

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County
Honorable Maite Murphy, Circuit Court Judge

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S.C. SUPREME COURT

LATRONE T. BUTLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000736

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2012-GS-10-03303
 2012-GS-10-03304
 2012-GS-10-03305

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -vs-)
) January 15-17, 2014
LATRONE BUTLER,)
) Charleston, South Carolina
 Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge and a Jury.

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

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Attorneys for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

	I N D E X				
	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1					
2					
3	Letty Ann Martin	36	42	49	54
4		90	133	145	150
5		--	--	238	--
6	Chris Smith	55	58	63	63
7		190	195	--	--
8	Latrone Butler	65	67	--	--
9	Penny Jo Mizell	152	--	--	--
10	Don Kjellman	156	160	163	--
11	James Perkins	164	177	187	189
12	Shaun James	199	207	--	--
13	Jason Riley	214	235	--	--
14	Kathy Kjellman	239	--	--	--
15	Al Hallman	242	253	255	--
16	Kevan Sherbine	257	265	--	--
17	Catherine Leisy	265	278	--	--
18	Matthew Davis	285	288	--	--
19					
20					
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22					
23					
24					
25					

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	State's 1	Aerial view of trailer park	90	90
4	State's 2	Photograph	90	90
5	State's 3	Photograph	90	90
6	State's 4	Photograph	90	90
7	State's 5	Photograph	90	90
8	State's 6	Photograph	90	90
9	State's 7	Photograph	90	90
10	State's 8	Photograph	90	90
11	State's 9	Photograph	90	90
12	State's 10	Photograph	90	90
13	State's 11	Photograph	90	90
14	State's 12	Photograph	90	90
15	State's 13	Photograph	90	90
16	State's 14	Photograph	90	90
17	State's 15	Photograph	90	90
18	State's 16	Photograph	90	90
19	State's 17	Photograph	90	90
20	State's 18	Photograph	90	90
21	State's 19	Photograph	90	90
22	State's 20	Photograph	90	90
23	State's 21	Photograph	90	90
24	State's 22	Photograph	90	90
25				

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	State's 24	Photograph	90	90
4	State's 25	Photograph	90	90
5	State's 26	Photograph	90	90
6	State's 27	Photograph	90	90
7	State's 28	Photograph	90	90
8	State's 29	Photograph	90	90
9	State's 30	Photograph	90	90
10	State's 31	Photograph	90	90
11	State's 32	Photograph	90	90
12	State's 33	Photograph	90	90
13	State's 34	Photograph	90	90
14	State's 35	Photograph	90	90
15	State's 36	Photograph	90	90
16	State's 37	Photograph	90	90
17	State's 38	Photograph	90	90
18	State's 39	Photograph	220	220
19	State's 40	Photograph	220	220
20	State's 41	Photograph	202	202
21	State's 42	Photograph	202	202
22	State's 43	Photograph	90	90
23	State's 44	Photograph	90	90
24	State's 45	Photograph	90	90
25	State's 46	Photograph	90	90

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	State's 47	Photograph	90	90
4	State's 48	Photograph	90	90
5	State's 49	Photograph	90	90
6	State's 50	Photograph	90	90
7	State's 51	Photograph	90	90
8	State's 52	Photograph	90	90
9	State's 53	Photograph	90	90
10	State's 54	Photograph	90	90
11	State's 55	Photograph	90	90
12	State's 56	Photograph	226	226
13	State's 57	Photograph	90	90
14	State's 58	Photograph	90	90
15	State's 59	Photograph	90	90
16	State's 60	Photograph	226	226
17	State's 61	Photograph	90	90
18	State's 62	Photograph	90	90
19	State's 63	Photograph	90	90
20	State's 64	Photograph	90	90
21	State's 65	Photograph	90	90
22	State's 66	Photograph	90	90
23	State's 67	Photograph	90	90
24	State's 71	Photograph	90	90
25	State's 72	Photograph	90	90

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	State's 73	Photograph	90	90
4	State's 74	Photograph	90	90
5	State's 75	Photograph	90	90
6	State's 76	Photograph	90	90
7	State's 77	Photograph	90	90
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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
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Court's 10	Stipulation	352	352

1 (January 15, 2014.)

2 THE COURT: Are y'all ready to draw a jury?

3 MS. SHEALY: Yes.

4 THE COURT: All right. Welcome back, folks.

5 I met some of you earlier in the week. For
6 those I didn't get a chance to meet, my name is Roger
7 Young, and we're getting ready to draw a jury on another
8 trial we're going to start after lunch.

9 The case we're going to try is the State of
10 South Carolina versus Latrone Butler. I want to explain
11 a couple of things to you about criminal trials before we
12 begin. When the State of South Carolina charges somebody
13 with a crime, the person, after they have been indicted
14 or addressed, makes a plea, and if they plead not guilty,
15 then the State has to provide them with a jury trial and
16 the State has to prove their guilt beyond a reasonable
17 doubt. A person does not have to prove their innocence
18 in this country, and that is a right that you and I have
19 as well as every defendant that is charged with a crime
20 in this country.

21 I say that because I'm going to read you what
22 the charges on in this case for the sole purpose of I'm
23 going to ask you if you know anything about this case.
24 I'm going to tell you that these indictments are simply
25 the charging instruments by which the defendant is told

1 what he's to stand trial for and it gives this Court
2 jurisdiction over the case.

3 The fact that somebody is arrested or
4 indicted for a crime does not raise any presumption of
5 guilt at all. Again, these are simply charging
6 instruments. He pled not guilty to these charges, and he
7 is presumed to be innocent of the charges and he remains
8 innocent of the charges until such time as 12 of you
9 folks are convinced that the State has proved his guilt
10 of the charges beyond a reasonable doubt.

11 All right? So the first indictment is
12 indictment 2012-GS-10-3304, and it is the State of South
13 Carolina versus Latrone Terrell Butler, and this
14 indictment is for attempted murder, and it alleges that
15 in Charleston County, South Carolina, on or about
16 December 5, 2011, the defendant, Latrone Terrell Butler,
17 did, with intent to kill and malice aforethought attempt
18 to kill Letty Martin. This is in violation of section
19 16-3-29 of the South Carolina code of laws as amended,
20 and Mr. Butler pled not guilty to that charge.

21 Indictment 2012-GS-10-3305 is the State of
22 South Carolina versus Latrone Terrell Butler, and it is
23 an indictment for kidnapping, and it alleges in
24 Charleston County South Carolina on or about December 5,
25 2011 the defendant, Latrone Terrell Butler, unlawfully

1 did seize, confine, inveigle, decoy, kidnap, abduct or
2 carry away the victim, Letty Martin, without authority of
3 law, all in violation of 16-3-910 of the South Carolina
4 code of laws as amended. He has pled not guilty to that
5 charge.

6 The final indictment is 2012-GS-10-3303, and
7 it is the State of South Carolina versus Latrone Terrell
8 Butler and this is an indictment for the crime of
9 carjacking, and it alleges in Charleston County, South
10 Carolina on or about December 5, 2011, the defendant did
11 take or attempt to take a motor vehicle from Letty Martin
12 by force, violence, or intimidation while Letty Martin
13 was operating a vehicle or inside of the vehicle in
14 violation of 16-3-1075 sub section (d)1 the South
15 Carolina code of laws as amended, and, again, Mr. Butler
16 pled not guilty.

17 So, first, is there any member of the jury
18 panel who knows anything at all about these cases? If
19 so, would you please stand. Okay. I find none.

20 Now, I want to introduce you to some of the
21 people that you will be seeing through this trial. In
22 South Carolina, we call our prosecutors solicitors. The
23 solicitors -- we have 16 judicial circuits in this state
24 and we are in the Ninth Circuit, and the Ninth Judicial
25 Circuit is Charleston and Berkeley Counties. The

1 solicitor for the Ninth Judicial Circuit is Ms. Scarlett
2 Wilson, and she has selected from her office two people I
3 will ask to stand and introduce themselves to you. If
4 you would --

5 MS. SHEALY: My name is Jennifer Shealy. I'm
6 assistant solicitor in the solicitor's office here, and
7 this is Drew Evans. He's also an assistant solicitor.

8 THE COURT: All right. Is there any member
9 of the jury panel who is related by blood or marriage or
10 acquainted in any way with either Ms. Wilson or either of
11 the two individuals you met from her office? If so,
12 would you please stand.

13 Is there any member of the jury panel, either
14 you or an immediate family member or close personal
15 friend, employed by the Ninth Circuit Solicitor's Office?
16 If so, would you please stand. I find none.

17 Now, the defendant in this case is
18 Mr. Latrone Butler. Would you stand and face the jury
19 panel, Mr. Butler? He is standing before you now. Is
20 there any member of the jury panel related by blood or
21 marriage or acquainted in any way with Mr. Latrone
22 Butler? If so, would you please stand. I find none.

23 He has two lawyers standing beside him.
24 Would y'all introduce yourselves to the jury panel.

25 MS. FORD: Hi. My name is Mary Ford, and I'm

1 an attorney with the public defender's office, and
2 joining me is another attorney from my office, Shirene
3 Hansotia.

4 THE COURT: Any member of the jury panel
5 related by blood or marriage or acquainted in any way
6 with either of these two folks or perhaps been
7 represented by them in the past? If so, would you please
8 stand. All right. I find none. Thank you. You can be
9 seated.

10 Now, next I'm going to call you out the names
11 of people who may be called as a witnesses in this case.
12 So when I call the name out, if you are related by blood
13 or marriage or acquainted in any way with the folks when
14 I call the name out, I ask that you please stand.

15 First is the victim in this case, Ms. Letty
16 Martin. Ms. Martin, will you stand and face the jury
17 panel. Any member of the jury panel related by blood or
18 marriage or acquainted in any way with her? If so, would
19 you please stand. Okay. I find none. Thank you.

20 How about Marcus Hostetler, who is a
21 chiropractor? Might be a patient of Dr. Hostetler?
22 Okay. I find none. Penny Joe Mizell? I find none.
23 Keivet -- is that a man or a woman?

24 MS. SHEALY: It's a woman.

25 THE COURT: She spells her name K-e-i-v-e-t?

1 All right. Anybody related by blood or marriage or paint
2 or acquainted with any way with her? I find none.
3 Brittany Jasmine Brown? I find none. Detective James
4 Perkins, Charleston County sheriff's office? Detective
5 Chris Smith, Charleston County sheriff's office? I find
6 none.

7 Kathy Kjellman with the Charleston County
8 sheriff's office? All right. I find none. B.H. Bedsaul
9 with Charleston County? I find none. James Milz with
10 Charleston County sheriff office? I find none. Brent
11 Roy with Charleston County county sheriff? I find none.
12 Jason Riley, Charleston County county sheriff? I find
13 none. Investigator Erin Meyer, Charleston County
14 sheriff? I find none. Keith Herriott, Charleston County
15 county sheriff? I find none. Megan Hyde, Charleston
16 County county sheriff? I find none.

17 David Johnson, Charleston County sheriff? I
18 find none. Shaun Jones, Charleston County county
19 sheriff?

20 MS. SHEALY: That's actually James. His last
21 name is James.

22 THE COURT: What did I say?

23 MS. SHEALY: I think you said Jones.

24 THE COURT: Shaun James? I'm sorry. Shaun
25 James? I find none. Al Hallman, North Charleston

1 police? Kelly Murphy, North Charleston police?
2 Catherine Leisy, South Carolina case law enforcement,
3 also known as SLED? I find none. Don Kjellman with
4 SLED?

5 Laverna Butler, Charleston County Detention
6 Center? Matthew Davis with the public defender's office?
7 Calvin Matthews and Kevan Sherbine with the county jail,
8 detention center? I find none.

9 Now, is there any member of the jury panel,
10 either you or an immediate family member or any of your
11 close personal friends, employed by any law enforcement
12 agency? If so, would you please stand.

13 All right. Let's start with you. Your name
14 and number?

15 A PROSPECTIVE JUROR: 16, Margaret Barton and
16 I have a friend, who is retired from the Charleston
17 sheriff's department.

18 THE COURT: All right. Thank you. Yes, your
19 name and number?

20 A PROSPECTIVE JUROR: Meg Herndon, number
21 152. I have an acquaintance, Buddy Littlejohn. I met
22 him several times. He's with SLED.

23 THE COURT: Okay. Thank you. Yes, ma'am.

24 A PROSPECTIVE JUROR: Sami Butler, juror 47.
25 My sister-in-law is currently in internal affairs in

1 Horry County.

2 THE COURT: All right. Thank you.

3 A PROSPECTIVE JUROR: Juror 281. My best
4 friend's husband just retired from Charleston County.

5 THE COURT: All right. Anyone else?

6 A PROSPECTIVE JUROR: 313. My grandfather
7 was a policeman in the New York police department.

8 THE COURT: Thank you. Yes?

9 A PROSPECTIVE JUROR: I'm retired from the
10 sheriff's department.

11 THE COURT: What's your name and number?

12 A PROSPECTIVE JUROR: Belinda Greenbrown,
13 143.

14 THE COURT: Yes, sir?

15 A PROSPECTIVE JUROR: Juror number one,
16 Calvin Allen. My wife is retired from the Charleston
17 County Detention Center. My brother-in-law was a deputy,
18 and my father-in-law was a deputy.

19 THE COURT: Thank you. Anyone else?

20 A PROSPECTIVE JUROR: I don't know if it
21 would apply, but in my job capacity I'm obligated, should
22 there be a national emergency, to provide a mobile Marine
23 station for any law enforcement whether it be game
24 warden, municipal, or --

25 THE COURT: What's your name and number?

1 A PROSPECTIVE JUROR: 291, Robert Schrimpf.

2 THE COURT: All right. Thank you. Anyone
3 else?

4 Any member of the jury panel or a close
5 personal friend or immediate relative ever been the
6 victim of a crime? If so, would you please stand.

7 You name and number, please.

8 A PROSPECTIVE JUROR: 262.

9 THE COURT: Give us just a little bit of more
10 information.

11 A PROSPECTIVE JUROR: I have a niece that was
12 had a rape incident. That went to trial.

13 THE COURT: All right. You think that would
14 affect your ability to be a fair and impartial juror in
15 this case?

16 A PROSPECTIVE JUROR: I do not.

17 THE COURT: All right. Thank you. Your name
18 and number please?

19 A PROSPECTIVE JUROR: 73, Laurie Cooper. We
20 were victims of burglary.

21 THE COURT: We, being your family?

22 A PROSPECTIVE JUROR: My family, uh-huh.

23 THE COURT: Do you think that would affect
24 your ability to be fair and impartial in this case?

25 A PROSPECTIVE JUROR: No, sir.

1 THE COURT: Okay. Thank you. Yes?

2 A PROSPECTIVE JUROR: 237, Elizabeth Morris.
3 My father-in-law was murdered by a hitchhiker.

4 THE COURT: Do you think that would affect
5 your ability to be fair and impartial in this case?

6 A PROSPECTIVE JUROR: No, sir, I do not.

7 THE COURT: Thank you. Yes, sir?

8 A PROSPECTIVE JUROR: William Smith, 313. My
9 nephew was killed by a drunk driver.

10 THE COURT: Do you think that would affect
11 your ability to be fair and impartial in this case?

12 A PROSPECTIVE JUROR: No, Your Honor.

13 THE COURT: Yes?

14 A PROSPECTIVE JUROR: Alex Ur, 342. I was
15 robbed, mugged, I guess you could say.

16 THE COURT: Do you think that would affect
17 your ability to be fair and impartial in this case?

18 A PROSPECTIVE JUROR: No, I do not.

19 THE COURT: Thank you. Yes?

20 A PROSPECTIVE JUROR: Jane Carpenter, my
21 son-in-law was killed by drug smugglers.

22 THE COURT: Do you think that would affect
23 your ability to be fair and impartial in this case?

24 A PROSPECTIVE JUROR: No, sir.

25 THE COURT: Any member of the jury panel ever

1 been a witness in either a civil or a criminal case? No?
2 Yes? Name and number?

3 A PROSPECTIVE JUROR: 313. I was a witness
4 in -- an expert witness in a real estate case.

5 THE COURT: All right. Thank you. Anyone
6 else? Any member --

7 A PROSPECTIVE JUROR: I don't know if I was
8 considered a witness because is it was my insurance
9 company being sued, but I got on the witness stand in an
10 automobile accident.

11 THE COURT: What is your name and number,
12 please?

13 A PROSPECTIVE JUROR: Meg Herndon, 152.

14 THE COURT: Thank you. Anyone else?

15 A PROSPECTIVE JUROR: I've been an expert
16 witness in several cases professionally.

17 THE COURT: What is your name and number?

18 A PROSPECTIVE JUROR: Norma Higgins, 156.

19 THE COURT: What is your area of expertise?

20 A PROSPECTIVE JUROR: I'm a psychotherapist,
21 and I used to work at mental health and adolescent
22 services.

23 THE COURT: All right. Thank you.

24 Any member of the jury or immediate family
25 member ever had any criminal charges either adjudicated

1 in the past or currently pending with the Charleston
2 County solicitor's office?

3 Any member of the jury panel or any of your
4 immediate family members ever been accused of a violent
5 crime? If so, would you please stand.

6 Any member of the jury panel have any
7 opinions or feelings about the crimes of carjacking,
8 attempted murder, or kidnapping that would make it
9 difficult for you to serve on a jury in this case, either
10 for or against the State or for or against the defendant?
11 I find none.

12 Any member of the jury panel ever served on a
13 jury before, either a criminal or a civil case?

14 We'll work our way across the room by row,
15 and just tell me your name and number, whether it was
16 criminal or civil, and, if it was a criminal case, what
17 was the verdict.

18 A PROSPECTIVE JUROR: Adam Gantt, juror
19 number 119. Criminal case.

20 THE COURT: Okay.

21 A PROSPECTIVE JUROR: And guilty verdict.

22 THE COURT: Name and number?

23 A PROSPECTIVE JUROR: Number one. It was a
24 civil trial, about two years ago.

25 THE COURT: Yes?

1 A PROSPECTIVE JUROR: 191, Scott
2 Lambertgorwyn. It was a criminal case in 2009, guilty
3 verdict.

4 THE COURT: It was --

5 A PROSPECTIVE JUROR: Guilty verdict, 2009.

6 A PROSPECTIVE JUROR: 237, Elizabeth Morris,
7 civil.

8 THE COURT: Thank you.

9 A PROSPECTIVE JUROR: Joseph Glover, 126, it
10 was civil.

11 THE COURT: Thank you.

12 A PROSPECTIVE JUROR: Toni Bennett, number
13 24, civil.

14 THE COURT: All right. Thank you.

15 A PROSPECTIVE JUROR: Alex Ur, 342, criminal.

16 THE COURT: 342, you said it was criminal?

17 A PROSPECTIVE JUROR: Yeah, and the verdict
18 was guilty.

19 THE COURT: Yes?

20 A PROSPECTIVE JUROR: Brandy West, 357, it
21 was civil.

22 THE COURT: Thank you.

23 A PROSPECTIVE JUROR: Jonathan Thompson, 333,
24 criminal. It was dismissed.

25 THE COURT: All right. Thank you. Any

1 member of the jury panel a member of any kind of
2 organization that supports victim's rights or law
3 enforcement, groups like Citizens Against Violent Crime,
4 People Against Rape, Mothers Against Drunk Driving,
5 Persons Empowered to Save Teens or any community
6 organizations like that? Okay. I find none.

7 Any member of the jury panel have any reason
8 at all why they think they could not be a fair and
9 impartial juror in this case, either for or against the
10 State or for or against the defendant? Sometimes you
11 have folks -- and I'm not going to try to persuade you or
12 change your beliefs or anything, I'm just trying to get
13 12 people who can serve on a jury who can take an oath
14 and listen to the evidence in this case, apply the law as
15 I charge it to you, and agree that that will and that
16 alone will be the basis for your verdict.

17 Sometimes you have people who say I don't
18 think I ought to sit in judgment the other people
19 because, you know, things in the Bible. Sometimes you
20 have people that belong to organizations that are
21 basically saying, well, you know, the government is on
22 the wrong track and we got to do something to fix the
23 country, and if I ever get on a jury or any member of
24 that group gets on a jury, we've already decided what the
25 outcome of the case ought to be and made up their mind

1 before they ever get here.

2 Sometimes you have philosophical reasons why
3 you don't think you could be fair if you stopped and talk
4 and thought about it. Well, if you got arrested, you
5 must be guilty. That is, you know, not what the law is
6 when it comes to making a decision, and if you don't feel
7 you can put that aside, then we should talk about it.

8 All of these things are just examples. I'm
9 not trying to limit them, but there are things that I've
10 dealt with before, saying, well, I need to talk to you
11 about it, and if you come up talk to me about it
12 privately -- in fact, I would prefer it if you do, if you
13 have some, reason either what I said or something else,
14 why you don't think you could be fair and impartial?

15 I really want 12 people that go, well, if I
16 was on trial, I would want somebody like me who says I
17 will make my decision based on the evidence presented in
18 the courtroom, the law the judge tells me, and
19 understanding the law in this case and in this country is
20 Mr. Butler is sitting there presumed innocent and the
21 State has to prove he is guilty beyond a reasonable
22 doubt.

23 If you don't think you can go along with that
24 or you have some reason why you don't think you could be
25 fair to either the State or to Mr. Butler, would you

1 please stand? And you're welcome to come up and talk to
2 me about it. All right?

3 I think I have covered all the questions you
4 have, but does anything have anything? From the State?

5 MS. SHEALY: No, sir. Thank you.

6 THE COURT: From the defense?

7 MS. FORD: No, Your Honor.

8 THE COURT: Are there any challenges for
9 cause from the State?

10 MS. SHEALY: No, Your Honor.

11 THE COURT: From the defense?

12 MS. FORD: No, Your Honor.

13 THE COURT: What we do now, folks, is we are
14 going to draw 12 jurors and who alternate. The way we do
15 this, if you were in civil court, this is a totally
16 different way of doing it. You come through these two
17 doors, this gentleman standing here right now, and you
18 come stand in front of this podium and turn around and
19 face the back toward the exit sign.

20 The State will then have the opportunity to
21 say either present the juror or excuse the juror. If the
22 State excuses you, you go sit back down. If the State
23 says present the juror, then the defense has the
24 opportunity to say either present the juror or excuse the
25 juror. If the defendant says excuse the juror, you go

1 sit back down.

2 However, if both of you, both sides, say
3 present the juror, then you just come over here, and
4 you're on the jury. So when you come up, bring your
5 belongings because you may be going right over into the
6 jury box. Don't take it personal if somebody says excuse
7 the juror. Our rules provide that the State gets five
8 strikes, the defense gets ten, and when we do the
9 alternates, its one and two.

10 So, Mr. Clerk, you got a list?

11 THE CLERK: All right. As the judge stated
12 whenever, I call your name, gather your belongings, turn
13 and face the back of the courtroom.

14 Juror number 73, Laurie Cooper.

15 (The juror, a white female, approaches.)

16 What say you for the State?

17 MS. SHEALY: Please seat the juror.

18 THE CLERK: What say you for the defendant?

19 MS. FORD: Please present the juror.

20 THE CLERK: If you would make your way to the
21 jury box, you've been selected as a juror in this case.

22 Juror number 70, Richard Comerford.

23 (The juror, a white male, approaches.)

24 What say you for the State?

25 MS. SHEALY: Please seat the juror.

1 THE CLERK: What say you for the defendant?

2 MS. FORD: Please present the juror.

3 THE CLERK: If you would please make your way
4 to the jury box, you've been selected as a juror in the
5 trial of this case. Juror number 295, Stacy Shelley.

6 (The juror, a white male, approaches.)

7 What say you for the State?

8 MS. SHEALY: Please seat the juror.

9 THE CLERK: What say you for the defendant?

10 MS. FORD: Please present the juror.

11 THE CLERK: If you would make your way to the
12 jury box, you've been selected as a juror in the trial of
13 this case.

14 Juror 367, Scott Williams.

15 (The juror, a white male, approaches.)

16 THE COURT: What say you for the State?

17 MS. SHEALY: Beg the Court's indulgence just
18 a moment.

19 Please excuse the juror.

20 THE CLERK: If you return to your seat,
21 you've been excused from the trial of this case.

22 Juror number 105, Meridith Fessenden.

23 (The juror, a white male, approaches.)

24 What say you for the State?

25 MS. SHEALY: Please seat the juror.

1 THE CLERK: What say you for the defendant?

2 MS. FORD: Please present the juror.

3 THE CLERK: If you would make your way to the
4 jury box, you've been selected as a juror in the trial of
5 this case.

6 Juror number 266, John Price.

7 (The juror, a white male, approaches.)

8 What say you for the State?

9 MS. SHEALY: Please seat the juror.

10 THE CLERK: What say you for the defendant?

11 MS. FORD: Please present the juror.

12 THE CLERK: If you would make your way to the
13 jury box, you've been selected as a juror in the trial of
14 this case.

15 Juror 156, Norma Higgins.

16 (The juror, a white female, approaches.)

17 What say you for the State?

18 MS. SHEALY: Please seat the juror.

19 THE CLERK: What say you for the defendant?

20 MS. FORD: Please excuse the juror.

21 THE CLERK: Ma'am, have a seat back in the
22 audience. You've been excused from the trial of this
23 case.

24 Juror number 16, Margaret Barton.

25 (The juror, a white female, approaches.)

1 What say you for the State?

2 MS. SHEALY: Please seat the juror.

3 THE CLERK: What said you for the defendant?

4 MS. FORD: Please excuse this juror.

5 THE CLERK: You've been excused from the
6 trial of this case.

7 Juror number 333, Jonathan Thompson. What
8 say you for the State?

9 MS. SHEALY: Please excuse this juror.

10 THE CLERK: If you would return to your seat,
11 you've been excused from the trial of this case.

12 Juror number 352, Cynthia Wand.

13 (The juror, a white female, approaches.)

14 What say you for the State?

15 MS. SHEALY: Please seat this juror.

16 THE CLERK: What say you for the defendant?

17 MS. FORD: Please excuse the juror.

18 THE CLERK: If you would please return to
19 your seat, you've been excused from the trial of this
20 case.

21 Juror 285, Covell Rogers.

22 (The juror, a white female, approaches.)

23 What say you for the State?

24 MS. SHEALY: Please seat the juror.

25 THE CLERK: What say you for the defendant?

1 MS. FORD: Please seat the juror.

2 THE CLERK: If you would make your way to the
3 jury box, you've been selected as a juror in the trial of
4 this case.

5 Juror number 358, Robert Whaley.

6 (The juror, a black male, approaches.)

7 What say you for the State?

8 MS. SHEALY: Please seat the juror.

9 THE CLERK: What say you for the defendant?

10 MS. FORD: Please seat the juror.

11 THE CLERK: If you make your way to the jury
12 box, you've been selected as a juror in the trial of this
13 case.

14 Juror number 136, Shirley Griffin.

15 (The juror, a black female, approaches.)

16 What say you for the State?

17 MS. SHEALY: Please seat the juror.

18 THE CLERK: What say you for the defendant?

19 MS. FORD: Please seat the juror.

20 THE CLERK: Make your way to the juror box.

21 You've been selected as a juror in the trial of this
22 case.

23 Juror 133, Belinda Greenbrown.

24 (The juror, a black female, approaches.)

25 What say you for the State?

1 MS. SHEALY: Please excuse this juror.

2 THE CLERK: If you would return to your seat,
3 you've been excused from the trial of this case. The
4 State has exhausted three of its strikes.

5 Juror number 119, Scott Lambertgorwyn.

6 (The juror, a white male, approaches.)

7 What say you for the State?

8 MS. SHEALY: Please seat the juror.

9 THE CLERK: What say you for the defendant?

10 MS. FORD: Please excuse the juror.

11 THE CLERK: If you would return to your seat,
12 you've been excused from the trial of this case.

13 Juror 107, Charles Fogleman.

14 (The juror, a white male, approaches.)

15 What say you for the State?

16 MS. SHEALY: Please seat the juror.

17 THE CLERK: What say you for defendant?

18 MS. FORD: Please excuse this juror.

19 THE CLERK: If you would please return to
20 your seat, you've been excused from the trial of this
21 case. The defense has exhausted five of its ten strikes.

22 Juror 119, Adam Gantt.

23 (The juror, a white male, approaches.)

24 What say you for the State?

25 MS. SHEALY: Please seat the juror.

1 THE CLERK: What say you for defendant?

2 MS. FORD: Please excuse this juror.

3 THE CLERK: If you would, please return to
4 your seat. You've been excused from the trial of this
5 case.

6 Juror 237, Elizabeth Morris.

7 (The juror, a white female, approaches.)

8 What say you for the State?

9 MS. SHEALY: Please seat the juror.

10 THE CLERK: What say you for defendant?

11 MS. FORD: Please excuse this juror.

12 THE CLERK: Please return to your seat.

13 You've been excused from the trial of this case.

14 Juror number 12, Corey Baize.

15 (The juror, a white male, approaches.)

16 What say you for the State?

17 MS. SHEALY: Please seat the juror.

18 THE CLERK: What say you for the defendant?

19 MS. FORD: Please seat the juror.

20 THE CLERK: If you would make your way to the
21 jury box, you've been selected as a juror in the trial of
22 this case.

23 Juror 47, Sami Butler.

24 (The juror, a white female, approaches.)

25 What say you for the State?

1 MS. SHEALY: Please excuse this juror.

2 THE CLERK: If you would return to your seat,
3 you've been excused from the trial of this case. State
4 has one strike remaining.

5 Juror 52, Jane Carpenter.

6 (The juror, a white female, approaches.)

7 What say you for the State?

8 MS. SHEALY: Please seat the juror.

9 THE CLERK: What say you for the defendant?

10 MS. FORD: Please excuse the juror.

11 THE CLERK: You've been excused from the
12 trial of this case. Juror number two 91, Robert
13 Schrimpf.

14 (The juror, a white male, approaches.)

15 What say you for the State?

16 MS. SHEALY: Please seat the juror.

17 THE CLERK: What say you for the defendant?

18 MS. FORD: Please seat the juror.

19 THE CLERK: If you would, please make your
20 way to the jury box. You've been selected as a juror in
21 the case.

22 Juror number 135, Brayon Gregg.

23 (The juror, a black female, approaches.)

24 What say you for the State?

25 MS. SHEALY: Please excuse this juror.

1 THE CLERK: If you would please return to
2 your seat, you've been excused from the trial of this
3 case. State has exhausted all five of their strikes.

4 Juror number 11, Nicole Bacza.

5 (The juror, a white female, approaches.)

6 Any challenges from the State?

7 MS. SHEALY: Please seat the juror.

8 THE CLERK: What say you for the defendant?

9 MS. FORD: Please seat the juror.

10 THE CLERK: If you make your way to the jury
11 box, you've been selected a juror in this case. Juror
12 number 79, April Cuocodesalvo. Any challenges from the
13 State?

14 MS. SHEALY: Please seat the juror.

15 THE CLERK: What say you for the defendant?

16 MS. FORD: Please seat the juror.

17 THE CLERK: If you make your way to the jury
18 box, you've been selected as a juror in the trial of this
19 case. Now striking for our alternate. Strikes are one
20 and two.

21 Juror number 137, Ginger Grimes.

22 (The juror, a white female, approaches.)

23 What say you for the State?

24 MS. SHEALY: Please seat the juror.

25 THE CLERK: What say you for the defendant?

1 MS. FORD: Please seat the juror.

2 THE CLERK: If you make your way to the jury
3 box, you've been selected as the first alternate.

4 Juror number 94, Diane Dunlap.

5 (The juror, a white female, approaches.)

6 What say you for the State?

7 MS. SHEALY: Please seat the juror.

8 THE CLERK: What say you for the defendant?

9 MS. FORD: Please seat the juror.

10 THE CLERK: If you would make your way to the
11 jury box, you've been selected as the second alternate in
12 the trial of this case.

13 THE COURT: Anything further from the State?

14 MS. SHEALY: Nothing further, Your Honor.

15 THE COURT: From the defense?

16 MS. FORD: No, Your Honor.

17 THE COURT: Folks, you are our jury now, and
18 we will begin this case after lunch. I'm going to send
19 you now with the bailiff, and he'll show you where the
20 jury room is and where you'll report to. Please don't
21 talk to anybody about the case while you're gone.

22 You can go to lunch with other members of the
23 jury panel if you want. While you haven't heard any of
24 the evidence yet, this is a standard charge that I give
25 you any time we leave the room or break for lunch or for

1 the day, for that matter, but the oath that you'll take
2 when you get back is you make your decisions based on
3 what you hear in this courtroom without any outside
4 influences, and it's also not proper for you to begin
5 your deliberations or discussions until you've heard all
6 of the evidence and both sides of the story.

7 So, please, don't begin talking about the
8 case, or if anybody approaches you to discuss the case,
9 please report that back to me when you get back. We've
10 got to get a few thing done on this case before we are
11 ready for trial. Got to grab a bite to eat. We have a
12 few pretrial matters to resolve, and then we will start
13 back, so I'm going to have you come back at 3:00 in the
14 jury room.

15 When you get back, amongst yourselves, I like
16 to let the jury pick the foreperson of the jury. Anybody
17 can be the foreperson of the jury except the two
18 alternates, so that always gives you a chance to give you
19 some way to introduce yourself, and if somebody wants to
20 take that on, fine. If you don't, then I'll pick
21 somebody.

22 All right? We'll see you back at 3:00, and
23 thank you for your patience.

24 The rest of the you folks, that will take us
25 through the rest of the week for criminal court, and they

1 gave me a note that said the ongoing civil trials will
2 finish out the rest of the week, so you are done with
3 your jury duty for the rest of the week.

4 You're welcome to come back and watch any of
5 the trials if you want to. Nobody ever seems to take me
6 up on that offer, but you got free parking downtown for
7 the rest of the day, if you want to go have lunch or do
8 whatever you want to do. Feel free to do that, but,
9 otherwise, I want to thank you for your service.

10 I hope you enjoyed it. I hope it didn't
11 inconvenience you too much, and thank you for your time.

12 All right. You said you had a Biggers
13 matter. How long do you anticipate that will take?

14 MS. SHEALY: I think at least 45 minutes.

15 THE COURT: Well, then -- and Jim Stack wants
16 to still do a plea?

17 MS. SHEALY: It's actually Timmy Finch that
18 has a plea.

19 THE COURT: Well, that that shouldn't take
20 that long. How about y'all -- tell Tim and Kevin to be
21 here at 2:15. We'll do that plea, and then we'll start
22 with your hearing.

23 (Recess taken.)

24 A F T E R N O O N S E S S I O N

25 THE COURT: All right. Are you ready with

LETTY MARTIN - DIRECT BY MS. SHEALY

1 your witness?

2 MS. SHEALY: Your Honor, we're ready to
3 proceed.

4 THE COURT: All right. Call your witness.

5 MS. SHEALY: Letty Martin.

6 LETTY MARTIN,

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SHEALY:

11 Q. Ms. Martin, if you would, for purposes of this
12 hearing, tell the judge how old you are.

13 A. Sixty-nine.

14 Q. And how far did you go in school?

15 A. High school graduate and business school.

16 Q. Focussing your attention back to December 5th of
17 2011, could you tell the Court whether or not you were
18 the victim of a carjacking and attempted murder and
19 kidnapping.

20 A. Yes, I was.

21 Q. And without the detail of the actual crime at that
22 point, could you tell the Court whether or not you called
23 911 that evening or had someone else call 911 for you?

24 A. Someone else called for me.

25 Q. And do you recall what kind of description you

LETTY MARTIN - DIRECT BY MS. SHEALY

1 gave of the person who attacked you that evening?

2 A. Yes.

3 Q. Could you tell the Court what description you
4 gave.

5 A. A black male, maybe five-ten to six feet tall. I
6 guessed weight at 180 pounds.

7 Q. And did you know who the individual was?

8 A. No.

9 Q. That evening, did you hear any officer mention a
10 name of a possible suspect based on your description?

11 A. Yes.

12 Q. And what name was mentioned?

13 A. Latrone Butler.

14 Q. When you heard the name Latrone Butler, did that
15 mean anything to you?

16 A. No.

17 Q. Did you at that point know who Latrone Butler was?

18 A. No.

19 Q. Two days later were you asked to go to the
20 sheriff's department for purposes of looking at a lineup?

21 A. Yes.

22 Q. And when you got there, could you tell the judge,
23 if you would, did they also take some photographs of your
24 injuries while you were there?

25 A. Yes, they did.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. Showing you --

2 MS. SHEALY: Your Honor, for purposes of this
3 hearing, I would like to have the admonition sheet and
4 the actual lineup marked as a Court's exhibit, if that's
5 okay.

6 THE COURT: Okay.

7 BY MS. SHEALY:

8 Q. Ms. Martin I'm going to show you what's been
9 marked as Court's Exhibit No. 1, and first, if you could
10 tell the Court, please, do you remember who asked you to
11 come down to the sheriff's office?

12 A. Detective Smith.

13 Q. And Detective Smith is a female?

14 A. Yes.

15 Q. When you got there, did she go over some aspects
16 of the lineup reflected on the form in front of you?

17 A. Yes.

18 Q. And could you advise the Court whether or not
19 those are your initials by items number one through
20 seven.

21 A. Yes, they are.

22 MS. SHEALY: And, Judge, I think for purposes
23 of this hearing, I can hand you a copy.

24 BY MS. SHEALY:

25 Q. I don't think I need go through each of those, but

LETTY MARTIN - DIRECT BY MS. SHEALY

1 did you read them or have them read to you before
2 initialling?

3 A. I read them.

4 Q. What was your understanding of the lineup that you
5 would be shown? Were you told the person was definitely
6 in there?

7 A. No.

8 Q. Were you told the name of any of the people in the
9 lineup?

10 A. No.

11 Q. Was the name Latrone Butler mentioned in your
12 presence at that time?

13 A. No.

14 Q. Did Ms. Smith, in fact, show you the lineup and
15 give you an opportunity to evaluate them?

16 A. Yes.

17 Q. After having done so, did you, in fact, identify
18 anyone?

19 A. I did.

20 Q. And looking at Court's Exhibit No. 1 on the second
21 page, could you tell us whether or not you initialed a
22 person identified in that lineup?

23 A. Yes.

24 Q. After having done so -- well, prior to that, did
25 Detective Smith at in any manner suggest to you that the

LETTY MARTIN - DIRECT BY MS. SHEALY

1 person who did this to you was in the lineup?

2 A. No.

3 Q. Did she suggest to you which one might be the
4 person who did this to you?

5 A. No.

6 Q. Did she attempt to lead you in any fashion to
7 choose one of the people in the lineup?

8 A. No.

9 Q. After having put your initials by one of the
10 photographs, did you, in fact, enter a statement on the
11 cover of Court's Exhibit 1?

12 A. Yes.

13 Q. And is that listed under witness identification
14 statements?

15 A. Yes, it is.

16 Q. Would you tell the Court, please, what you said?

17 A. He looks most like a person that car jacked me and
18 tried to kill me.

19 Q. Okay. You're going to have to speak up for us
20 just a little bit.

21 A. He looks most like the person that car jacked me
22 and tried to kill me.

23 Q. And did you, in fact, sign that document?

24 A. I did.

25 Q. And is your name reflected under the witness

LETTY MARTIN - DIRECT BY MS. SHEALY

1 signature?

2 A. Yes, it is.

3 Q. And did you print on the line beneath your
4 signature your name?

5 A. Yes, I did.

6 Q. Who all was present with you when this
7 identification was made?

8 A. Just Detective Smith.

9 Q. And at some point did you see Detective Perkins on
10 that same evening?

11 A. I did.

12 Q. And did he, in fact, come in and also witness
13 beneath Detective Smith's signature?

14 A. Yes.

15 Q. Would you tell the Court whether any member of law
16 enforcement suggested to you -- first of all, what
17 Latrone Butler looked like?

18 A. No, no one did.

19 Q. And anyone suggest to you when you're shown the
20 lineup the person is definitely going to be in there?

21 A. No one said that, no.

22 Q. Did anyone in law enforcement indicate to you
23 which one you should choose?

24 A. No.

25 MS. SHEALY: I have no further questions

LETTY MARTIN - CROSS BY MS. FORD

1 regarding this with Ms. Martin. Please answer any the
2 defense may have.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q. Hello, Ms. Martin.

7 A. Hello.

8 Q. So at the time the police came out, they were
9 interested in getting a description of the person from
10 you, correct?

11 A. Yes.

12 Q. And the description you gave was male, black male,
13 correct?

14 A. Yes.

15 Q. In his 20's?

16 A. I thought late 20's maybe.

17 Q. And as far as him being black, you gave no further
18 details if he was light, dark, or medium black?

19 A. No.

20 Q. And you say the guy was wearing jeans?

21 A. Yes.

22 Q. But you never said if he was wearing light or dark
23 jeans?

24 A. No.

25 Q. And you said he was wearing a dark jacket?

LETTY MARTIN - CROSS BY MS. FORD

1 A. Yes.

2 Q. And you never say what color jacket, just dark?

3 A. No, but I know it was a puffy jacket. I don't
4 know if I said that to them.

5 Q. You didn't mention that to anybody at the time?

6 A. No.

7 Q. And you didn't give a description of his shirt?

8 A. I didn't see the shirt.

9 Q. Okay. You didn't give a description of shoes,
10 correct?

11 A. No. I'm sorry.

12 Q. And the guy wasn't wearing gloves or anything like
13 that?

14 A. No, I don't think so.

15 Q. And you didn't see any identifying marks on the
16 man?

17 A. No.

18 Q. You didn't give a description about the man's
19 eyes?

20 A. No.

21 Q. You didn't give a description about the man's --
22 any facial hair? You didn't see facial hair?

23 A. I don't think so. I don't remember saying
24 anything.

25 Q. You never mentioned what kind of hair the man had?

LETTY MARTIN - CROSS BY MS. FORD

1 A. No.

2 Q. All right.

3 MS. SHEALY: I'm going to object to the
4 relevancy as to suggestiveness for the purposes of this
5 hearing.

6 MS. FORD: Your Honor, I think we can go into
7 a Neil vs. Biggers hearing relating to everything about
8 reliability. I think that's appropriate to do it all at
9 one time.

10 THE COURT: The liability?

11 MS. FORD: Reliability. You know, the
12 factors -- her ability to see him, the description, and
13 if they match the defendant.

14 THE COURT: Go ahead.

15 BY MS. FORD:

16 Q. And as Ms. Shealy had asked you, you indicated you
17 had never seen the man, the man who took you that day,
18 you had never seen him before?

19 A. Not that I know of, no.

20 Q. Did you see him that morning?

21 A. I'm sorry. Yes, I did see him that morning.

22 Q. Okay. And that was at your neighbor's house --

23 A. Yes. He was knocking on my neighbor's back door.
24 I was standing at my kitchen window and saw him then.

25 Q. But you hadn't seen him before that day?

LETTY MARTIN - CROSS BY MS. FORD

1 A. Not that I'm aware of.

2 Q. And the mobile home park where you live, that's
3 Jericho trailer park, mobile --

4 A. Jericho mobile home park, yes.

5 Q. And there is about 40 trailers out there; is that
6 fair to say?

7 A. I think so.

8 Q. Just a couple of roads around there, right? It's
9 not too big of a place?

10 A. That's correct.

11 Q. The person -- or when Detective Smith showed you
12 the lineup, she gave you the instructions that Ms. Shealy
13 went over. And she told you that the person may appear
14 different in their tone, their skin coloring, things like
15 that?

16 A. She did not.

17 Q. She did not? And you ended up saying the picture
18 you chose, you said he looks most like the guy?

19 A. Yes.

20 Q. You --

21 A. Compared to the other pictures, yes.

22 Q. You didn't say anything like he looks most like
23 the guy but the hair is different or the skin coloring
24 looks different?

25 A. No.

LETTY MARTIN - CROSS BY MS. FORD

1 Q. This incident happened at about 5 in the
2 afternoon?

3 A. That's correct.

4 Q. And this was December?

5 A. December 5th, yes.

6 Q. So it was light outside still?

7 A. Yes.

8 Q. Kind of getting dark?

9 A. It was still light, yes.

10 Q. And how long did the incident take, from the time
11 that he made you get in the car to the time that he left?

12 A. I have no real sense of the time while it was
13 going on. I wasn't -- I was in fear of my life, and I
14 wasn't paying any attention to the time, quite frankly.

15 Q. And in your car, the gear shifter is in between
16 the driver and the passenger?

17 A. It's in the console, yes.

18 Q. So somebody would have had to use their hand to
19 move around the gear shifter?

20 A. Yes.

21 Q. And you never saw any marks on the man's hands?

22 A. I didn't -- I really didn't notice his hand. He
23 told me to keep my eyes straight ahead on the road or he
24 would shoot me.

25 Q. Okay. So were you able to look at the man?

LETTY MARTIN - CROSS BY MS. FORD

1 A. Out of the corner of my eye a little bit, but he
2 told me not to look at him and to keep my eyes ahead or
3 he would shoot me.

4 Q. And when the two of y'all were outside of the car
5 afterwards, this is when the man put his hands around
6 your throat? Is that --

7 A. He put his one hand on my forehead and one on my
8 chin and started jerking my head like he was trying to
9 break my neck.

10 Q. Okay.

11 A. Later, I don't know how many times he did that,
12 but then I -- he choked me.

13 Q. Were you -- and the man was taller than you?

14 A. Yes.

15 Q. About six feet?

16 A. I would think so, yes.

17 Q. Okay. And he didn't have gloves on when this was
18 happening?

19 A. No.

20 Q. And so at this point the two of you were facing
21 each other?

22 A. No. He was behind me.

23 Q. He was behind you?

24 A. Yes.

25 Q. Did you tell us that you had never -- to your

LETTY MARTIN - CROSS BY MS. FORD

1 knowledge, you had never seen this man before this day,
2 correct?

3 A. To my knowledge, that is correct.

4 Q. Right. But it's true that you had given a man in
5 the trailer park a ride to Harvest Moon Grill?

6 A. That is true.

7 Q. At some point?

8 A. Yes.

9 Q. Do you remember when that was?

10 A. I don't remember specifically, no.

11 Q. It was before this incident?

12 A. Yes, and some time before, I just don't remember
13 how long.

14 Q. And was that once or more than one time?

15 A. Just once.

16 MS. FORD: Beg the Court's indulgence. May I
17 approach, Your Honor?

18 THE COURT: You may.

19 MS. FORD: I apologize, Your Honor. I'm
20 trying to find my copy of the one -- no further
21 questions, Your Honor.

22 THE COURT: Do you have any redirect?

23 REDIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q. Ms. Martin, let's back up just a little bit. When

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 you were shown a lineup, second page of Court's Exhibit 2
2 is folded in that manner.

3 A. It was.

4 Q. It was folded that way when you were shown it?
5 Okay. And then in looking at the items that you say you
6 read and then initialed, looking at item number six,
7 could you tell the Court what that says.

8 A. People may not appear exactly as they did at the
9 time of the event because features such as clothing
10 style, hair color, hairstyle, et cetera, may change even
11 in a short period of time.

12 Q. So when Ms. Ford asked you whether or not
13 Detective Smith had told you that, you had read that and
14 initialed it?

15 A. Yes.

16 Q. And Ms. Ford asked you some questions about
17 earlier that morning?

18 A. Yeah.

19 MS. SHEALY: And if I at this time could have
20 these three items marked as Court's exhibits, three
21 photographs.

22 THE COURT: All right.

23 BY MS. SHEALY:

24 Q. Okay. In showing you State's Exhibit No. 3, could
25 you tell the Court what is depicted in that photograph.

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 A. The back of my house and the spot where my carport
2 was that night.

3 Q. And looking at this area that does not have the
4 same grass as the other does, is that where your carport
5 was?

6 A. Yes, the kind of lighter brownish area right
7 behind the house.

8 Q. Showing you State's Exhibit 2, is your neighbor's
9 mobile home depicted in that photograph?

10 A. Yes, it is.

11 Q. And when you saw the same individual that
12 approached you later that day, where had you seen him
13 earlier that morning?

14 A. At her back door on the steps.

15 Q. Okay. And a closer up photograph of that is
16 Court's Exhibit 4; is that correct?

17 A. Yes.

18 Q. Now, Ms. Ford was asking you approximately what
19 time did this take place, and you indicated it was some
20 time after 5:00?

21 A. Yes, just a little bit after 5:00.

22 Q. Could you -- do we have a pointer? While they're
23 looking for a pointer, could you describe to the judge
24 that evening, that late afternoon, where did you first
25 see the person who kidnapped you?

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 A. Coming around the end corner of my house.

2 Q. Okay.

3 A. From between my house and the neighbor's house.

4 Q. So when you're saying the end corner, you mean
5 this way?

6 A. Closer to the house, actually.

7 Q. Closer here?

8 A. Yes.

9 Q. Coming that way?

10 A. Yes.

11 Q. And what were you, in fact, doing at your car at
12 that point?

13 A. I was locking the doors and getting ready to go
14 into the house.

15 Q. Would you describe to the judge your ability to
16 see him at the point that he was approaching you, before
17 he got to you?

18 A. I could see him very clearly. It wasn't -- it was
19 not yet dark, so I could see him.

20 Q. And His Honor is not aware of all the facts in the
21 case, but just to summarize, you are initially put in
22 what side of the vehicle by him?

23 A. The driver's side, to start the car.

24 Q. And does that change at some point?

25 A. Yes.

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 Q. And prior to it changing, did he say anything to
2 you about whether or not he had a weapon?

3 A. He told me he had a gun and not to fight or scream
4 or he would shoot me.

5 Q. At that point after you got the vehicle started,
6 what happened?

7 A. He took my arm again and pulled me out of the car
8 and walked me around to the passenger seat and put me in
9 the passenger seat.

10 Q. And when he put you in the passenger seat, where
11 did he go?

12 A. Back around to the driver's side and got in the
13 car.

14 Q. And at that point does he drive off?

15 A. Yes.

16 Q. And you described to us when you were trying to
17 look over at him, what would he say to you?

18 A. He would say, Keep your eyes on the road ahead.
19 Don't look at me or I will shoot you.

20 Q. And prior to his saying that to you, did you have
21 a chance to look over at him until he says that?

22 A. Not -- just barely a glance, in the car.

23 Q. And after y'all had driven around -- and you
24 indicated to the Court you're not sure how long that
25 process took; is that correct?

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 A. Yes.

2 Q. But at some point he stops the vehicle?

3 A. Yes, yeah.

4 Q. And describe to the judge what happens when he
5 stops the vehicle.

6 A. He got out and came around to the passenger side
7 and pulled me out, walked me to the back of the car, told
8 me to put my purse on trunk, and that's when he started
9 to trying to break my neck.

10 Q. And during that time of his opening the door and
11 getting you out and taking you back to the back of the
12 car, did you have the opportunity to see him at that
13 point?

14 A. No.

15 Q. Okay. So focussing your attention then on the
16 initial time with the person who abducted you that day,
17 you got the best look at him while he was walking towards
18 you.

19 A. Correct.

20 Q. And when you saw him walking towards you, you
21 realized you had seen him earlier that morning?

22 A. Yes.

23 Q. Is that correct? And then in the vehicle before
24 he would shout at you not to look at him, you would see
25 him again, see his face again?

LETTY MARTIN - RECROSS BY MS. FORD

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 MS. SHEALY: I have no further questions at
5 this time, Your Honor.

6 THE COURT: Recross?

7 MS. FORD: Yes, Your Honor.

8 RECROSS-EXAMINATION

9 BY MS. FORD:

10 Q. Earlier in the morning when you saw the man, you
11 had been inside your house?

12 A. I was in my kitchen, standing at my sink, which
13 is -- has the window over it, yes.

14 Q. Okay. So you just saw the man, and did you get a
15 good look at the man at that point?

16 A. Yes.

17 Q. Or just look at his clothing?

18 A. No, I saw him because he turned away from the
19 door, my neighbor's door.

20 Q. How long did this last? Did you stare at him for
21 a long amount of time?

22 A. A few seconds. I don't know how long.

23 Q. A few seconds. You never told anyone -- when you
24 spoke to the police that day, you never indicated to them
25 you had seen a man earlier that day?

CHRIS SMITH - DIRECT BY MS. SHEALY

1 A. I don't remember if I did or not.

2 Q. Okay.

3 MS. FORD: No further questions.

4 MS. SHEALY: I have no further questions at
5 this point.

6 THE COURT: You may step down. Do you have
7 another witness?

8 MS. SHEALY: Yes, Chris Smith.

9 CHRISTINA SMITH,

10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Christina Smith, S-m-i-t-h.

14 BY MS. SHEALY:

15 Q. Detective Smith, how long have you been working
16 with the Charleston County sheriff's office?

17 A. Nineteen years.

18 Q. And focussing your attention back to December 7 of
19 2011, could you advise the Court whether or not you
20 administered a photographic lineup to Letty Martin.

21 A. Yes, I did.

22 Q. Were you actively participating in the
23 investigation of the case at that point?

24 A. No, ma'am, I was not.

25 Q. Who asked you to show her the lineup?

CHRIS SMITH - DIRECT BY MS. SHEALY

1 A. Detective Perkins.

2 Q. And are you aware of what agency compiled the
3 lineup?

4 A. I believe it was the detention center.

5 Q. Okay. If you were to look at it, would it help
6 you in answering that?

7 A. Yes.

8 Q. Showing you Court's Exhibit 1.

9 A. Yes. It's a detention center lineup.

10 Q. Prior to showing Ms. Martin the lineup itself, did
11 you allow her the opportunity to read the -- I guess we
12 usually call it an admonition form for a line-up?

13 A. Actually, I read the form to her, and as I read
14 the form, after each one, I would have her initial next
15 to it, to make sure she understood what I was reading.

16 Q. And did you have any discussion with Ms. Martin
17 whatsoever about the name Latrone or Latrone Butler?

18 A. No, ma'am, I did not.

19 Q. When you presented her with the actual array
20 itself, did you indicate to her whether or not the person
21 who you believed or the agency believed had committed the
22 act was in the lineup?

23 A. No, I did not.

24 Q. And did you at any point suggest to her which one
25 she should identify as being the perpetrator?

CHRIS SMITH - DIRECT BY MS. SHEALY

1 A. No, ma'am.

2 Q. When you showed it to her, you had already gone
3 through -- you say you had read them to her, all seven
4 items?

5 A. Yes, ma'am.

6 Q. And do you recall whether or not she had any
7 difficulty once she was looking at the photographic array
8 itself?

9 A. I don't believe she had any difficulty.

10 Q. I notice that the page itself is folded back with
11 the identifying information concealed. Could you advise
12 the Court whether or not that's the way in which you
13 presented the document to her?

14 A. Yes, it is.

15 Q. Did any other law enforcement officer or anyone
16 involved with your agency at any point suggest to her
17 which one she should identify in the lineup?

18 A. No, ma'am.

19 MS. SHEALY: I have no further questions.
20 Please answer any the defense may have.

21 THE COURT: Cross?

22 MS. FORD: Yes, Your Honor. May it please
23 the Court:

24 CROSS-EXAMINATION

25 BY MS. FORD:

CHRIS SMITH - CROSS BY MS. FORD

1 Q. So you would be considered an independent
2 administrator?

3 A. That's correct.

4 Q. And that just means that you're not aware who the
5 target person is in the lineup?

6 A. Exactly.

7 Q. And that's because you don't want to in any way,
8 even unconsciously, indicate who the person is, or who
9 you think the person is?

10 A. Yes, ma'am.

11 Q. And one reason y'all do this is based on -- it's
12 an actual policy of the sheriff's department; isn't that
13 correct?

14 A. Yes, ma'am.

15 Q. And you have a whole policy and procedure manual
16 covering identifications.

17 A. Yes, yes, we do.

18 Q. And you go over the different types of
19 identifications? Sometimes there are show-up IDs,
20 correct?

21 A. That's correct.

22 Q. But a lot of times you'll do the six pack?

23 A. Either the six individual photographs or the array
24 of six, like this.

25 Q. Okay. And according to the policy of the

CHRIS SMITH - CROSS BY MS. FORD

1 sheriff's department, there was an identification here?

2 A. Yes, there was.

3 Q. Okay. According to the policy, if someone makes
4 an identification, aren't you supposed to ask them to
5 state their level of competence regarding the
6 identification?

7 A. Yes. We ask them to write a statement, and that
8 would be the witness identification statement that's on
9 our form.

10 Q. Okay. But in this case, she didn't say, I'm 100
11 percent sure, 50 percent sure, she said, He looks most
12 like the guy.

13 A. That's correct.

14 Q. And you were there and you indicated today that
15 you didn't think she had any difficulty, but you didn't
16 actually write a report for this, or did you?

17 A. No, I did not.

18 Q. Okay. So this is based on your memory from over
19 two years ago?

20 A. Yes, ma'am.

21 Q. And according to policy, you are supposed to
22 document the witness's responses for the investigative
23 file?

24 A. Yes, but I believe Detective Perkins may have done
25 that in his report.

CHRIS SMITH - CROSS BY MS. FORD

1 Q. Okay. And he was or was not with the two of you
2 when she actually circled the picture, or did he come
3 afterwards?

4 A. We were in the interview room together, just
5 Ms. Martin and I, and then he came in afterwards.

6 Q. Was he able to see this, like, from outside, like
7 on monitor or --

8 A. I don't know if he may have been looking. I can't
9 answer that.

10 Q. Okay. So he was not there when she actually --

11 A. No.

12 Q. -- identified someone. The policy also states the
13 lineup is to be conducted using video and/or audio
14 recording and conducted in a location when equipped with
15 it; is that correct?

16 A. That's correct.

17 Q. And the sheriff's department is equipped with
18 recording devices, correct?

19 A. We are now. At the time, at this particular time,
20 I'm not sure -- we were, like, changing from no audio and
21 video recording to audio and video reporting. It was
22 being put in place, so we were having some, like,
23 technical difficulties so I'm not sure if that was used
24 at this time.

25 Q. So you don't recall if it was available or not.

CHRIS SMITH - CROSS BY MS. FORD

1 A. Yeah.

2 Q. And so you do not compile the lineup, correct?
3 You said that --

4 A. That's correct.

5 Q. SLED did?

6 A. No. It came from the Charleston County Detention
7 Center.

8 Q. Okay.

9 A. Our ID section.

10 Q. And did they indicate -- did they include the
11 names of the persons involved but was not included on the
12 lineup given to Ms. Martin?

13 A. Yeah. The way that the this is folded is exactly
14 how it I showed it to her.

15 Q. But you do not have another lineup involving the
16 names and everything on people in there?

17 A. No. What do you mean? I don't understand what
18 you mean.

19 Q. The policy states that you're supposed to include
20 the source of the photo used, so that's from the
21 detention center, correct?

22 A. Yes.

23 Q. The date and time?

24 A. Yes.

25 Q. And the names of all persons present during the

CHRIS SMITH - REDIRECT BY MS. SHEALY

1 line -- so that is Mr. -- you were there and Detective
2 Perkins came later -- never mind.

3 A. Okay.

4 Q. You do not know where these people live, correct?
5 The people in the lineup, you have no knowledge if any of
6 them live in Ravenel, correct?

7 A. No, I have no idea.

8 Q. Is that usually a basis for a lineup where
9 somebody is from or is it based just on their physical
10 descriptions?

11 A. I believe it's just going to be on their physical
12 descriptors. I've never created lineup. We usually ask
13 SLED or the detention center to create a lineup for us.

14 Q. And you had no part of putting in the factors to
15 determine --

16 A. No, ma'am.

17 Q. -- the description?

18 A. No, ma'am.

19 MS. FORD: No further questions.

20 THE COURT: Any further questions?

21 MS. SHEALY: Judge, I would like to have this
22 marked as Court's Exhibit 5.

23 REDIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q. Detective Smith, you're familiar with mugshots

CHRIS SMITH - RECROSS BY MS. FORD

1 that are taking during the booking process?

2 A. Yes.

3 Q. Showing you State's Exhibit 6 -- I'm sorry, 5.

4 Could you tell the Court, please, whether or not that's
5 the mugshot of Latrone Butler?

6 A. On this paper, yes, correct.

7 Q. And what was that booking date?

8 A. This booking date was December the 8th, 2011.

9 Q. What does it depict is his height?

10 A. Five-eleven.

11 MS. SHEALY: I have no further questions.

12 RECROSS-EXAMINATION

13 BY MS. FORD:

14 Q. To your knowledge, the height on a booking
15 photo -- the inmates at the Charleston County detention
16 center, are they actually measured or is it just based on
17 what somebody says?

18 A. Probably wasted upon what they say as they are
19 being booked in.

20 Q. So --

21 A. So they'll be asked, How tall are you and what is
22 your weight, and this is a description that they would
23 give of themselves.

24 Q. And would you say -- can you tell if Mr. Butler
25 looks to be five-eleven from where you are? I'm

LATRONE BUTLER - DIRECT BY MS. FORD

1 five-eight. I am wearing heels.

2 A. I would say average height, maybe five-ten,
3 five-eleven. It would be difficult for me to say.

4 Q. Okay. So you can't say --

5 A. Yeah.

6 Q. But the height on the booking record is based what
7 people are told --

8 A. By the -- by the prisoner that is brought in.
9 They are the ones that tell the detention officers how
10 tall they are.

11 Q. Okay.

12 MS. FORD: No further questions.

13 THE COURT: You can step down. Anything
14 further?

15 MS. SHEALY: I have no further witnesses,
16 Your Honor.

17 THE COURT: Ms. Ford, do you need to call
18 anybody?

19 MS. FORD: The defense calls Latrone Butler.

20 LATRONE BUTLER,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 THE WITNESS: My name is Latrone Butler,

25 B-u-t-l-e-r.

LATRONE BUTLER - DIRECT BY MS. FORD

1 BY MS. FORD:

2 Q. Hi, Mr. Butler. Just a few questions. Do you
3 have any tattoos, Mr. Butler?

4 A. Yes, ma'am.

5 Q. And do you know how many tattoos you have?

6 A. A total of about 17.

7 Q. And do you have any tattoos on your hands?

8 A. Yes, ma'am.

9 Q. And where are they located on your hands, on the
10 inside or the outside?

11 A. On the top part of my hands.

12 Q. And do you have any tattoos on your neck?

13 A. Yes, ma'am.

14 Q. Is that to the right or left side of your neck?

15 A. To the left side of my neck.

16 Q. I'm going to show you some photos in a moment, if
17 I could have them marked first.

18 I'm showing you what I've marked as Court's
19 Exhibit No. 6. Do you recognize what's in that photo?

20 A. Yes.

21 Q. Is it fair to say that's a tattoo on your left
22 arm?

23 A. Yes, ma'am.

24 Q. Does it accurately reflect the tattoos on your
25 arm?

LATRONE BUTLER - DIRECT BY MS. FORD

1 A. Yes, ma'am.

2 Q. Does it include a tattoo on your hand?

3 A. Yes, ma'am.

4 Q. And how long have you had that tattoo on your
5 hand?

6 A. Between 2002 and 2007.

7 Q. So since then?

8 A. Yes, ma'am.

9 Q. So you have a tattoo in 2011?

10 A. Yes, ma'am.

11 Q. I'm now showing you what's been marked as Court's
12 Exhibit No. 7. Do you recognize what's in that photo?

13 A. Yes, ma'am.

14 Q. Is that a photo of the tattoos on your right arm?

15 A. Yes, ma'am.

16 Q. Including a tattoo on your right hand?

17 A. Yes, ma'am.

18 Q. Okay. And did you have that in 2011?

19 A. Yes, ma'am.

20 Q. Now I'm showing you what has been marked as
21 Court's Exhibit No. 8. And is that a photo of a
22 tattoo -- or do you recognize what's in that photo?

