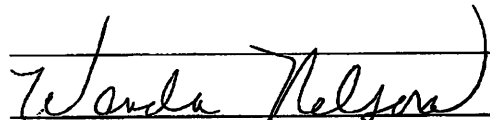
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 York County, South Carolina, on the 22nd through the 25th days of July, 2013

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



Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 11-4, 2013

County: York
 Date: July 22-25, 2013

VOIR DIRE

Case No.: 2011-GS-46-02898
2011-GS-46-02905
 Plaintiff: State

Judge: John C. Hayes, III

Pl's Atty.: Sol. Misti H. Shelton
Sol. Ryan Newkirk

Defendant(s): Dantonyo Heath
Marquis Robinson

Def's Atty: Twana Burris; Phil Smith

Court Reporter: Wanda Nelson

Juror #	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
83	Tamara N. Gary	F	B				X
29	Jonathan C. Brown	M	W			X (R)	
5	Jeffrey S. Antinoro	M	W			X (R)	
207	Bonnie K. StClair	F	W			X (H)	
182	Alex H. Robertson	M	W				X
108	William Huffstetler	M	W		X		
76	Randall R. Finn	M	W			X (R)	
213	Cynthia M. Tadlock	F	W			X (H)	
177	Eric C. Ramsdell	M	W			X (H)	
251	Kevin S. Baker	M	W			X (R)	
169	Jonathan M. Petty	M	W				X
9	Justin M. Baker	M	W			X (R)	
85	Micah P. Gaylor	M	W				X
142	David E. McCauley	M	W			X (H)	
8	Angela M. Baioni	F	W			X (R)	
124	Ernest E. Lawing	M	W			X (R)	
233	David A. Wendland	M	W			X	
78	Dawn H. Styles	F	w				X
264 *	Jermaine C. Taylor	M	B				X
52	Teresa D. Coulter	F	W				X
201	Sharon L. Smith	F	W			X (H)	

191	Lorraine Schwahl	F	W	X			
79	John H. Fowler	M	W	X			
173	Brandy N. Hagerman	F	W			X(H)	
252	Lindsey M. Campbell	F	w				X
193	Teresia C. Sexton	F	W			X(H)	
25	Joseph G. Brandon	M	W				X
235	Jennifer P. West	F	W				X
17	Ilse B. Bertilson	F	W				X
209	Thomas k. Stevenson	M	W		X		
130	Justin R. Lucas	M	W				X
117 **	Lynn M. Kimble	F	W				X
64	Susan L. Dove	F	W			X(H)	
121 **	Gary E. Lamb	M	W				X

*For the Court column, indicate who made the motion to strike the juror "for cause".
C-Court, P-Plaintiff, D-Defense * Foreperson ** Alternate

(R) Strike for Defendant Robinson
(H) Strike for Defendant Heath

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUIS JEARIES S. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2013-001618

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to grant the motion for a mistrial based on the prosecutor's failure to disclose evidence favorable to Appellant and material to his guilt in violation of Appellant's state and federal constitutional rights to due process?

STATEMENT OF THE CASE

In September of 2011, the York County Grand Jury indicted Appellant Robinson for armed robbery, attempted murder, criminal conspiracy, kidnapping and possession of a firearm during the commission of a violent crime, indictments #2011-GS-46-2905, 2906, 2907, 2908, 2909. On July 22, 2013, Appellant and a co-defendant, Dantonyo Heath, proceeded to jury trial before the Honorable John C. Hayes, III.¹ Twana Burris represented Appellant. Phil Smith represented the co-defendant. Misti Horton-Shelton prosecuted the case. The jury found Appellant guilty of armed robbery, criminal conspiracy, kidnapping, possession of a weapon during the commission of a violent crime and the lesser included offense of assault and battery second degree. Judge Hayes sentenced Appellant to thirty (30) years for armed robbery, concurrent thirty (30) years for kidnapping, concurrent five (5) years for criminal conspiracy, concurrent five (5) years for possession of a weapon during the commission of a violent crime and a concurrent three (3) years for assault and battery second degree. The jury found the co-defendant guilty of the lesser included offense of strong armed robbery, criminal conspiracy, kidnapping and the lesser included offense of assault and battery second degree. Judge Hayes sentenced the co-defendant to fifteen (15) years for strong armed robbery, concurrent thirty (30) years for kidnapping, concurrent five (5) years for criminal conspiracy, and a concurrent three (3) years for assault and battery second degree. Appellant served a timely notice of intent to appeal on July 30, 2013. this appeal follows.

¹ The case was called to trial once before and a mistrial declared because of a problem with the jury pool.

STATEMENT OF FACTS

At 10:00 PM on June 8, 2011, Ernest Neal Jordan was at his automobile detailing business, Five Star Customs, in Rock Hill, South Carolina. An employee, Jared Crane, was also at the business that night preparing to paint a car. Two men entered the business, one armed with a gun the other masked, and robbed the two men. During the course of the robbery Jordan and Crane were assaulted and Crane was bound with speaker wire. The incident was captured on video surveillance admitted in evidence a trial. At trial both Jordan and Crane identified Appellant as the armed robber and Jordan identified the co-defendant as the masked robber. Jordan and Crane knew the Appellant.

According to Jordan, he had between seven and ten thousand dollars in cash in his truck and the robbers took this cash. (R. pp. 263-271). Crane's wife, who arrived at the business as the robbers were walking with Jordan to his truck, identified the co-defendant as one of the robbers. According to Crane, the robbers took money and marijuana from his pocket. (R. p. 414, lines 15-19). The sole forensic testimony came from the DNA analyst who testified that the co-defendant could not be excluded as a minor contributor to blood from a white t-shirt found at the scene. (R. p. 493, line 23 – p. 494, lines 1-3).

ARGUMENT

The trial judge erred in refusing to grant the motion for a mistrial based on the prosecutor's failure to disclose evidence favorable to Appellant and material to his guilt in violation of Appellant's state and federal constitutional rights to due process.

During cross examination, the State's ninth and final witness, Detective Cedric Stokes with the Rock Hill Police Department, referred to a CAD² report that had not been provided to defense counsel in discovery. (R. p. 601, lines 1-12). Counsel for both Appellant and the co-defendant moved for a mistrial. (R. p. 601, line 20 – p. 602, 603, lines 1-10). The State argued that the investigator's notes and the CAD report were protected as work product. (R. p. 603, lines 17-18). The judge disagreed. (R. p. 603, lines 19-20). The CAD report was then made available to both defense counsel and the judge. (R. p. 604, line 15 – p. 605, lines 1-19).

After reviewing the CAD report counsel for both Appellant and the co-defendant each moved for a mistrial. (R. pp. 605-610). Specifically, counsel noted that the CAD report references three rather than two black males headed toward Interstate 77 in an older model black Jeep Cherokee and argued that this information could have been used to impeach witnesses Jordan and Crane. (R. p. 605, line 20 – p. 606, lines 1-8). Counsel also noted that the CAD report references the subjects talking with one another and this also could have been used to impeach the witnesses. (R. p. 606, line 11 – p. 607, lines 1-20). The CAD report actually reads, "SUBJ WILL NOT TALK TO EOC OR POLICE THEY ARE TALKING TO EACH OTHER." (R. p. 801. Court's Exhibit #9, p. 1). This information could have been used to support a theory that Jordan and Crane needed to get their stories straight before talking with police.

² Computer Assisted Design.

Counsel for the co-defendant argued that the CAD report notes that one of the suspects possibly has a stab wound and this could have led to a self defense claim. (R. p. 607, lines 22 – p. 608, lines 1-13). Additionally counsel argues, “And then lines below 6-8-2011, I’m sorry, 20-11 it says suspect is possibly Marquis Robinson. I would say the possibly language is much different than any of the testimony we’ve heard from everyone saying there was immediate identification of one of these two subjects so I would say that would be exculpatory and/or used for impeachment.” (R. p. 608, lines 14-20). Counsel for Appellant agreed with the arguments made by counsel for the co-defendant. (R. p. 610, lines 20-21).

The judge denied the motion for a mistrial stating, “Well, whether or not this has exculpatory material on it is awful difficult for the court to determine, but arguably it does. Arguably it should have been provided, however, I find that there is no prejudice to the defendants. Basically there is really no real differences. This CAD report does talk about talking to each other and they’ve admitted that there was some conversation. This does not say what that conversation was and this is not – this is all hearsay anyway. The whole report’s hearsay.” (R. p. 610, line 22 – p. 611, lines 1-6). The judge found that the information from the CAD report that one of the suspects had a stab wound was not exculpatory. (R. p. 612, lines 1-4). The judge erred. The judge should have granted the mistrial based on the Brady violation.

In Brady v. Maryland, 373 U.S. 83 (1963), the United States Supreme Court held that prosecutors must disclose any evidence in the prosecutor’s possession that may be favorable to the accused and material to guilt or punishment. See also Kyles v. Whitley, 514 U.S. 419

(1995); Porter v. State, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006). In State v. Anderson, 407 S.C. 278, 286-287, 754 S.E.2d 905, 909 (Ct.App.2014) the Court wrote:

The Brady disclosure rule requires the prosecution to 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). Favorable evidence is either favorable exculpatory evidence or favorable impeachment evidence. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). Materiality of evidence is based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. Hyman, 397 S.C. at 45, 723 S.E.2d at 380. A reasonable probability is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. Id. at 45-46, 723 S.E.2d at 380. Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused. United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). Thus, an individual asserting a Brady violation must demonstrate the evidence was (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or was impeaching. Kyles v. Whitley, 514 U.S. 419, 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

The Brady rule extends to evidence that is not in the actual possession of the prosecution but known by others acting on the government's behalf including the police. Kyles v. Whitley, 514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

In State v. Moses, 390 S.C. 502, 516, 702 S.E.2d 395, 402 - 403 (Ct.App.2010) the South Carolina Court of Appeals, citing Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006) wrote:

The prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor's private deliberations, as the chosen forum for ascertaining the truth about criminal accusations. Id. (internal quotation marks and citation omitted). As such, it is imperative for prosecutors to abide by this rule as "[o]ur judicial system relies upon the integrity of the participants." Id. Whether the prosecutor's failure to reveal evidence pursuant to Brady is due to negligence or an intentional act is irrelevant because a court may find a Brady violation regardless of the good or bad faith of the

prosecutor. Gibson v. State, 334 S.C. 515, 528, 514 S.E.2d 320, 327 (1999). Because Brady is founded upon a sense of fairness and justice, the focus in a Brady analysis should not be on the misconduct of the prosecutor, but rather on the fairness of the procedure. Id. As noted in Brady, “[t]he principle ... is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair[.]” Id. (quoting Brady, 373 U.S. at 87, 83 S.Ct. 1194). “If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor.” Id. (quoting United States v. Agurs, 427 U.S. 97, 110, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976)).

Appellant established that the State’s failure to disclose the CAD report constituted a Brady violation requiring the granting of a mistrial. The CAD report contains favorable impeachment evidence. The report contains conflicting information about the number of suspects and that one of the suspects possibly had a stab wound. The report indicates that seven thousand (\$7,000.00) dollars was taken. At trial Jordan testified that the robbers took ten thousand (\$10,000.00) dollars. (R. pp. 265-270). The report indicates that one of the suspects was possibly Appellant. Importantly the report contains information that the subjects initially would not talk to police because they were talking with one another. At trial Jordan denied talking with Crane after the incident. (R. p. 284, line 17 – p. 285, lines 1-2). At trial Crane denied talking with Jordan after the incident. (R. p. 424, lines 4-9). The report was in the possession of the Rock Hill Police Department. The report was suppressed by the State. The report was material as impeaching. The State’s suppression of the CAD report undermines confidence in the outcome of this trial. The judge erred in refusing to declare a mistrial.

CONCLUSION

Based on the above argument the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of December, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUIS JEARIES S. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2013-001618

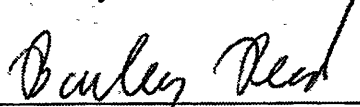
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of December, 2014.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of December, 2014.


(L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021

1. The first of the two main parts of the report is a description of the work done during the year.

2. The second part of the report is a summary of the results of the work done during the year.

3. The third part of the report is a list of the names of the people who have worked on the project.

4. The fourth part of the report is a list of the names of the people who have helped with the project.

5. The fifth part of the report is a list of the names of the people who have helped with the project.

6. The sixth part of the report is a list of the names of the people who have helped with the project.

7. The seventh part of the report is a list of the names of the people who have helped with the project.

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12. The twelfth part of the report is a list of the names of the people who have helped with the project.

13. The thirteenth part of the report is a list of the names of the people who have helped with the project.

14. The fourteenth part of the report is a list of the names of the people who have helped with the project.

15. The fifteenth part of the report is a list of the names of the people who have helped with the project.

16. The sixteenth part of the report is a list of the names of the people who have helped with the project.

17. The seventeenth part of the report is a list of the names of the people who have helped with the project.

18. The eighteenth part of the report is a list of the names of the people who have helped with the project.

19. The nineteenth part of the report is a list of the names of the people who have helped with the project.

20. The twentieth part of the report is a list of the names of the people who have helped with the project.

21. The twenty-first part of the report is a list of the names of the people who have helped with the project.

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly denied Appellant's request for a mistrial where the evidence does not satisfy the requirements of Brady v. Maryland, 373 U.S. 83 (1963), because any nondisclosure did not violate Appellant's due process rights, and where Appellant was not prejudiced under the facts of this case because he received the evidence during trial?

STATEMENT OF THE CASE

Marquis Jearies Santoni Robinson (Appellant) was indicted at the September 15, 2011 term of the grand jury of York County for armed robbery (2011-GS-46-2905), attempted murder (2011-GS-46-2906), criminal conspiracy (2011-GS-46-2907), kidnapping (2011-GS-46-2908), and possession of a firearm during the commission of a violent crime (2011-GS-46-2909). He was represented by Twana N. Burris, Esquire, of the York County Bar. The State was represented by Assistant Solicitor Misti Horton-Shelton of the Sixteenth Circuit Solicitor's Office. (R.p.1). On July 22-25, 2013, Appellant proceeded to trial by jury before the Honorable John C. Hayes, III, pursuant to which he was found guilty of armed robbery, kidnapping, assault and battery in the second degree as a lesser included offense of attempted murder, criminal conspiracy, and possession of a firearm during the commission of a violent crime. He was sentenced to thirty (30) years' imprisonment for kidnapping, thirty (30) years' concurrent imprisonment for armed robbery, five (5) years' concurrent imprisonment for criminal conspiracy, five (5) years' concurrent imprisonment for possession of a weapon during the commission of a violent crime, and three (3) years' concurrent imprisonment for second degree assault and battery, for an aggregate sentence of thirty (30) years' imprisonment. (R.p.783, line 13-p.784, line 21; p.795, lines 12-23). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

On Wednesday evening, June 8, 2011, Earnest Neal Jordan (Jordan) and Jared Crane (Crane) were assaulted, kidnapped, and robbed at gunpoint by Appellant and his co-defendant, Dantonyo Heath (Heath). At trial, Jordan was called as the first witness for the State. He testified that on June 8, 2011, he and Crane were working late at Jordan's business, Five Star Customs, on Cherry Road in Rock Hill. Crane was about to paint a car, and Jordan was doing administrative work in his office. Crane's wife Amanda was also at the shop but left to get Crane something to eat shortly before the robbery. At approximately 10:00 p.m., while Jordan was in the bathroom, he heard the bay door to the garage slam open. As he came out to investigate, a man with his shirt over his face pointed a gun at Jordan and ordered him back into the bathroom. Jordan identified the man with the gun as Appellant. He testified he had known Appellant for four or five years because Appellant was at the shop almost every other day and sometimes helped work on the cars. (R.p.200, line 9-p.202, line 21; p.207, lines 8-19).

