

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Maite Murphy, Circuit Court Judge

Appellate Case No. 2018-002035
Opinion No. 5589 (S.C. Ct. App. Filed August 15, 2018)

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S.C. SUPREME COURT

THE STATE, ...PETITIONER

v.

ARCHIE MORE HARDIN,.....RESPONDENT

APPENDIX
VOLUME 2 OF 2

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1 Q Okay. And what is the date?

2 A May the 16th, 2014.

3 Q Okay. And would you agree that on each item that I just
4 called out that that seal is intact?

5 A Yes, ma'am. Yes, ma'am.

6 Q Investigator, at this time, I'm going to have you open
7 these items and look at them and see if you can tell the jury
8 what it is. Don't pull it out yet, I'll -- and just read the
9 number out.

10 A You want me to open them?

11 Q You can. I will get some scissors for you.

12 A Do you have any latex gloves available?

13 Q I do not. You don't have to pull them out. You can
14 just open the bag and look into it.

15 THE COURT: We do have some gloves if you want to
16 take a minute.

17 MS. CORNWELL: Thank you, Your Honor.

18 BY MS. CORNWELL:

19 Q Either one or both of them?

20 A Both. I prefer to be gloved up, because of the ongoing
21 investigation.

22 Q And just to speed this along, would you mind? I'm going
23 to go ahead and help you open up some of these?

24 A Yes, ma'am. Inside this bag, is gray duct tape. And
25 that's marked as item number five, from the floor, and table

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1 in the back room.

2 Q And the description that you're reading off the front of
3 the bag, who wrote that description?

4 A I did.

5 Q Okay.

6 THE COURT: What exhibit number was that?

7 MR. KETCHERSIDE: Exhibit Number 74.

8 BY MS. CORNWELL:

9 Q All right. That's 77.

10 A This is a larger amount of duct tape. It's gray in
11 color duct tape. It's kind of bent and wound up. It's from
12 the floor in the area -- it is the store room door, attached
13 to the middle room. And that's Exhibit No. 77.

14 Q And State's 73?

15 A Also, gray in color duct tape. Exhibit 73 is marked as
16 item number four, gray duct tape from the floor at the rear
17 desk in the store. And that would be at the front of the
18 store.

19 Q Let's go on to State's 78?

20 A This is marked as item number nine. It's gray in color
21 duct tape from the top of the bathroom sink in the bathroom
22 that's attached to the employees room, the middle room or the
23 back room.

24 Q Finally, State's 75.

25 A It's marked as item number six. It's gray in color duct

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1 tape in the floor by a desk and chair in the back room.

2 Q Okay. And are these items the items that were depicted
3 in the photographs that you just described?

4 A Yes, ma'am.

5 Q And are these the actual items that you collected from
6 the store?

7 A Yes, ma'am.

8 MS. CORNWELL: Your Honor, at this time the State
9 would move to have State's 74, 75, 76, 77, and 73 moved into
10 evidence?

11 COURT REPORTER: 78?

12 THE COURT: Is there a 78?

13 MS. CORNWELL: And 78. Yes, Your Honor.

14 THE COURT: Any objection.

15 MR. MELLARD: No objection.

16 THE COURT: They're in.

17 MS. CORNWELL: Thank you.

18 (State's Exhibit No. 73, evidence
19 bag, was marked and entered.)

20 (State's Exhibit No. 74, evidence
21 bag, was marked and entered.)

22 (State's Exhibit No. 75, evidence
23 bag, was marked and entered.)

24 (State's Exhibit No. 76, evidence
25 bag, was marked and entered.)

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1 (State's Exhibit No. 77, evidence
2 bag, was marked and entered.)

3 (State's Exhibit No. 78, evidence
4 bag, was marked and entered.)

5 BY MS. CORNWELL:

6 Q And just so it's tape and it's sticky, so I don't have
7 to pull it all out, is that what's in here is the actual duct
8 tape?

9 A Yes, ma'am. Yes, ma'am.

10 Q Thank you. Okay. And after you went through and
11 photograph the evidence and collected the duct tape, did you
12 do anything else in the store?

13 A Yes, ma'am. I processed several surfaces for
14 fingerprints.

15 Q Okay. And let's talk about fingerprints a little bit.
16 Can you tell the jury exactly how you collect fingerprints?

17 A What we do is we determine surfaces that need to be
18 processed. That's the main thing. And then we apply finely
19 ground volcanic powder, black powder, to that surface using a
20 brush. If any fingerprints are developed, then we lift them
21 using an adhesive tape. And then they're placed on a white
22 back -- what we call a white back, print lift card. It's got
23 a glossy surface on one side. And that's the side to which
24 the tape goes.

25 MS. CORNWELL: And, Your Honor, at this time I'm

1 not sure that it's completely necessary, but based on his
2 testimony as to his experience and law enforcement, the
3 training that he has, as well as the number of times he's
4 done collection of fingerprints and DNA, we would ask that he
5 be an expert in the collection of fingerprints and DNA
6 evidence?

7 THE COURT: Any voir dire?

8 MR. MELLARD: No voir dire.

9 THE COURT: He's so qualified. So you're
10 qualifying him in the field of --

11 MS. CORNWELL: Collection of fingerprints and
12 collection of DNA, not analysis or any, just the collection.

13 THE COURT: He's qualified in the field of
14 collection of fingerprints.

15 MS. CORNWELL: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 BY MS. CORNWELL:

18 Q And just because somebody touches an item, does that
19 automatically mean that you'll be able to get a fingerprint
20 off of that item?

21 A Not necessarily.

22 Q Can you explain to the jury why that is?

23 A There's several things that can hinder somebody from
24 getting -- or hinder from getting fingerprints from a
25 surface. Moisture could be one thing, temperature could

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1 actually affect it. Someone could be wearing gloves. It's
2 hard. They may not have touched that exact surface as well
3 as type of work that somebody does can also effect the
4 fingerprints. When we roll people, sometimes we have an
5 issue with that. Their profession, the type of work they do
6 may affect it. We may have to roll them several times before
7 we actually get good usable fingerprints.

8 Q And when you say roll them, is that when you get the
9 little fingerprint card and put them --

10 A Yes, ma'am. We're applying actual fingerprint ink to
11 the fingers and rolling them onto a marked card, specified
12 per finger.

13 Q And even then you don't always get a good --

14 A No, ma'am. Sometimes it takes several.

15 Q And if somebody were wearing gloves as you are right
16 now, and touched something, would you be able to get
17 fingerprints off of that item?

18 A No, ma'am.

19 Q And in this case, were you able to collect fingerprints
20 from anywhere?

21 A Yes, ma'am.

22 Q Where did you collect those prints from?

23 A There were some device boxes on the floor at the storage
24 cabinet inside of the -- I guess that would be the main
25 storage room of the business. I was able to collect some,

1 develop some prints on those surfaces and collect them.

2 Q Okay. And did you compare those prints with that of the
3 Defendant's prints?

4 A Yes, ma'am, I did.

5 Q Were they a match?

6 A No, ma'am.

7 Q And just because you weren't able to match the
8 Defendant's fingerprints to an item in the store, does that
9 necessarily mean that the Defendant didn't touch any items in
10 the store?

11 A No, ma'am, it does not.

12 Q And, again, if somebody was wearing gloves, does that
13 indicate that they'd be able to leave fingerprints?

14 A If they were wearing gloves, more than likely they would
15 not leave fingerprints.

16 Q Okay. Were you able to identify whose fingerprints they
17 were that you collected that day?

18 A No, ma'am. They could be an employee, a stock person of
19 the business, they could be anybody's fingerprints.

20 Q And after you finished collecting evidence at T-Mobile,
21 did you have any further involvement in this case?

22 A Yes, ma'am, I did.

23 Q And what was that involvement?

24 A Processed a gray in color Toyota Corolla.

25 Q And I'm going to show you what's been marked as State's

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1 32. Is that the vehicle you processed?