23 A. Yes, ma'am.

24 Q. Is that a tattoo, picture of a tattoo on your
25 neck?

LATRONE BUTLER - CROSS BY MS. SHEALY

1 A. Yes, ma'am.

2 Q. And did you have that in 2011?

3 A. Yes, ma'am.

4 Q. Were all of these photos taken during your
5 incarceration period for the current charges you're in
6 jail on now?

7 A. Yes, ma'am.

8 Q. And had Ms. Martin -- you've seen Ms. Martin here
9 today. At some point did Ms. Martin -- did you work for
10 Harvest Moon Grill?

11 A. Yes, ma'am.

12 Q. And at some point did you come in contact with Ms.
13 Martin as she gave you a ride there?

14 A. Yes, ma'am.

15 MS. FORD: No further questions.

16 CROSS-EXAMINATION

17 BY MS. SHEALY:

18 Q. Do you remember when it was you said Ms. Martin
19 took you to Harvest Moon?

20 A. It was around -- I want to say around June,
21 summertime of 2011.

22 Q. June of 2011. How do you remember that?

23 A. Because I was running a little late, and then I
24 turn around, and when I saw her, I flagged her down and
25 she gave me a ride to work.

1 Q. It wasn't one of your family members or your
2 girlfriend that asked if she would take you for a ride?

3 A. It was who?

4 Q. It wasn't someone in your family that asked you if
5 she would take you for a ride?

6 A. Yes, ma'am.

7 Q. It was somebody in your family. Who would what
8 that?

9 A. That would be my girlfriend, Tiara Gardner.

10 Q. And is Tiara Gardner still your girlfriend?

11 A. No, ma'am.

12 MS. SHEALY: I have nothing further.

13 THE COURT: Redirect?

14 MS. FORD: No, Your Honor.

15 THE COURT: You can step down. You got
16 anything else?

17 MS. FORD: No, Your Honor.

18 THE COURT: Argument?

19 MS. FORD: Yes, Your Honor. We realize,
20 first the Court must determine if the identification
21 process was unduly suggestive. We realize there is no
22 indication that anyone specifically pointed Mr. Butler
23 out. We would draw the Court's attention to the actual
24 lineup itself.

25 Mr. Butler, his photo is the last photo in

1 the lineup. His picture appears to be highlighted more
2 so as of the skin coloring, the lighting conditions. It
3 looks like there is a glare, so we would argue that is
4 somewhat suggestive, Your Honor, especially since it's
5 the last picture. We think it would stand out.

6 Also, we would say, Your Honor, that Ms.
7 Martin never really did identify anyone. She said -- she
8 didn't say that looks like him, the hair is different or
9 facial hair is different. She said that looks most like
10 the guy.

11 According to the Neil vs. Biggers factors,
12 Your Honor, she stated multiple times that she was too
13 scared to look at the man. Many of the times she didn't
14 get to look at them. She gave a very, very generic
15 description, black male, in his 20s, about five-eleven.
16 That's the whole of her description.

17 She doesn't say anything about if he's light
18 or dark skinned. She doesn't mention anything about
19 facial hair. On his booking photo, you can see he has
20 facial hair. That was, you know, two and a half days
21 later. She doesn't say anything about tattoos.

22 He has very identifiable tattoos on both of his hands and
23 on his neck. The neck may have been covered by his
24 jacket, but he was not wearing gloves. So the very
25 generic description she gave, even though it roughly may

1 fit Mr. Butler, it doesn't fit him -- it's too generic.
2 It doesn't -- she didn't say anything about the man's
3 hair --

4 THE COURT: Isn't that an argument you can
5 make to the jury? The whole point of Biggers is was the
6 process unduly suggestive, anything about their process
7 that suggests that it was unduly suggestive, other than
8 saying that the defendant's picture was highlighted more
9 than the others?

10 MS. FORD: No, Your Honor, not from the
11 testimony.

12 THE COURT: All right. Madame solicitor?

13 MS. SHEALY: Your Honor, I think that
14 obviously there is nothing suggestive about the lineup
15 except Mr. Butler is lighter and perhaps grabs the
16 attention more greatly. I think it's interesting to look
17 at the language of Ms. Martin under statement and then
18 look at the booking report the day after when she notes
19 he looks most like the person that carjacked me and tried
20 to kill me, that's because the clean-cut picture in the
21 lineup, she obviously was examining it closely.

22 She identified his face, and she qualifies it
23 only to say that he looks the most like him. It's
24 interesting that his looks were different in the actual
25 mugshot, but his face is the same, so he didn't have this

1 clean-cut look, so any type of qualified language, even
2 if it's determined to be that way, certainly is
3 understandable given the change since the original time
4 the mugshot was taken.

5 She's indicated to the Court that she got a
6 look at him that morning, she got a look at him as he
7 approached, and she got a look at him each time before he
8 yelled, Stop looking at me or I'll shoot, or I have a
9 gun.

10 So I understand the Court's comments. Those
11 are arguments Ms. Ford can make in front of the jury, but
12 for purposes of the Biggers hearing, I believe it has
13 been satisfied that it was not a suggestive lineup
14 process.

15 THE COURT: All right. Well, I find there is
16 nothing suggestive at all about the process, much less
17 unduly suggestive. It's a textbook procedure outlined.
18 Went over the questions with her with a disinterested
19 person, someone who is not involved in the investigation
20 at all so she wouldn't have any way of tipping the victim
21 of looking at any particular one of the photos.

22 And as far as the argument that his picture
23 has more of a highlight or a glare, I mean, I just don't
24 see it. All of these gentlemen have a little bit of a
25 glare to their picture. I mean, it's a flash, is what

1 we're talking about, and I don't see where that draws any
2 attention to the defendant's picture over any of the
3 others such that it would make it an unduly suggestive
4 process.

5 So I'll let that in, and we will make the
6 argument to the jury as to whether or not her
7 identification was, in fact, of the defendant.

8 Anything further?

9 MS. SHEALY: I approached the court reporter.
10 If you would allow us a quick rest room break, we can
11 mark some photographs. That will make everything go more
12 quickly.

13 (Recess taken.)

14 (In open court, jury present.)

15 THE COURT: Did y'all pick a jury foreperson?

16 You'll find you don't get any extra pay for
17 the job. You'll just handle the jury form at the end.

18 Thank you so much for your patience with us,
19 folks. It's just been one of those days where about four
20 different things came up while you guys were out. Had to
21 handle some stuff on a couple other cases, and then we
22 got word that the jury we had charged this morning had
23 reached a verdict, so we had to come in and receive that
24 verdict, but we are about an hour behind where I wanted
25 to be at this point, but we are going to get back on

1 track here and get this case started here in just a
2 couple minutes.

3 Before I do, though, I need to have you
4 placed under oath, so if you would, please stand, raise
5 your right hand, and the clerk will administer the oath
6 to you.

7 (Jury duly sworn.)

8 THE COURT: All right. Folks, let me just go
9 over with you briefly a little bit about some of the
10 things we'll be doing over the next couple of days so
11 that y'all have some idea what to expect, and I'll turn
12 it over so we can get into the opening statements and the
13 presentation of the first witness. We'll just have one
14 witness today, and then we'll start fresh in the morning.

15 As I told you, Mr. Butler has been charged
16 with three crimes: Carjacking, kidnapping, and attempted
17 murder. He pled not guilty to each of these charges, so
18 the State must provide him with a jury trial and prove to
19 the 12 of you that he is guilty beyond a reasonable doubt
20 of these charges. Mr. Butler is not required to prove he
21 is innocent. The State must prove to you that he is
22 guilty beyond a reasonable doubt of these charges.

23 The fact that he got arrested and indicted
24 for these charges does not raise any inference or
25 presumption of guilt. The State is required again to

1 prove his guilt. In the eyes of the law, he sits there
2 at the table as an innocent man. These indictments
3 simply provide him with notice of the charges of what he
4 is to stand trial for, gives this Court jurisdiction, and
5 the only thing that he has to do is show up for trial,
6 and that's what he's done.

7 Everything else from this point on the State
8 must show, or prove to you, that he is guilty of these
9 charges beyond a reasonable doubt before that presumption
10 of innocence is removed.

11 Now, we have a couple of different things
12 that we go through in trials. First is we'll have
13 opening statements where the lawyers will get up, give
14 you just what I call a little Reader's Digest condensed
15 version, five to ten minutes of what this case is about,
16 just so it will help you follow it a little bit easier.

17 After that, we'll get into the calling of
18 witnesses, and then after that, all the witnesses have
19 been called to testify, the lawyers will make closing
20 arguments, and I will charge you on the law and then you
21 will retire to consider your verdict. Now, because the
22 State has the burden of proof, they get to call their
23 witnesses first. They will ask the questions of the
24 witnesses first.

25 Witnesses -- when you call a witness and you

1 are the person that called them and ask the questions,
2 that's called direct examination. Then the other side
3 will get to call or ask questions, and that's called
4 cross-examination. So you will have a series of direct,
5 cross, and I let them do a follow up, and it will be
6 redirect, recross, and then we move on to the next
7 witness. All right?

8 Now, the State, again, has the burden of
9 proof, so they'll call all of their witnesses first, and
10 then the defendant will have the opportunity to present
11 any witnesses that he wants to, and if he wants to
12 testify, he can. If he doesn't want to, he's not
13 required to, and I will tell you now, and I will tell you
14 again at the end of the trial, he has no burden of proof,
15 so he doesn't have to call witnesses and he doesn't have
16 to testify, and if he doesn't call witnesses and he
17 doesn't testify, then that is not to be considered by you
18 in any way when you are deliberating.

19 That's an important constitutional right that
20 everybody has: Me, you, everybody in this room,
21 including Mr. Butler.

22 So the fact that he may or may not testify
23 isn't to be held against him. In fact, he doesn't have
24 to tell me at this point if he wants to. He can make
25 that decision later on down the road.

1 So you focus in on what the State is proving
2 and if they have met their burden of proof. So let's
3 talk about their burden of proof. We keep hearing that
4 phrase.

5 Well, the burden of proof in a criminal case
6 is what we call beyond a reasonable doubt. You probably
7 have heard that phrase before, maybe just reading a book
8 or watching a TV show or a movie or something along those
9 lines or maybe you sat on a jury. I know some of y'all
10 had indicated you sat on juries before. If it was a
11 civil trial you sat on, then you heard that the burden of
12 proof was what we call a preponderance of the evidence,
13 or the greater weight of the evidence, or, stated another
14 way, is whatever the party trying to prove more likely
15 true than not true.

16 So in a civil case when a person sues, they
17 just have to present enough evidence to convince you that
18 whatever they are alleging in their complaint is more
19 likely true than not true.

20 It's a lot more of a burden in a case where
21 the State accuses somebody of a crime. So it might be
22 helpful if you're like me and you're a visual learner and
23 it helps to see things in order to understand a little
24 better, imagine that set of scales, you see, with lady
25 justice and two sets of scales, two hands out with that

1 set of scales.

2 Well, on the one hand, in a civil case, you
3 have the plaintiff, the person that brought the lawsuit,
4 suing the defendant, the person who got sued, and the
5 scales of justice are even at the beginning of the trial.
6 For the plaintiff in a civil case to meet their burden of
7 proof, they just have to tip those scales just a little
8 bit, even if it's just a tad over what we think in terms
9 of probabilities maybe 51 percent. All right?

10 It's not much that they have to prove, but in
11 a criminal case like this, where the State accuses
12 somebody of a crime, it's a much heavier burden of proof.
13 Those scales have to be tipped quite a bit in order to
14 meet the burden of proof.

15 The law says you have to be firmly convinced
16 of the defendant's guilt to convict somebody beyond a
17 reasonable doubt.

18 The law doesn't say they have to remove every
19 possibility of some other explanation of what happened,
20 but they do have to leave you firmly convinced that the
21 defendant is guilty as charged, and at the end of the
22 evidence, if you don't feel like they've met that burden
23 of proof, then you are required to find the defendant not
24 guilty.

25 On the other hand, if at the end of the trial

1 you are firmly convinced that he is guilty and you find
2 that the State has met that burden of proof of guilt
3 beyond a reasonable doubt, you are required to return a
4 verdict of guilty.

5 All right? So the State has to prove he's
6 guilty. He does not have to prove he's not guilty. All
7 right?

8 So now, my job is to preside over the trial
9 and to charge the law at the end of the trial. Your job
10 is to find what the facts are, and those are disputed
11 facts. That's why we're here, okay, and you'll hear
12 evidence, and some of it will contradict itself. You are
13 required, as part of your job, to resolve those
14 differences, and whatever you decide, that's what we live
15 with. All right?

16 But you are required at the end of the trial
17 to apply the law that I tell you applies, even if it's
18 not what you think it is or what you hope it might be,
19 but it's what you have to apply under the oath you just
20 took. You apply it to the facts that you find, and
21 that's how you come up with the verdict of guilty or not
22 guilty. All right?

23 Now, as part of my job for presiding over the
24 trial, the State of South Carolina and Mr. Butler are
25 entitled to fair trials in here, so I have to make sure

1 that we follow the procedural rules that we have and the
2 evidentiary rules that we have, and so sometimes you
3 might have a lawyer stand up and say objection.

4 That is just basically saying, Judge, this is
5 our code word for there is evidence that's coming up, and
6 you need to make a ruling as to whether or not it's
7 proper for these folks to hear this evidence. All right?

8 They're not trying to hide anything from you.
9 They're just doing their job because our whole focus of
10 this trial is to make sure that what you hear is legally
11 competent evidence, and so my job is to make sure that
12 you are hearing what you're supposed to but not what
13 you're not supposed to. Okay? So some evidence is
14 better than others and we have all those rules. That's
15 my job. All right?

16 So sometimes when a lawyer stands up and says
17 objection, I can just rule and say either sustain or
18 overrule. Sometimes I might have to say, well, come up
19 here and just argue out of earshot of the jury just a
20 second. Sometimes I have to send y'all out so I can hear
21 what the witness is going to say before I can make a
22 decision whether or not it's proper for you to hear it or
23 not hear it. All right?

24 Because, really, at the end of the day, if
25 there is ever an appeal from this case, they appeal my

1 rulings. They really don't appeal the verdict, so to
2 speak, because if there's any evidence in the record to
3 support your verdict, then the verdict gets upheld, but
4 if, at the end of the day, I have let you hear something
5 that you weren't supposed to hear or kept you from
6 hearing something that you were supposed to hear, that's
7 bad on me.

8 If I charge you on the law incorrectly, bad
9 on me. If I don't follow the rules of procedure, bad on
10 me, and they reverse me. They don't reverse you, okay?
11 So I'm just trying to do this one time. Nobody wants to
12 do this twice, so that's what we're all trying to do when
13 we have our little rules of procedures and evidence, so
14 just bear with us when we get to this point.

15 It moves pretty rapidly. It's got a good
16 flow. It's not like TV where we take a break every eight
17 to twelve minutes for commercials, but it moves pretty
18 quickly. We won't resolve this case in an hour. We got
19 a little bit of a slower start than I thought we would
20 today, but we're aiming to get all the evidence in by the
21 end of the day tomorrow so that you can either start
22 deliberations tomorrow, but more than likely now you
23 won't be able to deliberate until Friday, but we'll just
24 do the best we can. Okay?

25 We're not going to get anything done if I

1 keep talking, so the State, having the burden of proof,
2 you'll hear from the solicitor first and then from the
3 defense on an opening statement.

4 So, Ms. Shealy, you may begin.

5 MS. SHEALY: May it please the Court,
6 counselors: Good afternoon. On December 5th of 2011,
7 Letty Martin, who was 67 at the time, spent the afternoon
8 like she planned. She teaches line dancing at the senior
9 center in Mount Pleasant, but she lived in Ravenel, out
10 17, going towards Edisto, in a mobile home park.

11 She went and taught her class in Mount
12 Pleasant. She left there and went up Rivers Avenue and
13 stopped at Michael's craft shop. Ran in and got
14 something, then went to Northwoods Mall and picked up a
15 camera she had ordered and went home. When she got home,
16 she started unloading her car.

17 Now, one difficulty with a mobile home park
18 where she lives is you don't have a whole bunch of
19 private space. People will cut through your yard, maybe
20 walk a little too close to your house than you care for,
21 but there is not much you can do about it. The mobile
22 homes, there is not a whole lot of green area separating
23 them.

24 Letty Martin saw a man. She had noticed him
25 earlier that day when he was at her neighbor's door. He

1 caught her attention then.

2 She drove a burgundy Accura, and she was
3 unloading the items that she takes to go teach dancing
4 and the camera, and as she got those items out, she sees
5 that guy coming towards her. Well, at first she thought,
6 well, maybe he's just cutting through. But she saw him,
7 like she had seen him earlier that day, said, That's the
8 guy who was over at my neighbor's house.

9 Next thing she knew, he came up behind her,
10 twisted her arm back, and told her to get back in the car
11 and start it. She did. She started the vehicle. Then
12 he said, Okay. Get out.

13 And pulls her out and walks her around her
14 own car and puts her in the passenger seat. Out of
15 nowhere this happens to her.

16 He carjacked her. He demanded that she start
17 that car, and he put something up in her rib area and
18 told her it was a gun. She could feel it in her ribs,
19 and when he walked her around the vehicle to get in the
20 passenger side, he was talking about the gun some more.
21 He puts her in the car and he starts driving, told her,
22 Do not scream. He reminded her, I've got a gun.

23 He drove and drove and he drove, and every
24 time as she sat in that passenger seat to look over at
25 him, Don't look at me. Look straight ahead.

1 She was scared to death. He would not let
2 her out of that vehicle. Ms. Martin will do the best she
3 can to tell you what roads he was taking, but he thought
4 he was being smart, but as cars came up behind him, he
5 wanted to get off that road.

6 He kidnapped her. She's in her own vehicle,
7 unable to leave. He kept that vehicle. He kept her in
8 that car. He abducted her and carried her away. Then,
9 when they get -- and this is in Charleston County -- out
10 to an intersection where High Park Road is, on one side
11 it's paved. On the other side, it's gravel and dirt.

12 He took her down that country road and made
13 her get out of the car. He pulls her out of the vehicle,
14 takes her to the back of the car, and what does he do
15 then? Not one time, not two times, but several times
16 tries to break her neck.

17 Ms. Martin will describe to you and show you
18 how he put her head and her neck in his hands and tried
19 to twist her, hoping to leave her behind on a dark
20 country gravel road.

21 Thank God that another car came down that
22 road. He wasn't expecting it, but when another car came,
23 he left Ms. Martin, got in that vehicle and fled. Now,
24 as he was maneuvering her neck and trying to crack it and
25 break it and kill her, she goes to the ground one time

1 and passes out. He pulls her up and tries it again. And
2 that car that came down the road, frankly, saved Ms.
3 Martin's life.

4 Left on that dark road, after what all had
5 happened to her, she walked to the home of Penny Jo
6 Mizell who gets this random knocking on her door,
7 frantic, that evening. She asked Ms. Mizell, Would you
8 please call 911 for me?

9 Ms. Mizell will describe how Ms. Martin was
10 behaving, and you'll hear the 911 report, and the
11 operator keeps asking Ms. Mizell questions, and so
12 finally Ms. Martin gets on the phone with the 911
13 dispatcher. She describes the man, had on a jacket, had
14 on jeans, was black, five eleven, six feet. She tells
15 that immediately after all of this happens.

16 Officers come. First officer that came was
17 Don Kjellman with the county. He had a camera in his car
18 and took pictures of how she looked that night. He asked
19 her what happened, and as the protocol goes, he calls his
20 supervisor and his supervisor sends out a detective to
21 talk to her that evening while she's still in Ms.
22 Mizell's house. She gives a written statement about what
23 happened that evening, right after it happened.

24 The detective comes and he's the one who
25 takes the written statement. Ms. Martin's sister,

1 brother-in-law come over. Well, the next day, you know
2 how it is after you've injured yourself, the next day
3 you're sorer, and you start seeing the bruises. And then
4 the next day, the police call Ms. Martin and ask her to
5 come to the station. They want to take photographs of
6 her again, and they want to see if she can identify
7 anyone from the lineup.

8 And she does, Latrone Butler. So that was
9 two days after the incident, and the incident happened on
10 the 5th. On the 7th the police call her back in. The
11 8th, the police go to a bar, a club, called Hamm's, I
12 think is the name of it, a little club out that way,
13 because they've gotten a tip that Latrone Butler is
14 there. Officers get there, and they see the vehicle,
15 they see Ms. Martin's vehicle outside the club.

16 Check the license tag. So you can kind of
17 imagine a club out in the country. They've got to be
18 careful when they go in there to see if Latrone Butler
19 is, in fact, in there, and he was, but they have to take
20 the people out one by one.

21 Guess what's in his shoe? The key to her
22 car. Guess what is in her car? Puffy jacket, blue
23 jeans, a wallet with Latrone Butler's social security
24 card, Latrone Butler's IDs, Latrone Butler's work
25 receipts, all in Letty Martin's vehicle.

1 Ms. Martin got her car back. You've seen the
2 photographs of what it looked like when she got it.
3 She'll tell you what was different, of what was in there
4 before she got carjacked, before she was kidnapped,
5 before he tried to break her neck, how it was different
6 once she got it back.

7 Ladies and gentlemen: On December 5th, 2011,
8 Latrone Butler carjacked Letty Martin, kidnapped Letty
9 Martin, and tried to leave her dead on a gravel road.

10 THE COURT: Ms. Ford?

11 MS. FORD: Thank you, Your Honor. May it
12 please the Court: Fifty-five hours. That is the time
13 frame we're talking about here, and so much can happen in
14 '55 hours.

15 Back in December of 2011, Letty Martin was
16 approached by a black man, and she and her car were
17 taken, and it was a terrible thing. The solicitor went
18 into great detail. It was an awful experience for her,
19 and that's not in dispute, but what is in dispute is who
20 did it.

21 The State has accused my client, Latrone
22 Butler, and Latrone is not guilty. Now, when Ms. Martin
23 first reported this incident, the police were very
24 interested in getting a description. Why? Because
25 that's how they catch the guy, a description.

1 So she gives a description. She gives a
2 very, very generic description, black male, in his 20's,
3 late 20's, about six feet tall. That's the physical
4 description she gives, jeans, a dark jacket, nothing more
5 particular than that, just jeans, dark jacket.

6 Now, Latrone, he's a Ravenel boy. He's
7 always lived in Ravenel. He lives in that same exact
8 area, and Latrone, like many, many others, he fits that
9 very generic description.

10 And then over two days later, 55 hours later,
11 he is arrested. He's near the car, and some of his
12 property is, in fact, in that car.

13 But you can't ignore those 55 hours. You
14 can't ignore all the things that could have taken place
15 during that time. So that is what we're going to ask you
16 to consider during this trial.

17 Also, we're going to ask you to consider the
18 location. This is out in Ravenel, as the solicitor said,
19 and this isn't -- Jericho mobile home park is where Ms.
20 Martin lived, and this is off of Savannah Highway, but
21 it's not close to West Ashley. It's still a little drive
22 out there, and this mobile home park, it's actually a
23 pretty small area, maybe 40 trailers out there, and just
24 a couple of roads.

25 So it's not too big of an area, and so we

1 would ask you to think about what makes sense, what would
2 make sense for someone to do or not to do during a time
3 period of 55 hours.

4 And so when you think about all of those
5 things and you hear all the evidence, we're going to ask
6 you to seriously think about if the State has really
7 proven their case beyond a reasonable doubt, and the
8 answer is going to be no.

9 It's going to be no because Latrone did not
10 do these things because Latrone is not guilty, and that
11 what we are going to ask you to find at the end of this
12 trial -- because, yes, a terrible thing happened to Ms.
13 Martin, a terrible thing, but that doesn't mean that
14 Mr. Butler did it.

15 Thank you.

16 THE COURT: Okay. Folks, before we have the
17 State call their first witness, I want to remind you that
18 when the lawyers are up talking like they are now,
19 they're not testifying. They're not witnesses to the
20 case. The evidence is the only thing that you use to
21 base your decision on, and evidence is witnesses getting
22 up, testifying, telling you what they heard, they
23 touched, they felt, they smelt, that sort of thing.

24 It might be photographs. It might be
25 documents. It might be articles of clothing, weapons

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1 things like that. That's evidence, but the lawyers are
2 not witnesses. They can't testify. So whenever they're
3 talking, don't consider that as evidence. When they ask
4 a question of a witness, that's not evidence, but the
5 answer to their question is evidence. Okay?

6 So just keep that in mind. That is usually
7 part of my standard instruction when I first talk to you
8 about what we do, but I just forgot about it and I
9 remembered it while they were talking.

10 So if you're ready, Madame Solicitor, call
11 your first witness.

12 MS. SHEALY: Thank you, Your Honor. Letty
13 Martin.

14 LETTY MARTIN,
15 having been first duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: My name is Letty Martin,
19 L-e-t-t-y, M-a-r-t-i-n.

20 MS. SHEALY: Your Honor, just for
21 housekeeping purposes, without objection, and I've given
22 these numbers to your court reporter, State's Exhibits 1
23 through 22, 24 through 38, 43 through 55, 57 through 59,
24 61 through 67, and 70 through 74 we'll be moving into
25 evidence at this point, Your Honor, without objection.

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1 THE COURT: All right. Very good.

2 (State's Exhibit Nos. 1-22, 24-38, 43-55,
3 57-59, 61-67, 70-74 and 75 were marked for identification
4 and admitted into evidence.)

5 BY MS. SHEALY:

6 Q. Ms. Martin, tell us, if you would, please, how old
7 are you?

8 A. Sixty-nine.

9 Q. So back on December 5th, 2011 you were --

10 A. Sixty-seven.

11 Q. Okay. And tell us a little bit about your
12 background. Where did you grow up and where have you
13 lived?

14 A. I was born and raised in Dorchester Terrace, North
15 Charleston, and when I was 20, I moved to Omaha and lived
16 there for five years, and then I moved to Los Angeles and
17 I lived there for 37 years. I retired in 2007 and moved
18 back here so I could be near family.

19 Q. And when you say near family, what family do you
20 have in the Charleston area?

21 A. A sister and a brother-in-law.

22 Q. And during part of that travel, did your husband,
23 in fact, die?

24 A. He -- in 2003, yes, my husband died.

25 Q. Where did you reside? Where do you reside now?

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1 In 2011, December the 5th, where did you reside and are
2 you currently still there?

3 A. Yes. I moved into the mobile home park in 2007,
4 and I've been there ever since.

5 Q. And what is, in fact, the name of that mobile home
6 park?

7 A. Jericho mobile home park.

8 Q. And is that in Charleston County?

9 A. Yes.

10 Q. And what area of Charleston County is it?

11 A. Ravenel.

12 Q. Let me show you some photographs, and you can just
13 kind of orient us about your home. Showing you State's
14 Exhibit 3, is that a picture of home?

15 A. Yes. That's the south side of my house.

16 Q. And this picture was taken more recently; is that
17 correct?

18 A. Yes.

19 Q. The carport area that you have, was it located
20 there in 2011?

21 A. No.

22 Q. And showing you -- before we get there, let me
23 show you State's Exhibit 1. Can you see that?

24 A. Yes.

25 Q. Can you -- you can actually point on here. Can

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1 you show us on this screen, please, where your mobile
2 home is located.

3 A. It's this one. Can you see that?

4 Q. Yes. Okay. And are there a variety of ways you
5 can enter and exit the mobile home park?

6 A. There are two.

7 Q. Can you point those out to us and describe them.

8 A. One is here off of Savannah Highway, and the other
9 comes in off Old Jacksonboro Road.

10 Q. Which one would come into the mobile home park,
11 the Old Jacksonboro?

12 A. Right here.

13 Q. And do you, in fact, use different entrances based
14 on where you're coming from?

15 A. Not where I'm coming from so much, but maybe,
16 like, the time of day I would come in off of Savannah
17 Highway so I could check my mail. The mailboxes are up
18 closer to the front. My usual route would be off of Old
19 Jacksonboro Road, though.

20 Q. Now, focussing your attention back to December 5,
21 2011, could you tell the jury what you did earlier that
22 day.

23 A. I taught my line dance classes at the senior
24 center in Mount Pleasant. I had two classes that day.
25 When I left there, I went down Rivers Avenue and went to

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1 Michael's. I went to buy paint for a Christmas present
2 for my brother-in-law, actually, and then I went across
3 the highway, or Rivers Avenue, to Northwoods Mall to the
4 Sears store to pick up a camera I had ordered online.

5 Q. You may need to speak up just a little bit for us.
6 I'm having a little difficulty hearing you, okay? The
7 microphone is right in front of you.

8 How long have you been teaching line dancing over
9 at the senior center?

10 A. I think I started in the summer of 2011.

11 Q. And you're still currently doing that?

12 A. I am.

13 Q. What type of vehicle did you have?

14 A. A 1996 Accura 3.2 TL.

15 Q. And showing you State's Exhibit 2, is this a
16 photograph of your vehicle?

17 A. Yes, it is.

18 Q. Now, you told us that your last stop was at
19 Northwoods Mall, and you headed back. Showing you
20 State's Exhibit 1 again, which way would you have entered
21 the mobile home park?

22 A. I came in on Savannah Highway that day, here.

23 Q. Okay. Now, showing you State's Exhibits -- let me
24 show you State's Exhibit 76. Can you describe to the
25 jury what that photograph depicts.

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1 A. That is the back of my mobile home park.

2 Q. And are you able to see it on that frame there?

3 A. Yes, yes.

4 Q. When you say the back, draw for us where the
5 entrance to your home is.

6 A. This is the front door, and the back door is right
7 here (indicating).

8 Q. And the area that's depicted just before the
9 mobile home, it looks like there is some grass that's
10 missing.

11 A. Yes.

12 Q. What was located in that area back in December of
13 2011?

14 A. That's where the park was.

15 Q. And did it have the type of awning that you have
16 now moved to another side?

17 A. Yes.

18 Q. On that morning, before you even left to go to
19 line dancing, did anything draw your attention over at
20 your neighbor's house?

21 A. Yes. I saw the defendant standing on her back
22 steps, knocking on the door.

23 Q. And showing you State's Exhibit 75 --

24 A. Yes.

25 Q. -- tell us what is depicted in that photograph.

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1 A. This is the neighbor's house who was at that door.

2 Q. And show us where your home is in relationship.

3 A. This is my house, and I was at my kitchen window.

4 Q. Okay.

5 A. Which is practically just opposite those stairs.

6 Q. When you saw him earlier that morning, tell the
7 jury, if you would, what kind of look you got at him.

8 Did you see his face or just the back of him or what?

9 A. No, I saw his face. He turned away from the door
10 while I was looking out the window.

11 Q. Did you see your neighbor answer the door?

12 A. No one answered the door.

13 Q. And showing you State's Exhibit 77, that's just a
14 closer view of your neighbor's door?

15 A. Yes, and that's the view I would have had from my
16 kitchen window.

17 Q. Now, when you got home that afternoon, where did
18 you pull up in your vehicle?

19 A. Into the carport.

20 Q. And, again, showing you State's 75, could you mark
21 with an X where you would have pulled up, or
22 approximately where you would have pulled up?

23 A. In there.

24 Q. When you got out of the vehicle, did you have
25 anything that you needed to unload from the vehicle?

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1 A. I did. I take my dance stuff in a black case that
2 has wheels, and I took that out of the trunk.

3 Q. And when you got out of your vehicle, or even
4 before you got out of your vehicle, did anybody draw your
5 attention?

6 A. Not while I was still in the car, no.

7 Q. Okay. Describe for us what happened there.

8 A. Well, I pulled the case out, put it on the ground,
9 and I saw the defendant coming around the end of my
10 house, and I, you know, felt a little annoyed that he was
11 there, between the house and the carport, but -- and I
12 turned to the car door to lock the door, and I had to
13 actually insert the key because the remote wasn't
14 working.

15 Q. To lock the door, so you already had what you
16 needed?

17 A. Yes, to lock the doors.

18 Q. When you saw the man walk around the front of your
19 trailer towards where you were standing, were you able to
20 see his face at that point?

21 A. Yes.

22 Q. What happened as you turned back to lock your
23 vehicle?

24 A. He came up behind me. He grabbed my left arm, put
25 something in my ribs he said was a gun, told me not to

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1 scream or fight or he would shoot me and demanded my car
2 keys.

3 MS. SHEALY: Your Honor, if I may ask her to
4 step down, please.

5 THE COURT: Certainly.

6 MS. SHEALY: May I ask Mr. Evans to stand for
7 demonstration purposes?

8 THE COURT: Sure.

9 BY MS. SHEALY:

10 Q. If you could play the role and show the jury, the
11 court reporter is going to have to hear you, you're good
12 that way, kind of turn sideways, and if Mr. Evans is at
13 your vehicle?

14 A. So as he came around, I had my back turned toward
15 him. He grabbed my left arm and put something in my ribs
16 up here, like this, and said it was a gun and not to
17 fight or scream or he would shoot me, and then the man
18 took my car keys which I held out for him.

19 Q. You can go back to your chair now.

20 After that happened, what was the next thing that
21 happened?

22 A. He told me to open -- unlock the car, which I did.
23 Then he told me to start to get in and start the car,
24 which I did. He wanted me to climb across the console
25 into the passenger seat, but I told him I couldn't do

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1 that, so he pulled me out of the car, walked me around,
2 still holding my arm, opened the passenger door and put
3 me in the seat.

4 Q. And while he did that, were you able to see
5 whether or not he had a gun?

6 A. I was not.

7 Q. Once you were seated in the passenger seat, was
8 your door closed?

9 A. Yes.

10 Q. What was the next thing that happened?

11 A. He walked around the car and got in the driver's
12 seat, and he drove off between the two end trailers, my
13 next door neighbor and the one on the end. He drove and
14 went out onto the road in the mobile home park and then
15 went to Old Jacksonboro Road and turned right toward
16 Highway 165.

17 Q. And let me ask you this: When you saw him, were
18 you able to get an idea of how tall he was?

19 A. Yes.

20 Q. How tall would you say that he was?

21 A. Five-ten to six feet or something.

22 Q. In that range?

23 A. Uh-huh.

24 Q. How tall are you?

25 A. Five-four.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. And how was the person's build? Was it slim or do
2 you know?

3 A. I really don't know. He had on a quilted jacket.

4 Q. So you couldn't tell how much he weighed?

5 A. Yes, that's correct.

6 Q. And when you saw the clothing when he came up
7 behind you, was that the same clothing that he had had on
8 earlier that day?

9 A. Yes.

10 Q. Did you recognize him from anywhere other than
11 seeing him earlier that day?

12 A. No.

13 Q. So as y'all are driving and you say you went down
14 Old Jacksonboro and then he turned and went down where?

15 A. To Highway 165. I would like to back up and add
16 something. He asked for my cell phone and asked for the
17 cash in my purse, which I gave him.

18 Q. You did that while you were in the vehicle?

19 A. I think before we got in the car, before I
20 started, he asked for that and I gave it to him.

21 Q. Did you see where he put them?

22 A. No.

23 Q. So when you're in the car with him, did you make
24 an effort to look over at him?

25 A. Yes.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. And if you would, please, describe to the jury,
2 when you would look at him, what would he say to you?

3 A. Well, I was trying to kind of look out of the
4 corner of my eye, and every time he sensed that, he would
5 say, Keep your eyes on the road. Don't look at me or I
6 will shoot you.

7 Q. And did you, in fact, try several times to look
8 over at him while he was driving?

9 A. Yes.

10 Q. Did he say anything to you about what to do with
11 your hands?

12 A. Well, he told me not to fidget. He asked -- I was
13 holding my purse on my lap, and I'm fidgeting a little
14 bit with my hands, and one time he asked me, why are you
15 fidgeting like this?

16 And I said this is really kind of nerve wracking,
17 and several times he said stop fidgeting or he would
18 shoot me.

19 Q. Is your car an automatic or do you have to shift
20 gears?

21 A. It's automatic.

22 Q. And was there any time that the car seemed to be
23 driving in the wrong gear?

24 A. Yes.

25 Q. Describe what happened.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 A. When he turned onto Highway 165, we got to Hyde
2 Park Road and at that point several cars had come up
3 behind us, and he turned on to Hyde Park Road, turned
4 right on to Hyde Park Road, pulled into a driveway, and
5 turned around. He didn't like, I don't think, those cars
6 behind him.

7 And he turned around, and as he was going back to
8 Highway 165, I realized that the car was in the wrong
9 gear, so I asked him to change gears and he did. He put
10 it in the correct gear.

11 Q. When you say he turned right on Hyde Park Road,
12 when you're at that intersection, is part of it paved and
13 part of it unpaved on one side?

14 A. Yes, and this was the paved side.

15 Q. So showing you State's Exhibit -- let's see, 6,
16 can you orient yourself to that photograph?

17 A. Uh-huh.

18 Q. Do you see Ms. Mizell's house?

19 A. I see this house. If this is 165, then this would
20 be the unpaved part.

21 Q. Can you actually draw on there so we can see what
22 you're talking about.

23 A. If this is Highway 165, then the painted part is
24 over here, and this is the unpaved part and Ms. Mizell's
25 house is on the unpaved side.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. You turned around in that driveway. Did y'all
2 continue to drive?

3 A. We did.

4 Q. Can you describe to the jury -- I'm just going to
5 clear those marks. Can you describe to the jury, please,
6 what are you thinking as you're in that vehicle?

7 A. Well, I was in fear for my life and disbelief that
8 this was happening to me, and, in a way, kind of
9 paralyzed with fear, quite frankly. I feel like I was in
10 kind of a state of shock because it was sudden and so
11 unexpected.

12 Q. And as you were driving, were you able to tell the
13 jury how long you were in the vehicle with him?

14 A. No, not really.

15 Q. Why is that?

16 A. Well, because of all the above stated reasons. I
17 really wasn't noticing the time.

18 Q. At some point do you all get back to the in
19 intersection of Highway 165 and Hyde Park Road?

20 A. Yes.

21 Q. And which way did he turn at that point?

22 A. From this point on Hyde Park he turned right on to
23 165?

24 Q. You're talking about after he --

25 A. After he turned around in the driveway and changed

LETTY MARTIN - DIRECT BY MS. SHEALY

1 gears, yes.

2 Q. Do you remember where you went once you went down
3 165 that day?

4 A. Yes. He drove to County Line Road and turned
5 right again and went to a street that started with a C.
6 I couldn't see the name of it, and he told me that that
7 street would loop around and come back out on 165. He
8 wanted -- one of the other things he said several times
9 was he was just going to drop himself off up there
10 somewhere and I could have the car and that would be
11 fine.

12 But then he would say, Don't look at me. Don't
13 fidget or I'll shoot you.

14 So it did look like it came around on 165. At
15 that intersection, he turned left, which brought us back
16 down this way to Hyde Park Road.

17 Q. When you got back down to Hyde Park Road, at what
18 point which way did y'all turn?

19 A. Down the unpaved part.

20 Q. Tell us if you would, please, what happened when
21 you got on the unpaved part.

22 A. He drove down the road for some distance. I
23 really don't know how far. He turned the car around and
24 came back toward 165 but stopped where there was no
25 houses or anything around. It was wooded on both sides.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 It's Westvaco property, so there's not a lot of houses
2 along there.

3 He stopped the car and got out and came around and
4 took my arm and pulled me out of the car, walked me to
5 the trunk, to the back of the car, told me to put my
6 purse on the trunk, and then he put his hand on my
7 forehead and one on my chin and started jerking my head.

8 Q. So let me slow that down just a little bit. When
9 he came back over to the passenger side, did he tell you
10 to get out of the car or did he pull you out?

11 A. He pulled me out. I don't remember that he said
12 anything at that point.

13 Q. Were you able to see him when he pulled you out of
14 the car?

15 A. Not well. It was full dark by then.

16 Q. And then you walked to the back of the vehicle?

17 A. Yes.

18 Q. So describe for us again how he had your head
19 positioned and what he did.

20 A. He was behind me, and he put one hand on my
21 forehead and one on my chin and kept just jerking my head
22 very hard.

23 Q. And when you're demonstrating that for us, are you
24 showing how hard he did it to you?

25 A. No. I had whiplash from that. I don't want to do

LETTY MARTIN - DIRECT BY MS. SHEALY

1 that.

2 Q. Do you know how many times he did that?

3 A. I don't. It was -- I don't really know, but it
4 was certainly more than two or three.

5 Q. At some point do you find yourself on the ground?

6 A. I do.

7 Q. Describe that to the jury, please.

8 A. I remember feeling his arm across my neck, and the
9 next thing I know I'm waking up on the ground.

10 Q. What happens at that point?

11 A. He jerked me up off the ground and started trying
12 to break my neck again.

13 Q. And then what happened?

14 A. A car came down 165, the direction we had
15 originally gone. I could see the headlights because I
16 was facing that direction at the trunk of the car, and he
17 pushed me down to the side of the road, got in the car,
18 and drove off.

19 Q. When you advised us at some point you passed out
20 from the actions he's doing with your neck, when you come
21 to, are you saying anything to him when he started doing
22 it again?

23 A. I just started saying, no, no, no.

24 Q. Now, today you're pretty composed. Could you
25 describe to the jury whether or not you were this

LETTY MARTIN - DIRECT BY MS. SHEALY

1 composed that evening.

2 A. No.

3 Q. So as the car approaches, he gets back in your
4 vehicle?

5 A. And drives off.

6 Q. You have told us that you put your pocketbook on
7 the back of the car when he pulled you to the back of the
8 vehicle?

9 A. Yes, that's true.

10 Q. Did you have your pocketbook after he drove off?

11 A. No.

12 Q. What did you do once he drove off?

13 A. I waited, actually, until that car had come along
14 past me. Then I got up and I walked to the house. I
15 remembered passing this house on the corner there. I
16 remembered passing that house, and I walked back there.

17 Q. Did you know who lived there?

18 A. No.

19 Q. And what did you do when you got to the house?

20 A. I walked up on the porch and knocked on the door,
21 and when Ms. Mizell answered, I said I've been carjacked.
22 Can you help me?

23 Q. And did she, in fact, help you?

24 A. Absolutely. She took me in the house, and I asked
25 her to call 911, which she did.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. Was her husband present at the home?

2 A. Her husband was present and several other people,
3 I think her son and her father, I think.

4 Q. Do you at some point get on the phone with the 911
5 dispatcher?

6 A. Yes.

7 Q. And was that during the conversation that Ms.
8 Mizell initiated?

9 A. Yes.

10 Q. And have you had the opportunity to listen to the
11 911 tape?

12 A. Yes.

13 MS. SHEALY: Your Honor, at this time, we
14 would enter State's Exhibit 104 and ask to publish it to
15 the jury.

16 THE COURT: Without objection?

17 MS. FORD: No objection.

18 THE COURT: Admitted. You can publish it.

19 (State's Exhibit No. 104 marked for
20 identification and admitted into evidence.)

21 BY MS. SHEALY:

22 Q. Ms. Martin, are these your initials on this disk?

23 A. Oh, yes.

24 Q. So the beginning part of the 911 tape will be Ms.
25 Mizell speaking with the dispatcher.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 A. Yes.

2 Q. And was she trying to ask you questions as they
3 were asking her questions?

4 A. Yes.

5 (Whereupon, State's Exhibit No. 104 was
6 played for the jury.)

7 BY MS. SHEALY:

8 Q. Did an officer actually come over to Ms. Mizell's
9 house?

10 A. Actually, three deputies came in at various times,
11 but yes.

12 Q. And did one of them take photographs of you from
13 that night?

14 A. Yes.

15 Q. While you were at Ms. Mizell's house?

16 A. Yes.

17 Q. Later did your sister and brother-in-law come
18 over?

19 A. Yes.

20 Q. And that was still at Ms. Mizell's?

21 A. Yes.

22 Q. I'm not sure you remember their names. Do you
23 know the names of first officers? Do you remember a
24 detective coming and your giving a statement?

25 A. Yes.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. Now, you mentioned on the 911 tape that your car
2 has a LoJack security feature?

3 A. Yes.

4 Q. Can you describe that for the jury?

5 A. LoJack is a device that is hidden someplace in the
6 wiring of the car that is a vehicle recovery device. If
7 your car is stolen, they can activate the device and send
8 out a signal, and I think most police departments can
9 pick up.

10 Q. At the time this occurred, you're not familiar
11 with whether they were able to use the LoJack system?

12 A. No.

13 Q. And code for that was in your home --

14 A. Well, I had one in my wallet, and I had one at
15 home, a copy of it at home.

16 Q. You also said you were worried about his having
17 your house keys.

18 A. Absolutely.

19 Q. Showing you what's been previously marked as
20 State's Exhibit 9, is that a photograph of you from that
21 evening?

22 A. Yes.

23 Q. That's after you've been through everything you've
24 been through?

25 A. Yes.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. And showing State's Exhibit 10.

2 A. Yes.

3 Q. Can you point out to the jury what your appearance
4 reflects in that photograph that wasn't there before you
5 got carjacked.

6 A. I lost an earring.

7 Q. During the assault?

8 A. Yes. During the assault. This abrasion up here,
9 the spot on my nose, this bruising down here. There is a
10 certain amount of redness that is normal for me on my
11 neck, but not quite that much. My nose is -- I'm not
12 sure what's going on there, but my chin, as it turned
13 out, the next day showed up bruising here and inside my
14 lips.

15 Q. Okay. Showing you State's Exhibit 11?

16 A. Yes.

17 Q. Can you show some other areas -- let me clear
18 those other ones.

19 A. This spot on my cheek and this area across my
20 collarbone and again the tip of my nose there. You could
21 see that.

22 Q. And those were not there --

23 A. No, they were not there. They were not there
24 before. This part is pretty normal, but this looks like
25 it's ready to bruise, and that wasn't there before.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. And what about the red in your hair, by your ear?

2 A. Right here?

3 Q. Yes.

4 A. I think that might be a little blood, probably.

5 Q. State's Exhibit 13?

6 A. This side of the face didn't get quite as much
7 damage.

8 Q. And it shows the other earring being in?

9 A. Yes.

10 Q. When you met with the detectives that evening at
11 Ms. Mizell's house and gave your written statement, that
12 would have been not too terribly long after the incident
13 occurred; is that correct?

14 A. That's correct.

15 Q. And you were doing your best to give as much
16 descriptive information as you could at the time.

17 A. Correct.

18 Q. Do you remember how you were feeling when the
19 detective was questioning you and when you were talking
20 to the officers? Had you regained your composure or were
21 you still in a shock-like state?

22 A. I was still in shock, very upset. I wanted to go
23 home.

24 Q. Now, did EMS actually come?

25 A. They did.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. Did they check you out?

2 A. Yes.

3 Q. And did they ask you --

4 A. They asked if I wanted to go to the hospital, but
5 I said no.

6 Q. Did you feel like at that point you needed to go
7 to the hospital?

8 A. No.

9 Q. Now, could you describe for the jury, if that were
10 on the 5th and on the 6th, how did you feel the next day
11 when you woke up?

12 A. I was pretty sore. My neck was hurting quite a
13 lot because I had whiplash and I was beginning to show a
14 lot of bruising.

15 Q. On the following day, that being December 7th,
16 were you called back to the sheriff's department?

17 A. Yes.

18 Q. And who called you?

19 A. Detective Smith.

20 Q. And what did she want you to do?

21 A. To look at a photo lineup to see if I could
22 identify anyone.

23 Q. When you got to the sheriff's department, did they
24 also take photographs of you?

25 A. They did.

—LETTY MARTIN - DIRECT BY MS. SHEALY—

1 Q. Do you remember whether or not you took the
2 pictures first or looked at the lineup first?

3 A. I believe I looked at the lineup first.

4 Q. Let's go back for a moment, if we could, to when
5 the three officers were at Ms. Mizell's house. When you
6 were describing what the person looked like, did anybody
7 indicate to you who that sounded like?

8 MS. FORD: Objection. Hearsay.

9 MS. SHEALY: That's okay.

10 BY MS. SHEALY:

11 Q. When you get to the sheriff's office and meet with
12 Detective Smith, had you ever met her before?

13 A. No.

14 Q. And what does she explain to you about the
15 photographic lineup process?

16 A. She explained the process and read a series of
17 statements that I initialed in stating that I understood
18 them, and I read them along with her and she showed me a
19 sheet with six photographs on it, and I looked at the
20 photographs and picked one of them.

21 MS. SHEALY: Your Honor, at this time I would
22 offer into evidence State's Exhibit 14, and I
23 understand --

24 MS. FORD: Yes, Your Honor. I would renew my
25 objection at this time.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 THE COURT: All right. Subject to your
2 earlier objection, it is overruled.

3 MS. SHEALY: And, actually, it's State's
4 Exhibit 14 and 15.

5 THE COURT: All right.

6 BY MS. SHEALY:

7 Q. Ms. Martin, you've described that there was a form
8 that had different entries on it and that you initialed
9 by them.

10 A. Yes.

11 Q. Showing you State's -- those two State's Exhibits,
12 could you tell me whether or not that is the form you're
13 referring to?

14 A. Yes.

15 Q. Okay. And if you would, please, would you
16 indicate to the jury and could you pull up -- you may not
17 be able to see that very well, so just look at the
18 document itself, but that does refresh -- just point on
19 that form as to where your initials are.

20 A. My initials are beside each item here.

21 Q. And would you read into the record what those
22 statements state, starting with number one.

23 A. One, I'm going to show you a series of
24 photographs, a physical lineup of individuals for an
25 array of six photographs of individuals. The photographs

—LETTY MARTIN - DIRECT BY MS. SHEALY—

1 that I am about to show you are placed in no special
2 order. These photographs may or may not be the person
3 who committed the crime. It is just as important to
4 clear innocent people as it is to identify possible
5 suspects. Whether or not you identify someone, the
6 police will continue to investigate it.

7 Q. And, Ms. Martin, that was actually item two.

8 A. Yes.

9 Q. And you initialed by that as well?

10 A. I did.

11 Q. And did you understand that it would be important
12 to clear someone?

13 A. Oh, yes.

14 Q. And that if you couldn't identify anyone, they
15 would continue to investigate?

16 A. Yes.

17 Q. And number three?

18 A. Three is after you were done, I will not be able
19 to provide you with any feedback or comment on the
20 results of the process.

21 Q. Did you initial there?

22 A. I did. Four, do not discuss this identification
23 or procedure or the results with other witnesses in this
24 case, and I initialed that.

25 Five: Focus on the event, the place, view,

—LETTY MARTIN - DIRECT BY MS. SHEALY—

1 lighting, your frame of mind, et cetera. Take as much
2 time as you need. I initialed that.

3 Six: People may or may not appear exactly as they
4 did at the time of the event because features such as
5 clothing style, hair color, hairstyle, et cetera may
6 change even in a short period of time. I initialed it.

7 Seven: As you look at the photographs, tell me if
8 you recognize the person in them. If you do, please tell
9 me how you know the person and, in your own words, how
10 sure you are of the identification.

11 And I initialed that.

12 Q. And all of that was done prior to your being shown
13 the lineup?

14 A. Yes.

15 Q. Was it your understanding that the lineup may or
16 may not have the person in it?

17 A. Yes.

18 Q. And could you describe to the jury what level of
19 care you took in looking at the photographs?

20 A. I took several minutes looking at them and
21 studying the faces.

22 Q. Now, looking at State's Exhibit 15 -- and I'm
23 going to go ahead and separate these. When Detective
24 Smith showed you this document, was it folded like that?

25 A. Yes.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. Okay. So you never saw what was on the flip --

2 A. No.

3 Q. -- of this page.

4 A. I did not.

5 Q. And when you looked at each of the photographs
6 there, did you conclude that the person who had abducted
7 you that evening was one of the six pictures?

8 A. Yes.

9 Q. And could you point at that person for the jury?

10 A. (Indicating.)

11 Q. Now, at any time did Detective Smith tell you who
12 she wanted you to pick?

13 A. No.

14 Q. Did she suggest to you at all that the person they
15 thought did it was in the lineup?

16 A. No.

17 Q. Did she or any law enforcement officer encourage
18 you to choose a specific person in that lineup?

19 A. No.

20 Q. After you did that, is that your circling of the
21 identifying number underneath?

22 A. Yes.

23 Q. And are your initials on that document as well?

24 A. Yes.

25 Q. Did Detective Smith then ask you, looking back at

LETTY MARTIN - DIRECT BY MS. SHEALY

1 the previous document, to make a statement as to who you
2 identified?

3 A. Yes.

4 Q. And what did you, in fact, write?

5 A. He looks most like the person that carjacked me
6 and tried to kill me.

7 Q. Do you see the person in the courtroom who
8 abducted you that day?

9 A. Yes.

10 Q. And could you point to him, please.

11 MS. FORD: Objection, based on my prior
12 motion.

13 THE COURT: Overruled. You can identify if
14 you can.

15 BY MS. SHEALY:

16 Q. I'm sorry?

17 A. Yes, the defendant.

18 Q. Seated between his lawyers?

19 A. Yes.

20 Q. And you signed that evening this document?

21 A. Yes.

22 Q. Now, you've told us that obviously your car key
23 was gone.

24 A. Yes.

25 Q. And your house keys were gone.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 A. Yes.

2 Q. Let's look at the photographs that were taken of
3 you that evening at the sheriff's department.

4 A. Okay.

5 Q. And, again, this would have been two days later,
6 is that correct?

7 A. Yes.

8 Q. Showing you State's 16, that's just at a little
9 bit of a distance, 17, from the profile. Looking at
10 State's 19, can you point to areas that were not on your
11 face in that photograph prior to being abducted that
12 evening?

13 A. Yes. This on my cheek, this on my neck, and
14 bruising across here.

15 Q. Okay. And is there anything different about your
16 nose in that picture, that you can see?

17 A. Well, it was kind of on the other side. I don't
18 see it on this picture.

19 Q. That's fine. Showing you State's Exhibit 20.

20 A. That's across my collarbone and my neck because it
21 was getting bruised in here, bruising in here and all
22 across here.

23 Q. And what caused that bruising? What action by the
24 defendant caused that bruising?

25 A. This across here. I'm really not sure.

—LETTY MARTIN - DIRECT BY MS. SHEALY—

1 Q. You don't remember?

2 A. I don't remember.

3 Q. But did you have it prior to that day?

4 A. No.

5 Q. Showing you State's 21, could you focus on your
6 lip area and tell us what was appearing on your lip.

7 A. It was bruised right here.

8 Q. State's 22.

9 A. This is the inside of my lips and my gums. Like
10 this hematoma or bruise there and here, and my gums were
11 all bruised, upper and lower.

12 Q. Showing you State's 24.

13 A. I had developed a big bruise. Almost my whole
14 tongue was bruised, and this is a big lump on it. I
15 don't know how it got there, but it wasn't there prior.

16 Q. State's Exhibit 25.

17 A. Broken blood vessels in my eyes.

18 Q. State's Exhibit 26?

19 A. The bruise on my arm that was --

20 Q. It's a little hard to tell?

21 A. It's a little hard to tell, but it was the shape
22 of fingers on my arm.

23 Q. Did you look on that photograph and see that to
24 point it out to the jury?

25 A. This is one of it, yeah. It's a little hard to

LETTY MARTIN - DIRECT BY MS. SHEALY

1 tell on that.

2 Q. State's Exhibit 27.

3 A. This is the other side of my arms. There is a
4 bruise there.

5 Q. 28.

6 A. More bruising there.

7 Q. 29.

8 A. I had a bruise, a big bruise, on my knee, my right
9 knee.

10 Q. And then State's 30.

11 A. That's a close up of the bruise on my knee.

12 Q. And do you know when that occurred that evening?

13 A. I don't know.

14 Q. Did you get the key back to your car eventually?

15 A. I did.

16 Q. And did someone from law enforcement give it back
17 to you?

18 A. Yes.

19 Q. What about your pocketbook?

20 A. I was teaching a class, and I got a phone call
21 from a Westvaco employee, a man named Tim. I don't
22 remember his last name, and he said he had found my purse
23 in the woods on Westvaco property. And I asked him did
24 you touch it? And he said no, that my business cards had
25 fallen out and he had got my phone number from that.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 So I asked him if he would please stay there and
2 call the sheriff's department and have them pick it up
3 and he said he would.

4 Q. Did you get it back?

5 A. I did get it back later that day, I believe it was
6 later that day.

7 Q. Did you seek any medical attention after the
8 incident based on your injuries?

9 A. Yes. I went to see a chiropractor.

10 Q. Is that someone you had seen previously?

11 A. Yes.

12 Q. And what was his name?

13 A. Marcus Hostetler. He specializes in sports
14 medicine, which is why I wanted to go with him.

15 Q. And did he, in fact, see you and try to provide
16 you with some relief?

17 A. Yes, he did.

18 Q. Now, eventually you got your car back, correct?

19 A. I did.

20 Q. And could you tell the jury whether or not the car
21 was in the same position as you left it when you got it
22 back?

23 A. No, it was not.

24 Q. Okay. Showing you State's Exhibit 31.

25 A. Yes.

LETTY MARTIN - DIRECT BY MS. SHEALY

1 Q. Is there anything depicted in this photograph that
2 was different from when you came home that day from
3 running your errands?

4 A. The coin tray, it's not an ashtray, was full of
5 cigarette ashes. This is not mine.

6 Q. Let me show you State's 32. That might show that
7 area a little more clearly.

8 A. So the cigarette ashes, I never smoke cigarettes,
9 so that's not mine. This wallet is not mine. This car
10 charger is not mine.

11 Q. And State's Exhibit 35, had anything moved places
12 from when you had left it earlier?

13 A. In the console, no, I don't think so. All that is
14 mine.

15 Q. What about the feather with the cup? Had it been
16 located in that area of the vehicle?

17 A. Yes.

18 Q. State's Exhibit 36, is that your blue bowl?

19 A. No.

20 Q. State's Exhibit -- beg the Court's indulgence just
21 one moment. State's Exhibit 37, do you typically ride
22 with your car seats in that position in the front?

23 A. Never.

24 Q. In the back seat, the dark towel looking item, can
25 you point to that? Is that yours?

LETTY MARTIN - DIRECT BY MS. SHEALY

1 A. That was mine. It was up in the back deck to
2 protect it from the sun.

3 Q. Okay. The dark jacket next to is, is that yours?

4 A. No.

5 Q. Showing State's Exhibit 38, are those jeans yours?

6 A. No. Just for the record, whatever this is, is not
7 mine either.

8 Q. Okay.

9 MS. SHEALY: Your Honor, may we approach for
10 a moment?

11 THE COURT: Sure.

12 MS. SHEALY: Your Honor, at this time we
13 would move State's Exhibit 40, 41, and 42 into evidence.

14 THE COURT: Well, you need to ask her --

15 MS. SHEALY: She's not going to be able to --

16 THE COURT: All right. Well, you can't put
17 it in through her, but you can ask her if she can
18 identify it, and if she can't, she can't, but you could
19 ask her if it was something in her car, and then you can
20 put it in through another witness.

21 MS. SHEALY: So I'm going to have these
22 marked as ID for now.

23 BY MS. SHEALY:

24 Q. I'm going to show you State's 40, 41, and 42 and
25 ask you whether or not that item is yours and whether or

1 not it was in your car before you were abducted.

2 A. It is not mine and it was not in the car.

3 Q. And it was not in the car before?

4 A. No, I never had anything like that.

5 Q. Do you remember ever meeting Latrone Butler that
6 evening?

7 A. No.

8 MS. SHEALY: I beg the Court's indulgence
9 just a moment. I have no further questions for you right
10 now. Please answer any questions the defense may have.

11 THE COURT: All right. Folks, this is where
12 we will break for today, and we'll have defense begin
13 their cross-examination in the morning since it's getting
14 a little bit late.

15 I'm going to send you home now. Please don't
16 talk to anybody about the case. Obviously, the first
17 thing that's going to happen is you're going to walk
18 through the door and somebody is going to ask you if you
19 got picked for a jury.

20 If you haven't told them already, you can
21 tell them yeah, I got picked for a jury; however, the
22 judge says I'm not allowed to talk about the case and
23 please, respect that, because -- understand the basis for
24 that rule is real simple. It's fairness to the parties,
25 both sides.

1 Remember, they're entitled to a fair trial.
2 You have taken an oath that says you'll make your
3 decision based on what you hear in this courtroom,
4 evidence and the law. It's not fair to these folks to
5 have outside influences help you make that decision.
6 What your husband, wife, boyfriend, girlfriend,
7 bartender, next door neighbor thinks about the case is
8 absolutely irrelevant, and it's unfair for these folks
9 who have waited for a long time for their day in court to
10 have those influences on you.

11 So please respect that. Tell them, Look,
12 when the case is over, I can talk to you about it all I
13 want, but the judge has forbidden me to talk about it
14 now.

15 Also, now that you get on a jury, sometimes
16 people get invested in a case and they'll do things like
17 ride out to the scene. They'll get on the Internet and
18 try to find out what they can about a case. I don't know
19 if there is anything on the Internet about the case. I
20 know there is some access to public court documents,
21 things like that, but I don't know what's in them, and,
22 again, don't do that.

23 Whatever you need to make your decision we
24 will let you know about in this courtroom, and that's
25 what you promise to do under your oath. So go home,

1 enjoy the evening, relax. Don't think about the case
2 again, because, again, remember: You've only heard one
3 side from one witness.

4 You'll hear cross-examination tomorrow, and
5 you'll hear from a lot more witnesses with direct and
6 cross. Your mind will probably change more than one time,
7 so please, just keep an open mind. Don't talk about
8 witness demeanor with each other or with anyone, and,
9 again, if anybody does approach you about the case,
10 please report that back.

11 Now, I don't think there has been any
12 newspaper reporters. I know there haven't been any
13 television, but if you happen to see something in the
14 court or in the newspaper in the morning, please just
15 divert your gaze, and it will be better if you didn't
16 read the newspaper for the next couple days, but if you
17 can't resist and you see something about the case
18 tomorrow, please don't read it.

19 Again, that's an outside influence, and,
20 again, I haven't seen the reporters and sometimes they
21 come in and out, and I don't even know what all of them
22 look like, to be honest, but so please just go home and
23 enjoy your evening. If you would report back at 9:30
24 tomorrow, we'll do our best to get started right then and
25 try to get in as much as we can tomorrow. Thank you for

1 your patience today.