Jordan saw a second intruder duck down behind a Jeep that was in the garage. As the first intruder was pulling him towards the bathroom, Jordan tried to grab the gun and began "tussling" with the man. During the struggle, the gun discharged and Jordan began bleeding from the face, leading him believe he had been shot and might soon be killed. The struggle continued in the bathroom where the intruder started choking Jordan and called for assistance from "Yodi." Before the second intruder could respond, Jordan told the first intruder that he had money in his truck. As Jordan was led out of the bathroom at gunpoint, he saw Crane get "cold cocked" by the second intruder, who surprised Crane by jumping up from behind the vehicle as Crane came to see what was happening with Jordan. The second intruder kept beating Crane and eventually took Crane to the

bathroom and tied him up with speaker wire. Jordan identified the second intruder as Heath. He testified he had seen Heath three or four times before the incident and knew him by the nickname "Yodi." After beating and tying Crane up in the bathroom, Appellant and Heath started walking Jordan outside to his truck to retrieve the money. When they got outside, they saw Amanda in her car. Heath approached the car to ask for Amanda's cell phone while Appellant had Jordan get the cash from his truck. Security cameras from the shop recorded the incident from several angles, and those video recordings were introduced into evidence. (R.p.202, line 22-p.226, line 16; State's Exhibits 7, 8, & 9).

After the assault and battery, kidnapping and robbery, Appellant and Heath got in a nearby vehicle and fled while Jordan went back inside and called 9-1-1. Jordan told the police who were dispatched to the scene that Appellant and "Yodi" committed the crimes. Jordan later identified Appellant and Heath in photo line-ups prepared by the police, and subsequently made in-court identifications of both assailants. (R.p.226, line 17-p.238, line 9).

Next, the State called Investigator Tim Buchanan of the York County Sheriff's Department to describe how he processed the crime scene to gather evidence, and collected buccal swabs from Jordan, Crane, and Heath for possible DNA testing. (R.p.335, line 2-p.352, line 19; p.377, line 24-p.383, line 2). Amanda Crane then took the stand. She witnessed the two suspects leading Jordan out of the building when one approached to ask for her cell phone. She went inside to retrieve the phone and discovered her husband, Crane, bleeding from the head as he came out of the bathroom.

Amanda made an in-court identification of Heath as the person who approached her in the parking lot, saying she was sure it was him. (R.p.385, line 23-p.395, line 3).

Next, Jared Crane took the stand and described the crimes from his perspective. He described hearing the rolling garage door come up and seeing Appellant run by with his shirt pulled-up over part of his face, but assumed it was a joke since Appellant and Jordan were friends. Crane identified Appellant in a photo line-up and made an in-court identification. When Crane heard a pop that sounded like a firecracker, he went to see what was going on and was suddenly hit in the back of the head so hard his "bells was ringing." Crane tried to fight back while he was being beaten and choked by the second intruder, but eventually gave up when the man threatened to harm Amanda when she returned. Crane was then taken to the bathroom and tied up with speaker wire. Crane was not able to identify the second intruder. (R.p.408, line 15-p.423, line 12).

The State then called two chain-of-custody witnesses before putting forensic DNA analyst Lilly Gallman of SLED on the stand. She was admitted as an expert in the field of forensic DNA analysis and testified she discovered a mix of DNA samples on a white t-shirt taken from the scene. She determined Crane was a match as the major contributor with a 1 in 11 quadrillion probability of having provided the sample, while Heath could not be excluded as the minor contributor, with a 1 in 111 probability of having been the minor contributor. (R.p.478, line 13-p.496, line 5). Next, Sergeant Tashia Smith of the Rock Hill Police Department testified about her role in responding to the crime scene and helping produce and the photo line-ups. (R.p.527, line 23-p.534, line 16).

Finally, the State called the lead investigator, Detective Cedric Stokes of the Rock Hill Police Department, to the stand. He described responding to the crime scene, talking to the victims, producing and showing the photo line-ups and other aspects of the investigation. (R.p.556, line 22-p.577, line 23). During cross-examination, Appellant asked what time Detective Stokes was dispatched to the crime scene. In attempting to respond, Detective Stokes began reading from his copy of a "CAD [computer aided dispatch] report" that was in his file. At that point, Appellant indicated this report had not been turned over in discovery. The jury was excused and Appellant and his co-defendant moved for a mistrial. The solicitor advised she had not seen Detective Stokes' notes or the CAD report. The court then recessed for approximately ten minutes to allow the parties to review the CAD report. (R.p.600, line 20-p.604, line 22). Upon completing their review, both Appellant and his co-defendant moved for a mistrial alleging the failure to disclose the CAD report violated Brady v. Maryland. The court offered them the opportunity to explain what information they believed was material in the report. Appellant argued the information in the CAD report about "three black males last seen headed towards 77," and the information about the victims "talking to each other" would have been valuable for impeachment. (R.p.605, line 20-p.607, line 20). Appellant's co-defendant argued the CAD report could possibly sustain a self-defense claim or it could "lead to something that neither of these individuals have a stab wound" because the report indicates "F14 advised one of the suspects possibly has a stab wound." (R. 607, line 22-p.608, line 13; p.801, page 1). He further noted the CAD report states: "Suspect is possibly Marquise Robinson" and asserts he could use this language to impeach the certainty of the identifications made by the victims. (R.p.608, line 14-p.609, line 2).

The trial court found: "Well, whether or not this has exculpatory material on it is awful difficult for the court to determine, but arguably it does. Arguably it should have been provided, however, I find that there is no prejudice to the defendants. Basically there is really no real differences." (R.p.610, line 22-p.611, line 2). The court then analyzed the various arguments on how Appellant and his co-defendant believed the CAD report was material and found that nothing in the report provided them with exculpatory evidence. He noted much of the report is hearsay which would make it inadmissible; further, he indicated the evidence did not contradict or affect the evidence already presented at trial. As a result, the trial judge denied the motion for a mistrial. (R.p.611, line 2-p.612, line 4). The CAD report was marked as Court's exhibit number nine and received into evidence. (R.p.615, lines 8-14).

Appellant and his co-defendant proceeded to use the CAD report during their cross-examination of Detective Stokes. Appellant questioned him about: (1) the reference to "three black males," (2) the comment that the victims were talking to each other instead of the police, and (3) the comment that the suspect was only "possibly" Appellant. Heath then questioned Detective Stokes about the reference to one of the suspects possibly having a stab wound. (R.p.616, line 1-p.621, line 12; p.646, lines 4-12; p.648, line 11-p.649, line 8; p.657, lines 3-25). Neither Appellant nor Heath requested a continuance or any additional time to consider the report or how best to utilize it during trial. They also did not ask to recall any witnesses based on the newly discovered CAD report, in an effort to further explore any alleged inconsistencies.

After the State rested, Appellant renewed his motion for a mistrial and the trial court denied that motion. (R.p.665, lines 1-22). During closing arguments, Appellant

and Heath both referenced the CAD report and the alleged inconsistencies with the victims' trial testimony in trying to convince the jury not to convict. (R.p.700, line 18-p.701, line 4; p.702, lines 2-16; p.707, lines 9-24; p.734, line 11-p.735, line 8). After the verdict Appellant moved for a judgment notwithstanding the verdict, and that motion was denied. (R.p.790, lines 11-14).

ARGUMENT

I.

The trial court properly denied Appellant's request for a mistrial where the evidence does not satisfy the requirements of Brady v. Maryland, 373 U.S. 83 (1963), because any nondisclosure did not violate Appellant's due process rights, and where Appellant was not prejudiced under the facts of this case because he received the evidence during trial.

Appellant argues the trial court erred in refusing to grant his motion for a mistrial which was based on an allegation that the solicitor's failure to disclose evidence favorable to Appellant and material to his guilt violated his state and federal constitutional rights to due process. Specifically, Appellant claims Brady required that the solicitor provide him with the CAD report that was in the possession of law enforcement, and that the failure to do so requires reversal of his conviction and remand for a new trial. The State disagrees and submits Appellant's argument is without merit for several reasons. The CAD report was turned over during trial, did not contain any evidence material to a determination of Appellant's guilt, and Appellant was able to use it during cross-examination of the lead investigator. Further, Appellant never requested a continuance to pursue any information provided by the CAD report, nor did he request to recall any witness to attempt to use the information to impeach; therefore, he cannot demonstrate how he was prejudiced even if the evidence met the requirements of Brady.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). In Brady, the United States Supreme Court held "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady, 373

U.S. at 87. 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); Porter v. State, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006). Favorable evidence is either favorable exculpatory evidence or favorable impeachment evidence. United States v. Bagley, 473 U.S. 667 (1985); Hyman at 45, 723 S.E.2d at 380; Porter at 384, 629 S.E.2d at 356. Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. Hyman at 45, 723 S.E.2d at 380; Porter at 384, 629 S.E.2d at 356. A reasonable probability is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. Hyman at 45-46, 723 S.E.2d at 380; Porter at 384, 629 S.E.2d at 356. Furthermore, the prosecution has the duty to disclose such evidence even in the absence of a request by the accused. United States v. Agurs, 427 U.S. 97 (1976); Hyman at 46, 723 S.E.2d at 380; Porter at 384, 629 S.E.2ds at 356. Thus, "A Brady claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Sheppard v. State, 357 S.C. 646, 659, 594 S.E.2d 462, 470 (2004); see also Kyles v. Whitley, 514 U.S. 419 (1995); Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006).

"In determining the materiality of nondisclosed evidence, this Court will consider it in the context of the entire record." State v. Gathers, 295 S.C. 476, 481, 369 S.E.2d 140, 143 (1988). "[E]vidence is material only if there is a reasonable probability that,

had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." United States v. Bagley, 473 U.S. 667, 682 (1985); State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998). This Court in Kennerly further explained: "In a Brady analysis, information is not deemed 'material' if the defense discovers the information in time to adequately use it at trial." Kennerly, 331 S.C. at 453, 503 S.E.2d at 220; see also, State v. Moses, 390 S.C. 502, 517, 702 S.E.2d 395, 403 (Ct. App. 2010) ("Evidence is not considered 'material' if the defense discovers the information in time to adequately use it at trial."). Further, "[t]he lack of demand . . . [of a continuance] is often taken as strong evidence that the discovery violation has not been prejudicial." 5 Wayne R. LaFave, et. al, Criminal Procedure § 20.6(b) (3d. ed. 2010); see also, Gorham v. Wainwright, 588 F.2d 178 (5th Cir.1979) (denying the defendant's mistrial motion and holding the defendant was not prejudiced by the prosecution's failure to turn over certain reports prior to trial because, although defense counsel requested and received a ten minute recess to review the new evidence, he did not request a continuance); State v. Davis, 309 S.C. 56, 419 S.E.2d 820 (Ct. App. 1992) (the trial court's failure to suppress evidence of a defendant's oral statements because the prosecution did not disclose the statements pursuant to Rule 5, SCRCrimP, despite a timely request for them, was upheld where the defendant was permitted to view and copy the prosecution's file and did not request a continuance or recess to review the prosecution's file).

In the instant case, Appellant contends the prosecution withheld favorable and material evidence which would have allowed him to impeach witness testimony.

However, a review of the evidence presented at trial, the testimony of the witnesses, Appellant's claimed harm from not having the CAD report, and the limited information provided by the disclosed CAD report indicate it was not material to Appellant's case, and that Appellant could have taken, and did take, steps to use the information after receiving it during trial. Appellant failed to make a showing as to how the CAD report was material to his guilt or innocence. Since the State has neither a burden to show otherwise nor an affirmative duty to respond to a defendant's unsubstantiated allegation of materiality, his argument must fail.

The State submits the trial court correctly determined the withheld evidence would not be material and Appellant was not prejudiced by its late discovery. First, Appellant received the CAD report during trial, and both he and Heath used it during their cross-examination of Detective Stokes. Appellant questioned him about: (1) the reference to "three black males," (2) the comment that the victims were talking to each other instead of the police, and (3) the comment that the suspect was only "possibly" Appellant. Heath then questioned Detective Stokes about the suggestion that one of the suspects possibly had a stab wound. (R.p.616, line 1-p.624, line 12; p.646, lines 4-12; p.648, line 11-p.649, line 8; p.657, lines 3-25). Further, Appellant never requests a continuance or any additional time to consider the report or how best to utilize it during trial. Finally, Appellant did not ask to recall any other witnesses based on the newly discovered CAD report, an action which would have allowed any alleged inconsistencies to be explored. As a result, Appellant cannot demonstrate any prejudice from the late discovery of the CAD report, and pursuant to Kennerly and Moses, the evidence could not be considered material.

Additionally, the evidence is clearly not material in light of the other evidence presented at trial. First, Appellant contends the CAD report contains contradictory information from the trial testimony because it references "3 BLK males last seen headed towards [Interstate] 77" rather than the two described at trial. He complains that this information could have been used to impeach Jordan and Crane. However, Appellant and Heath were well aware of this discrepancy before the CAD report even became an issue because Jordan admitted on direct examination he told the police who first arrived at the scene he believed there might have been a third suspect driving the get-away car. Jordan testified he never actually saw a third person in the shop, never actually saw someone driving the car, and never gave any kind of description of a third suspect. (R.p.228, lines 2-20). Appellant and Heath questioned Jordan and Crane about this on cross-examination, but their testimony clearly explained the origin of the confusion. Any attempt to use the CAD report in an attempt to impeach on this discrepancy would have been cumulative. Indeed, the time stamps on the CAD report show that the entry suggesting there could be three conspirators in the get-away car was made less two minutes after the officers arrived at the scene, corroborating Jordan's testimony about the comment. (R.p.801, p.1). Under cross-examination, Jordan again admitted he told the initial responding officers there were three suspects, but explained this was because there was a car parked nearby and he thought there might have been a third person in that car. (R.p.245, line 11-p.246, line 5). Crane testified he never told anyone there were three black males involved. (R.p.441, lines 8-16). He said he told the police who responded to the scene that there were two suspects. (R.p.455, lines 21-23). Thus, the CAD report

would not have offered anything material to Appellant's defense because, rather than contradicting the testimony of Jordan and Crane, it supports Jordan's explanation.

Next, Appellant contends the CAD report indicates the victims were talking to each other and would not talk to police. First, the CAD report merely indicates "SUBJ will not talk to EOC or police they are talking to each other." (R.p.801, p.1). "SUBJ" could refer to Crane and Jordan, or it could refer to Crane and his wife, Amanda Crane, who was also on scene when the police arrived. Jordan testified that after the police were called, Crane came over and asked if he was alright. He told Crane, "Man if I die tell my kids I love him." Crane then told him: "Man you ain't going to die." When specifically asked if they were talking about what just happened and the case, he denied that was the conversation he had with Crane. He indicated he just wanted to get to the hospital. He also testified Crane kept saying: "I can't believe Marquis did that" indicating Appellant robbed them. (R.p.283, line 21-p.285, line 8). Crane was also asked if he was having back and forth conversations with Jordan about what just happened. Crane responded: "No. Actually I hadn't because [Jordan] was on - - I went back to my wife is where I went. I didn't go back to [Jordan]." Instead he indicated he was with his wife and checking on her. (R.p.424, lines 4-18). Crane insisted the only conversation he had with Jordan during the 9-1-1 call was to ask if Jordan was OK before going to check on Amanda. (R.p.438, line 18-p.439, line 7).