2 A Yes, ma'am.

3 Q And were you able to collect any evidence from that
4 vehicle?

5 A Yes, ma'am.

6 Q What type of evidence did you collect from there?

7 A I collected Q-tip swabs from the doors, interior door
8 handle, the steering wheel and the gearshift of the vehicle.

9 Q And what were you looking for with those Q-tips? What
10 were you swabbing for?

11 A What we refer to as touch DNA or contact DNA.

12 Q And what is touch DNA?

13 A It's basically when someone touches a surface, they
14 leave behind -- they could leave behind sweat or skin cells
15 from their hands, from the skin.

16 Q And are you always able to collect DNA off of an item?

17 A Not always.

18 Q What effects your ability to collect that DNA?

19 A Someone wearing gloves. A large amount of water.
20 That's pretty much --

21 Q And once you collected the DNA what did you do with it?

22 A Once I collected it, it was allowed to dry. It was
23 packaged in small envelopes and it's sealed.

24 Q And did you send that anywhere to be tested?

25 A No, ma'am, we did not.

1 Q. Why not?

2 A The vehicle that I processed, it was my understanding,
3 the information I received, that Mr. Hardin actually was the
4 renter of the vehicle and admitted to having the vehicle.
5 So, therefore, his DNA would be inside the vehicle. So
6 proving that he was inside the vehicle would not be
7 necessary.

8 Q Okay. So why go through the hassle of collecting DNA at
9 all?

10 A There is an ongoing investigation as to a second
11 defendant or suspect in this case and we would need to
12 utilize that DNA evidence to tie him to the case.

13 Q And other than photographing and collecting the
14 evidence, the fingerprints and the DNA, did you have any
15 further involvement in this case?

16 A Yes, ma'am. Actually, I processed the firearms that
17 were recovered.

18 Q Okay. And I'll show you what's been marked as State's
19 Exhibits 69 and 71. Do you recognize those items?

20 A Yes, ma'am.

21 Q And what are those items?

22 A Those are pistols that were, revolvers that were
23 submitted into our evidence storage and I processed those for
24 DNA as well.

25 Q Okay. And were you able to collect any DNA from those?

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1 A I collected two Q-tip swabs from each, for touch DNA.

2 Q And did you send those off to SLED?

3 A No, ma'am. They have not been sent as well.

4 Q Okay. And why is that?

5 A SLED's policy from what we are told, SLED's policy is if
6 you have a known suspect in a case, they want DNA for all
7 parties involved before you even submit any items for
8 evidence.

9 Q So because there is an ongoing investigation of the
10 second subject?

11 A Yes, ma'am.

12 Q Okay. I don't have any further questions. Please
13 answer any questions Defense counsel may have?

14 A Yes, ma'am.

15 Q Thank you.

16 THE COURT: Cross-Examination

17 WILLIAM KETCHERSIDE - CROSS-EXAMINATION

18 BY MR. MELLARD:

19 Q Now, on May 16th, you responded to the T-Mobile Store;
20 correct?

21 A Yes, sir.

22 Q Okay. And you talked to the officers who were there and
23 you kind of found out what had been going on?

24 A Yes, sir.

25 Q All right. And you put in your report that buccal swabs

1 were collected from three store employees?

2 A Yes, sir. Those are Q-tip swabs collected from the
3 store employees.

4 Q You take a Q-tip and you rub it inside their gum?

5 A It's actually two Q-tips, yes, sir.

6 Q Two Q-tips? Okay. All right. And then I guess that,
7 you know, that gives a person's cells, skin cells?

8 A Yes, sir.

9 Q And in their skin cells would be DNA?

10 A Yes, sir.

11 Q And then that DNA could be compared to other DNA that
12 you would find in a particular location?

13 A Yes, sir; correct.

14 Q All right. And to get this DNA, there's a process that
15 y'all use when you go into a crime scene? You look for DNA?

16 A Yes, sir.

17 Q All right. And it's my understanding, and you tell me
18 if I'm wrong, but each person has a unique DNA?

19 A That's my understanding. I'm not an expert the actual
20 makeup of DNA.

21 Q Right. But it's your understanding that your DNA would
22 be different from my DNA --

23 A Exactly. Yes, sir.

24 Q -- the Judge's DNA?

25 A That's correct.

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1 Q Right. And so it's a crime tool that y'all use?

2 A Yes, sir.

3 Q And that's how y'all use to identify people?

4 A Yes, sir.

5 Q It's a way that y'all can do it?

6 A (No verbal response)

7 Q All right. And, again, you tell me if I'm wrong, but
8 it's my understanding DNA can be found in a person's blood?

9 A Yes, sir.

10 Q A person's saliva?

11 A Yes, sir.

12 Q A person's body hair?

13 A Yes, sir.

14 Q All right. Hair on a person's head?

15 A Yes, sir.

16 Q All right. You can even get it from skin cells that you
17 leave on things?

18 A Yes, sir.

19 Q And that's what you call the touch DNA?

20 A Yes, sir.

21 Q All right. And if I was drinking out of a cup, and you
22 tested it you might find my DNA on that particular cup if I
23 was the person drinking out of it?

24 A Yes, sir. We'd still need a standard to verify that
25 that's definitely your DNA?

1 Q Right. Right. Now, y'all talked about the duct tape.
2 And we have bags of duct tape?

3 A Yes, sir.

4 Q All right. And when you're processing the scene, you
5 found this duct tape?

6 A Yes, sir.

7 Q All right. And it was your understanding this duct tape
8 had been used by the robbers to tie up the employees at the
9 T-Mobile?

10 A Yes, sir.

11 Q And just so we're clear, you looked in the bag?

12 A Yes, sir.

13 Q And that is the duct tape?

14 A Yes, sir.

15 Q All right. And there's pictures of this duct tape. And
16 you've seen those pictures. And it's kind of like the duct
17 tape you buy at Lowe's? Kind of --

18 A Yes, sir.

19 Q -- you know, just --

20 A The roll was marked Dollar General.

21 Q Okay. And I heard you -- you said that you collected
22 several items of the duct tape. You've got item four, which
23 is duct tape on the floor at the rear service desk. Item
24 five, duct tape on the chair. I mean, you collected about
25 six or seven pieces of duct tape? There's four, five, six,

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1 seven --

2 A It was five.

3 Q Five or six?

4 A Five.

5 Q Five, okay. All right. So you collected these five
6 pieces of duct tape. And duct tape is sticky?

7 A Yes, sir.

8 Q All right. And I heard you say when you were on the
9 stand there's an ongoing investigation?

10 A Yes, sir, into a second possible defendant.

11 Q Right. And before you opened up that bag, we had to
12 stop everything and you had to go get some gloves?

13 A Yes, sir.

14 Q All right. And you're wearing those gloves right now?

15 A Yes, sir.

16 Q Okay. And those are, I guess, latex gloves?

17 A These are latex gloves, yes.

18 Q Okay. And you put those latex gloves on so you wouldn't
19 contaminate anything?

20 A Exactly.

21 Q Okay. Because you could use those items in the ongoing
22 investigation?

23 A Yes, sir. That's correct.

24 Q All right. You could test them for DNA?

25 A Yes, sir.

1 Q All right. You could maybe -- what about fingerprints?

2 There could be fingerprints on it?

3 A Yes, sir, there could be.

4 Q Okay. But you never tested those things for DNA or
5 fingerprints in Mr. Hardin's case?

6 A No, sir.

7 Q Never bothered to do that?

8 A It has not been sent.

9 Q You might do it in a later case, but in this case you're
10 not going to do that?

11 A No, sir.

12 Q Okay. Now, you processed the T-Mobile for fingerprints;
13 correct?

14 A Yes, sir.

15 Q All right. And again, like DNA, fingerprints, I guess,
16 is a crime fighting tool y'all use?

17 A Yes, sir. They're unique to each person.

18 Q All right. So my fingerprints are different than yours,
19 which are different from the Judges?

20 A Yes, sir.

21 Q All right. So I guess what you did is you find some
22 fingerprints and you run them through a database like we see
23 on TV?