2 (In open court, jury not present.)

3 THE COURT: Now you're on the witness stand,
4 you're not allowed to talk anybody about your testimony.
5 That would include Ms. Shealy or anybody else.

6 You can talk about scheduling or something if
7 you have transportation needs, but you're not allowed to
8 talk to her or the defense lawyer or anybody about the
9 case, and if anybody does approach you to talk about the
10 case, tomorrow please report that to me first thing in
11 the morning. Okay?

12 THE WITNESS: Yes, sir.

13 THE COURT: We'll see you in the morning.
14 Anything from the State?

15 MS. SHEALY: Yes, judge. Ms. Ford and I have
16 spoken about this. Here is a jail phone call that I
17 intend to offer.

18 THE COURT: Okay.

19 MS. SHEALY: I have a disk for you -- I don't
20 know if you want to look at it overnight or listen to it,
21 I'm sorry, but I also have a transcript that may assist
22 you.

23 THE COURT: Is there something unusual about
24 it as opposed to every other jail phone call?

25 MS. SHEALY: No. I think she objects to it.

1 THE COURT: What would be your objection?

2 MS. FORD: My objection is that I don't think
3 it's clear enough and that it's misleading. You know,
4 it's part one of the jail conversation, and I just don't
5 think the context is there to -- I just think it's
6 misleading. It's very difficult to follow without the
7 other person to explain.

8 THE COURT: It's only one side of a phone
9 call?

10 MS. FORD: Well, it is both parties. I'm
11 just talking about all the of their conversations, Your
12 Honor.

13 THE COURT: Well, if you've got some other
14 ones that you want to play, you can play it, but if he
15 said something and it's against his interest to have him
16 said it, it's fair game.

17 You know, if he's not got enough sense to not
18 talk on the telephone with a sign in front of him that
19 says this phone call is being recorded, the law says it
20 can come in. As to whether or not it's intelligible,
21 well, you know, if the jury can hear it and make sense of
22 it, that's fine. I'll take the transcript, but I'm not
23 going to probably let the jury see that transcript
24 because I don't know what -- if it's one of those that is
25 so difficult to hear like last week where I don't

1 understand how anybody could hear what was said and we
2 got people talking street language and stuff like that,
3 we will -- I'll just let the jury hear it, make of it
4 what they will.

5 Okay? Anything else?

6 MS. FORD: No, Your Honor. I don't think so
7 right now.

8 THE COURT: All right. See y'all at 9:30.

9 (Recess taken.)

10 (January 16, 2014.)

11 (In open court, jury not present.)

12 THE COURT: All right. Are we ready to go
13 forward?

14 MS. FORD: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. FORD: There is an issue. Basically, in
17 the car, when it's found several days later, there is a
18 jacket and a pair of jeans in there, and the pair of
19 jeans have a few spots of blood on it. The blood was
20 analyzed. It's not Ms. Martin's blood. The blood
21 actually belongs to Mr. Butler.

22 THE COURT: Okay.

23 MS. FORD: But we do not think it's relevant
24 at all and it's prejudicial to bring any of that in.

25 THE COURT: Well, it's definitely

1 prejudicial. It proves his guilt. It is prejudicial to
2 him. Why wouldn't that be relevant?

3 MS. FORD: It's not Ms. Martin's blood, it's
4 his own, but there is no allegation --

5 THE COURT: But it's in her car.

6 MS. FORD: Right. It's two days later.

7 THE COURT: Okay.

8 MS. FORD: But, Your Honor, the jeans -- the
9 State wants to bring in the jeans to show, Oh, there was
10 a pair of jeans in there. The carjacker was wearing
11 jeans.

12 Ms. Martin never gave a specific description
13 of the jeans. We already have pictures of the jeans.
14 It's not that we object to the jeans coming in. Jeans
15 with his blood on it serves no relevance. There is no
16 allegations that the carjacker cut himself, and it's also
17 cumulative because the jeans are also traced to him
18 through his DNA because they take from the pocket. So
19 the DNA person will be able to say that his DNA was found
20 in the pocket.

21 There's no reason to say his DNA was found in
22 the pocket and also blood found in the jeans. There is
23 no allegation that the carjacker cut himself. There is
24 just no reason to bring his blood in. It just is
25 misleading, confusing to the jury, because it serves no

1 purpose.

2 THE COURT: What's the State's position on
3 this?

4 MR. EVANS: Well, Your Honor touched on the
5 probative value. The jeans belonged to the defendant and
6 were found in Ms. Martin's car. There was extensive lab
7 work on the jeans, not only on the blood, but on the
8 jeans in general, at SLED and the State wanted to
9 introduce the entire jeans just to tie everything
10 together. As Your Honor said, it's probative. It's his
11 clothes in the back seat of the car.

12 MS. FORD: And the jeans can already be tied
13 to him through the pockets, so it's cumulative, and
14 especially there is the jeans themselves, but also there
15 is pictures of the jeans themselves with blood spots on
16 them. We already have pictures of the jeans without the
17 blood spots.

18 I don't see any need to put pictures into
19 evidence the cops holding up jeans with blood spots on
20 them. It serves no purpose.

21 THE COURT: Well, the jury needs to know that
22 the DNA is on there and how it got found. The fact that
23 there was blood is how they happened to come about
24 finding that DNA and was found on him is necessary to
25 prove that.

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 You are certainly able to bring out on
2 cross-examination that this was not her blood, and, you
3 know, the jury can decide whether or not that has any
4 bearing on the issue, but, frankly, his jeans being found
5 in her car is certainly relevant, and the part of the
6 chain for getting the DNA in is to know what the source
7 is of the DNA was, so I am going to allow it.

8 What else you got?

9 MS. FORD: That's all, Your Honor.

10 MR. EVANS: Thank you, Your Honor.

11 THE COURT: Okay.

12 (In open court, jury present.)

13 THE COURT: Welcome back, folks. We are
14 going to resume where we left off yesterday with the
15 cross-examination of Ms. Martin. Ms. Martin, you can
16 come back up. All right.

17 Ms. Martin, I want to remind you, you were
18 placed under oath yesterday so you are still under oath.

19 THE WITNESS: Yes, sir.

20 CROSS-EXAMINATION

21 BY MS. FORD:

22 Q. Thank you, Your Honor. May it please the Court:
23 Good morning, Ms. Martin.

24 Ms. Martin you told us yesterday that you saw the
25 man who did these things. You saw him earlier that day?

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 A. That's correct.

2 Q. And that was at your neighbor's house?

3 A. Correct.

4 Q. You spoke to the police the day of the incident,
5 correct?

6 A. Correct.

7 Q. And you spoke to several police officers?

8 A. Yes.

9 Q. And they were very interested if you had ever
10 seen the man before?

11 A. They asked me if I had.

12 Q. And you told them no?

13 A. I don't remember.

14 Q. You don't remember what you told them? You gave a
15 written statement, correct?

16 A. Yes.

17 MS. FORD: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MS. FORD:

20 Q. You agree you told the police you don't know the
21 black man, correct?

22 A. That's correct.

23 Q. You talked to the 911 operator that day, correct?

24 A. Yes.

25 Q. And you talked to Deputy Kjellman?

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 A. I talked to three deputies and a detective. I
2 don't remember the names.

3 Q. Detective Perkins is one of the officers?

4 A. Not that night.

5 Q. Not that night? You talked to Detective Herriott?

6 A. Whoever signed that written statement. I really
7 don't remember the name who gave them.

8 Q. You told them all you had never seen the man
9 before?

10 A. I don't remember. I don't remember saying that.

11 Q. So you never told the police you had seen the guy
12 earlier that day.

13 A. I don't remember.

14 Q. You don't remember that either?

15 A. If I said that.

16 Q. You've lived the Jericho mobile home park since
17 2006?

18 A. 2007.

19 Q. 2007? At some point when you were living there,
20 you gave a black man a ride to his job at Harvest Grill;
21 is that correct?

22 A. That's correct.

23 Q. You don't really remember what that man looked
24 like?

25 A. He was -- I don't. He came and knocked on my door

1 and said his girlfriend had sent him over. I had given
2 him a ride at some point in the past, and he asked if I
3 would take him to work. He stated that he needed that
4 job. He had a child support, and he couldn't be late
5 again, but I didn't know who he was, so I gave him a
6 ride, based on the fact that I had taken his girlfriend
7 before.

8 Q. And Harvest Moon Grill, is that about a ten to
9 fifteen minute drive from where you live?

10 A. Probably not. It's about three miles, maybe.

11 Q. Three miles?

12 A. Uh-huh.

13 Q. The police were very interested in a description
14 of the suspect, correct?

15 A. Of course.

16 Q. And so you gave a description.

17 A. Yes.

18 Q. The 911 operator asked for a description?

19 A. Yes, I think so.

20 Q. And the responding deputy, Deputy Kjellman?

21 A. Whoever it was, the deputies asked.

22 Q. The deputies who took the written statement that
23 night?

24 A. Probably. I'm thinking he did.

25 Q. You did -- you wrote a statement, correct?

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 A. Yes.

2 Q. And in that statement, you gave a description of
3 the man.

4 A. I did.

5 Q. And you wrote the statement that night?

6 A. Yes.

7 Q. And Detective Perkins, when you met with him, he
8 asked for a description?

9 A. I don't remember. Probably, but I don't remember
10 for sure.

11 Q. The description you gave was male?

12 A. Yes.

13 Q. In his late 20's?

14 A. Yes.

15 Q. And now you're saying the man was about five-ten
16 to six feet?

17 A. Yes.

18 Q. In your written statement, you just said he was
19 about six feet; correct?

20 A. That's what it says, yes.

21 MS. FORD: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MS. FORD:

24 Q. I'm handing you what's been marked as Defendant's
25 Exhibit 1. Does this look to be your statement that you

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 wrote?

2 A. Yes.

3 Q. And on the third page when it asked for a
4 description, you said the man was about six feet,
5 correct?

6 A. Yes.

7 Q. In the 911 call, you said the man was about six
8 feet that we listened to yesterday, correct?

9 A. Yes.

10 Q. You also said the man was black?

11 A. Correct.

12 Q. But you didn't indicate if he was light, medium,
13 or dark skinned, correct?

14 A. Correct.

15 Q. You said the black man was wearing jeans?

16 A. Yes.

17 Q. But you didn't indicate if the jeans were dark,
18 medium, or light colored?

19 A. I didn't think so.

20 Q. You didn't note any labels or designs or patches
21 of any kind on the jeans?

22 A. That would have been covered by the jacket, but
23 no.

24 Q. So you said he was wearing a jacket?

25 A. Yes.

1 Q. You said the jacket was dark?

2 A. Correct.

3 Q. Never told the police what color the jacket was,
4 though?

5 A. I don't believe so.

6 Q. You did not describe the man's shirt?

7 A. Didn't see it.

8 Q. You didn't describe the man's shoes?

9 A. Don't think I noticed.

10 Q. You didn't note any facial hair?

11 A. No.

12 Q. You didn't note what hair length the man had?

13 A. I don't remember seeing it. I thought he might be
14 wearing a cap, but I never told anyone.

15 Q. Never told anyone he was wearing a cap?

16 A. No.

17 Q. You didn't notice any birthmarks or anything like
18 that?

19 A. No.

20 Q. The man was not wearing gloves?

21 A. I don't think so.

22 Q. You never told anybody he was wearing gloves?

23 A. He didn't have gloves on when he had his hands on
24 my face.

25 Q. You didn't note any tattoos on the man at all?

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 A. No.

2 Q. When the police first talked to you, when you were
3 asked for a description, they asked if you would be able
4 to identify the man when you saw him?

5 A. Yes.

6 Q. And you told them that you didn't know?

7 A. That's correct.

8 Q. And when Detective Smith showed you the lineup
9 that you pointed out yesterday, she asked you about the
10 six men in the lineup, correct, or she asked you who, if
11 anyone, was responsible, correct?

12 A. I don't remember how she phrased it or if she just
13 said, Look at the pictures and see if anyone --

14 Q. And you told us yesterday it took you several
15 minutes to make that identification?

16 A. I might have said that yesterday. It wasn't a
17 long time, but it wasn't like -- I studied the
18 photographs for a little bit.

19 Q. And you indicate the man looked most like the guy?

20 A. Yes.

21 Q. You didn't say he looked most like the guy except
22 for the hair, correct?

23 A. No, I didn't.

24 Q. So all you said is he looks most like the guy?

25 A. Yes.

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 Q. And you didn't recognize any of the other males in
2 the lineup as being residents of Ravenel or Jericho
3 mobile home park, correct?

4 A. That's correct.

5 Q. You talked to most of the police at Ms. Mizell's
6 house, correct?

7 A. Correct.

8 Q. And they were there about two hours?

9 A. I don't really know.

10 Q. So you spoke to the three police officers there?

11 A. Three deputies.

12 Q. And you gave a written statement?

13 A. And a written statement to the detective. I gave
14 the statement verbally to the three deputies at different
15 times. They were not all there at the same time, and to
16 the detective I gave the written statement.

17 Q. But that detective is not Detective Perkins,
18 right?

19 A. That's correct.

20 Q. And you talked to Detective Perkins when, do you
21 know? Was it later that night for the first time?

22 A. I think the first time I talked to him -- I don't
23 think it was that night. I can't remember if it was the
24 next day or the day after.

25 Q. You did -- we know you talked to him when you went

1 in for photo lineup, correct?

2 A. Correct, and that's the first time I met him.

3 Q. Okay. And that was two days later?

4 A. Yes.

5 Q. And you also spoke to Detective Smith that day
6 too?

7 A. Yes.

8 Q. I just want to clarify a few things about the
9 incident, okay? So you're telling us that the man is the
10 one who drove the car?

11 A. Yes.

12 Q. So you never told Detective Perkins that you were
13 the one driving the car?

14 A. No.

15 Q. And you told us that the man, he had some type of
16 object, but you never saw it, correct?

17 A. That's correct.

18 Q. He said it was a gun?

19 A. He said it was a gun.

20 Q. So you never told Detective Perkins that the man
21 had a knife at your throat while you were driving?

22 A. No.

23 Q. After the car was stopped --

24 A. Yes.

25 Q. -- when the man got you out, did you try to flee

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 at that point?

2 A. No. As I said yesterday, I was in such, really, a
3 state of shock. I felt paralyzed by fear.

4 Q. So you never told Detective Perkins that you tried
5 to flee?

6 A. That's correct, and he had hold of my arm when I
7 was out of the car. He wouldn't turn me loose.

8 Q. Did you tell Detective Perkins that the man was
9 holding your arm inside the car?

10 A. The only time I think that he had hold of my arm
11 is when I first got in the car to start it, and he was
12 standing in the driver's door. I think he had my arm and
13 he still had whatever that object was that he said was a
14 gun in my ribs.

15 Q. So you never told Detective Perkins that he was
16 holding your arm in the car, though, when y'all were
17 driving?

18 A. When he was driving, no.

19 Q. Your car, it has -- the gear shifter and the
20 console area, correct?

21 A. Correct.

22 Q. And that's between the driver and the passenger
23 seat?

24 A. Yes.

25 Q. So in order to change the gear, somebody would

LETTY MARTIN - CROSS-EXAMINATION BY MS. FORD

1 have had to put his hand down in between the two seats,
2 correct?

3 A. Yes.

4 Q. And you noticed that the car was in the wrong gear
5 at some point, didn't you?

6 A. The first time he turned on Hyde Park Road and
7 turned around in the driveway, I glanced down and noticed
8 that it was in the wrong gear, yes.

9 Q. So you indicated to the man they should change it?

10 A. Yes.

11 Q. He did?

12 A. He did.

13 Q. And the man was also turning around a few times,
14 correct?

15 A. He made several turns; yes.

16 Q. Right. He had to go into reverse at some time?

17 A. Yes.

18 Q. And during all this, you never noticed any tattoos
19 on the man's hands?

20 A. No, I didn't.

21 Q. And the man also, he had had his hands at your
22 head?

23 A. Yes.

24 Q. Okay. And you never noticed any tattoos on his
25 hands at that point?

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 A. When he was behind me, his hands were back here.
2 I didn't see.

3 MS. FORD: Beg the Court's indulgence.

4 No further questions, Your Honor.

5 THE COURT: Redirect?

6 MS. SHEALY: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. SHEALY:

9 Q. Ms. Martin, Ms. Ford had asked you whether or not
10 your statement said that you had never seen him before.
11 Would it be helpful to look at a copy of your statement?

12 A. Yes.

13 Q. And focussing your attention to the last page of
14 that statement, what, in fact, were you asked?

15 A. Do you know the black male?

16 Q. And did you know the black male?

17 A. No.

18 Q. You had not been asked whether or not you had seen
19 him before; is that correct?

20 A. That's correct.

21 Q. And the Harvest Grill is on Highway 17?

22 A. That's correct.

23 Q. And that's a local -- they serve lunch and they
24 serve supper?

25 A. Yes.

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 Q. You do recall taking a man one time to a job at
2 Harvest Grill?

3 A. Correct.

4 Q. Do you know whether or not it was Latrone Butler?

5 A. No.

6 Q. Do you remember what that guy even looks like?

7 A. Not really.

8 Q. And do you remember when that was in comparison to
9 when this occurred?

10 A. I don't, and that day, he was wearing work
11 clothes, white pants and a white shirt and some kind of a
12 white head covering, I guess, restaurant workers kind of
13 covering, so I didn't see his hair that day.

14 Q. So you don't know whether that was Latrone Butler
15 or not?

16 A. That's correct, I do not.

17 Q. You just remember giving a guy a ride one time?

18 A. Right.

19 Q. And Ms. Ford asked you, did you see the shirt that
20 the guy was wearing that night?

21 A. Correct.

22 Q. Did you see the shirt, though?

23 A. No.

24 Q. And describe that jacket to us again.

25 A. It was a dark color and a quilted jacket so it was

1 puffy.

2 Q. And you indicated it was dark?

3 A. It was dark.

4 Q. You don't know whether it was dark blue, a dark
5 black, a dark brown?

6 A. No, I don't.

7 Q. You indicated today that he may have been wearing
8 a cap.

9 A. Yes.

10 Q. Do you recall whether specifically he was wearing
11 a cap?

12 A. I don't. I just know -- I don't remember seeing
13 his hair, so I just think he might have been, but I don't
14 know for sure.

15 Q. And Ms. Ford asked you whether or not you know if
16 he were wearing gloves, and you indicated that you know
17 he wasn't when he was trying to snap your neck?

18 A. That's correct, yes.

19 Q. Is that because you couldn't feel the gloves on
20 your face when that happened?

21 A. Yes.

22 Q. When you tell the detective who took your written
23 statement that you're not -- when they asked if you would
24 be able to recognize him and you said you don't know --

25 A. Uh-huh.

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 Q. -- when you later go back to look at the one
2 lineup they had, the police already knew you may not be
3 able to recognize him, right?

4 A. That's correct.

5 Q. Did you feel any pressure to identify anybody on
6 that lineup?

7 A. Absolutely not.

8 Q. And when you told the Court that you studied the
9 photographs, was it important to you to make sure?

10 A. Oh, yes.

11 Q. Did you have any interest in just getting somebody
12 arrested?

13 A. No.

14 Q. Ms. Ford also asked you whether or not you ever
15 indicated he had a knife on him and a knife on you?

16 A. Yes.

17 Q. Did you ever indicate that to anyone?

18 A. No.

19 Q. What do you recall describing to the police about
20 whether or not there was a weapon or whether he said
21 there was a weapon?

22 A. I told him he said several times that he had a gun
23 and he would shoot me. I never saw it. The jacket I had
24 on was a windbreaker type and it came over like this and
25 covered whatever was here, so I didn't see what it was.

—LETTY MARTIN - REDIRECT BY MS. SHEALY—

1 I don't have experience with guns, but it felt like what
2 I imagine one would feel like.

3 Q. And that was in your rib area?

4 A. In my ribs, yes.

5 Q. After Mr. Butler was arrested, did you attend the
6 bond hearing?

7 A. I did.

8 Q. Were you able to see Mr. Butler at the bond
9 hearing?

10 A. He was. He was on video in the detention center,
11 and we were in a courtroom across the road, I think, from
12 there.

13 Q. When you had the opportunity to see him that day,
14 were you concerned whether you got the right guy or did
15 it appear to be the person that abducted you that
16 evening?

17 A. It was the one who had abducted me.

18 Q. In December 2012 did a crime scene technician come
19 and take a buccal swab of you?

20 A. Yes.

21 Q. And when doing so did they give you a Q-tip to
22 hold or did they rub it in your jaw area?

23 MS. FORD: Your Honor, this is outside the
24 scope of my cross.

25 THE COURT: Sustained. No new matter.

—LETTY MARTIN - RECROSS BY MS. FORD—

1 BY MS. FORD:

2 Q. When Ms. Ford was asking you about whether or not
3 Mr. Butler held your arm while y'all were in the car,
4 you've indicated -- did you indicate that it was
5 initially when he asked you to start your vehicle?

6 A. Yes.

7 Q. And the remainder of the time he was not holding
8 your arm while you were in the car?

9 A. That's correct.

10 MS. SHEALY: Beg the Court's indulgence just
11 a moment. I have no further questions.

12 MS. FORD: I have a few questions.

13 THE COURT: Go ahead.

14 RECROSS-EXAMINATION

15 BY MS. FORD:

16 Q. When you gave your written statement, nowhere did
17 you indicate that you had seen the man earlier that day,
18 correct?

19 A. I guess. I would have to read it again. I have a
20 copy here. I'm sorry. Would you repeat your question?

21 Q. Nowhere in your statement do you indicate you had
22 seen the man earlier that day?

23 A. That's correct.

24 Q. Now, you indicated when y'all got out of the car,
25 it was dark, correct?

PENNY MIZELL - DIRECT BY MR. EVANS

1 A. Yes.

2 Q. But when everything started, it was around 5:00 in
3 the afternoon, right?

4 A. That's correct.

5 Q. So it was still light at that time.

6 A. Yes.

7 Q. Now, the jacket, you described it today as quilted
8 and puffy, correct?

9 A. Yes, yes.

10 Q. But you never at any time told any police officer
11 that?

12 A. No, I didn't, but I knew that at the time, but I
13 -- that's correct.

14 MS. FORD: Beg Court's indulgence. No
15 further questions.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Next witness.

19 MR. EVANS: State calls Penny Jo Mizell.

20 PENNY MIZELL,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. EVANS:

25 Q. Good morning, Ms. Mizell. How are you?

PENNY MIZELL - DIRECT BY MR. EVANS

1 A. Good. How are you?

2 Q. Where do you live?

3 A. [REDACTED] in Ravenel, South Carolina.

4 Q. Is there a road that intersects with that right
5 where you live?

6 A. Yes, sir, Hyde Park Road.

7 Q. I'm showing you State's Exhibit 5. Would you tell
8 me if you recognize what's depicted in this picture. Do
9 you recognize that?

10 A. I do.

11 Q. Can you kind of orient us to what we're looking
12 at?

13 A. It looks like --

14 Q. And you can actually draw on that, if you like.

15 A. Yeah, it's Hyde Park Road. My house is right here
16 in the middle, so where this tree's at, you're coming up
17 High Park Road to 165, and there is a dirt road that runs
18 in front of my house, and then 165 is also to the left of
19 my house here.

20 Q. You can actually literally draw on the thing in
21 front of you. Can you draw and trace High Park Road for
22 us.

23 A. Okay. I live right there -- and let's see. This
24 right here is Hyde Park Road, the paved road side of Hyde
25 Park Road, and this is the dirt road of High Park Road,

1 and I live right there where the X is at.

2 Q. And that is 165?

3 A. Yeah. This is 165 right there.

4 Q. Do you recall night of December 5, 2011?

5 A. I do.

6 Q. Were you at your house?

7 A. Yes.

8 Q. Was there anybody else with you?

9 A. My husband and my 16-year-old son.

10 Q. What happened that night?

11 A. We had a knock on the door, and I looked out the
12 window and I saw a white female standing on my porch. I
13 opened the door, because we don't usually get visitors
14 out there, and we yelled at John, my husband, and asked
15 the lady, you know, what was the matter.

16 And she said she had been carjacked and would I
17 please call the police for her, and then after I did
18 that, she asked me to call her sister.

19 Q. Had you ever seen her before?

20 A. No, sir.

21 Q. You didn't know her?

22 A. No, sir.

23 Q. What did she look like?

24 A. Older lady, gray hair, short.

25 Q. How was she acting?

PENNY MIZELL - DIRECT BY MR. EVANS

1 A. Very distraught, upset, scared. Terrified,
2 , actually. I didn't know what was going on until she
3 explained to us exactly what had taken place.

4 Q. Did she have any physical injuries that you could
5 see?

6 A. She was red around her neck and face, visibly.

7 Q. Did she say anything else about what had happened?

8 A. Yes, sir. She said that she was getting into her
9 vehicle, I guess when she was at home or something, and
10 that someone had approached her from behind, put
11 something in her side, forced her --

12 MS. FORD: Objection. This is going into
13 hearsay, Your Honor.

14 THE COURT: What is the objection?

15 MS. FORD: Hearsay.

16 THE COURT: 803(2), excited utterance.

17 BY MR. EVANS:

18 Q. You can continue.

19 A. She said she was getting into her car. Somebody
20 approached her from behind, put something in her ribs.
21 She thought it was a gun. Forced her into the car, kept
22 screaming at her not to look at him and choked her out.
23 You know, this was daytime. When she got to my house it
24 was at night, so it had been a few hours, I'm guessing.

25 Q. And did she ask you to call 911?

PENNY MIZELL - DIRECT BY MR. EVANS

1 A. She did.

2 Q. And did you?

3 A. I did.

4 Q. And did law enforcement respond to your house that
5 night?

6 A. Yes, they did.

7 Q. Do you recall what time they came or --

8 A. I do not.

9 Q. And did you call any of her family members?

10 A. I did. I called her sister.

11 Q. And they came to your house as well?

12 A. Yes, sir.

13 MR. EVANS: Beg the Court's indulgence.

14 BY MR. EVANS:

15 Q. Did you physically dial 911?

16 A. Yes.

17 Q. Did you speak to them?

18 A. Yes.

19 Q. And at some point did you hand the phone over?

20 A. I did. We were going back and forth -- I was
21 going back and forth with her and the 911 operator, and
22 then she calmed down enough to where she could talk to
23 the 911 operator.

24 MR. EVANS: Beg the Court's indulgence.

25 Nothing further right now. Please answer any

DON KJELLMAN - DIRECT BY MS. SHEALY

1 questions Ms. Ford may have. Thank you.

2 THE COURT: Cross?

3 MS. FORD: I have no questions for this
4 witness, Your Honor.

5 THE COURT: You may step down. Thank you.

6 Next witness?

7 DON KJELLMAN,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q. Officer Kjellman, if you would please tell the
13 jury where you're employed.

14 A. Charleston County sheriff's office. I'm a deputy
15 sheriff.

16 Q. How long have you been a deputy sheriff?

17 A. Since 1989.

18 Q. And on the evening of December 5, 2011, did you
19 answer a call to penny Joe Mizell's house?

20 A. Yes, ma'am, I did.

21 Q. Do you remember the location of that?

22 A. I don't remember the street address but, I can
23 tell you exactly where the residence is located.

24 Q. Tell us where it's -- the crossroads of what two
25 roads?

DON KJELLMAN - DIRECT BY MS. SHEALY

1 A. Highway 165 and Hyde Park Road.

2 Q. When you got there, did you have the opportunity
3 to meet with Ms. Letty Martin?

4 A. Yes, ma'am, I did.

5 Q. Let me ask you a little bit about that area. Is
6 that the area you typically patrol?

7 A. Yes, ma'am, it is.

8 Q. And as a part of your duties, do you answer calls
9 when someone is called into 911?

10 A. Yes, ma'am.

11 Q. The area that Ms. Mizell lived in, that Hyde Park
12 Road area with 165, is that in Charleston County?

13 A. Yes, it is.

14 Q. And what about Jericho mobile home park? Are you
15 familiar with whether or not that's in Charleston County?

16 A. Yes, ma'am, I am, and it is. It's on Savannah
17 Highway.

18 Q. At that intersection with Hyde park and 165, part
19 of Hyde park is paved and the other side is gravel; is
20 that correct?

21 A. Yes, ma'am, that's correct.

22 Q. When you first met with Ms. Martin, could you
23 describe her demeanor?

24 A. She was quiet. She had very little in the way of
25 facial expressions. I would describe her as being in

DON KJELLMAN - DIRECT BY MS. SHEALY

1 shock.

2 Q. And being a patrol officer, have you seen other
3 people react similarly to violent crimes?

4 A. Yes, ma'am, I have.

5 Q. While there, did you ask her what, in fact, had
6 happened earlier in the evening?

7 A. Yes, I did.

8 Q. And did you later fill out a supplemental report,
9 noting what she had told you?

10 A. I wrote the initial report describing in detail
11 what she had told me at that date and time.

12 Q. And while there, did you, in fact, take
13 photographs of her?

14 A. Yes, I did.

15 Q. Showing you State's Exhibit 6 -- I'm sorry. Well,
16 go ahead and orient us there. That's the gravel road?

17 A. It's a little bit too close, but I believe that's
18 going to be the gravel portion of Hyde Park Road taken
19 from the intersection of Highway 165. The gravel portion
20 would be to the left here and the painted portion would
21 be behind the scene that you can't see going the opposite
22 direction.

23 Q. Showing you State's Exhibit No. 9, the series of
24 photographs when she is clothed that way are the ones you
25 took that evening?

DON KJELLMAN - DIRECT BY MS. SHEALY

1 A. Yes, ma'am.

2 Q. And while there, is part of your role to contact
3 the supervisor about what should be the next step in the
4 investigation?

5 A. Yes, ma'am.

6 Q. And did you, in fact, talk to your supervisor
7 about whether or not a detective needed to come to the
8 scene?

9 A. Yes, sir. I notified my supervisor as to what had
10 happened and he summoned a detective to report it.

11 Q. Do you remember which detective reported?

12 A. Give me just a minute to check my report. It was
13 Detective Herriott.

14 Q. That's Keith Herriott from the sheriff's office?

15 A. Yes, ma'am.

16 Q. Were there other patrol officers that also
17 reported to Ms. Mizell's house?

18 A. There was one other, but I don't recall who it
19 was.

20 Q. And based on the description that Ms. Martin had
21 given of her vehicle, did you relay that information to
22 your supervisor?

23 A. Yes, I did, and it was subsequently listed in the
24 report and entered into the computer NCIS having been
25 stolen from the victim.

DON KJELLMAN - CROSS BY MS. FORD

1 Q. The gravel part of Hyde Park Road, could you
2 describe to the jury whether or not there were any houses
3 or buildings on that road?

4 A. There are not a lot in the way of houses. I would
5 call it very sparsely populated. You can go for a
6 lengthy period of time before you come across another
7 building or another residence.

8 Q. And while you were still at Ms. Mizell's house,
9 did family members of Ms. Martin come to that home?

10 A. Yes, ma'am.

11 MS. SHEALY: Beg the Court's indulgence just
12 a moment.

13 I have no further questions. Please answer
14 any that the defendant may have.

15 CROSS-EXAMINATION

16 BY MS. FORD:

17 Q. Jericho mobile home park, so you are familiar with
18 that area?

19 A. Yes, ma'am, I am.

20 Q. And that is a fairly small mobile home park,
21 correct, about maybe 40 trailers, maybe?

22 A. That sounds about right.

23 Q. And so you were the first officer to respond?

24 A. To where?

25 Q. To Ms. Mizell's, to Hyde Park?

DON KJELLMAN - CROSS BY MS. FORD

1 A. Yes, ma'am.

2 Q. And as the first officer there, it's important for
3 you to find out information about a suspect, correct?

4 A. Yes, ma'am, and what had happened to the victim
5 and any assistance the victim might need.

6 Q. And so you did all you could to find out as much
7 information about this suspect as you could, correct?

8 A. Yes, ma'am.

9 Q. Because that's important so y'all can try to
10 arrest someone, correct?

11 A. Correct.

12 Q. And it's important to know if the person knows the
13 person, correct, because that would make a difference in
14 your investigation. If they know the person who did
15 something to them, that makes a difference in your
16 investigation, correct?

17 A. I'm not -- I don't quite understand the question.

18 Q. If someone tells you that they know the person or
19 they've seen them before, that would be an important
20 fact, correct? It would help you find a person more
21 easily?

22 A. Yes, it would. That, it would.

23 Q. And you told us that you wrote a detailed report,
24 as detailed as you could, correct?

25 A. Yes, ma'am.

—DON KJELLMAN - CROSS BY MS. FORD—

1 Q. So you included everything that Ms. Martin gave
2 you, correct?

3 A. Yes, ma'am.

4 Q. And so had she told you anything, you know, about
5 the suspect, you would have made sure to include that in
6 your report, correct?

7 A. Yes, ma'am.

8 Q. And Ms. Martin had never indicated to you that she
9 had seen the person earlier that day, correct?

10 A. She was in shock. I don't know if she would have
11 been able to had she known him.

12 Q. Well, you were there about two hours, correct?

13 A. Approximately, yes.

14 MS. FORD: Beg the Court's indulgence.

15 BY MS. FORD:

16 Q. Deputy Kjellman, you did note a description in
17 your report, correct?

18 A. Yes, I did.

19 Q. And the description was a black male?

20 A. Yes, ma'am.

21 Q. About five-eleven?

22 A. Yes, ma'am.

23 Q. Twenty-four to thirty?

24 A. Yes, ma'am.

25 Q. And 170 pounds?

~~DON KJELLMAN - REDIRECT BY MS. SHEALY~~

1 A. Yes, ma'am.

2 Q. So that weight, you wouldn't have just made up a
3 weight, correct? That would have been based on something
4 that Ms. Martin told you about the man's size?

5 A. Yes, ma'am, yes, ma'am.

6 MS. FORD: No further questions.

7 REDIRECT EXAMINATION

8 BY MS. SHEALY:

9 Q. Officer Kjellman, I wanted to make sure I
10 understand. On the same form you that you've indicated
11 you was your initial incident report, you did give the
12 information five-eleven, 170, black individual, and the
13 range of 27 to 30 years old?

14 A. Yes, ma'am.

15 Q. And that was the information that Ms. Martin had
16 given you that evening?

17 A. Yes, it was.

18 Q. She didn't know his name?

19 A. No, she did not.

20 Q. But five-eleven?

21 A. Yes, ma'am.

22 Q. Black?

23 A. Yes, ma'am.

24 Q. Late 20's?

25 A. Yes, ma'am.

JAMES PERKINS - DIRECT BY MS. SHEALY

1 MS. SHEALY: Thank you. I have nothing
2 further.

3 THE COURT: Recross?

4 MS. FORD: No, Your Honor.

5 THE COURT: You may step down. Thank you.

6 MS. SHEALY: May he be excused, Your Honor?

7 THE COURT: Certainly. Next witness?

8 MS. SHEALY: James Perkins.

9 JAMES PERKINS

10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: James Perkins, P-e-r-k-i-n-s.

14 BY MS. SHEALY:

15 Q. Detective Perkins, if you would, please, tell the
16 jury where you're currently employed.

17 A. Charleston County sheriff's office, investigation
18 division.

19 Q. I'm sorry. I interrupted. Investigations
20 division?

21 A. Yes, ma'am.

22 Q. You're a detective there?

23 A. Yes, ma'am.

24 Q. How long have you served as a detective for the
25 county?

JAMES PERKINS - DIRECT BY MS. SHEALY

1 A. Approximately eight years.

2 Q. And involving in incident, that being the case
3 against Latrone Butler, were you assigned as the lead
4 detective?

5 A. Yes, ma'am.

6 Q. However, were you present on the 5th at Ms.
7 Mizell's house?

8 A. No, I wasn't.

9 Q. Are you aware of who took Ms. Martin's statement?

10 A. Yes.

11 Q. And who was that?

12 A. Keith Herriott, Detective Keith Herriott.

13 Q. When you were assigned as the lead investigator,
14 would you then have been provided with a copy of the
15 statement he got from Ms. Martin?

16 A. That's correct, yes, ma'am.

17 Q. Now, based on her statement that evening, what
18 type of car were y'all looking for?

19 A. Maroon burgundy type Accura sedan, TL.

20 Q. And, in fact, did you learn the license tag number
21 to that vehicle?

22 A. Yes, ma'am.

23 Q. Once you had that vehicle, what's the next step in
24 the investigation? How do you communicate that to other
25 law enforcement?

JAMES PERKINS - DIRECT BY MS. SHEALY

1 A. Well, there is a couple techniques that we use.
2 One of them is called -- is where we let neighboring
3 agencies know, detectives, supervisors, everybody in
4 neighboring agencies, North Charleston, Mount Pleasant,
5 neighboring agencies in Berkeley, Dorchester County, of
6 the incident that's been reported as well as the
7 description of the vehicle.

8 We also do something called LPR, which is the
9 license plate reader, that will read the license plate
10 and alert us, and we also use something called -- I'm
11 trying to think of the name of it. There is another
12 method that we use, but I'm -- it's gone from me now.

13 Q. You're trying to remember the method. Okay.
14 Well, regarding the license plate reader that you were
15 telling us about, how, in fact, does that work?

16 A. What happens is if the vehicle comes by, it would
17 alert you that this vehicle has been reported stolen or
18 report in reference to any kind of an incident to where
19 we are looking for the vehicle, somebody that is driving
20 it, and it's wanted and we have the vehicle's
21 information.

22 Q. And when you are indicating that is used, you
23 place some kind of device in a given area to see if it
24 registers that tag?

25 A. Well, the LPR -- the LoJack is the other device

JAMES PERKINS - DIRECT BY MS. SHEALY

1 that we use, and it is similar to the LPR where it reads
2 the vehicle, but in order for that LoJack to read it, it
3 has to be inside the vehicle where the LPR reads it off
4 of the tag.

5 Q. So after learning what type of vehicle was
6 involved, could you tell the jury what efforts you made
7 in this specific case to try to locate the vehicle.
8 Which of those methods?

9 A. We used all three of those methods.

10 Q. And did you get any type of hit off any of those
11 items?

12 A. No, ma'am, not initially.

13 Q. Okay. What is the next thing that you do after
14 entering the information about the vehicle regarding the
15 investigation of this case?

16 A. Well, we kept investigating the case, but we was
17 receiving tips, and we received a tip --

18 MS. FORD: Objection. Hearsay.

19 MS. SHEALY: He's not going to go into the
20 nature of the tip.

21 THE COURT: All right.

22 BY MS. SHEALY:

23 Q. You received a tip. Are you talking about the
24 Crime Stoppers tip?

25 A. Yes, ma'am.

JAMES PERKINS - DIRECT BY MS. SHEALY

1 Q. And based on that tip, what did you then do?

2 A. Based on that tip, I did an array of six pictures,
3 photographs, wherein you have a sheet of paper where you
4 have six pictures, including the individual that is
5 reportedly a suspect in the crime. I had that comprised.

6 I notified the South Carolina Law Enforcement
7 Division along with the Charleston County sheriff's
8 office, detention center.

9 Q. Okay. And just so the jury understands, you're
10 not the person that is picking out the photographs?

11 A. No.

12 Q. You ask other law enforcement agencies to do that
13 for you?

14 A. Yes, ma'am.

15 Q. And you ask they include the name that you have
16 gotten from a tip?

17 A. That's correct.

18 Q. And in this case, what name did you ask to be
19 included in the lineup?

20 A. Latrone Butler.

21 Q. After you requested that that be compiled, what
22 did you then do in relationship to Ms. Martin?

23 A. We received that tip. I had Detective Smith
24 notify Ms. Martin and ask her if she could come and meet
25 with us at the sheriff's office. She agreed, and when

JAMES PERKINS - DIRECT BY MS. SHEALY

1 she came to the sheriff's office, I had Detective Smith
2 show her the photographic lineup.

3 Q. And that is Detective Christine Smith?

4 A. Yes, ma'am.

5 Q. Now, when you asked Detective Smith to show the
6 lineup to Ms. Martin, did you ask her to alert Ms. Martin
7 to any specific photograph on that lineup?

8 A. No.

9 Q. And did you discuss any name with Ms. Martin as a
10 possible suspect?

11 A. No.

12 Q. Were you present at the sheriff's office when the
13 identification process took place?

14 A. I wasn't in the room. I wasn't near her. I was
15 outside of the room.

16 Q. They were in a room and you were --

17 A. I was outside of the room.

18 Q. And at some point after Ms. Martin looks at the
19 lineup, do you, in fact, sign as a witness?

20 A. I do.

21 Q. And at that point you're witnessing her signature?

22 A. That's what I'm witnessing.

23 Q. Showing you State's Exhibit 14, is this the
24 document that you're reflecting that you signed?

25 A. Yes, ma'am.

JAMES PERKINS - DIRECT BY MS. SHEALY

1 Q. And that would have been after Ms. Martin made the
2 identification?

3 A. Yes, ma'am.

4 Q. Did Detective Smith know anything about the
5 investigation? Was she kept up-to-date about the
6 investigation at that point?

7 A. No, ma'am. That's the reason that we use -- we
8 have a policy where we use somebody that is independent
9 from the case so Detective Smith had no knowledge of
10 anything as it relates to the case. She didn't know who
11 the suspect was, so that's why I used her instead of
12 myself or someone else who was familiar with the case for
13 the photo lineup.

14 Q. So after the identification had been completed and
15 Ms. Martin, in fact, identified whom? Who is that
16 photograph that she circled?

17 A. That is Latrone Butler.

18 Q. Once you had the name Latrone Butler and you had
19 the description of her vehicle, what did you then do?

20 A. I secured warrants for Mr. Butler.

21 Q. And do you put out any type of BOLO, to be looking
22 for him?

23 A. Yes. I put a BOLO, notified the same neighboring
24 agencies of the fact that the victim had identified this
25 guy as the person who committed the act along with the

JAMES PERKINS - DIRECT BY MS. SHEALY

1 description.

2 Q. So at that point in the investigation you're just
3 looking for him?

4 A. Yes, ma'am.

5 Q. The lineup itself was actually done on December
6 7th; is that correct? Do you want to look at that?

7 A. Yes, it was.

8 Q. And could you tell the jury what happened on
9 December 8th.

10 A. Mr. Butler was located in the rest room.

11 Q. Where was he located?

12 A. It's a small club in the Hollywood Ravenel area.
13 It's called the Grant, Hamm Grant.

14 Q. Hamm Grant's?

15 A. Yes, ma'am.

16 Q. Were you present for his arrest?

17 A. No, I wasn't.

18 Q. Later in this investigation, did you get a buccal
19 swab from Mr. Butler?

20 A. Yes.

21 Q. And could you tell the jury what date that was?
22 Do you remember?

23 A. August the 1st.

24 Q. Of what year?

25 A. 2012.

JAMES PERKINS - DIRECT BY MS. SHEALY

1 Q. And would you describe for the jury, what is the
2 purpose of getting a buccal swab from someone?

3 A. That's when you're trying to collect information
4 as relates to DNA. Pretty much everything we do has
5 something that is DNA. Like now, my DNA is up here.

6 Q. Detective, I need you to speak up a little bit.
7 I'm struggling to hear you. Speak a little louder for
8 me.

9 A. We do it in order to collect DNA, and we do it in
10 the form of a buccal swab wherein you collect your swab
11 where your DNA is, and that was the method we used as
12 relates to this.

13 Q. And the purpose would be for the swab to then go
14 to SLED?

15 A. That's correct, to be analyzed.

16 Q. Showing you what has been previously marked as
17 State's Exhibit 101 --

18 MS. SHEALY: And I would like to move this
19 into evidence without objection.

20 MS. FORD: Yes, Your Honor, without
21 objection.

22 (State's Exhibit No. 101 was marked for
23 identification and admitted into evidence.)

24 BY MS. SHEALY:

25 Q. Looking at this, could you tell the jury whether

JAMES PERKINS - DIRECT BY MS. SHEALY

1 or not that envelope contains the buccal swab?

2 A. Yes, it does.

3 Q. And how can you tell that from the envelope?

4 A. Well, that's definitely my handwriting.

5 Q. Okay. Now, how do you accomplish the actual
6 swabbing of the mouth area of the defendant? How did
7 that occur?

8 A. The swab that we use is similar to a Q-tip, but
9 it's a little bit longer and it's in a package, sealed
10 package. You unseal the package and you take the swab
11 and you swab their gums and mouth, where the DNA is.

12 After you do that, you place it in a sterile
13 tube. It's completely sterile, unused, and you package
14 it up and we sent it off to SLED where they do -- where
15 they analyze it.

16 MS. SHEALY: Beg the Court's indulgence just
17 a second. Your Honor, we have a matter.

18 MS. FORD: May we approach?

19 THE COURT: Let's go ahead and take a
20 ten-minute break. Don't begin discussions about the
21 case.

22 (In open court, jury not present.)

23 THE COURT: All right. What's the problem?

24 MS. SHEALY: I'd like to admit that with the
25 identifying information at the top, Judge. It reflects

JAMES PERKINS - DIRECT BY MS. SHEALY

1 his date of birth, it reflects the date that the
2 photograph was taken. It reflects his height, and it's
3 something, obviously, that Detective Perkins was familiar
4 with in his booking photo in this case. I believe
5 Ms. Ford objects to the identifying information.

6 MS. FORD: In addition, Your Honor, I believe
7 there might be a foundation issue. Detective Perkins did
8 not take those photos. He's not a records custodian at
9 the jail, so especially -- I think even if the pictures
10 were allowed to show that's what he looked like, the
11 identifying information is a jail record.

12 As you heard from Detective Smith yesterday,
13 I do not believe it's reliable because it's just -- the
14 height, for example, is just based on what anyone could
15 say. It's not actually based on an actual measurement.

16 THE COURT: Well, it can come in under the
17 public records exception. If you insist on having a
18 custodian over to get it in, you can call somebody and
19 get him in here, but it's coming in, so if you want to
20 have her lay that foundation, it will just come in
21 through another witness.

22 MS. FORD: I think -- otherwise, I believe I
23 would waive my objection, Your Honor.

24 THE COURT: What was that?

25 MS. FORD: Yes, Your Honor, just because I

JAMES PERKINS - DIRECT BY MS. SHEALY

1 believe I would probably waive my objection if I do
2 not -- I agree with that.

3 THE COURT: All right. Well, have somebody
4 come over to authenticate it.

5 MS. SHEALY: Okay.

6 THE COURT: All right. Let's take ten
7 minutes.

8 (Recess taken.)

9 THE COURT: Let the record reflect the
10 defendant is in the courtroom. Bring the jury back.

11 (In open court, jury present.)

12 Okay, folks. We will resume with the direct
13 of this witness.

14 BY MS. SHEALY:

15 Q. Detective Perkins, I just have a couple more
16 questions.

17 Regarding the buccal swab, once you obtained it,
18 who did you turn that in to?

19 A. I turned it in to the lab, forensic lab services,
20 forensic lab services, the lab technicians. When I
21 collect the buccal swab or any evidence, it's turned in
22 to them.

23 Q. And when were you telling us earlier about the
24 different ways in which you try to locate a car once a
25 car has been identified, could you describe to the jury

JAMES PERKINS - DIRECT BY MS. SHEALY

1 the LoJack system, was that something that y'all were
2 using very often?

3 A. LoJack system is something that we use on a
4 regular basis. Patrol units are typically the ones that
5 have them, the patrol vehicles, and it's inside your
6 vehicle, but they also have stationary ones.

7 They have some where you can move them and
8 others where you can't, you can't move them. This
9 particular incident, we had a couple of LoJacks when we
10 was made aware by the victim that she had a LoJack system
11 installed on her vehicle, so that was one of the methods
12 that we used in an attempt to locate the vehicle as well.

13 Q. And you indicated that Mr. Butler was arrested on
14 December 8 at Hamm Grant's club; is that correct?

15 A. Yes, ma'am.

16 Q. Were you aware of whether or not any of the
17 officers' LoJacks went off when at the club?

18 A. Yes, ma'am. We were notified to go to the club,
19 'cause we received information that the defendant was
20 there. While en route, one of the deputy's LoJacks went
21 off which confirmed that that vehicle is within a three-
22 to five-mile radius.

23 Q. And prior to that, though, had you had any success
24 with any of the other -- either the LoJack or the other
25 ways in which to locate a vehicle? Had y'all had any

JAMES PERKINS - CROSS BY MS. FORD

1 other hits prior to that?

2 A. No, ma'am.

3 Q. So three days afterwards is when y'all were able
4 to arrest him?

5 A. Yes, ma'am.

6 MS. SHEALY: I have no further questions.
7 Please answer any Ms. Ford has.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MS. FORD:

11 Q. Hello, Detective?

12 A. Good morning.

13 Q. Detective Perkins, you're the case agent for this
14 case, correct?

15 A. Correct.

16 Q. But you weren't the responding officer?

17 A. No, I wasn't.

18 Q. So you didn't speak to Ms. Perkins that day?

19 A. I'm Perkins.

20 Q. I'm sorry. Ms. Martin, Ms. Martin that day?

21 A. Of --

22 Q. The day of the incident. When did you first speak
23 with her?

24 A. I spoke with her the next day, is when I spoke
25 with her, but that night, Detective Herriott was the

JAMES PERKINS - CROSS BY MS. FORD

1 responding detective because he was on call, like he
2 earlier stated.

3 Q. So you spoke to Ms. Martin the next day?

4 A. Correct.

5 Q. And you spoke to her again on the 7th when the
6 photo lineup was done?

7 A. Correct.

8 Q. And as part of your investigation, did you talk to
9 her about what had happened as well, in addition to what
10 responding officers had talked to her about?

11 A. When I was notified, I was notified that night by
12 Detective Herriott. Because of the nature of the
13 incident, we try not to engage the victims to kind of
14 relate that incident again when we collect information,
15 so I didn't speak to her necessarily about the incident
16 when I spoke with her. It was more about how was she
17 doing.

18 Q. But you didn't prevent her from talking to you,
19 did you?

20 A. No, of course not.

21 Q. Okay. So you wrote a report in this case,
22 correct?

23 A. Correct.

24 Q. And that was based on your investigation?

25 A. Based on a couple things, the investigation, the

JAMES PERKINS - CROSS BY MS. FORD

1 information we received from fellow officers, fellow
2 deputies, fellow detectives.

3 Q. And when you write reports, reports are a big part
4 of your job, correct?

5 A. It's a part of the job.

6 Q. Well, you learn how to write reports when you go
7 to the academy, correct?

8 A. Learn a procedure in writing reports. A lot of it
9 is learned by experience.

10 Q. When you have a case, often it doesn't go to trial
11 for a while, correct, like in this case, two years later?

12 A. Some.

13 Q. But in the meantime, you have a lot of cases,
14 correct?

15 A. I do.

16 Q. So in order -- there are a lot of reasons you
17 write a report, basically, correct?

18 A. Yes, ma'am.

19 Q. One reason is so that you make sure to remember
20 things two years later, for example, correct?

21 A. That's correct.

22 Q. And also other people rely on those reports,
23 correct? Your supervisor, for example?

24 A. Yes, ma'am.

25 Q. And the solicitor would rely on your report?

JAMES PERKINS - CROSS BY MS. FORD

1 A. Correct.

2 Q. And it's important to make sure that your report
3 is accurate?

4 A. Yes, as accurate as possibly could be.

5 Q. Well, accurate based on what other people have
6 told you, correct?

7 A. Yes, ma'am.

8 Q. And fair?

9 A. Yes, ma'am.

10 Q. And true, to the best of your knowledge?

11 A. That's correct.

12 Q. Mr. -- Detective Perkins, did Ms. Martin tell you
13 that the man made her drive the car?

14 A. I don't recall her telling me that.

15 Q. Okay. But it's in your report, isn't it?

16 A. It is.

17 Q. And what about -- did she tell you that the man
18 had a knife to her throat while she was made to drive?

19 A. When I was notified, they advised that a weapon,
20 knife, gun -- there was a weapon that he had when he
21 forced her into the vehicle.

22 Q. So you just assumed it was a knife?

23 A. I just said knife or gun.

24 Q. Okay.

25 A. I was advised knife or a gun, a weapon, a knife or

JAMES PERKINS - CROSS BY MS. FORD

1 a gun.

2 Q. And that you indicated in your report that the man
3 held a knife to her throat, though?

4 A. Yes. If that's in the report, then that's what I
5 was advised.

6 Q. Okay. Your report actually wasn't completed until
7 February, correct?

8 A. Sorry?

9 Q. Your report, it was not completed until February
10 of 2012, correct?

11 A. Yes, ma'am. It was -- well, I don't know exactly
12 when it was completed. Does it have a stamp date on it?

13 Q. Yes. Would it help you to see your report?

14 A. Please.

15 Q. One moment. I'm handing you what's been marked as
16 Defense Exhibit 2 for ID purposes.

17 A. What this is, is a stamp date. So it doesn't
18 necessarily mean or reflect this is when this report is
19 completed, it just means that is when this report is
20 entered into a system, i.e., my supervisor going through
21 it and completing everything that he has to do.

22 Q. Well, by that time, by February, Mr. Butler had
23 already been arrested, correct?

24 A. Correct.

25 Q. And you had had an opportunity to review all of

JAMES PERKINS - CROSS BY MS. FORD

1 the reports from the other officers, correct?

2 A. Some of them.

3 Q. But in your report, you indicate there was a knife
4 held to Ms. Martin's throat, correct?

5 A. Correct.

6 Q. And you've also indicated in your report that
7 after the car stopped, Ms. Martin tried to flee, but then
8 the man caught her, correct?

9 A. Did I indicate that in the report?

10 Q. Yes.

11 A. Okay. Well, if that's what I indicated, that's
12 what I was advised.

13 Q. But you don't remember where you got that
14 information from?

15 A. The only people I spoke with were maybe Detective
16 Keith, along with the investigators and Detective Smith.

17 Q. You had a copy of Ms. Martin's statement at that
18 point?

19 A. Correct, uh-huh.

20 Q. And you had a copy of Deputy Kjellman's report?

21 A. I did.

22 Q. And Detective Herriott's report?

23 A. Yes.

24 Q. As the case agent, Detective Perkins, you're aware
25 that some fingerprints were taken during the

JAMES PERKINS - CROSS BY MS. FORD

1 investigation from the car?

2 A. Yes.

3 Q. And do you remember testifying at a preliminary
4 hearing in March of 2012?

5 A. Yes, I do.

6 Q. And you indicated at that time that the
7 fingerprints had matched Latrone Butler, correct?

8 A. What I was indicating is that we had positively
9 collected fingerprints that would be tested to indicate
10 if it was Latrone Butler versus a partial print, which is
11 sometimes collected.

12 Q. So you don't recall testifying that the prints
13 actually matched Mr. Butler at that point?

14 A. It may have been said in error, but the prints was
15 collected from the vehicle.

16 Q. Would it help you to see a copy of the transcript
17 from the preliminary hearing?

18 A. I am pretty aware of it. That's what I'm saying
19 is it was done in error, but if it was said, it was said
20 in error.

21 Q. So you said it at a preliminary hearing?

22 A. I may have said it, but it was said in error.
23 What is meant is instead of a partial print, sometimes
24 you collect partial prints in vehicles or anything that
25 you're actually going through as relates to evidence. We

JAMES PERKINS - CROSS BY MS. FORD

1 collected a full print wherein we could be able to use it
2 to make an identification, if it was anybody that had
3 been arrested or anybody that's in the system, and that's
4 what was indicated in the preliminary hearing.

5 Q. Detective Perkins, does this sound familiar: As
6 we search the vehicle, we received numerous hits through
7 SLED matching the fingerprints located inside of the
8 vehicle to the defendant, Mr. Butler.

9 A. It was done in error.

10 Q. Okay. But you did say it?

11 A. Yes, ma'am.

12 Q. And that preliminary hearing, just as of today,
13 you testified under oath, correct?

14 A. Correct.

15 Q. So you testified that you were the one who
16 compiled the lineup pictures, correct, or --

17 A. I'm the one that requested the lineup. I had
18 nothing to do with anything as relates to the lineup,
19 other than requesting it from the -- from SLED and from
20 the sheriff's office.

21 Q. And that lineup, when a lineup is done, they try
22 to find people who look somewhat similar, correct?

23 A. I would assume.

24 Q. Right. They're not going to have one guy with
25 long dreads and another guy who's bald, correct?

JAMES PERKINS - CROSS BY MS. FORD

1 A. I wouldn't think they would.

2 Q. They base those pictures base on descriptors that
3 are given based on the target?

4 A. That's incorrect. As it relates to this lineup,
5 the only thing that was given as it relates to Mr. Butler
6 was his name. They are able to get all of the other
7 information and comprise a lineup.

8 Q. But they would have picked the other pictures,
9 based on Mr. Butler's --

10 A. I would assume they would have.

11 Q. Okay. And from your knowledge as the case agent,
12 you know that Mr. Butler is from the Ravenel area?

13 A. I was advised of that, he was from that area, yes,
14 ma'am.

15 Q. And is connected to mobile homes in the Jericho
16 mobile home park as well?

17 A. I wasn't aware of that, no, ma'am.

18 Q. Again, I'm going to take you back to the
19 preliminary hearing. Do you remember testifying there
20 that he had family members --

21 A. Yeah. He has family members there. That doesn't
22 mean that he lives there. I have family members in North
23 Carolina, but I don't live in North Carolina.

24 Q. Well, as the case agent, you know that an ID was
25 collected with that address?

JAMES PERKINS - CROSS BY MS. FORD

1 A. I'm sorry?

2 Q. An ID -- an identification card, a South Carolina
3 ID, was collected with that address on it.

4 A. Okay.

5 Q. Okay. To your knowledge, do you know if anyone
6 else in the lineup -- because you've seen the lineup,
7 correct?

8 A. That's right.

9 Q. Do you know if anyone else in the lineup lived in
10 the Ravenel area?

11 A. No. When they do a lineup, we -- when I got the
12 lineup, pretty much anything I did -- I don't go through
13 and look at everybody else that was in the lineup. I
14 took the lineup and I gave it to Detective Smith who
15 didn't -- like I earlier stated, didn't know anything
16 about the case, and that's when the lineup was shown, but
17 I did not know that.

18 Q. Okay. So to your knowledge, no one else lived in
19 Ravenel?

20 A. Not to my knowledge, no, ma'am.

21 MS. FORD: No further questions, Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q. Detective Perkins, as the lead detective, you

JAMES PERKINS - REDIRECT BY MS. SHEALY

1 could have gotten a copy of the statement Letty Martin
2 would have given to Keith Herriott, correct?

3 A. Correct.

4 Q. And you would have gotten a copy of Officer
5 Kjellman's report, correct?

6 A. Correct.

7 Q. I'm going to hand those to you so you have the
8 opportunity to review them. You would have gotten -- and
9 tell the jury, if you would, whether the detective who
10 interviewed her that night and the first responder ever
11 indicated that she said anything about a knife.

12 A. There is nothing indicated about a knife in the
13 report or in the statement she wrote.

14 Q. What about her being forced into the car and told
15 where to drive? Could you tell the jury whether
16 Detective Herriott or responding Officer Kjellman's
17 report indicate anything about her being the driver?

18 A. Nothing indicates that in this report.

19 Q. And then the other question that Ms. Ford asked
20 you, is there anything in those two reports indicating
21 that she attempted to flee from that vehicle?

22 A. Nothing indicating in these reports.

23 Q. And you told us that when she came back in to do
24 the lineup, you did not go back through the whole crime
25 with her.

JAMES PERKINS - REDIRECT BY MS. SHEALY

1 A. No, ma'am.

2 Q. Okay. So is it fair to say that if your report
3 reflects those things about her being forced to drive and
4 a knife that it's an error?

5 A. Yes, ma'am.

6 Q. Now, regarding fingerprints, you are aware, as the
7 lead detective, that fingerprints were analyzed in this
8 case; is that correct?

9 A. Correct.

10 Q. And that they do match Mr. Butler?

11 A. That's correct.

12 MS. FORD: Objection. Hearsay.

13 THE COURT: Objection what?

14 MS. FORD: Hearsay. Foundation.

15 MS. SHEALY: She's asked him questions on
16 cross about what he stated at a preliminary hearing
17 regarding fingerprints.

18 MS. FORD: About the existence at a single
19 time.

20 THE COURT: It was a door that got opened on
21 cross, so you can call it up.

22 MS. SHEALY: Detective Perkins, I have no
23 further questions. Thank you.

24 THE WITNESS: Thank you.

25 MS. FORD: Yes, Your Honor.

JAMES PERKINS - RECROSS BY MS. FORD

RECROSS-EXAMINATION

BY MS. FORD:

Q. Yes, Your Honor. The fingerprint reports didn't come out until last week, correct?

A. Correct.

Q. Okay.

A. Positively.

Q. Right, but you had indicated back in 2012, in March, at the preliminary hearing, that they were positive at that point, correct?

A. Again, indicating that it's a positive full print versus a partial print.

Q. In your cross that we just did, when I read to you the part from the transcript, you admitted that you had said, even though you said it was error, that you had testified under oath that the prints at that time period matched the prints of Latrone Butler?

A. Yes, ma'am. It was done in error, like I earlier stated.

MS. FORD: Thank you.

THE WITNESS: Thank you.

THE COURT: You can step down. Next witness?

MS. SHEALY: Chris Smith.

CHRISTINA SMITH,
having been first duly sworn,

CHRIS SMITH - DIRECT BY MS. SHEALY

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: Christina Smith, S-m-i-t-h.

4 BY MS. SHEALY:

5 Q. Detective Smith, tell the jury where you're
6 employed and how long you've been employed there.

7 A. With the Charleston County sheriff's office, and
8 I've about with them for 19 years.

9 Q. And you're serving in what capacity there now?

10 A. I do investigations, major violent crimes.

11 Q. And back in December of 2011, what position were
12 you in?

13 A. I just moved into the major crimes and also
14 working the sex offender registry.

15 Q. Looking back to December 7th of 2011, could you
16 tell the jury whether you were actively involved in the
17 investigation of Latrone Butler at that time?

18 A. Yes, I was.

19 Q. And that was when you were asked to do what by
20 Detective Perkins?

21 A. To present a photographic lineup of -- to the
22 victim.

23 Q. And prior to being asked to do that, had you had
24 any involvement with the investigation?

25 A. No, I did not.

CHRIS SMITH - DIRECT BY MS. SHEALY

1 Q. You were present when Ms. Martin came to the
2 sheriff's office?

3 A. Yes, ma'am.

4 Q. Could you describe to the jury how that process
5 played out that evening? I have State's Exhibits 14 and
6 15 that I can hand you.