Nothing in the CAD report indicates specifically that Jordan and Crane were talking to each other. It could have been Crane and Amanda that would not talk with police. Further, the CAD report does not describe anything particular being said between the subjects who were talking. Finally, the time stamps on the CAD report demonstrate

that whatever is being described happened during the 9-1-1 call, before the first officer had even arrived on the scene. Also, Appellant and Heath cross-examined both Jordan and Crane about whether they were talking about the case when officers arrived, and whether they were trying to get their story straight. As a result, the CAD report would not have offered anything material to their defense and does not contradict the actual testimony of Jordan and Crane. It contains no specific information about what was occurring, and nothing that was inconsistent with their trial testimony.

Appellant then contends the CAD report may contain evidence demonstrating the attack on Jordan and Crane was in self-defense. He asserts the fact the CAD report states: "F14 advised one of the suspects possibly has a stab wound" indicates his actions in shooting, choking, and robbing Jordan may have been in self-defense. (R.p.801, p.1). This claim flies in the face of the only evidence presented at trial and was properly rejected by the court after discussing the evidence presented.

The victims' testimony indicated Appellant and Heath were clearly at fault in bringing on this difficulty. Appellant went past Crane with a shirt over his face and confronted Jordan. Jordan found himself with a gun pointed in his face and being ordered into the bathroom. Jordan testified he went for the gun and it went off, resulting in Jordan being shot. At that time, Appellant placed Jordan in a choke hold from behind. Jordan explained that during the struggle, the bathroom mirror broke. He tried unsuccessfully to get a piece of the broken glass to defend himself, but Appellant got to it first. Jordan did not remember Appellant bleeding at all during, or after, the struggle. (R.p.202, line 6-p.205, line 1; p.291, line 18-p.292, line 15).

Crane testified he heard the shot, and tried to see what was going on, but at that point he was hit in the back of the head so hard "bells were ringing" and he lost sight in one eye. He testified he felt he was "in a fight for my life." Crane stated his assailant "[a]ctually picked me up off the ground by my neck choking me." (R.p.410, line 2-p.411, line 25). Jordan indicated he got out of the bathroom at one point and saw Heath beating Crane. (R.p.204, lines 14-20). Crane ended up tied up with speaker wire in the bathroom. (R.p.206, lines 16-17; p.412, line 12-p.413, line 1). As a result of the beating, Crane had to have surgery to fix a broken nose, suffered a black eye, lost hearing for about a month, had a "stab hole" in his arm, and other cuts and bruises. (R.p.415, line 13-p.416, line 18).

Crane testified he had a pocket knife and would have used it to cut his assailant given the chance; however, he did not cut anyone with the knife. (R.p.415, lines 4-12). On cross-examination, Crane's use of the knife was further explored. He was asked: "And at some point during the struggle with the individual, you pulled that knife out but you ultimately dropped the knife; is that right?" He responded: "I did pull the knife out and I was told that if I did not let it go that my wife would be harmed, so yes I did." He then testified he threw the knife and it just remained on the floor of the shop. (R.p.448, line 19-p.449, line 11). Additionally, after receiving the CAD report, counsel for Heath asked Detective Stokes: "And there's no indication from anything you ever seen or done in this case that my client Dantonyo Heath ever had a stab wound; is that right?" Detective Stokes responded: "No, Sir." (R.p.648, line 11-p.649, line 8).

Based on the facts testified to by the victims, which are also supported by video surveillance, there is little basis to argue self-defense. (State's Exhibits 7, 8, & 9). If a

knife or a piece of glass was used on one of the assailants it was used in self-defense by Crane or Jordan. Counsel for Appellant clearly knew of the existence of the broken glass in the bathroom and Counsel for Heath clearly knew of the existence of the knife prior to receiving the CAD report because they questioned the victims about the glass and the knife during cross-examination. No evidence suggests any action by Appellant or his co-defendant was taken in self-defense and nothing in the CAD report changed the facts the parties already explored in their cross-examination of the victims. After receiving the CAD report, neither Appellant nor Heath addressed the possibility of self-defense; instead, Heath appeared to try and use the knife and possible stabbing to allege a mistake in identity. During closing arguments Appellant and Heath each argued this was a case about misidentification, and did not contend it was self-defense. (R.p.709, lines 8-9; p.716, lines 4-14; p.727, lines 5-16). In addressing the CAD report's mention of a possible stab wound and its exculpatory effect, the trial judge specifically found it was not exculpatory, noting:

It may have given some more ammunition for some cross examination as to something, but it's hard for me particularly having viewed the videos where [Heath], who is the one who addressed that, throws . . . the victim around like a rag doll. I don't see where that if one of the suspects ended up with a stab wound is exculpatory to any degree whatsoever, so I deny the motions to mistrial on behalf of [Appellant and Heath].

(R.p.611, line 21-p.612, line 4). The possible stab wound mentioned in the CAD report was simply not material to Appellant's guilt or punishment.

Finally, Appellant maintains the CAD report is written in a much less certain way than the testimony presented at trial in regards to his identity. Specifically, the CAD report states: "Suspect is possibly Marquise Robinson." (R.p.801, p.1). The

impeachment value for Appellant is minimal at best, and certainly insufficient to be classified as material and warranting a mistrial. Both Jordan and Crane identified Appellant, by name, as the person who robbed them. They both completed photo line-ups identifying Appellant. (R.p. 804 & 806). It is understandable the CAD report would indicate the suspect was "possibly" Appellant as opposed to labeling the suspect as "definitely" Appellant, or anything more certain. Had the officers listed him as the "suspect" with more certain language, defense counsel's accusation at trial would be the officers focused on him to the exclusion of other possibilities. Further, the CAD report was being created in real time as the officers were radioing information from the field, and does not directly reflect exactly what and how something was said. As a result, there is certainly no prejudice from the exclusion of this information, and the information was not material because it would not have assisted either defendant at trial.

Based on the foregoing and the lack of materiality of the CAD report, the trial court's decision denying Appellant's request for a mistrial is clearly supported by the evidence. Appellant failed to demonstrate the State committed a Brady violation and his convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
December 29, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2013-001618

THE STATE,.....RESPONDENT

v.

MARQUIS JEARIES SANTONI ROBINSON,.....APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule
211(b), SCACR.

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

KEVIN BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY:

Jennifer Ellis Roberts for

J. Benjamin Aplin
S.C. Bar No. 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
December 29, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2013-001618

THE STATE, ...RESPONDENT

v.

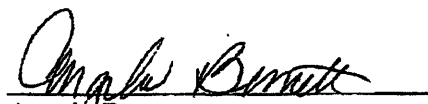
MARQUIS JEARIES SANTONI ROBINSON, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated December 29, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Kathrine H. Hudgins, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served.
This 29th, day of December, 2014.


Angela Bennett
Administrative Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-3727

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUIS JEARIES S. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2013-001618

INITIAL REPLY BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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ARGUMENT IN REPLY

The trial judge erred in refusing to grant the motion for a mistrial based on the prosecutor's failure to disclose evidence favorable to Appellant and material to his guilt in violation of Appellant's state and federal constitutional rights to due process.

The State failed to disclose, prior to trial, a CAD report prepared by law enforcement in connection with the case. Appellant only learned of the report during cross examination of, the State's ninth and final witness, Detective Cedric Stokes with the Rock Hill Police Department. (Tr. p. 633, lines 1-12). Counsel for both Appellant and the co-defendant moved for a mistrial. (Tr. p. 633, line 20 – p. 634, 635, lines 1-10). The State argued that the investigator's notes and the CAD report were protected as work product. (Tr. p. 635, lines 17-18). The judge disagreed. (Tr. p. 635, lines 19-20). The CAD report was then made available to both defense counsel and the judge. (Tr. p. 636, line 15 – p. 637, lines 1-19).

After reviewing the CAD report counsel for both Appellant and the co-defendant each moved for a mistrial. (Tr. pp. 637-642). The judge denied the motion for a mistrial stating, "Well, whether or not this has exculpatory material on it is awful difficult for the court to determine, but arguably it does. Arguably it should have been provided, however, I find that there is no prejudice to the defendants. Basically there is really no real differences. This CAD report does talk about talking to each other and they've admitted that there was some conversation. This does not say what that conversation was and this is not – this is all hearsay anyway. The whole report's hearsay." (Tr. p. 642, line 22 – p. 643, lines 1-6). The judge found that the information from the CAD report that one of the suspects had a stab wound was not exculpatory. (Tr. p. 644, lines 1-4).

The State now argues that the trial court correctly determined that the withheld CAD report was not material and Appellant was not prejudiced by its late discovery. (Initial Brief of Respondent p. 12). The trial judge made no determination as to materiality. Instead, the judge ruled that the report was not exculpatory. The Brady disclosure rule requires the prosecution to 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). Favorable evidence is either favorable exculpatory evidence or favorable impeachment evidence. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). Materiality of evidence is based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. Hyman, 397 S.C. at 45, 723 S.E.2d at 380. A reasonable probability is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial. Id. at 45–46, 723 S.E.2d at 380.

The withheld CAD report contained favorable impeachment evidence that Appellant was unable to use because the report was not disclosed until cross examination of the State's final witness. The report was material. In State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998) aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999) the South Carolina Court of Appeals wrote:

In a Brady analysis, information is not deemed “material” if the defense discovers the information in time to adequately use it at trial. In Kennerly's case, we conclude there was no Brady violation because Kennerly discovered the information at issue and used it at trial by calling Tina Benjamin as a witness, despite the State's failure to disclose the information. Therefore, the exculpatory statements made by Tina Benjamin to the solicitor's investigator are not “material” for purposes of

Brady. Since the information was used by Kennerly at trial, there is nothing to suggest that the result of her trial would have been different had the State disclosed the information to her.

In contrast, the withheld CAD report in the present case was not discovered in time to adequately use it at trial. Requesting a continuance, as the State suggests Appellant should have done (Brief of Respondent p. 12) would not have solved the problem as the State had already called eight of the nine witnesses to testify at trial.

In Riddle v. Ozmint, 369 S.C. 39, 44-45, 631 S.E.2d 70, 73 (2006), the South Carolina Supreme Court wrote:

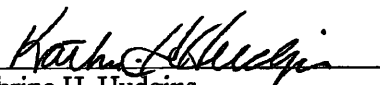
Evidence is material under *Brady* if there is a “reasonable probability” that the result of the proceeding would have been different had the information been disclosed. *E.g.*, *State v. Proctor*, 358 S.C. 424, 595 S.E.2d 480 (2004). The question is not whether petitioner would more likely have been acquitted had this evidence been disclosed, but whether, without this impeachment evidence, he received a fair trial “resulting in a verdict worthy of confidence.” *Kyles v. Whitley*, *supra*, at 434, 115 S.Ct. 1555.

The withheld CAD report in the present case was both favorable to the accused and material to guilt. The State’s failure to disclose the report constitutes a Brady violation requiring a new trial.

CONCLUSION

Based on the above argument the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

This 5th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

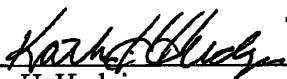
MARQUIS JEARIES S. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2013-001618

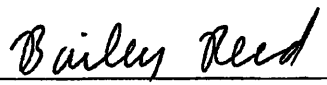
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Reply Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 5th day of November, 2014.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 5th day of November, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.

**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.

Marquis Jearies Santoni Robinson, Appellant.

Appellate Case No. 2013-001618

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2015-UP-486
Submitted September 1, 2015 – Filed October 14, 2015

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General John Benjamin Aplin, both of
Columbia; and Solicitor Kevin Scott Brackett, of York,
for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In

criminal cases, the appellate court sits to review errors of law only."); *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) ("[A *Brady*¹] claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." (footnote omitted)); *State v. Taylor*, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998) ("Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (alteration and internal quotation marks omitted)); *id.* ("A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." (internal quotation marks omitted)).

AFFIRMED.²

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

² We decide this case without oral argument pursuant to Rule 215, SCACR.



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
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 04, 2015

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Marquis Jearies Santoni Robinson
Lower Court Case No. 2011GS4602905, 2011GS4602906,
2011GS4602907, 2011GS4602908, 2011GS4602909
Appellate Case No. 2013-001618

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.

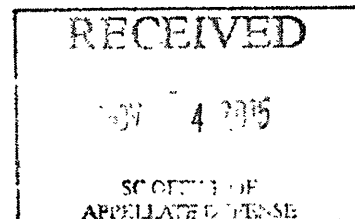
Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Kathrine Haggard Hudgins, Esquire
John Benjamin Aplin, Esquire
Kevin Scott Brackett, Esquire



CERTIFIED TRUE COPY
 2016 APR 13 PM 12:24

2016 CP46-1144

STATE OF SOUTH CAROLINA

COUNTY OF York

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

Marquis J.S. Robinson, #266341
 Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst.; Dorchester County
2. Name and location of Court which imposed sentence York County Ct. S.; York, SC
3. Name(s) of co-defendant(s) (if any) Darfonya A. Heath
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2011-GS-46-02898 thru 02909
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) July 25, 2013
 (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 9/01/15
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. See attached "Affirm" decision
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 4th, 5th, 6th, 8th, 13th, 14th Amendment and violation of due process
 (b) Violation and fraud upon the court and subject matter Jurisdiction
 (c) Ineffective of assisted Counsel and violation of Brady law

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Memorandum will follow with brief
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? ✓
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. See answer to #9
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. See above
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. See above
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. See above

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. See above

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NA

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. NA

ii. NA

iii. NA

(b) the proceedings in which each ground was raised:

i. NA

ii. NA

iii. NA

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) NA

(b) NA

(c) NA

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Tung N. Burris; 204 Johnson St., Ste. B; Rock Hill, SC 29730
 - ii. Kathrine H. Hudgins; P.O. Box 11589; Columbia, SC 29211-1589
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial & sentence
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

New Trial &/or vacate my conviction with ; order expunging record

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of York)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Marquis Robinson
Marquis J.S. Robinson #266342

SWORN to and subscribed before me this 9th
day of April, 2016.

Ludwien Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Margie Robinson # 266342
Applicant

SWORN or affirmed to and subscribed before me this
8th day of April, 2016.

Ludheen Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	2016-CP-46-1144
Marquis Robinson,	)	
S.C.D.C. No. 266341,	)	
	)	
Applicant,	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed April 13, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2011 term of the York County Grand Jury for armed robbery (2011-GS-46-2905); attempted murder (2011-GS-46-2906); criminal conspiracy (2011-GS-46-2907); kidnapping (2011-GS-46-2908); and possession of a firearm during the commission of a violent crime (2011-GS-46-2909). Applicant was represented by Twana Burris, Esquire. On July 25, 2013, Applicant underwent a jury trial before the Honorable John C. Hayes, III. Applicant was found guilty of armed robbery as indicted, second degree assault and battery as a lesser included offense of attempted murder, criminal conspiracy as indicted, kidnapping as indicted, as possession of a firearm during the commission of a violent crime as indicted. Applicant was sentenced to thirty years imprisonment for armed robbery, three years for second degree assault and battery, five years for criminal conspiracy, thirty years for kidnapping, and five years for

possession of a firearm during the commission of a violent crime. All sentences were to run concurrently.