24 A They're ran through AFIS, the Automated Fingerprint
25 Index System.

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1 Q Okay. All right. And when you're processing the T-
2 Mobile, you check it for the fingerprints?

3 A I actually compared the prints that I had and Mr.
4 Hardin's myself.

5 Q Right. And they came back, they did not match Mr.
6 Archie Hardin?

7 A No, sir.

8 Q Okay. And that was from what, the Nexus box?

9 A Yes, sir. I think one was from a NEXUS box and one was
10 from a iPhone.

11 Q Okay. And the fingerprints did not belong to Mr. Archie
12 Hardin?

13 A No, sir.

14 Q Okay. But you didn't run them through this database you
15 were just talking about?

16 A No, sir.

17 Q You didn't do that?

18 A No, sir. They have not been through AFIS.

19 Q Okay. You didn't try to figure out whose fingerprints
20 those were?

21 A They could be anybody's within the business.

22 Q They could. They could be somebody who's not in the
23 business?

24 A Yes, sir.

25 Q Right. But you don't know because you didn't check them

1 out?

2 A No, sir.

3 Q Okay. Now, you processed the Toyota Corolla?

4 A Yes, sir.

5 Q And you got swabs for touch DNA?

6 A Yes, sir.

7 Q And that's that skin cell stuff we were talking about
8 earlier?

9 A Yes, sir, that's correct.

10 Q All right. And you got it from the driver's door, front
11 driver's door?

12 A Yes, sir.

13 Q Got it from the rear driver's door?

14 A That's correct.

15 Q Got it from the front passenger door?

16 A That's correct.

17 Q Got it from the rear passenger door?

18 A Yes, sir.

19 Q Got it from the steering wheel?

20 A Yes, sir.

21 Q All right. But you never sent that DNA off to be
22 tested?

23 A No, sir, not in this case.

24 Q Not in this case. Now, maybe in this other case that
25 you've got, you might do it?

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1 A Yes, sir.

2 Q But Mr. Hardin's case, you're not going to do it?

3 A No, sir. No, sir.

4 Q Okay. All right.

5 A It was my understanding he admitted to be in control of
6 the vehicle as well as he was the renter of the vehicle. So,
7 therefore, his DNA would be there.

8 Q Well, I --

9 A So we wouldn't have a reason to or a need to place him
10 inside of that vehicle.

11 Q Suppose somebody was to have a vehicle and loan it to
12 somebody else, would that other person's DNA be in the
13 vehicle?

14 A Well, under a rental agreement, he's not supposed to do
15 that. So we would assume that if he's following his renters
16 agreement, he would be the only person in control of that
17 vehicle.

18 Q But suppose it was loaned to somebody else? It's
19 possible that other person's DNA could be in that vehicle?

20 A It's possible. Yes, sir.

21 Q And it's possible, if y'all had tested the DNA, you
22 might have found that person's DNA in the vehicle.

23 A Well, it hasn't been tested because there's a process to
24 getting the DNA.

25 Q Right. And you might use that process in the later

1 case?

2 A Yes, sir.

3 Q But you ain't going to use it in this case?

4 A Not in this, no.

5 Q Okay. All right. Now, you took DNA from the guns?

6 A Yes, sir.

7 Q All right. And, again, you didn't send that off to get
8 tested?

9 A No, sir.

10 Q Okay. It might get tested in the other case, but it
11 ain't going to get tested in this case?

12 A Not at this time.

13 Q Okay. All right.

14 MR. MELLARD: No more questions.

15 THE COURT: Anything on redirect?

16 MS. CORNWELL: No, Your Honor.

17 COURT REPORTER: Mr. Ketcherside, can you give me
18 the acronym for NEXUS?

19 MR. KETCHERSIDE: It's N-E-X-U-S.

20 COURT REPORTER: That's what I though it was.

21 Thank you.

22 MR. KETCHERSIDE: Yes, ma'am.

23 THE COURT: Ladies and gentlemen of the jury do you
24 need a quick break or are you okay?

25 (No verbal response)

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1 MS. FORD: Your Honor.

2 THE BAILIFF: Speak verbally when speaking to the
3 Judge.

4 THE COURT: Do y'all need a quick break?

5 THE JURY: No.

6 THE COURT: No.

7 THE BAILIFF: Some are saying yeah. Some saying,
8 no.

9 THE COURT: All right. Let's take a quick ten-
10 minute recess.

11 (Jury out at 3:05 p.m)

12 (Court in recess for break.)

13 (Court in session after break.)

14 MS. CORNWELL: Your Honor, I have spoken to Defense
15 counsel. I believe we just want to put on the record about
16 State's 76, 77, 75, 74, 73 and 78. Those are the actual duct
17 tape when we unsealed them. The only person that touched
18 those was Investigator Ketcherside. He touched them with
19 gloves. We have discussed with Defense counsel about not
20 sending that back to the jury because there is an on-going
21 investigation. There are photographs of the duct tape that
22 was collected that will go back. They agreed that we don't
23 have to send that back with the jury and Investigator
24 Ketcherside can go ahead and take these items with him to
25 preserve the chain of custody for the on-going investigation

1 of the second subject.

2 THE COURT: Are you going to go ahead and mark the
3 photographs like 77A --

4 MS. CORNWELL: We have photographs of where the duct
5 tape was found already in the store that's already been moved
6 into evidence. I think that will be sufficient.

7 THE COURT: Okay.

8 MS. CORNWELL: To show them there was duct tape to
9 corroborate. Thank Your Honor.

10 THE COURT: Just for the record, when this came up,
11 I did ask the Investigator to remain in the courtroom since
12 the evidence was here in the courtroom so he can still have
13 possession and custody of that evidence.

14 MS. CORNWELL: Thank you, Your Honor.

15 COURT REPORTER: That is 73, 74, 75, 76, 77 and 78?

16 MS. CORNWELL: Yes, ma'am.

17 (Court in recess for short break.)

18 (Court in session after short
19 break.)

20 THE COURT: Thank you. You may have a seat. Are
21 we ready for our jury?

22 MS. CORNWELL: Yes, Your Honor.

23 MR. MELLARD: Yes, ma'am.

24 THE COURT: All right. Let's have our jury,
25 please?

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1 Application?

2 A Yes, I am.

3 Q Okay. And without going into any scientific discussion
4 or anything like that, just a basic laymen's term, so what is
5 your understanding of how that application works?

6 MR. STEVENS: I didn't think we were going into
7 this. This specific area.

8 THE COURT: Subject to the Court's restrictions and
9 your objection is overruled.

10 MR. STEVENS: Thank you.

11 A That app actually, whenever you lose your iPhone or
12 iPad, you can actually login into that app with your username
13 and password and it will give you an approximate GPS location
14 of that device.

15 BY MS. CORNWELL:

16 Q Okay. And do you have any personal experience with that
17 application?

18 A Yes, I do. My kids have the device because they have
19 iPads and iPhones, myself and my wife also have those
20 devices.

21 Q And do you ever have the occasion outside of your
22 profession to use that application?

23 A Yes, ma'am. My daughter actually lost her iPhone in
24 Columbiana Mall in Columbia and we actually --

25 MR. STEVENS: Objection, 401 and 403.

1 MS. CORNWELL: I think he's just laying the
2 foundation as to how he knows the application and how he
3 knows what to do with the application. It's going to be a
4 foundation for what he did in his investigation.