7 A. Thank you. Ms. Martin, the victim in the case
8 came in, and I was given a photo lineup. It was six
9 photographs of subjects, and what I do is I present that
10 lineup to her after I read from our form, our
11 photographic lineup form, to explain to her what I'm
12 about to do.

13 Q. Okay. And in looking at State's Exhibit 15 --
14 could I hold that for a second? This document is folded
15 over.

16 A. Yes.

17 Q. Could you describe to the jury why it's done that
18 way?

19 A. We fold it over, one, just to show the individual
20 photographs. On the back side of this document is dates,
21 times, subjects, and we would also have possibly the
22 subject that we're looking at. His name would be on the
23 back along with the other five individuals.

24 Q. And so why is it that you don't want the person
25 looking at the lineup to have that information?

CHRIS SMITH - DIRECT BY MS. SHEALY

1 A. In case they may know the subject by name, it
2 doesn't -- I don't believe it shows where they are
3 located on the lineup, but you just don't want them to
4 have the name.

5 Q. Now, prior to showing her the lineup, do you go
6 over a litany of questions with her?

7 A. Yes, ma'am, I do.

8 Q. And showing you State's Exhibit 14, could you tell
9 me whether or not that's the form you used in showing
10 her --

11 A. Yes.

12 Q. -- the lineup? Looking at State's Exhibit 14
13 on -- just for the jury's benefit, that's the form; is
14 that correct?

15 A. That's correct.

16 Q. Now, when you are showing a line up to someone,
17 did you in any fashion on this occasion indicate to
18 Ms. Martin who you wanted her to ID?

19 A. No, I did not.

20 Q. Was anyone around her that suggested anybody was
21 in this lineup?

22 A. No, I did not. Actually, I didn't even know who
23 this subject was in the lineup, so I don't even know who
24 that person is when I present it because I'm considered
25 an independent -- kind of like an independent witness as

CHRIS SMITH - DIRECT BY MS. SHEALY

1 well to the lineup.

2 Q. Let me see that for just a second. Is that a
3 policy of the sheriff's department, to make sure you
4 don't even know who a possible suspect is in a lineup?

5 A. That's correct.

6 Q. And as part of the items that you read to her, do
7 you advise her the person may not be in this lineup?

8 A. That's correct.

9 Q. When showing this to Ms. Martin, could you
10 describe to the jury what level of care she seemed to be
11 giving the photographs? How did she appear when she was
12 looking at them?

13 A. She studied the photographs, making sure that
14 each -- you can see as just her and other folks that have
15 seen photo lineups, they look at each individual picture
16 to see if they can pick out whoever is in that photo.

17 Q. And while Ms. Martin was there -- I'll get to that
18 in just a second.

19 So how did she indicate to you that she, in fact,
20 identified someone?

21 A. She pointed to the picture that she thought was
22 the person that had carjacked her.

23 Q. Okay. And it's showing you on your screen there,
24 State's Exhibit 15?

25 A. Yes.

CHRIS SMITH - DIRECT BY MS. SHEALY

1 Q. Could you explain to the jury in what way she
2 reflected that on the sheet itself.

3 A. After she pointed to the individual photo that she
4 identified as the person who possibly carjacked her, I
5 had her circle that and initial her name, her initials
6 next to the photograph.

7 Q. After that is accomplished, do you go back to that
8 initial form?

9 A. I'll go back to the initial form and ask her --
10 there is a line there to ask her how does she now
11 consider -- or basically describe who this person is or
12 how she knows that is the person that she believes is the
13 person that carjacked her.

14 Q. And what she wrote is, in fact -- what she wrote
15 is, in fact, on that form; is that correct?

16 A. Yes.

17 Q. At any time did she indicate to you that she
18 didn't notice anybody on the lineup, that she couldn't
19 recognize anyone?

20 A. No, she did not.

21 Q. And after she accomplished the lineup procedure,
22 did you -- were you present when some photographs were
23 taken of her?

24 A. I believe I was present during the photograph.

25 Q. Okay.

CHRIS SMITH - CROSS BY MS. FORD

1 MS. SHEALY: Beg the Court's indulgence, just
2 a moment.

3 I have no further questions. Please answer
4 any that the defense may have.

5 THE COURT: Cross?

6 MS. FORD: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. FORD:

9 Q. You mentioned policy before, that it's policy to
10 have an independent administrator do the lineup, correct?

11 A. That's correct.

12 Q. And that's so someone doesn't either consciously
13 or unconsciously point out to someone who they think it
14 is, is that correct?

15 A. That's correct.

16 Q. If a witness identifies someone, the policy also
17 states that the witness is to be asked their level of
18 competence, correct?

19 A. Yes, it does.

20 Q. And that's supposed to be documented, correct?

21 A. That's correct.

22 Q. And in this case, in particular Ms. Martin
23 indicated that this looks most like the guy, correct?

24 A. Yes, she did.

25 Q. There is never anything more than 100 percent sure

CHRIS SMITH - CROSS BY MS. FORD

1 or anything like that noted?

2 A. No, not documented. Normally we would allow the
3 witness to write whatever they feel of how they are able
4 to identify this person. I'm not asking her a
5 percentage, just how do you know that this is the person
6 that committed the crime.

7 Q. But the policy does state that the witness is
8 supposed to be asked the level of competence.

9 A. Yes.

10 Q. The manual also states that the lineup is to be
11 conducted using video or audio recording if the location
12 is equipped to do so, correct?

13 A. I don't believe that's in the policy. I'm -- not
14 that the photo lineup, the interview needs to be audio
15 and video recorded if we are equipped, but we may present
16 a photo lineup at someone's residence, so we would not be
17 able to always audio and video record a photo lineup.

18 Q. So to your recollection, the policy does not state
19 that the photographic lineup may be conducted using video
20 and/or audio if available?

21 A. It may be if it's available, yes.

22 Q. That was not so in this case, correct?

23 A. No, it was not. We didn't have a policy, I don't
24 believe, at that time for audio and video recording
25 because all of our audio and video recording was not in

CHRIS SMITH - CROSS BY MS. FORD

1 place during the time of this photographic lineup being
2 presented.

3 Q. But you're not sure of that, correct?

4 A. Of --

5 Q. The timing?

6 A. I believe the policy that was written was probably
7 in January of 2012, and this would have happened prior to
8 that.

9 Q. Would it help you to see the policy?

10 A. Yeah, yeah.

11 Q. Handing you what has been marked as Defendant's
12 Exhibit 3 for ID purposes, does that look like a copy of
13 the manual for the policy?

14 A. Yes.

15 Q. And it's dated 2009?

16 A. Yes.

17 Q. And I would direct your attention to page six.

18 A. Yes.

19 Q. And it indicates that the photographic lineup may
20 be conducted using video and/or audio, if the location
21 has that ability.

22 A. Yes.

23 Q. Okay. Part of your job is writing reports,
24 correct?

25 A. That's correct.

CHRIS SMITH - CROSS BY MS. FORD

1 Q. Okay. In this case you were a witness to the
2 identification, correct?

3 A. Yes.

4 Q. But you didn't write another -- you didn't write a
5 report involving the identification or anything that you
6 did, correct?

7 A. No. Basically the documentation is your short
8 form that we have, and then the detective that's handling
9 the case would document his report or her report.

10 Q. So you yourself never did a report indicating what
11 you saw or did or anything like that, correct?

12 A. No.

13 MS. FORD: No further questions.

14 THE COURT: Redirect?

15 MS. SHEALY: I have nothing further.

16 THE COURT: You may step down. Thank you.

17 MS. SHEALY: May she be excused, Your Honor?

18 THE COURT: Certainly. Next witness?

19 MS. SHEALY: Shaun James.

20 SHAUN JAMES,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SHEALY:

25 Q. If you would tell the jury, where are you

SHAUN JAMES - DIRECT BY MS. SHEALY

1 employed?

2 A. Charleston County sheriff's office.

3 Q. If you would tell the jury how long you've been
4 employed with the county.

5 A. Since December 1998.

6 Q. And in what capacity are you working now there
7 now?

8 A. I'm a night shift patrol supervisor.

9 Q. And back in December 2011, in what capacity were
10 you working there?

11 A. I was a K-9 handler with the Charleston County
12 sheriff's unit.

13 Q. With the dogs?

14 A. Yes, ma'am.

15 Q. Focussing your attention to December 8, 2011,
16 could you tell the jury whether or not you reported to --
17 is it Hamm Grant's?

18 A. Hamm Grant's club. Yes, ma'am, that's correct.

19 Q. What was your reason for answering to that club
20 area?

21 A. Dispatch put out a call in reference to a possible
22 subject that was involved in a carjacking with an Accura,
23 gave out a tag that was supposed to be parked there and
24 the subject was supposed to be inside the club.

25 Q. And when you arrived at Hamm Grant's, were there

SHAUN JAMES - DIRECT BY MS. SHEALY

1 other officers there as well?

2 A. Yes, ma'am.

3 Q. Showing you what has been previously marked as
4 State's Exhibit 46, and it's going to show you on your
5 screen, what is that a photograph of?

6 A. That is the outside.

7 Q. And showing you State's Exhibit 49, that's just
8 another angle?

9 A. Front view, yes, ma'am.

10 Q. And then we have one other, State's Exhibit 50.

11 A. Yes, ma'am, that's the other view. Matter of
12 fact, his car would be over there.

13 Q. Let's talk about that. When you arrived, did you,
14 in fact, see a car with a license tag that had been
15 called out?

16 A. That's correct, yes, ma'am.

17 Q. And if you would, on that photograph, mark on the
18 screen, if you would show us where the vehicle was.

19 A. Right around that area right there, backed in.

20 Q. And do you recall about how many other officers
21 were there?

22 A. After everyone arrived, there was probably about
23 seven or eight of us out there, yes, ma'am.

24 Q. And was a decision made after locating the vehicle
25 as to how y'all would handle looking for Mr. Butler?

SHAUN JAMES - DIRECT BY MS. SHEALY

1 A. Yes, ma'am.

2 Q. Were you given his name?

3 A. Yes, ma'am.

4 Q. And what was the plan as to how to try to locate
5 him?

6 A. We probably had about 150 to 200 patrons that we
7 knew that were inside, just by looking at the amount of
8 vehicles that were outside, and also what we knew from
9 past experiences there. So we knew that it wasn't going
10 to be safe just to walk in and attempt to locate Mr.
11 Butler, so what we decided to do is have one deputy stay
12 with the vehicle and then to have vehicles -- excuse me,
13 deputies around the perimeter.

14 And at that time, after I verified on the radio
15 his tattoos on the arms, we knew that that right there
16 was going to be easy to identify the subjects coming out
17 along with his picture that we had. So at that time we
18 stood at the front door and we started having people
19 leave one by one.

20 Q. So before we go over that process a little bit
21 more fully, when you located the vehicle, did you look
22 inside the vehicle?

23 A. Yes, ma'am.

24 Q. And did you have any type of -- did you have a
25 flashlight with you?

SHAUN JAMES - DIRECT BY MS. SHEALY

1 A. Yes, ma'am, I did.

2 Q. And did you look inside the vehicle with the
3 flashlight?

4 A. Yes, ma'am.

5 Q. Showing you what has been marked as State's
6 Exhibits 41 and 42 for identification, I ask you whether
7 when you looked in the driver's side, did something draw
8 your attention?

9 A. Yes, ma'am.

10 Q. Showing you these two exhibits, can you tell me
11 whether or not you can identify those?

12 A. Yes, ma'am.

13 MS. SHEALY: Your Honor, at this time I would
14 move both of these exhibits into evidence, State's 41 and
15 42.

16 MS. FORD: And, Your Honor, I object based on
17 my objection yesterday.

18 THE COURT: All right. Overruled. They're
19 admitted.

20 (State's Exhibit Nos. 41 and 42 were marked
21 for identification and admitted into evidence.)

22 BY MS. SHEALY:

23 Q. Tell the jury what you saw when you looked in the
24 driver's side.

25 A. Well, we knew from what the dispatch had stated

SHAUN JAMES - DIRECT BY MS. SHEALY

1 that he was supposed to be armed. From the carjacking,
2 he was supposed to be armed, so with that being said, of
3 course, knowing that there was always the potential that
4 he may get back to the car somehow, sliding through, you
5 know, maybe not be in the club, maybe on the outside of
6 the club somewhere, I looked in there to see if I could
7 see a gun that was in plain view, and with the
8 flashlight, it was very apparent that I could see the red
9 duct tape.

10 That stuck out, and of course I saw the remote
11 control, and at that time I could see probably
12 three-quarters of what you could tell was made into a
13 makeshift weapon underneath the seat.

14 Q. Let me pull that up for the benefit of the jury.
15 What floorboard area are we looking at in that picture?

16 A. This is the driver's floorboard, and I'm only
17 telling you that because I see the trunk shown there.
18 It's hard to see from this angle.

19 Q. Where did you see the item?

20 A. I assumed that the vehicle was towed or something,
21 but the item was a little further in.

22 Q. Draw on our screen for us.

23 A. It was probably right in here, right in that area.

24 Q. And then showing you State's Exhibit 42, that's
25 just the flip side of the same?

SHAUN JAMES - DIRECT BY MS. SHEALY

1 A. Yes, ma'am. That's not how it was. The bottom
2 sign was actually up.

3 Q. So when you saw it on 41 -- go back to 41. You
4 saw that item, but it was further back towards the seat
5 at the time that you saw it?

6 A. That's correct.

7 Q. And you had said something about maybe it had been
8 towed. Is it customary for vehicles involved in criminal
9 acts to be towed, to be processed?

10 A. That's correct, yes, ma'am.

11 Q. So focussing your attention then back on what was
12 going on in the club, you indicate that y'all had a
13 photograph of Mr. Butler?

14 A. That's correct.

15 Q. Were you concerned about whether or not that was
16 enough information given the scene that evening?

17 A. Well, people change their look everyday. You
18 never know what the picture is going to look like or when
19 it was taken, so that was just one identifier in order to
20 locate Mr. Butler.

21 Q. How did y'all gain information about the tattoos?

22 A. Through dispatch.

23 Q. And did you make that phone call?

24 A. Over the radio, yes, ma'am.

25 Q. So back -- looking again then at the club itself,

SHAUN JAMES - DIRECT BY MS. SHEALY

1 on photograph 48, you have indicated that some officers
2 were around the perimeter of the club?

3 A. Yes, ma'am is.

4 Q. Is that right?

5 A. Yes, ma'am.

6 Q. Describe to the jury what you mean by that.

7 A. There's a rear door that didn't look like it was
8 utilized very much. We couldn't really tell so we had
9 two officers back there which would be on this side over
10 here, around the back. On the right side, there was
11 nothing -- we ended up having a deputy over here, but
12 there was actually no doors or no exits through there
13 that we could tell, so obviously we had one stay with the
14 vehicle and we had a couple on the back side and one over
15 here and maybe had one of the K-9 -- one of my partners
16 who was there with his dog probably about 20 yards back
17 and then myself, supervisor, and then another deputy at
18 the door.

19 Q. And describe then, once you began looking for
20 patrons, how did you have them come out of the facility?

21 A. One by one. I mean, obviously we knew we weren't
22 looking for a female, so that was pretty easy. We kind
23 of shuffled them out and had them kind of move out of the
24 way and went one by one.

25 Q. How were you able to determine whether or not they

SHAUN JAMES - DIRECT BY MS. SHEALY

1 had tattoos?

2 A. I had them pull up their sleeves if they had long
3 sleeves on because these tattoos were actually on the
4 forearm area.

5 Q. And tell the jury then whether or not you
6 identified the tattoo you had been advised about on
7 Mr. Butler?

8 A. Yes, ma'am. They were identified.

9 Q. Once you identified Mr. Butler by his tattoo and
10 by the photograph, was he put under arrest?

11 A. Yes, ma'am.

12 Q. And could you tell the jury whether or not
13 anything was found on his person while y'all were there?

14 A. Well, specifically, the key -- and it was either
15 his left or right shoe or sock, but it was in that area,
16 and that was very specific and definitely brings
17 attention, and knowing that was an Accura key and
18 obviously the vehicle involved was an Accura.

19 Q. And you say you looked at the tattoo, you looked
20 at the photograph. You arrested him. Why did y'all
21 think to look in the shoes? What was the purpose of
22 that?

23 A. That's a kind of search due to the fact that we're
24 dealing with weapons, the opportunity -- you don't want
25 to put him in the back of a vehicle and you can put a

SHAUN JAMES - CROSS BY MS. FORD

1 small derringer in your sock or your shoe, so that's
2 something that is going to be common practice for law
3 enforcement, to search shoes.

4 MS. SHEALY: I beg the Court's indulgence for
5 just a moment.

6 I have no further questions. Please answer
7 any questions the defense may have.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MS. FORD:

11 Q. Just a few questions.

12 This incident was over two years ago now?

13 A. Yes, ma'am.

14 Q. And you've dealt with many cases since then,
15 correct?

16 A. Yes, ma'am.

17 Q. You did not actually write a report for this
18 incident, did you?

19 A. No, ma'am.

20 Q. So this is just based on your memory?

21 A. Yes, ma'am.

22 MS. FORD: No further questions.

23 THE COURT: Redirect?

24 MS. SHEALY: No, Your Honor. We would just
25 ask that he be excused.

1 THE COURT: You're free to go. Thank you.

2 MS. SHEALY: May we approach the bench for
3 just a second?

4 THE COURT: Sure.

5 (Discussion held at sidebar.)

6 THE COURT: All right, folks. We got a
7 number of other witnesses that we're going to get to this
8 afternoon, and they won't all be terribly long, but it
9 would probably be a good place to break for lunch right
10 now.

11 I know it's a little bit early. We'll go
12 ahead and break for lunch till 1:30. If you would,
13 please don't talk about the case with anyone. You can go
14 to lunch with anybody on the jury panel you want to, but
15 don't discuss witness demeanor, don't discuss the case in
16 any way, shape, or form. Don't try to find out anything
17 about the case on social media or anything like that.

18 Please report back to me if anybody does try
19 to approach you about the case. Report back to the jury
20 room just a little bit before 1:30, and we hope to get
21 started right promptly at 1:30.

22 Thank you for your patience.

23 (Jury excused.)

24 THE COURT: All right. Before we break,
25 Mr. Butler, stand up a second. I want to talk to you --

1 we're approaching the end of the State's case here
2 probably a little bit after lunch. You've heard me tell
3 the jury about your rights; that is, to present evidence
4 and to testify or not testify.

5 I want to go over with you specifically your
6 right to testify. You have the constitutional right to
7 get up on the witness stand and tell your side of the
8 story if you want to; however, you also have the right
9 not to testify. If you testify, your lawyer will ask you
10 questions and you have to answer them. The State will
11 also have the opportunity to cross-examine you and ask
12 questions.

13 If you have prior convictions, they may be
14 used to impeach you, and I don't know if you have a prior
15 record, but if you decide you want to testify, we'll get
16 into that. However, if you do not want to testify, I
17 will tell the jury they are not to hold that against you
18 while they are deliberating your verdict.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. You don't have to
22 tell me now whether or not you want to present any
23 witnesses or testify, but at the end of the State's case,
24 you will have to make a decision as to whether you want
25 to call any witnesses, and before the case is done you

1 will have to make a decision as to whether or not you
2 want to testify.

3 I would suggest to you that you discuss this
4 matter with your lawyers again. I will assume that you
5 have already discussed this with them at some point, but
6 if not, this will be the first time, but if you have,
7 then you need to talk with them about it again.

8 This is ultimately your decision and your
9 decision alone. If you want to get consultation with,
10 you know, a family member or a friend about your decision
11 and they're here and available, you know, you can do
12 that, but I strongly suggest you talk it over with your
13 lawyers, and, again, we will have -- we will revisit this
14 issue before the day's out and before the case is out.

15 Y'all have to let me know what your decision
16 is. You don't have to make a decision now, but I just
17 want to let you know that is a decision that you will
18 have to make.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions you
22 want to ask me about that right now?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. Got a charge on the
25 attempted murder. Y'all want to look and see what we

1 have? If you have any suggestions or changes, please put
2 it down in writing and bring it back with you when we
3 resume at 1:30. Okay?

4 MS. FORD: Your Honor, I found that sometimes
5 judges -- their general instructions language about
6 seeking the truth and I just wanted -- I would object to
7 any of that language. There is a case I can get from
8 2000 --

9 THE COURT: I have not used that language
10 before.

11 MS. FORD: Okay. I was just making sure.
12 Thank you, Your Honor.

13 THE COURT: You have an objection to seeking
14 the truth? What is the point of that?

15 MS. FORD: In the instructions, it's burden
16 shift. There is a case on that point.

17 THE COURT: I never used that.

18 (Recess taken.)

19 A F T E R N O O N S E S S I O N

20 THE COURT: All right. You got your
21 witnesses ready?

22 MR. EVANS: Yes, Your Honor.

23 THE COURT: Let the record reflect the
24 defendant is in the courtroom.

25 Bring the jury in.

1 MS. SHEALY: I could just tell you this, we
2 have a stipulation that we've agreed to.

3 THE COURT: All right.

4 MS. SHEALY: I don't know how you like to
5 handle that. I usually read it to the jury.

6 (In open court, jury present.)

7 THE COURT: Okay. Welcome back, folks.
8 We're going to resume now with the State calling their
9 next witness. Before I have them call their next
10 witness, I wanted to read to you a stipulation of
11 evidence.

12 Stipulations are simply things that both
13 sides have agreed on. They don't have to then prove a
14 particular thing. It is considered to be adjudicated and
15 doesn't require proof in court, and I'll tell you what it
16 is, explain what it means.

17 It says, Attorneys for the State and the
18 defendant agree that appropriate measures took place in
19 the transporting of the following exhibits while at the
20 South Carolina Law Enforcement Division, SLED. The
21 exhibits were not tampered with at any time. One:
22 State's Exhibit 93, which is SLED item 1.1; State's
23 Exhibit 94, which is SLED's item 1.2; State's Exhibit 95,
24 which is SLED's item number 1.4, and State's Exhibit 96,
25 which is SLED's item number 3.

1 Furthermore, attorneys for the State and the
2 defendant agree that while at SLED the proper chain of
3 custody was followed. The exhibits were kept in a
4 locked, secure facility, and the exhibits were not
5 tampered with.

6 Sometimes in cases you'll hear testimony
7 where one person says, I got this, and then what they did
8 with it, and you have to keep a chain of custody on
9 certain types of evidence from the time the one person
10 picked it up to the time it got analyzed by somebody at a
11 different facility, usually SLED.

12 In this case, the parties have agreed as to
13 these particular incidents, or exhibits, that the chain
14 of custody was properly met. It's not question of fact,
15 and therefore you won't have to have a bunch of witnesses
16 come in and just basically say, I got it from this person
17 and then I put it into evidence and they got it out of
18 that, and so on and so forth.

19 Okay? Madame Solicitor, call your next
20 witness.

21 MR. EVANS: State calls Jason Riley, Your
22 Honor.

23 JASON RILEY,
24 having been first duly sworn,
25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. EVANS:

3 Q. Good afternoon, Investigator Riley. How are you?

4 A. I'm good.

5 Q. Where do you work currently?

6 A. Currently, I'm employed with the Charleston County
7 sheriff's office. I work in the forensic service unit.8 Q. How long have you been employed by the sheriff's
9 office?

10 A. Just over 11 years.

11 Q. What about law enforcement in general?

12 A. Thirteen years plus.

13 Q. And what are your duties at the sheriff's office?

14 A. Currently, my duties as a forensic investigator,
15 and also we take care of all the evidence in the
16 sheriff's office, processing scenes, documenting scenes,
17 cataloging, logging evidence, and then also understanding
18 what evidence we need to send to different agencies or
19 different places for further testing.

20 Q. Generally, how do you go collecting evidence?

21 A. We document all evidence to be collected by
22 photography first, and once it's been collected, usually
23 in big stacks, document the date and time of collection,
24 and the collections are sealed and placed in our evidence
25 storage.

1 Q. And do you analyze that evidence inhouse or do you
2 send it out somewhere?

3 A. There are some things that we do analyze inhouse
4 and some things that we just collect, package, preserve
5 and then later are sent somewhere else for testing.

6 Q. Where do you generally send those?

7 A. State Law Enforcement Division.

8 Q. And SLED is the acronym?

9 A. SLED, yes.

10 Q. What does SLED do with them?

11 A. SLED generally does all the DNA testing, general
12 and trace evidence. DNA is the big one.

13 Q. Were you called to process a burgundy Accura on
14 December 14, 2011?

15 A. I was.

16 Q. Do you recall where that was?

17 A. The vehicle was actually towed to our evidence
18 compound which is where I was already located.

19 Q. So it wasn't on the scene when you processed it?

20 A. No, sir, it wasn't.

21 Q. In your experience, do items sometimes shift when
22 the car is being towed?

23 A. They can.

24 Q. What do you typically do when you go about
25 processing a vehicle?

1 A. Once we obtain a search warrant, if a search
2 warrant is needed, in this case it was, we generally
3 photograph the exterior of the vehicle first, and once we
4 have finished with the general photography of the
5 exterior, we move to the interior of the vehicle, same
6 type of situation. You do not move anything. We
7 photograph the inside of the vehicle, each compartment
8 area.

9 I forgot the rest of the question.

10 Q. After you photographed the vehicle, what is your
11 next step, generally?

12 A. DNA collection, touch type swabs.

13 Q. Can you kind of briefly describe what a touch swab
14 is.

15 A. A touch swab is generally going to be skin type
16 DNA left on items. We would use a Q-tip swab and sterile
17 water to collect those.

18 Q. Do you recall if you took any touch swabs in this
19 case?

20 A. I did.

21 Q. Do you recall where?

22 A. From the steering wheel and from the gear shift.

23 Q. And I'm referring now to State's Exhibit No. 31.
24 Does that depict the steering wheel where you took the
25 test touch swab from?

1 A. Yes, it was.

2 Q. What was done with the swab from the steering
3 wheel?

4 A. Packaged in a cardboard box and packaged in an
5 envelope and placed in a refrigerator where it stayed
6 until it was sent to the state laboratory.

7 Q. You sent it to SLED. I know we have been over it.
8 You sent it to SLED for DNA?

9 A. Correct.

10 Q. What is your next step in processing a car after
11 you have done touch swabs for DNA?

12 A. That's when we remove items from the vehicle
13 important to the case the search warrant stipulates.
14 Items can be usually property, that type of thing.

15 Q. Do you take photographs of these items as you're
16 removing them?

17 A. We do.

18 Q. And did you do that in this case?

19 A. I did.

20 Q. I'm referring to State's Exhibit 32. And did you
21 photograph -- you yourself photograph this vehicle, do
22 you recall?

23 A. I did all the photographs on this case.

24 Q. And this is again State's 32. Do you recognize
25 what this is depicting?

1 A. I do.

2 Q. Can you explain?

3 A. It it's a black bi-fold wallet with a cell phone
4 right behind it in the center console.

5 Q. And State's 33, what does this depict?

6 A. Same wallet removed from the single console opened
7 up on the driver's seat.

8 Q. State's 34, what does that depict?

9 A. Cell phone, center console.

10 Q. And 35, what does that depict?

11 A. That shows -- again, shows the wallet in the
12 console area, in the secondary console area, where the
13 armrest is located. It shows what was inside that.

14 Q. And State's 36, what does that depict?

15 A. That's on the passenger front side looking into
16 the vehicle.

17 Q. State's 37?

18 A. That's the items on the back seat.

19 Q. Do you recall what those items were in the back
20 seat?

21 A. A blue extra large jacket. There was a pair of
22 blue jeans, a gray, I believe, a polo shirt, extra large,
23 and a black towel.

24 Q. And State's 38, is that just a closer view of the
25 back seat there?

1 A. That's a closer view.

2 Q. And now State's 62, what does that depict?

3 A. That's two of the items in the back seat after we
4 had removed the larger jacket and the towel from that.

5 Q. That is just the flip side or the other side of
6 the passenger side, or can you tell?

7 A. It's probably from the driver's side door looking
8 in.

9 Q. State's 58.

10 A. That's depicting the size from the manufacturer of
11 the clothing label.

12 Q. And State's 63? We've already been through --

13 A. That's another photograph of the wallet showing
14 all -- I guess the areas that can be opened.

15 Q. I'm going to hand you a couple exhibits right now.
16 I'm going to show you what has been marked for
17 identification purposes as State's 39 and 40. Do you
18 recognize these?

19 A. I do.

20 Q. Do you -- you can identify those?

21 A. I can.

22 Q. Did you take these pictures?

23 A. I took these pictures, yes.

24 MR. EVANS: Your Honor, I'm going to ask to
25 admit these into evidence. There's an objection.

1 THE COURT: Admitted. There is an objection?

2 MS. FORD: Yes, Your Honor. There is an
3 objection based on the prior objection.

4 THE COURT: Same thing, just from another
5 angle?

6 MR. EVANS: Yes, sir.

7 THE COURT: Overruled.

8 (State's Exhibit Nos. 39 and 40 were marked
9 for identification and admitted into evidence.)

10 BY MR. EVANS:

11 Q. And I'm referring to State's 39. Can you identify
12 that for the jury, please.

13 A. This is a photograph of the driver's side
14 floorboard showing an object that's protruding from
15 underneath the driver's seat.

16 Q. And State's 40?

17 A. This is a lower angle showing the same item.

18 Q. And this is State's 41.

19 A. This is when the item has been pulled out from
20 underneath the seat.

21 Q. Did you know what that was?

22 A. It was identified as a remote control taped to
23 another rectangular object.

24 Q. State's 42, that's the flip side of it?

25 A. That's the reverse side, yes.

1 Q. Investigator Riley, I'm going to hand you what's
2 been marked as State's Exhibit 89.

3 Beg the Court's indulgence. Do you recognize this
4 item?

5 A. I do.

6 Q. Could you identify that for the Court, please.

7 A. This is the --

8 MS. FORD: Objection, Your Honor. Not
9 admitted into evidence yet.

10 BY MR. EVANS:

11 Q. I apologize. Can you identify it for the Court?

12 A. Remote control taped to a different square item.

13 Q. Do you recognize that object?

14 A. I do recognize it.

15 Q. Is this the one depicted in the pictures?

16 A. This is the one from the picture of.

17 MR. EVANS: I seek to admit State's 89.

18 MS. FORD: And I object based on my prior
19 objection.

20 THE COURT: Over objection it is admitted.

21 (State's Exhibit No. 89 was marked for
22 identification and admitted into evidence.)

23 BY MR. EVANS:

24 Q. Would you please identify this for the jury.

25 A. Yes. This is the TV remote. It is taped to a

1 different square rectangular object. It was pulled from
2 the driver's side of the maroon Accura.

3 Q. And I'm referring now to State's Exhibit 43.

4 A. It's a photograph depicting the trunk of the
5 Accura.

6 Q. So generally, after you pull out all the items and
7 photograph them, what's your next step when you process a
8 vehicle?

9 A. We usually move on to the latent fingerprint
10 process.

11 Q. Can you briefly describe that process for the
12 jury, please.

13 A. The process where we use fingerprint powder,
14 generally black fingerprint powders with a brush. We
15 usually start on the exterior of the vehicle, and we call
16 processing or dusting, taking the fingerprint powder on
17 the brush and apply that to the vehicle to attempt to
18 find latent fingerprints. The powder will appear through
19 the fingerprint patterns.

20 Q. What do you do if you find the latent prints?

21 A. When we're finished with the powdering and we
22 identify the prints, we will take fingerprint tape, just
23 clear tape, and place it over the print to lift that
24 print and place it on to a white card.

25 Q. I show you what has been marked for identification

1 purposes as State's 90 and 91. Do you recognize these
2 items?

3 A. I do.

4 Q. What are they?

5 A. These are latent print cards that came from the
6 Accura and one obtained from the remote control device
7 with the red tape.

8 Q. Were those collected by you or in your presence?

9 A. They were.

10 MR. EVANS: Your Honor, I would seek to admit
11 State's 90 and 91.

12 MS. FORD: No objection, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit Nos. 90 and 91 were marked
15 for identification and admitted into evidence.)

16 BY MR. EVANS:

17 Q. Investigator, we're going to briefly go over these
18 cards if you don't mind. This is referring to State's
19 90, if you could open those up, and, Investigator Riley,
20 was there another crime scene tech with you?

21 A. There was an Investigator Kjellman.

22 Q. And did you personally witness anything she had
23 processed that day as well?

24 A. Yes, I did.

25 Q. If you could pull out card one, where was that

1 print lifted?

2 A. From the driver's window of the Accura.

3 Q. And was there more than one print that you were
4 able to identify on there?

5 A. Yes, there was.

6 Q. Can you kind of briefly go over when you have a
7 print and then you identify individual prints within that
8 lift. For example, in card one, when you have 1.1 and
9 1.2, what does that refer to?

10 A. There are times when there's more than one print
11 that will be pulled from an area and placed on to a
12 single card. We don't differentiate more than one print.
13 A physical examiner will.

14 Q. So you didn't do that yourself. Okay. Card two,
15 do you recall where that lift was obtained from?

16 A. That was also from the driver's window, on the
17 exterior side of the Accura.

18 Q. And card three, where was that lift taken from?

19 A. It was on also the driver's door window but on the
20 inside.

21 Q. Four, where that was lift taken from?

22 A. It was from the inside of the vehicle on the front
23 passenger armrest, front passenger door's armrest.

24 Q. What about card five?

25 A. Also from inside the car, from the front passenger

1 door's handle.

2 Q. What about card six?

3 A. That's the inside of the driver's window.

4 Q. And card seven?

5 A. It's the inside of the driver's door.

6 Q. And card eight?

7 A. That's the inside driver's door handle.

8 Q. Would you have to use that handle to get out of
9 the vehicle if you were driving?

10 A. I would think so, yes.

11 Q. I'm handing you now State's Exhibit 91. You have
12 previously identified this, but would you identify it
13 once more?

14 A. This is the latent print card that was removed
15 from the remote control.

16 Q. Beg the Court's indulgence.

17 So after you get the fingerprint cards lifted,
18 where do you send those generally?

19 A. To the city of North Charleston's AFIS.

20 Q. I'm showing you now State's Exhibit 60 and 56. Do
21 you recognize these?

22 A. I do.

23 Q. Could you identify them to the Court -- well,
24 could you identify them?

25 A. I can.

1 Q. Did you take these pictures?

2 A. I took these pictures.

3 MR. EVANS: Your Honor, I would seek to admit
4 these into evidence. I believe there is another
5 objection that we covered previously.

6 MS. FORD: Yes, Your Honor. I would object
7 base on my prior motion, particularly 402 and cumulative.

8 THE COURT: All right. Over objection. It's
9 admitted.

10 MR. EVANS: Thank you, Your Honor.

11 (State's Exhibit Nos. 56 and 60 were marked
12 for identification and admitted into evidence.)

13 BY MR. EVANS:

14 Q. Officer Riley, I'm referring to State's Exhibit
15 44 -- let me back up. When you take the items out of the
16 car, do you take them to a lab?

17 A. We have a secure processing bay. Yes, we do.

18 Q. And do you generally photograph them again in that
19 secure processing bay?

20 A. Yes.

21 Q. And you did that in this case?

22 A. I did.

23 Q. I'm referring to State's 44. Do you know what
24 that depicts?

25 A. A tag from a black towel.

1 Q. Do you recall where the towel was located?

2 A. It's in the rear seat of the Accura.

3 Q. State's 45.

4 A. Full view of that same towel from the Accura.

5 Q. And State's 52.

6 A. A photograph again of the tag on the black towel.

7 Q. I'm referring to State's Exhibit 53. Do you
8 recall what that depicts?

9 A. The blue jacket from the back seat of the Accura.

10 Q. And State's 54?

11 A. It's the tag on that same blue jacket.

12 Q. And 55?

13 A. It's the back side camera shot of the jacket.

14 Q. Investigator, I am showing you State's -- what's
15 been marked for identification purposes as State's
16 Exhibit 78, I believe. 78. Do you recognize this item?

17 A. I do.

18 Q. Do you recall where -- where do you recognize it
19 from?

20 A. From the search on the Accura on the rear seat.

21 Q. Do you recall where it was located?

22 A. It was on the rear seat.

23 MR. EVANS: I seek to admit this in as
24 State's 78.

25 MS. FORD: No objection.

1 THE COURT: Admitted.

2 (State's Exhibit No. 78 was marked for
3 identification and admitted into evidence.)

4 BY MR. EVANS:

5 Q. Investigator Riley, I'm referring to State's
6 Exhibit 57 now. What does that depict?

7 A. It's a tag of the polo shirt.

8 Q. And do you recall where that was located?

9 A. The rear seat, again, of the Accura.

10 Q. And 59?

11 A. That's a larger shot of that same polo shirt.

12 Q. State's Exhibit 61, what does that depict?

13 A. Showing the tag on a pair of blue jeans.

14 Q. Do you recall where those blue jeans were located?

15 A. On the rear seat of the Accura.

16 Q. State's 60, what does that depict?

17 A. It's a red stain on one of the pants legs of those
18 blue jeans.

19 Q. And 56?

20 A. That's that same pant leg turned inside to show
21 that red stain.

22 Q. What did you suspect that red stain to be?

23 A. Blood.

24 Q. And did you do any tests to determine whether it
25 what blood?

1 A. I did.

2 Q. Could you generally describe what you do to
3 determine that.

4 A. You take a swabbing and you place that inside a
5 test kit, break the chemical vials in the order it tells
6 you, and if it turns a certain color, then it's telling
7 you that it's blood.

8 Q. And did this stain test presumptive for blood?

9 A. It did.

10 Q. What would you have done with the jeans at that
11 point?

12 A. They were repackaged in a paper bag and placed and
13 secured into evidence.

14 Q. Investigator, I am showing you what's been marked
15 as State's 79. Do you recognize these?

16 A. I do.

17 Q. What do you recognize those as?

18 A. Blue jeans from the Accura.

19 MR. EVANS: Your Honor, I seek to move
20 State's 79 into evidence as well.

21 MS. FORD: Objection. Based on my prior 402,
22 403, and cumulative, Your Honor.

23 THE COURT: Overruled. They're admitted.

24

25 (State's Exhibit No. 79 was marked for

1 identification and admitted into evidence.)

2 BY MR. EVANS:

3 Q. And, again, you would send those off to SLED for
4 analysis?

5 A. Yes.

6 Q. Investigator Riley, do you recall if any other
7 physical evidence was sent to SLED?

8 A. Yes, there was.

9 Q. Do you recall what it was?

10 A. It was the touch swab from the steering wheel, and
11 it was also called buccal swabs -- or buccal swabs from
12 both the defendant and the victim.

13 Q. And did you take those personally to SLED, do you
14 recall?

15 A. I did.

16 Q. Beg the Court's indulgence.

17 Investigator Riley, again, this is State's 79, I
18 believe. Was this cutting there when you pulled them out
19 of the Accura?

20 A. No, sir.

21 Q. Do you know when that would have been done?

22 A. By SLED.

23 Q. To analyze the spot?

24 A. Yes, sir.

25 MR. EVANS: Beg the Court's indulgence.

1 I apologize, Your Honor.

2 BY MR. EVANS:

3 Q. I am now referring to State's 80. Do you
4 recognize this item?

5 A. I do.

6 Q. What is that look like?

7 A. A black bi-fold wallet with papers and
8 identification.

9 Q. Is this the wallet you found in the Accura when
10 you were processing?

11 A. In the center console, yes.

12 MR. EVANS: I seek to admit State's 80 into
13 evidence.

14 MS. FORD: One moment, Your Honor. Without
15 objection, Your Honor.

16 THE COURT: Admitted.

17 (State's Exhibit No. 80 was marked for
18 identification and admitted into evidence.)

19 MR. EVANS: I apologize, Your Honor.

20 BY MR. EVANS:

21 Q. Investigator Riley, I am handing you a pile that's
22 been marked as -- it's been admitted as State's 80, and
23 we're going to briefly go through the contents of this
24 wallet.

25 A. All right.

1 Q. Is there a social security card located in that
2 wallet, or was there when you found it?

3 A. Yes, sir.

4 Q. And I believe that's visible on State's 67. Can
5 you identify the name on that social security card?
6 Actually, that looks like a vehicle.

7 A. It's actually a vital statistics birth
8 certificate.

9 Q. I'm sorry. Could you identify it a little louder
10 for the jury?

11 A. Vital records and a copy of a birth certificate.

12 Q. Could you identify the name on that birth
13 certificate?

14 A. Latrone Terrell Butler.

15 Q. And the birth date, can you see that?

16 A. Can't quite make out the first month, [REDACTED] of
17 1984.

18 Q. Can you see it on the physical one?

19 A. [REDACTED], [REDACTED].

20 Q. Thank you. And referring to State's 64, what are
21 these three items?

22 A. One is a South Carolina beginner's permit.

23 Q. What is the name on that?

24 A. Latrone Terrell Butler.

25 Q. And what date was it issued?

1 A. 3/11 of 2011.

2 Q. And what is the height and the weight on that?

3 A. The height is listed at five-eleven and 190.

4 Q. And what is the things under that?

5 A. That is the South Carolina identification card.

6 Q. And what is the name on that identification card?

7 A. Latrone Terrell Butler.

8 Q. And when was that issued?

9 A. February 10th of 2010.

10 Q. And, again, the height and weight on that card?

11 A. States five-ten and 180.

12 Q. And what is located under that?

13 A. It's a social security card.

14 Q. And whose name is on that social security card?

15 A. Latrone Terrell Butler.

16 Q. Referring to State's Exhibit 65, and,

17 Investigator, I believe those three things are located to
18 your left. Can you identify those three items for us?

19 A. It would be pay stubs from the Harvest Moon
20 Lowcountry Grill.

21 Q. What is the check date on the first one?

22 A. June the 10th, 2011.

23 Q. And the second one, what's the check date on that
24 one?

25 A. July the 8th, 2011.

1 Q. And that is also a pay stub from Harvest Moon?

2 A. It is.

3 Q. And the final document on there, and you can refer
4 to the actual ones, if you want to.

5 A. It's June 24th of 2011.

6 Q. Thank you. Referring to State's Exhibit 66, do
7 you recognize that? Can you identify that?

8 A. It's a Family Dollar payroll account, or pay
9 stubs.

10 Q. What are the dates on those?

11 A. One is from September the 16th of 2011, and the
12 other from September 23rd, 2011.

13 Q. Thank you. Beg the Court's indulgence.

14 Investigator, I'm handing you what has been
15 admitted as State's 100 and State's 101. Could you
16 identify these. Could you identify those for us.

17 A. Yes, I can.

18 Q. What are they?

19 A. They are buccal swabs.

20 Q. And who -- they were taken from whom?

21 A. One was obtained from a Letty Martin and another
22 Latrone Butler.

23 Q. Do you remember if you took those to SLED
24 yourself?

25 A. I did.

JASON RILEY - CROSS BY MS. FORD

1 Q. Thank you.

2 (State's Exhibit No. 100 was marked for
3 identification and admitted into evidence.)

4 MR. EVANS: Investigator Riley, I have no
5 further questions at this time. Please answer any
6 questions Ms. Ford may have.

7 THE COURT: Cross?

8 MS. FORD: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. FORD:

11 Q. Hello.

12 A. How are you doing?

13 Q. I would like to direct your attention back to
14 State's No. 64. And can you see the first, the
15 beginner's permit card?

16 A. Yes, ma'am.

17 Q. And the address listed on that is [REDACTED] Savannah
18 Highway lot [REDACTED] is that correct?

19 A. Yes, ma'am.

20 Q. And that's from March of 2011?

21 A. Yes.

22 Q. Also, we saw earlier a picture of the car's trunk
23 with a lot of items in there.

24 A. Yes, ma'am.

25 Q. You took a picture of that.

JASON RILEY - CROSS BY MS. FORD

1 A. I did, yes.

2 Q. But you didn't process anything in it, correct?

3 A. No, ma'am.

4 Q. And in your work, you told us how you processed
5 this car. Do you ever process people, like to look for
6 evidence on people?

7 A. Yes, we do.

8 Q. 'Cause sometimes you can find DNA on people if
9 they scratch one and their nails or something like that?

10 A. Yes, ma'am.

11 Q. In this case, you were never asked to go to Letty
12 Martin and try to find the DNA samples, correct?

13 A. With the exception of the buccal, no, ma'am, I was
14 not.

15 Q. Beg the Court's indulgence.

16 MS. FORD: No further questions, Your Honor.

17 THE COURT: Redirect?

18 MR. EVANS: Nothing further, Your Honor.

19 THE COURT: You may step down.

20 THE WITNESS: Thank you.

21 MR. EVANS: May this witness be excused?

22 THE COURT: Yes.

23 Folks, before we have the next witness, I
24 want to take up a matter on another case for just a few
25 minutes, so let me go ahead and let you go for a bathroom

1 break.

2 Don't begin deliberations or discussions in
3 the case. We'll have you back in about ten minutes.

4 (Recess taken.)

5 THE COURT: All right. You got your other
6 witnesses lined up?

7 MS. SHEALY: We do. I think -- Judge, our
8 next witness, I think I'm going to recall Letty Martin
9 just as to one issue that Ms. Ford brought up. It should
10 take three minutes. I've got everybody else lined up.

11 THE COURT: All right. Give me five minutes.
12 I'll be right back.

13 (Recess taken.)

14 THE COURT: Let the record reflect the
15 defendant is in the courtroom. Just for the record, I
16 got a note, juror 137, that's Ms. -- she's the alternate,
17 Ms. Grimes. Ms. Grimes sent a note saying she had an
18 appointment in the morning at 8:15 in Goose Creek, wanted
19 to know if she needed to reschedule. She said it was
20 work and she didn't have any problem with rescheduling
21 it, so just for the record. She'll be here tomorrow and
22 I told her that it wouldn't be a problem. She said it
23 wouldn't be a problem if we started at 9:30.

24 All right. You ready?

25 MS. SHEALY: I'm ready.

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 THE COURT: Bring the jury in.

2 (In open court, jury present.)

3 THE COURT: Okay. Folks, we're going to
4 resume with the State recalling Ms. Martin briefly. You
5 want Ms. Martin to come back up? I remind you that
6 you're still under oath.

7 THE WITNESS: Yes, sir.

8 LETTY MARTIN,

9 having been previously duly sworn,
10 was examined and testified as follows:

11 REDIRECT EXAMINATION

12 BY MS. SHEALY:

13 Q. Ms. Martin, showing you what's been previously
14 marked as State's Exhibit 43?

15 A. Yes.

16 Q. Is that the trunk of your vehicle?

17 A. Yes, it is.

18 Q. Okay.

19 A. I'm sorry to say.

20 Q. Could you point out -- well, first of all, is
21 there anything in your trunk that wasn't in your trunk on
22 December 5th, before you were abducted?

23 A. I don't think so.

24 Q. Could you point to some of those items and tell us
25 what they are.

LETTY MARTIN - REDIRECT BY MS. SHEALY

1 A. Yes. This is an air compressor that you use to
2 inflate the tires if they are low.

3 Q. You know, the point is not showing up.

4 A. This is the air compressor. This is the box for
5 the air compressor. These two items are little
6 toolboxes. These are window screens to help cut down
7 sunlight coming into the car, and a lot of this is
8 grocery bags that I kept in the car, and this is, I
9 think, a rain poncho. This is like a grocery bag.

10 Q. Very good.

11 MS. SHEALY: I have no further questions.
12 Answer any Ms. Ford may have.

13 THE COURT: Doing you have anything?

14 MS. FORD: No, Your Honor.

15 THE COURT: You may step down.

16 MS. SHEALY: Kathy Kjellman

17 KATHY KJELLMAN,

18 having been first duly sworn,

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: My name is Kathy Kjellman,
22 K-j-e-l-l-m-a-n.

23 BY MS. SHEALY:

24 Q. Investigator Kjellman, would you please tell the
25 jury where you're employed and in what capacity.

KATHY KJELLMAN - DIRECT BY MS. SHEALY

1 A. Im employed by the Charleston County sheriff's
2 office as an investigator.

3 Q. And how long have you been employed there?

4 A. With Charleston County, 12 years.

5 Q. And do you work in the evidence compound?

6 A. Yes.

7 Q. Regarding the investigation against Latrone
8 Butler, would you tell the jury whether or not you, along
9 with Investigator Riley, lifted some latent fingerprints
10 off of the Accura in question?

11 A. Yes, we did.

12 Q. And, in addition to that, did you obtain a buccal
13 swab from Letty Martin?

14 A. Yes, I did.

15 Q. Do you recall when it was that you obtained it?

16 A. It was collected on December 13th, at about 12:16
17 in the afternoon.

18 Q. From which year, December --

19 A. 2012.

20 Q. 2012. Showing you what has been previously marked
21 as State's Exhibit 100, can you tell us whether or not
22 that's the buccal swab?

23 A. Yes, it is.

24 Q. And would you just tell us briefly the process
25 that you underwent with Ms. Martin in an effort to

KATHY KJELLMAN - DIRECT BY MS. SHEALY

1 achieve this.

2 A. First I presented her with a sealed sterile cotton
3 swab, and I explained the procedure to her briefly, and I
4 was wearing gloves through the entire process. I opened
5 the package in front of her, handed one swab to her, and
6 gave her instructions to run the swab around her mouth,
7 similar to the way you would brush your teeth.

8 She did. I had a small long cardboard box. I
9 presented the box to her. She placed the swab in the
10 box, and she did a second swab the same way, placed that
11 swab in the box, and I sealed it up, the box up, in an
12 envelope in front of her.

13 Q. And after you sealed the box up, what did you do
14 with the box when you returned to the evidence compound?

15 A. I entered it into our evidence system and placed
16 it in the refrigerator.

17 Q. And were you aware of whether or not that later
18 went to SLED?

19 A. Yes, it did.

20 MS. SHEALY: I have no further questions.
21 Answer any that Ms. Ford may have.

22 THE WITNESS: Yes..

23 MS. FORD: I have no questions for this
24 witness, Your Honor.

25 THE COURT: You can step down. Thank you.

AL HALLMAN - DIRECT BY MS. SHEALY

1 MS. SHEALY: Al Hallman.

2 AL HALLMAN,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 THE WITNESS: Al Hallman, H-a-l-l-m-a-n.

7 BY MS. SHEALY:

8 Q. Officer Hallman, would you please explain to the
9 jury where you're currently employed.

10 A. I'm currently employed with the city of North
11 Charleston police department.

12 Q. And how long have you been employed there?

13 A. Twenty-six years.

14 Q. And in what capacity are you currently employed
15 there?

16 A. I'm assigned to the crime scene unit.

17 Q. And included in your duties in crime scene, do you
18 analyze latent fingerprints?

19 A. Yes, I did.

20 Q. How many years have you been doing that type of
21 work?

22 A. Approximately 18.

23 Q. And where did you receive training for that type
24 of analysis?

25 A. I have attended advanced schools and seminars all

AL HALLMAN - DIRECT BY MS. SHEALY

1 over the country.

2 Q. And are there requirements that you keep up on the
3 newest information regarding latent print analysis?

4 A. Yes. It's called SWGFAST.

5 Q. Have you been keeping up with all the new
6 information about latent print analysis?

7 A. Yes.

8 Q. Okay. Have you testified in court previously?

9 A. I have.

10 Q. And did you know approximately how many times
11 you've testified?

12 A. Hundreds. I don't know.

13 Q. When you testify, were you qualified as an expert
14 in the area of latent print analyst?

15 A. Yes.

16 MS. SHEALY: Your Honor, at this time we
17 would offer Mr. Hallman as an expert in latent print
18 analysis.

19 MS. FORD: No objection, Your Honor.

20 THE COURT: Okay. Folks, when somebody comes
21 and testifies, we normally just let them come in and
22 testify about what they saw, they heard, they touched,
23 they felt, they smelt, that sort of thing. We don't
24 generally allow people to come in and tell us what they
25 think about evidence. However, the law says that when

AL HALLMAN - DIRECT BY MS. SHEALY

1 somebody, because of specialized training or education in
2 some field rises to a level of expertise, the law will
3 allow them to be qualified as an expert, and then they
4 can come into court and give you testimony that is in the
5 form of an opinion. They can also give you the basis of
6 their opinion.

7 The law also says that you are not required
8 to blindly accept any expert's testimony simply because
9 they are an expert. You decide how much weight to give
10 this witness's testimony based on all of the evidence
11 that you will hear throughout the trial.

12 You may resume. He's now been qualified as
13 an expert in the field of --

14 MS. SHEALY: Latent fingerprint analysis.

15 THE COURT: -- latent print analysis. Thank
16 you.

17 BY MS. SHEALY:

18 Q. Would you please describe to the jury what is meant
19 by the term latent print?

20 A. Yes. The word latent means invisible, and a
21 latent print is an image or impression that is placed on
22 a given surface by the palms or the fingers of your hands
23 or even your feet. And since it's latent, since it's
24 invisible, it requires chemical processing or different
25 processing mediums to make it visible, and once you've

AL HALLMAN - DIRECT BY MS. SHEALY

1 processed this, an item with a chemical process or
2 fingerprint powder or something to that effect and you
3 develop this print on that surface, it becomes what is
4 called a latent print, or comparable latent fingerprint,
5 but it has to be processed by some means in order to make
6 visible.

7 Q. Would you advice the jury whether or not every
8 time a potential latent print is lifted whether it is
9 necessarily capable of making a match up?

10 A. No, it's not.

11 Q. Why is that?

12 A. There are numerous reasons. The person that
13 applied that latent print on the surface may not have
14 been identified in our system, you know, previously. We
15 may not have what's called known exemplars, which are the
16 eight finger and palm prints of a person. That's what we
17 use to compare to the latents. If we don't have them and
18 they not in a system of any type, we have no way of
19 knowing.

20 Q. What is meant by the term ridged detail?

21 A. Ridged detail, if you look on your palms or your
22 fingers, the ridge -- friction ridge skin is present
23 there and on the bottoms of your feet. Those are the
24 only two places we have friction ridged skin. Your
25 fingerprint, the top digit of your print contains

AL HALLMAN - DIRECT BY MS. SHEALY

1 anywhere from 75 to 250 individual points of
2 identification, just in that one little print.

3 When you look at your entire palm, you're talking
4 about thousands upon thousands of identifiable
5 characteristics, and what makes that important in the
6 field that I'm in is that the possibility of two people
7 living or dead having the exact same print, palm print,
8 fingerprint, doesn't matter, is approximately 10 to the
9 42 power, and that is ten with 42 zeros, so, needless to
10 say, they're unique.

11 Q. Would you explain to us, if someone touches a
12 surface, does it necessarily mean that their fingerprints
13 will be left behind?

14 A. No. They could be wearing gloves or they could
15 have, you know, some type of material between their hands
16 and the surface that's touched.

17 Q. When you touch a surface, if it's an area that's
18 touched repeatedly, could that also affect the ability to
19 be able to lift good prints?

20 A. You could lift them, but whether good or not would
21 be a determination later made. What she's referring to
22 is what we call a double tap, or where the finger or the
23 hand touches numerous times in the same spot, which
24 basically distorts the latent print, and a lot of times,
25 depending on repeated touching, it almost makes it

AL HALLMAN - DIRECT BY MS. SHEALY

1 unidentifiable.

2 Q. In relationship to this investigation, were you
3 asked to compare some latent prints to a ten print card?

4 A. Yes.

5 Q. And the ten print card, was that actually the ten
6 print card of Latrone Butler?

7 A. It as.

8 Q. When we say ten print card, what does that
9 literally mean, ten print?

10 A. That means the individual fingerprints, all ten
11 fingerprints, and then what's called slap images, which
12 are the fingers applied to the card. It gets all digits
13 of each finger.

14 Q. And in this case, in fact, you had the ten print
15 card for Latrone Butler?

16 A. Correct.

17 MS. SHEALY: Beg the Court's indulgence for
18 just a moment. Your Honor, at this time I would like to
19 mark this Exhibit, just for ID, as State's 97.

20 MS. FORD: It's just being marked.

21 THE COURT: Okay. It's marked.

22 BY MS. SHEALY:

23 Q. Officer Hallman, I'm going to show you what's been
24 marked as State's Exhibit 97 just for ID purposes. Could
25 you tell the Court, is that the ten print card of Latrone

AL HALLMAN - DIRECT BY MS. SHEALY

1 Butler?

2 A. This is actually a complete set of major case
3 prints, and what major case prints are is basically the
4 ten print card that she's referring to, plus prints of
5 the palms, the entire palm print. So, basically, you got
6 the entire hand of each hand in here, but yes, these are
7 the prints of Latrone Butler.

8 Q. And in addition to that, were you provided with
9 State's Exhibit 91, that being a latent print card from
10 an RCA remote control?

11 A. Yes, I was.

12 Q. And were you provided with State's Exhibit 98,
13 latent print cards from an Accura?

14 A. Yes, I was.

15 Q. And would you describe to the jury, once you
16 received the ten print card or the major case prints and
17 items of latent prints, how could you go about conducting
18 your analysis?

19 A. I conduct what's referred to as a side by side
20 comparison, beginning with the latent print, and what
21 we've been taught is to try and identify what's called a
22 target group of points within that print, something that
23 stands out that just isn't the same as the rest of the
24 normal flow of the fingerprint.

25 Once we've identified something of that nature,

AL HALLMAN - DIRECT BY MS. SHEALY

1 then I go to the inked impressions and start looking and
2 trying and matching or finding a fingerprint that has
3 that kind of target group in it. Once that print is
4 identified, we start going back and forth, back and
5 forth, identifying points within each print until we're
6 comfortable and conclude that it is an identification.

7 Q. Okay. And could you hand me those back just for a
8 second. Just that one, actually?

9 A. This one.

10 Q. Yes. Regarding State's Exhibit 90, there were
11 numerous latent print cards from within that folder, that
12 envelope; is that correct?

13 A. Yes, there were eight.

14 Q. And when there are red markings on those cards,
15 were they done by you?

16 A. Some of them were done by me.

17 Q. Did you break down the print sometimes into, for
18 example, 1.1, 1.2 ?

19 A. Yes.

20 Q. If you would tell the jury in examining the major
21 case prints from Latrone Butler with items in State's
22 Exhibit 90, what your findings were.

23 A. Yes. Latent print card number one that I marked
24 as L-1 was lifted and labelled driver's window of a '96
25 Accura. Latent print 1.1 on that card positively

AL HALLMAN - DIRECT BY MS. SHEALY

1 identified to the number seven left index finger of
2 Latrone Butler, and latent print on that card number
3 1.2 was identified as the number eight left middle finger
4 of Latrone Butler.

5 Both of these prints were a result of what was
6 called a simultaneous impression, and what a simultaneous
7 impression is, is an impression left on a surface that
8 involves multiple latent prints that were applied at the
9 exact same time by the same person and are in the
10 anatomically correct position within that surface.

11 So those were simultaneous impressions. No
12 identifications were affected to latent cards two, three,
13 four, five, six, and seven. Latent card number L-8 was
14 identified as the interior front driver's door handle,
15 and latent 8.1 was identified as being positive to the
16 number 9 left ring finger of Latrone Butler.

17 Q. So three positive matches?

18 A. Correct.

19 Q. Now, regarding the ones that were not -- that you
20 were not able to make a positive identification, your
21 language says insufficient for identification. What is
22 meant by that?

23 A. If I've got it marked as insufficient for
24 identification, no analysis performed, that just
25 certainly says that that individual latent impression is

AL HALLMAN - DIRECT BY MS. SHEALY

1 totally unidentifiable. It does not have any detail in
2 it to successfully affect a positive identification.

3 Q. Meaning -- does that mean that you're not able to
4 see the ridged detail to be able to make a comparison, or
5 what does that mean?

6 A. No. Sometimes you can see the ridge detail in
7 some prints that are unidentifiable, but it just does not
8 contain any of the levels of comparison, the ridge flow,
9 the pattern type, or even the poroscopy, which is the
10 sweat pores within each ridge. If we can't see that to
11 make a positive identification, we rule it as
12 unidentifiable.

13 Q. And regarding the other envelope?

14 A. Yes.

15 Q. State's Exhibit 41, coming from the remote
16 control, were you able --

17 MS. FORD: Your Honor, may I approach the
18 solicitor for a matter?

19 BY MS. SHEALY:

20 Q. Regarding State's 91, that being from the remote
21 control, were you able to make any type of identification
22 on that?

23 A. No. The latent print on that card was
24 unidentifiable.

25 Q. And when you say unidentifiable, what does that

AL HALLMAN - DIRECT BY MS. SHEALY

1 mean?

2 A. It simply means that there is not enough ridge,
3 characteristics or what we term as level three detail,
4 which is the pores and the measurements of the ridges in
5 order to effect an identification.

6 Q. Showing what's been previously marked as State's
7 Exhibit 103 --

8 MS. SHEALY: Your Honor, without objection,
9 I'll show it to the officer first.

10 THE COURT: Okay.

11 BY MS. SHEALY:

12 Q. Showing you what's been previously marked as
13 State's Exhibit 103, could you describe what that is.

14 A. Yes. That's my latent analysis report.

15 MS. SHEALY: At this time I would offer this
16 into evidence without objection.

17 THE COURT: Admitted.

18 (State's Exhibit No. 103 was marked for
19 identification and admitted into evidence.)

20 BY MS. FORD:

21 Q. So, Officer Hallman, the positive fingerprint
22 matches were to the driver's window of the Accura and to
23 the interior front driver's door handle?

24 A. Correct.

25 MS. SHEALY: I have no further questions.

AL HALLMAN - CROSS BY MS. FORD

1 Please answer any questions that Ms. Ford may have.

2 THE COURT: Cross?

3 MS. FORD: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q. Hello.

7 A. Hi.

8 Q. So you were able to positively match Mr. Butler's
9 prints to several of the matches on the car, correct?

10 A. Several of the latent prints, yes.

11 Q. And some of the prints you had were not
12 sufficient, correct, that's what you've been telling us,
13 to do any kind of comparison?

14 A. Some of them were, yeah, unidentifiable, yes.

15 Q. But for some of them, you were able to compare
16 them to Mr. Butler's prints, and he was excluded as a
17 contributor?

18 A. Yes, ma'am.

19 Q. So that means they were somebody else's prints?

20 A. That is correct.

21 Q. And you don't know who?

22 A. No, ma'am, I do not.

23 Q. And he was actually excluded as a contributor for
24 two, correct, L-2?

25 A. 2.1, correct.

AL HALLMAN - CROSS BY MS. FORD

1 Q. And he was excluded from 3.1, correct?

2 A. That is correct.

3 Q. He was excluded from 4.1, correct?

4 A. Yes, ma'am.

5 Q. He was excluded from 5.1, correct?

6 A. 5.1, 5.2.

7 Q. He was excluded from 6.1, correct?

8 A. Yes, and 6.2.

9 Q. And he was excluded from 6.2, correct?

10 A. Yes, ma'am.

11 Q. So that was seven prints that he was excluded
12 from.

13 A. Yes.

14 Q. And were those prints from the same person, or you
15 don't know?

16 A. I don't know. The only way to determine that is
17 to find out who they belong to.

18 Q. So it's possible that could be seven other people?

19 A. It could be, or one.

20 Q. One more question, actually. You actually just
21 did your report on this last week, on January 9th.

22 A. That is correct.

23 Q. So this was not done prior to March of 2012,
24 correct?

25 A. It was -- the case was investigated by another

AL HALLMAN - REDIRECT BY MS. SHEALY

1 investigator prior to my looking at it. I received a
2 request to examine the prints against the ink prints of
3 Mr. Butler, and that was done on the 9th.