Applicant filed a notice of appeal and an appeal was perfected by Appellate Defender Katherine Hudgins. In an unpublished opinion, the South Carolina Supreme Court affirmed Applicant's convictions. State v. Jeffrey McCoy, 2015-UP-136 (filed March 11, 2015). The Remittitur was sent April 10, 2015.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "4th, 5th, 6th, 8th, 13th, 14th Amendment and violation of due process."
2. "Violation and fraud upon the court and subject matter jurisdiction."
3. "Ineffective Assistance of Counsel and violation of Brady law."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations

in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an

evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

[Signature Block on Following Page]

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

Respectfully submitted,

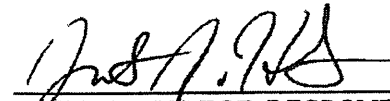
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

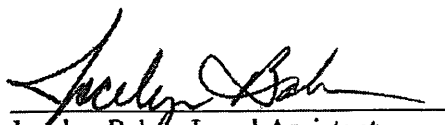
August 5, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2016-CP-46-1144
	)	
MARQUIS J. S. ROBINSON, #266341,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Nathan J. Sheldon, Esquire
The Law Office of Nathan J. Sheldon, LLC
PO Box 36682
Rock Hill, SC 29732-0510

DATED this 5th day of August, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
FOR THE 16th JUDICIAL CIRCUIT
Case No.: 2016-CP-46-01144

Marquis J. S. Robinson, #266341,)
Applicant,)
v.)
State of South Carolina.)

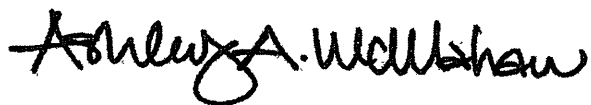
**AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on April 13, 2016, to include the following additional allegation:

1. Ineffective Assistance of Counsel as to Twana N. Burris-Alcide, Esquire:
 - a. Failed to call Kayla Higgs as an alibi witness.
 - b. Failed to properly cross-examine Ernest Jordan regarding statements made. Had Mr. Jordan been properly cross examined he would have lost all credibility and the Applicant would have been exonerated at trial.
2. Trial Judge abused discretion when he punished the Applicant for exercising his right to trial by giving Applicant an excessive sentence. *See Castro v. State*, 417 S.C. 77, 789 S.E.2d 44 (2016).
3. Juror Tamara N. Gary knew trial counsel and failed to disclose that information in voir dire. *See State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001), “[w]here a juror, without justification, fails to disclose a relationship to a party, it may be inferred, nothing to the contrary appearing, that the juror is not impartial.”

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. *See Simpson v. Moore*, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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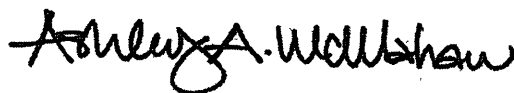
January 15, 2018

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Justin J. Hunter
Assistant Attorney General
jhunter2@scag.gov
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This 15th Day of January, 2018.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-46-1144

MARQUIS JAERIES SANTONI)
ROBINSON)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

JANUARY 29, 2018
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE J. MARK HAYES, II

APPEARANCES:

ASHLEY MCMAHON, ESQUIRE
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
MARQUIS ROBINSON				
By Ms. McMahan	5			
By Mr. Hunter		17		
By Ms. McMahan			18	
KAYLA HIGGS				
By Ms. McMahan	19			
By Mr. Hunter		25		
By Ms. McMahan			25	
TWANA BURRIS				
By Mr. Hunter	26			
By Ms. McMahan		39		

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

(NO EXHIBITS)

1 MR. HUNTER - Your Honor, may it please the Court.
2 The next case is Marquis Robinson vs. The State of South
3 Carolina, 2016-CP-46-1144. Your Honor, he was indicted
4 September, 2011 for armed robbery, attempted murder,
5 criminal conspiracy and kidnapping and possession of a
6 fireman during a violent crime. He was represented by Ms.
7 Twana Burris and on July 25th, 2013 he proceeded to a jury
8 trial before Judge John C. Hayes. He was found guilty as
9 indicted for armed robbery, sentenced to thirty years,
10 guilty as indicted for criminal conspiracy and sentenced to
11 five years, found guilty as indicted for kidnapping and
12 sentenced to thirty years, found guilty as indicted to
13 possession of a firearm during a violent crime, sentenced
14 to five years, and on attempted murder he was found guilty
15 on the lesser included offense of assault and battery
16 second degree and sentenced to three years. He did file a
17 direct appeal and an appeal was perfected by Public
18 Defender Katherine Hudgins. The Court of Appeals dismissed
19 his appeal October 14th, 2015 where Remittitur was sent
20 November 4th, 2015, filed this current action April 13th,
21 2016. He's present today represented by Ms. Ashley
22 McMahan.

23 MS. MCMAHON - Your Honor, if it pleases the
24 Court, we'd call Marquis Robinson to the stand.

1 THE COURT - Mr. Robinson, please come around if
2 you would.

3 MARQUIS ROBINSON, AFTER BEING FIRST DULY SWORN,
4 TESTIFIES AS FOLLOWS -

5 THE COURT - Sir, watch your step. There's a step
6 up there.

7 DIRECT EXAMINATION

8 BY MS. MCMAHAN -

9 Q Mr. Robinson, did you file this PCR application?

10 A Yes, ma'am.

11 Q Okay. So -- I know we have some amended issues and we
12 have your original issues, but let's just go over what your
13 original issues were first. I believe there were some
14 constitutional amendment issues that you raised in the
15 initial application?

16 A Yes, ma'am, it was.

17 Q Will you explain to Judge Hayes what that -- issues
18 behind that are?

19 A Basically, ineffective assistance of counsel with Ms.
20 Twana Burris failing to call my alibi witness and, um,
21 properly cross examining (sic) one of the victims, Ernest
22 Jordan and also not acknowledging the fact to the Courts
23 that, uh, she knowed Tamara Gray (sic) what was, um -- one
24 of the jurors in my -- in my case during trial. She, um --

MARQUIS ROBINSON - DIRECT BY MS. MCMAHAN

6

1 well, before trial she let me know that she knew Ms. Gray
2 (sic) and did not let the Courts know that.

3 Q Okay. So did she tell you she knew Ms. Gray (sic)?

4 A Yes, she did, before Court started.

5 Q And what did she say how she knew Ms. Gray (sic)?

6 A Said they had grew up together and they were close
7 friends.

8 Q Do you recall if the juror stood up beforehand and
9 said -- told the Court that she knew Ms. Burris?

10 A No, she didn't.

11 Q So the juror did not disclose to the Court that she
12 knew Ms. Burris?

13 A No, ma'am.

14 Q And what -- so she just said they grew up together.
15 She didn't give you any other indication how they knew each
16 other?

17 A No, she didn't.

18 Q And the issue about the constitutional violations,
19 what was that?

20 A I'm not sure where -- (witness mumbling) ---

21 Q Well, you brought up the Eighth Amendment, that's
22 cruel and unusual punishment. Can you go a little bit into
23 that?

24 A The fact -- see, I can't -- I didn't bring all my
25 notes -- excuse me -- have to excuse me for that, Your

1 Honor, but they told me I was going on a medical run
2 Thursday, so I didn't bring none of my notes. They
3 wouldn't allow me to go back and get it, so everything that
4 I had written down, I don't have, you know, so if I -- I
5 mean I apologize if I don't understand the question.

6 Q Okay. So the Eighth Amendment is cruel and unusual
7 punishment. That has to do with your sentencing.

8 A Right.

9 Q So what -- what was the issue with your sentencing?

10 A Well, the sentencing -- what the issue was, when we
11 started trial that Monday, I was -- Twana -- Ms. Burris
12 asked me did I want to take a ten year plea and that what
13 came from the solicitor. Now, when I decided to take the
14 ten year plea, at the last minute I -- I guess it was the
15 last minute -- she went back to solicitor -- it was Misti
16 Shelton at the time and, uh, Misti informed Twana that it
17 won't be a ten year plea no more, it was going to be
18 fifteen years. Now, the fifteen year plea that they
19 discussed never came back to me. It never came back to me.
20 I didn't know nothing about it until pre-trial. And pre-
21 trial at -- you know, she brought it up and they went
22 through they (sic) -- they computers and everything trying
23 to find where they was negotiating the plea ten, the
24 fifteen or whatever, but Twana admitted during pre-trial
25 that she -- she didn't bring me back the fifteen year plea

MARQUIS ROBINSON - DIRECT BY MS. MCMAHAN

8

1 because I -- I didn't want to take the ten. She felt like
2 it was useless to come back to me and by that being my
3 counselor, I think it was very ineffective. I obtained her
4 to negotiate or do whatever she had to do with the
5 solicitor, and she took it upon herself not to come with
6 the plea that I probably would've took. Here I am with
7 thirty years because of her mistake.

8 Q So you initially were given a ten year plea. Is that
9 correct?

10 A Right, we talked about it. I refused it at first,
11 because like I said, I'm in here for something I didn't do,
12 but I -- I talked to my family -- upon talking to them I
13 was going to go ahead and just kind of like (sic) the ten
14 years, and I told Ms. Burris that and she said she went
15 back to -- like I didn't find out to -- about the fifteen
16 year plea until we are -- we are at pre-trial.

17 Q Okay. Let's just get the time-line down a little bit
18 better. So, you were -- when were you initially offered
19 the ten years? Was that -- was that Monday morning or was
20 it Friday?

21 A It was prior -- it was that week prior to that -- that
22 Monday morning we gonna start trial.

23 Q So Monday morning you told Ms. Burris you wanted the
24 ten year?

1 A I think Saturday. I think around -- Friday or
2 Saturday, you know, that I had called in and told her that
3 -- after talking to my family I was going to go ahead and
4 take the plea.

5 Q So the Friday or Saturday before Court -- before your
6 trial started ---

7 A Right.

8 Q --- you told Ms. Burris, okay, I'll go ahead and take
9 the ten year plea.

10 A Right.

11 Q Okay. so what did Ms. Burris tell you about that?

12 A She said she was going to go back and let the
13 solicitor know we gonna sign the plea, and uh, I was like -
14 - my intentions when we came in Monday that it wouldn't be
15 no trial, I was gonna sign -- sign the ten year plea.

16 Q Okay. So then when did Ms. Burris come back and tell
17 you that it was no longer ten years?

18 A She didn't.

19 Q She didn't? Okay.

20 A Pre-trial when they -- when they, actually, in camera,
21 when they got to discussing the plea, ten year came out of
22 Ms. Burris' mouth and then Misti said, no I said fifteen,
23 then they went looking through their computer trying to
24 find -- you know, actually, where they had documented as
25 far as the plea bargain.

1 Q So you only found out that there had been a fifteen
2 year plea offer once the solicitor and everybody was just
3 trying to get the record down prior to starting the trial.

4 A Yes, ma'am.

5 Q So Ms. Burris never came back and said, it wasn't ten,
6 it was, actually, fifteen.

7 A Never did.

8 Q Did she ever bring any sentencing sheets or anything
9 to sign?

10 A No, ma'am.

11 Q Did you ever ask her why you weren't signing any
12 sentencing sheets?

13 A No, ma'am.

14 Q So when you came in that Monday, what did she say?
15 We're starting trial, you're not going to plead, or how'd
16 that come about?

17 A Well, I asked her about the ten year plea and what,
18 you know, what was going on, then she -- you know, she
19 stood up and spoke with the, uh, -- you know, please the
20 Court, and that's when they got in the discussion about the
21 plea, and that's when I was hearing about the fifteen year
22 plea that never came back to me.

23 Q I got it. Okay. So you -- had you known about that
24 fifteen year plea, would you have taken it?

1 A I know I would have, because, like I said, speaking
2 with my family, they was telling me to go ahead and take
3 the plea, you don't want to go to trial and face more time,
4 so I would -- I know I would've took it.

5 Q Okay. What that just due to the amount of time that
6 you were facing if you went to trial?

7 A Yeah.

8 Q Okay. And so you had another issue where you were
9 talking about Kayla. What was the issue with Kayla? She's
10 your alibi witness? Is that your assertion?

11 A Yes, ma'am. She was -- well, actually, was supposed
12 to be called the first trial I had and also on the second
13 trial, but Ms. Burris said it wasn't no need for her to be
14 called. I mean I, actually, think she would know her way
15 around the courtroom. I mean I let her call that shot.

16 THE COURT - Sir, your voice is trailing off. Be
17 sure you speak up, because both that lady way over there
18 and I over here have to be able to hear you. Okay?

19 MR. ROBINSON - Okay.

20 Q So you initially had a trial before this one.

21 A Yes, ma'am, I did.

22 Q What happened with that?

23 A They declared a mistrial, I guess, because a glitch or
24 something I think it was.

25 Q Was there a glitch with the jury pool ---

MARQUIS ROBINSON - DIRECT BY MS. MCMAHAN

12

1 A The jury pool.

2 Q --- they notified ---

3 A Yes, ma'am. That's what they -- I was told.

4 Q Had you already gone through the entire trial almost?

5 A I would say -- I would say I did.

6 Q You were pretty close to coming to the end of that
7 trial?

8 A It was third day. I -- I believe I was. I would say
9 so.

10 Q Okay. And then there was a mistrial declared. So how
11 long after the first trial did you get tried again?

12 A Six months.

13 Q Were you out this whole time or were you in the
14 detention center?

15 A Well, prior to the first trial I was out for seventeen
16 months, but ---

17 Q Okay.

18 A --- and then they -- they revoked my bond, because we
19 started trial that January of '13 and the mistrial, so I
20 stayed in for six months ---

21 Q Okay.

22 A --- until we started the second one.

23 Q So you were in the detention center for both trials?

24 A Yes, ma'am.

1 Q Were there any other witnesses that you told Ms.
2 Burris that you wanted to have called besides Ms. Riggs
3 (sic)?

4 A Not that I remember.

5 Q What did you and Ms. Burris talk about that was your
6 main defense in this case?

7 A The fact that they was, I guess, a issue of mistaken
8 identity. They couldn't -- they couldn't put me at the
9 crime scene, given that the crime scene was, I guess if you
10 want to use the word gruesome or a lot of blood around or -
11 - I mean the suspect was touching things and by DNA or
12 physical evidence they couldn't put be there, but I wasn't
13 there, so I -- I don't know, you know, so ---

14 Q Ultimately, none of your DNA was found.

15 A Nothing. Nothing pertaining to me was found there
16 period.

17 Q Was there DNA related to somebody else that was found?

18 A A unknown suspect they say had got stabbed and the
19 actual, I guess, altercation that went on there, and they
20 never pursued who the other suspect was. They never, you
21 know, let any -- let the Courts know did the DNA come back
22 to somebody that was known in the system -- I don't know
23 who the other guy could've been to the day.

24 Q How many times did you meet with Ms. Burris?

25 A Several different times. It was a lot.

MARQUIS ROBINSON - DIRECT BY MS. MCMAHAN

14

1 Q And this is while you were both in and out of the
2 detention center?

3 A I think the whole time I was inside. I think I was
4 inside the whole time.

5 Q But you had a different attorney for your first trial,
6 didn't you?

7 A Yeah.

8 Q Who was that?

9 A Mr. John Freeman.

10 Q Okay. And then after the mistrial is when you
11 retained Ms. Burris?

12 A Yes, ma'am.

13 Q So Ms. Burris was representing you for, what, about
14 six, seven months?

15 A Probably like three months. Say about three months.
16 From April I think to June or July, three or four months.

17 COURT REPORTER - He needs to speak up.

18 Q And did -- and she came to visit you in the detention
19 center?

20 A Yes, ma'am.

21 Q Okay. But you don't recall how many times,
22 specifically.

23 A It was several different times. It was pretty often.

24 Q Do you remember what you guys talked about?

1 A Just more or less the -- the fact that I was telling
2 her that I -- you know, I didn't commit the crime, and um,
3 and we -- boiled down to -- when she first got my case,
4 she, actually, had got like two charges dismissed right
5 when she -- when she got the case. I can't remember which
6 ones though, but, um, I was letting her know if the charges
7 she was getting dismissed I wasn't going to be eligible to
8 come back to York County as far as work release or
9 anything, that I wasn't, you know, subject to take, you
10 know, the ten years. That's where the ten year negotiation
11 came about, and I didn't really want to take it because I -
12 - she was saying I might not be able to come back to the
13 county or whatever, but we, basically, talked about the
14 fact that I'm innocent and they can't put me at the crime
15 scene, I wasn't there and I wanted, you know, to go home to
16 my family. I wasn't trying to take any type of plea, but,
17 um, so over a period of time, we talked and like I said, I
18 talked to my family and they kind of felt like taking a
19 plea to something I didn't do was going to be reasonable
20 versus having the thirty years that I have now.