5 MR. STEVENS: I think they've already tried to
6 establish that.

7 THE COURT: Overruled.

8 A She lost her cell phone. I logged into that Find My
9 iPhone App with my username and password and was able to
10 locate the iPhone inside the restroom at the mall.

11 BY MS. CORNWELL:

12 Q Okay. And so Corporal Cain advised you of this and were
13 you able to eventually get the information for the stolen
14 iPad yourself?

15 A Yes, I did.

16 Q And were you able to log-in to that stolen device?

17 A Yes, I was.

18 Q What application did you use? What modem did you use to
19 log into that device?

20 A I had my iPad and I actually put the victim's username
21 and password in and pulled up the location on my device.

22 Q Okay. And were you able to see on your device exactly
23 where the iPad was located at?

24 A Yes, I was.

25 Q And where was it located?

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1 A It was located at the Bentley Court Apartments in
2 Columbia.

3 Q Okay. And when talking with Corporal Wade, you were
4 given information about an iPad. Were you given any other
5 information about the person that they were looking for or
6 any vehicles that they may have been driving?

7 A Yes. They were he gave me a vehicle description that
8 was used as a getaway vehicle for that, which was like a dark
9 gray in color Toyota.

10 Q Okay. And once you saw the iPad at the Bentley
11 Apartments, what did y'all do?

12 A I attempted to drive around the parking lot to see if I
13 could locate that vehicle. At that time, I saw a vehicle
14 fitting that description with the driver's side door open in
15 the parking lot where the approximate iPad was supposed to be
16 located.

17 Q Okay. And I'm going to show you what's been marked as
18 State's Exhibit 7. Can you tell me what's in that
19 photograph?

20 A It's a photograph of a gray in color four-door Toyota.

21 Q And is it parked in front of anywhere?

22 A Yes, ma'am. It's parked in front of -- looks like
23 building 2709.

24 Q Okay. And is this the vehicle that you saw when you
25 pulled up?

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1 A Yes, ma'am, it is.

2 Q And is this a true and accurate depiction of the vehicle
3 that you saw when you pulled up?

4 A Yes, it is.

5 MS. CORNWELL: Your Honor, at this time, the State
6 would move State's Exhibit 7 into evidence.

7 THE COURT: Any objection?

8 MR. STEVENS: Without objection, Judge.

9 (State's Exhibit No. 7, photo, was
10 marked and entered.)

11 Q So you pulled up to the apartment complex and saw this
12 vehicle?

13 A Yes.

14 Q And I believe you said the door was open?

15 A Yes. The driver's side door was ajar.

16 Q Did you see anybody getting in that vehicle?

17 A When I first saw the vehicle no one was getting inside
18 the vehicle, but there was a black male on the second landing
19 of that breeze way, that you can see from the photograph,
20 that looked like he was closing the door.

21 Q Okay. And did you make contact with that person?

22 A Not at that time. I actually radioed to the other
23 officers that were en route to that location and I told them
24 that the vehicle door was open. And we were going to wait to
25 see exactly who came back to the vehicle.

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1 Q Okay. And who came to that vehicle?

2 A It was the black male that was closing the door on the
3 second landing of that -- in the breeze way.

4 Q And do you see him in the courtroom today?

5 A Yes, I do.

6 Q Can you point him out for the jury?

7 A He's sitting right there with that suit on.

8 MS. CORNWELL: The record reflect that the witness
9 pointed out the Defendant.

10 THE COURT: Yes, ma'am.

11 BY MS. CORNWELL:

12 Q And when you made contact with the Defendant, did you
13 inquire about the gray car?

14 A Yes, I did.

15 Q And what did he tell you about the gray car?

16 A He said the car was his.

17 Q Okay. And did he tell you originally why he was at the
18 apartment complex?

19 A He said he was there to visit a friend but they was not
20 at home at that time.

21 Q Okay. And were you able to confirm whether or not he
22 was being honest with you and visiting friends?

23 A He was actually not being honest with me.

24 Q Okay. Who actually lived at that apartment?

25 A He lived at the apartment where he was closing the door

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1 to,

2 Q Okay. And after you met with him, what did you do next?

3 A At that time, I told him the reason why we made contact
4 with him. And I advised Corporal Cain exactly where we were.
5 During that time, I asked him if I can do a Terry Frisk, a
6 pat-down for my safety to see if he had any weapons or
7 anything on him. He actually told me I could. I patted him
8 down, make sure he didn't have any weapons or anything on
9 him, make sure nothing that would hurt me or the other
10 officers at that time.

11 Q And at that time, were you also still viewing your iPad
12 that was showing the stolen iPad?

13 A Not at the exact moment I was making contact with him.

14 Q Okay. But during your investigation, that was still --

15 A Yes. Yes, ma'am.

16 Q All right. And at some point did you look for that
17 iPad?

18 A Yes, I did.

19 Q And tell the jury how you went about looking for the
20 iPad?

21 A While we were talking to the subject, he actually --
22 another officer came up and started and talking. And when
23 the other officer turned his head, the Defendant actually
24 attempted to toss a key from his right hand. I saw the brass
25 key fall in the parking lot. I picked it up and it was the

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1 actual key to the residence that we were at. After talking
2 with the subject a little more, he actually did say he did
3 live at that residence. And we obtained a consent to search
4 the apartment.

5 Q And what made you want to search the apartment?

6 A One of the description of the one of the robbers was a
7 black male that walked with a limp, approximately 5'10" in
8 height, between the weight of 190 to 200 pounds.

9 Q Okay. And the reason that you had come to the apartment
10 complex was what reason?

11 A Because of the stolen iPad was actually showing at that
12 apartment.

13 Q Okay. And at that apartment building?

14 A Yes, it was.

15 Q Now, I'm going to show you what's been marked as State's
16 Exhibit 1. Can you tell me what that is?

17 A It's a voluntary consent to search by the Columbia
18 Police Department.

19 Q Okay. And is that -- did you have an occasion to go
20 over that form with the Defendant?

21 A Yes, I actually did.

22 Q Okay. What did you -- is that a true and accurate copy
23 of the consent form that you went over with him?

24 A Yes, ma'am, it is.

25 Q Have there been any modifications, alterations,

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1 additions or deletions made to that paper since you filled it
2 out?

3 A No, it hasn't.

4 MS. CORNWELL: Your Honor, at this time the State
5 would offer State's 1 into evidence.

6 THE COURT: Any objection?

7 MR. STEVENS: Without objection, Judge.

8 THE COURT: All right. It's in.

9 (State's Exhibit No. 1, consent to
10 search form, was marked and entered.)

11 MS. CORNWELL:

12 Q If you could, read for the jury what that paper says?

13 A In the top left-hand -- in the top right-hand corner, it
14 has a -- it says, can read and write. And right under that
15 it also said, has a high school diploma.

16 Q And why do you have that information on there?

17 A Before I usually get people to sign a voluntary consent
18 to search or advise them their rights, I actually ask them
19 can they read and write? If they can understand, and what's
20 their highest grade that they completed at that time.