4 Q. Of this year?

5 A. Yes.

6 MS. FORD: Thank you. No further questions.

7 THE WITNESS: You're welcome.

8 THE COURT: Redirect?

9 MS. SHEALY: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. SHEALY:

12 Q. Officer Hallman, in looking at the envelope with
13 the eight latent prints, regarding the items that you
14 excluded Mr. Butler from, you may need to look at your
15 individual cards. Card 2.1, that lift -- that was lifted
16 from where?

17 A. I would have to look at the card, yes. I'm sorry.

18 Q. That's okay.

19 A. Card two was lifted from the exterior side of the
20 driver's window.

21 Q. So you did not have -- I'm sorry. Latrone Butler
22 was excluded from the outside driver's window?

23 A. That is correct.

24 Q. Okay. And then 4.1, he was excluded from the lift
25 taken where?

AL HALLMAN - REDIRECT BY MS. SHEALY

1 A. 4.1 or 3.1?

2 Q. I'm sorry, 3.1.

3 A. 3.1 was the interior driver's door window.

4 Q. And you did not have Letty Martin's fingerprints;
5 is that correct?

6 A. No.

7 Q. Then regarding 4.1 that he was excluded from --

8 A. That was the interior front passenger door
9 armrest.

10 Q. The passenger door armrest?

11 A. Uh-huh.

12 Q. And 5.1?

13 A. The interior passenger front door handle.

14 Q. So the passenger side again?

15 A. Yes.

16 Q. And then 5.2 was also from --

17 A. Yes, 5.1, 5.2, and 5.3 were all lifted from the
18 same area, from the same handle.

19 Q. And 6.1 and 6.2, he was excluded from the driver's
20 window interior?

21 A. That's correct.

22 Q. And, again, you did not have Letty Martin's
23 fingerprints?

24 A. No, I did not.

25 MS. SHEALY: I have no further questions.

KEVAN SHERBINE - DIRECT BY MR. EVANS

1 Thank you.

2 THE COURT: Recross?

3 MS. FORD: No, Your Honor.

4 THE COURT: You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: Next witness.

7 MR. EVANS: State calls Kevan Sherbine, and
8 we may need to approach the bench about this witness.

9 KEVAN SHERBINE,

10 having been first duly sworn,

11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Kevan Sherbine,

14 S-h-e-r-b-i-n-e.

15 BY MR. EVANS:

16 Q. Private Sherbine?

17 A. Officer Sherbine.

18 Q. How are you this afternoon?

19 A. Fine. How are you?

20 Q. Fine thanks. Officer Sherbine, where do you work?

21 A. I work at the Al Cannon Detention Center.

22 Q. What are your duties at that detention center?

23 A. I am the professional visitation officer, and part
24 of my duties is to be the main point of contact
25 between --

—KEVAN SHERBINE - DIRECT BY MR. EVANS—

1 Q. Can you speak up a little bit?

2 A. I'm sorry. One of my main duties is to be the
3 main point of contact for the inmates and their
4 attorneys, public defenders, outside agencies, law
5 enforcement agencies. I do three-fourths of the
6 subpoenas that come into the jail, as well as I help with
7 the day-to-day running of front part of the jail, which
8 is the lobby.

9 Q. And do you handle the jail calls there?

10 A. I do, yes.

11 Q. Could you briefly describe how the system there,
12 the call system, is organized?

13 A. The inmates are assigned a PIN when they come in
14 the booking and processing area. This PIN is used for
15 any outgoing calls that they make. This is how the calls
16 are tracked and recorded, and when I get a subpoena, I
17 use their inmate number to track those calls for whatever
18 reason they're required.

19 Q. And is that PIN unique to each --

20 A. It's unique to each individual, yes.

21 Q. And when you get a subpoena for jail calls, how do
22 you usually respond to those subpoenas?

23 A. I respond as quickly as is humanly possible. I
24 make a copy for myself and for our supervisor, and then I
25 look and see the parameters for the subpoenas dates and

KEVAN SHERBINE - DIRECT BY MR. EVANS

1 times. I enter those into the program that we use. I
2 pull the records. I print a hard copy and then make the
3 recordings and put them on disk.

4 Q. And, Officer, I'm handing you what has been marked
5 for identification purposes as State's 92. Do you
6 recognize that?

7 A. I do, yes.

8 Q. And what is that?

9 A. This is a CD of phone recordings, for the inmate
10 specified below.

11 Q. Is that how you would respond to a subpoena in the
12 ordinary course of your business?

13 A. It is, yes.

14 Q. Is that your handwriting on that disk?

15 A. It is, yes.

16 Q. Thank you.

17 MR. EVANS: Your Honor, I move to admit
18 State's 92 into evidence.

19 MS. FORD: Your Honor, I would object. I
20 don't think they've established the foundation on how the
21 system -- how the tapes are stored and distributed and
22 received and things of that nature. I also don't think
23 they have authenticated the jail calls.

24 MR. EVANS: I can go into a little more
25 detail with the witness if necessary.

KEVAN SHERBINE - DIRECT BY MR. EVANS

1 THE COURT: That's fine. Go ahead.

2 BY MR. EVANS:

3 Q. Can you briefly describe how the call system --
4 how it's stored and how it works in that regard.

5 A. It's stored in a computer database system. When
6 the calls are made, they're recorded, and they are put in
7 that database system that we maintain in the lobby.
8 There is a few people that have access to it for the
9 purpose of making dual recordings, and once the calls are
10 recorded, they are available for a specified number of
11 years for tracking, for listening, for these purposes.

12 Q. And is it stored by each individual inmate?

13 A. It's stored by each inmate as well as by phone
14 number called.

15 Q. And once they make a call out with their unique
16 PIN, would it go into their database?

17 A. It will, yes.

18 Q. And when you get a subpoena, do you search by that
19 inmate to pull up any calls?

20 A. We do, yes.

21 Q. Would that access only the call that inmate has
22 made?

23 A. With their PIN, yes.

24 Q. So only calls made with that PIN number?

25 A. Yes.

KEVAN SHERBINE - DIRECT BY MR. EVANS

1 Q. And, again, when you pull up the information on
2 the computer to respond to a subpoena, does it reflect
3 the date the call was made?

4 A. The date the call was made, the time the call was
5 made, and how many minutes.

6 Q. Could you tell me the date that was made?

7 A. February 9th --

8 MS. FORD: Objection. May we approach?

9 THE COURT: Uh-huh.

10 (Discussion held at sidebar.)

11 BY MR. EVANS:

12 Q. When you respond to the subpoena for this
13 particular defendant, did you place calls on the date
14 range that were requested in there?

15 A. Yes.

16 Q. Thank you.

17 MR. EVANS: Your Honor, I would like to
18 publish the calls to the jury at this time.

19 THE COURT: All right.

20 MS. FORD: Well, Your Honor, it has not been
21 admitted --

22 THE COURT: You want to put in a particular
23 call from a particular date?

24 MR. EVANS: Correct.

25 THE COURT: What is the date of the call that

KEVAN SHERBINE - DIRECT BY MR. EVANS

1 you want to put in?

2 BY MR. EVANS:

3 Q. Officer Sherbine, would one of the dates requested
4 in the subpoena have been December 10th, 2011? And I'm
5 going to hand you the disk.

6 A. December 10, 2011.

7 Q. Yes, sir.

8 A. Yes.

9 MR. EVANS: May I publish this to the jury?

10 MS. FORD: I don't think they've connected
11 the call to my client.

12 THE COURT: How do you know that that is the
13 defendant?

14 MR. EVANS: I apologize, Your Honor.

15 BY MR. EVANS:

16 Q. Can you identify the name on that disk, please.

17 A. It's Latrone Butler.

18 Q. And that would have been placed on there in
19 response to a subpoena from calls to Latrone Butler's
20 PIN?

21 A. Yes.

22 MR. EVANS: Thank you.

23 THE COURT: All right.

24 MR. EVANS: Again, I move to admit.

25 THE COURT: You want him to explain how the

—KEVAN SHERBINE - DIRECT BY MR. EVANS—

1 PIN system works?

2 MS. FORD: No. It's another matter. I just
3 want to clarify what is being played.

4 THE COURT: Let me send the jury out for just
5 a second. Don't begin deliberations or discussions about
6 the case.

7 (In open court, jury not present.)

8 THE COURT: What's the confusion?

9 MS. FORD: I just wanted to clarify the whole
10 conversation is about 15 minutes long, and I wanted to
11 clarify that they were only playing the part mentioned in
12 the transcript they provided because the other parts of
13 the conversation go into some other bad acts and things
14 like that, so I just wanted to make sure that was all
15 that was being published.

16 MR. EVANS: And, Your Honor, we intended to
17 queue it up at 12:49. We are only going to play the
18 relevant portion of the call.

19 MS. FORD: Just to put my objection on the
20 record, I would move that the contents are not admitted
21 into evidence because I don't think it's an actual
22 confession. He's just talking about getting into a drug
23 program. He's just talking in general, thinks this may
24 help me out, so I don't think it's specific enough to
25 connect it to a crime, and I think it's misleading.

KEVAN SHERBINE - DIRECT BY MR. EVANS

1 THE COURT: All right. Well, that is
2 overruled. The jury can decide how much weight it
3 deserves and what he is, in fact, talking about.

4 MS. SHEALY: And, Your Honor, if you'll allow
5 us. We'll get it queued up right now so we'll have it
6 ready to go.

7 THE COURT: All right.

8 (State's Exhibit No. 92 marked for
9 identification and admitted into evidence.)

10 (In open court, jury present.)

11 THE COURT: We're going to resume now with
12 the playing of this recording. The solicitor will be
13 starting it at a certain point. The entire conversation
14 we're not going to play, but just starting at a
15 particular point, which I have directed them to start at
16 and where to end it. All right?

17 MR. EVANS: And, for the record, there will
18 be a portion of a phone call made on December 10, 2011 at
19 15:06:14, and the recording will begin 12 minutes and 41
20 seconds into the phone call.

21 THE COURT: All right. Go ahead.

22 (Whereupon, the recording was played for the
23 jury.)

24 MR. EVANS: Your Honor, I have no further
25 questions. Please answer any questions Ms. Ford may

—KEVAN SHERBINE - CROSS BY MS. FORD—

1 have.

2 THE COURT: Do you have anything you want to
3 ask this witness?

4 CROSS-EXAMINATION

5 BY MS. FORD:

6 Q. Just -- Officer Sherbine, you're not present when
7 these phone calls are being made, correct?

8 A. That's correct.

9 Q. So you have no clue what is going on around this
10 conversation; is that correct?

11 A. That's correct.

12 MS. FORD: No further questions.

13 THE COURT: Anything further?

14 MS. SHEALY: Nothing further, Your Honor.

15 THE COURT: You may be excused.

16 MS. SHEALY: Catherine Leisy.

17 CATHERINE LEISY,

18 having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 THE WITNESS: Catherine Leisy, L-e-i-s-y.

22 BY MS. SHEALY:

23 Q. Ms. Leisy, would you please tell the jury where
24 you're currently employed.

25 A. I work for the South Carolina Law Enforcement

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 Division, more commonly referred to as SLED.

2 Q. And would you tell the jury just a little bit what
3 SLED does as a whole.

4 A. SLED provides forensic assistance to law
5 enforcement agencies throughout the State, be it local,
6 state level agencies that want to submit items of
7 evidence for forensic testing.

8 Q. And how long have you been employed with SLED?

9 A. Eight years.

10 Q. And tell us a little bit about your educational
11 background.

12 A. I have a bachelor of science degree in genetic
13 engineering from Cedar Crest College in Allentown,
14 Pennsylvania. I have received training at SLED by other
15 Court-qualified analysts involving all of the different
16 types of tests and analysis I'm required to perform, and
17 I'm also required to do continuing education, which
18 consists of training or seminars related to the forensic
19 DNA field on an annual basis.

20 Q. And tell us also about your previous employment.

21 A. Prior to working at SLED, I spent four years as a
22 DNA analyst at a private testing facility known Orchid
23 Cellmark in Germantown, Maryland where I ran the same
24 types of tests and analysis as I do at SLED.

25 Q. Have you testified in court in connection with

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 your job as a forensic DNA analyst?

2 A. I have.

3 Q. And do you know approximately how many times
4 you've testified?

5 A. Approximately 50 occasions.

6 Q. And on those occasions, were you qualified in the
7 field of forensic analysis of DNA?

8 A. I was.

9 MS. SHEALY: Your Honor, at this time we
10 would offer Ms. Leisy as an expert in the area of
11 forensic analysis of DNA.

12 THE COURT: Any objection, or do you wish to
13 voir dire?

14 MS. FORD: No, Your Honor.

15 THE COURT: All right. Folks, as I told you
16 earlier, an expert witnesses -- this witness is now
17 qualified as an expert in the field of DNA analysis and
18 will be allowed to testify as an expert in that field and
19 give her opinion about the evidence that she has examined
20 and give you the basis of her opinion.

21 Again, you are not required to give her
22 testimony any greater weight than you would any other
23 witnesses simply because she is an expert. You decide
24 how much weight to give her testimony based on all of the
25 evidence that you'll hear throughout the trial.

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 Go ahead.

2 MS. SHEALY: Thank you, Your Honor.

3 BY MS. SHEALY:

4 Q. If you could just start and tell us what DNA is.

5 A. DNA stands for deoxyribonucleic acid. It's the
6 genetic material found in all of our body cells with the
7 exception of our red blood cells. DNA is packaged into
8 structures called chromosomes which contain our genes,
9 and genes are simply strands of DNA that code for our
10 physical characteristics, such as our height or eye
11 color. We inherit one copy of DNA from our mother and
12 one copy our father; therefore, we have two copies of
13 every gene. Approximately 99.9 percent of an
14 individual's DNA is identical to that of everyone else's,
15 and it's the variation in that remaining .1 percent that
16 we test to tell different people apart.

17 Q. And could you describe for us what is involved in
18 the DNA analysis?

19 A. There are several basic steps to DNA analysis, the
20 first being the removal of DNA from a particular item of
21 evidence. Once we have removed the DNA from the
22 evidence, we make copies of the specific locations in the
23 DNA that we want to test. Once we've made those copies,
24 we have what we call a DNA profile. It consists of 15
25 locations in our DNA and is unique to each individual.

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 Once we develop a DNA profile from an item of evidence,
2 we can compare it to the DNA profile of a known
3 individual to determine whether or not that individual
4 could have contributed to DNA found on that evidence.

5 Q. Describe for the jury, please, what is the value
6 of a buccal swab?

7 A. A buccal swab is what we call a known standard.
8 It's a sterile cotton swab, essentially just a Q-tip that
9 we run on the inside of an individual's cheek to collect
10 skin cells. We will then use that known standard to
11 develop a DNA profile for that individual and use that
12 profile in comparison with items that we wish to test.

13 Q. And were you tasked with performing a DNA analysis
14 in the case of the State versus Latrone Butler?

15 A. I was.

16 Q. Showing you what has been previously marked as
17 State's Exhibit 100 and 101, could you advise the Court
18 whether or not you had been provided with these buccal
19 swabs?

20 A. These are the swabs that I tested in this case.

21 Q. And those are swabs for two different individuals?

22 A. That is correct.

23 Q. Then were you also provided with items of
24 evidence?

25 A. Yes, I was.

—CATHERINE LEISY - DIRECT BY MS. SHEALY—

1 Q. And could you describe to the jury what items of
2 evidence you were provided with.

3 A. The items provided to me were cuttings, swabbings
4 taken from a pair of jeans as well as possible hairs
5 collected from those jeans. I also received a swab as
6 being described as being taken from a steering wheel.

7 Q. In your coming here today from Columbia, did you
8 bring back some items that you had with you from your
9 analysis?

10 A. I did.

11 Q. And what items are those?

12 A. I brought back all the cuttings and swabbings, as
13 well as the possible hair taken from the jeans and the
14 steering wheel. That pouch contains items taken from a
15 pair of jeans.

16 Q. Ms. Leisy, if you could get those cuttings and
17 swabbings for me. Would that include one cutting or two
18 cuttings?

19 A. It would contain three cuttings taken from a pair
20 of jeans, as well as swabbings and scraping taken from
21 the pockets and possible hair.

22 MS. SHEALY: Your Honor, at this time, I
23 would move these into evidence as State's Exhibit 93.

24 MS. FORD: I would just object for the jeans
25 based on the prior motion.

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 THE COURT: Overruled. Admitted.

2 (State's Exhibit No. 93 was marked for
3 identification and admitted into evidence.)

4 THE WITNESS: This pouch contains the pouch
5 that was identified as coming from the steering wheel.

6 MS. SHEALY: At this time I would move this
7 into evidence as State's Exhibit 94.

8 THE COURT: Admitted over defendant's
9 objection.

10 (State's Exhibit No. 94 was marked for
11 identification and admitted into evidence.)

12 BY MS. SHEALY:

13 Q. Okay. So if you could, walk us through the
14 analysis you performed and your findings.

15 A. I started performing DNA testing on the items of
16 evidence that were submitted. I tested SLED item 1.1,
17 which was identified as a cutting of a stain on the
18 inside of the left pant leg of the jeans; SLED item 1.2,
19 a cutting from the outside of the left leg of the jeans;
20 and SLED item 1.3, which was a cutting taken from the
21 outside of the right leg of the jeans.

22 I performed a preliminary test on those items to
23 test for possible presence of blood. On SLED items 1.1
24 and 1.2 from the left leg, I then received a positive
25 result indicating the possible presence of blood.

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 Q. Let me interrupt you there for just a second.
2 Those are cuttings from blue jeans; is that correct?

3 A. That's correct.

4 Q. Now, when you received these, the cuttings had
5 already been made?

6 A. They had.

7 Q. When a pair of jeans is sent to SLED, who actually
8 processes the item of evidence and makes the cuttings?

9 A. For an article of clothing, such as a pair of
10 jeans it, will go through our evidence processing
11 department. There a technician will examine the clothing
12 to look for possible bodily fluids or hairs that may be
13 present as well as take swabbings or scrapings to try and
14 determine ownership of a particular item, and any items
15 they collect are then forwarded to me for DNA testing.

16 Q. And I think I had interrupted you when you had
17 told us there were two cuttings from blue jeans, 1.1 and
18 1.2, where blood was indicated?

19 A. Correct. Again, those items were both identified
20 as being taken from the left leg of the pants. I was
21 able to identify a DNA profile from those items. That
22 profile matches the DNA profile I developed from the
23 swabs from Latrone Butler, and the possibility of the
24 random selecting an unrelated individual having a DNA
25 profile matching these items is approximately 1 in 1.4

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 quintillion.

2 Q. Could you explain to us, when you are indicating
3 it was a match and the 1 in 1.4 quintillion, what are you
4 advising us of?

5 A. What I have is what we call a single source
6 profile, meaning it indicates I have DNA from one person.
7 That profile is a perfect match to the DNA profile I
8 developed from swabs from Mr. Butler.

9 We basically consider this an identification.
10 What it means is if you were to randomly select an
11 unknown individual and test their DNA profile, the
12 probability they would have that particular profile is
13 approximately 1 in 1.4 quintillion.

14 Q. And you can continue with your report.

15 A. I further performed the same preliminary test on
16 item 1.3, which was a cutting taken from the outside of
17 the right leg. The cutting itself, I developed a
18 negative test result for the cutting. The technician
19 also included swabs that she had taken from that stain.

20 I went ahead and processed those swabs for DNA but
21 was not able to develop a DNA profile from that
22 particular item. I also tested a swab that was taken
23 from the inside of the front pockets of the jeans. The
24 DNA profile from the pockets is a mixture of at least two
25 individuals. The DNA profile developed from major

—CATHERINE LEISY - DIRECT BY MS. SHEALY—

1 contributor to this mixture also matches the DNA profile
2 of Latrone Butler, and Letty Martin is excluded as a
3 possible contributor to this mixture.

4 Q. And when you say that it comes from a mixture of
5 at least two individuals, that again would have been a
6 swabbing from the scrapings inside the pockets?

7 A. That's correct.

8 Q. Could you explain to the jury how sometimes there
9 is a mixture of DNA?

10 A. When we refer to a mixture, it just means there is
11 DNA from more than one individual present. In this
12 instance, I was able to develop what we call a major
13 contributor, which just means one of the contributors
14 left significantly more DNA than the other. That allows
15 us to basically pull their profile out and treat it as a
16 single source profile and make a comparison just as we
17 would with a single source profile.

18 Q. And there he was the major contributor?

19 A. That's correct.

20 Q. If you would continue.

21 A. I performed DNA testing on a possible hair that
22 was collected from the jeans, which is identified as SLED
23 item 1.5.1. No DNA -- no human DNA was identified on
24 that particular item, so no profile was developed.

25 I also performed testing on what was identified as

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 SLED item 3, swab from the steering wheel. The DNA
2 profile developed from this swab from the steering wheel
3 is a mixture of at least two individuals. The DNA
4 profile developed from the major contributor to this
5 mixture also matches the DNA profile of Latrone Butler.

6 The probability ever randomly selecting an
7 unrelated individual having a DNA profile matching the
8 major contributor to this mixture is approximately 1 in
9 110 quadrillion, and Letty Martin is excluded as a
10 possible contributor to this mixture.

11 Q. Regarding your findings, 1 in 1.4 quintillion
12 earlier, and 1 in 110 quadrillion, could you give the
13 jury some understanding of the value of those numbers in
14 analyzing this.

15 A. Numbers are used to give weight to a match
16 statement. If you have a partial profile and you make a
17 match and you said the probability is one in ten, that
18 means if you randomly selected an unrelated individual,
19 the probability they would match is one in ten. In these
20 instances, we're talking about one in several quadrillion
21 or quintillion, which is a much larger number.

22 It helps give weight to how strong a statement
23 we're making when we say someone matches a particular
24 kind of test.

25 Q. And when you perform DNA analyses, do you

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 frequently have one in ten, one in twenty, one in two
2 hundred, some of the lower numbers?

3 A. Not with a full profile single source match
4 statement, as I have in this case.

5 Q. So here, the numbers reflect the level of the match
6 that occurred?

7 A. That's correct, and with each particular items --
8 with the cuttings, particularly from the jeans, I would
9 say it's my opinion, from a reasonable degree of
10 scientific certainty, that Mr. Butler is the contributor
11 of the DNA obtained from those cuttings.

12 Q. And as relates to the swab from the steering
13 wheel?

14 A. That particular case again, I have a match
15 statement. The statistic is a little bit different. Not
16 all the locations that I tested qualified to be used in
17 statistics, which is what resulted in that difference,
18 but, again, we do have a match between Mr. Butler's
19 profile and the steering wheel, major contributor, I
20 should say, to the steering wheel.

21 Q. And that figure again is what?

22 A. That particular item is going to be 1 in 110
23 quadrillion.

24 Q. And then did that complete your initial analysis
25 conducted?

CATHERINE LEISY - DIRECT BY MS. SHEALY

1 A. It did.

2 Q. Did you also compare those same items to Letty
3 Martin's buccal swab?

4 A. I did. I compared all the evidence profiles I
5 developed to profile develop from Letty Martin's buccal
6 swab and was able to exclude her as a possible
7 contributor to all of these items.

8 Q. To all of these items?

9 A. Yes.

10 Q. And showing you what's been marked as State's 102,
11 could you identify what these two documents are.

12 A. These are reports that I generated documenting the
13 test I performed and the results and conclusions that I
14 drew.

15 MS. SHEALY: Beg the Court's indulgence just
16 a second. Your Honor, at this time we would offer
17 State's Exhibit 102 into evidence.

18 MS. FORD: Your Honor, I would object on the
19 basis for the part that contains information from my
20 prior objection regarding the gene.

21 THE COURT: Based on your prior objection --
22 oh, regarding the blue jeans?

23 MS. FORD: Yes, Your Honor.

24 THE COURT: All right. Overruled. It's
25 admitted.

CATHERINE LEISY - CROSS BY MS. FORD

1 (State's Exhibit No. 102 was marked for
2 identification and admitted into evidence.)

3 MS. SHEALY: Ms. Leisy, please answer any
4 questions that the defense attorneys may have. Thank
5 you.

6 THE COURT: Cross?

7 MS. FORD: Yes, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. FORD:

10 Q. I want to talk a little more about the major
11 contributor issue that you mentioned, how Mr. Butler was
12 found as the major contributor, but there was another
13 person's DNA on the steering wheel, for example, and the
14 jeans, correct?

15 A. That's correct.

16 Q. Being a major contributor could mean that that
17 person just had the item last, correct?

18 A. That's correct. I can't determine necessarily
19 when someone was in contact or when they left their DNA,
20 just that at some point their DNA was deposited on that
21 item.

22 Q. And on the steering wheel, you did not find Ms.
23 Martin's DNA at all, correct?

24 A. Correct. She was excluded as a possible minor to
25 the mixture that I developed.

CATHERINE LEISY - CROSS BY MS. FORD

1 Q. So if she had been driving the car a few days
2 earlier, her DNA was covered up, basically, by whoever
3 drove after her?

4 A. That is a possibility. It may also depend on
5 where she touched the steering wheel versus where it was
6 swabbed. I can't say specifically why her DNA wouldn't
7 be present in this mixture, just that in the profile I
8 developed I was able to exclude her as a possible
9 contributor.

10 Q. And just to make sure this is understood, the
11 blood swabs from the jeans -- that blood belonged to
12 Latrone Butler, correct?

13 A. It's my opinion he was a contributor of the DNA to
14 those items, yes.

15 MS. FORD: Beg the Court's indulgence. No
16 further questions.

17 MS. SHEALY: I have nothing further, Your
18 Honor.

19 THE COURT: You may step down. Thank you.

20 All right. So is the State calling any
21 further witnesses?

22 MS. SHEALY: No. At this time the State
23 would rest.

24 THE COURT: All right. Folks, we got some
25 things we need to take up procedurally at this point

1 before we move on to the next phase of the case, so let
2 me send you to the jury room. Do not begin deliberations
3 or discussions about the case, and we'll have you back in
4 about ten minutes.

5 Thank you.

6 (In open court, jury not present.)

7 THE COURT: Motions?

8 MS. SHEALY: I would put on the record we
9 approached the bench, and we had previously moved into
10 evidence State's Exhibit 70, and when I attempted to get
11 in the mugshot that had identifying information, Ms. Ford
12 made an objection, and so No. 70 has not been testified
13 to by anyone, and we would at this time ask to remove it
14 from evidence.

15 It's my understanding Ms. Ford does not have
16 an objection to that.

17 THE COURT: It was not admitted, correct?

18 MS. SHEALY: It was admitted, but no one has
19 testified to it. The jury has not seen it, and if it's
20 okay I'll go ahead and grab it so we can get it out of
21 the --

22 THE COURT: All right. Ms. Ford?

23 MS. FORD: At this point I would like to
24 renew all of my prior objections, but I would at this
25 time move for a directed verdict, in particular with the

1 attempted murder.

2 I think the law requires an actual specific
3 intent to kill, and I don't think that that specific
4 intent to kill has been proven, Your Honor, and, in
5 addition, I would just like to ask for a directed verdict
6 to all charges.

7 Mr. Butler was found with the car three days
8 later, but there is no other physical evidence tying him
9 to the crime itself.

10 THE COURT: State want to be heard?

11 MS. SHEALY: Your Honor, I think there is
12 ample evidence regarding the attempted murder charge.
13 Ms. Martin has testified that repeatedly he attempted to
14 snap her neck while in a dark country road. She passed
15 out. He grabbed her back up and continued to try to do
16 so and only fled the area when another vehicle
17 approached.

18 I was trying -- the second part of her
19 argument was Ms. Martin has identified him. His items
20 were in the vehicle. Her key is in his shoe. I think we
21 have ample reason to go in front of the jury with this.
22 I think a directed verdict would certainly be
23 inappropriate.

24 THE COURT: I agree. There is ample
25 opportunity to sustain a guilty verdict, so the motion is

1 denied.

2 So what is y'all's plan on the defense? Have
3 you talked about whether or not you're going to call
4 witnesses and is he going to testify?

5 MS. FORD: My client has indicated to me that
6 he does not want to testify. I do have a witness to put
7 up a few pictures. I don't think it will take very long.

8 THE COURT: Okay. Pictures of what?

9 MS. FORD: Tattoos, Your Honor.

10 THE COURT: All right. Let's take a short
11 rest room break. We'll come back. You can call your
12 witness, put that in. Then we will stop for the day and
13 then do the arguing and charging in the morning.

14 You might want to do a little bit of research
15 on this specific intent versus general intent issue that
16 you raised. What's your thoughts on that?

17 MS. SHEALY: I really need to look at it,
18 Judge. I didn't get a chance to look at your charge or
19 what she apparently e-mailed to me, so I don't feel like
20 I can address it this second.

21 THE COURT: I'll give you the evening to look
22 at it and I'll look at it, and we'll talk about it in the
23 morning. All right?

24 Mr. Butler, stand up. The State has now
25 rested; in other words, they called all the witnesses

1 they're going to call. Your lawyer tells me that she
2 wants to call one witness, put in some photographs. At
3 that point you would have to decide if you want to
4 testify.

5 Your lawyer tells me at this point that you
6 indicated to her that you do not want to testify. So
7 when we talked before lunch, I told you you have to make
8 a decision as to whether or not you want to testify.
9 That is your decision, your decision alone. If you do
10 testify, you'll answer the questions, you'll be put under
11 oath, answer the questions that your lawyer asked you.
12 You'll also have the obligation to answer the State's
13 questions, and if there are any prior convictions that
14 you have, we'll discuss whether or not these would be
15 admitted for the sole purpose of impeaching your
16 testimony.

17 However, if you don't want to testify, I will
18 instruct the jury that they are not to hold that against
19 you in any way while they're deliberating. Have you had
20 an opportunity to think about this?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you had an opportunity to
23 discuss it with your lawyers?

24 THE WITNESS: Yes, sir.

25 THE COURT: Have you made a decision?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What's your decision?

3 THE DEFENDANT: I'm not testifying.

4 THE COURT: You don't want to testify?

5 THE DEFENDANT: No, sir.

6 THE COURT: This is your decision and your
7 decision alone?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. We're going to take a
10 rest room break. When we come back, Ms. Ford will call
11 the witness that you want, and we will break for the day.

12 MS. FORD: Thank you, Your Honor.

13 THE COURT: See you back in ten minutes.

14 (Recess taken.)

15 (In open court, jury present.)

16 THE COURT: Okay, folks. The State has now
17 rested, and so the defense will call their first and only
18 witness.

19 After they call that witness, we will break
20 for today and then come back tomorrow morning and do the
21 closing arguments and the charge on the law and then
22 you'll begin your deliberations. All right?

23 So, Ms. Ford, if you're ready, you may begin.

24 MS. FORD: Thank you, Your Honor. The
25 defense calls Matthew Davis to the stand.

MATTHEW DAVIS - DIRECT BY MS. FORD

1 MATTHEW DAVIS,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: Matthew Davis, D-a-v-i-s.

6 BY MS. FORD:

7 Q. Hello. By whom are you employed, Mr. Davis?

8 A. With the public defender's office and Charleston
9 County.

10 Q. What is your job there?

11 A. I'm an investigator.

12 Q. And does part of your job entail taking pictures?

13 A. Yes.

14 Q. And did you ever -- have you worked on the case of
15 State versus Latrone Butler?

16 A. Yes.

17 Q. And did you have an opportunity to meet with
18 Mr. Butler?

19 A. Yes.

20 Q. And did you take pictures during that meeting?

21 A. Yes.

22 Q. And you're aware of his charges, correct?

23 A. Yes, ma'am.

24 Q. And to your knowledge, at the time you met him, he
25 was incarcerated for the current charges, correct?

MATTHEW DAVIS - DIRECT BY MS. FORD

1 A. Correct.

2 Q. I'm going to show you some pictures now. First
3 I'm showing you what has been marked as Defendant's
4 Exhibit 4. Do you recognize that picture?

5 A. Yes.

6 Q. Did you take that picture?

7 A. I did.

8 Q. What does that picture show?

9 A. It is a picture of a tattoo on the defendant's
10 neck.

11 Q. Okay. And when you met Latrone Butler, that is
12 the same man who is here in the courtroom today, at the
13 defense table?

14 A. Yes, ma'am.

15 Q. Now, I'm going to show you what's been marked as
16 Defendant's Exhibit 5. Do you recognize what's in that
17 picture?

18 A. Yes.

19 Q. And what is it of?

20 A. It is a tattoo on the defendant's left hand.

21 Q. Okay. And did you take that picture?

22 A. I did.

23 Q. Does that look the same as when you took the
24 picture?

25 A. Yes, ma'am.

MATTHEW DAVIS - DIRECT BY MS. FORD

1 Q. Now, I'm showing you what has been marked as
2 Defendant's Exhibit 6. Did you take that picture as
3 well?

4 A. Yes.

5 Q. And what is that a picture of?

6 A. This is a picture of a tattoo on the defendant's
7 right hand.

8 Q. And does that look the same as when you took the
9 picture?

10 A. Yes, ma'am.

11 MS. FORD: Your Honor, at this time I would
12 like to admit Defendant's Exhibits 4, 5, and 6, Your
13 Honor. I think they would become 1, 2, and 3.

14 MS. SHEALY: No objection.

15 THE COURT: Admitted.

16 (Defendant's Exhibit Nos. 1, 2, and 3 were
17 marked for identification and admitted into evidence.)

18 BY MS. FORD:

19 Q. What is that a picture of?

20 A. That's a picture of the defendant's neck.

21 Q. Okay. And now I'm showing you what has been
22 previously marked as Defendant's Exhibit 5. What is that
23 a picture of?

24 A. That is a picture of the tattoo on the defendant's
25 left hand.

MATTHEW DAVIS - CROSS BY MS. SHEALY

1 Q. And now I'm showing you what has been marked
2 Defendant's Exhibit 6, and what is that a tattoo of?

3 A. That is a tattoo on his right hand.

4 Q. Okay. And during the course of your
5 investigation -- are you also aware of other multiple
6 tattoos on Mr. Butler's arms as well?

7 A. Yes.

8 MS. FORD: I have no further questions, Your
9 Honor.

10 THE COURT: Cross?

11 MS. SHEALY: May it please the Court?

12 CROSS-EXAMINATION

13 BY MS. SHEALY:

14 Q. Mr. Davis, in your role as an investigator at the
15 public defender's office, you also were able to see some
16 photographs of tattoos of Mr. Butler that the jail had
17 taken; is that correct?

18 A. Yes, ma'am.

19 Q. Okay. I'm going to show you a number of those
20 photographs and ask you if you recognize those.

21 A. Yes, ma'am.

22 Q. And you indicated to Ms. Ford that there were
23 tattoos on his arms; is that correct?

24 A. Correct.

25 Q. There were tattoos on the under part of his arm

MATTHEW DAVIS - CROSS BY MS. SHEALY

1 and on the front part of both arms; is that correct?

2 A. Yes, ma'am.

3 Q. And that he had some tattoos on his chest?

4 A. Correct.

5 Q. And tattoos on each leg?

6 A. Yes.

7 Q. And when you went to take photographs of him, you
8 saw the tattoos on his arms; is that correct?

9 A. Correct.

10 MS. SHEALY: Your Honor, at this time I would
11 like to move into evidence State's Exhibit 81, 82, and
12 83.

13 MS. FORD: And I object, Your Honor. May we
14 approach?

15 (Discussion held at sidebar.)

16 MS. SHEALY: Thank you, Your Honor. I was
17 just going to follow up with one question.

18 BY MS. SHEALY:

19 Q. So regarding Mr. Butler and the tattoos on his
20 arms, they were tattoos down both sides, front and back;
21 is that correct?

22 A. Yes, ma'am, from the elbow down, from what I saw.

23 MS. SHEALY: Very good. Thank you.

24 THE COURT: Any redirect?

25 MS. FORD: No, Your Honor.

1 THE COURT: You may step down. Do you have
2 any other witnesses?

3 MS. FORD: No, Your Honor. At this time the
4 defense rests.

5 THE COURT: Anything in reply?

6 MS. SHEALY: No, Your Honor.

7 THE COURT: Folks, you have now heard all of
8 the evidence in this trial, so we'll break for the day
9 because we have to still have a charge conference and
10 then we would have arguments and begin deliberations.

11 It would be probably closer to 6:00 before
12 you get it. We'll go ahead and work some on what we have
13 to and then have it ready for you to just begin hearing
14 arguments in the morning and begin deliberations, so
15 let's break for the day.

16 So even though you have heard all of the
17 evidence, it's improper for you to begin your
18 deliberations and discussions with each other about the
19 case. It's really improper for you to even start
20 thinking about your verdict. I mean, I know I can't
21 control your mind, but until you hear the arguments, but
22 most importantly until you hear the law that applies to
23 these facts, you really don't know how to go about
24 arriving at a verdict.

25 So please just go home and enjoy your day.

1 Don't try to find out anything on the Internet or
2 anything like that. Don't discuss the case with each
3 other, and just be back in the jury room at 9:30 tomorrow
4 and we will get started with the closing arguments,
5 charge on the law, and then you'll begin your
6 deliberations.

7 Thank you for your patience today.

8 (In open court, jury not present.)

9 All right. Anything else we need to take up
10 before we break? You got your copy of the jury charges
11 to take home. I will think about the specific intent
12 versus general intent question and let you know in the
13 morning.

14 MS. FORD: I didn't know if there was going
15 to be some type of circumstantial evidence charge.

16 THE COURT: There is a direct circumstantial,
17 isn't it? Brand new. Fresh hot off the press. You got
18 it.

19 MS. FORD: At this time, Your Honor, I would
20 just renew all my prior motions for the rest of my case.

21 THE COURT: All right. They are denied. See
22 y'all at 9:00 -- how about y'all get here about 9:15 so
23 we can kind of finalize the jury charges.

24 MS. FORD: Yes, sir. I am also requesting
25 the lesser included.

1 THE COURT: We'll talk about it tomorrow.

2 MS. FORD: Yes, sir.

3 (Recess taken.)

4 (January 17, 2014.)

5 THE COURT: You'll see on page four I put in
6 the changes that the State had recommended in that first
7 sentence, and then on page five, on the last bulleted
8 paragraph above -- it is the at the beginning of the
9 charge on kidnapping, I made a change in what the State
10 wanted me to take out, the entire sentence that said a
11 specific intent is not required.

12 Well, the statute says it's with an intent to
13 kill. I'm putting in the language that says an intent to
14 kill is an element of attempted murder, and then I'm
15 putting in the sentence intending a result which actually
16 occurs, not accidentally or involuntarily, and the rest
17 of it I believe was already there.

18 I think that is correct. I'll hear any
19 objections if anybody wants to make any.

20 MS. SHEALY: I do, Your Honor. Regarding the
21 entry you're making about, page five, I don't have a
22 problem with your putting in an intent to kill as an
23 element of attempted murder, but the next sentence
24 doesn't make sense to me: Intent means intending the
25 result which actually occurs. He wasn't attempting -- he

1 was intending to kill her, so the result was not
2 achieved. See what I'm saying?

3 So for it to say intent means intending the
4 result which actually occurs. I think the remainder of
5 the paragraph fully explains intent to kill, but to say
6 intent means intending the result which actually occurred
7 seems difficult for me.

8 THE COURT: Well, I see your point. I see
9 your point. I would counter with well, it's always been
10 in an intent charge, and you would always have that
11 problem, either with attempted murder or the old ABWIK.
12 Nobody ever attempts murder or attempts, under the old
13 ABWIK statute, to almost kill them.

14 MS. SHEALY: Right. Well, let me ask you
15 this: If it would be okay with the Court, what if you
16 were to take out intent meaning intending the result
17 which actually occurs and instead saying intent means
18 that it was not accidental or involuntary?

19 THE COURT: Or how about intent means not
20 accidentally or involuntarily.

21 MS. SHEALY: That would be fine with the
22 State.

23 THE COURT: Ms. Ford, do you want to be heard
24 on that? I'm just looking at some of the case law when
25 they define specific intent. I don't know if that

1 language would be more helpful. Well, I don't know of
2 any case law that says specific intent language on
3 attempted murder statute. It's so new.

4 MS. FORD: I mean in general.

5 THE COURT: So the magic of the word specific
6 escapes me when I have an intent to kill is an element of
7 attempted murder. You've got the language there that you
8 want.

9 MS. FORD: Well, just as the solicitor and I
10 were talking about, the definition, they don't go into
11 for attempted murder since there is no case law on that
12 but just specific intent in general is defined in the
13 South Carolina case law to prove attempt, the State must
14 prove that the defendant had the specific intent to
15 commit the underlying offense, along with some overt act
16 beyond mere preparation in furtherance of the intent, or,
17 in the alternative, the defendant consciously intended
18 the completion act comprising the inchoate offense.

19 MS. SHEALY: Well, I think each of those
20 definitions do remedy the problem that I was asserting
21 with that second sentence, because they're saying what he
22 intended was -- how is it phrased again, Mary? The
23 underlying offense.

24 THE COURT: Let me see. I would say instead
25 of comprising the inchoate offense, how about charged

1 offense, which I think is really what it's saying.

2 MS. SHEALY: It's not even the charged
3 offense, is it? Is it referencing an attempt when it is
4 using that?

5 THE COURT: Why don't we look it up, since
6 nobody knows. Inchoate: Finished, replete. It says
7 completed. The completion of acts comprising --

8 MS. SHEALY: Sort of -- I'm not sure which
9 one you're looking at, completed this, a more
10 comprehensible role. Judge, one other -- Ms. Ford's
11 e-mail that she sent you, I don't know if you have that
12 before you --

13 THE COURT: Yes.

14 MS. SHEALY: This sentence might make it as
15 clear it as needs to be: Specific intent means the
16 defendant intended to complete the acts comprising the
17 underlying offense.

18 THE COURT: That the works for me if that
19 works for you. Does that work for you?

20 MS. FORD: Yes, Your Honor.

21 THE COURT: I will leave in the changes I
22 said I would leave in. While she's doing that, let's
23 talk about lesser included. She wants ABHAN and all the
24 A and B charges. What is the evidence that entitles you
25 to those charges, entitles your client to those charges?

1 MS. FORD: I think the evidence is Ms. Martin
2 testified the man's hands were around her mouth and her
3 forehead and everything.

4 THE COURT: And the jerking --

5 MS. FORD: Yes, but I think it's possible the
6 jury comes to the interpretation that the man does not
7 intend to actually kill her, but, rather, trying to get
8 her to --

9 THE COURT: A chiropractic adjust or what? I
10 mean, we don't understand it. The only evidence we have
11 is he not only put his hand over her forehead and chin
12 but he was jerking her head to the side. You can't just
13 say one thing. There's no evidence other than that.

14 MS. FORD: I just think the jury could come
15 to the conclusion that there was not an intent to kill,
16 Your Honor.

17 THE COURT: How?

18 MS. FORD: Just because the circumstances she
19 was in a is very stressful situation, obviously. She
20 doesn't remember all of the details and everything that
21 was occurring. She passed out, and so I just think --

22 THE COURT: And then he resumed the exact
23 same attack. That is uncontroverted evidence. Now, they
24 can believe it or not, but it is uncontroverted that that
25 is what happened. He took his hands, put it over her

1 head and her chin, and snapped her neck to the side till
2 she passed out. All right? And then he did it again
3 when she came out.

4 So if you were to say his intent was not to
5 kill her but to cause her to just pass out, well, he
6 accomplished that, so to do it again makes no sense. If
7 you want to say, well, all he wanted to do was cause her
8 to pass out so that he could rob her and take her stuff,
9 he had the opportunity to do that.

10 I'm just trying to think, how is there any
11 view of the evidence that we have that he had anything
12 other than the intent to kill her?

13 MS. FORD: She passed out but then she came
14 to so the man did it again and got her to pass out again.
15 It didn't work the first time. That's why he had to do
16 it again.

17 THE COURT: And what?

18 MS. FORD: I understand that's the only
19 evidence about what happened that evening. We just think
20 the jury could come to the conclusion there was not a
21 specific intent to kill, so in that case, an ABHAN charge
22 and assault and battery first charge and the others would
23 be appropriate, Your Honor. Just cause of the various
24 assaults there is great bodily injury, moderate bodily
25 injury.

1 THE COURT: You would be entitled to those
2 charges if there was some way to construe the evidence as
3 fitting all those elements without intent to kill, but
4 there is no way to view this evidence, as I see it, other
5 than with an intent to kill, because he did it until she
6 passed out and then he started to do it again and then
7 another car came along. A car came along and spooked him
8 and he dropped her and ran off. I don't know how you
9 construe that as other than an intent to kill, and I've
10 thought about it.

11 Ms. Shealy, what are your thoughts on it?

12 MS. SHEALY: I don't think there is anything
13 in the record that warrants inclusion of lesser
14 includeds.

15 THE COURT: I agree with you. I just don't
16 see how you can have the uncontroverted evidence that we
17 have and not view that evidence as not having an intent
18 to kill, and that's the only way you get the lesser
19 included.

20 I agree, they are lesser includeds but the
21 facts have to support them, and there is no way to view
22 the uncontroverted evidence as whoever did it. She says
23 it was him, had the intent to kill her at that time. So
24 I'm not going to allow lesser included. It's is straight
25 up attempted murder, kidnapping, carjacking.

1 MS. SHEALY: Regarding your carjacking
2 charge, Ms. Ford and I noticed that the second paragraph
3 under carjacking deals with great bodily injury, and I
4 don't believe we need to have that charge.

5 THE COURT: All right. Do you agree?

6 MS. FORD: Yes, Your Honor, I agree.

7 THE COURT: All right. We'll take it out.
8 What else?

9 MS. FORD: I would request an identity
10 charge. I think that would be appropriate in this case
11 considering the identification.

12 THE COURT: Do you have an identity charge?

13 MS. FORD: Yes, Your Honor!

14 THE COURT: Let me see what you have.

15 MS. FORD: This is from the -- I think it may
16 be one of the judges.

17 MS. SHEALY: Your Honor, I object to this
18 charge for this reason.

19 THE COURT: Let me see it. All right.

20 MS. SHEALY: What I'm concerned about
21 regarding that charge, Judge, I think that the jury is
22 entitled in this case -- obviously, we've got to prove
23 that he did it. I'm not arguing that it's not our burden
24 to prove that he did it, I think that that is confusing
25 in that it suggests that it has to be narrowed to the

1 identification process.

2 I think the jury in this case can take that
3 process along with his being found at the club, with the
4 key in his shoe, with his items in her car in assessing
5 whether or not we've proven it beyond a reasonable doubt.

6 I'm afraid that isolates the identification
7 process and tells this jury, we have to prove to you
8 beyond a reasonable doubt that when she identifies him in
9 the lineup that it's him. I think what we're allowed to
10 do is that's part of it, and then we can combine it with
11 his being found at the club with his key and her car.

12 MS. FORD: And I don't think anything
13 suggests that they're to disregard all the other
14 evidence, Your Honor, just with the identity in
15 particular, I think the case law is clear --

16 THE COURT: I agree with you. It will come
17 in. That's an argument you can make, but I don't read
18 this language as in any way referred to her -- it's just
19 a lineup process, or the six-pack process. To talk about
20 things like how long she saw him, time of day, all those
21 things could refer just as easily to the actual incident
22 earlier in the day when she saw him as opposed to just
23 identifying him as part of a photo lineup, so -- is this
24 out of the charge book?

25 MS. FORD: Yes, Your Honor.

1 THE COURT: All right. Anything else?

2 MS. SHEALY: Would it be possible for me to
3 get a copy --

4 THE COURT: You can have that one.

5 MS. SHEALY: Okay.

6 THE COURT: Anybody have any issues with
7 these charges other than you still, of course, want ABHAN
8 and the other lesser includeds but other than that?

9 MS. FORD: No, Your Honor, not other than
10 that.

11 MS. SHEALY: No, sir.

12 THE COURT: Okay. Is everybody ready to go
13 then? Bring the jury in.

14 (In open court, jury present.)

15 THE COURT: Welcome back, folks. We're now
16 going to the final phase of the trial where we have the
17 closing arguments by the parties, and then I will charge
18 you on the law. Then you will retire to consider your
19 verdict.

20 In this final part where we have the closing
21 arguments, I'll remind you that the lawyers are getting
22 up now, reviewing the evidence in the record, making
23 arguments based on that evidence and the law as I will
24 charge it to you.

25 They are not testifying, so don't consider

1 what they're saying as evidence. You have heard all of
2 the evidence, or seen all of the evidence, that has come
3 in during this trial.

4 Now, the burden of proof remains on the
5 State, so under our rules, the State gets to close, and
6 so you will hear first from the defense lawyer and then
7 from the solicitor. Ms. Ford, if you're ready, you may
8 begin.

9 MS. FORD: Thank you, Your Honor. Black
10 male, late 20's, about six feet tall, jeans, dark jacket.
11 That's a description given of the male. That's the only
12 description given of the man.

13 The State would have it both ways: They want
14 to say that Ms. Martin that day got such a great look at
15 the guy because earlier in the day she had seen him when
16 she was in her house. She had seen him through a window,
17 across the way at her neighbor's door for a short amount
18 of time, and then later, as the man, before he approached
19 her, he walked through her yard, and basically she was a
20 little annoyed that he was walking through the yard.

21 But then they would like you to accept that,
22 well, she really didn't get a great look at him in other
23 ways because she was too scared. And so they want to say
24 she wouldn't recognize obvious things and she wouldn't be
25 able to give any more of a detailed description than what

1 she did.

2 It doesn't work like that. Ms. Martin spoke
3 to numerous people that evening. She spoke to the 911
4 operator, to Deputy Kjellman, to Detective Herriott. You
5 didn't see him but you heard of him. That day she didn't
6 give him any more description. The next day she met with
7 Detective Perkins.

8 Yes, she was in shock, understandably, but
9 the next day, she didn't mention anything more, and then
10 the following day she met with Detective Perkins and with
11 Detective Smith and still nothing more, no more details.

12 She didn't even remember what the guy's hair
13 looked like. She told us on the stand that she never
14 gave a description of the hair, that she couldn't
15 remember, and she tried to fill in the gaps, and that's
16 normal. Humans do that, but she said he was maybe
17 wearing a cap, but she admitted she didn't actually
18 remember that. She just knows that she didn't remember
19 his hair, even though hair is the easiest thing to
20 describe about a person, if it's dark, short, medium,
21 curly, straight. It's generally the easiest thing to
22 pick up on.

23 Instead, what she has done is the most
24 obvious thing possible, and, in court, she identified
25 Mr. Butler as being the man, but what else could she do?

1 He's the only man sitting at the defense table. Of
2 course, she would identify him here in court over two
3 years later. She has acted in the trial confident about
4 her identification of Mr. Butler. However, that
5 confidence was not exhibited at the time over two years
6 ago.

7 When the police asked her, when they spoke to
8 her after they responded, they asked her, in her written
9 statement you heard about, would you be able to identify
10 the guy? And she told them, I don't know. And then,
11 when Detective Smith showed her the lineup, it took her a
12 while to pick out someone. She told us several minutes,
13 and she didn't say, yes, that's the man right there.
14 That's the man who did it.

15 No. She said, He looks most like the guy.
16 He looks most like the guy, not, He looks most like the
17 guy but I'm not quite sure about the hair or the skin
18 tone because there are little notes saying that the guy's
19 hair or skin tone whatever may be different. She didn't
20 say anything like that. He just looks most like the guy.

21 Well, he's also very likely the only one in
22 the lineup from Ravenel. Ravenel is not this huge town.
23 It's a small area, so many of you are probably familiar
24 with it in some way, and Jericho mobile home park is
25 where this incident began. It's where Ms. Martin lived,

1 and you heard it's a pretty small area. You saw the
2 Google overhead map, and you heard from Deputy Kjellman,
3 I believe. There's only about 40 homes there, only a
4 couple of roads. It's not too big.

5 Ms. Martin had lived there since 2007, and we
6 know Latrone Butler had lived there too because you saw
7 his ID in evidence, and it's the same exact address as
8 Ms. Martin except a different lot, of course.

9 We also know that at some point Ms. Martin
10 took a black man to work at Harvest Moon Grill. We know
11 from the evidence that Latrone worked at Harvest Moon
12 Grill at some point because those pay stubs were in his
13 wallet.

14 So who did it? Well, it probably was that
15 man that Ms. Martin had seen earlier that day, the man
16 who was at the neighbor's door and maybe saw her and
17 thought maybe she might be an easy target. Does it make
18 sense that Latrone Butler took the car of a lady who
19 lived in his very same small neighborhood and that he
20 didn't try to get rid of the car, but instead held on to
21 it for several days?

22 The State may say, well, that's why he tried
23 to kill her, but whoever did this act, they knew that
24 Ms. Martin was not dead when they left. And when Latrone
25 Butler was found, 55 hours later, at the club, he was

1 still in the same area, the Ravenel Hollywood area. He
2 wasn't across the county in North Charleston or wherever
3 else. He was in a small area, a small area in which the
4 police would obviously be looking for this car. So it
5 doesn't make sense that the person who ultimately did
6 have the car, which was Latrone, that he had the car if
7 he had known the circumstances of how that car was
8 gotten.

9 It doesn't make sense, but he did have the
10 car. The State is likely going to stress that because he
11 did. It was in his possession. He was in the club, but
12 he had the key on him and some of his belongings were in
13 the car. But this was 55 hours later, and no one put
14 Latrone Butler in that car before then. So much can
15 happen in 55 hours.

16 What does the evidence show? Well, the
17 evidence shows that Latrone's fingerprints are on the
18 car. Again, he did have possession of the car at some
19 point, but the evidence also shows that there are prints
20 on the car, seven other prints, and it could be as many
21 as seven other people. Officer Hallman said he didn't
22 know, but he just knew that those prints did not belong
23 to Latrone Butler, and then there is the DNA.

24 The DNA on the steering wheel is tied to
25 Latrone Butler. Again, he was in the car, but there also

1 is the DNA on the steering wheel of another person, and
2 we know for certain that that other person was not
3 Ms. Martin.

4 So what that means is that there had been a
5 third person at some point driving that car. Mr. Butler
6 was the major contributor, so as the DNA person told us,
7 that could mean that he was just the one who had it last,
8 but there was DNA from a third person on the steering
9 wheel as well. So what makes sense is that someone else
10 gave the car to Latrone during those 55 hours, and
11 Latrone had the car because he didn't know better. He
12 didn't know that that car was gotten from a carjacking.
13 That's why he didn't -- he had no reason to think that he
14 shouldn't be hanging around this small area.

15 There's physical evidence tying Latrone to
16 the car, but there's no physical evidence tying him to
17 the actual incident, the actual carjacking. You heard
18 that they could have gotten DNA off Ms. Martin, but
19 there's no DNA that was found or whatever. There's no
20 DNA on her.

21 There's the jeans. You saw the blood spots,
22 and of course you were thinking, oh, maybe that's Ms.
23 Martin's blood, but that is his own blood. Ms. Martin's
24 DNA is not on his jeans at all, and there is no
25 indication that the carjacker had cut himself or anything

1 like that, just a pair of pants with his blood on it.

2 There's that object, which the State will
3 likely say is probably the gun, the pretend gun, the
4 object taped up. Ms. Martin had never gotten a chance to
5 see the object. She just felt something at some point.
6 The man said he had an object, but that object was up
7 under the driver's seat, and Mr. Butler's fingerprints
8 were not on that object.

9 When Ms. Martin got her purse back,
10 thankfully, she made sure the sheriff's deputies could go
11 pick it up because that way they could look through it
12 and see if they could find any physical evidence in
13 there, but nothing was ever done or anything to tie
14 Mr. Butler to that purse.

15 And so now we come to the clothes. The State
16 showed you pictures of the jeans, and they showed you the
17 jeans. Ms. Martin, after all, had said the carjacker was
18 wearing jeans, but she didn't say dark jeans or light
19 jeans or medium jeans. She didn't say the genes had a
20 big 79 on them like Mr. Butler's jeans do or a patch on
21 them. She just said jeans. She didn't identify these
22 jeans.

23 Every man probably owns a pair of jeans.
24 There is a jacket, which there is no DNA tying the jacket
25 to Mr. Butler, but it's a dark jacket. Ms. Martin had

1 said the jacket was dark. She never before had mentioned
2 that it was quilted. She did in court after seeing
3 pictures, but it was a dark jacket. Ms. Martin never
4 identified color; she never identified the jacket in
5 court as being the jacket of Mr. Butler.

6 Many men own a dark jackets, and, also, this
7 is 55 hours later. Obviously, Mr. Butler was in a
8 different set of clothing when he was arrested, and so
9 does it make sense that he would somehow go and change
10 clothes but keep the clothes that he had supposedly used
11 in a carjacking in a car just for some reason he didn't
12 have other clothes in, that he just really wanted to have
13 those clothes in the car for 55 hours? That doesn't make
14 any sense.

15 And, yes, there is the conversation from the
16 jail. What does that conversation reveal? Mr. Butler
17 says, Yeah, I did it. He doesn't say that. Instead, he
18 tells us why he was asking the lady to go to -- the lady
19 to say those things about him being on crack because
20 Detective Perkins came to him and convinced him, man --

21 MS. SHEALY: Objection, Your Honor.

22 THE COURT: What's the objection?

23 MS. SHEALY: Asserting facts not in the
24 record.

25 MS. FORD: It's from the transcript, Your

1 Honor, or from the tape. The tape mentioned Detective
2 Perkins.

3 THE COURT: Step up.

4 (Discussion held at sidebar.)

5 MS. SHEALY: She was talking about what
6 Perkins did.

7 MS. FORD: It was in the tape.

8 We don't know if it was Detective Perkins.
9 It was the back detective who came to Mr. Butler and
10 indicated to him -- and it's hard to make out exactly
11 what's said, but, Those white people hate you. Man, you
12 must have been on drugs.

13 And so that is what was in his mind, you can
14 tell from the tapes, of Latrone Butler when he's
15 realizing there's this car he was arrested in, there was
16 the car involved in the carjacking, and he had to do
17 something to help himself because things just don't work
18 out when the truth comes out.

19 Or the black detective that Mr. Butler refers
20 to in the jail conversation, he had put it in his head,
21 can you tell that's the mindset of Latrone when he's
22 speaking on these jail tapes, trying to do whatever he
23 can, because, again, things don't always work out as they
24 should, or as they're supposed to.

25 After all the police -- you saw that the

1 police, after maybe that first day, didn't give much of a
2 care to this case. Detective Perkins, the case agent,
3 when he wrote his report, he didn't even bother to look
4 at the evidence, or we can assume that because the
5 information in his report was completely wrong. He
6 indicated that Ms. Martin had been driving the car with a
7 knife held to her throat.

8 Now, I wasn't pointing out those things to
9 show that Ms. Martin had changed her story or anything
10 like that, but to show that Detective Perkins apparently
11 couldn't have been bothered to review the reports before
12 writing his reports. And then, at a preliminary hearing,
13 under oath, he swore that the prints found in the car
14 matched Latrone Butler, but we heard that those findings
15 did not exist until last week.

16 So, clearly, Latrone Butler was not going to
17 get a fair chance. Latrone is a Ravenel boy. Latrone is
18 a Jericho mobile home park boy, and that is why he was
19 picked out in that lineup, because he looked familiar.
20 And that is why, in this small town, he was able to come
21 into possession of that car.

22 The evidence does not support that he did
23 these things. He has numerous characteristics that
24 Ms. Martin never identified or never described on the
25 man. Ms. Martin told us how she realized at some point

1 the man was driving in the wrong gear shift, and she told
2 him, Hey, you might want to change that, and the man did.
3 The man turned around numerous times, went in reverse,
4 changed his direction. All of that time while he wasn't
5 wearing gloves his hand would have had to have been down
6 at the gear shifter between the driver and Ms. Martin.

7 Latrone, as you saw, has very noticeable
8 tattoos on his hands, on both, and they pretty much cover
9 the whole hand. If the person, the driver, had been
10 Mr. Butler, then Ms. Martin would have noticed those
11 tattoos.

12 Also, the guy, at several points he grabs Ms.
13 Martin and drags her around. If somebody grabs you,
14 usually your first reaction just not thinking is to look
15 down at where that person, you know, where you're being
16 grabbed. At no point does she see big tattoos on the
17 person's hands.

18 She wasn't able to describe facial features
19 in any way. She did mention height, but she said around
20 six feet initially. At one point there's five-eleven out
21 there. She said five-ten to six feet now. Mr. Butler's
22 ID does say five-eleven. You may have seen him when he
23 stood at the beginning of this trial. He's not --
24 doesn't seem five-eleven. Many people exaggerate on
25 their IDs. But regardless, I mean, height is an easy

1 thing to get mistaken. That's fair enough to say.

2 But the State stressed that because there
3 really are no details, there never were any details given
4 of the man. Ms. Martin was right: She was right when
5 she said she had never seen the man before that day.

6 The man who did this, she had never seen
7 before that day, and the evidence would indicate that the
8 chances are that she had seen Latrone Butler before that
9 day, in that neighborhood, that small neighborhood, and
10 we can come to the conclusion that since Latrone worked
11 at Harvest Moon Grill and she gave a man a ride to
12 Harvest Moon Grill, which I would think would be a pretty
13 memorable thing -- it sounds like she was very nice and
14 gave this man she didn't know a ride.

15 That was a very nice thing to do, but I'm
16 assuming it wasn't something she did on a regular basis,
17 take strangers to work, so that would be memorable, but
18 she didn't recognize the man who had robbed her as being
19 a man that she had seen before or given a ride to before.

20 Ms. Martin went through a terrible ordeal.
21 Again, that is absolutely not in dispute. It was
22 horrific, but you are not here to determine if she went
23 through this terrible ordeal. You're here to determine
24 if the State has proven beyond a reasonable doubt, which
25 is a very high burden, that it was Latrone that did these

1 things.

2 While Latrone had the car, that was 55 hours
3 later , 55 hours that are unaccounted for, 55 hours of
4 doubt. Latrone Butler is not guilty, and we would ask
5 you to come back with verdicts of not guilty.

6 Thank you.

7 THE COURT: Ms. Shealy?

8 MS. SHEALY: May it please the Court: Good
9 morning. Latrone Butler, he didn't have a gun, but he
10 came up with this. Can't you just see him, taping it
11 together? Did he have it earlier when he was knocking on
12 the neighbor's door to see if someone was there? He
13 wanted who he used it on to believe it was a gun.