21 Q And did she ever ask for any bond hearing for you so
22 you could get out while the trial was pending?

23 A Several times, several different times.

24 Q You asked her to file one for you or you did have
25 bonds hearing?

1 A We had a few, because she -- she took me up ---

2 Q Okay.

3 A --- present me with -- but, we definitely went several
4 different times so I could get my bond back.

5 Q I guess, ultimately, that was denied because you were
6 in the detention center.

7 A At least three or four times.

8 Q Okay. What else do you want the Court to know about
9 all this?

10 A I just like the Court to know that I have a beautiful
11 family I'm trying to get back to, I'm innocence of this
12 case -- of these crimes that I've been accused of, and I
13 would like to get back home to my family. You know, any
14 type of relief I'm willing to take it. I think 30 years is
15 excessive. It's too much for me, you know, to bear when I
16 got little kids that's growing up.

17 Q Do you feel like you were being punished for
18 exercising your right to trial with your sentence?

19 A Excuse me. Could you say that again?

20 Q Do you feel like the trial judge punished you with
21 your sentence for going to trial?

22 A Oh, most definitely.

23 Q And just to recap, if you'd known about the fifteen
24 year sentence, you would've taken it.

25 A Yes, ma'am.

1 Q And Kayla Riggs (sic) was listed as a witness for both
2 trials but was not called for either one of them.

3 A Yes, ma'am, she wasn't.

4 Q I'm sorry.

5 A Yes, ma'am.

6 MS. MCMAHAN - Okay. Nothing further, Your Honor.
7 Please answer any questions Mr. Hunter has.

8 MR. HUNTER - Just a couple.

9 CROSS EXAMINATION

10 BY MR. HUNTER -

11 Q Now, the plea offers you're talking about, were those
12 extended to you before the first trial or just the second
13 trial?

14 A The second trial.

15 Q Okay, so only -- only before the second trial?

16 A Yes, yes, ma'am (sic). I ain't ever talked to Mr. --
17 Mr. Freeman had my first trial. Me and him never discussed
18 a plea at all. Twana, she handled my second trial, and
19 that's when the plea negotiation came in.

20 MR. HUNTER - Okay. That's all I have. Thank
21 you.

22 THE COURT - Any re-direct?

23 RE-DIRECT EXAMINATION

24 BY MS. MCMAHAN -

MARQUIS ROBINSON - RE-DIRECT BY MS. MCMAHAN

18

1 Q Was there -- at any point were you and Ms. Burris
2 discussing a plea offer prior to that ten year offer? Was
3 it always you wanted to go to trial, or were you trying to
4 get a deal out of this the whole time?

5 A I always wanted to go to trial. Dealing -- dealing
6 with the, you know, the lack of evidence they had, you
7 know, just, basically, hearsay. You know, that's why I was
8 going to trial.

9 Q So it was an identity issue in your -- in this trial.

10 A Big one. In -- in the case he said possibly. He
11 never even stated it was me. He said possibly.

12 Q And so when you talked to your family about the ten
13 year offer, that's when you decided that it would be in
14 your best interest to take that?

15 A Right. They didn't want me to be gone for -- you
16 know, they knew what I was facing. They didn't want me to
17 be gone for that long, so they -- ten years would, I guess
18 ---

19 Q So that was the best avenue for you to take?

20 A Yeah, because the plea -- the plea deal was explained
21 to me, ten years, do a third and I'll be eligible for
22 parole, and once my family got a whiff of that, say, okay,
23 well, you might be out as long as you do a third of the ten
24 years and be eligible for parole, so I -- I mean I -- they

1 kind of convinced me to do it. That's why I could even
2 considered it. (sic)

3 Q Just based on the parole eligibility issue, but you --
4 -

5 A Right.

6 Q This time with your conviction you have a different
7 parole issue, don't you?

8 A I don't have a parole dated out ---

9 Q So you're serving a no parole offense. Right?

10 A Right.

11 MS. MCMAHAN - Nothing further, Your Honor.

12 THE COURT - Thank you, sir. You may step down.

13 Watch your step as you're stepping down, sir.

14 Applicant have any other witnesses?

15 MS. MCMAHAN - Yes, sir, I call Kayla Riggs (sic).

16 MS. HIGGS - Higgs.

17 MS. MCMAHAN - Ms. Higgs. I'm sorry. Kayla
18 Higgs.

19 THE COURT - Come on up, ma'am.

20 KAYLA HIGGS, AFTER BEING FIRST DULY SWORN,

21 TESTIFIES AS FOLLOWS -

22 THE COURT - Watch your step up.

23 DIRECT EXAMINATION

24 BY MS. MCMAHAN -

25 Q Will you state your name for the record?

KAYLA HIGGS - DIRECT BY MS. MCMAHAN

20

1 A Kayla Higgs.

2 Q Is it H-i-g-g-s?

3 A g-g-s, yes, ma'am.

4 Q And how do you know Marquis?

5 A He is my children's father.

6 Q And were you guys together at the time of this alleged
7 incident?

8 A We were.

9 Q And what happened that night between you and Marquis?
10 What were you guys doing?

11 A Well, we carried on with our regular daily routines.
12 I worked til 6:00 o'clock. My car tore up the day of, so
13 he had to take me to work. He picked me up from work at
14 6:00. We went home, same routine as every other night,
15 dinner, bath time for our daughter and bedtime. I mean ---

16 Q And about what time --

17 A --- was nothing different.

18 Q --- do you put the kids to bed?

19 A Well, she went to bed at 8:30.

20 Q And what time would you guys normally go to bed?

21 A Typically around 10:00, 10:30.

22 Q So you put your daughter to bed, you guys ate dinner
23 and all that, she was in bed by 8:30.

24 A Yes.

25 Q So between 8:30 and 10:30 what were y'all doing?

1 A Well, we typically go to bed around 10:00, 10:30, so I
2 know I was asleep by 10:30.

3 Q Okay. So, would you guys watch TV or something
4 between that time or ---

5 A Yeah, (Indicating yes)

6 Q --- just kind of sort of hang out?

7 A Yeah.

8 Q So at 10:30 did Marquis ---

9 A Well, she slept in the bed with us that night, so it
10 was all three of us in the bed asleep.

11 Q So would Marquis, typically, go to bed with you at the
12 same time?

13 A Yeah.

14 Q What -- what was he working that -- while you guys
15 with them? (sic)

16 A He worked during the day. I can't remember his hours,
17 because he had started going back to school, so I can't
18 remember his exact hours.

19 Q So the night that this incident happened, did Marquis
20 go to bed with you at the same time?

21 A He did.

22 Q Was he there in the morning when you woke up?

23 A He was. He had to take me to work.

24 Q Okay. Would you have heard him get up?

KAYLA HIGGS - DIRECT BY MS. MCMAHAN

22

1 A I would have. Our master bedroom is on the side of
2 the house where our driveway is, and he has pipes on his
3 car, so if he were to have snuck out, left the house any
4 time of the night, I would've heard it.

5 Q Would you have heard him get out of bed?

6 A I would've.

7 Q Would your child had felt it since she was in the bed
8 with you?

9 A I'm sure she -- it would've been more me than her.

10 Q Yeah. So you would've noticed if he had gotten up.

11 A I would have, yes.

12 Q Like if he gets up to pee in the middle of the night,
13 do you -- can you tell?

14 A I'm a light sleeper, so, I mean, yeah.

15 Q Okay. So at some point during both trials you were
16 listed as a witness.

17 A Right.

18 Q Were you ever called as a witness?

19 A No.

20 Q So were you ever -- did Ms. Burris ever give you a
21 reason why you weren't?

22 A With the first trial we never got to complete it.

23 Q Okay.

24 A So I never had the opportunity, but I was on the list
25 to be called, and then with the second trial, I was up -- I

1 was on there, as well, but she felt as if we -- I didn't
2 need to be called.

3 Q Did she tell you why?

4 A (Indicating no)

5 COURT REPORTER - I need a verbal response.

6 A No.

7 Q Do you recall at what point during the beginning of
8 the trial that she released you? Did she -- did she say
9 she wasn't going to call you at the beginning of the trial
10 or did she tell you later on during the trial she wasn't
11 going to call you?

12 A Um, I can't really remember. I want to say maybe
13 towards maybe the beginning.

14 Q Do you remember watching most of the trial?

15 A Yeah.

16 Q Okay. What time do you, typically, get up to go to
17 work?

18 A Six.

19 Q So when you woke up at 6:00, Marquis was there.

20 A Yeah.

21 Q And at 10:30 you guys were both in the bed.

22 A He was there.

23 Q What -- so even if you get in the bed at 10:30, do you
24 fall asleep a little bit later or ---

KAYLA HIGGS - DIRECT BY MS. MCMAHAN

24

1 A I mean we're usually in bed before then and watch TV,
2 but I know that night we were in bed -- it was around
3 10:00. We have our routine, same routine all the time.

4 Q So and the routine is that you guys eat dinner, you
5 give your child a bath and then you are, ---

6 A Yes.

7 Q --- typically, both in bed around 10:30.

8 A Yes.

9 Q Okay. Unless something weird happens ---

10 A Right.

11 Q --- like if you're -- or something.

12 A Nothing.

13 Q Okay.

14 A Yeah.

15 Q Did you tell Ms. Burris all this?

16 A Yeah.

17 Q And you told Mr. Freeman that?

18 A I did.

19 MS. MCMAHAN - Okay. Answer any questions Mr.
20 Hunter may have.

21 MS. HIGGS - Okay.

22 MR. HUNTER - Just a couple.

23 CROSS EXAMINATION

24 BY MR. HUNTER -

1 Q Did you meet with Ms. Burris in her office before the
2 trial?

3 A I did.

4 Q And did y'all go over this alibi?

5 A We did.

6 Q And did she -- do you recall if she ever indicated she
7 was going to use that alibi?

8 A We talked about it, but she just felt as if we didn't
9 need to do so, so I never questioned her. I just went with
10 it.

11 MR. HUNTER - That's all I have. Thank you.

12 MS. MCMAHAN - Just briefly, Your Honor.

13 RE-DIRECT EXAMINATION

14 BY MS. MCMAHAN -

15 Q Are you a lawyer?

16 A No, ma'am.

17 Q You been to law school?

18 A No, ma'am.

19 Q So when Ms. Burris was hired, did you trust her to
20 tell you what needed to be done?

21 A I did.

22 MS. MCMAHAN - Nothing further, Your Honor.

23 THE COURT - Thank you, ma'am. You may step down.
24 Watch your step as you're stepping down.

25 MS. HIGGS - Okay, thank you.

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1 MS. MCMAHAN - Nothing further from the applicant,
2 Your Honor.

3 THE COURT - State ready to call your first
4 witness?

5 MR. HUNTER - Yes, Your Honor. State would call
6 Ms. Twana Burris.

7 TWANA BURRIS, AFTER BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS -

9 MR. HUNTER - May it please the Court.

10 DIRECT EXAMINATION

11 BY MR. HUNTER -

12 Q Would you please state your name for the record?

13 A Twana Burris-Alcide.

14 Q And where are you currently employed?

15 A The Burris Legal Group.

16 Q Is that where you were employed when you became
17 involved in the trial of this case?

18 A Yes, sir.

19 Q And can you explain -- there's been talk about prior
20 representation. Can you explain how you became involved in
21 this case?

22 A Yes, um, I was, actually -- Kayla Higgs, the
23 girlfriend of Marquis Robinson, and I believe it's his
24 sister, Shameka Robinson, called -- I think Kayla,
25 actually, came by -- asked if I would go and consult with

1 Marquis Robinson, in which I did. He stated that he
2 desired to retain me and he did retain me. I believe it was
3 March the 22nd.

4 Q That's March 22nd, 2013, the same ---

5 A That is ---

6 Q --- month before the trial?

7 A Yes, that's correct.

8 Q Okay. And where did your meetings with Mr. Robinson
9 occur?

10 A Mr. Robinson -- at the York County Detention Center.

11 Q Okay. Do you recall how many times you met before
12 trial?

13 A Many times, lots.

14 Q Okay. And just to, I guess, clear something else up,
15 after his first mistrial, did you receive any documents or
16 information from his prior attorney?

17 A I received all of them. I received all of the
18 discovery. I had numerous conversations with Mr. Freeman,
19 also, I ordered the transcript and went through everything
20 thoroughly and also had conversations with Mr. Robinson in
21 regards to the mistrial and what took place during his --
22 when Mr. Freeman was, actually, representing him.

23 Q Okay. So during your meetings, can you just recall, I
24 guess, from the beginning to pre-trial what y'all
25 discussed?

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1 A During my meetings with Mr. Robinson?

2 Q Yes.

3 A We discussed all of the discovery in detail. I,
4 actually, went out and interviewed the victim, Mr. Ernest
5 Jordan, went to the -- I think it was Five Customs Rim Shop
6 or something like that on Cherry Road. I communicated to
7 Mr. Robinson my discussions with Mr. Jordan and if he
8 testified, this is most likely what he'll say, so, I,
9 basically, went over my notes from the -- I, actually,
10 spoke with Mr. Jordan two times. I spoke with him via
11 telephone one time, and then I actually went to the rim
12 shop and had a very extensive conversation with him in
13 regards to discovery, the lineup and, you know, what he
14 would, actually, testify to and whether or not he,
15 actually, knew Marquis and how long had he, actually, known
16 Marquis and, you know, in what capacity, so I, actually,
17 communicated all of that to Mr. Robinson, Marquis Robinson.
18 We talked about all of the pre-trial motions and the
19 likelihood of whether or not I thought the Judge would
20 grant the pre-trial motions, and I kind of explained the
21 law to him. We talked about his prior record. We
22 discussed, of course, some of the things that were,
23 actually, in the transcript that had happened previously in
24 the trial when there was a mistrial, and we had lots of

1 communications. I would often come to the York County
2 Detention Center, sometimes even on the weekends.

3 Q Okay. And let's go over the plea offers. From your
4 representation from the commencement to the trial, can you
5 go over your discussions with the solicitor and any plea
6 offers that were made?