21 Q Okay. And that was the information that you got from
22 the Defendant?

23 A Yes, it was.

24 Q Okay. And what does the form say?

25 A It has the date 5/16/2014, time in military time 14:00,

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1 which is 2:00 in the afternoon. And then it has location
2 [REDACTED] Bentley Court, Columbia, South Carolina, 29210. Under
3 that, it has -- it reads, I, and then it has, Hardin, Archie,
4 do hereby consent to a search of my premises and/or
5 automobile without a search warrant by officers of the
6 Columbia Police Department, Columbia, South Carolina. These
7 officers are authorized by me to take from the premises
8 and/or automobile, letters, papers, materials or other
9 property which they desire. Description of property to be
10 searched is described as follows: It says, black male,
11 5'10", 190 to 200 pounds, walks with a limp. And it says any
12 stolen property. In parentheses it has iPad. And it also
13 has any firearms, handgun. And it has my initials under
14 that, under that DSW. Then it has I am aware that any
15 evidence obtained as a result of this search can be used
16 against me in a court of law. By signature below I
17 understand I can withdraw my consent. This written
18 permission is being given by me to the officers to the above
19 officers voluntarily and without threats or promises of any
20 kind. Then it has a line for person authorizing to search to
21 sign that, to sign that line, which is signed by Mr. Hardin.
22 Under that, it has a witness line, which I have my signature,
23 Darius S. Wade, with my badge number 20318. Following that,
24 it has a place for a second witness, which is G. Key. And
25 his badge number which is 22317.

1 Q And did the Defendant sign that form?

2 A Yes, he did.

3 MS. CORNWELL: Your Honor, may I publish to the
4 jury?

5 THE COURT: You may.

6 BY MS. CORNWELL:

7 Q Now, on this form there is -- who filled the form out?

8 A (Witness pauses)

9 Q Who filled out all the information up here?

10 A I filled it out.

11 Q Okay. Now, it looks like on this form the handwriting
12 is a little bit different on each one. Can you explain that
13 to the jury?

14 A Actually, where it says by. It says any firearm handgun
15 was -- after the consent to search we actually located a box
16 of cell phones, which lead us to believe possibly because a
17 firearm was used in a robbery, they might also be inside the
18 apartment. So I added firearms in. And I notified the
19 Defendant we would also be looking for firearms.

20 Q Okay. So you added this language after Mr. Hardin had
21 signed?

22 A Yes, I did. But I explained it to him before I added
23 it.

24 Q So you explained everything that you were adding on
25 here?

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1 A Yes. I actually -- before he signed, I actually filled
2 it out and he actually was reading along while I was reading
3 from another, from another one.

4 Q Okay. At any time, did he withdraw his consent to
5 search?

6 A No, he did not.

7 Q Tell the jury what you did when you first entered the
8 apartment and why you entered the apartment.

9 A I said -- from the original before I made that amendment
10 to that, we were looking for a black male that was possibly a
11 suspect in the armed robbery. For my protection -- or
12 actually Mr. Hardin said will he be able to go up to the
13 apartment while you search. And we told him he would. So as
14 we went up to the landing to enter the apartment, Mr. Hardin
15 actually stayed outside the door, because we were looking for
16 a person in an armed robbery, myself and other officers was
17 going to enter that house prior to, to do a protective sweep
18 to ensure no one was in there with guns or anything to harm
19 us or Mr. Hardin at that time.

20 Q Okay. And when you did that protective sweep, was
21 anybody else in the apartment at the time?

22 A No. Nobody else was in the apartment.

23 Q I'm going to show you what's been marked as State's
24 Exhibit 23. Do you recognize that photograph?

25 A Yes, I do.

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1 Q And what is that a photograph of?

2 A That's a photograph of the door on the apartment that we
3 searched.

4 Q And is that true and accurate depiction of the door?

5 A Yes, it is.

6 MS. CORNWELL: Your Honor, at this time, the State
7 would move State's 23 into evidence.

8 THE COURT: Any objection?

9 MR. STEVENS: Without objection, Judge.

10 THE COURT: It's in.

11 (State's Exhibit No. 23, photo, was
12 marked and entered.)

13 BY MS. CORNWELL:

14 Q Is that the door to the apartment complex that you
15 searched?

16 A Yes, ma'am, it is.

17 Q And who was the, I guess, owner or resident/occupant of
18 that apartment?

19 A Mr. Hardin.

20 Q Okay. All right. And when you went through to do the
21 protective sweep, were you able to see in plain sight any
22 items of evidentiary value?

23 A Yes, there was a -- looks like a -- it's a cardboard box
24 that's used to -- that you would get copy paper in, was
25 actually filled with various electronic devices.

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1 Q Okay. And I'm going to show you photographs and looking
2 at State's 2, can you describe what's in that photograph?

3 A In that photograph, that's the view of the living room.
4 As we enter, it's a sofa with a foot stool and an actual
5 stool. Another sofa to the left. There's going to be some
6 bags right there to the left of the door, a TV stand. And
7 then right off, right there before you enter the bedroom, you
8 can actually see the white cardboard box.

9 Q Okay. And looking -- and is this a true and accurate
10 depiction of the apartment as you walk into it?

11 A Yes, it is, ma'am.

12 Q Okay. And looking at State's 25, what is that?

13 A This is actually a picture of the -- when you enter the
14 apartment to the left of the door, it has the plastic bags.
15 And you can see the cardboard and the TV.

16 Q And is this a true and accurate depiction?

17 A Yes, it is.

18 Q And looking State's 24?

19 A This is another photo of the living room. You can
20 actually see where they're standing facing towards the
21 bedroom. That's just the inside of the bedroom where there's
22 a ironing board. And you can see the white cardboard box
23 with the electronic devices.

24 Q Okay. And is this a true and accurate depiction?

25 A Yes, it is.

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1 Q State's 17?

2 A This is the -- you a see a closeup of the cardboard box,
3 what has a mountain on it. And it has various -- it looks a
4 iPhone, other various electronic devices.

5 Q And this is a true and accurate depiction of what you
6 saw when you entered the apartment?

7 A Yes, it is.

8 Q And, finally, State's Exhibit 16?

9 A This is another closeup of that same box containing
10 several iPhones and other LG -- looks like a LGG Flex and
11 electronic devices.

12 Q And, again, is that a true and accurate depiction of
13 what you saw that day?

14 A Yes, it is.

15 Q Did you take any of those items out of those, out of the
16 apartment?

17 A No, I did not.

18 MS. CORNWELL: Your Honor, at this time the State
19 would ask to publish State's 16, 17, 24, 25 and 62.

20 THE COURT: I don't think you've formally moved
21 them in yet.

22 MS. CORNWELL: I have not formally moved them in
23 yet? Well, we'd like to do that at this time, Your Honor.

24 THE COURT: Any objection?

25 MR. STEVENS: Without objection, Your Honor.

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1 THE COURT: All right. They're in.

2 MS. CORNWELL: Thank you, Your Honor.

3 (State's Exhibit No. 16, photo, was
4 marked and entered.)

5 (State's Exhibit No. 17, photo, was
6 marked and entered.)

7 (State's Exhibit No. 24, photo, was
8 marked and entered.)

9 (State's Exhibit No. 25, photo, was
10 marked and entered.)

11 (State's Exhibit No. 62, photo, was
12 marked and entered.)

13 BY MS. CORNWELL:

14 Q And in looking at State's 62, can you tell the jury what
15 that was again?

16 A It's the living room, the view as soon as you walk
17 through the door of the house.

18 Q And you said these are the bags right to the left of the
19 door?

20 A Yeah, to the left of the door and the TV stand.

21 Q Okay. And would this be those bags?

22 A Yes. That's the bag, the TV stand and then the white
23 cardboard box.

24 Q This is the white cardboard box right over here; is that
25 correct?

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1 A Yes, ma'am, it is.

2 Q And, again, I believe this is just a different view?

3 A Yes, ma'am, it is.

4 Q And State's 17 is just a little closer up?

5 A Yes. It's a closeup of the box.

6 Q And that was in plain sight when you entered the
7 apartment?

8 A Yes, it was.

9 Q And State's 16 is just the extreme closeup; is that
10 correct?

11 A Yes, it is.

12 Q So you went inside, you did a protective sweep, there
13 was nobody there. You saw these items in plain sight. What
14 did you do next?