14 He wanted a car, and then he had to get rid
15 of her, kill her. There is someone out there who drove
16 down Hyde Park Road and saved her life. They have no
17 idea, because he wasn't going to stop until he killed
18 her. It spooked him and he fled like a coward. Let's
19 talk about Letty Martin for a minute.

20 His Honor will instruct you on the law, and
21 part of that is that you, each of you, determine the
22 believability, the credibility, the reliability of the
23 witnesses. You saw her demeanor. You saw her testify;
24 you heard her testify. She did not come in here and
25 exaggerate anything. She didn't take this stand and make

1 up that she knew at the time who it was. She didn't come
2 in here and tell you she knew it was a guy she had given
3 a ride before. She didn't come in here and tell you she
4 was looking at him the whole time. She did absolutely
5 nothing to exaggerate this.

6 She is believable. Very exact. When she
7 answers questions, she took care any in making sure that
8 she was answering it as accurately as she could.

9 Now, she was composed in the courtroom, and
10 sometimes that concerns us when a victim of this type of
11 horrendous act takes the stand and doesn't break down.
12 Well, everybody has a different way of reacting, and she
13 told you, she wasn't as composed that night as she was in
14 here.

15 What did Penny Jo Mizell -- the woman who
16 thankfully answered the door when Ms. Martin had to walk
17 down that gravel road to seek help? She told you how
18 upset Ms. Martin was. Look at the pictures taken of
19 Ms. Martin that evening. She had just gone through the
20 worst event in her life, and she recalled everything that
21 she could recall about the event.

22 She told the 911 operator, black male, dark
23 jacket, jeans, about six feet tall, late 20's. She saw
24 Officer Kjellman. Then she sees officer Keith Herriott
25 that same evening, and this is what's interesting. When

1 she was asked by Detective Keith Herriott, Will you be
2 able to recognize him? She said, honestly, I don't know.

3 She didn't know. She never tried to inflate
4 this in any way. She was speaking from the heart. The
5 police knew that she said I may not be able to recognize
6 him.

7 When she gets called into the sheriff's
8 office and Chris Smith tells her, now, the perpetrator
9 may not be in this picture, you saw Ms. Martin testify.
10 She is no one's fool. She realized, well, they may show
11 me something, and the guy may not be in here. She had no
12 pressure to identify someone. She told them she may not
13 be able to do it, and they told her he may not be in
14 there. But she does. She circles the number, she
15 initials it, and she states, he looks most like the
16 person that carjacked me and tried to kill me.

17 But what else does she tell you? After he
18 got arrested and she went to the bond hearing and she saw
19 him, she knew it was him. She saw him. You saw her
20 demeanor. If for one second Letty Martin thought that
21 was the wrong guy, you know she would have told them.
22 She doesn't want the wrong guy to get punished. She
23 wants the right guy to get punished.

24 Ms. Ford mentioned that Letty Martin said she
25 had never seen him before, and if you remember when she

1 was being questioned, that was the way Ms. Ford asked it.
2 Didn't you say you had never seen him before? And I had
3 to correct it. She had been asked, Do you know him? The
4 police always want to know if you know who did it. And
5 she said, I don't know him.

6 MS. FORD: Objection. It's not in evidence,
7 Your Honor.

8 MS. SHEALY: Your Honor, may we approach?

9 THE COURT: Yeah.

10 (Discussion held at sidebar.)

11 THE COURT: Overruled. Go ahead.

12 MS. SHEALY: If you'll recall, I went back up
13 and asked her, what had she been asked and she had been
14 asked do you know him, and she said no.

15 Remember what Detective Smith said and
16 Ms. Martin said as well. She didn't just look at that
17 lineup and go -- and choose someone. She studied every
18 photograph. You saw her. She's the type of person who
19 takes care in making big decisions. Latrone Butler.

20 Let's reflect back on what Ms. Martin had
21 said that morning when she looked out her kitchen window
22 that drew her attention. He drew her attention. He was
23 knocking on the neighbor's trailer. She saw him head on,
24 and later, after she's gone to teach dancing at the
25 senior center in Mount Pleasant and run a few errands,

1 who does she see coming between these two trailers
2 closest to her own trailer but Latrone Butler.
3 Frustrated that someone was walking that close to her
4 trailer.

5 She saw him that morning, she saw him. He
6 was the man who put her back into the car after using
7 this smart device on her ribs. Felt just like a gun.

8 He does that to a 67-year-old woman, puts her
9 back in her car, and says, you start it and she start her
10 vehicle. Then what does he do? Jerk her out of it,
11 walks her around, puts her in the passenger seat after
12 she said, I can't crawl over the gear area.

13 And as they drove, and as they drove and as
14 they drove, she kept looking over. He would say, Don't
15 look at me. Look straight ahead.

16 Why was he driving around? He told her, I'm
17 just going to have you drop me off somewhere.

18 Well, did that happen? Did she just drop him
19 off somewhere? Did he get out of the vehicle? No. When
20 cars came up behind, he would scurry another way. One
21 time when he tries to turn around quickly, he puts it in
22 the wrong gear.

23 Ms. Ford wants you to believe that at that
24 point she was studying his hands in the darkness of the
25 car to see the tattoos. You'll have the pictures.

1 What does she care about what his hands look
2 like at that point? She's praying to God she doesn't
3 die. Let's look back at the timeline here, because it's
4 so important. These crimes occur on December 5th. On
5 December 7th, two days later, Detective Perkins gets a
6 tip. Thank goodness for crime stoppers, and they put the
7 photo of Latrone Butler in a lineup.

8 He hasn't been to the club and gotten
9 arrested yet. They're operating on a tip, and so lo and
10 behold, when Ms. Martin goes in, she identifies Latrone
11 Butler. The tip was right. And then the next night, all
12 those police go to Hamm Grant's club.

13 Police haven't found him yet. They haven't
14 found Latrone Butler. They haven't located the car
15 despite the fact they were using all those techniques to
16 find it. And there he is, inside the club. How did he
17 park the car? It was backed in. License tag behind.
18 And Shaun James, who testified, told you, the photograph,
19 there were 150 or so people there. They had to bring
20 them out one by one and say, Show me your arms. And the
21 tattoos matched, and there was the key to her car, in his
22 shoe.

23 Is this a coincidence? Is it a coincidence
24 that the tip and the person she identified is the guy at
25 the club with the car and the key? No, it's not a

1 coincidence. It's because Latrone Butler chose to do
2 these things, and Ms. Ford wants you to believe, well,
3 would it make sense for him to keep the car?

4 They're not geniuses who do these types of
5 crimes. They're not geniuses. Did it just happen that
6 she identifies the guy who the next day is found with the
7 key? What does the car show? Jeans.

8 Now, Ms. Ford wants you to hold it against
9 Ms. Martin. She didn't know the brand, that she didn't
10 see the patch. Are you kidding me? Dark jacket. Long
11 sleeves. Who knows how long they went over his hands?
12 Neckline that would come up around your neck, and his
13 wallet. There's nobody else's wallet in there? Cereal
14 bowl. Was he living in the car? Cereal bowl wasn't Ms.
15 Martin's. The cigarette ashes all over the car weren't
16 Ms. Martin's. The jacket wasn't hers; the jeans weren't
17 hers; the wallet wasn't hers; and his DNA is on that
18 steering wheel; and the fingerprints on the driver's
19 side, not the passenger side, the driver's side.

20 And Ms. Ford wants you to get really
21 concerned that they couldn't find his fingerprints on
22 this. Where was it? It was on the driver's side floor
23 when Shaun James saw it. It's his. And what does Al
24 Hallman tell you about -- you'll have his report back
25 there -- the gun? Insufficient for identification. No

1 analysis performed. They couldn't get good prints off
2 it, but it's in the driver's side where the DNA on the
3 steering wheel is, where the fingerprints on the door
4 handle are and the fingerprint on the window.

5 What do the contents of that wallet tell us?
6 The same man who asked her to start the car, the same man
7 who got it out of gear, even though it was an automatic?
8 He had a beginner's permit for a license in that wallet.
9 And his date of birth? [REDACTED], 27 years old at
10 the time. What did Ms. Martin say? Late 20's. She
11 nailed it.

12 And you've heard the descriptions she gave,
13 about six feet, five-ten to six feet, five-eleven. Keep
14 in mind she is five-four. He was taller than her.
15 That's what she knew, but what did his ID say?
16 Five-eleven.

17 I guess Ms. Ford wants you to believe that
18 because he lived at some point in Jericho mobile home
19 park that she just remembers him from hanging out there.
20 You think Ms. Martin was hanging out with everybody,
21 given her age or her interests? I'll tell you what
22 Jericho mobile home park has to do with it: He knows the
23 area. He would be there. That's what it tells us.

24 Let's talk about the actual crimes. That day
25 he carjacked her. He put her back in that vehicle to

1 start it and in the passenger side when he was driving,
2 and he left her there, much to his misfortune,
3 ironically, alive. He wanted to kill her. The judge
4 will instruct y'all on the law.

5 Carjacking is when a person takes or attempts
6 to take a motor vehicle from another person by force,
7 violence, or by intimidation while the person was
8 operating the vehicle or while the person was in the
9 vehicle.

10 Carjacking: Guilty. He kidnapped her. He
11 put her in that car. Why didn't he just leave her
12 behind? Because he didn't want the police after him. He
13 put her in that car, and he put her through terror,
14 driving around, the whole time. Time has escaped her,
15 she said. It was just difficult to even put it all
16 together, timelines. Every turn he takes. Every route
17 he chooses. She is in the car and cannot get out.

18 Kidnapping: When the defendant knowingly and
19 unlawfully seizes, confines, kidnaps, abducts or carries
20 away another person. Kidnapping: Guilty. And the
21 attack itself, doesn't that show us more than anything
22 else about Latrone Butler? He finds the spot. Cars are
23 on the other roads. He finds that gravel road, with not
24 a lot of houses, not a lot of businesses, a country
25 gravel road and says, This is the spot.

1 And he forces her out of that car and leads
2 her to the back and repeatedly jerks her neck in an
3 attempt to kill her. She told you. It wasn't the way
4 she was showing you on the stand. It was snap, snap,
5 snap, and she goes down. Didn't satisfy him.

6 He pulls her up and he does it again and he
7 does it again and he does it again until that car comes.
8 He wasn't trying to beat her up, he was trying to kill
9 her. He realized, I got to get rid of her. He needed to
10 get rid of her permanently.

11 He didn't say, get out of the car and run.
12 He didn't say, okay. Drop me off here. He didn't say,
13 I'll let you out, but swear to me you won't call the
14 police. He did none of those things. He tried to break
15 her neck and kill her.

16 Look at these photos. No earring in the ear.
17 This is the picture that was taken later. I'm sorry.
18 The earlier picture, remember, there was no earring on
19 the side and she had one on the other side? This photo,
20 shows you -- look at her neck area, and I'll tell you
21 what, it shows you again that she is a fair and honest
22 person. She told me, now, I have some natural redness on
23 my neck. She wanted y'all to know that, but the
24 abrasions on her cheek and the scratch marks, that's from
25 his attack.

1 Right in here. Look at her collarbone. Look
2 at the bruise on her mouth. Her eye hemorrhages from the
3 impact, jerking her, jerking her, trying to take the life
4 out of her. Doesn't that speak volumes, a bruised tongue
5 from him? What shows you his intent more than anything
6 is that when she passed out, that wasn't good enough for
7 him. That didn't do the trick. Pulls her up and goes at
8 it again.

9 You will have the recording in the jail.
10 Actually, you won't have it back there, but if you need
11 to listen to it again, you can come back out and we'll
12 play it, and those are his words. And if you recall, two
13 days after his arrest, December 10th, talking to a girl,
14 he is still trying to be smart. Smart like this? He's
15 asking for some help because he's got some things figured
16 out. He has figured out a way to help himself.

17 This is what I need to tell you. This is
18 what I need you to do, you, Jazz, and Nicky. I need you
19 and Jazz to go to the lady's house. He knows the lady's
20 house. You follow me? Honestly now. This is what you
21 got to do. Go to her house and tell her I'm your cousin.
22 Don't let her know I'm your boyfriend, I'm your cousin,
23 scheming. Trying to work this thing out.

24 Say, He apologizes. You need to apologize
25 for what happened or whatever and say, say, he's strung

1 out on drugs. You follow me? Not, go down to that
2 lady's house and tell her she's got the wrong person. Go
3 tell her. It wasn't me. I just got that car from
4 somebody else.

5 That's not what he's saying. He's saying go
6 down there and apologize, not she's confused. She's
7 confused 'cause she gave me a ride one time to Harvest
8 Moon. I didn't do it. I did not do it. He doesn't say
9 that. Lie and said you're my cousin, go down to her and
10 apologize.

11 The girl says, I hear you. All right,
12 listen. Get out there. Both of you go out there and
13 say, he's strung out on drugs. I don't know, just be
14 like my cousin. Apologize.

15 Now, the reason I'm telling you this, when
16 the detectives come to me, when he gave me my papers, he
17 be telling me you can't -- white people, whatever. Boy,
18 they hate me.

19 The girl: What kind of drugs you on?

20 No, I ain't on. Oh, Lord. That's the catch
21 to the shit.

22 He's telling her, I'm not on drugs. I wasn't
23 on drugs that night, but go down to her and say he
24 apologizes. He was on drugs.

25 The girl says: What kind of drugs you on?

1 And he says: That's the catch to this shit.

2 She then says: Well, what kind of drugs do
3 you want me to tell her you're on?

4 Tell her on coke, crack, heroin.

5 The girl says: No, you're not.

6 He says: I got to. She says no. Well, what
7 you want me to use?

8 He's asking the girl. They're plotting.

9 Girl says: Just say coke.

10 All right. Better tell them that. All you
11 go to do is tell them, man, he is strung out. Say he's
12 high. And I'm going to have to use that for the
13 detective when he comes to me on Monday.

14 He's working the woman; he's going to work
15 the detective.

16 He'll say, meaning the detective, you on
17 drugs?

18 And when he tell me I be trying to catch on
19 to what he's telling me because he's a black dude. He's
20 a black dude. I can use that to my advantage.

21 Girl says -- I'm sorry. He says, What you
22 mean? He a black dude so I'm going to use that to my
23 advantage. The program they going to put you in is no
24 longer than four to eight months. Working it.

25 Never, I didn't do this. Get me a good

1 lawyer.

2 The girl says: So about a year?

3 And he says: Yeah. So once I tell them I on
4 drugs, he go back and he'll tell the next person I was on
5 drugs, and then the program is eight months, minimum of
6 four months, the maximum is eight. He is thinking. He
7 is working.

8 Let's hear it again.

9 (Whereupon, the recording was played for the
10 jury.)

11 Ladies and gentlemen: Letty Martin didn't
12 deserve what happened to her. Latrone Butler doesn't
13 deserve to get away with it.

14 THE COURT: All right, folks. Now we are at
15 the part of the trial where I told you at the beginning
16 you and I each have different duties. We're both judges,
17 but I'm the judge of the law and you're the judge of the
18 facts, and so I have duties as the trial judge to preside
19 over the trial, make sure the rules of our procedure were
20 followed, make sure our evidentiary rules were followed,
21 so you heard the evidence properly, exhibits were entered
22 into evidence, and stipulations of counsel were admitted.

23 It's now my duty to charge you on the law
24 that was applicable to this case and it's your duty as
25 jurors to accept the law as I now state it to you.

1 If you think you have some idea as to what
2 the law is or what it ought to be and it doesn't agree
3 with what I now charge you that it is, it is your duty
4 under the oath that you took to accept this law as I now
5 charge it to you and apply it as I state it.

6 You are the judges of the facts. You are the
7 sole judges of the facts. You determine such things as
8 how much weight to give the testimony of a witness, how
9 to judge the credibility of a witness. You can decide
10 whether or not a witness has a bias or prejudice or an
11 interest in the outcome of the suit. You can judge such
12 things as appearance and demeanor on the witness stand
13 and the reasonableness of a witness's statement.

14 You're not bound to decide this case based on
15 the number of witnesses that a side produces. You can
16 believe one witness over many and many over one. You can
17 accept all of a witness's statement or you can reject it
18 entirely. You can accept part of a witness's statement
19 and reject part of it, and if you reject part of it, of
20 course you can still accept the remainder of a witness's
21 testimony.

22 We also spoke about expert witnesses, and I
23 told you that ordinarily we don't let people come in and
24 tell you what their opinion is about evidence in this
25 case, but we make an exception for expert witnesses, and

1 those are people that because of education or experience
2 or specialized training in some area rise to a level of
3 expertise, and we allow them to come in and give you
4 their opinion about the case and state their reasons for
5 their opinion.

6 You decide how much weight to give an
7 expert's testimony. You can give it as much or as little
8 as you think it deserves. If you don't think a witness
9 has sufficient education or experience or you conclude
10 that an expert's opinion is not sound or that it's
11 outweighed by other evidence, you can disregard that
12 opinion entirely.

13 You're not compelled to blindly accept an
14 expert's opinion, and you have the right to consider how
15 much weight you want to give that testimony based on all
16 of the circumstances and evidence that you have heard
17 throughout the trial, and you give it the weight that you
18 think it's entitled, if any.

19 I want to remind you that the fact that the
20 defendant was arrested and charged and indicted in this
21 case is not evidence in this case and it can't be
22 considered by you as evidence of guilt in this case. It
23 does not present any presumption or inference of guilt.
24 The fact that he was indicted is simply a formal written
25 notice that puts him on notice of the charge that he is

1 standing trial for, and it is the way that this Court
2 gets jurisdiction over the case, but these indictments
3 are the only pieces of evidence that go back in the jury
4 room with you, or the only documents that will go back in
5 the jury room that are not evidence, again, going back in
6 the jury room simply for the purpose of you writing what
7 the verdict is on the back of it, and I'll go over that
8 with you in just a minute.

9 Now, the defendant pled not guilty to those
10 indictments, and that plea then casts a burden on the
11 State to prove the defendant is guilty beyond a
12 reasonable doubt. A person who is charged with
13 committing a criminal offense in South Carolina is never
14 required to prove himself innocent. This is an important
15 rule of law that we have in this country, that a
16 defendant in a criminal trial is always presumed to be
17 innocent of the crime for which he's indicted and until
18 his guilt has been proven by evidence satisfying you of
19 that guilt beyond a reasonable doubt.

20 This presumption of innocence is not a mere
21 legal theory. This isn't just a legal phrase. This is a
22 substantial constitutional right that every defendant is
23 entitled to. This presumption of innocence accompanies
24 the defendant from the time he's charged throughout the
25 trial and until you reach a verdict based upon evidence

1 satisfying you of guilt beyond a reasonable doubt.

2 I want to instruct you, and again emphasize,
3 the fact that the defendant did not testify is not a
4 factor to be considered by you in any way in your
5 deliberations and in your considerations on the question
6 of guilt or innocence of the defendant.

7 It must not be considered by you in any
8 manner whatsoever. The defendant has a constitutional
9 right to remain silent, and the assertion of this right
10 must not be considered by you in your deliberations. I
11 repeat: Under your oath, you are to draw no conclusion
12 whatsoever from the fact that the defendant in this case
13 did not testify. The fact that the defendant did not
14 testify should not even be discussed in the jury room.

15 The burden of proof as I've stated is on the
16 State. The defendant is not required to prove his
17 innocence. The burden of proof remains on the State to
18 prove guilt beyond a reasonable doubt. So what is this
19 reasonable doubt we've been talking about? And I told
20 you that you might have served as -- those of you that
21 might have served as a juror in a civil trial are told
22 that it was necessary only to prove something is more
23 likely true than not true. This is also called the
24 greater weight of the evidence or preponderance of the
25 evidence, but in a criminal trial, the State's proof has

1 to be more powerful than that. It must be beyond a
2 reasonable doubt.

3 Proof beyond a reasonable doubt is doubt that
4 leaves you firmly convinced of the defendant's guilt.
5 Very few things in this world that we know with absolute
6 certainty, and in criminal cases, the law doesn't require
7 proof that overcomes every possible doubt.

8 If, based on your consideration of the
9 evidence, you are firmly convinced that the defendant is
10 guilty of the crime that he has been charged with, then
11 you must find the defendant guilty. On the other hand,
12 if you think there is a real possibility that the
13 defendant is not guilty, then you must give the defendant
14 the benefit of the doubt and find him not guilty.

15 Now, there are two types of evidence in a
16 trial. There is direct evidence and there is
17 circumstantial evidence. Direct evidence directly proves
18 a fact or the existence of a fact, and it doesn't require
19 deduction. Circumstantial evidence is a proof of a chain
20 of facts and circumstances that indicate the existence of
21 a fact. Crimes can be proven by circumstantial evidence,
22 and the law doesn't make any distinction between the
23 weight or value to be given to either direct or
24 circumstantial evidence.

25 However, to the extent that the State relies

1 on circumstantial evidence, all of the circumstances must
2 be consistent with each other and, when taken together,
3 point conclusively to the guilt of the accused beyond a
4 reasonable doubt. If these circumstances merely portray
5 the defendant's behavior as suspicious, then the proof
6 has failed.

7 The State again has the burden of proving the
8 defendant guilty beyond a reasonable doubt, and this
9 burden rests on the State regardless of whether the State
10 relies on direct evidence, circumstantial evidence, or
11 some combination of the two.

12 Now, there are three charges in this case,
13 and I will go over the first one with you, and that is
14 attempted murder. Now, each of these charges are to be
15 considered by you separately. You will have a separate
16 verdict on each of the charges. You can find the
17 defendant guilty or not guilty of each of the charges
18 independent of what your verdict is on the other charges.

19 The first charge I want to go over with you
20 is attempted murder. In order to prove attempted murder,
21 the State must prove that the defendant, with the intent
22 to kill, attempted to kill another person with malice
23 aforethought, either expressed or implied. Malice is
24 hatred, ill will, or hostility toward another person.
25 It's the intentional doing of a wrongful act without just

1 cause or excuse and with an intent to inflict an injury
2 or under circumstances that the law will infer an evil
3 attempt.

4 Malice aforethought does not require that
5 malice exists for any particular time before the act is
6 committed, but malice must exist in the mind of the
7 defendant just before and at the time the act is
8 committed. Therefore, there must be a combination of
9 previous evil intent and act.

10 Malice aforethought may be expressed or
11 inferred. These terms, expressed or inferred, do not
12 mean different kinds of malice but merely the manner in
13 which malice may be shown to exist; that is, either by
14 direct evidence or from any inferences from the facts and
15 circumstances which are proven.

16 Express malice is shown when a person speaks
17 words which express hatred or ill will for another, or
18 when the person prepared beforehand to do the act which
19 was later accomplished. For example, lying in wait for a
20 person or any other acts in preparation going to show
21 that the deed was within the defendant's mind would be
22 express malice.

23 If the facts are proved beyond a reasonable
24 doubt sufficient to raise an inference of malice to your
25 satisfaction, this inference would simply be an

1 evidentiary fact to be considered by you, the jury, along
2 with any other evidence in this case, and you may give it
3 the weight you decide it should receive. Intent to kill
4 is an element of attempted murder, and the context of an
5 attempt crime, specific intent means the defendant
6 intended to complete the acts comprising the underlying
7 offense.

8 Intent means not accidentally or
9 involuntarily. Incident may be shown by acts and conduct
10 of the defendant or other circumstances from which you
11 may naturally and reasonably infer intent.

12 Evidence of the character of the act,
13 character of the instrument used, the manner in which it
14 was used, the purpose to be accomplished, and the
15 resulting wounds or injuries may be considered in
16 determining the incident with which the act was
17 committed. Intent may also be inferred when it
18 demonstrates that the defendant voluntarily and willfully
19 commits an act, the natural tendency of which is to
20 destroy another's life.

21 Now, the second charge is for kidnapping,
22 and, again, this should be considered independently for
23 what your verdict is for the other two charges. In order
24 to prove kidnapping, the State must prove beyond a
25 reasonable doubt that the defendant knowingly and

1 unlawfully seized, confined, inveigled, decoyed,
2 kidnapped, abducted, or carried away another person
3 without authority of law. It means -- to do a thing
4 unlawfully is to do it willfully against the law.

5 Knowingly means with knowledge, consciously,
6 not accidentally. Seize means to take hold of suddenly
7 or forcibly. Confine means to limit, restrict, or
8 enclose within bounds, imprison, or shut or keep in.
9 Inveigle means to lure, entice, or lead astray by false
10 representations, promises, or other deceitful means.
11 Decoy means to lure by, as if by, decoy.

12 A decoy is something to entice a person into
13 a trap. Kidnap is to remove a person against his will by
14 unlawful force or fraud. Abduct means to carry off
15 secretly or by force, for illegal purpose. Carry away
16 means to remove.

17 The State does not have to prove that the
18 defendant did all of these things. Instead, if you find
19 beyond a reasonable doubt that the defendant did any of
20 these things, you may find the defendant guilty of
21 kidnapping.

22 Something that is done without authority of
23 law is something which the law does not sanction, permit,
24 allow, condone, or provide justification for. The
25 kidnapping does not have to be for any personal or

1 monetary gain, for any illegal purpose but may be for any
2 reason whatsoever.

3 Now, the third charge is for carjacking, and,
4 again, this should be considered by you independent of
5 the other two charges. In order to prove carjacking, the
6 State must prove beyond a reasonable doubt that the
7 defendant took or attempted to take a motor vehicle from
8 another person by force and violation or about
9 intimidation while the person was operating his vehicle
10 or while the person was in the vehicle.

11 Now, an issue in this case is the
12 identification of the defendant as the person who
13 committed the crime charged. The State has the burden of
14 proving identity beyond a reasonable doubt. You must be
15 satisfied beyond a reasonable doubt of the accuracy of
16 the identification of the defendant before you may
17 convict the defendant. Identity testimony is an
18 expression of belief or impression by a witness.

19 You must determine the accuracy of the
20 identification of the defendant. You must consider the
21 believability of each identification witness in the same
22 way as any other witness. You may consider whether the
23 witness had an adequate opportunity to observe the
24 offender at the time of the offense. This will be
25 affected by things like how long or how short a time was

1 available, how far or how close the witness was, the
2 lighting conditions, and whether the witness had the
3 chance to see or know the person in the past.

4 Once again, I instruct you that the burden of
5 proof is on the State, and it extends to every element of
6 the crime charged, and this specifically includes the
7 burden of proving beyond a reasonable doubt the identity
8 of the defendant as the person who committed the crime.
9 If, after examining the testimony, you have a reasonable
10 doubt as to the accuracy of the identification, you must
11 find the defendant not guilty.

12 Finally, in determining the guilt or
13 innocence of the defendant, you cannot consider any
14 possible penalty for a particular crime. The punishment
15 of the crime is a matter for me to determine. It's never
16 to be considered by you in any way whatsoever in arriving
17 at a fair and impartial verdict as to the guilt or
18 innocence of the defendant. I will also instruct you
19 that your verdict must be unanimous.

20 So, Madame Foreman, these are the indictments
21 that will go back with you, and you'll see there's three
22 of them, and on the back of each of these, there is a red
23 stamp where it says true billed. Right below that, it
24 says verdict, and you write the verdict of the jury. The
25 two possible verdicts for each of the charge are either

1 guilty or not guilty. Whatever the jury unanimously
2 decides, you write that down, sign it, date it. All
3 right? Go to each one of them independently, same thing,
4 guilty or not guilty, give you options on each charge.

5 Once the jury has reached a unanimous verdict
6 on each of three charges, please let the bailiff know.
7 Now, I'm going to send you back. Don't begin your
8 deliberations just yet until I send the evidence back
9 with the indictments.

10 I have to give the lawyers just an
11 opportunity to say, you know, Judge, you misspoke. It
12 didn't come out like I said it was going to. Just a
13 formality we go through. We'll get the evidence
14 together, send it back with the bailiff, and when he
15 sends the evidence back and says the judge says you can
16 begin your deliberations, do that.

17 This just us takes a few minutes, but please
18 don't begin your deliberations until you get the word
19 along with the evidence. Thank you, and we'll see you in
20 a little bit.

21 (In open court, jury not present.)

22 THE COURT: Anything from the State?

23 MS. SHEALY: No, Your Honor.

24 THE COURT: From the defense?

25 MS. FORD: Just, Your Honor, about the

1 assaults and the lesser included.

2 THE COURT: How about y'all make sure
3 everything is together there. Is there any objection to
4 me sending the charges back?

5 MS. SHEALY: Not from the State.

6 MS. FORD: No, Your Honor.

7 THE COURT: All right. Good.

8 (At 11:15, jury retires to deliberate.)

9 (12:31 p.m., in open court, jury present.)

10 THE COURT: All right, folks. You asked a
11 couple of questions: What was the time of the 911 call
12 from Ms. Mizell's home? That time was not brought out in
13 evidence during the trial, so it's not something we can
14 go back and put in now, so the answer to that is I don't
15 know. It wasn't put in evidence.

16 And the other question, are we able to have
17 the location of lot four identified on State's Exhibit 1?
18 That also was not put in evidence during the trial, so we
19 cannot have new evidence considered now.

20 The other two questions are related -- the
21 first part was DNA analysis, item either 14 or 1.4, I
22 can't quite make out if there is a dot in the middle of
23 that. Was Letty Martin excluded as the second
24 contributor, and then you have a related question, is it
25 possible to read a copy of Catherine Leisy's testimony,

1 SLED forensic. We don't have a copy of the transcript,
2 but we can play the audio of it back. Do you wish to
3 have that played back? Okay. She's got it cued up. Go
4 ahead.

5 Is there any particular part that you want to
6 get to or you just want to hear the whole thing?

7 THE FOREPERSON: The question was just in
8 relation to whether or not Letty Martin was excluded from
9 the pocket swab and what the explanation was.

10 THE COURT: Okay. Does that answer your
11 question, or do you want to listen to more?

12 THE FOREPERSON: They said it was difficult
13 for them to understand.

14 THE COURT: That's best we can do.

15 THE FOREPERSON: Sure.

16 THE COURT: You want to hear it again or you
17 want us to play another part?

18 THE FOREPERSON: You want to hear it again?

19 THE COURT: Okay. So she'll go back with
20 you. Please don't discuss the case in front of her.
21 Just let her know what you want to hear. She'll play
22 back any of it, all of it, as many times as you want, and
23 when you're done, let us know and, she'll leave and
24 you'll resume your deliberations? Okay.

25 Thank you.

1 (Jury resumes deliberations.)

2 THE COURT: All right. Let the record
3 reflect the defendant is in the courtroom. I'm told we
4 have a verdict, so let's bring the jury in.

5 (1:53 p.m., in open court, jury present.)

6 THE COURT: All right. Welcome back, folks.

7 Madame Foreman: I'm told the jury has reached a verdict;
8 is that correct?

9 THE FOREPERSON: Yes, sir, we have.

10 THE COURT: Is it on all three indictments?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: Is it unanimous as to each
13 indictment?

14 THE FOREPERSON: Yes, sir.

15 THE COURT: Would you hand that to the
16 bailiff, please.

17 All right. Defendant will rise. As to
18 indictment 2012-GS-10-3304, indictment for attempted
19 murder verdict is guilty, signed and dated by the
20 foreperson of the jury. 2012-GS-10-3305, indictment for
21 kidnapping, verdict is guilty, signed and dated by the
22 foreperson. Indictment 2012-GS-10-3303, indictment for
23 carjacking, verdict is guilty, signed and dated by the
24 foreperson.

25 Thank you. You may be seated. All right.

1 Poll the jury, please.

2 THE CLERK: Whenever I call your juror
3 number, I am going to ask you two questions. Please
4 respond to each question appropriately, and also whenever
5 I call your juror number, please raise your hand so I can
6 identify fill you.

7 Juror number 79 is this your verdict?

8 THE JUROR: Yes, it is.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes, it is.

11 THE CLERK: Juror 73, is this your verdict?

12 THE JUROR: Yes, it is.

13 THE CLERK: Thank you. Juror number 70, is
14 this your verdict?

15 THE JUROR: Yes, it is.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes, it is.

18 THE CLERK: Thank you, sir. Juror 295, is
19 this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Thank you. Juror 105, is this
24 your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Juror 266, is this
4 your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Is it still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Thank you. Juror 285, is this
9 your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Thank you. Juror 358, is this
14 your verdict.

15 THE JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Thank you. Juror 136, is this
19 your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Thank you. Juror number 12, is
24 this your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 THE JUROR: Yes.

3 THE CLERK: Thank you. Juror 291, is this
4 your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Is it still your verdict.

7 THE JUROR: Yes.

8 THE CLERK: Thank you. Juror 11, is this
9 your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Your Honor, the jury has been
14 polled and the verdict stands.

15 THE COURT: Very well. Thank you, ladies and
16 gentlemen for your hard work and your service this week.

17 That will conclude your jury service for the
18 week. We very much appreciate your, first of all,
19 showing up, and for jury duty, and then, second, for
20 helping us out on this trial, listening, paying
21 attention. Part of my job is to occasionally look glance
22 and check y'all out, and everybody paid attention the
23 whole time. I didn't see anybody inattentive or sleeping
24 or anything like that, and it's clear to me that the time
25 that you spent deliberating shows that you took it

1 seriously and did the things that we ask people to do.

2 It's not easy to do jury service and some
3 cases are easier than others. Obviously this case had
4 some difficulties to it, and that was reflected, you
5 know, in the amount of time you took to deliberate, so
6 that shows us that you took it seriously and the system
7 works, you know, and that's all we can ever ask.

8 We'll all live with your verdict now, and we
9 thank you so much for the service that you did this week.
10 This is public service at its finest, and -- because I
11 didn't qualify the jury on Monday, but I often tell
12 jurors that, you know, it is often considered to be a
13 burden to be on a jury. It's a responsibility of
14 citizenship, but it's also a privilege to be on a jury,
15 and this is your government at work, and people all over
16 the world would like to have this opportunity to have
17 their guilt or innocence decided by fellow citizens, not
18 people in the government that work, and a lot of
19 countries, it's probably less than a handful, that have
20 the right to have a jury trial when a state accuses
21 somebody of a crime.

22 Most countries around the world, if you have
23 anything that resembles a trial as we would recognize it,
24 it's either a panel or panel of judges that would make
25 that decision, but our founding fathers thought it was so

1 important to have a right for a jury in this country that
2 they put it in the federal and state constitution, so
3 it's a big deal, and because we do it all the time, we
4 take it for granted, but it's special what you have done
5 this week, just by showing up and participating.

6 I'm not trying to say you know, we encourage
7 you to find people guilty or not. The State has their
8 burden. They need to put up their evidence. Y'all
9 listened to the evidence. You decided they met their
10 burden, and that's all we could ever ask you to do, is to
11 set, listen, weigh the evidence, apply the law, and if
12 you felt like the State met their burden, then find the
13 defendant guilty, and if you had found otherwise, we
14 would live with that as well.

15 So we thank you for your service. You are
16 now free to go. You don't have to stick around. Did the
17 lunch ever come? You're welcome to stay back there and
18 eat your lunch or take your lunch with you, but you don't
19 have to hang around this place anymore, and they'll have
20 a big fat check next week. It's not huge, so probably
21 doesn't even pay for the lunches if you had to pay for on
22 your own, but I do want to thank you for your service,
23 and I will see you down the road.

24 (Jury dismissed.)

25 THE COURT: Is there anything the State wants

1 to say before imposing sentence?

2 MS. SHEALY: Yes, Your Honor. I would like
3 to advise you of his prior record. He has a shoplifting
4 from 2002; assaulting a police officer from 2002; a grand
5 larceny from 2002; a failure to stop for a blue light in
6 2005; a shoplifting in 2003; a grand larceny in 2005; an
7 ABWIK in 2005, and three -- let's see if it's ABHAN or
8 AHAN -- three ABHANS from 2005.

9 As I indicated to you earlier in the trial,
10 Your Honor, this is a case that would have been
11 appropriate for an LWOP notice. That was a failing on my
12 part. I think a sentence in this case begs for
13 consecutive time and the maximum time on each of these
14 three charges. They were distinct terrors that the
15 witness was faced with.

16 Her vehicle was carjacked. She was kidnapped
17 in the car and in fear of her life, and he was repeatedly
18 subjected to his attempting to break her neck. She
19 passed out. He pulls her up and keeps going.

20 Your Honor, we would ask the Court for the
21 maximum time and consecutive time. Any one of these
22 charges would have merited the maximum penalty, and in
23 that he did three different crimes on that one occasion,
24 it would be the State's position that it warrants more
25 than just a signal maximum penalty.

1 THE COURT: Would the victim like to say
2 anything?

3 MS. SHEALY: Let me ask her.

4 THE WITNESS: Yes, Your Honor, I feel very
5 strongly that if he isn't sentenced to the maximum time,
6 my life will still be in danger. He knows where I live.
7 I would feel that I would have to move, and since I live
8 in a mobile home, that's expensive, and I don't know
9 where I would go, actually, and I really do feel that if
10 he gets back on the street, he's going to keep trying
11 until he manages to kill somebody.

12 I don't see him stopping, and I really do
13 live in fear, every day, because of what he did to me.

14 THE COURT: All right. Thank you. Anything
15 further from the State?

16 MS. SHEALY: Nothing further. Thank you,
17 Judge.

18 THE COURT: Ms. Ford?

19 MS. FORD: Yes, Your Honor. May it please
20 the Court: Latrone is 30, will be 30 years old this
21 year. He's from the Ravenel area. He does have a young
22 daughter, Your Honor. The tattoo on his neck is actually
23 her name, so that's where that comes from.

24 You saw where he worked at the Harvest Moon
25 Grill and more recently Family Dollar. Latrone has been

1 in jail a little over two years now. He's been my client
2 during all of that time. First of all, we would like to
3 point out that if he were to receive the maximum on one
4 sentence, he certainly -- I don't think there would be
5 any issue that he would be a threat to Ms. Martin,
6 especially, Your Honor, at that point in time.

7 During the course of my representation, I can
8 tell you that he has always maintained his innocence,
9 Your Honor, but he has been someone -- he isn't someone
10 who has come off as cold or anything like that to me.

11 He has been patient. He takes -- you know,
12 he's been taking his case very seriously. He's actually
13 bright in a lot of ways. He's picked up with a lot of
14 things with the technical issues and DNA and everything.
15 He picked right up on it without me explaining it, so I
16 do think he is someone who does have potential in him.

17 He does have some smarts to him, Your Honor,
18 but he's always been a really good client to me. He's
19 never been rude to me or anything like that. He's always
20 been courteous and patient and very polite and nice to
21 me, Your Honor. We would ask for a concurrent sentence.

22 These charges, they do carry, I believe, zero
23 to 30, zero to 30, and zero to 20 because of the
24 carjacking. There has never -- they did not put forth
25 criminal bodily injury, so we would ask for concurrent

1 sentence. We think that that would be more than -- that
2 would certainly be sufficient considering the amount of
3 time. It's 85 percent, Your Honor, considering his age
4 now.

5 Thank you.

6 THE COURT: Mr. Butler, do you want to say
7 anything?

8 THE DEFENDANT: If it please the Court, I
9 just have to fight this another way. I mean, honestly,
10 sir, I am looking forward to getting back to my daughter.
11 She's two, going to be three, and she was born [REDACTED]
12 [REDACTED] That's pretty much it.

13 THE COURT: All right. Anything further from
14 the defendant?

15 MS. FORD: No, Your Honor.

16 THE COURT: Well, Mr. Butler, you know, the
17 problem that I have with this case, having listened to
18 the testimony, is trying to figure out what the actual
19 motive was, and there's times when you go, well, it looks
20 like this was drug related. Usually they're stealing
21 money for drugs, that sort of thing.

22 I don't know what the motive was. The State
23 doesn't have to prove a motive, but it's disturbing that
24 there didn't seem to be a theft for money. Maybe the car
25 and the stupidity of riding around in a car after you

1 stole it is an issue. But that bothers me because, you
2 know, you almost can understand somebody committing this
3 crime if it were for some purpose, but the thing that
4 people in the community worry about more than anything is
5 unprovoked attacks by strangers, and this lady, she
6 didn't know you, and you appear from around the corner,
7 carjack her, take her off, kidnap her, and clearly, if
8 you had not had another car come along and cause you to
9 run off, I think you would have stayed there and murdered
10 her.

11 I do honestly believe that, and that just
12 makes you a mean person, and your prior record is
13 escalating. You're the kind of person that does need to
14 be taken off the streets for as long as we can, and I am
15 going to sentence you to 20 years on the carjacking, 30
16 on the kidnapping, 30 on the attempted murder, and run
17 them all consecutively. Good luck to you.

18 All right. Anything else from you guys?

19 MS. SHEALY: No, Your Honor. Thank you.

20 (Court's Exhibit Nos. 9 and 10 were marked
21 for identification.)

22 - - -

23 (Whereupon, the proceedings were concluded.)

24 - - -

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 17th of January 2014.

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

March 26, 2014


Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)Latrone T. Butler #303325)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2016-CP-10-4888
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2016 SEP 14 PM 2:11
JULIE J. ARISTIDE
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Charleston County / Al Cannon Detention Center
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-10-3304; Attempted Murder
 - (b) 2012-GS-10-3305; Kidnapping
 - (c) 2012-GS-10-3303; Carjacking
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 17, 2014; 20 years for Carjacking
 - (b) January 17, 2014; 30 years for Kidnapping

(All run consec)

- (c) January 17, 2014; 30 yrs for Attempted Murder
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?
I appealed judgment of conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Court of Appeals ^{KB} Affirmed the Convictions
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. ^{LB} ~~Appealed~~ November 25, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
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) Alleged Victim Claim She Struggled/Fought with Attacker
 (b) My Clothing were tested for DNA, in which Victim was Exclude
 (c) Victim stated Attacker had no tattoo's, Nor facial hair. Nor A
 Description; Victim stated I look most like the Attacker)
 11. State concisely and in the same order the facts which support each of the grounds set out in (10): (Booking Photo)

- (a) See attached Affidavit for Kidnapping 116-3-910.
 (b) See attached SLED; Forensic Lab report
 (c) See trial transcript pages 139, and 140; and Booking P
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. N/A
 ii. N/A
 iii. N/A
 iv. N/A

- (b) the name and location of the Court in which each was filed:

- i. N/A
 ii. N/A
 iii. N/A
 iv. N/A

- (c) the disposition thereof:

- i. N/A
 ii. N/A
 iii. N/A

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

State Court of Appeals (South Carolina)

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. All
- ii. All
- iii. All - except my Booking photo from Dec, 8, 2011

- (b) the proceedings in which each ground was raised:

- i. During trial
- ii. During trial
- iii. During trial

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) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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. Mary Ford; Charleston County Public Defender
- ii. Shirone Hanisotia, 11 Charleston SC 29401
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. ineffectively
- ii. ineffectively
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate Sentence; or New Trial

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA

County of Charleston

VERIFICATION

I, LB 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.

Latrone T. Butler

SWORN to and subscribed before me this 7th
day of Sept., 2016.

Linda K. B. (L.S.)
Notary Public

My Commission Expires: 6-20-26

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, LB 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.

Latrone Butler
Applicant

SWORN or affirmed to and subscribed before me this
7th day of Sept., 2016.

Linda K. B
Notary Public

My Commission Expires: 6-20-26

Charleston County Sheriff's Office
Criminal Investigations Division
Phone (843) 554-2475



3505 Pinehaven Drive
Charleston Heights, SC 29405
FAX (843) 554-9744

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

OCA # 2011-020074-B

AFFIDAVIT

Personally appeared before me, a magistrate of this County, one Detective J. Perkins, who, first being duly sworn, deposes and says that

LATRONE TERRELL BUTLER

did within this County and State on or about the 5th day of December, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

KIDNAPPING

16-3-910

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on December 5, 2011, while at [REDACTED] Lot# [REDACTED] Savannah Highway, in the County and State aforesaid, the above named defendant, **LATRONE TERRELL BUTLER**, did commit offense of violation section 16-3-910 of the South Carolina Code of Laws, 1976 as amended, **KIDNAPPING**, in that he did willfully, unlawfully, and feloniously did abduct and carry away the victim, one Letty Martin, against her will and without authority of law after he carjacked her while she was operating a 1996 Acura TL bearing SC registration [REDACTED] VIN# JH4UA3635TC014432 and would not allow her to leave.

The facts to establish the aforesaid are that on December 5, 2011, members of the Charleston County Sheriff's Office responded to [REDACTED] Lot # [REDACTED] Savannah Highway, Charleston SC. Upon arrival, Deputies met with the victim, Letty Martin, who had visible bruising consistent with being assaulted. Victim Martin advised that an unknown suspect grabbed her, forced her into the vehicle and held her there against her will and made her drive to Hyde Park Road. The suspect repeatedly told her while holding her against her will inside her vehicle that he would kill her if she did not follow all of his commands. Upon arrival of deputies, they observed visible injuries consistent with a physical confrontation. Victim Martin further stated that the unknown suspect was not wearing a mask and she could clearly see his face, nor did the suspect see any gloves being worn by the suspect.

That on December 7, 2011, Detective C. Smith met with Victim Martin at the Charleston County Sheriff's Office. Once at the Sheriff's Office, victim Martin was showed a six (6) picture photographic lineup including one with the defendant, Latrone Terrell Butler. Victim Martin positively identified the defendant, Latrone Terrell Butler, in a six (6) picture photographic lineup as the assailant who carjacked and held the victim against her will not allowing her to leave.

This information was revealed through the investigation of Detective J. Perkins of the Charleston County Sheriff's Office, and through the signed written statement of the victim, Letty Martin. They are both witnesses to prove the same against the form and dignity of the State.

Sworn to and Subscribed before me

This 5 day of December 2011

Signature of Judge

Detective J. Perkins
Charleston County Sheriff's Office
3505 Pinehaven Drive
North Charleston, SC 29405

TEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & S.C.

by

NOTARY CLERK

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Inv. Kathy Kjellman
Charleston County Sheriff's Office
3505 Pinehaven Drive
North Charleston, SC 29405

DNA ANALYSIS
August 26, 2013
SLED LAB: L12-10200
Your Case No: 11020074
Incident Date: 12/5/2011
[V] Letty Martin
[S] Latrone Butler

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

DNA ANALYSIS

ITEMS ANALYZED:

- 2. Buccal swabs from Latrone Butler
- 4. Buccal swab from Letty Martin
- 1.1 Cutting from blue jeans – inside
- 1.2 Cutting from blue jeans – outside
- 1.3.2 Swabs from blue jeans – outside
- 1.4 Swab from scraping and swabbing inside front pockets of blue jeans
- 1.5.1 Possible hair from blue jeans
- 3 Swab from steering wheel

Profiles for items 1.1, 1.2, 1.3.2, 1.4, 1.5.1, 2, and 3 were previously issued in a report dated February 27, 2013.

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED LAB No. L12-10200

August 26, 2013

Page 2 of 3

RESULTS

The DNA profile developed from items 1.1 and 1.2 matches the DNA profile of Latrone Butler and has been entered into the Combined DNA Index System (CODIS). The probability of randomly selecting an unrelated individual having a DNA profile matching these items is approximately 1 in 1.4 quintillion. **Letty Martin is excluded as a possible contributor to these items.**

The DNA profile developed from item 1.4 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture also matches the DNA profile of Latrone Butler. The partial DNA profile developed from the minor contributor to this mixture is suitable for comparison purposes but is not suitable for CODIS entry. **Letty Martin is excluded as a possible minor contributor to this mixture.**

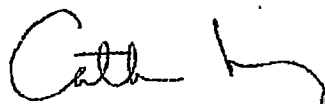
The DNA profile developed from item 3 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture also matches the DNA profile of Latrone Butler. The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately 1 in 110 quadrillion. The partial DNA profile developed from the minor contributor to this mixture is suitable for comparison purposes but is not suitable for CODIS entry. **Letty Martin is excluded as a possible minor contributor to this mixture.**

No DNA profile was developed from item 1.3.2.

No human DNA was obtained from item 1.5.1.

Items 1.1 (cutting from blue jeans – inside), 1.2 (cutting from blue jeans – outside), 1.3 (cutting from blue jeans – outside), 1.3.1 (cutting from blue jeans – outside), 1.3.2 (swabs from blue jeans – outside), 1.4 (swab from scraping and swabbing inside front pockets of blue jeans), 1.5 (debris from blue jeans), 1.5.1 (possible hair from blue jeans), 2 (buccal swabs from Latrone Butler), and 3 (swab from steering wheel) are being returned without further DNA analysis and have not been inventoried.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Catherine Leisy
Forensic Scientist



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RULE 5 JKS 190

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)

SEARCH WARRANT

Form Approved by
 SC Attorney General
 Section 19-13-160
 March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
 MUNICIPALITY OF CHARLESTON:

It is appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON OR THING)

TO BE SEARCHED

SEE ATTACHED AFFIDAVIT

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

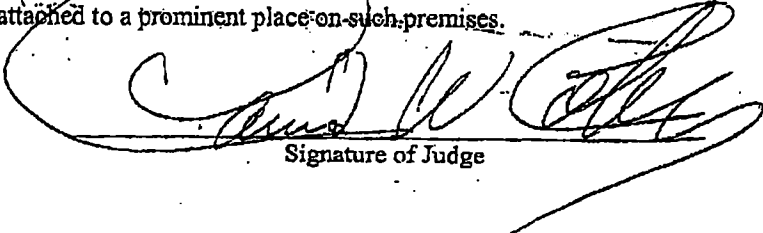
SEE ATTACHED AFFIDAVIT

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to the issuing magistrate within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Charleston, South Carolina


 Signature of Judge

Dated: 12-13-11



J. AL CANNON, JR., ESQ.
SHERIFF, CHARLESTON COUNTY

Report of Photographic/Physical Lineup

OCA #: 2011-0200748 Date: 12-7-11

Time: 12:25 Location: 3505 Pinhaven Dr.

Investigating Deputy: Det. J. Perkins

Identifying Witness (name & DOB) Letty Martin [REDACTED]

lam 1. I am going to show you a series of photographs/physical lineup of individuals or an array of six photographs of individuals (circle appropriate one). The photographs that I am about to show you are placed in no special order.

lam 2. These photographs may or may not be the person who committed the crime. It is just as important to clear innocent people as it is to identify possible suspects. Whether or not you identify someone, the police will continue to investigate.

lam 3. After you are done, I will not be able to provide you with any feedback or comment on the results of the process.

lam 4. Do not discuss this identification procedure or the results with other witnesses in this case.

lam 5. Focus on the event: the place, view, lighting, your frame of mind, etc. Take as much time as you need.

lam 6. People may not appear exactly as they did at the time of the event, because features such as clothing style, hair color, hair style, etc. may change, even in a short period of time.

lam 7. As you look at the photographs, tell me if you recognize the person in them. If you do, please tell me how you know the person, and in your own words, how sure you are of the identification.

Witness Identification Statements

Identification Made: Yes ☒ No ☐

He looks most like the person that carjacked me & tried to kill me.

[Signature]
Independent Adminstrating Deputy's Signature

Christina Smith
Print Name

[Signature]
Deputy Sheriff's Signature

James Perkins
Print Name

Letty Anne Martin
Witness Signature

Letty Anne Martin
Print Name

that is the victims
statement of a
looking at a
photographic lineup

SCSO-179 01/04/10

Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSFPO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	I
2 Latvone Butler	14,15	30,32.2	8,11	11,12	13,16	7,9,3	13,14	10,11	22,24	13,13.2	18,19	9	
4 Letty Martin	12,14	26,29	10,12	11,12	16,17	7,9,3	11,12	13	20,22	13	14,16	8,11	
1.1 Jeans - inside	14,15	30,32.2	8,11	11,12	13,16	7,9,3	13,14	10,11	22,24	13,13.2	18,19	9	
1.2 Jeans - outside	14,15	30,32.2	8,11	11,12	13,16	7,9,3	13,14	10,11	22,24	13,13.2	18,19	9	
1.3.2 Jeans - outside	-	-	-	-	-	-	-	-	-	-	-	-	
1.4 Jeans - pockets	13,14 15	30,(32) 32.2	8,(10) 11	11,12	13,16 18	7,9,3	12,13 14	10,11	22,(23) 24	13,13.2	18,19	9	
3 Steering wheel	14,15	(29),30 32.2	8,(10) 11	11,12	13,16	7,9,3	(12),13 14	10,11	22,24	13,13.2	(17),18 19	9	

() = alleles between 75 and 149 rfu

- = no results

Bold = major contributor

RULE 5 JKS 191



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Inv. Erin Meyer
Charleston County Sheriff's Office
3505 Pinehaven Drive
North Charleston, SC 29405

DNA ANALYSIS
February 27, 2013
SLED LAB: L12-10200
Your Case No: 11020074
Incident Date: 12/5/2011
[V] Letty Martin
[S] Latrone Butler

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

1.1	Cutting from blue jeans – inside	1.1	Blood indicated. See DNA analysis.
1.2	Cutting from blue jeans – outside	1.2	Blood indicated. See DNA analysis.
1.3	Cutting from blue jeans – outside		
1.3.1	Cutting from blue jeans – outside	1.3.1	No blood indicated.
1.3.2	Swabs from blue jeans – outside	1.3.2	See DNA analysis.
1.4	Swab from scraping and swabbing inside front pockets of blue jeans	1.4	See DNA analysis.
1.5	Debris from blue jeans		
1.5.1	Possible hair from blue jeans	1.5.1	See DNA analysis.



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RULE 5 JKS 192

368

ARREST WARRANT

M-605184

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Latrone Terrell Butler

Address:

Ravenel, SC 29470-5493

Phone:

SSN:

Sex: M Race: B Height: 5 11 Weight: 190

DL State: SC

DL #:

DOB: Agency ORI #: SC0100000

Prosecuting Agency: Charleston County Sheriff

Prosecuting Officer: James B. Perkins - 0208

Offense: Carjacking / Take or attempt a vehicle from person
by force without great bodily harm

Offense Code: 2599

Code/Ordinance Sec: 16-03-1075(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 318Personally appeared before me the affiant James B. Perkins who
being duly sworn deposes and says that defendant Latrone Terrell Butler
did within this county and state on or about 12/ 5/2011 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)
in the following particulars:

DESCRIPTION OF OFFENSE: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 3505 Pinehaven Drive

Charleston, SC 29405-

Affiant's Telephone (843)202-1700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/ 5/2011 defendant Latrone Terrell Butler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/ 8/2011

(L.S.)

Signature of Judge
David Wilson Coker

Judge Code: 5535

Judge's Address 4045 Bridge View Drive

Charleston, SC 29419

Judge's Telephone (843)202-6610

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

Judge Fliger
 on 12-9-11
 Type and Amount: No Bond
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS



FILED
 011 DEC 13 AM 10:57
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

Charleston County Sheriff's Office
Criminal Investigations Division
Phone (843) 554-2475



3505 Pinehaven Drive
Charleston Heights, SC 29405
FAX (843) 554-9744

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

AFFIDAVIT

OCA # 2011-020074-B

Personally appeared before me, a magistrate of this County, one Detective J. Perkins, who, first being duly sworn, deposes and says that

LATRONE TERRELL BUTLER

did within this County and State on the 5TH day of December, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE
CARJACKING
16-3-1075**

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on December 5, 2011, while at [REDACTED] Lot # [REDACTED] Savannah Highway, Ravenel, in the County and State aforesaid, the above named defendant, **LATRONE TERRELL BUTLER**, did commit offense of violation section 16-3-1075 of the South Carolina Code of Laws, 1976 as amended, **CARJACKING**, in that he did willfully, unlawfully, and feloniously, while armed with a pistol, forcibly take and drive away a 1996 Acura TL, Maroon in color, SC registration [REDACTED], VIN# JH4UA3635TC014432, from Letty Martin with the intent to deprive the owner.

That on December 5, 2011, members of the Charleston County Sheriff's Office responded to [REDACTED] Lot # [REDACTED] Savannah Highway in reference to a carjacking. Upon arrival, deputies met with the victim, Letty Martin. Victim Martin advised that she arrived home during the afternoon hours and observed a black male walking through her front yard near the open car garage. Victim Martin advised that she parked the vehicle and began looking through her trunk and that was when she was attacked by the same black male. The suspect forced victim Martin into her vehicle and told her where to drive. The suspect then forced her out of her vehicle and sped off to an unknown direction of travel. Victim Martin advised that she did not know the suspect, but stated that he was not masked nor did he wear any gloves during the incident. Victim Martin also advised that while the suspect was inside the vehicle he held her right arm with force causing injury.

That on December 7, 2011, Detective C. Smith met with victim Martin at the Charleston County Sheriff's Office. There, victim Martin was showed a six (6) picture photographic lineup including one with the defendant, Latrone Terrell Butler. Victim Martin positively identified the defendant, Latrone Terrell Butler, in a six (6) picture photographic lineup as the assailant who carjacked and physically assaulted her causing injury.

This information was revealed through the investigation Detective Perkins of the Charleston County Sheriff's Office and the signed written statement of the victim, Letty Martin. They are both witnesses to prove the same against the form and dignity of the State.

Sworn to and Subscribed before me
this [REDACTED] day of [REDACTED] 2011

Signature of Judge

Detective J. Perkins
Charleston County Sheriff's Office
3505 Pinehaven Drive
North Charleston, SC 29405
843-554-2475

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.Latrone Terrell Butler

AKA:

Race: BLACK Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Ravenel, SC 29470-5493DL#: [REDACTED] SID#: SC01437454*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Carjacking Without InjuryINDICTMENT/CASE#: 2012GS1003303A/W#: M605184Date of Offense: 12/5/2011S.C. Code § : 16-03-1075(B)(1)CDR Code #: 2599

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
☐ 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.

ATTEST:

Kneese Shealy, Jennifer7/9/12
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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ 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

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>100.00</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 Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.40</u>
TOTAL		\$ <u>133.40</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Amanda H. Hunter

SCCA/217 (03/2011)

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: 2137Sentence Date: 11/7/14

372
JKS2011T1208413

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011020074B

ARREST WARRANT NUMBER

M605184

DATE OF ARREST

December 8, 2011

ACTED BY GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUL 14 2012

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 1/17/14

INDICT

DOCKET NO. 2012GS1003303

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

LATRONE TERRELL BUTLER

DOB: 1984-08-20

B/M

Indictment for

Carjacking

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

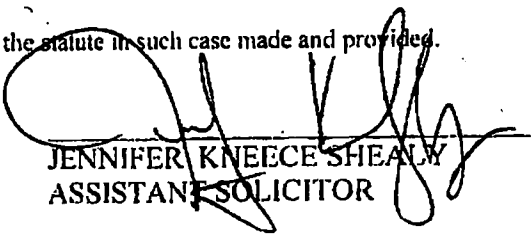
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Carjacking

That in Charleston County, South Carolina, on or about December 5, 2011, the Defendant, did take or attempt to take a motor vehicle from Letty Martin by force, violence or intimidation while Letty Martin was operating the vehicle or inside of the vehicle; in violation of Section 16-3-1075(B)(1) of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

374

ARREST WARRANT

M-605186

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Latrone Terrell Butler

Address:

Ravenel, SC 29470-5493

Phone: _____ SSN: _____
Sex: M Race: B Height: 5 11 Weight: 190

DL State: SC DL #: _____

DOB: _____ Agency ORI #: SC0100000

Prosecuting Agency: Charleston County Sheriff

Prosecuting Officer: James B. Perkins -0208

Offense: Kidnapping / Kidnapping

Offense Code: 0095

Code/Ordinance Sec: 16-03-0910

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN:

A copy of this arrest warrant was delivered to
defendant.
on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

AFFIDAVIT

ORIGINAL

Form Approved by
U.S. Attorney General
April 21, 2003
SCCA 918

Personally appeared before me the affiant James B. Perkins

who

being duly sworn deposes and says that defendant Latrone Terrell Butler

did within this county and state on or about 12/5/2011 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)

In the following particulars:

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 3505 Pinehaven Drive
Charleston, SC 29405-

Affiant's Telephone (843)202-1700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/5/2011 defendant Latrone Terrell Butler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below.

DESCRIPTION OF OFFENSE: Kidnapping / Kidnapping

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on 12/8/2011Signature of Judge
David Wilson Coker
Judge Code: 5535Judge's Address 4045 Bridge View Drive
Charleston, SC 29419

Judge's Telephone (843)202-6610

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL



BAIL set by

WITNESSES:

Judge Bliger
 on 12-9-11
 Type and Amount: \$ 100,000
 Name of Surety: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____

Telephone: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Name: _____
 Address: _____

Telephone: _____

Decision: _____

Name: _____
 Address: _____

Telephone: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, nol. pros., etc.)

Name: _____
 Address: _____

Telephone: _____

Disposition: _____

Name: _____
 Address: _____

Telephone: _____

Sentence: _____

JURORS

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

CODEFENDANTS

BY _____

JULIE J. ARMSTRONG
 CLERK OF COURT

2011 DEC 13 AM 10:57

FILED

Charleston County Sheriff's Office
Criminal Investigations Division
Phone (843) 554-2475



3505 Pinehaven Drive
Charleston Heights, SC 29405
FAX (843) 554-9744

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

AFFIDAVIT

OCA # 2011-020074-B

Personally appeared before me, a magistrate of this County, one Detective J. Perkins, who, first being duly sworn, deposes and says that

LATRONE TERRELL BUTLER

did within this County and State on or about the 5th day of December, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

KIDNAPPING

16-3-910

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on December 5, 2011, while at [REDACTED] Lot# [REDACTED] Savannah Highway, in the County and State aforesaid, the above named defendant, **LATRONE TERRELL BUTLER**, did commit offense of violation section 16-3-910 of the South Carolina Code of Laws, 1976 as amended, **KIDNAPPING**, in that he did willfully, unlawfully, and feloniously did abduct and carry away the victim, one Letty Martin, against her will and without authority of law after he carjacked her while she was operating a 1996 Acura TL bearing SC registration [REDACTED], VIN# JH4UA3635TC014432 and would not allow her to leave.

The facts to establish the aforesaid are that on December 5, 2011, members of the Charleston County Sheriff's Office responded to [REDACTED] Lot # [REDACTED] Savannah Highway, Charleston SC. Upon arrival, Deputies met with the victim, Letty Martin, who had visible bruising consistent with being assaulted. Victim Martin advised that an unknown suspect grabbed her, forced her into the vehicle and held her there against her will and made her drive to Hyde Park Road. The suspect repeatedly told her while holding her against her will inside her vehicle that he would kill her if she did not follow all of his commands. Upon arrival of deputies, they observed visible injuries consistent with a physical confrontation. Victim Martin further stated that the unknown suspect was not wearing a mask and she could clearly see his face, nor did the suspect see any gloves being worn by the suspect.