7 A Yes. There were -- I think, initially, she started at
8 -- I want to say, like, twenty or twenty-five. I
9 communicated that offer to Mr. Robinson. At no time did he
10 express an interest in accepting the twenty to twenty-five
11 -- I believe -- either twenty or twenty-five. As it got
12 closer to the trial, I believe in July, I remember having a
13 conversation with Mrs. Shelton. It was on a Friday. It
14 was very late. I went by her office. I had to go to the
15 clerk's office, and I believe I was, actually, going to get
16 a jury list, and then I came upstairs to talk to her, and
17 she said my offer is fifteen, and she did make the
18 statement that if I even made an offer of ten years, would
19 he accept it, and my question to her was then, are you
20 offering him ten years, and she said, no, my offer is
21 fifteen years at this time, but my question is even if I
22 offered him ten years would he take it. So it was later in
23 the evening on a Friday, I remember, actually, coming to
24 the York County Detention Center on Saturday to communicate
25 verbatim my conversation with Mrs. Misti Shelton, and I

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1 remember having that conversation with Mr. Robinson. I
2 remember, specifically, his words was, I have a lot of
3 pride. I remember that. And so I then went back to the
4 assistant solicitor, I said, will you offer him -- he -- he
5 was kind of thinking about, but he looked at me and said, I
6 have a lot of pride and um, you know, we were going through
7 the discovery. I talked about, you know, the advantages
8 and disadvantages of going to trial, what he was facing as
9 to each charge, and, you know, what would be presented
10 based on the discovery -- the evidence presented what was
11 going to be presented to the jury. I spoke with the
12 assistant solicitor. I told her, I said, you know, I need
13 some clarification, are you offering him ten years, because
14 I need to know -- and this was on the weekend -- I need to
15 know so that I can further work with Mr. Robinson and
16 explaining to him, this is a ten year offer and, you know,
17 encourage him to accept the ten years offer based on the
18 evidence presented, based on my interviewing of the
19 witnesses, and she said to me, no, it is a fifteen year
20 offer. I'm not sure exactly why she made the statement was
21 -- even if I offered ten, you know, would he have accepted
22 it, but then she said in that same conversation, the offer
23 is fifteen. So in this next conversation with her, which
24 may have, actually, been a Sunday, I believe, she said, no,
25 the offer is fifteen, and so I communicated to Mr. Robinson

1 that the offer is fifteen, it will not change. I came to -
2 - we were preparing for jury selection, I believe, that
3 Monday, had a long conversation with her in regards to the
4 fifteen and whether or not she would, actually, offer ten,
5 would she be willing to offer him ten so that I could
6 communicate, further communicate, and her answer was, no..
7 So I spoke with Mr. Robinson, and I told him the offer is
8 fifteen years, and I explained everything, and, again, I
9 went through exactly what he was facing as to each charge.

10 Q Okay. And so can you just clarify, when exactly this
11 -- you talked to him about this fifteen year offer, the
12 final time you talked to him about the offer?

13 A So I spoke with him Satur -- well, it was -- I think
14 it was like a Thursday or Friday, because she -- she kept
15 saying fifteen for like a week, so she had, actually, moved
16 -- this was the week before trial -- she was stating the
17 offer is fifteen years, the offer is fifteen years, so I
18 spoke with him that week before trial, probably about three
19 to four times. And my -- I kept going to the York County
20 Detention Center -- and to communicate the offer, yes, but
21 also to go through the specifics of everything, the
22 evidence, the witnesses, the pre-trial, the strategy, just
23 because that's what I do with all clients, because it's
24 getting closer to trial and we must talk in detail about
25 what's going to take place so that they can make an

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1 informed decision as to whether or not they would like to
2 take the offer from the solicitor or whether or not they
3 would like to continue to proceed to trial, so I remember
4 having those extensive conversations with him the week
5 prior to trial.

6 Q And, ultimately, he told you he did not want to accept
7 the offer?

8 A Yes, he did say he will not accept the fifteen for
9 sure.

10 Q Okay. And also in your discussions with him, did he
11 give you any alibi witnesses or his side of the story?

12 A He definitely -- we discussed -- he kept telling me,
13 it wasn't me, it wasn't me. As with all clients -- I
14 stayed in contact simply because Mr. Robinson asked me to
15 stay in contact with Ms. Kayla Higgs. She would come to my
16 office a lot. I had communications with her. I had
17 communications with Mr. Robinson. Not one time did they
18 ever mention that Kayla Higgs was an alibi witness. It's
19 not a feeling. It's an obligation on my behalf as a
20 defense attorney, so I would have been obligated to
21 investigate any alibi, and, of course, during the numerous
22 times that she had contact with me I understand that once I
23 investigate that alibi, and, of course, if it -- if it's
24 confirmed, then I have an obligation to turn it over to the
25 State. Not one time was there any -- ever any discussion

1 about an alibi witness. I would have been obligated.
2 That's not a feeling. That's an obligation, and I would
3 have done that, because, typically, what I do -- and I know
4 I did it in this case -- is the day I told the accused til
5 the day before, walk me through your steps, because I want
6 to know if there are any other additional witnesses or any
7 locations where I could, actually, obtain surveillance,
8 your day before, the day of and the day after the incident,
9 and so I know for sure that's what I would have done with
10 Mr. Robinson had he made mention of any alibi witness, and
11 I had so much contact with Ms. Kayla Higgs, because she was
12 often coming by my office more-so than his sister, which is
13 Ms. Robinson. She would come by -- Ms. Kayla Higgs was
14 often coming to my office. She would have appointments;
15 she would come by. I would sit down; I would talk to her,
16 but she would also just drop by, and I would also take time
17 to talk to her, because I understand that this was a
18 crucial time for she, as well as, Mr. Robinson.

19 Q So as far as including her on the trial witness list,
20 what was the reason for that?

21 A I always include witnesses, because if I do not
22 include all witnesses and I decide to, actually, call that
23 witness and if I do not include that witness name on the
24 witness list, I risk a chance of not being able to call
25 them, so I list all potential witnesses.

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1 Q Okay, and, I guess, leading up to the trial and
2 beginning the trial, did you -- did you tell Ms. Higgs that
3 she would or she would not be a witness at the -- during
4 trial?

5 A Absolutely not. She never ever asked to be a witness,
6 and, again, I communicated with her the whole time. I
7 communicated with her in the hall during the trial, prior
8 to the trial, the weekend prior to the trial starting, I
9 believe it was that Monday or Tuesday, and not one time did
10 she indicate ever that Mr. Robinson was at home or that she
11 would testify as an alibi witness. That was never ever
12 introduced to me at all.

13 Q Okay. Now, I just want to move to the juror issue,
14 Tamara Gary was seated during the -- I guess, during this
15 trial and Mr. Robinson alleges that she knew you and you
16 told him this. Do you recall anything about that juror?

17 A I do not know a Tamara or Tamara Gary. When I read
18 the initial PCR allegation, I, actually, -- of course, of
19 all the documents I have, I went to go look up my jury list
20 to see if I even knew -- I wanted to know her age or where
21 she -- I do not know a Tamara Gary. I've never heard of a
22 Tamara or Tamara Gary, and the answer is no. I did not
23 communicate with Mr. Robinson that I knew or I had grown up
24 with a Tamara Gary. I would be totally honest about that,
25 but I don't even know of -- I've never even heard of her.

1 Q Okay. Now, I believe you testified a little bit
2 earlier that before the trial you fully informed him of the
3 advantages and disadvantages of going to trial. Is that
4 correct?

5 A Absolutely.

6 Q Do you think that he, I guess, was fully informed as
7 far as going to trial versus pleading guilty?

8 A Absolutely. And -- and not just the week prior to.
9 In my initial conversation -- and I remember ordering the
10 transcript, going over that in detail and what had,
11 actually, taken place during that trial, and then when I,
12 of course, went through the discovery with a fine tooth
13 comb going over the details, I always discuss with every
14 client the advantages and disadvantages, and I -- you know,
15 as we get closer to trial and, of course, I've gone and
16 conducted interviews with victim witnesses, those who are
17 willing and were willing to talk to me, I discuss every
18 step of the way advantages and disadvantages, and because
19 he was pretty adamant about going to trial, I would've
20 definitely discussed advantages and disadvantages of going
21 to trial.

22 Q Okay. And can you just go over -- I believe you
23 might've touched on it earlier -- go over the defense
24 strategy, what your theory was for trial?

1 A Yes. Some of the things that -- of course, I made
2 some pre-trial motions in regards to severance, a motion to
3 sever. After, of course, speaking with Mr. Robinson, you
4 know, he -- he just kept saying it wasn't me, and so, you
5 know, misidentification, of course -- I had the opportunity
6 -- when I spoke with Mr. Jordan over the phone and I,
7 actually, went to speak with him face-to-face, he was
8 pretty adamant that he, actually, knew Mr. Robinson, that I
9 think that Mr. Robinson, actually, had done some work for
10 him in the shop, and that it's not a, you know, whether or
11 not it's a mistaken -- because he mentioned that when Mr.
12 Robinson, actually, -- I believe he say the bay door --
13 when he, actually, opened the door, that the t-shirt that
14 was over his face, initially covered his face, fell down,
15 and so that he knew exactly who it was and he thought that
16 Mr. Robinson was playing, because Mr. Robinson initially
17 had a smirk on this face, and he thought he was playing and
18 then he realized that he wasn't playing, so it was obvious
19 that Mr. Jordan, actually, knew Mr. Robinson, but I've kind
20 of forgotten what your initial question was. Sorry.

21 Q That's all right. In going along with
22 misidentification, was the defendant identified in lineups
23 by the victims in this case?

24 A Yes, sir, he was.

1 Q And do you recall if one or both made positive
2 identifications to the defendant?

3 A It was both.

4 Q Okay. And, I believe, was there a Bigger's hearing
5 about that?

6 A Yes.

7 Q Okay. And, I guess, in keeping with the defense
8 theory, did you have any issues -- I believe you said you
9 filed a motion for severance -- did you have any issues as
10 far as being able to pursue a defense while having the co-
11 defendant there?

12 A No, I didn't have any issues, no.

13 Q Okay. And, again, I just want to go back to Mr.
14 Jordan. You called him on the phone and visited him.
15 Correct?

16 A Yes.

17 Q How many hours total would you say you talked to him?

18 A On the phone I talked to him for about 30 minutes.
19 When I went to the rim shop, I stayed there probably about
20 an hour, hour and a half just talking to him to -- I was
21 asking him about, you know, how long had he known Mr.
22 Robinson and what capacity, and, you know, did he get a
23 good look at Mr. Robinson, but just to go back to the
24 previous question in regards to the strategy, my goal was
25 to, of course, question the investigation. Of course, I

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1 did question Mr. Jordan, even though I had spoken with him,
2 but I also knew not to elicit testimony that could be
3 damaging to my client, because I'd already spoken with Mr.
4 Jordan, and also the same with Mr. Craine. So, you know,
5 as far as the DNA and, you know, it coming back, I believe,
6 there was no -- I think it was an unknown suspect and
7 question Mr. Jordan in regards to the bathroom and, you
8 know, whether or not he'd gotten, you know, a good look at
9 who he believed was Marquis Robinson. Of course, I
10 questioned the investigator, Detective Stokes, you know, in
11 regards to -- that's when the CAD report issue came up in
12 regards to the CAD report, and he was the assigned lead
13 investigator, and because, initially, there was an
14 allegation about three males -- three males that were,
15 actually, involved, of course, I elicited -- you know,
16 asked question about that in cross examination from
17 Detective Stokes about the three males being involved and
18 because my understanding is that the initial allegation was
19 two, then it changed to three, and then there was some --
20 the CAD report came up, which I was able to read the CAD
21 report in detail, you know, in regards to the possibly a
22 suspect. At that time I know that I, actually, asked for a
23 mistrial, but I also found in my documentation that, if
24 necessary, which I did not find it necessary, but I found

1 that I had prepared a subpoena for the person who,
2 actually, took the call. So it was a lot. I did a lot.

3 Q Okay.

4 MR. HUNTER - Beg the Court's indulgence for one
5 second. (Pause) That's all I have. Thank you.

6 MS. BURRIS - Yes, sir.

7 CROSS EXAMINATION

8 BY MS. MCMAHAN -

9 Q So at some point during the trial you stated that you
10 had two witnesses that you had on your witness list, one
11 coming from Walterboro and one in the trial transcript you
12 said that had talked to their supervisor and would be here
13 in the morning. Do you recall who those people were?

14 A Walterboro?

15 Q Yes. In the transcript you said something about
16 someone coming from Walterboro?

17 A No, but if you could show me, that'll be good.

18 (WHEREUPON, DOCUMENT HANDED TO THE WITNESS)

19 Q It's on page 201 of the transcript.

20 A I don't know who -- I really don't know who the person
21 is from Walterboro. I do not recall.

22 Q Okay.

23 A I do not.

24 Q And then you also had Ms. Higgs listed ---

25 A Yes, absolutely.

1 Q --- as a witness? But then you released her that
2 morning. Do you remember that?

3 A I don't remember releasing her because -- I don't
4 remember releasing her. She was here the entire time, so
5 I'm not sure why I would have released her, other than the
6 fact, if I released her that morning, it may have been if I
7 was downstairs during the voir dire. I'm not sure. I'm
8 not sure why I released her. I wouldn't have communicated
9 to her that she was released to my knowledge or -- because
10 she -- I think she was here the whole time unless she asked
11 to leave.

12 Q Just below that on page 202, on our witnesses we have
13 one witness listed as Kayla Higgs, she's no longer going to
14 testify, if it's okay, is she allowed to come back in the
15 courtroom. That was just before you guys put the plea
16 negotiations on the record.

17 A Okay, maybe so.

18 Q Okay. And then you discussed -- did you discuss with
19 him his right to testify?

20 A Always.

21 Q And who's decision, ultimately, was it ---

22 A His.

23 Q --- not to testify?

24 A His.

25 Q Did you agree with his decision?

1 A Couple of things that I take into consideration and
2 would've taken in consideration, whether or not they have -
3 - you know, in spending time with the client, what type of
4 witness would they make to the jury, whether or not they
5 have a prior history or prior record, criminal conviction
6 that could come out and be used against them, the evidence
7 presented by the State, and so, ultimately, it's the
8 client's decision, and it's something that I have a
9 conversation with them prior to the trial about, and then,
10 of course, throughout the trial and then right before or
11 right after the State rest I have that conversation.

12 Q And you, actually, were -- got into the record at pre-
13 trial what his record was from Mr. (sic) Shelton. Do you
14 remember that?

15 A Yes, I do.

16 Q And so, ultimately -- I'm sorry, let me strike that.
17 Did you subpoena some bank records in this case?

18 A Yes. So, um, after speaking, interviewing Mr. Jordan,
19 the victim witness, there were some inconsistencies or
20 discrepancies in regards to the amount of money that he had
21 on him or was taken from him. I believe there were two
22 different things said in regards to the monies, and it was
23 seven thousand dollars that he indicated was in his jeep or
24 his SUV. And then he also indicated to police that -- or
25 to someone -- that there was money in his pocket, and so I

1 had a conversation with the assistant solicitor in regards
2 to the amount of monies and I think that in my
3 investigation I asked about the type of business that he
4 runs and, you know, I think I remember asking about who
5 keeps seven thousand dollars on their person and in their
6 car, and so I think that's where the whole, let me subpoena
7 bank records, because I remember having that conversation.

8 Q So you, ultimately -- you were going to try to do what
9 with that, just impeach Mr. Jordan with it?

10 A Yes.

11 Q Okay. Do you recall why that -- someone made a motion
12 to quash that, didn't they?

13 A Yes. The assistant solicitor, I believe, because I --
14 yes. I'd spoken with her about that, too, and I think I
15 may have even gone so far as does he have any tax records,
16 etcetera, but, yeah.

17 Q Okay. And that was for the inconsistencies in his
18 statement.

19 A It was inconsistencies about the amount of money that
20 he was alleging that my client had, actually, taken from
21 him.