15 A At that time, that's when we believe he actually did
16 have something to do with the robbery. And because those
17 items were there, that's when I went to amend and add any
18 firearms/handgun to the consent to search.

19 Q At that point, where was Mr. Hardin?

20 A He was actually still inside the apartment at that time.

21 Q Okay. So after you did the protective sweep, did you
22 allow Mr. Hardin to come into the apartment?

23 A Yes, ma'am, he was.

24 Q And at that time, was Mr. Hardin in custody in any way?
25 Was he in handcuffs or anything?

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1 A I don't recall.

2 Q Okay. While you were in the apartment, did you do
3 anything to try to locate Mr. Sims' stolen iPad?

4 A Yes, I did. I actually got my iPad and I actually --
5 when I went to play a sound, I didn't hear the iPad. And at
6 that time, the map, the hybrid map refreshed and it wasn't
7 actually showing on top of the building anymore by the
8 apartment. It was actually showing off to the side of the --
9 behind, on the side of the building.

10 Q Okay. And were you able to search the perimeter for
11 that item?

12 A Yes. At that time when I saw that was no longer on top
13 of the building, I actually went down the rear breeze-way,
14 the rear stairs. As I was walking around the building, I was
15 hitting the play the sound because you can remotely play a
16 sound on the device, whether it's on silent or whatnot, as
17 long as it's powered up, you can still play the sound on it.
18 And while I was walking around the perimeter, I actually was
19 hitting the play button to see if I can hear the sound.

20 Q And did you ever hear the sound?

21 A Yes, I did.

22 Q Were you able to locate the iPad at that time?

23 A Yes, I was.

24 Q Where were you able to locate the iPad?

25 A I was able to locate the iPad near -- there's a dumpster

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1 area to the right of the building. I was able to locate the
2 iPad behind that dumpster.

3 Q And what was the iPad in when you located it?

4 A The iPad was actually, was in a plastic grocery bag. It
5 was actually a tied up grocery bag.

6 Q Okay. I'm going to show you what's been marked as
7 State's Exhibit 30. Do you recognize that photograph?

8 A Yes, ma'am.

9 Q And can you tell what's in that photograph?

10 A That's a photograph to the right of the building where
11 the dumpsters are located.

12 Q Okay. And in that photograph, can you see the
13 Defendant's car?

14 A Yes, I can.

15 Q Okay. And is that a true and accurate depiction of what
16 the scene looked like that day?

17 A Yes, it is.

18 MS. CORNWELL: Your Honor, the State would move
19 State's 30 into evidence.

20 THE COURT: Any objection?

21 MR. STEVENS: Without objection.

22 (State's Exhibit No. 30, photo, was
23 marked and entered.)

24 MS. CORNWELL: May I publish?

25 THE COURT: You may.

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1 BY MS. CORNWELL:

2 Q Now, are those the dumpsters behind which you found the
3 iPad?

4 A Yes, it is.

5 Q And that's with the car. That's probably -- about how
6 many feet away from the apartment?

7 A I'd say less than a hundred feet.

8 Q And looking at State's 18, is that just a closer view?

9 A Yes, it is.

10 Q And is that a true and accurate depiction of the scene?

11 A Yes, it is.

12 MS. CORNWELL: Your Honor, the State would move
13 State's 18 into evidence.

14 THE COURT: Any objection?

15 MR. STEVENS: Without objection, Your Honor.

16 THE COURT: Admitted.

17 (State's Exhibit No. 18, photo, was
18 marked and entered.)

19 BY MS. CORNWELL:

20 Q And that's just a closer view of the dumpsters; is that
21 correct?

22 A Yes, it is.

23 Q And, again, State's 58?

24 A It's just a closer view of behind the dumpster.

25 Q Okay. And is that a true and accurate depiction?

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1 A Yes, it is.

2 MS. CORNWELL: Your Honor, the State would move
3 State's 58 into evidence.

4 THE COURT: Any objection?

5 MR. STEVENS: Without objection, Judge.

6 THE COURT: Okay.

7 (State's Exhibit No. 58, photo, was
8 marked and entered.)

9 BY MS. CORNWELL:

10 Q And behind these dumpsters, is that where you found the
11 iPad?

12 A Yes, it is.

13 Q State's 5, do you recognize that?

14 A Yes, it is.

15 Q What is that?

16 A It's a bunch of bushes and it has -- you can see, like a
17 gray in color plastic bag, right in the bushes.

18 Q Okay. And is that an accurate depiction of what you saw
19 that day?

20 A Yes, it is.

21 MS. CORNWELL: The State would move State's 5 into
22 evidence, Your Honor.

23 THE COURT: Any objection?

24 MR. STEVENS: Without objection.

25 THE COURT: It's in.

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1 (State's Exhibit No. 5, photo, was
2 marked and entered.)

3 BY MS. CORNWELL:

4 Q And when you heard the music playing on the iPad, where
5 was that music coming from?

6 A It was coming from that bag.

7 Q And in looking at State's 22?

8 A It's just a closeup of that bag.

9 Q Okay. Is that true and accurate depiction of what you
10 saw that day?

11 A Yes, it is, ma'am.

12 MS. CORNWELL: State's 22 into evidence, Your
13 Honor.

14 THE COURT: Any objection?

15 MR. STEVENS: Without objection, Judge.

16 THE COURT: It's in.

17 (State's Exhibit No. 22, photo, was
18 marked and entered.)

19 BY MS. CORNWELL:

20 Q And once you found that bag and heard the music coming
21 from it, did you open the bag up?

22 A No, I did not.

23 Q What did you do after you located the bag and heard the
24 music playing?

25 A I actually notified our crime scene for our crime scene

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1 unit to come collect the evidence.

2 Q Okay. And once you did that, what did you do?

3 A After I did that, I believe I went back up to the
4 apartment where Mr. Hardin was.

5 Q And were you present when the crime scene person came
6 and took photographs of the evidence?

7 A Yes, I was.

8 Q Were you present when the rest of the search was
9 executed?

10 A Yes, I was.

11 Q And what items were found in the Defendant's apartment
12 that day?

13 A In the Defendant Apartment --

14 MR. STEVENS: Judge, we're going to raise our
15 pretrial objection.

16 THE COURT: They're subject to your previous
17 objections. Thank you.

18 A Inside that apartment we actually found another bag
19 containing several more phone and electronic devices. We
20 also were able to locate two handguns inside that apartment.

21 BY MS. CORNWELL:

22 Q Okay. And looking at State's 47, are those the bags
23 that you found in the apartment?

24 A Yes, it was.

25 Q And is that a true and accurate depiction of what you

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1 saw that day?

2 A Yes, it is, ma'am.

3 MS. CORNWELL: Your Honor, State's 47 I'd like to
4 move into evidence.

5 THE COURT: Any objection?

6 MR. STEVENS: Without objection?

7 (State's Exhibit No. 47, photo, was
8 marked and entered.)

9 BY MS. CORNWELL:

10 Q And it looks like those are in an empty room. How many
11 bedrooms are in this apartment?

12 A I don't know. I'm not exactly sure. I believe it was
13 one or two.

14 Q How many people did it look like resided in the
15 apartment?

16 A One.

17 Q Because this is pretty much an empty room; correct?

18 A Yes, it is.

19 Q And you stated that you were present when the handguns
20 were found?

21 A Yes.

22 Q Do you recall what the handguns were found in?

23 A I believe it was a black bag.

24 Q Okay. And I'm going to show you what's been marked as
25 State's 33. Do you recognize that?

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1 A Yes, I do.