That on December 7, 2011, Detective C. Smith met with Victim Martin at the Charleston County Sheriff's Office. Once at the Sheriff's Office, victim Martin was showed a six (6) picture photographic lineup including one with the defendant, Latrone Terrell Butler. Victim Martin positively identified the defendant, Latrone Terrell Butler, in a six (6) picture photographic lineup as the assailant who carjacked and held the victim against her will not allowing her to leave.

This information was revealed through the investigation of Detective J. Perkins of the Charleston County Sheriff's Office, and through the signed written statement of the victim, Letty Martin. They are both witnesses to prove the same against the form and dignity of the State.

Sworn to and Subscribed before me

This 8 day of December 2011

Signature of Judge



Detective J. Perkins
Charleston County Sheriff's Office
3505 Pinehaven Drive
North Charleston, SC 29405

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Latrone Terrell Butler

AKA:

Race: BLACK Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Ravenel, SC 29470-5493DL#: [REDACTED] SID#: SC01437454*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: KidnappingINDICTMENT/CASE#: 2012GS1003305A/W#: M605186Date of Offense: 12/5/2011S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin 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 ☐ §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.

ATTEST:

Kneese Stealy, JenniferSC Bar# 1919

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

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>100.00</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 Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</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.Clerk of Court/ Deputy Clerk: Amanda HendersonCourt Reporter: Amanda Henderson

SCCA/217 (03/2011)

Presiding Judge: 2134Judge Code: 2134Sentence Date: 11/17/14

378
JKS20111208413

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011020074B

ARREST WARRANT NUMBER

M605186

DATE OF ARREST

December 8, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 11 2012

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1003305

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

LATRONE TERRELL BUTLER

DOB: [REDACTED]

B/M

Indictment for

Kidnapping

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

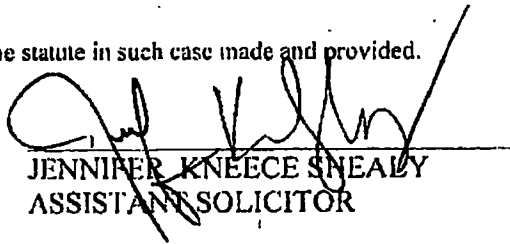
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about December 5, 2011, the Defendant, LATRONE TERRELL BUTLER, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Letty Martin, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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



JENNIFER KNEECE SNEAZY
ASSISTANT SOLICITOR

380

ARREST WARRANT

M-605185

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Latrone Terrell Butler

Address:

Ravenel, SC 29470-5493

Phone: SSN: 5 11 Weight: 190

Sex: M Race: B Height: 5 11 Weight: 190

DL State: SC DL #: Agency ORI #: SC0100000

DOB: Prosecuting Agency: Charleston County Sheriff

Prosecuting Officer: James B. Perkins - 0208

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 510

Personally appeared before me the affiant James B. Perkins who

being duly sworn deposes and says that defendant Latrone Terrell Butler

did within this county and state on or about 12/5/2011 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address: 3505 Pinehaven Drive

Charleston, SC 29405-

Affiant's Telephone (843)202-1700

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 12/5/2011 defendant Latrone Terrell Butler

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me
on 12/8/2011

(L.S.)

Signature of Issuing Judge

David Wilson Coker

Judge Code: 5535

Judge's Address: 4045 Bridge View Drive

Charleston, SC 29419

Judge's Telephone (843)202-6610

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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BAIL set by

WITNESSES

Judge Bliger
 on 12-9-11
 Type and Amount: \$100,000
 Name of Surety: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Decision: _____

Name: _____
 Address: _____

Telephone: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Disposition: _____

Sentence: _____

JURORS

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

CODEFENDANTS



BY _____

FILED
 2011 DEC 13 AM 10:57
 JULIE J. ARMSTRONG
 CLERK OF COURT

Charleston County Sheriff's Office
Criminal Investigations Division
Phone (843) 554-2475



3505 Pinehaven Drive
Charleston Heights, SC 29405
FAX (843) 554-9744

STATE SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

OCA# 2011-020074-B

Personally appeared before me, a magistrate of this County, one Detective J. Perkins, who, first being duly sworn, deposes and says that

LATRONE TERRELL BUTLER

did within this County and State on 5TH day of December, 2011, violate the criminal laws of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE
ATTEMPTED MURDER
16-3-29**

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on December 5, 2011, while at [REDACTED] Lot # [REDACTED] Savannah Highway, Ravenel, in the County and State aforesaid, the above named defendant, **LATRONE TERRELL BUTLER**, did commit offense of violation section 16-3-29 of the South Carolina Code of Laws, 1976 as amended, **ATTEMPTED MURDER**, in that he did wilfully, unlawfully, and feloniously, repeatedly choke the victim, Letty Martin, causing her to go unconscious along with trying to break her neck and causing the victim to receive great bodily injury.

That on December 5, 2011, members of the Charleston County Sheriff's Office responded to [REDACTED] Lot # [REDACTED] Savannah Highway after receiving a call from the victim, Letty Martin, that she was just carjacked and assaulted by a black male suspect. Victim Martin advised that she arrived home during the afternoon hours and observed a black male walking through her front yard of her property near her open garage. Victim Martin then stated that she pulled up in her yard and parked the vehicle and went to the trunk area to retrieve some items. Victim Martin advised, at that time the same black male walked up and grabbed her and forced her into her vehicle and made her drive while holding on to her arm and making verbal threats to kill her. Victim Martin further advised that the suspect made her drive to Hyde Park Road. Victim Martin further stated that once they exited the vehicle, the suspect choked her repeatedly until she became unconscious. Victim Martin stated that she later came too with the suspect trying to break her neck which caused her major injury.

That on December 7, 2011, Detective C. Smith met with Victim Martin at the Charleston County Sheriff's Office. Once at the Sheriff's Office, victim Martin was showed a six (6) picture photographic lineup including one with the defendant, Latrone Terrell Butler. Victim Martin positively identified the defendant, Latrone Terrell Butler, in a six (6) picture photographic lineup as the assailant who carjacked and attempted to kill her causing her major physical injury.

The above information was revealed through the investigation of Detective J. Perkins of the Charleston County Sheriff's Office along with the signed written statement of the victim, Letty Martin. They are both witnesses to prove the same against the form and dignity of the State.

Sworn to and Subscribed before me

this 5 day of

Signature of Judge

Detective J. Perkins
Charleston County Sheriff's Office
3505 Pinehaven Drive
Charleston Heights, SC 29405
843-554-2475

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.Latrone Terrell Butler

AKA:

Race: BLACK Sex: M Age: 29DOB: 4 SS#: [REDACTED]

Address:

City, State, Zip: Ravenel, SC 29470-5493DL#: [REDACTED] SID#: SC01437454*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted MurderINDICTMENT/CASE#: 2012GS1003304A/W#: M605185Date of Offense: 12/5/2011S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ 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.

ATTEST:

Kneel Shealy, JenniferSC Bar# 7919

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

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>100.00</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 Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Amanda H. Harden

SCCA/217 (03/2011)

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: 2137Sentence Date: 11/27/14

384
JKS20111208413

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011020074B

ARREST WARRANT NUMBER

M605185

DATE OF ARREST

December 8, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 11 2012

VERDICT:

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1003304

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

LATRONE TERRELL BUTLER

DOB: [REDACTED]

B/M

Indictment for

Attempted Murder

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

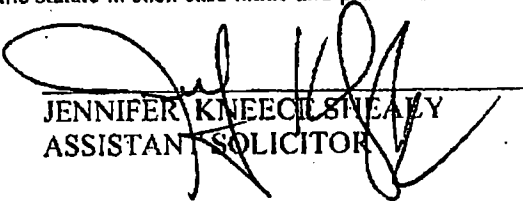
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about December 5, 2011, the Defendant, LATRONE TERRELL BUTLER, did, with intent to kill and malice aforethought, attempt to kill Letty Martin. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER KNEECOL SNEY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Latrone T. Butler, #303325,	)	Case No.: 2016-CP-10-4888
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent ("the State"), making its Return to the application for post-conviction relief filed on September 14, 2016, would respectfully show this Court:

I. Procedural History

Latrone T. Butler ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In June 2012, the Charleston County Grand Jury indicted Applicant for carjacking (2012-GS-10-3303), attempted murder (2012-GS-10-3304), and kidnapping (2012-GS-10-3305). Mary Ford, Esquire, and Shirene Hansotia, Esquire, represented Applicant. Solicitors Elizabeth Shealy, Esquire, and Andrew Evans, Esquire, prosecuted the case. On January 15, 2014, Applicant proceeded to a jury trial before the Honorable Roger Young, Sr., where he was convicted as indicted of all three offenses. Judge Young sentenced Applicant to imprisonment for consecutive terms of imprisonment of twenty years for carjacking, thirty years for attempted murder, and thirty years for kidnapping.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence on November 25, 2015, in an unpublished opinion State v. Latrone T. Butler, Op. No. 2015-UP-528 (Ct. App. filed November 25,

2015). The remittitur was returned to the circuit court on December 15, 2015.

II. Summary of Facts Adduced at Trial

On December 5, 2011, sixty-seven year old widow Letty Martin (hereinafter "Martin") was living by herself at the Jericho Mobile Home Park in Ravenel, South Carolina. (Tr. pp. 90-91). On that day, Martin taught two line dance classes at the Mt. Pleasant Senior Center, ran some errands, and returned home. (Tr. pp. 92-93). After parking her vehicle (a 1996 Acura 3.2 TL) in the carport adjacent to her trailer, Martin began to unload her belongings. (Tr. pp. 93, 95-96). After removing the items from her car, Martin noticed a man coming between her carport and her home. (Tr. p. 96). Martin observed his face before turning around to lock her car. (Tr. p. 96) While her back was turned, the man came behind her, grabbed her left arm and put something that he said was a gun against her ribs. (Tr. p. 96). He told her not to scream or fight or he would shoot. (Tr. pp. 96-97). The man then demanded she unlock her car and hand over her car keys, cell phone, and money; Martin complied. (Tr. pp. 97, 99). He also instructed Martin to get into the passenger seat. (Tr. p. 97).

Once Martin was in the passenger seat, the man drove out of Martin's trailer park and on to a main thoroughfare. (Tr. p. 98). Martin was able to glance at the man, although he repeatedly instructed her not to look at him or he would shoot her. (Tr. pp. 99-100). Martin noticed the man was driving the car in the wrong gear and asked him to correct it, which he did. (Tr. p. 101). The man continued to drive around the general area before eventually stopping in a secluded wooded area; by this time it was completely dark. (Tr. pp. 101-104). The man then pulled Martin from the car, placed her near the car's rear, and instructed her to put her purse on the trunk. (Tr. p. 104). The man then placed one hand on Martin's chin and one on her forehead and repeatedly jerked her head in an attempt to snap her neck. (Tr. pp. 104-105). The man's force was so great that it gave Martin whiplash. (Tr. p. 104-105). At some point, Martin passed out and woke up on the ground; the man

then lifted Martin up and resumed his attempts to break her neck. (Tr. p. 105). The man eventually stopped and fled in Martin's car with her purse when another car approached. (Tr. pp. 105-106).

Martin walked to the nearest home for help. (Tr. 106). When she arrived, she was greeted by Penny Mizell. (Tr. p. 106). Mizell, a resident of Ravenel, was at home with her husband and sixteen year old son when Martin knocked on her door. (Tr. pp. 107, 153). Mizell answered the door and Martin informed her that she had been carjacked and needed help. (Tr. pp. 106, 153). Martin was very distraught and had visible injuries. (Tr. p. 154). Mizell called 911 and spoke with law enforcement, as well as called Martin's family. (Tr. pp. 107-08, 153-55).

Shortly thereafter, Deputies from the Charleston County Sheriff's Office responded to the Mizell home. (Tr. pp. 108, 155, 156). Responding Deputy Don Kejellman spoke with Martin and received initial information about the carjacking and assault. (Tr. pp. 109, 158-59, 160-61). Martin informed law enforcement that the car had a LoJack security detection device that could possibly be used to locate her car. (Tr. p. 109). Martin also provided law enforcement with a description of the man and her vehicle, resulting in alerts to other law enforcement agencies. (Tr. pp. 159, 165-66). Martin described the man as a black male, age twenty-four to thirty, approximately five feet and eleven inches and one-hundred-and-seventy pounds. (Tr. pp. 162-63). Martin also reviewed her physical injuries with law enforcement. (Tr. pp. 109-112). Emergency Medical Services (EMS) came to the Mizell home and treated Martin. (Tr. p. 111-12).

Two days later, Martin went to the Sheriff's Office to view a photographic lineup. (Tr. p. 112, 169-70). Smith explained the process to Martin and advised her of her rights, which Martin voluntarily waived. (Tr. pp. 113-16, 192-93). Smith then showed Martin a photo lineup comprised of six individuals matching the description she previously gave law enforcement; the lineup was compiled by another law enforcement agency with no other involvement in the case. (Tr. p. 113-117,

168-69, 192-93). Based on a tip law enforcement received from Crime Stoppers, Applicant's photograph was included in the six person photo lineup. (Tr. pp. 167-68). Smith had no other involvement in the case beyond showing her the lineup and did not know which person was the suspect when she showed Martin the lineup, which is accordance with office policy. (Tr. pp. 170, 192-95). Martin spent several minutes reviewing the lineup and studying the subject's individual faces before selecting Applicant as the perpetrator, circling his photograph and stating that he looked most like the perpetrator. (Tr. pp. 116-118, 170, 193-94). Martin then reviewed her injuries with law enforcement, which were documented by camera. (Tr. p. 119-121, 194).

After Martin identified Applicant as the suspect, law enforcement sent out a BOLO report for Applicant. (Tr. pp. 170-71). Applicant was located the next day, December 8, 2011, at the Hamm Grant Club in Ravenel. (Tr. pp. 171, 199). Martin's vehicle was also found in the parking lot of the club. (Tr. pp. 171, 199). Law enforcement responded to the scene and apprehended Applicant from the club's restroom. (Tr. pp. 171, 199-206). When he was taken into custody, Applicant had the key to Martin's car hidden in his sock. (Tr. p. 206). Law enforcement also took custody of Martin's vehicle, which was towed to the Sheriff's Office evidence compound for processing. (Tr. p. 215). After obtaining a search warrant, Martin's vehicle was searched, photographed, and inventoried. (Tr. p. 215-16). A black wallet containing Applicant's vital records, birth certificate, social security card, paystubs, a South Carolina Beginner's Driving Permit, and South Carolina Identification Card were found in the vehicle. (Tr. p. 231-34). Applicant's beginner's permit listed his height as five feet and eleven inches and one-hundred-and-ninety pounds. (Tr. pp. 232-33). Law enforcement also recovered men's clothing, a towel, and a remote augmented to look like a makeshift weapon in the vehicle. (Tr. pp. 218-222, 226-230). Law enforcement also took DNA swabs and fingerprint lifts

from Martin's vehicle. (Tr. pp. 216-17, 222-226). Law enforcement obtained buccal swabs and fingerprints from Applicant and Martin. (Tr. pp. 171-73, 240-41).

The Charleston County Sheriff's Office sent the fingerprint lifts and known fingerprint samples from Applicant to be tested by a latent print analyst. (Tr. p. 225). Applicant's known prints matched numerous different prints found in Martin's vehicle. (Tr. pp. 247- 250). Additionally, the Charleston County Sheriff's Office sent the DNA swabs from Martin's vehicle and the known DNA samples from Martin and Applicant to the South Carolina Law Enforcement Division (SLED) for testing. (Tr. pp. 175, 234, 269). The SLED analyst who tested the DNA swabs concluded that Applicant's DNA was found on Martin's car and items found within the vehicle. (Tr. pp. 269-278).

Applicant proceeded to a jury trial on January 15, 2014. Applicant moved to suppress Martin's identification of him. (Tr. p. 36-71). The trial court held a hearing pursuant to Neil v. Biggers¹ and heard testimony from Martin, Detective Smith, and Applicant. (Tr. pp. 36-68). Applicant argued that the photographic lineup was unduly suggestive because Applicant's face was more highlighted and located last. (Tr. pp. 68-69). Applicant also argued that Martin only said that Applicant looked most like the perpetrator, not that Applicant was the perpetrator. (Tr. p. 69). Applicant also noted that he has more than seventeen visible tattoos and that Martin's description of her perpetrator did not mention any tattoos. (Tr. pp. 43, 65-67). In reply, the State acknowledged that Applicant's face did appear to be lighter than the other five photographs and could have grabbed the attention more, but argued that nothing in the lineup was suggestive. (Tr. p. 70). The State also noted that Martin examined all the photographs in the lineup closely before selecting Applicant as most closely resembling the perpetrator and noted the long duration Martin had to observe her perpetrator. (Tr. pp. 70-71). The trial court denied Applicant's motion:

¹ 409 U.S. 188 (1972).

Well, I find there is nothing suggestive at all about the process, much less unduly suggestive. It's a textbook procedure outlined. Went over the questions with her with a disinterested person, someone who is not involved in the investigation at all so she wouldn't have any way of tipping the victim of looking at any particular one of the photos. And as far as the argument that his picture has more of a highlight or a glare, I mean, I just don't see it. All of these gentlemen have a little bit of a glare to their picture. I mean, it's a flash, is what we're talking about, and I don't see where that draws any attention to the defendant's picture over any of the others such that it would make it an unduly suggestive process.

(Tr. pp. 71-72).

During the trial, Martin's out-of-court identification of Applicant was admitted, and Martin made an in-court identification of Applicant. (Tr. pp. 114-18). Martin also testified she had seen Applicant earlier on the day of the attack knocking on her neighbor's door. (Tr. p. 133). Martin also testified that she had given a black man around Applicant's age a ride to work at Harvest Moon Grill (the same restaurant that Applicant worked) earlier in the year but could not recall if it was Applicant. (Tr. pp. 135-36).

Following the State's case, Applicant moved for a directed verdict, arguing the State did not present sufficient evidence that Applicant had attempted to kill Martin and that there was no physical evidence tying him to the attack. (Tr. pp. 280-281). The trial court denied Applicant's motion. (Tr. pp. 281-82). Applicant called one witness in his defense, an investigator with the Charleston County Public Defender's Office, who testified regarding Applicant's numerous tattoos. (Tr. pp. 285-290). Applicant then renewed his motion for a directed verdict, which was again denied by the trial court. (Tr. p. 291).

Applicant requested jury instructions on the lesser included offenses. (Tr. p. 291). At a charging conference on the record the following morning, the trial court noted that Applicant had requested jury instructions on assault and battery of a high and aggravated nature and assault and

battery in the first, second, and third degrees. (Tr. p. 295). The court asked Applicant to elucidate why he was entitled to those lesser included offenses and the following exchange occurred:

MS. FORD: I think the evidence is Ms. Martin testified the man's hands were around her mouth and her forehead and everything.

THE COURT: And the jerking --

MS. FORD: Yes, but I think it's possible the jury comes to the interpretation that the man does not intend to actually kill her, but, rather, trying to get her to --

THE COURT: A chiropractic adjust or what? I mean, we don't understand it. The only evidence we have is he not only put his hand over her forehead and chin but he was jerking her head to the side. You can't just say one thing. There's no evidence other than that.

MS. FORD: I just think the jury could come to the conclusion that there was not an intent to kill, Your Honor.

THE COURT: How?

MS. FORD: Just because the circumstances she was in a very stressful situation, obviously. She doesn't remember all of the details and everything that was occurring. She passed out, and so I just think--

THE COURT: And then he resumed the exact same attack. That is uncontroverted evidence. Now, they can believe it or not, but it is uncontroverted that that is what happened. He took his hands, put it over her head and her chin, and snapped her neck to the side till [sic] he passed out. All right [sic]? And then he did it again when she came out. So if you were to say his intent was not to kill her but to cause her to just pass out, well, he accomplished that, so to do it again makes no sense. If you want to say, well, all he wanted to do was cause her to pass out so that he could rob her and take her stuff, he had the opportunity to do that. I'm just trying to think, how is there any view of the evidence that we have that he had anything other than the intent to kill her?

MS. FORD: She passed out but then she came to so the man did it again and got her to pass out again. It didn't work the first time. That's why he had to do it again.

THE COURT: And what?

MS. FORD: I understand that's the only evidence about what happened that evening. We just think the jury could come to the conclusion there was not a specific intent to kill, so in that case, an ABHAN charge and assault and battery first charge and the others would be appropriate, Your Honor. Just cause of the various assaults there is great bodily injury, moderate bodily injury.

THE COURT: You would be entitled to those charges if there was some way to construe the evidence as fitting all those elements without intent to kill, but there is no way to view this evidence, as I see it, other than with an intent to kill, because he did it until she passed out and then he started to do it again and then another car came along. A car came along and spooked him and he dropped her and ran off. I don't know how you construe that as other than an intent to kill, and I've thought about it.

(Tr. pp. 295-98). The court then asked the State to respond, to which the prosecutor replied that there was nothing in the record warranting the inclusion of the lesser included offenses. (Tr. p. 298). The Court agreed, stating: "I just don't see how you can have the uncontroverted evidence that we have and not view that evidence as not having an intent to kill, and that's the only way you get the lesser included. I agree, they are lesser included but the facts have to support them, and there is no way to view the uncontroverted evidence as whoever did it. She says it was him, had the intent to kill her at that time. So I'm not going to allow lesser included. It's straight up attempted murder, kidnapping, carjacking." (Tr. p. 298). Applicant also requested a specific jury instruction on the identification procedure, which the trial court charged over the State's objection. (Tr. p. 299-301).

The jury convicted Applicant as indicted of attempted murder, kidnapping, and carjacking. (Tr. p. 342). The State informed the court that Applicant was eligible for life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior record and requested that the court impose a lengthy term of imprisonment with consecutive sentences. (Tr. p. 348). After listening to mitigation from Applicant's counsel, the trial court sentenced Applicant to twenty years imprisonment for carjacking,

thirty years imprisonment for attempted murder, and thirty years imprisonment for kidnapping, with all sentences to be served consecutively. (Tr. p. 349-52)

III. Allegations Raised in Post-Conviction Relief Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Alleged victim claimed she struggled/fought with attacker."
2. "My clothing were tested for DNA, in which victim was excluded."
3. "The victim stated attacker had no tattoos; nor facial hair; nor hair description; victim stated I look most like the attacker Booking Photo."

Attached to this return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted

leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

IV. Failure to State a Cognizable Claim

Respondent submits this application for post-conviction relief should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974).

A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal. Moreover, Applicant's allegations pertaining to the victim's identification of him were raised in his direct appeal and properly denied by the Court of Appeals.

For these reasons and pursuant to Rule 12(b)(6), SCRPC, Respondent moves for summary dismissal of this application for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application for failure to state a claim upon which post-conviction relief can be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

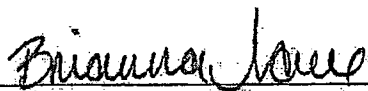
June 8, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2016-CP-10-4888
LATRONE BUTLER,	)	
S.C.D.C. No. 303325,	)	
	)	
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 and Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Falk, Esquire
Falk Law Firm
PO Box 1058
Charleston, SC 29402

DATED this 8th day of June, 2017.


Brianna Arnone, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Latrone T: Butler, #303325,

Applicant,

V.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-10-4888

CONDITIONAL ORDER OF DISMISSAL

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JULIE J. ARMSTRONG
CLERK OF COURT
SMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed September 14, 2016. Respondent made its return and motion to dismiss the application or failure to state a cognizable claim upon which post-conviction relief can be granted.

I. PROCEDURAL HISTORY

Latrone T. Butler ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In June 2012, the Charleston County Grand Jury indicted Applicant for carjacking (2012-GS-10-3303), attempted murder (2012-GS-10-3304), and kidnapping (2012-GS-10-3305). Mary Ford, Esquire, and Shirene Hansotia, Esquire, represented Applicant. Solicitors Elizabeth Shealy, Esquire, and Andrew Evans, Esquire, prosecuted the case. On January 15, 2014, Applicant proceeded to a jury trial before the Honorable Roger Young, Sr., where he was convicted as indicted of all three offenses. Judge Young sentenced Applicant to imprisonment for consecutive terms of imprisonment of twenty years for carjacking, thirty years for attempted murder, and thirty years for kidnapping.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins,

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Esquire, of the Office of Appellate Defense perfected the appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence on November 25, 2015, in an unpublished opinion State v. Latrone T. Butler, Op. No. 2015-UP-528 (Ct. App. filed November 25, 2015). The remittitur was returned to the circuit court on December 15, 2015.

III. ALLEGATIONS RAISED IN POST-CONVICTION RELIEF APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Alleged victim claimed she struggled/fought with attacker."
2. "My clothing were tested for DNA, in which victim was excluded."
3. "The victim stated attacker had no tattoos; nor facial hair; nor hair description; victim stated I look most like the attacker Booking Photo."

Before this Court are the records of the Charleston County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the records from Applicant's appeal, and the records from this post-conviction relief action, including Applicant's Post-Conviction Relief Application, and Respondent's Return and Motion to Dismiss.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds this application for post-conviction relief should be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

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3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Applicant's allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised these issues at trial or on appeal. Moreover, Applicant's allegations pertaining to the victim's identification of him were raised in his direct appeal and properly denied by the Court of Appeals.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, this Court finds this application must be summarily dismissed for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

This Court finds that Applicant failed to comply with the filing procedures set forth in the Act. Therefore, this application for post-conviction relief is summarily dismissed with prejudice.

CONCLUSION

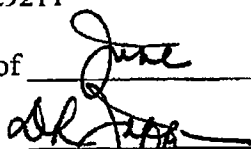
S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that the Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give reason for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Megan Harrigan Jameson, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 13th day of June, 2017.


Deadra L. Jefferson
Chief Administrative Judge
Ninth Judicial Circuit

Charleston, South Carolina

4 of 4


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	CASE NO.#2016-CP-10-4888
Latrone T. Butler,#303325,	)	
Petitioner,	)	
	)	
v.	)	"AMENDMENT TO PCR APPLICATION"
	)	
THE STATE OF SOUTH CAROLINA	)	
Respondent,	)	

Now comes Latrone T. Butler,#303325, through his counsel James Falk,Esq. to amend his Post-Conviction Relief application filed on September 14th,2016. Amendment is based upon the ineffective assistance received from trial counsel Mary Ford,Esq. and Appellate counsel Kathrine H. Hudgins, Appellate Defender. This amendment is in compliance with Rule#11(a) and Rule#15(a) of the SCRCF. Petitioner alleges the following:

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Referred to

Answered

VAN SYCKE/PB

10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

(a). "INEFFECTIVE ASSISTANCE OF TRIAL COUNSELS"

Mary Ford Esq. and Shirene Hansotia, Esq.

(b). "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL"

Kathrine H. Hudgins, Appellate Defender

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

"INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL MARY FORD"

1. Counsel was ineffective for failing to challenge the jury instruction.
2. Counsel was inadequate for denying the Petitioner the right to receive effective assistance guaranteed under the Sixth Amendment.
3. Counsel was inadequate for failing to object to or raising the issue that trial judge abused his discretion when he ran the Petitioner's sentence consecutively.
4. Counsel was ineffective for failing to raise the issue of cruel and unusual punishment violating the Petitioner's Eighth Amendment of the United States Constitution.
5. Counsel was inadequate for not challenging the sufficiency of the indictment.
6. Counsel was inadequate and her performance was deficient because counsel helped the State bolster their case against her client by purging the testimony of the State's witness.

7. Counsel was inadequate for failing to challenge the State to an meaningful adversarial testing meaning the State did not meet its burden beyond reasonable doubt, they were relieved of their burden with help from counsel.
8. Counsel was inadequate for failing to properly investigate, properly prepare for trial, or properly prepare an defense.
9. Counsel was inadequate for failing to challenge the in-court identification.
10. Counsel was inadequate for failing to seek DNA expert opinion to rebut the State's lack of evidence.
11. Counsel was inadequate for denying the Petitioner the rights to a fair trial, and equal protection of the law violating the Petitioner's 14th Amendment under the United States Constitution and the State Constitution art#1 § 3,10,&14.
12. Counsel was inadequate for failing to consult or advise the Petitioner of his options.
13. Counsel was ineffective for failing to request jury instuct. of an lesser-included offense for the attempted murder.
14. Counsel was ineffective for failing to move on the defense of mistaken identity.
15. Counsel was inadequate for abandoning her client during trial.
16. Counsel was ineffective for failing to object to the multiplicity of the indictments.

"INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL KATHRIN HUDGINS"

1. Appellate counsel was inadequate for failing to raise the issue of ineffective assistance of trial counsel.
2. Appellate counsel was inadequate for denying the Petitioner the right to receive effective assistance of counsel during direct appeals as of right.
3. Appellate counsel was inadequate for raising an frivolous issue to the Court of Appeals.
4. Counsel was inadequate for failing to raise any constitutional violations.
5. Appellate counsel was inadequate for not consulting with the Petitioner to decide what issues to raise, but did provide a letter telling the Petitioner that it is ~~her~~ decision what issues to present and this conduct was very prejudicial.
6. But, for the counsel's error the results in this case would have been different.
7. Appellate counsel was inadequate for failing to raise an abused of discretion.
8. Appellate counsel was inadequate for having an conflict of interest between the interest of trial counsel or effectively representing the client.
9. Both trial and appellate counsel violated the Appellate Court Rule#407 Professional conduct.

CONCLUSION

WHEREFORE, Latrone T. Butler, #303325, the Petitioner hereby respectfully asks this Honorable Court to grant relief sought in his amended application issues for Post-Conviction Relief as a matter of law.

Dated: May 31st, 2017.
Ridgeville, S.C.

Respectfully submitted,

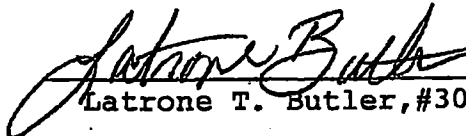
/s/ Latrone T. Butler
Latrone T. Butler, #303325
LCI. Wando-A#215
136 Wilborne Ave.
P.O. Box 205
Ridgeville, S.C. 29472

/s/ James Falk
James Falk
38 Broad St., Suite #350
Charleston, S.C. 29401
P.O. Box 1058
Charleston, S.C. 29402
Attorney for Petitioner

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. #2016-CP-10-4888
Latrone T. Butler, #303325,)
Petitioner,)
)
v.) "VERIFICATION"
)
THE STATE OF SOUTH CAROLINA)
Respondent,)

VERIFICATION

PERSONALLY appeared before me Latrone T. Butler, #303325,
the Petitioner, being duly sworn upon my oath, depose and say
that he is the Petitioner whom has subscribed to the foregoing
~~"Amended Application for PCR"~~; that he knows the content therein;
that it includes every ground known to him for vacating, setting-
aside, or correcting his conviction and sentence attacked in
this pleading; and that all matters and allegations therein
set forth are true and correct to the best of his knowledge.


Latrone T. Butler, #303325

SWORN to and subscribed before me this 31st
day of May, 2017.

 (L.S.)
NOTARY PUBLIC

My Commission Expires: May 26, 2020.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. #2016-CP-10-4888
Latrone T. Butler, #303325,)
Petitioner,)
v.) "CERTIFICATE OF SERVICE"
THE STATE OF SOUTH CAROLINA,)
Respondent,)

CERTIFICATE OF SERVICE

The undersigned Latrone T. Butler, #303325, hereby certifies that he has served the opposing party an true copy of his motion to amend his PCR application, by mailing U.S. postal service prepaid postage mailed to the Office of the Attorney General Alan Wilson, P.O. Box 11549, Columbia, S.C. 29211.

Dated: May 31st, 2017. Respectfully submitted,

/s/ Latrone T. Butler
Latrone T. Butler, #303325

LCI. Wando-A#215
136 Wilborne Ave.

P.O. Box 205

Ridgeville, S.C. 29472

/s/ James Falk
James Falk

P.O. Box 1058

Charleston, S.C. 29402

Attorney for Petitioner

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Latrone T. Butler, #303325,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-10-4888

AMENDED RETURN

Respondent ("the State"), making an amended Return to the application for post-conviction relief filed on September 14, 2016 and amendment filed June 29, 2017, would respectfully show this Court:

I. Procedural History

Latrone T. Butler ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In June 2012, the Charleston County Grand Jury indicted Applicant for carjacking (2012-GS-10-3303), attempted murder (2012-GS-10-3304), and kidnapping (2012-GS-10-3305). Mary Ford, Esquire, and Shirene Hansotia, Esquire, represented Applicant. Solicitors Elizabeth Shealy, Esquire, and Andrew Evans, Esquire, prosecuted the case. On January 15, 2014, Applicant proceeded to a jury trial before the Honorable Roger Young, Sr., where he was convicted as indicted of all three offenses. Judge Young sentenced Applicant to imprisonment for consecutive terms of imprisonment of twenty years for carjacking, thirty years for attempted murder, and thirty years for kidnapping.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence on November 25, 2015, in an

unpublished opinion State v. Latrone T. Butler, Op. No. 2015-UP-528 (Ct. App. filed November 25, 2015). The remittitur was returned to the circuit court on December 15, 2015.

II. Summary of Facts Adduced at Trial

On December 5, 2011, sixty-seven year old widow Letty Martin (hereinafter "Martin") was living by herself at the Jericho Mobile Home Park in Ravenel, South Carolina. (Tr. pp. 90-91). On that day, Martin taught two line dance classes at the Mt. Pleasant Senior Center, ran some errands, and returned home. (Tr. pp. 92-93). After parking her vehicle (a 1996 Acura 3.2 TL) in the carport adjacent to her trailer, Martin began to unload her belongings. (Tr. pp. 93, 95-96). After removing the items from her car, Martin noticed a man coming between her carport and her home. (Tr. p. 96). Martin observed his face before turning around to lock her car. (Tr. p. 96) While her back was turned, the man came behind her, grabbed her left arm and put something that he said was a gun against her ribs. (Tr. p. 96). He told her not to scream or fight or he would shoot. (Tr. pp. 96-97). The man then demanded she unlock her car and hand over her car keys, cell phone, and money; Martin complied. (Tr. pp. 97, 99). He also instructed Martin to get into the passenger seat. (Tr. p. 97).

Once Martin was in the passenger seat, the man drove out of Martin's trailer park and on to a main thoroughfare. (Tr. p. 98). Martin was able to glance at the man, although he repeatedly instructed her not to look at him or he would shoot her. (Tr. pp. 99-100). Martin noticed the man was driving the car in the wrong gear and asked him to correct it, which he did. (Tr. p. 101). The man continued to drive around the general area before eventually stopping in a secluded wooded area; by this time it was completely dark. (Tr. pp. 101-104). The man then pulled Martin from the car, placed her near the car's rear, and instructed her to put her purse on the trunk. (Tr. p. 104). The man then placed one hand on Martin's chin and one on her forehead and repeatedly jerked her head in an attempt to snap her neck. (Tr. pp. 104-105). The man's force was so great that it gave Martin

whiplash. (Tr. p. 104-105). At some point, Martin passed out and woke up on the ground; the man then lifted Martin up and resumed his attempts to break her neck. (Tr. p. 105). The man eventually stopped and fled in Martin's car with her purse when another car approached. (Tr. pp. 105-106).

Martin walked to the nearest home for help. (Tr. 106). When she arrived, she was greeted by Penny Mizell. (Tr. p. 106). Mizell, a resident of Ravenel, was at home with her husband and sixteen year old son when Martin knocked on her door. (Tr. pp. 107, 153). Mizell answered the door and Martin informed her that she had been carjacked and needed help. (Tr. pp. 106, 153). Martin was very distraught and had visible injuries. (Tr. p. 154). Mizell called 911 and spoke with law enforcement, as well as called Martin's family. (Tr. pp. 107-08, 153-55).

Shortly thereafter, Deputies from the Charleston County Sheriff's Office responded to the Mizell home. (Tr. pp. 108, 155, 156). Responding Deputy Don Kejellman spoke with Martin and received initial information about the carjacking and assault. (Tr. pp. 109, 158-59, 160-61). Martin informed law enforcement that the car had a LoJack security detection device that could possibly be used to locate her car. (Tr. p. 109). Martin also provided law enforcement with a description of the man and her vehicle, resulting in alerts to other law enforcement agencies. (Tr. pp. 159, 165-66). Martin described the man as a black male, age twenty-four to thirty, approximately five feet and eleven inches and one-hundred-and-seventy pounds. (Tr. pp. 162-63). Martin also reviewed her physical injuries with law enforcement. (Tr. pp. 109-112). Emergency Medical Services (EMS) came to the Mizell home and treated Martin. (Tr. p. 111-12).

Two days later, Martin went to the Sheriff's Office to view a photographic lineup. (Tr. p. 112, 169-70). Smith explained the process to Martin and advised her of her rights, which Martin voluntarily waived. (Tr. pp. 113-16, 192-93). Smith then showed Martin a photo lineup comprised of six individuals matching the description she previously gave law enforcement; the lineup was

compiled by another law enforcement agency with no other involvement in the case. (Tr. p. 113-117, 168-69, 192-93). Based on a tip law enforcement received from Crime Stoppers, Applicant's photograph was included in the six person photo lineup. (Tr. pp. 167-68). Smith had no other involvement in the case beyond showing her the lineup and did not know which person was the suspect when she showed Martin the lineup, which is accordance with office policy. (Tr. pp. 170, 192-95). Martin spent several minutes reviewing the lineup and studying the subject's individual faces before selecting Applicant as the perpetrator, circling his photograph and stating that he looked most like the perpetrator. (Tr. pp. 116-118, 170, 193-94). Martin then reviewed her injuries with law enforcement, which were documented by camera. (Tr. p. 119-121, 194).

After Martin identified Applicant as the suspect, law enforcement sent out a BOLO report for Applicant. (Tr. pp. 170-71). Applicant was located the next day, December 8, 2011, at the Hamm Grant Club in Ravenel. (Tr. pp. 171, 199). Martin's vehicle was also found in the parking lot of the club. (Tr. pp. 171, 199). Law enforcement responded to the scene and apprehended Applicant from the club's restroom. (Tr. pp. 171, 199-206). When he was taken into custody, Applicant had the key to Martin's car hidden in his sock. (Tr. p. 206). Law enforcement also took custody of Martin's vehicle, which was towed to the Sheriff's Office evidence compound for processing. (Tr. p. 215). After obtaining a search warrant, Martin's vehicle was searched, photographed, and inventoried. (Tr. p. 215-16). A black wallet containing Applicant's vital records, birth certificate, social security card, paystubs, a South Carolina Beginner's Driving Permit, and South Carolina Identification Card were found in the vehicle. (Tr. p. 231-34). Applicant's beginner's permit listed his height as five feet and eleven inches and one-hundred-and-ninety pounds. (Tr. pp. 232-33). Law enforcement also recovered men's clothing, a towel, and a remote augmented to look like a makeshift weapon in the vehicle. (Tr. pp. 218-222, 226-230). Law enforcement also took DNA swabs and fingerprint lifts

from Martin's vehicle. (Tr. pp. 216-17, 222-226). Law enforcement obtained buccal swabs and fingerprints from Applicant and Martin. (Tr. pp. 171-73, 240-41).

The Charleston County Sheriff's Office sent the fingerprint lifts and known fingerprint samples from Applicant to be tested by a latent print analyst. (Tr. p. 225). Applicant's known prints matched numerous different prints found in Martin's vehicle. (Tr. pp. 247- 250). Additionally, the Charleston County Sheriff's Office sent the DNA swabs from Martin's vehicle and the known DNA samples from Martin and Applicant to the South Carolina Law Enforcement Division (SLED) for testing. (Tr. pp. 175, 234, 269). The SLED analyst who tested the DNA swabs concluded that Applicant's DNA was found on Martin's car and items found within the vehicle. (Tr. pp. 269-278).

Applicant proceeded to a jury trial on January 15, 2014. Applicant moved to suppress Martin's identification of him. (Tr. p. 36-71). The trial court held a hearing pursuant to Neil v. Biggers¹ and heard testimony from Martin, Detective Smith, and Applicant. (Tr. pp. 36-68). Applicant argued that the photographic lineup was unduly suggestive because Applicant's face was more highlighted and located last. (Tr. pp. 68-69). Applicant also argued that Martin only said that Applicant looked most like the perpetrator, not that Applicant was the perpetrator. (Tr. p. 69). Applicant also noted that he has more than seventeen visible tattoos and that Martin's description of her perpetrator did not mention any tattoos. (Tr. pp. 43, 65-67). In reply, the State acknowledged that Applicant's face did appear to be lighter than the other five photographs and could have grabbed the attention more, but argued that nothing in the lineup was suggestive. (Tr. p. 70). The State also noted that Martin examined all the photographs in the lineup closely before selecting Applicant as most closely resembling the perpetrator and noted the long duration Martin had to observe her perpetrator. (Tr. pp. 70-71). The trial court denied Applicant's motion:

¹ 409 U.S. 188 (1972).

Well, I find there is nothing suggestive at all about the process, much less unduly suggestive. It's a textbook procedure outlined. Went over the questions with her with a disinterested person, someone who is not involved in the investigation at all so she wouldn't have any way of tipping the victim of looking at any particular one of the photos. And as far as the argument that his picture has more of a highlight or a glare, I mean, I just don't see it. All of these gentlemen have a little bit of a glare to their picture. I mean, it's a flash, is what we're talking about, and I don't see where that draws any attention to the defendant's picture over any of the others such that it would make it an unduly suggestive process.

(Tr. pp. 71-72).

During the trial, Martin's out-of-court identification of Applicant was admitted, and Martin made an in-court identification of Applicant. (Tr. pp. 114-18). Martin also testified she had seen Applicant earlier on the day of the attack knocking on her neighbor's door. (Tr. p. 133). Martin also testified that she had given a black man around Applicant's age a ride to work at Harvest Moon Grill (the same restaurant that Applicant worked) earlier in the year but could not recall if it was Applicant. (Tr. pp. 135-36).

Following the State's case, Applicant moved for a directed verdict, arguing the State did not present sufficient evidence that Applicant had attempted to kill Martin and that there was no physical evidence tying him to the attack. (Tr. pp. 280-281). The trial court denied Applicant's motion. (Tr. pp. 281-82). Applicant called one witness in his defense, an investigator with the Charleston County Public Defender's Office, who testified regarding Applicant's numerous tattoos. (Tr. pp. 285-290). Applicant then renewed his motion for a directed verdict, which was again denied by the trial court. (Tr. p. 291).

Applicant requested jury instructions on the lesser included offenses. (Tr. p. 291). At a charging conference on the record the following morning, the trial court noted that Applicant had requested jury instructions on assault and battery of a high and aggravated nature and assault and

battery in the first, second, and third degrees. (Tr. p. 295). The court asked Applicant to elucidate why he was entitled to those lesser included offenses and the following exchange occurred:

MS. FORD: I think the evidence is Ms. Martin testified the man's hands were around her mouth and her forehead and everything.

THE COURT: And the jerking –

MS. FORD: Yes, but I think it's possible the jury comes to the interpretation that the man does not intend to actually kill her, but, rather, trying to get her to –

THE COURT: A chiropractic adjust or what? I mean, we don't understand it. The only evidence we have is he not only put his hand over her forehead and chin but he was jerking her head to the side. You can't just say one thing. There's no evidence other than that.

MS. FORD: I just think the jury could come to the conclusion that there was not an intent to kill, Your Honor.

THE COURT: How?

MS. FORD: Just because the circumstances she was in a very stressful situation, obviously. She doesn't remember all of the details and everything that was occurring. She passed out, and so I just think–

THE COURT: And then he resumed the exact same attack. That is uncontroverted evidence. Now, they can believe it or not, but it is uncontroverted that that is what happened. He took his hands, put it over her head and her chin, and snapped her neck to the side till [sic] he passed out. All right [sic]? And then he did it again when she came out. So if you were to say his intent was not to kill her but to cause her to just pass out, well, he accomplished that, so to do it again makes no sense. If you want to say, well, all he wanted to do was cause her to pass out so that he could rob her and take her stuff, he had the opportunity to do that. I'm just trying to think, how is there any view of the evidence that we have that he had anything other than the intent to kill her?

MS. FORD: She passed out but then she came to so the man did it again and got her to pass out again. It didn't work the first time. That's why he had to do it again.

THE COURT: And what?

MS. FORD: I understand that's the only evidence about what happened that evening. We just think the jury could come to the conclusion there was not a specific intent to kill, so in that case, an ABHAN charge and assault and battery first charge and the others would be appropriate, Your Honor. Just cause of the various assaults there is great bodily injury, moderate bodily injury.

THE COURT: You would be entitled to those charges if there was some way to construe the evidence as fitting all those elements without intent to kill, but there is no way to view this evidence, as I see it, other than with an intent to kill, because he did it until she passed out and then he started to do it again and then another car came along. A car came along and spooked him and he dropped her and ran off. I don't know how you construe that as other than an intent to kill, and I've thought about it.

(Tr. pp. 295-98). The court then asked the State to respond, to which the prosecutor replied that there was nothing in the record warranting the inclusion of the lesser included offenses. (Tr. p. 298). The Court agreed, stating: "I just don't see how you can have the uncontroverted evidence that we have and not view that evidence as not having an intent to kill, and that's the only way you get the lesser included. I agree, they are lesser includeds but the facts have to support them, and there is no way to view the uncontroverted evidence as whoever did it. She says it was him, had the intent to kill her at that time. So I'm not going to allow lesser included. It's is straight up attempted murder, kidnapping, carjacking." (Tr. p. 298). Applicant also requested a specific jury instruction on the identification procedure, which the trial court charged over the State's objection. (Tr. p. 299-301).

The jury convicted Applicant as indicted of attempted murder, kidnapping, and carjacking. (Tr. p. 342). The State informed the court that Applicant was eligible for life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior record and requested that the court impose a lengthy term of imprisonment with consecutive sentences. (Tr. p. 348). After listening to mitigation from Applicant's counsel, the trial court sentenced Applicant to twenty years imprisonment for carjacking,

thirty years imprisonment for attempted murder, and thirty years imprisonment for kidnapping, with all sentences to be served consecutively. (Tr. p. 349-52)

III. Current Post-Conviction Relief Action

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Alleged victim claimed she struggled/fought with attacker."
2. "My clothing were tested for DNA, in which victim was excluded."
3. "The victim stated attacker had no tattoos; nor facial hair; nor hair description; victim stated I look most like the attacker Booking Photo."

On June 8, 2017, the State filed its Return and Motion to Dismiss, asking the Court to summarily dismiss the application for failure to state a claim upon which post-conviction relief could be granted. On June 13, 2017, the Honorable Deadra L. Jefferson, acting in her capacity as Chief Administrative Judge for Common Pleas for Charleston County, signed a Conditional Order of Dismissal provisionally dismissing the application but allowing Applicant twenty days to provide specific reasons, either factual or legal, as to why the application should not be dismissed; the order was filed on June 14, 2017.

Thereafter, on June 29, 2017, Applicant, through counsel James K. Falk, filed a Return to the State's Motion to Dismiss and Amended Application for post-conviction relief.² In this amended application, Applicant sets forth the following grounds for post-conviction relief:

1. Trial counsel failed to obtain or consult with an expert DNA witness.

² Applicant also filed his own *pro se* amended application alleging various grounds of ineffective assistance of trial and appellate counsel. However, as Applicant is represented by counsel, the State does not consider these *pro se* filings to be part of the record of this case. See Rule 11, SCRCP, requiring every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11 SCRCP. Furthermore, the South Carolina Supreme Court has stated counsel cannot serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation, but must use their professional judgment in reviewing the documents and shall only submit those arguments that are relevant and have been edited by counsel. *Jones v. State*, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002).

2. Trial counsel failed to seek suppression or redaction of the 911 recording (State's Ex. No. 104)
3. Trial counsel failed to object to prejudicial hearsay testimony uttered by the State's witnesses, Penny Mizell (Record on Appeal p. 153 lines 16-17; p. 154 lines 19-24).
4. Trial failed to object when State's witness Chris Smith testimony bolstered the victim's identification testimony. (Record on Appeal p. 193 lines 9-25).
5. Trial counsel failed to move to challenge the sufficiency of the indictment and move to quash the indictments.

Applicant also requests the Court's Conditional Order of Dismissal be set aside, he be granted leave to further amend his application, and an evidentiary hearing be set.

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute

resulting in undue prejudice to Respondent.

IV. Response to Applicant's Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of trial counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his 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, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test.

However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Response to Any and All other Allegations

Each and every allegation contained within the application and amended application not expressly admitted, qualified, or explained in this amended return is hereby denied.

VI. Conclusion

WHEREFORE, Respondent requests the Court's dismissal of all other allegations as set forth in Applicant's original application be made final. Moreover, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

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10/5, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

LATRONE BUTLER, # 303325

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

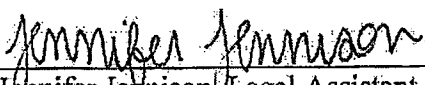
IN THE COURT OF COMMON PLEAS
2016-CP-10-4888

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James Kristian Falk, Esquire
Falk Law Firm, LLC
PO Box 1058
Charleston, SC 29402

DATED this the 5th day of October, 2017.


Jennifer Jennison, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2016-CP-10-4888
4 LATRONE BUTLER,)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: January 31, 2018
9 _____)

10 B E F O R E:

11 THE HONORABLE MAITE MURPHY

12
13 A P P E A R A N C E:

14 JAMES FALK
15 Attorney for the Applicant

16 MEGAN HARRIGAN JAMESON
17 Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

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1 MS. JAMESON: Your Honor, this is the matter of
2 Latrone Butler vs. the State, Docket 2016-CP-10-4888.

3 In June of 2012, the Charleston County Grand Jury
4 indicted Mr. Butler for carjacking, attempted murder and
5 kidnapping. Mary Ford represented him.

6 On January 15th, 2014, he proceeded to a jury trial
7 before the Honorable Roger Young, where he was convicted as
8 indicted of all three offenses.

9 Judge Young sentenced Mr. Butler to imprisonment
10 for consecutive terms of 20 years for carjacking, 30 years
11 for attempted murder, and 30 years for kidnapping.

12 He filed a timely notice of appeal. He was
13 represented by Appellate Defender Katherine Hudgins of the
14 Office of Appellate Defense. Following briefing, the Court
15 of Appeals affirmed Mr. Butler's convictions and sentences
16 on November 25th, 2014, in an unpublished opinion.

17 The remittitur was returned to the circuit court on
18 December 15th, 2015.

19 Thereafter, on September 14th, 2016, he filed an
20 application for post-conviction relief alleging direct
21 appeal claims.

22 On June 8th, 2017, the State filed a return and
23 motion to dismiss, asking the court to summarily dismiss the
24 application for failure to state a claim upon which
25 post-conviction relief can be granted.

1 On June 13th, 2017, Judge Jefferson, acting in her
2 capacity as chief administrative judge for common pleas for
3 Charleston County, signed a conditional order of dismissal,
4 provisionally dismissing the application, but allowing him
5 20 days to provide sufficient reasons why his application
6 should be able to go forward.

7 Thereafter, on June 29th, 2017, Mr. Butler, through
8 his appointed counsel, James Falk, filed a return to the
9 State's motion to dismiss and amended application for
10 post-conviction relief.

11 In his amended application, he set forth five
12 specific grounds for post-conviction relief: The first,
13 trial counsel failed to obtain or consult with a DNA expert
14 witness; second, trial counsel failed to seek suppression or
15 redaction of 911 phone calls; third, trial counsel failed to
16 object to prejudicial hearsay testimony by the State's
17 witness Penny Mizell; fourth, trial counsel failed to object
18 when State's witness Chris Smith presented testimony that
19 bolstered the victim's identification of Mr. Butler; and
20 finally, that trial counsel failed to move to challenge
21 sufficiency of the indictments or move to quash the
22 indictments.

23 The State filed an amended return on October 5th,
24 2017, requesting an evidentiary hearing on those amended
25 grounds as set forth in the application.

1 THE COURT: Mr. Falk.

2 MR. FALK: Your Honor, the only issue that we are
3 going forward with today is the issue regarding the tape.

4 THE COURT: The 911 tape?

5 MR. FALK: The 911 tape. I reviewed it again, and
6 I don't believe there's a meritorious claim there.

7 THE COURT: Sir, you may proceed and call your
8 first witness.

9 MR. FALK: We call trial counsel Ms. Ford to the
10 stand.

11 MARY FORD,
12 having been duly sworn, testifies as follows:

13 THE COURT: Your witness.

14 DIRECT EXAMINATION

15 BY MR. FALK:

16 Q. Will you please state your name.

17 A. Mary Ford, F-o-r-d.

18 Q. Ms. Ford, you are employed with the public
19 defender's office here?

20 A. I am.

21 Q. Were you appointed to represent Mr. Butler in this
22 case?

23 A. I was.

24 Q. Are you the only public defender who was appointed
25 in this case? I mean, nobody else was relieved or

1 something?

2 A. No.

3 Q. Okay.

4 A. Not to my knowledge.

5 Q. Better question, were you appointed from beginning
6 to end in this case?

7 A. Yes, I was.

8 Q. That's a better question. Okay. Can you just sort
9 of advise the Court sort of, basically, the factual
10 allegations that led to the arrest? What happened in this
11 case? Why did he get arrested?

12 A. Yes. There was a woman in, I believe it was, a
13 trailer-park type of area. And when she was getting into
14 her car, she was approached by a black male who told her to
15 get into the car and have her drive around for a bit. Then
16 he had her pull over. And this is out in a rural area. So
17 there's great stretches where not a lot of people or houses
18 are around. So at one point, the man had her pull over,
19 sort of on a dirt road and get out. And then the
20 allegations are that he proceeded to strangle her.

21 A car ended up coming. And so the man just stopped
22 and left with the car. No one from that, the car driving
23 by, was able to see anything. But the woman was able to
24 walk nearby to a house and knocked on the door and asked for
25 help. She ended up not being injured too badly or anything.

1 And she had -- so her car was stolen. And about, I
2 think it was, 55 hours later, the police found Mr. Butler.
3 I don't think he was directly in the car. They had gotten a
4 tip about Mr. Butler being the person suspected of taking
5 the car, or they had seen him in the car. And when they
6 found the car, Mr. Butler, he had the key to the car.

7 Ultimately, in the car, his DNA was found in the
8 car. Some paperwork with his name was found in the car as
9 well. And the woman was able to identify him from a photo
10 lineup. I believe it was before he was arrested. But she
11 had said he looks most like the person who robbed me. So
12 that's the evidence from my recollection.

13 Q. So -- and I will come back to this a little bit
14 later. But she said, he looked most like him. So it was
15 not the most confident identification?

16 A. Correct.

17 Q. From the lineup?

18 A. That's what I argued, yes.

19 Q. What significance of the DNA evidence -- do you
20 have the DNA results, the discovery with you? Do you have
21 the DNA?

22 A. I have all of my discovery. I can find it.

23 Q. Do you recall whether or not there was any of her
24 DNA found on Mr. Butler?

25 A. No. My memory is that I don't think there was any

1 DNA connecting Mr. Butler to the victim herself. Rather,
2 there was DNA connecting him to her car, which he was, you
3 know, found at least nearby. And, supposedly, had the key
4 to more than two days later, 55 hours, I believe, is what I
5 remember seeing.

6 Q. Did you consider calling your own DNA expert in
7 this case?

8 A. Not in this case. My review of the evidence is
9 that there was a lot to tie Mr. Butler to the car, including
10 paperwork with his name on it inside of the car. There was
11 also, I believe, a fingerprint in the car as well of his.
12 And he had the key on him as well. So my strategy in the
13 trial was to basically claim ownership, so to speak, that he
14 had had possession of car, but that it was 55 hours later
15 and that a lot happens in 55 hours. And that he was from
16 and lived in that area. So it wouldn't have been unusual
17 for him to come in contact with that car at some point.

18 So that's why I didn't feel that a DNA expert would
19 have been useful. I believe there was somebody else's DNA
20 in the car as well. And I did bring that out.

21 And I used a DNA expert before on other cases. And
22 so, I mean, I am not, by any means, saying that I fully
23 understand DNA, but I knew generally the kind of questions
24 or what he would help me with. And so I didn't feel like I
25 needed that in this case for extra expertise in this case.

1 Q. Did you think that the evidence that her DNA was
2 not found on him would have helped to exonerate him?

3 A. Well, he was found -- he was not arrested for more
4 than two days later. So my understanding is that DNA,
5 obviously, had her DNA been on him, more than two days --
6 even though it's possible, I guess, her DNA could have been
7 somewhere, but someone washing their hands, taking baths, a
8 variety of things could have led to her DNA not being on
9 him. So I don't think -- if my argument had been her DNA
10 wasn't on him, the State obviously would have said, well, of
11 course, it wouldn't have been, it doesn't matter, you know,
12 because it was more than two days later. And so I didn't
13 feel having an expert would have helped prove that point.

14 Q. How many, in your recollection, how many cases have
15 you tried where DNA evidence has been an essential part of
16 the State's case?

17 A. In trials? Maybe -- I had one last year and in the
18 one I used an expert on. Those are the only two coming to
19 mind besides this one. But I can't recall in trial DNA
20 coming up other than -- well, I handle a lot of criminal
21 sexual conduct cases. And so sometimes, you know, they have
22 someone testify in general about how they look for DNA, but
23 DNA can be washed away. So they tend to put people up just
24 to say, this is why there's no DNA, because DNA easily goes
25 away. So I've had a lot of experience with that. But,

1 generally, that's in the context, again, of there not being
2 DNA and they are explaining why.

3 Q. But you would admit that the presence of the DNA
4 was a significant factor in the State's case in this case?

5 A. In tying him to the car, yes.

6 Q. Okay. And, ultimately, then tying him to the
7 kidnapping, I guess?

8 A. Yes. I mean, my strategy, again, was to try to
9 separate the two. But, obviously, the State was arguing
10 that him being in possession of the car was evidence of him
11 being involved in the kidnapping.

12 Q. Okay. Do you have a copy of the record up there,
13 the transcript?

14 A. I do.

15 Q. If you could look at page 153 of the transcript.

16 A. Okay.

17 Q. And this is the direct testimony of Penny Mizell.
18 Can you explain what her role was in this case?

19 A. Yes. She was the lady who lived in the house where
20 the victim went to after the -- after the man left her on
21 the road. The victim went to the house -- to a random
22 house. And she was a resident of that house who answered
23 the door.

24 Q. And so when was that contact made?

25 A. Right after the incident or shortly after. I'm not

1 sure of the exact time frame.

2 Q. And in looking on page 153, can you read line 16
3 through 18?

4 A. Yes.

5 Q. Just to yourself.

6 A. Oh, yes. Okay.

7 Q. Who is the "she said"? Who is the witness talking
8 about there?

9 A. She's referring to the victim.

10 Q. Okay. Did you consider whether or not that was a
11 hearsay statement?

12 A. I mean, I don't recall exactly what was going
13 through my head at that moment. Looking back -- and I know
14 there's a similar -- there's more details coming up later.
15 And I did object before that. And the judge said, no,
16 that's an excited utterance, I think is what the judge said.
17 But my understanding of that, when I review that, I agree
18 it's more like present sense impression. And it didn't go
19 to the identity of Mr. Butler at all. And we weren't
20 denying that this woman was carjacked or injured. We were
21 denying that Mr. Butler was the one who did it.

22 And so from that statement, you know, it has
23 nothing to do with Mr. Butler himself. And so that's why,
24 you know, I wouldn't -- you know, probably why I did not
25 object.

1 Q. So your reason not to object was trial strategy or
2 you just didn't think it was significant in the case?

3 A. It wasn't necessarily trial strategy, but I didn't
4 think it was necessarily significant in my case. And I did
5 believe it would come in under a hearsay exception, because
6 the victim was still under the stress of being kidnapped and
7 everything.

8 Q. Could you go to page 154.

9 A. Yes.

10 Q. If you could look over lines 19 through 24.

11 A. Okay.

12 Q. Again, that's Ms. Mizell still testifying?

13 A. Yes.

14 Q. And she is relaying statements that were made to
15 her by the victim in this case; is that correct?

16 A. Correct.

17 Q. And this is sort of going beyond an excited
18 utterance, wouldn't you agree? I mean, my impression of
19 excited utterance is, he just hit me, or something like
20 that. But, eventually, the excitement dies down and she's
21 sort of relaying more specific facts.

22 A. Well, I know the judge had claimed excited
23 utterance. I actually did object earlier in that page when
24 they were starting to get into that line of questioning.
25 So -- and, again, I can't remember specifically at the time.

1 So I don't know if I was thinking necessarily that, well,
2 she's already ruled on that issue, because it was just a
3 continuation.

4 Again, it doesn't go to the identity of Mr. Butler.
5 But I do think, perhaps, it could come under more of, like,
6 a present sense impression situation, since she had just
7 been attacked, because I don't think -- as long as she's
8 still under the effects of it, I believe that's where that
9 exception comes in.

10 I mean, I do think at the end, even though I don't
11 know this would be relevant, maybe it's speculation when she
12 says it could have been a few hours. So I could have
13 objected to that part as well, certainly. But I do think
14 possibly I did object -- I don't know if that technically
15 covers that portion, but I did object on that same page
16 earlier on. And the judge had denied my objection. So ...

17 Q. What do you think the State's purpose was in having
18 Ms. Mizell testify? I mean, if they had the victim, why did
19 they need Ms. Mizell?

20 A. Well, I think part of the State, they want to not
21 set the scene, but also they tried -- depending on the
22 solicitor, different solicitors are different, some may try
23 to keep it more simple. But some like to -- they don't want
24 to leave certain people out. So that I, as a defense
25 attorney, can't get up and argue, they didn't do this, or,

1 you didn't hear from this person. So sometimes they may
2 want to put people up just for that reason.

3 I mean, probably to an extent, it was to bolster.
4 But I think they were just establishing what happened and
5 that she did go to this house. And just, I think it
6 corroborates that there was an incident, even though, again,
7 I was not trying to argue that this woman was lying about
8 being carjacked and attacked.

9 I think the fact that she went to a random person's
10 house, probably for the State, you know, corroborated that
11 something did happen, because they still had the burden to
12 prove that, even though I wasn't necessarily objecting or
13 denying that there was an incident.

14 Q. Because you would agree that this is basically the
15 only eyewitness to this event, is the victim?

16 A. Correct.

17 Q. And you would agree that you argued that her
18 identification from the photo pack was not 100 percent
19 confident?

20 A. Correct.

21 Q. So would you then agree that any witnesses--

22 MS. JAMESON: Your Honor, I would object to any
23 leading or testimony from counsel.

24 THE COURT: Please rephrase.

25 BY MR. FALK:

1 Q. Do you think that this testimony corroborated the
2 State's witness, the victim's testimony?

3 A. Yes, that she was attacked, yes.

4 Q. Do you think that that had an impact on the jury as
5 far as corroborating the State's witness's testimony?

6 A. I mean, to me, personally, I don't think it's the
7 biggest deal. But she testified just because -- again, my
8 strategy was not to claim that this woman was making this
9 kidnapping up out-of thin air. So I don't think --
10 personally, I don't think it had much of an impact on the
11 jury. But, obviously, that's speculation. I can't say for
12 sure if it did.