22 Q Okay. And then the DNA that was involved, that was
23 never traced back to Marquis, was it?

24 A That's correct, it was not.

1 Q And how many times did you try to get him out on bond
2 again? Do you recall?

3 A I want to say it was like two or three times I may
4 have taken -- I -- I think it was. Now, that was prior to
5 the new legislation, because I believe the legislation was,
6 actually, passed in 2014, and during this time I believe it
7 was year 2013, so I could petition the Court numerous times
8 upon the client's request, but I know after 2014 I couldn't
9 unless there was a change in circumstances, so as many
10 times as he would've asked me to petition the Court for a
11 bond, that's what I did.

12 Q Okay. And so when Ms. -- you said earlier that Ms.
13 Higgs had come by multiple times and never told you
14 anything about like their routine or anything like that?

15 A About their routine?

16 Q About him being there that night and her routine and -
17 --

18 A In general she did. She talked about a small child,
19 them having a small child together, but she never told me
20 that he was at home during that time of the alleged
21 incident, never.

22 MS. MCMAHAN - Court's indulgence, Your Honor.

23 Q So when you guys were doing your discussions, besides
24 Ms. Higgs being on your witness list, was there anybody

1 else that he was talking about could've been a possible
2 witness on his behalf?

3 A No, absolutely not, because if he would've, again,
4 said anything about an alibi witness or anyone from
5 anywhere in the State of South Carolina, and if it's North
6 Carolina, I would have then gone through an out-of-state
7 subpoena, gone through that process, but, no, absolutely
8 not, because I would've been obligated to call, or if I
9 could not go and speak with the person, I would have sent
10 an investigator there to investigate the alibi, because
11 that's what I'm required to do, and that's what I would
12 have done.

13 Q Did the State request any alibi witnesses? Did they
14 do a reciprocal discovery requests?

15 A I do not remember, but it's standard that they always
16 e-mail me a reciprocal discovery, and, yes, they always do,
17 but I don't -- I just don't remember.

18 Q And in this case, if they did, typically, would you
19 have complied with that? Was there anything that you had
20 that the State didn't have?

21 A My notes, my work product.

22 Q Which is not discoverable.

23 A Not discoverable, right.

24 Q And then the -- and other than the bank records, did
25 you try to subpoena anything else?

1 A I think that I may have sent a subpoena to the Rock
2 Hill Police Department just because -- the solicitor, of
3 course, they turn over all discovery, but sometimes like
4 internal records and things like that, I will send
5 subpoenas over to the police department to see if there's
6 anything that I do not have, so I'm not a hundred percent
7 sure, but that's what I, typically, do ---

8 MS. MCMAHAN - Hold on one second.

9 A --- just to make sure that my investigation,
10 independent investigation, is thorough.

11 Q In your closing argument, at some point I believe you
12 said something to the effect of like, you don't owe me
13 anything. Is that pretty typical for you to say in a
14 closing argument?

15 A Oh, yeah, for them to base their evidence -- base
16 their decision solely on the evidence presented and the
17 testimony and you do not owe me a favor, and you do not owe
18 the assistant solicitor any favors, yes.

19 Q Was that something that you said just for this trial
20 or is that something that you, typically, use in your
21 closing strategy?

22 A The fact that the jurors does (sic) owe me any favors?

23 Q Yeah.

24 A I've probably said it numerous times.

25 MS. MCMAHAN - Court's indulgence, Your Honor.

1 Q And when you were discussing with Marquis the plea
2 offers and Mrs. Shelton -- I'm confusing with Mr. Shelton -
3 --

4 A Mrs. Shelton.

5 Q It was one of the Sheltons. When you were discussing
6 on them (sic) about how she said, if I was to offer ten
7 years, did you explain to him fully that that was really
8 not an offer but just a question she was wanting answered?

9 A Yes.

10 Q And did Marquis ever tell you that he would take the
11 ten year?

12 A No. That's when he made the statement -- and I
13 remember, because -- I don't know, just certain things you
14 remember -- just because -- you remember. I remember him
15 talking to me, and he did make the statement, he said, you
16 know, -- I said, you know, would you even consider -- if
17 she could offer you ten years, would you be willing to take
18 the ten years, because I knew exactly what he was facing as
19 to each charge, and so I just remember him saying, you
20 know, I -- I have a lot of pride, and so he never said that
21 he would take -- yes, he would take the ten years, but I
22 still went back to the solicitor, you know, to ask her, you
23 know, would you be willing to take ten years, because he
24 thought about it, but he did tell me that, you know, he --
25 yeah -- and this was like Saturday or Sunday.

1 Q So did he explicitly say he wouldn't have taken ten?

2 A I'm trying to recall the con -- the communications.

3 Yeah, he said -- so the weekend he definitely said that he
4 would not -- he had a lot of pride and that he would not --
5 he didn't say no. I think he said something about he was -
6 - he started -- I think he was still talking about trial,
7 and then I had a further communication with the solicitor,
8 because if he would've said, yes, I would take the ten, my
9 question to the solicitor -- because I remember going back
10 to her -- my question to her is, are you offering the ten,
11 because if you're offering the ten, I want to be clear in
12 my communications with him so that he can give me a yes or
13 a no, and, again, when I had this conversation with her --
14 I think it was on a Friday evening -- you know, her -- what
15 she said is, you know, even if I offered the ten, would he
16 accept the ten, and she said but my offer is fifteen, so,
17 yeah.

18 MS. MCMAHAN - Court's indulgence. I just had a
19 question that just escaped my mind just then.

20 Q If -- what was the fifteen offer to, which charge?

21 A I don't recall as to which -- I -- I don't recall as
22 to which charge it is.

23 Q Were all of the charges no-parole offenses? Were some
24 sixty-five?

25 A (Indicating yes)

TWANA BURRIS - CROSS BY MS. MCMAHAN

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1 Q They were all no-parole?

2 A They were -- so the -- I think the kidnapping and the
3 armed robbery were, and the criminal conspiracy was
4 paroleable.

5 Q And there was an attempted murder ---

6 A There was, and they found him guilty of the lesser, I
7 believe. I believe there was an assault and battery ---

8 Q It was ABHAN ---

9 A Yeah, it was ABHAN, based on I think the injuries
10 maybe. I think.

11 Q Okay. And you discussed with him the percentages he
12 would've had to have served on all of the charges that he
13 was ---

14 A Yes, based on what I know, and then I advised him
15 that, you know, if he was convicted, of course, when go
16 down to SCDC, they'll sit down with a counselor and they go
17 through the details of that, but, yes, I did discuss all of
18 that previously, what I knew.

19 MS. MCMAHAN - Okay. Court's indulgence. Okay,
20 just one follow-up.

21 Q When was the last time you were discussing any
22 possible ten year offer or -- versus the fifteen?

23 A With Mr. Robinson?

24 Q Yeah.

25 A I believe that was Sunday afternoon.

1 Q Sunday afternoon was the conversation from Mrs.
2 Shelton if I was to offer ten years?

3 A No, I spoke with her on -- that was, I think, on
4 Friday evening I think it was when I went passed her
5 office, because I was here, I think, getting a jury list or
6 something and went passed her office, if I remember,
7 specifically, because I remember Mr. Smith, actually, being
8 in her office at that same time, and so I remember having
9 that conversation with her and then I remember further
10 speaking with, I believe, it was Saturday, and then my last
11 time talking to Mr. Robinson prior to the week -- Monday --
12 was, actually, Sunday at -- it was like probably Sunday
13 around -- between 4:00 to 6:00.

14 Q So that was the last time you would've brought up the
15 possibility of the fifteen year sentence?

16 A Not a possibility. That was her offer ---

17 Q Yeah, that's what I meant.

18 A --- of fifteen.

19 Q My apologies.

20 A Yes, is -- yes, that was my offer to him. That was
21 what she communicated to me and then, you know, that Monday
22 morning, Monday or Tuesday I did. You know, I -- I had a
23 very long conversation with her, both in her office and I
24 think in the hall as we were walking, you know, why did you
25 ask me, you know, would he take ten years if you were not

1 considering -- I did. I had a conversation with her about
2 that, and she said my offer is fifteen years, and she would
3 not lower it.

4 Q So on the Friday when you talked to Mrs. Shelton, when
5 did you first discuss your conversation with Mrs. Shelton
6 to Marquis? Was it Saturday or Sunday?

7 A I think it was Saturday, I think.

8 Q And then you would've discussed it again on Sunday?

9 A (Indicating yes) (Indicating yes) I -- because I
10 think at that time, you know, you're so close to trial,
11 you're communicating back and forth, but I believe I spoke
12 with Mrs. Shelton again on Saturday. Okay? And then I --
13 I know it was on the weekend that I spoke with Mr.
14 Robinson. I don't remember if it was Saturday, Sunday or
15 Saturday and Sunday. I don't remember, but we were so
16 close to trial and, you know, negotiating between ten and
17 fifteen could've made a big difference to him, so, yes, I
18 had very close communications with him during that time.

19 Q And then that morning when you got there before the
20 trial, what was your first conversation with Mr. Robinson?

21 A My first conversation with him?

22 Q When you sat down that morning for trial ---

23 A Like probably Tuesday or so, maybe?

24 Q Yeah, whatever morning it was. Would you have
25 discussed that fifteen years at that point or -- again --

1 or would you have just gone straight into the pre-trial
2 stuff?

3 A I -- I communicated -- I remember talking to him that
4 morning, but we were more-so talking about pre-trial stuff,
5 and then I believe I reminded him you have fifteen years,
6 but at that point, to be honest with you, I don't even know
7 -- I had not talked to her any further about the fifteen
8 years, because once the trial starts -- and I remember she
9 and I having this conversation -- once we're about to pick
10 the jury there are no offers on the table, so I'm not -- I
11 don't remember in detail.

12 Q Is that, typically, something that she would give you
13 in writing or is that sort of like an unwritten policy
14 within the solicitor's office, or how does that work?

15 A The offers are given to you in writing now. Back in
16 2013 they would sometimes e-mail the offer, and I know that
17 -- I don't think she e-mailed me the fifteen year offer. I
18 believe her -- she e-mailed me -- I got on it in March --
19 probably in -- maybe in April she would've maybe e-mailed
20 me the, whatever, the twenty, twenty-five, and then often
21 times I communicated with the assistant solicitors in
22 detail about the case. I go to their office, I sit down
23 and I talk to them, and I -- I think she gave that to me
24 verbally as we were talking.

TWANA BURRIS - CROSS BY MS. MCMAHAN

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1 Q Okay. So then the verbally thing also was, what, if I
2 was to offer ten years, that was never in writing or
3 anything. Correct.

4 A No, no, it wasn't. It was on a Friday evening, like
5 4:00 or 5:00. She was still there, but it was getting
6 late, because I would've, actually, gone straight to see
7 Mr. Robinson, but, typically, you know, when it gets into
8 the evening, it's harder to get into the York County
9 Detention Center, because the front desk is, actually,
10 gone, and then there are like second shift people and a lot
11 of times they know you, so that's why I know that I went to
12 see him like on Saturday.

13 MS. MCMAHAN - Okay. Nothing further, Your Honor.

14 THE COURT - Any re-direct?

15 MR. HUNTER - No, Your Honor.

16 THE COURT - Thank you, ma'am. You may step down.
17 Watch your step.

18 MS. BURRIS - Yes, sir, thank you.

19 MR. HUNTER - Nothing else from the State.

20 THE COURT - Any reply?

21 MS. MCMAHAN - No reply, Your Honor.

22 THE COURT - Thank you very much. I'll let you
23 know.

24 (END OF TRANSCRIPT)

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 52 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Marquis Jaeries Santoni Robinson vs. State of South Carolina, as taken by me in Court of Common Pleas for the Sixteenth Judicial Circuit on January 29, 2018, and provided by me this the 29th day of May, 2018.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Marquis Robinson,
S.C.D.C. No. 266341,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2016-CP-46-1144

ORDER OF DISMISSAL

FILED-RECEIVED
2018 APR 12 PM 2:15
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 13, 2016. An evidentiary hearing into the matter was convened on January 29, 2018, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Twana Burris, Esquire, and Applicant's former girlfriend Kayla Higgs also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2011 term of the York County Grand Jury for armed robbery (2011-GS-46-2905); attempted murder (2011-GS-46-2906); criminal conspiracy (2011-GS-46-2907); kidnapping (2011-GS-46-2908); and possession of a firearm during the commission of a violent crime (2011-GS-46-2909). Applicant was represented by Twana Burris, Esquire. On July 25, 2013,

JHK

Applicant underwent a jury trial before the Honorable John C. Hayes, III. Applicant was found guilty of armed robbery as indicted, second degree assault and battery as a lesser included offense of attempted murder, criminal conspiracy as indicted, kidnapping as indicted, as possession of a firearm during the commission of a violent crime as indicted. Applicant was sentenced to thirty years imprisonment for armed robbery, three years for second degree assault and battery, five years for criminal conspiracy, thirty years for kidnapping, and five years for possession of a firearm during the commission of a violent crime. All sentences were to run concurrently.

Applicant filed a notice of appeal and an appeal was perfected by Appellate Defender Katherine Hudgins. In an unpublished opinion, South Carolina Court of Appeals dismissed Applicant's appeal on October 14, 2015. State v. Robinson, Op. No. 2016-UP-486 (S.C. Ct. App. filed October 14, 2015). The Remittitur was sent November 4, 2015.

PCR Application

In his application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. "4th, 5th, 6th, 8th, 13th, 14th Amendment and violation of due process."
2. "Violation and fraud upon the court and subject matter jurisdiction."
3. "Ineffective Assistance of Counsel and violation of Brady law."

Applicant filed an amendment on or about January 15, 2018, alleging the following grounds for relief:

1. Ineffective Assistance of Counsel as to Twana N. Burris-Alcide, Esquire:
 - a. Failed to call Kayla Higgs as an alibi witness.
 - b. Failed to properly cross-examine Ernest Jordan regarding statements made. Had Mr. Jordan been properly cross examined he

would have lost all credibility and the Applicant would have been exonerated at trial.

2. Trial Judge abused discretion when he punished the Applicant for exercising his right to trial by giving Applicant an excessive sentence. See Castro v. State, 417 S.C. 77, 789 S.E.2d 44 (2016).
3. Juror Tamara N. Gary knew trial counsel and failed to disclose that information in voir dire. See State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001), “[w]here a juror, without justification, fails to disclose a relationship to a party, it may be inferred, nothing to the contrary appearing, that the juror is not impartial.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel’s performance was deficient. Id. Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that “there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Failure to Call Kayla Higgs as an Alibi Witness

Applicant alleged Counsel was ineffective for failing to call Kayla Higgs as an alibi witness at Applicant's trial. Applicant testified Ms. Higgs was supposed to testify at the trial. Ms. Higgs testified at the PCR hearing. She testified she has children with Applicant and they were together as a couple at the time of the incident. She testified that on the night of the incident, Applicant picked her up from work at 6:00PM, the two went to their home, and they went to bed at 10:30PM. She testified Applicant worked during the day. Ms. Higgs testified she would have heard if Applicant got up in the middle of the night to leave their house. She testified she told Counsel her version of events during the night in question. She testified she was not called as a witness at Applicant's trial or his prior trial that ended in a mistrial. Ms. Higgs testified Counsel told her she did not need to be called as a witness. She further testified Counsel discussed the alibi but said she would not use it.