2 Q And what is that?

3 A It's two revolver handguns and it's a black sack with a
4 Jumpman Jordan, red Jumpman Jordan.

5 Q And is that a true and accurate depiction of where you
6 saw the guns come out of?

7 A Yes, it is.

8 Q And does that accurately reflect the scene as you saw it
9 that day?

10 A Yes, it does.

11 MS. CORNWELL: Your Honor, the State would move
12 State's 33 into evidence.

13 THE COURT: Any objection?

14 MR. STEVENS: No objection, Judge.

15 (State's Exhibit No. 33, photo was
16 marked and entered.)

17 BY MS. CORNWELL:

18 Q And when the bags were opened, you were able to see
19 inside of those bags?

20 A Yes.

21 MS. CORNWELL: Court's indulgence.

22 BY MS. CORNWELL:

23 Q And you're looking at State's 13. What is that?

24 A It's a closeup of the black knapsack with the red Jump
25 man?

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1 MS. CORNWELL: I'm sorry, Breen.

2 BY MS. CORNWELL:

3 Q Is this the bag? What was in this bag?

4 A The two revolvers.

5 Q And this is a true and accurate depiction of what you
6 saw that day?

7 A Yes, it is.

8 MS. CORNWELL: Your Honor, the State would moved
9 State's 13 into evidence.

10 THE COURT: Any objection?

11 MR. STEVENS: Without objection, Your Honor.

12 (State's Exhibit No. 13, photo, was
13 marked and entered.)

14 BY MS. CORNWELL:

15 Q And I believe you also stated you were able to see
16 inside the bags that were in that bedroom, the empty bedroom?

17 A Yes.

18 Q I'm going to show you what's been marked as State's 12
19 and State's 14. Do you recognize what's in those pictures?

20 A Yes, I do. It's a closeup of the two black bags that
21 were in front of the Nike shoe boxes. It actually shows
22 varied -- more cell phone and electronic devices.

23 Q And are State's 14 and 12 accurate depictions of what
24 you saw that day?

25 A Yes, it is.

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1 MS. CORNWELL: Your Honor, the State would move
2 State's 12 and 14 into evidence.

3 THE COURT: Any objection?

4 MR. STEVENS: Without objection, Your Honor.

5 THE COURT: It's in.

6 (State's Exhibit No. 12, photo, was
7 marked and entered.)

8 (State's Exhibit No. 14, photo, was
9 marked and entered.)

10 BY MS. CORNWELL:

11 Q And to your knowledge, who collected the evidence in
12 this case?

13 A I believe it was the Orangeburg County Sheriff's
14 Department.

15 Q And after they searched the apartment and retrieved the
16 evidence, did you have any further involvement in this case?

17 A No, I did not.

18 Q Thank you, Investigator Wade. Please answer any
19 questions Defense Counsel may have.

20 THE COURT: Cross Examination.

21 DARIUS WADE - CROSS-EXAMINATION

22 BY MR. STEVENS:

23 Q Good afternoon, Investigator Wade.

24 A How you doing, sir?

25 Q I'm doing well. Are you still recovering from your cold

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1 or are you feeling better?

2 A No, I'm one hundred percent better.

3 Q Fantastic to hear. All right. As you already know, my
4 name is Breen Stevens and I represent the accused, Mr. Archie
5 Hardin, you met?

6 A Yes, sir.

7 Q We had a chance to kind of cover this same material
8 yesterday; correct?

9 A Yes, we did. Yes, sir.

10 Q Okay. So through part of our conversation with you
11 today, I'm going to ask you to recall a bit of that as well;
12 all right?

13 A Yes.

14 Q You said that today you're with the Columbia Police
15 Department?

16 A Yes.

17 Q For about ten years you said; right?

18 A It'll be ten years next month.

19 Q Okay. And regarding the incident which brings us all
20 here today, you said you assisted a Corporal Cain; do you
21 remember that?

22 A Yes, I did, sir.

23 Q Okay. And you were assisting Corporal Cain in what lead
24 to the Bentley Court Apartments; is that correct?

25 A Yes, sir.

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1 Q Okay. And you were using an iPad Application; correct?

2 A Yes, sir.

3 Q Okay. An iPad location was a large dot on a building;
4 correct?

5 A Yes, sir, it was a blue dot.

6 Q Okay. But it wasn't like a specific small spot inside
7 the building; right?

8 A I don't understand your question. What do you mean?

9 Q Well, it lead you to the area but it didn't specifically
10 lead you to right on top of the device; right?

11 A It did eventually, yes.

12 Q Right. But it was through sound, not seeing on the
13 device; right?

14 A Yes, sir.

15 Q Okay. You had play the button to make it play music;
16 right?

17 A Yes, but I was walking in the area where the blue dot
18 was.

19 Q Right. But you didn't see it, you found it based on
20 sound; correct?

21 A Yes.

22 Q Okay. So you pulled up to the Bentley Court Apartments
23 and you said you saw a dark gray Toyota Corolla; right?

24 A Yes.

25 Q And you said the door was ajar?

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1 A Yes, it was.

2 Q Okay. And you saw someone coming down from the second
3 floor apartments?

4 A When I first saw them, drove by, because I had to pass
5 by the breeze-way --

6 Q Uh-huh (affirmative).

7 A -- to where -- the direction, I was going. I could
8 actually see the door was open. And, yes, they was closing
9 the door. I couldn't tell exactly what he was doing by the
10 door.

11 Q But your testimony on direct was you saw a black male on
12 the landing on the second floor; correct?

13 A Yes.

14 Q All right. And you said other officers were en route;
15 right?

16 A Yes.

17 Q All right. So you weren't alone, were you?

18 A No.

19 Q Okay. And eventually said the black male came down to
20 the gray car; right?

21 A Yes.

22 Q And that's when you approached; correct?

23 A Yes.

24 Q And he said it was his; right?

25 A Yes.

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1 Q Okay. Now, you said you did a Terry Frisk; right?

2 A Yes.

3 Q And a Terry Frisk is a pat down; right?

4 A Yes, it is.

5 Q All right. And it's essentially to determine if anybody
6 has any weapons?

7 A Yes, it is.

8 Q And you didn't find any weapons; did you?

9 A No, I did not.

10 Q And the person you were patting down was Archie Hardin;
11 right?

12 A Yes, sir, it was.

13 Q So Archie Hardin had no weapons on him at all at the
14 time?

15 A No, he did not.

16 Q Okay. And there were other officers present; correct?

17 A Yes, there was.

18 Q Okay. In fact, there were at least three maybe four
19 other officers present at that time; correct?

20 A Yes.

21 Q Okay. So it wasn't just you by yourself?

22 A No, it was not.

23 Q Okay. Now, you informed Mr. Hardin, you said that you
24 were looking for -- you gave essentially the description of
25 the robber; right?

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- 1 A Yes.
- 2 Q You said a black male?
- 3 A Yes, I did.
- 4 Q Approximately 5'10"?
- 5 A Yes, I did.
- 6 Q About a 190 to 200 pounds?
- 7 A Yes, sir.
- 8 Q Okay. And you're also -- you told him you were looking
- 9 for iPad; correct?
- 10 A Yes.
- 11 Q Okay. And at about 2:00 p.m. you went through the
- 12 consent form with him; correct?
- 13 A Yes.
- 14 Q. Okay. And that's what's State's Exhibit No. 1; right?
- 15 A Yes.
- 16 Q Okay. And you went through that consent form with him,
- 17 that's when you actually included just the information with
- 18 the thin pen; correct?
- 19 A Yes.
- 20 Q Okay. Not the thick writing on here; right?
- 21 A No.
- 22 Q That came later?
- 23 A Yes.
- 24 Q Okay. Just so we're clear about that. And when it's
- 25 got the thin pen on there, that's when Archie Hardin signed;

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1 right?