13 Q. Could you look at page 193.

14 A. Okay.

15 Q. And I'm ultimately going to ask you about lines 9
16 through 25.

17 A. Okay.

18 Q. And if you can just maybe read those over.

19 A. Okay.

20 Q. Now, can you tell me who Chris Smith was in this
21 case?

22 A. Chris Smith was a detective, I believe, a
23 detective. But I'm pretty sure she's a female. She's in
24 law enforcement. And she was supposed to -- she wasn't
25 directly involved in the case itself as far as working on

1 the case. So they used her as a blind -- I can't think of
2 the term right now, but someone who didn't have any
3 knowledge. So they could say that she wouldn't have led Ms.
4 Martin, I believe is the name of the victim, to a particular
5 picture because she didn't really know anything about the
6 case.

7 Q. Just for the Court, this is testimony regarding the
8 victim's photo pack identification; is that correct?

9 A. Correct, yes.

10 Q. And did you consider whether or not this testimony
11 was really bolstering her identification?

12 A. I -- at the time, no, I don't think I looked at it
13 that way. My belief is that Detective Smith was just giving
14 her observations of what she saw, even though I do think
15 that the point of this questioning was to bolster. When I'm
16 looking at it, I do think that that was the intent, to
17 bolster. But I believe probably my thinking, just because,
18 looking back, is that she was just stating her observations.
19 And so, to me, at that time, I was thinking that was okay.
20 But, you know, I do think the ultimate goal of the solicitor
21 was likely to try to bolster the identification, yes.

22 Q. And this was an identification that, again, was a
23 little suspect or less than 100 percent confident?

24 A. Yes.

25 Q. And at the time, you didn't think to object?

1 A. Right. I'm pretty sure -- I cannot remember 100
2 percent myself, but I don't think at the time I had a
3 thought and I said, no, I am not going to object because of
4 this. I think as I was hearing it -- I don't have any
5 recollection of thinking to object, but deciding not to. I
6 think I just didn't think to object.

7 And based on my knowledge and experience, I think
8 probably I was thinking, well, the officer just testified to
9 their personal observations. So I don't think that's why I
10 thought anything of it at the time.

11 But looking back on it, I do see that, all right, I
12 am thinking that the State was likely trying to bolster the
13 identification, yes.

14 Q. Thank you. Now, prior to the beginning of the
15 case, did you have any questions about the indictments as
16 far as the --

17 A. No, I didn't.

18 Q. If you would have had a question whether or not the
19 indictments were accurate, would you have moved for a
20 continuance?

21 A. I think my understanding -- I had this happen in a
22 case last year -- is that if the indictment is incorrect in
23 some way, then I would have to object before the jury is
24 sworn. And then if the judge agreed with me, then the
25 case -- then the indictment wouldn't be able to go forward

1 and the State could decide if they wanted to try to
2 re-indict.

3 For example, my other case, the judge did throw out
4 some of these indictments. And the Grand Jury was there
5 that night, and they reindicted the cases properly,
6 basically, with some more indictments, actually.

7 But that's my understanding. I would have had to
8 raise the issue of an indictment before the jury was sworn.

9 Q. Could you have used more time in preparing for this
10 case?

11 A. I don't recall that being an issue. I don't recall
12 thinking, oh, I wish I had more time. You always want --,
13 especially when you think you are going and then you realize
14 you get extra time, that's always nice. You always can be
15 more prepared. But I don't think that at the time I was
16 thinking, oh, I am not ready for this case.

17 Q. I guess I'm coming back to the DNA expert.
18 Since -- even if you had another two months, would you have
19 called a DNA expert when you were preparing for this case?

20 A. No. I don't believe I would have, no.

21 MR. FALK: I have no further questions.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MS. JAMESON:

25 Q. Thank you, Your Honor. Good morning, Ms. Ford. Do

1 you recall -- I know you said that you were his first
2 attorney that was appointed. Do you recall when you were
3 appointed?

4 A. It would have been not -- not exactly, but it would
5 have been within about a month. Usually when someone is
6 arrested, we are appointed. It takes a few weeks for them
7 to be screened and then the process -- generally, I get them
8 about one month in. I mean, I could look at details, if you
9 want me to.

10 Q. I know you briefly reviewed the allegations on
11 direct examination, but I believe you testified that the
12 victim was either strangled -- does the record reflect
13 possibly he tried to snap her neck, or that was the State's
14 allegation?

15 A. I think that's what she would say. I mean, this
16 was -- I mean, my personal opinion, she was -- obviously, it
17 was traumatic, but that's what they were alleging. I don't
18 think they had a doctor testify or anything of that nature.

19 Q. But no blood -- the victim wasn't injured in any
20 sort of manner that she bled, correct?

21 A. Correct, correct.

22 Q. So there wouldn't have been any DNA from blood that
23 would have been found on Mr. Butler?

24 A. No. There could have been touch DNA or DNA under
25 his nails, but, no, nothing from blood.

1 Q. And, again, he was arrested about 55 hours later?

2 A. That -- when I reviewed it, I made a few notes in
3 preparation for this, and I made a note of 55 hours. So I
4 believe that's the correct time.

5 Q. And do you recall where specifically he was
6 arrested?

7 A. I believe he was at some type of a nightclub,
8 perhaps. It was still close by in the general -- in that
9 area. It wasn't -- I think -- but I think it was at some
10 type of nightclub.

11 Q. Do you recall where in the club he was arrested?

12 A. No, I don't.

13 Q. If the record reflects a bathroom, would you have
14 any reason to dispute that?

15 A. No.

16 Q. And when he was arrested, I think you discussed
17 that a key was found on his person.

18 A. I think so. That's my recollection. That could be
19 wrong, but ...

20 Q. Do you recall where on his person the key to Ms.
21 Martin's car was found?

22 A. No. I assume his pocket, but, no, I don't.

23 Q. And other than the DNA and the key that was found
24 on his person, if the record reflects it was found tucked in
25 his sock, in his shoe, does that --

1 A. No.

2 Q. -- ring a bell for you at all? It was found on his
3 person. And his DNA was found in the car. Was there
4 anything else linking your client to Mr. Martin's car?

5 A. I know that he had a print, I believe I noted.
6 There was DNA, I think, on the car itself, perhaps the
7 steering wheel. And then there was some pants in the car
8 with some blood on it. And that was his DNA. And I
9 objected to that, because as you had noted, the victim never
10 bled. And so I said it was just kind of prejudicial, since
11 there's no indication that it would have been the victim's
12 DNA or the blood.

13 But he had some documents in the car with his name
14 on it as well. So I believe, you know, there was DNA in a
15 couple of places, prints, and then documents with his name
16 on it.

17 Q. So ample evidence, other than the DNA, linking him
18 to the possession of the car?

19 A. That is what I believed, yes, from ...

20 Q. And you testified your theory wasn't that Ms.
21 Martin wasn't carjacked and assaulted; it was that your
22 client didn't do it. He was just in possession of this car
23 some 55 hours later, correct?

24 A. Correct.

25 Q. And this is a small, rural community. I believe it

1 was Ravenel.

2 A. Yes.

3 Q. How many times did you meet with Mr. Butler?

4 A. I would have to review.

5 Q. Do you know generally, more than five times?

6 A. Oh, yes, certainly, generally. And I might be able
7 to tell you. And I can give you all the dates, if you
8 want.

9 Q. Just an approximation of times.

10 A. I initially saw him on January 9th, 2012, was the
11 first time I saw him. Let's see. I believe just counting
12 it real quick -- so I could have missed things. I see that
13 it looks like I saw him 24 times before trial,
14 approximately.

15 Q. Did you discuss his version of what happened and
16 how he came in possession of the car?

17 A. I'm trying to remember. He kept quiet a lot, in my
18 recollection. I can't remember specifically what he may
19 have said about that. He and I discussed him testifying.
20 And he didn't want to testify. But I can't recall
21 specifically. I would have to try to go more thoroughly
22 over my notes to recall what he said about how he came in to
23 possession of the car.

24 Q. Regarding the identification, you moved to suppress
25 this pretrial in a *Neil v. Biggers* hearing, correct?

1 A. Yes.

2 Q. Do you recall what grounds you moved for
3 suppression on?

4 A. Well, I know there were a lot of issues with -- I
5 was arguing, like, for example, Mr. Butler, I had my
6 investigator testify, he had a lot of tattoos and everything
7 that were not -- the victim never mentioned any tattoos.
8 And I argued, like, I think he even has neck tattoos and
9 everything. So I argued that his, basically, appearance was
10 inconsistent with what she had said the man looked like.

11 In the car, I think she was saying she really --
12 you know, because she really didn't get to look at the man
13 that much, it sounded like. Because, you know, she was
14 either trying not to look or he was telling her not to look,
15 I think, actually. So I was arguing that even though they
16 were with each other for a good amount of time, she really
17 didn't get a good opportunity to see the man. Even though
18 she was not -- and she had indicated she wasn't quite
19 certain, which is another factor.

20 You know, my understanding sometimes certainly
21 doesn't necessarily correlate with accuracy, but -- so I
22 believe those were generally the grounds, that he didn't
23 actually fit, or she didn't note some very obvious things
24 she should have noted, and that she didn't have ample
25 opportunity, essentially.

1 Q. So one of the things you are saying she didn't note
2 was the tattoos all over him?

3 A. That's my recollection. And that's why I had my
4 investigator testify.

5 Q. And he testified at the *Neil v. Biggers* and your
6 case in chief, correct?

7 A. Yes, I believe so.

8 Q. Do you recall what specifically Ms. Martin said
9 when she identified him? And if you look at page 40, which
10 is during the *Neil v. Biggers* hearing, that might help to
11 refresh your recollection.

12 A. It's all in the -- she said, he looks most like the
13 person that carjacked me and tried to kill me.

14 Q. And you argued to the trial court that "looks most
15 like" isn't the same as 100 percent identification, correct?

16 A. Correct.

17 Q. And those arguments were all made and preserved for
18 public review, correct?

19 A. Correct.

20 Q. Have you had an opportunity to look at any of the
21 appellate documents from Mr. Butler's case?

22 A. No. It wasn't my understanding that was an issue
23 in the PCR. So, no, I did not review those.

24 Q. But to the best of your ability, you argued those
25 grounds for suppression of the identification, and those

1 were ultimately denied by the trial court?

2 A. Correct.

3 Q. And, again, your theory was not that Ms. Mizell
4 hadn't been attacked and carjacked, it was just that your
5 client wasn't the carjacker, correct?

6 A. Correct.

7 Q. So Ms. Mizell's testimony isn't really relevant to
8 that?

9 A. Oh, yes. That was my thinking about that witness,
10 my trial strategy. I wasn't thinking she was really
11 relevant to whether my client was guilty or not.

12 Q. So those two portions from the transcript, page 153
13 and 154, although the Court, it looks like, ruled at least
14 on 154, that those are excited utterances, those didn't
15 really affect your case theory?

16 A. I didn't feel that they did, no.

17 Q. Detective Chris Smith, you said, I think, was sort
18 of a blind investigator. She had no other involvement in
19 this case?

20 A. Yes. I believe so. That's my memory.

21 Q. Do you recall your cross-examination of her at all?

22 A. I had reviewed it when I was looking at -- and what
23 page is that again?

24 Q. Her testimony, the portion that Mr. Butler is
25 saying you should have objected to, is 193. And your

1 cross-examination starts on 195. Did you cross-examine her
2 on procedures that were employed or not employed when she
3 was giving the lineup to Ms. Martin, victim in this case?

4 A. I asked her -- my cross consisted of asking her,
5 it's about the policy to have an independent administrator
6 to do the lineup. Let's see. And to ask her the level of
7 confidence. I think it says "competence", but it's supposed
8 to be confidence.

9 Q. You specifically asked her, if you look at bottom
10 of 195, she never said that she was 100 percent sure,
11 correct? And you have Ms. Smith concede, no, that was not
12 documented?

13 A. Correct, I did that. So, yeah, I did go over the
14 policy of how the lineup is administered, correct.

15 MS. JAMESON: Moment's indulgence, Your Honor. No
16 further questions.

17 THE COURT: Any redirect?

18 MR. FALK: Briefly.

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q. Ms. Jameson asked you whether or not you thought
22 there was ample evidence tying Mr. Butler to the kidnapping;
23 is that correct? She asked you whether or not there was
24 ample -- or she asked you to agree that there was ample
25 evidence tying him to the kidnapping?

1 A. Well, I think my answer --

2 Q. I'm sorry, to the carjacking, to the carjacking.

3 A. I think there was ample evidence tying him to the
4 car.

5 Q. Okay.

6 A. But not necessarily to the car -- I mean, that's
7 where the strategy and the argument was. I argued he was
8 tied to the car, not necessarily to the kidnapping. Of
9 course, the victim did identify him as well. But my
10 strategy was to say, she identified him just because she
11 recognized him from the area. Clearly, was not a clear
12 identification.

13 It's just the same reason that would have led him
14 to be in possession of the car, is the same reason that
15 would have led her to identify the man in the photo lineup,
16 because he simply lives in the area.

17 Q. Okay. So you conceded, when Ms. Jameson asked you
18 on cross, that there was ample evidence tying him to the
19 car?

20 A. To the car, yes.

21 Q. Would you agree that there was not the same ample
22 evidence tying him to the kidnapping or the attempted
23 murder?

24 A. Personally, I mean, I think there is legitimate
25 trial issue there. That's a -- it could be subjective. I'm

1 sure the State would say, yes. But, no, I mean, I think
2 that there was possibly some lack of a connection to the
3 actual kidnapping itself. Of course --

4 Q. And the only real evidence tying him to the
5 kidnapping and attempted murder is the testimony of the
6 victim; is that correct?

7 A. Correct. And then -- I mean, he's in possession of
8 the car, but it's more than two days later.

9 Q. Right. And he got 20 years on the kidnapping -- on
10 the carjacking, and then he got 30 and 30 on the attempted
11 murder?

12 A. Correct.

13 Q. And all to run consecutive?

14 A. Yes. In this case, actually, Mr. Butler had a
15 prior most serious offense on his record. And the State had
16 neglected to serve him with LWOP notice. So Ms. Shealy, the
17 solicitor, made a pretty big deal at -- I can't remember if
18 it was the beginning of the trial or more toward
19 sentencing -- about how she made a mistake and it's but for
20 her fault. So she made a pretty big deal about how he
21 should have been LWOP'd and it was just a mistake that he
22 wasn't.

23 And I think the judge also went into a lot of
24 reasons why he felt that the time was an appropriate
25 sentence.

1 Q. Were there plea offers made in the case?

2 A. My recollection -- you know, I wasn't aware that
3 was an issue --

4 Q. It's not. I'm just now curious, based on what
5 you've just said.

6 A. Right. I know there certainly wasn't anything
7 beneficial. I think there was just maybe straight up and
8 she was going to be asking for a lot of time. But she
9 never -- again, I don't think she realized that he was LWOP
10 eligible until it was too late.

11 Q. Would you have handled this case differently if he
12 had been LWOP eligible?

13 A. I knew he was LWOP eligible. I wasn't going to
14 bring that to the solicitor's attention. So I had told him
15 that he was LWOP eligible. But, no, I wouldn't have treated
16 it differently. Because of the allegations of the case, I
17 think this is one of those situations, I always told him, I
18 said, you are going to get a lot of time, like, even at a
19 plea, because they are not really offering anything. I
20 said, you are going to get a lot of time. So it's one of
21 those situations where you may as well go to trial.

22 But my recollection is, I don't think there was
23 much interest from him to try to work out -- I think there
24 would have been too wide of a discrepancy in where maybe we
25 could have agreed to and where the State -- what the State

1 would have agreed to.

2 Q. And I think maybe -- I appreciate your answer. I
3 guess my question is, had you received LWOP notice from the
4 solicitor?

5 A. No.

6 Q. No. Had you -- you said you hadn't gotten LWOP.
7 Had you gotten LWOP notice, would you have handled this case
8 differently?

9 A. No, I would not have.

10 MR. FALK: No further questions.

11 THE COURT: You may step down, Ms. Ford. Thank
12 you.

13 You may call your next witness.

14 MR. FALK: I call Mr. Butler to the stand.

15 THE COURT: Come on up, Mr. Butler.

16 LATRONE BUTLER,

17 having been duly sworn, testifies as follows:

18 THE CLERK: Spell your first and last name for the
19 record.

20 THE WITNESS: Latrone Butler, B-u-t-l-e-r.

21 THE COURT: Your witness.

22 DIRECT EXAMINATION

23 By MR. FALK:

24 Q. Mr. Butler, you heard Ms. Ford just testify just
25 now; is that correct? You were here, right?

1 A. Yes, sir.

2 Q. And she testified as to the communication she had
3 with you prior to going to trial?

4 A. Yes, sir.

5 Q. Is your recollection of those conversations any
6 different than what she testified to?

7 A. No. My only thing would be the fact that I did
8 stated (sic) that I got it from someone.

9 Q. You told her --

10 A. Yes, sir.

11 Q. -- that you had gotten the car from someone?

12 A. Yes, sir.

13 Q. And so that would be an explanation as to why you
14 were in possession of the car?

15 A. Yes, sir.

16 Q. Did you give her any information to help her
17 identify who that person was?

18 A. No, sir. I never gave her no name or anyone, but I
19 did state to her that I got it from someone.

20 Q. Did you want her to present a different type of
21 defense based on that?

22 A. Yes, sir.

23 Q. What did you want her to do?

24 A. I mean, my whole thing was dealing with -- I think
25 it was pertaining to -- I don't know if she's independent

1 administrator, Ms. Smith.

2 Q. On the photo pack, the lineup?

3 A. Yes, sir. Yes, sir. Because, basically, I think
4 she was basically saying the biggest thing was the objection
5 to the height or whatever, because they were saying this
6 individual was six-foot. I ain't -- I'm nowhere near no
7 six-foot.

8 Q. How tall are you?

9 A. 5' 9".

10 Q. Is there other areas that you think that she should
11 have done differently with Ms. Smith?

12 A. I mean, with Ms. Smith, it basically was like -- I
13 was pretty much with the judge saying that she should have
14 got a custodian over to authenticate the booking photo. I
15 think she waived her objection to it, but I think she
16 shouldn't have done that.

17 Q. But as far as the trial strategy or what she talked
18 to you about in going forward with the trial, do you agree
19 that her testimony was what she had talked to you
20 beforehand?

21 A. Yes, sir. Pretty much everything was, you know,
22 right there.

23 Q. And did she have conversations with you about any
24 potential pleas?

25 A. No, sir. It was nothing never came my way about

1 any type of plea, no number or nothing like that.

2 Q. Did she discuss with you that you were LWOP
3 eligible prior to --

4 A. She came by and she brought me, I think it was --
5 well, first I got a letter from her. And she was stating
6 that the solicitor was trying to wait not to LWOP me. So
7 other than that, that's pretty much all I got out of that.

8 Q. You know what LWOP means, though, right?

9 A. Yes, sir.

10 Q. Okay. What does it mean?

11 A. Life without parole.

12 Q. All right. Is there anything else you think you
13 need to add to your PCR application?

14 A. I mean, with me, I just feel -- overall, I just
15 felt that I was pretty much -- it hurts to say, but I pretty
16 much feel that I was pretty much convicted of just from me
17 having a record. Stuff that at the time -- for everything I
18 did, I pled to. My whole life, everything I did, I pled to
19 that. But with this situation, no, because I didn't commit
20 that crime. But other than that, I just felt that I was
21 convicted of me having a background.

22 But with me coming home, I had done did -- I got on
23 parole, like, 13 months early, no ticket, no trouble. I had
24 two jobs. I've got two daughters. That was it. I mean, I
25 was out of harm's way. But other than that, I mean, I don't

1 even now how they even stretched eight years. I can't even
2 think with that.

3 MR. FALK: I have no further questions.

4 THE COURT: Cross-examination.

5 MS. JAMESON: Very briefly, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. JAMESON:

8 Q. Mr. Butler, you testified you think you were
9 convicted because you had a record, prior record, correct?

10 A. Yes, ma'am.

11 Q. But the jury never heard of that prior record,
12 correct?

13 A. They did -- it was -- I think it was a speck piece
14 that came out while they were doing it, because at the same
15 time, they did stated that -- I don't know if she asked
16 Shealy about it. I can't remember, actually, if Young asked
17 her about it. But I know in the end of it, it was like,
18 okay, does he have a prior? She's like, yes, he does. And
19 they go to sentencing. And he went haywire.

20 Q. So your complaint is that you received an 80-year
21 sentence because of your prior record; not that you were
22 convicted because of your prior record, correct?

23 A. Yeah. I feel like I was convicted because of my
24 prior record. You took my prior record and put a label on
25 me. I feel like you took that, all right, we might going to

1 do this. We are going to give it to him anyway, he has a
2 record anyway.

3 MS. JAMESON: No further questions.

4 MR. FALK: No redirect.

5 THE COURT: You may step down, Mr. Butler. Thank
6 you.

7 Any other witnesses?

8 MR. FALK: May I re-call Ms. Ford just briefly?

9 THE COURT: Yes, sir.

10 MARY FORD,

11 having been previously sworn, testifies as follows:

12 REDIRECT EXAMINATION

13 BY MR. FALK:

14 Q. Ms. Ford, I reviewed this transcript and I haven't
15 found it in there, but do you recall any time when
16 Mr. Butler's prior record or that information was given to
17 the jury prior to deliberation?

18 A. No. I don't believe it was at all.

19 And what Mr. Butler may have been saying,
20 obviously, I'm just -- this is just my take from what he was
21 saying, possibly thinks the reason the police thought he was
22 involved is because of his record. So I don't know if
23 that's what he was meaning. But, no, there's no time that I
24 recall that the jury heard anything about his record.

25 So other than when he was -- and this didn't come

1 out directly, obviously, but when there's a photo lineup,
2 they take those photos from prior arrests, generally. But
3 that didn't come up to the jury or anything. So -- and I
4 don't know if they would have made that connection.

5 MR. FALK: Thank you.

6 THE COURT: Anything, Ms. Jameson?

7 MS. JAMESON: Moment's indulgence, Your Honor.

8 RECROSS-EXAMINATION

9 BY MS. JAMESON:

10 Q. Ms. Ford, so your testimony is that the sheriff's
11 department uses arrest photos to compile a lineup, or are
12 they DMV photos?

13 A. Maybe -- I think a lot of times, they get -- well,
14 I'm not sure. A lot of people don't have DMV photos.

15 Q. Actually, I found the portion I was looking for.
16 If you will -- if you have the transcript, if you will look
17 at 61, which is your cross-examination of Chris Smith during
18 the *Biggers* hearing. So they came from the Charleston
19 County Detention Center. That was pretrial. That wasn't
20 ever before a jury, was it?

21 A. Correct, not that I recall.

22 MS. JAMESON: No further questions, Your Honor.

23 THE COURT: You may step down, Ms. Ford. Thank
24 you.

25 Any other witnesses, Mr. Falk?

1 MR. FALK: No, Your Honor.

2 THE COURT: Anything from the State?

3 MS. JAMESON: No, Your Honor.

4 Just brief argument, if Your Honor will allow.

5 THE COURT: Yes, ma'am.

6 You may proceed, Mr. Falk.

7 MR. FALK: Yes, Your Honor. In conclusion, I think
8 there was ample testimony that there was evidence in this
9 case that would have linked my client to be in possession of
10 the car a day and a half, 55 hours, two and a half days
11 after the alleged event. And I think that there was
12 testimony that, really, the evidence that would link my
13 client to the carjacking, the kidnapping and the attempted
14 murder is all based on the testimony of the victim in this
15 case.

16 And I think that we have shown that there were two
17 times where Ms. Ford could have really challenged the
18 credibility or at least stopped the State from bolstering
19 the credibility of the testimony of the victim witness, one
20 in the hearsay testimony from Ms. Mizell, and in the
21 bolstering testimony from Ms. Smith as far as her confidence
22 level or how she looked or how she appeared when she was in
23 the lineup.

24 I think that Ms. Ford acknowledges that the reason,
25 probably, both those people were called to testify was to

1 bolster the testimony of the victim. And it's this victim's
2 somewhat less than 100 percent identification, is what put
3 my client in SCDC for the next 80 years.

4 So we do think that there was some opportunity
5 where Ms. Ford could have handled this case differently, and
6 that because of those differences, my client was clearly
7 prejudiced, because she could have done a different job as
8 far as stopping the State from bolstering the credibility of
9 the victim witness.

10 THE COURT: Thank you, Mr. Falk.

11 Ms. Jameson.

12 MS. JAMESON: Your Honor, the State submits that
13 Mr. Butler has not met the standard under *Strickland* for
14 establishing deficiency of counsel or any prejudice. The
15 overall trial strategy that Ms. Ford testified to and is
16 readily apparent from review of the record is that
17 Mr. Butler was simply in possession of the stolen vehicle,
18 not that he was the carjacker who attempted to strangle or
19 snap Ms. Martin's neck. That was all presented to the jury.
20 And, unfortunately for Mr. Butler, that's not a theory that
21 the jury accepted, and they convicted him on all counts.

22 Going through the allegations one by one, for
23 failure to obtain or consult with DNA expert, Ms. Ford
24 testified that it was not necessary for this case or her
25 case theory, that she's well-versed in dealing with DNA

1 experts. So she did not need to consult with one to
2 formulate or craft her cross-examination, and that the DNA
3 just linked him to the car.

4 And, again, her theory was that he was in
5 possession of a stolen vehicle, but he was not the carjacker
6 or assaulter of Ms. Martin. So there really was no need to
7 call a DNA expert here. And so that did not have any impact
8 on the verdict in this case.

9 Turning to the allegations about the prejudicial
10 testimony from Ms. Mizell, the neighbor who opened her door
11 to Ms. Martin, the record supports that these were present
12 sense impressions or excited utterances and, therefore,
13 weren't hearsay.

14 For the second portion of the testimony, 154, Ms.
15 Ford actually did object. And the Court overruled her
16 objection and said it's excited utterance. So Ms. Ford did
17 properly object, was overruled. And moreover, it was
18 irrelevant to her case theory, which was that Mr. Butler
19 wasn't the assaulter of Ms. Martin.

20 Turning to the next allegation regarding Chris
21 Smith and the identification here, if Your Honor has a copy
22 of the direct appeal records in this case, that was one of
23 the two main issues that was dealt with on direct appeal.
24 And that issue has already been parsed out and rejected by
25 our appellate's court.

1 Ms. Ford properly preserved all those issues for
2 appellate review. She vigorously challenged the
3 identification in a pretrial *Biggers* hearing. And then also
4 vigorously challenged the identification when Ms. Smith was
5 on the stand. And got Ms. Smith to admit that Ms. Martin
6 wasn't 100 percent in her testimony. So there's no
7 deficiency or prejudice.

8 And the final allegation, that she failed to move
9 to challenge the sufficiency of the indictments or move to
10 quash, there's been nothing presented to this Court today to
11 show that the indictments were defective or she should have
12 so moved.

13 And so the State would ask this Court to deny the
14 application in full.

15 THE COURT: Thank you, ma'am.

16 I will take the time to review all of the
17 documentation and consider the testimony and advise you of
18 my decision.

19 MS. JAMESON: Thank you, Your Honor.

20 (Whereupon, proceedings are adjourned.)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Latrone T. Butler; #303325,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2016-CP-10-4888

ORDER OF DISMISSAL

FILED
2018 APR 18 AM 9:40
JULIE J. ARMSTRONG
CLERK OF COURT
By

This matter comes before the Court by way of an application for post-conviction relief filed on September 14, 2016, and amended on June 29, 2017, by LaTrone Butler (Applicant). On June 8, 2017, the State (Respondent) filed its Return and Motion to Dismiss, asking the court to summarily dismiss the application for failure to state a claim upon which post-conviction relief could be granted. On June 13, 2017, the Honorable Deadra L. Jefferson, acting in her capacity as Chief Administrative Judge for Common Pleas for Charleston County, signed a Conditional Order of Dismissal provisionally dismissing the application but allowing Applicant twenty days to provide specific reasons, either factual or legal, as to why the application should not be dismissed; the order was filed on June 14, 2017. Thereafter, on June 29, 2017, Applicant, through counsel James K. Falk, filed a Return to the State's Motion to Dismiss and Amended Application for post-conviction relief. In response, the State filed an Amended Return and requested an evidentiary hearing on the allegations presented in Applicant's amended application. An evidentiary hearing into the matter was convened January 31, 2018, at the Charleston County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the

evidentiary hearing, this Court denied the application. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In June 2012, the Charleston County Grand Jury indicted Applicant for carjacking (2012-GS-10-3303), attempted murder (2012-GS-10-3304), and kidnapping (2012-GS-10-3305). Mary Ford, Esquire, represented Applicant. Assistant Solicitors Jennifer Shealy, Esquire, and Andrew Evans, Esquire, prosecuted the case. On January 15, 2014, Applicant proceeded to a jury trial before the Honorable Roger Young, Sr., circuit court judge, where he was convicted as indicted of all three offenses. Judge Young sentenced Applicant to imprisonment for consecutive terms of imprisonment of twenty years for carjacking, thirty years for attempted murder, and thirty years for kidnapping.

Applicant filed a timely notice of appeal. Appellate Defender Kathrine H. Hudgins, Esquire, of the South Carolina Commission on Indigent Defense—Office of Appellate Defense perfected the appeal. Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence on November 25, 2015, in an unpublished opinion State v. Latrone T. Butler, Op. No. 2015-UP-528 (Ct. App. filed November 25, 2015). The remittitur was returned to the circuit court on December 15, 2015.

SUMMARY OF FACTS ADDUCED AT TRIAL

On December 5, 2011, sixty-seven year old widow Letty Martin (hereinafter "Martin") was living by herself at the Jericho Mobile Home Park in Ravenel, South Carolina. (Tr. pp. 90-91). On that day, Martin taught two line dance classes at the Mt. Pleasant Senior Center, ran

some errands, and returned home. (Tr. pp. 92-93). After parking her vehicle (a 1996 Acura 3.2 TL) in the carport adjacent to her trailer, Martin began to unload her belongings. (Tr. pp. 93, 95-96). After removing the items from her car, Martin noticed a man coming between her carport and her home. (Tr. p. 96). Martin observed his face before turning around to lock her car. (Tr. p. 96) While her back was turned, the man came behind her, grabbed her left arm and put something that he said was a gun against her ribs. (Tr. p. 96). He told her not to scream or fight or he would shoot. (Tr. pp. 96-97). The man then demanded she unlock her car and hand over her car keys, cell phone, and money; Martin complied. (Tr. pp. 97, 99). He also instructed Martin to get into the passenger seat. (Tr. p. 97).

Once Martin was in the passenger seat, the man drove out of Martin's trailer park and on to a main thoroughfare. (Tr. p. 98). Martin was able to glance at the man, although he repeatedly instructed her not to look at him or he would shoot her. (Tr. pp. 99-100). Martin noticed the man was driving the car in the wrong gear and asked him to correct it, which he did. (Tr. p. 101). The man continued to drive around the general area before eventually stopping in a secluded wooded area; by this time it was completely dark. (Tr. pp. 101-104). The man then pulled Martin from the car, placed her near the car's rear, and instructed her to put her purse on the trunk. (Tr. p. 104). The man then placed one hand on Martin's chin and one on her forehead and repeatedly jerked her head in an attempt to snap her neck. (Tr. pp. 104-105). The man's force was so great that it gave Martin whiplash. (Tr. p. 104-105). At some point, Martin passed out and woke up on the ground; the man then lifted Martin up and resumed his attempts to break her neck. (Tr. p. 105). The man eventually stopped and fled in Martin's car with her purse when another car approached. (Tr. pp. 105-106).

Martin walked to the nearest home for help. (Tr. 106). When she arrived, she was greeted by Penny Mizell (hereinafter "Mizell"). (Tr. p. 106). Mizell, a resident of Ravenel, was at home with her husband and sixteen year old son when Martin knocked on her door. (Tr. pp. 107, 153). Mizell answered the door and Martin informed her that she had been carjacked and needed help. (Tr. pp. 106, 153). Martin was very distraught and had visible injuries. (Tr. p. 154). Mizell called 911 and spoke with law enforcement, as well as called Martin's family. (Tr. pp. 107-08, 153-55).

Shortly thereafter, Deputies from the Charleston County Sheriff's Office responded to the Mizell home. (Tr. pp. 108, 155, 156). Responding Deputy Don Kejellman spoke with Martin and received initial information about the carjacking and assault. (Tr. pp. 109, 158-59, 160-61). Martin informed law enforcement that the car had a LoJack security detection device that could possibly be used to locate her car. (Tr. p. 109). Martin also provided law enforcement with a description of the man and her vehicle, resulting in alerts to other law enforcement agencies. (Tr. pp. 159, 165-66). Martin described the man as a black male, age twenty-four to thirty, approximately five feet and eleven inches and one-hundred-and-seventy pounds. (Tr. pp. 162-63). Martin also reviewed her physical injuries with law enforcement. (Tr. pp. 109-112). Emergency Medical Services (EMS) came to the Mizell home and treated Martin. (Tr. p. 111-12).

Two days later, Martin went to the Sheriff's Office to view a photographic lineup. (Tr. p. 112, 169-70). Detective Christina (Chris) Smith (hereinafter "Smith") explained the process to Martin and advised her of her rights, which Martin voluntarily waived. (Tr. pp. 113-16, 192-93). Smith then showed Martin a photo lineup comprised of six individuals matching the description she previously gave law enforcement; the lineup was compiled by another law enforcement

agency with no other involvement in the case. (Tr. p. 113-117, 168-69, 192-93). Based on a tip law enforcement received from Crime Stoppers, Applicant's photograph was included in the six person photo lineup. (Tr. pp. 167-68). Smith had no other involvement in the case beyond showing her the lineup and did not know which person was the suspect when she showed Martin the lineup, which is accordance with office policy. (Tr. pp. 170, 192-95). Martin spent several minutes reviewing the lineup and studying the subject's individual faces before selecting Applicant as the perpetrator, circling his photograph and stating that he looked most like the perpetrator. (Tr. pp. 116-118, 170, 193-94). Martin then reviewed her injuries with law enforcement, which were documented by camera. (Tr. p. 119-121, 194).

After Martin identified Applicant as the suspect, law enforcement sent out a BOLO report for Applicant. (Tr. pp. 170-71). Applicant was located the next day, December 8, 2011, at the Hamm Grant Club in Ravenel. (Tr. pp. 171, 199). Martin's vehicle was also found in the parking lot of the club. (Tr. pp. 171, 199). Law enforcement responded to the scene and apprehended Applicant from the club's restroom. (Tr. pp. 171, 199-206). When he was taken into custody, Applicant had the key to Martin's car hidden in his sock. (Tr. p. 206). Law enforcement also took custody of Martin's vehicle, which was towed to the Sheriff's Office evidence compound for processing. (Tr. p. 215). After obtaining a search warrant, Martin's vehicle was searched, photographed, and inventoried. (Tr. p. 215-16). A black wallet containing Applicant's vital records, birth certificate, social security card, paystubs, a South Carolina Beginner's Driving Permit, and South Carolina Identification Card were found in the vehicle. (Tr. p. 231-34). Applicant's beginner's permit listed his height as five feet and eleven inches and one-hundred-and-ninety pounds. (Tr. pp. 232-33). Law enforcement also recovered men's clothing, a towel,

and a remote augmented to look like a makeshift weapon in the vehicle. (Tr. pp. 218-222, 226-230). Law enforcement also took DNA swabs and fingerprint lifts from Martin's vehicle. (Tr. pp. 216-17, 222-226). Law enforcement obtained buccal swabs and fingerprints from Applicant and Martin. (Tr. pp. 171-73, 240-41).

The Charleston County Sheriff's Office sent the fingerprint lifts and known fingerprint samples from Applicant to be tested by a latent print analyst. (Tr. p. 225). Applicant's known prints matched numerous different prints found in Martin's vehicle. (Tr. pp. 247- 250). Additionally, the Charleston County Sheriff's Office sent the DNA swabs from Martin's vehicle and the known DNA samples from Martin and Applicant to the South Carolina Law Enforcement Division (SLED) for testing. (Tr. pp. 175, 234, 269). The SLED analyst who tested the DNA swabs concluded that Applicant's DNA was found on Martin's car and items found within the vehicle. (Tr. pp. 269-278).

Applicant proceeded to a jury trial on January 15, 2014. Applicant moved to suppress Martin's identification of him. (Tr. p. 36-71). The trial court held a hearing pursuant to Neil v. Biggers¹ and heard testimony from Martin, Smith, and Applicant. (Tr. pp. 36-68). Applicant argued that the photographic lineup was unduly suggestive because Applicant's face was more highlighted and located last. (Tr. pp. 68-69). Applicant also argued that Martin only said that Applicant looked most like the perpetrator, not that Applicant was the perpetrator. (Tr. p. 69). Applicant also noted that he has more than seventeen visible tattoos and that Martin's description of her perpetrator did not mention any tattoos. (Tr. pp. 43, 65-67). In reply, the State acknowledged that Applicant's face did appear to be lighter than the other five photographs and

¹ 409 U.S. 188 (1972).

could have grabbed the attention more, but argued that nothing in the lineup was suggestive. (Tr. p. 70). The State also noted that Martin examined all the photographs in the lineup closely before selecting Applicant as most closely resembling the perpetrator and noted the long duration Martin had to observe her perpetrator. (Tr. pp. 70-71). The trial court denied Applicant's motion:

Well, I find there is nothing suggestive at all about the process, much less unduly suggestive. It's a textbook procedure outlined. Went over the questions with her with a disinterested person, someone who is not involved in the investigation at all so she wouldn't have any way of tipping Martin of looking at any particular one of the photos. And as far as the argument that his picture has more of a highlight or a glare, I mean, I just don't see it. All of these gentlemen have a little bit of a glare to their picture. I mean, it's a flash, is what we're talking about, and I don't see where that draws any attention to the defendant's picture over any of the others such that it would make it an unduly suggestive process.

(Tr. pp. 71-72).

During the trial, Martin's out-of-court identification of Applicant was admitted, and Martin made an in-court identification of Applicant. (Tr. pp. 114-18). Martin also testified she had seen Applicant earlier on the day of the attack knocking on her neighbor's door. (Tr. p. 133). Martin also testified that she had given a black man around Applicant's age a ride to work at Harvest Moon Grill (the same restaurant that Applicant worked) earlier in the year but could not recall if it was Applicant. (Tr. pp. 135-36).

Following the State's case, Applicant moved for a directed verdict, arguing the State did not present sufficient evidence that Applicant had attempted to kill Martin and that there was no physical evidence tying him to the attack. (Tr. pp. 280-281). The trial court denied Applicant's motion. (Tr. pp. 281-82). Applicant called one witness in his defense, an investigator with the Charleston County Public Defender's Office, who testified regarding Applicant's numerous

tattoos. (Tr. pp. 285-290). Applicant then renewed his motion for a directed verdict, which was again denied by the trial court. (Tr. p. 291).

Applicant requested jury instructions on the lesser included offenses. (Tr. p. 291). At a charging conference on the record the following morning, the trial court noted that Applicant had requested jury instructions on assault and battery of a high and aggravated nature and assault and battery in the first, second, and third degrees. (Tr. p. 295). The court asked Applicant to elucidate why he was entitled to those lesser included offenses and the following exchange occurred:

MS. FORD: I think the evidence is Ms. Martin testified the man's hands were around her mouth and her forehead and everything.

THE COURT: And the jerking –

MS. FORD: Yes, but I think it's possible the jury comes to the interpretation that the man does not intend to actually kill her, but, rather, trying to get her to –

THE COURT: A chiropractic adjust or what? I mean, we don't understand it. The only evidence we have is he not only put his hand over her forehead and chin but he was jerking her head to the side. You can't just say one thing. There's no evidence other than that.

MS. FORD: I just think the jury could come to the conclusion that there was not an intent to kill, Your Honor.

THE COURT: How?

MS. FORD: Just because the circumstances she was in a very stressful situation, obviously. She doesn't remember all of the details and everything that was occurring. She passed out, and so I just think–

THE COURT: And then he resumed the exact same attack. That is uncontroverted evidence. Now, they can believe it or not, but it is uncontroverted that that is what happened. He took his hands, put it over her head and her chin, and snapped her neck to the side till

[sic] he passed out. All right [sic]? And then he did it again when she came out. So if you were to say his intent was not to kill her but to cause her to just pass out, well, he accomplished that, so to do it again makes no sense. If you want to say, well, all he wanted to do was cause her to pass out so that he could rob her and take her stuff, he had the opportunity to do that. I'm just trying to think, how is there any view of the evidence that we have that he had anything other than the intent to kill her?

MS. FORD: She passed out but then she came to so the man did it again and got her to pass out again. It didn't work the first time. That's why he had to do it again.

THE COURT: And what?

MS. FORD: I understand that's the only evidence about what happened that evening. We just think the jury could come to the conclusion there was not a specific intent to kill, so in that case, an ABHAN charge and assault and battery first charge and the others would be appropriate, Your Honor. Just cause of the various assaults there is great bodily injury, moderate bodily injury.

THE COURT: You would be entitled to those charges if there was some way to construe the evidence as fitting all those elements without intent to kill, but there is no way to view this evidence, as I see it, other than with an intent to kill, because he did it until she passed out and then he started to do it again and then another car came along. A car came along and spooked him and he dropped her and ran off. I don't know how you construe that as other than an intent to kill, and I've thought about it.

(Tr. pp. 295-98). The court then asked the State to respond, to which the prosecutor replied that there was nothing in the record warranting the inclusion of the lesser included offenses. (Tr. p. 298). The Court agreed, stating: "I just don't see how you can have the uncontroverted evidence that we have and not view that evidence as not having an intent to kill, and that's the only way you get the lesser included. I agree, they are lesser includeds but the facts have to support them, and there is no way to view the uncontroverted evidence as whoever did it. She says it was him,

had the intent to kill her at that time. So I'm not going to allow lesser included. It's is straight up attempted murder, kidnapping, carjacking." (Tr. p. 298). Applicant also requested a specific jury instruction on the identification procedure, which the trial court charged over the State's objection. (Tr. p. 299-301).

The jury convicted Applicant as indicted of attempted murder, kidnapping, and carjacking. (Tr. p. 342). The State informed the court that Applicant was eligible for life without parole pursuant to S.C. Code Ann. § 17-25-45 based on his prior record and requested that the court impose a lengthy term of imprisonment with consecutive sentences. (Tr. p. 348). After listening to mitigation from Applicant's counsel, the trial court sentenced Applicant to twenty years imprisonment for carjacking, thirty years imprisonment for attempted murder, and thirty years imprisonment for kidnapping, with all sentences to be served consecutively. (Tr. p. 349-52)

ALLEGATIONS RAISED

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Alleged victim claimed she struggled/fought with attacker."
2. "My clothing were tested for DNA, in which victim was excluded."
3. "Martin stated attacker had no tattoos; nor facial hair; nor hair description; victim stated I look most like the attacker Booking Photo."

On June 8, 2017, the State filed its Return and Motion to Dismiss, asking the Court to summarily dismiss the application for failure to state a claim upon which post-conviction relief could be granted. On June 13, 2017, the Honorable Deadra L. Jefferson, acting in her capacity as Chief Administrative Judge for Common Pleas for Charleston County, signed a Conditional Order of Dismissal provisionally dismissing the application but allowing Applicant twenty days

to provide specific reasons, either factual or legal, as to why the application should not be dismissed; the order was filed on June 14, 2017.

Thereafter, on June 29, 2017, Applicant, through counsel James K. Falk, filed a Return to the State's Motion to Dismiss and Amended Application for post-conviction relief.² In this amended application, Applicant sets forth the following grounds for post-conviction relief:

1. Trial counsel failed to obtain or consult with an expert DNA witness.
2. Trial counsel failed to seek suppression or redaction of the 911 recording (State's Ex. No. 104)
3. Trial counsel failed to object to prejudicial hearsay testimony uttered by the State's witnesses, Penny Mizell (Record on Appeal p. 153 lines 16-17; p. 154 lines 19-24).
4. Trial failed to object when State's witness Chris Smith testimony bolstered Martin's identification testimony. (Record on Appeal p. 193 lines 9-25).
5. Trial counsel failed to move to challenge the sufficiency of the indictment and move to quash the indictments.

At the start of the evidentiary hearing, Applicant expressly withdrew amended allegation #2 (Trial counsel failed to seek suppression or redaction of the 911 recording), citing a lack of merit. Applicant proceeded forward on the remaining four allegations as set forth in his amended application.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant called his trial counsel, Mary Ford (counsel), to testify. Counsel testified she was appointed to represent Applicant in her capacity as a Charleston

² Applicant also filed his own *pro se* amended application alleging various grounds of ineffective assistance of trial and appellate counsel. However, as Applicant is represented by counsel, this Court does not consider these *pro se* filings to be part of the record of this case. See Rule 11, SCRCP, requiring every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11 SCRCP. Furthermore, the South Carolina Supreme Court has stated counsel cannot serve as a mere conduit for *pro se* documents in an effort to avoid the prohibition against hybrid representation, but must use their professional judgment in reviewing the documents and shall only submit those arguments that are relevant and have been edited by counsel. *Jones v. State*, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002).

County Assistant Public Defender and is still employed at the Charleston County Public Defender's Office. Counsel testified she was appointed to represent Applicant shortly after his arrest and was his only attorney. She testified she met with Applicant for the first time on January 9, 2012, and met with Applicant a total of twenty-four times prior to his trial. Counsel testified the allegations presented by the State were that a black male approached Martin, an older woman who lived by herself, outside of her trailer, stole her vehicle and forced her to drive around with him around for a period of time before removing her from the car and attempting to snap her neck before eventually fleeing with the vehicle. She testified Applicant was apprehended at a nearby club fifty-five hours later and when arrested, had the key to Martin's car inside his shoe. Additionally, counsel testified Applicant's DNA, fingerprints, and various personal identification documents were found inside Martin's vehicle that was parked outside the club. She testified none of Martin's DNA was found on Applicant, but acknowledged he was arrested more than two days following the event and that none of victim's injuries resulted in a loss of blood.

She testified she reviewed the elements of the offenses and the State's evidence with Applicant prior to trial. She testified the State did not make any favorable offers to Applicant prior to trial and discussed with Applicant that he would likely receive a significant sentence if he pled guilty without any negotiations or recommendations, and therefore, both she and Applicant were preparing the case for trial early during her representation. She testified Applicant was eligible for a life without parole sentence based on his prior convictions and discussed this with Applicant. She testified the State did not serve Applicant with notice of intent

to seek life without parole, but that she would not have handled the case differently if the State had served notice.

Counsel testified she did not consult with a DNA expert because Applicant was already conclusively linked to Martin's vehicle by his fingerprints, various identifying documents found in the vehicle, and his possession of the vehicle's key in his shoe at the time of his arrest, so the DNA was not dispositive in linking him to the vehicle. Moreover, she testified the DNA found in Martin's vehicle did not establish that Applicant was the perpetrator who had carjacked and assaulted Martin, but merely showed he was in possession of the car some fifty-five hours following the attack, which coincided with her defense strategy that while Applicant was in possession of the stolen vehicle, he was not the person who committed these violent acts against Martin. She testified she has handled cases with DNA issues multiple times in her career and did not think it was necessary to consult with a DNA expert to prepare for her cross-examination of the State's DNA expert.

Counsel testified she moved to suppress Martin's identification of Applicant and the trial court held a pre-trial motions hearing pursuant to Neil v. Biggers. She testified she argued the photographic lineup was unduly suggestive because Applicant's photograph was last and was more highlighted than the other five photographs. She also testified she argued Martin's identification of Applicant was not sufficiently reliable because Martin only said Applicant looked most like the perpetrator, not that she was certain he was the perpetrator. She testified the trial court denied her motion to suppress and that she again moved to exclude the identification when the State sought to admit it during trial. She testified this issue was raised on Applicant's appeal.

When questioned about why she did not object to hearsay testimony provided by Mizell, counsel testified she did not think the testimony was objectionable. Counsel elaborated that Mizell's testimony that Martin told her she had been carjacked and asked her to call law enforcement and her sister was not objectionable hearsay because the statement was an excited utterance or present sense impression. (See Tr. P. 153 lns. 16-17). Moreover, she testified this testimony was not relevant to her case theory that someone else had attacked Martin, not Applicant, and therefore, it was not prejudicial. When questioned about Mizell's testimony describing how Martin said she was attacked, counsel again testified she did not think this testimony was objectionable hearsay as it was an excited utterance or present sense impression, as well as irrelevant to her defense strategy that someone else had attacked Martin and Applicant had received her stolen car sometime after. (See Tr. P. 154 lns. 19-24). Counsel acknowledged the State likely called Mizell as a witness to corroborate Martin's account that she had been attacked and to set the scene following the attack. However, she testified neither of these instances related to the identity of Applicant, and therefore, were irrelevant and not prejudicial.

When questioned about the testimony of Smith, the law enforcement officer who conducted the photograph lineup with Martin, counsel testified she was a "blind" witness who had no involvement in the case other than to conduct the identification with Martin. She testified this was a common procedure in law enforcement to avoid or limit any suggestibility from law enforcement during the identification procedures. Counsel testified she did not object to Smith's testimony where she described Martin "studying the photographs" because she did not think this testimony was bolstering, or intended to bolster Martin's testimony or identification of Applicant, but rather, an observation of what the witness observed during the identification

procedure. (See Tr. P. 193 Ins. 9-25). She testified that in hindsight, she can see an argument could have been made that the testimony was bolstering. Counsel testified she attacked this testimony on during cross-examination when she highlighted that the identification procedure was not recorded, that Martin did not indicate her confidence in her selection to a percentage value, and the witness did not write a report.

Counsel testified she believes Applicant was properly indicted and did not have any valid basis for challenging the sufficiency of the indictments. She testified she would have moved to quash the indictments if she saw any legitimate ground on which to attack their validity.

Counsel testified she called an investigator with the public defender's office as a defense witness to testify about Applicant's numerous tattoos. She testified she also moved pictures of Applicant's tattoos into evidence through this witness. She testified this was part of her trial strategy of establishing that although Martin had been attacked, Applicant was not the perpetrator, citing Martin's lack of any indication of tattoos on her attacker.

Counsel testified she was not surprised Applicant received lengthy consecutive sentences because the State informed the trial court that Applicant should have been served with notice of its intent to seek life without parole based on his prior convictions and it was an error that he had not been properly noticed. She elaborated that the State asked for a lengthy sentence based on the severity of the crime and that Applicant's prior record had made him eligible for a life without parole sentence. However, she clarified that the jury never heard about Applicant's prior record and this information was not presented to the court until after the jury had been excused following its verdict.

Applicant testified he told counsel he had received Martin's stolen car from someone and that he was not the attacker. He acknowledged he never told counsel who he received the car from or anything else that would have assisted counsel in investigating this defense. He testified he wanted counsel to bring up discrepancies between his height and the reported height of the attacker. He testified counsel discussed the possibility of the State serving him with notice of intent to seek life without parole based on his prior record. He testified he thinks he was convicted because of his prior record and background. He testified the jury heard "a piece" of his prior record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all

significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action in regards to his allegations of ineffective assistance of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant.

Allegation: trial counsel was ineffective for failing retain a DNA expert

Applicant asserts trial counsel was ineffective for failing to retain a DNA expert, either for consultation or to testify on his behalf at trial to rebut the State's evidence. This Court finds Applicant has failed to establish his requisite burden of proof as to this allegation, which must be denied and dismissed with prejudice.

Initially, this Court finds Applicant has failed to establish any deficiency of trial counsel, whom this Court finds performed effectively and in accordance with the professional standards

required. Trial counsel testified she had prior experience handling DNA cases and did not believe it was necessary to retain an expert for consultation or testimony in Applicant's case. She elaborated Applicant was already conclusively linked to Martin's vehicle by his fingerprints, various identifying documents found in the vehicle, and his possession of the vehicle's key in his shoe at the time of his arrest, and therefore, his DNA was not dispositive in linking him to the vehicle. She also testified a DNA expert would not have assisted with her defense theory that Applicant had received Martin's stolen vehicle from someone else and he was not the person who attacked and carjacked Martin. This Court finds counsel was not deficient in her decision not to retain a DNA expert.

Moreover, this Court finds Applicant cannot establish any prejudice because he failed to present testimony from a DNA expert at the evidentiary hearing. See Reeves v. State, 415 S.C. 366, 378, 782 S.E.2d 747, 753 (Ct. App. 2015) (finding Reeves established he was prejudiced by trial counsel's failure to present a medical expert to rebut the State's expert witness where he presented evidence of prejudice through the testimony of a medical expert at the PCR hearing); Lorenzen v. State, 376 S.C. 521, 530, 657 S.E.2d 771, 776–77 (2008) ("First, Lorenzen failed to present evidence that would show a reasonable probability that, but for counsel's failure to call expert witnesses, the result of his trial would have been different. Aside from his testimony and his trial counsel's testimony, Lorenzen did not offer any other witnesses to testify on his behalf at the PCR hearing. Therefore, it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense."); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) ("[B]ecause Dempsey failed to have an expert on child sexual abuse testify at the PCR hearing, we hold that any finding of prejudice is merely speculative."); see also Porter

v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) (“Mere speculation of what a witness’ testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR.”). Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: trial counsel was ineffective for failing to object to testimony of Penny Mizell

Applicant asserts trial counsel was ineffective for failing to object to two portions of Mizell’s testimony. The specific portions of testimony that Applicant alleges amount to prejudicial hearsay are as follows:

And she said she had been carjacked and would I please call the police for her, and then after I did that, she asked me to call her sister.

(Tr. P. 153 lns. 16-17).

She said she was getting into her car. Somebody approached her from behind, put something in her ribs. She thought it was a gun. Forced her into the car, kept screaming at her not to look at him and choked her out. You know, this was daytime. When she got to my house it was at night, so it had been a few hours, I’m guessing.

(Tr. P. 154 lns. 19-24).

Applicant asserts these statements by Mizell are impermissible hearsay and counsel was deficient for failing to object to these portions of testimony. Moreover, he argues these statements prejudiced him because they bolstered Martin’s testimony that she was attacked and carjacked.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. “Hearsay is not admissible” unless an exception applies, or “as provided by . . . other rules . . . or by statute.” Rule 802, SCRE. “An excited utterance is a ‘statement relating to a startling event or condition made while the declarant was under the stress of excitement caused

by the event or condition' and may be admitted at trial as an exception to the hearsay rule." State v. Dennis, 337 S.C. 275, 284, 523 S.E.2d 173, 177 (1999) (quoting Rule 803(2), SCRE). "The rationale underlying the excited utterance exception is that "the startling event suspends the declarant's process of reflective thought, reducing the likelihood of fabrication." Id. Additionally, "Rule 803(1), SCRE, provides for the 'present sense impression' exception, which allows for the admission of 'a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.'" State v. Parvin, 413 S.C. 497, 503, 777 S.E.2d 1, 4 (Ct. App. 2015) (quoting Rule 803(1), SCRE).

This Court finds this allegation is without merit and must be denied and dismissed with prejudice. When questioned about why she did not object to either portion of the testimony, trial counsel testified she believed both instances were not objectionable, as the testimony was about statements made by Martin immediately after she was violently carjacked and attacked, and therefore, were excited utterances and present sense impressions. This Court agrees and finds neither portion of Mizell's testimony was objectionable, as the testimony was admissible as excited utterances and present sense impressions.

Moreover, this Court finds Applicant cannot establish any requisite prejudice for counsel's alleged deficiency. Counsel testified neither statement was prejudicial based on her defense strategy, which was not to deny that Martin had been attacked or carjacked, but to establish that Applicant was not the perpetrator. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: trial counsel was ineffective for failing to object to testimony of Chris Smith

Applicant asserts trial counsel was ineffective for failing to object to the testimony of Chris Smith, the law enforcement officer who showed Martin the photographic lineup because this testimony impermissibly bolstered Martin's testimony. The specific testimony is in question is as follows:

Q. When showing this to Ms. Martin, could you describe to the jury what level of care she seemed to be giving the photographs? How did she appear when she was looking at them?

A. She studied the photographs, making sure that each -- you can see as just her and other folks that have seen photo lineups, they look at each individual picture to see if they can pick out whoever is in that photo.

Q. And while Ms. Martin was there -- I'll get to that in just a second. So how did she indicate to you that she, in fact, identified someone?

A. She pointed to the picture that she thought was the person that had carjacked her.

Q. Okay. And it's showing you on your screen there, State's Exhibit 15?

A. Yes.

(Tr. P. 193 lns. 9-25).

Counsel testified she did not object to Smith's testimony because she did not think it amounted to bolstering but was related to the witness' personal observation of the identification procedure. She testified that in hindsight, she can see an argument could have been made that the testimony was bolstering. Counsel also testified she believes she sufficiently attacked the identification procedures and Smith's observations on cross-examination.

“Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror.” State v. Douglas, 367 S.C. 498, 521, 626 S.E.2d 59, 71 (Ct.App.2006), rev’d in part on other grounds, 380 S.C. 499, 671 S.E.2d 606 (2009). “Generally, the prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain ‘the assessment of witness credibility . . . within the exclusive province of the jury.’” State v. Taylor, 404 S.C. 506, 514–15, 745 S.E.2d 124, 128 (Ct. App. 2013) (quoting State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012)).

This Court finds counsel was not deficient for failing to object to Smith’s testimony, as Smith’s testimony pertained to her personal observations. Moreover, this Court finds Applicant cannot establish the requisite prejudice necessary for relief in light of the substantial amount of evidence establishing his guilt. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Allegation: trial counsel was ineffective for failing to challenge the indictments

Applicant asserts trial counsel was ineffective for failing to challenge the indictments. Counsel testified Applicant was properly indicted and did not have any valid basis for challenging the sufficiency of the indictments, but if she believed there was a defect with any indictment, she would have properly moved to quash it. This Court has reviewed the indictments in conjunction with the record as a whole and finds this allegation is without merit. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

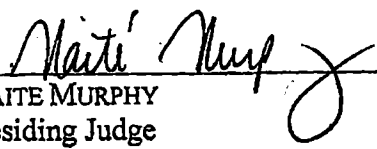
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant LaTrone Butler shall remain in the custody of the State.

AND IT IS SO ORDERED this 9 day of April, 2018.


 MAITE MURPHY
 Presiding Judge
 Ninth Judicial Circuit

St. Mary, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

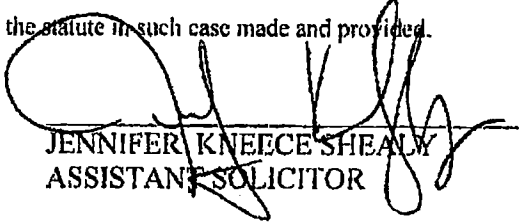
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Carjacking

That in Charleston County, South Carolina, on or about December 5, 2011, the Defendant, did take or attempt to take a motor vehicle from Letty Martin by force, violence or intimidation while Letty Martin was operating the vehicle or inside of the vehicle; in violation of Section 16-3-1075(B)(1) of the South Carolina Code of Laws (1976) as amended.

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



JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

JKS20111208413

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011020074B

ARREST WARRANT NUMBER

M605184

DATE OF ARREST

December 8, 2011

ACTING GRAND JURY
TRUE BILL

Foreperson of Grand Jury

Date: 11/11/11

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 1/7/12

INDICT

DOCKET NO. 2012GS1003303

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

LATRONE TERRELL BUTLER

DOB: [REDACTED]

B/M

Indictment for

Carjacking

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

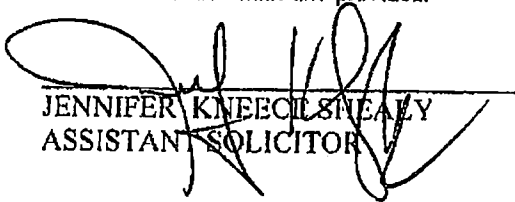
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about December 5, 2011, the Defendant, LATRONE TERRELL BUTLER, did, with intent to kill and malice aforethought, attempt to kill Letty Martin. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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



JENNIFER KNEELSNEAZY
ASSISTANT SOLICITOR

JKS20111208413

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011020074B

ARREST WARRANT NUMBER

M605185

DATE OF ARREST

December 8, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

JUN 11 2012

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1003304

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

LATRONE TERRELL BUTLER

DOB:

B/M

Indictment for

Attempted Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

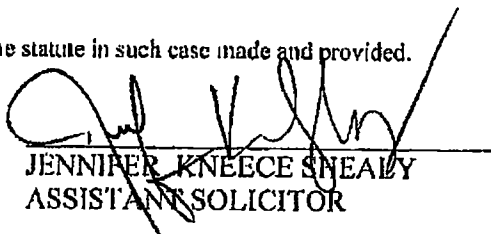
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about December 5, 2011, the Defendant, LATRONE TERRELL BUTLER, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Letty Martin, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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



JENNIFER KNEECE SNEALY
ASSISTANT SOLICITOR

JKS20111208413

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2011020074B

ARREST WARRANT NUMBER

M605186

DATE OF ARREST

December 8, 2011

ACCORD BY GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 11 2012

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1003305

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

LATRONE TERRELL BUTLER

DOB: [REDACTED]

B/M

Indictment for

Kidnapping

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Latrone Terrell Butler

AKA:

Race: BLACK Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
 City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC01437454*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Carjacking Without Injury

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1003303A/W#: M605184Date of Offense: 12/5/2011S.C. Code §: 16-03-1075(B)(1)CDR Code #: 2599

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd 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:

Kneese Shealy, JenniferSC 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 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ 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

_____ 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: 2137Sentence Date: 11/17/14

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.40</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Amanda H. Hader

SCCA/217 (03/2011)

493
STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

Latrone Terrell Butler

AKA: _____

Race: BLACK Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: SC01437454

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ 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: 7919

Kneec Shealy, Jennifer SC Bar# _____ Defendant

[Signature] 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 \$ 100.00

§ 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 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk _____

Court Reporter: Amanda H. [Signature]

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1003304

A/W#: M605185

Date of Offense: 12/5/2011

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

_____ 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: 2137

Sentence Date: 11/27/14

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Latrone Terrell Butler

AKA:

Race: BLACK Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: SC01437454*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1003305A/W#: M605186Date of Offense: 12/5/2011S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0910of the S.C. Code of Laws, bearing CDR Code # 0095☐ 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.ATTEST: [Signature] 11/17
Kneece Stealy, Jennifer 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.☐ 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 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 \$ 25.00§ 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 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.40 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther:

Clerk of Court/ Deputy Clerk

Court Reporter: Amanda Henderson

SCCA/217 (03/2011)

Presiding Judge: [Signature]Judge Code: 2134Sentence Date: 11/17/14