Counsel testified Ms. Higgs came to her office many times. She testified neither Applicant nor Ms. Higgs told her Ms. Higgs was an alibi witness. Counsel testified there was no mention of an alibi and if she had been informed of a possible alibi, she would have an obligation to investigate it and turn it over to the State. She testified she always includes more witnesses on her possible witness list because she would not be able to call someone who is not listed. She testified Ms. Higgs never asked to be a witness and never told her Applicant was at their house the night of the incident. Counsel said Ms. Higgs told her in general that she and Applicant have a small child together but Ms. Higgs never told her Applicant was at home during the incident.

This Court finds Applicant has failed to meet his burden of proving Counsel was ineffective for failing to call Ms. Higgs as a witness at the trial. Although Ms. Higgs' appeared credible at the PCR hearing, this Court finds Counsel's testimony is also credible and more believable than Ms. Higgs' testimony. This Court finds Counsel provided credible testimony that she met with Ms. Higgs often, and was never told of a possible alibi defense involving Ms. Higgs. This Court also finds Counsel provided credible testimony she was never told of a possible alibi because she would have an obligation to investigate and turn over the alibi. Applicant has failed to meet his burden of proving Counsel acted unreasonably or that she failed to investigate something known to her at the time. This Court finds Counsel was not deficient where she never had any indication from Applicant or Ms. Higgs that Ms. Higgs could provide alibi testimony for Applicant.

Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of his trial would have been different had Ms. Higgs been called to testify. A review of the trial transcript indicates that even if the alibi witness had been called at trial, a strong

likelihood exists that the alibi witness may not have been believed. The t-shirt which was pulled up over Applicant's face fell down during the robbery, uncovering the face. The victim even smiled when the robbery started as he thought the applicant was "playing." Thus, even if Counsel was deficient, Applicant has failed to meet his burden of proving the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Failed to properly cross-examine Ernest Jordan regarding statements made

Applicant alleged Counsel was ineffective for failing to properly cross-examine victim Ernest Jordan regarding his statements. At the PCR hearing, Counsel testified she interviewed Mr. Jordan twice prior to trial and went to see him. She testified she had an extensive conversation for two hours with Mr. Jordan about his trial testimony and relayed all information to Applicant. Counsel testified Applicant's main defense was mistaken identity, but Mr. Jordan told her he knew Applicant was the assailant because he knew Applicant. She testified it was obvious Mr. Jordan knew defendant, and he saw Applicant's face during the incident when Applicant's shirt fell off his face. Counsel testified she questioned the dollar amounts Jordan said were stolen and also questioned his inconsistent statements.

This Court finds Applicant has failed to meet his burden of proving Counsel's actions were deficient in her cross-examination of Mr. Jordan. Cross-examination is a matter of trial strategy, and as such, this Court must presume that Counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. The record reflects

Counsel cross-examined Mr. Jordan concerning his statements. She elicited testimony that Mr. Jordan could not remember what he told the 911 dispatcher the night in question. Tr. 275. She also elicited testimony that Mr. Jordan told the initial responding officers there were three suspects. Tr. 277. Counsel also went over Mr. Jordan's statement he gave Detective Stokes that outlined the incident. Tr. 293-295. She elicited testimony that Mr. Jordan offered to give Applicant and his codefendant \$10,000 from his truck. Tr. 295. She questioned Mr. Jordan about how much money he actually had on him and inside his truck that night, and how this differed from his prior testimony where he testified to only having \$7,000. Tr. 297, 299. Counsel was able to get Mr. Jordan to admit his prior testimony was inconsistent. Tr. 300-301.

This Court finds Counsel was not deficient in her cross-examination of Mr. Jordan as she thoroughly went through his prior testimony and cross-examined him on inconsistencies with his statements. This Court finds Counsel effectively called Mr. Jordan's credibility into question by pointing out the inconsistencies. Any inconsistent testimony was an issue of credibility to be resolved by the finder of fact. See e.g., State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 830 (2001) (witness's credibility an issue for the jury's consideration). This Court finds Applicant has failed to show exactly how Counsel's cross-examination was deficient and how it fell below the reasonable standard for attorneys. Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of Applicant's trial would have been different had Counsel employed different cross-examination. This Court finds Applicant has failed to show exactly how different cross-examination would have changed the outcome of his case and this Court will not speculate whether a "better" cross-examination would have helped Applicant. See Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997). Accordingly, this allegation must be dismissed.



Page 7 of 11

Trial Judge abused discretion when he punished the Applicant for exercising his right to trial by giving Applicant an excessive sentence

Applicant alleged the trial judge abused his discretion by punishing Applicant for exercising his right to a trial by giving him an excessive sentence. Our Courts have held "[w]hen a trial judge considers the fact that the defendant exercised his or her constitutional right to a jury trial as a factor in sentencing the defendant, it is an abuse of discretion." Castro v. State, 417 S.C. 77, 83, 789 S.E.2d 44, 47 (2016). In Castro, the Supreme Court held it did not matter if the trial judge also considered other factors, the fact that judge considered the defendant exercising his right to trial as a factor in sentencing was an abuse of discretion. This Court finds this allegation is without merit. This Court finds there is nothing in the record to support Applicant's claim. The transcript reflects the trial judge did not make any comments concerning Applicant during sentencing and only issued the sentence. Applicant has failed to provide any evidence to support his allegation. This Court finds Applicant has failed to meet his burden of proving the trial judge abused his discretion, or that Counsel should have objected to the sentence, and this allegation must be dismissed.

Juror Tamara N. Gary failed to disclose she knew Counsel

Applicant alleged Juror Tamara Gary knew Counsel and failed to disclose this fact to the trial court. Applicant testified Counsel said she knew Ms. Gary. Counsel testified she does not know Ms. Gary, has never heard of her before, and never told Applicant that she knew Ms. Gary.

This Court finds Applicant has failed to meet his burden of proving Counsel was deficient. This Court finds Counsel's testimony to be credible that he had never heard of Ms. Gary and did not know her. This Court finds Counsel was not deficient for failing to object to this juror being seated on the jury as no impartiality existed. Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of his trial would have been

different had this juror been excluded from the jury. Accordingly, this allegation must be dismissed.

Failure to convey plea offer

Applicant alleged during the PCR hearing that Counsel was ineffective for failing to convey a plea offer. Applicant testified he was offered a ten year plea at the start of trial. He testified the solicitor said at the start of trial that there was a fifteen year plea, but this plea was not relayed to him. He testified that the Friday or Saturday before trial he wanted the ten year plea deal and Counsel told him she would notify the solicitor. He testified Counsel never told him the plea offer was fifteen years and not ten years. Applicant testified he would have taken the fifteen year plea had he known about it.

Counsel testified the initial plea offer was for twenty or twenty-five years, and she communicated this to Applicant. She testified he never expressed interest in taking the plea offer. Counsel testified the offer was for fifteen years, but asked the solicitor if she would offer a ten year plea and the solicitor declined. Counsel testified she made it clear to Applicant that the offer was fifteen and would not change. She testified Applicant told her he had a lot of pride. Counsel testified a week before trial she relayed the fifteen year offer again and went over everything concerning the trial. She testified Applicant ultimately did not accept the fifteen year offer. Counsel further testified Applicant maintained his innocence was adamant about proceeding to trial.

This Court finds Applicant failed to prove Counsel was ineffective in this regard. To be successful on an allegation of an un conveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Petitioner was prejudiced by the deficient performance, or there was a reasonable probability that

but for this deficient performance, he would have accepted the original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422. To show prejudice from a failure to convey a plea offer, Applicant must:

demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time

Missouri v. Frye, 566 U.S. 134, 147, 132 S. Ct. 1399, 1409 (2012).

This Court finds Counsel provided credible testimony that she conveyed the State's fifteen year plea offer to Applicant several times prior to trial, after discussions about the facts of the case. This Court finds Counsel made it clear to Applicant the offer was for fifteen years and not ten years, and Applicant ultimately rejected the offer. This Court finds Counsel was not deficient in relaying the plea offer. This Court further finds Applicant has failed to meet his burden of proving he was prejudiced, as he has failed to show he would have accepted the plea offer but for Counsel's performance. This Court finds Counsel provided credible testimony that Applicant rejected the plea offer and was adamant about proceeding to trial. As Applicant has failed to meet his burden of proving Counsel's actions were ineffective in this regard, this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his

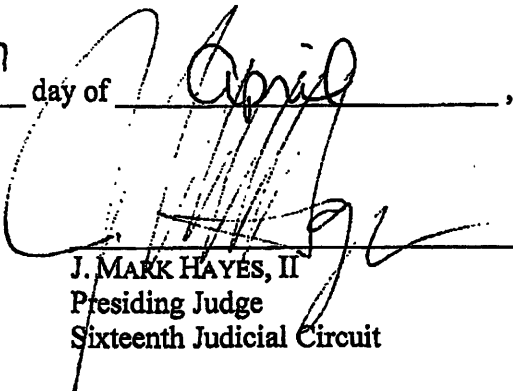
application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 5th day of April, 2018.


J. MARK HAYES, II
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

DOCKET NO. 2011-GS-46-02905

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

WITNESSES

Stokes

ARREST WARRANT NUMBER

58

ACTION OF GRAND JURY

Henry Williams
Person of Grand Jury
9/15/11

VERDICT

Person of Petit Jury

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

vs.

MARQUIS JEARIES SANTONI ROBINSON

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330
CDR Code: 0139

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

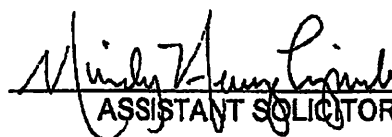
INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The Defendant, Marquis Jearies Santoni Robinson, did in York County, South Carolina, on or about June 8, 2011, while armed with a deadly weapon, to wit: used a weapon during the robbery, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of the victim, by means of force or intimidation goods or monies of said victims, Ernest Jordan and/or Jared Crane such goods or monies being described as approximately Seven Thousand Dollars (\$7,000.00) in U.S. Currency and/or other property. All in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

1342

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Marquies Jearies Santoni Robinson

Jail

AKA:

Race: BLACK Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Rock Hill, SC 29732

DL#: [REDACTED] SID#: SC01282770

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: f Armed Robbery

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY:

Shelton, Misti H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-1140 (Breath Test Fee)	\$50	\$
§ 56-5-2912 (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to 50% paid in installments	\$	\$
TOTAL	\$	\$ 130

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E. beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: _____

Sentence Date: _____

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (03/2011)

ORIGINAL

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

0139

301 days

John W. Hays

7.25.13

WITNESSES

Stokes

ARREST WARRANT NUMBER

57

ACTION OF GRAND JURY

TRUE BILL

George M. Hutto
Person of Grand Jury 9/15/11

VERDICT

Person of Petit Jury

DOCKET NO. 2011-GS-46-02906

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

VS.

MARQUIS JEARIES SANTONI ROBINSON

Indictment for
ATTEMPTED MURDER

SC Code: 16-3-29
CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

COUNTY OF York *Jail*
 STATE VS.
Marquis Jearies Santoni Robinson
 AKA:
 Race: BLACK Sex: M Age: 30
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Rock Hill, SC 29732
 DL#: [REDACTED] SID#: SC01282770

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery 2nd

in violation of § 16-3-600 of the S.C. Code of Laws, bearing CDR Code # 3413
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 69393
Shelton, Misti H SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 7/25/13
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 301 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$ <u>25</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5</u>
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ <u>130</u>

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]

Judge Code: 2049

Sentence Date: 7-25-13

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

DOCKET NO. 2011-GS-46-02907

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

WITNESSES

Stokes

The State of South Carolina
County of York

Defendant

COURT OF GENERAL SESSIONS

September 15, Term 2011

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

ARREST WARRANT NUMBER

92

Defendant

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

MARQUIS JEARIUS SANTONI ROBINSON

TRUE BILL

Person of Grand Jury

VERDICT

Person of Petit Jury

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code: 049

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

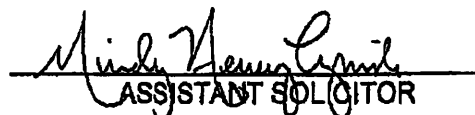
INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

The Defendant, Marquis Jearius Santoni Robinson, did in York County, South Carolina, on or about June 8, 2011, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing the crime of Armed Robbery and/or Attempted Murder and/or Kidnapping. All in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

1348

COUNTY OF
STATEYork
VS.

Marquies Jearies Santoni Robinson

Jail

AKA:

Race: BLACK Sex: M Age: 30

DOB: SS#:

Address:

City, State, Zip: Rock Hill, SC 29732

DL#: SID#: SC01282770

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

INDICTMENT/CASE#: 2011GS4602807

A/W#: J132892

Date of Offense: 6/8/2011

S.C. Code § : 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shelon, Misti H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years/or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 301 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (DUI Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J)(Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 130

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation

Presiding Judge

Judge Code: 2049

Sentence Date: 7.25.13

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

David Hamilton

Wanda Nelson

WITNESSES

Stokes

ARREST WARRANT NUMBER

38

ACTION OF GRAND JURY

VERDICT

Person of Grand Jury

9/15/11

VERDICT

Person of Petit Jury

DOCKET NO. 2011-GS-46-02908

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

VS.

MARQUIS JEARIES SANTONI ROBINSON

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

KIDNAPPING

The Defendant, Marquis Jearies Santoni Robinson, did in York County, South Carolina, on or about June 8, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Jared Crane and/or Ernest Jordan, without authority of law, all in violation of Section 16-03-910 of the Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

COUNTY OF York *Paul*
 STATE VS.
Marquis Jearies Santoni Robinson
 AKA:
 Race: BLACK Sex: M Age: 30
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Rock Hill, SC 29732
 DL#: [REDACTED] SID#: SC01282770
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping / Kidnapping

INDICTMENT/CASE#: 2011GS460208
 A/W#: J132908
 Date of Offense: 6/8/2011
 S.C. Code §: 16-03-0910
 CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ARREST: [Signature] 69393
Skelton, Misti H SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 301 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ <u>130</u>

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]

Judge Code: 2049

Sentence Date: 7-25-13

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

DOCKET NO. 2011-GS-46-02909

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES
Stokes

The State of South Carolina
County of York

Defendant

COURT OF GENERAL SESSIONS

I hereby appear in my own proper person and plead guilty to the within indictment or to

September 15, Term 2011

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER
193

THE STATE

vs.

MARQUIS JEARIES SANTONI ROBINSON

ACTION OF GRAND JURY

TRUE BILL

Henry H. White
Person of Grand Jury 9/15/11

VERDICT

Indictment for
POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490
CDR Code: 549

Person of Petit Jury

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

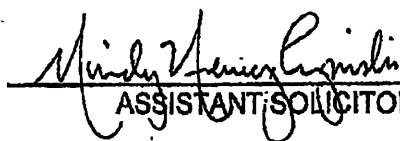
INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

The Defendant, Marquis Jearius Santoni Robinson, did in York County on or about June 8, 2011, while committing the crime of Attempted Murder and Robbery, a crime of violence, have in his possession a handgun, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

1354

COUNTY OF: York
STATE: VS.
Marquis Jearies Santoni Robinson

AKA:

Race: BLACK Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Rock Hill, SC 29732

DL#: [REDACTED] SID#: SC01282770

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

Shelton, Misti H

SC Bar# 169393

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 14-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(H) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.3 (SCJA Surcharge)	\$5	\$ 6
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 130

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4602909

A/W#: J132893

Date of Offense: 6/8/2011

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

ORIGINAL

☒ CONVICTED OF or ☐ PLEADS

7/25/13

301 Day

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning _____

\$ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

David Hamilton

Wanda Nelson

Presiding Judge

Judge Code:

Sentence Date:

2049
7.25.13