2 A Yes.

3 Q That's when he gave his consent?

4 A Yes.

5 Q Okay. And that was about 2:00 p.m.; correct?

6 A Yes.

7 Q Okay. And you said you were assisting in helping find
8 people from a robbery; right?

9 A Yes.

10 Q And were you aware the robbery occurred a little after
11 11:00 in the morning?

12 A I wasn't sure exactly what time it had occurred.

13 Q Okay. But it was 2:00 p.m. when he actually signed the
14 consent form?

15 A Yes.

16 Q Okay. Now, after the consent form was signed, y'all
17 went up to the second floor; right?

18 A Yes, sir.

19 Q And that's where his apartment was located; right?

20 A Yes, sir.

21 Q Okay. And it wasn't just you; right?

22 A No, sir.

23 Q Okay. So there were other officers with you?

24 A Yes, sir.

25 Q Okay. And, in fact, one officer at least was standing

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1 with Mr. Hardin?

2 A Yes, sir.

3 Q And he was actually taken up there with you; right?

4 A Yes, sir.

5 Q And you opened the door?

6 A Yes, sir.

7 Q And you went inside?

8 A Yes, sir.

9 Q And you performed a protective sweep; correct?

10 A Yes, sir.

11 Q And a protective sweep is to look for other people;
12 right?

13 A Yes, sir.

14 Q Okay. And you did. You looked around for other people?

15 A Yes, sir.

16 Q And you didn't find anyone there?

17 A No, sir.

18 Q And, in fact, Archie Hardin -- you were aware that he
19 didn't expect you to find anybody there; right?

20 A Yes, sir.

21 Q All right. Because he told you?

22 A Yes, sir.

23 Q And so that was honest; right?

24 A Yes, sir.

25 Q Now, after you're already inside, right, you're telling

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1 us that that's when you saw a box of items; correct?

2 A Yes, sir.

3 Q But you're not the one who initially saw anything; are
4 you?

5 A I'm not --

6 Q According to your testimony yesterday, it was a uniform
7 police officer; correct?

8 A I believe so, yes, sir.

9 Q Okay. And so it was later on, even though you'd
10 performed the protective sweep; right?

11 A I was one of the officers in there at the time.

12 Q Okay. But you were the one to perform one of, what, I
13 believe two officers that performed the sweep?

14 A I'm not sure exactly how many, sir.

15 Q Okay. Do you remember how many were there in the
16 apartment?

17 A Not to my knowledge.

18 Q More than one?

19 A Yes, more than one.

20 Q Okay. More than two?

21 A Yes, sir.

22 Q Less than four?

23 A Like I say, I don't recall the exact number.

24 Q So someone brought it to your attention after your sweep
25 that there was a box of items?

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1 A Yes, sir.

2 Q Okay. And that's when you had Archie sit down on the
3 couch?

4 A I'm not sure of the exact chain of events but, yes, sir.

5 Q Okay. Well, yesterday, you said after that you cleared
6 out the couch; right?

7 A Yes.

8 Q And you had Archie sit down; right?

9 A Yes, sir.

10 Q And he most certainly wasn't free to go; right?

11 A At that time, after they'd located the stolen items?
12 No, because Orangeburg wanted to speak with him.

13 Q Okay. And that's when you said went and got him a cup
14 of water?

15 A Yes, sir.

16 Q From his own cup?

17 A Yes, sir.

18 Q In his own house?

19 A Yes, sir.

20 Q And that's when you added language of what you were
21 looking for; right?

22 A Yes, sir.

23 Q And that's actually in a different pen; right?

24 A Yes, sir.

25 Q And he didn't sign off on that; did he?

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1 A No, because I made the changes. I put my initials
2 because I was the one that made the changes.

3 Q Right. But Archie didn't sign off on anything; did he?

4 A He signed the consent to search.

5 Q Right. But he wasn't totally noncompliant?

6 A As far as not resisting?

7 Q No?

8 A I'm not understanding you.

9 Q As far as letting you know that wasn't his?

10 A That wasn't his what, sir?

11 Q The box.

12 MS. CORNWELL: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. STEVENS:

15 Q When you were in there, you did collect an envelope;
16 correct?

17 A I didn't collect the envelope.

18 Q But you were told of an envelope?

19 A Yes.

20 Q That had the name of a different person?

21 A Yes.

22 Q And you were told the name of this different person
23 could help provide more information for you?

24 A Yes.

25 Q And it was Archie Hardin who gave you that information?

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1 A Yes.

2 Q Okay. So you went back out to look for the iPad;
3 correct?

4 A Yes, sir.

5 Q Okay. And just to be certain, you did try to look for
6 it there in the apartment; right?

7 A Yes, sir.

8 Q And you didn't find it in the apartment; did you?

9 A No, sir. We did not.

10 Q You had to go outside for it; right?

11 A Yes, sir.

12 Q And you eventually found it?

13 A Yes, sir.

14 Q And you said, what, about hundred feet or so away?

15 A Yes, sir.

16 Q Not even in the dumpster was it?

17 A No, it was not.

18 Q No, it was in a bag; right?

19 A Yes, sir.

20 Q And that was a little bit a ways away from the dumpster;
21 right?

22 A Yes, sir.

23 Q Okay. And just to be clear about -- let's start with
24 the iPad. You didn't see who put it there; did you?

25 A No, I did not.

1 Q And you didn't see when it was put there; did you?

2 A No, I did not.

3 Q Okay. And you personally didn't check for any
4 fingerprints on it; did you?

5 A No, I did not.

6 Q All right. And you personally didn't check for any DNA
7 on it; did you?

8 A No, sir.

9 Q Okay. You also said you later saw guns from the search;
10 right?

11 A Yes, sir.

12 Q Okay. And, again, you didn't see who put them there,
13 did you?

14 A No, I did not.

15 Q And you did not see when they were placed there; did
16 you?

17 A No, I did not.

18 Q Okay. And let's talk about that box with the
19 electronics in it; right?

20 A Yes, sir.

21 Q Again, you didn't see who put it there; did you?

22 A No, I did not.

23 Q And you didn't see when they were placed there; did you?

24 A No, I did not.

25 MR. STEVENS: Court's indulgence.

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1 BY MR. STEVENS:

2 Q Investigator Wade, thank you so, much?

3 A Thank you, sir.

4 MR. STEVENS: Thank you, Judge.

5 THE COURT: Any redirect?

6 MS. CORNWELL: No, Your Honor.

7 THE COURT: You may step down, sir. Thank you.

8 MR. WADE: Thank you.

9 THE COURT: You may call your next witness.

10 MS. CORNWELL: We are, Your Honor. The State would
11 call Sergeant Rashad Moore.

12 (WHEREUPON, Rashad Moore was sworn
13 to tell the truth.)

14 THE CLERK: Thank you. If you would have a seat.
15 Please state your name again for the record.

16 MR. MOORE: Sergeant Rashad Moore.

17 THE CLERK: Thank you.

18 THE COURT: Your witness.

19 RASHAD MOORE - DIRECT INVESTIGATION

20 BY MS. CORNWELL:

21 Q Sergeant Moore, where are you employed?

22 A Orangeburg County Sheriff's Office.

23 Q And what is your position with the Orangeburg County
24 Sheriff's Office?

25 A Sergeant in narcotics.

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1 Q Okay. How long have you worked for Orangeburg County
2 Sheriff's Office?

3 A About eight years.

4 Q And were you working in that capacity as Sergeant in May
5 of 2016?

6 A Yes, ma'am.

7 Q I'm sorry. May 16th of 2014?

8 A Yes, ma'am.

9 Q And in that capacity did you assist in the investigation
10 of an armed robbery from T-Mobile?

11 A Yes, ma'am.

12 Q Okay. And what was your role in the investigation?

13 A I was one of the first responding officers on the scene.
14 And when we found out it was headed to Columbia, I jumped in
15 the car to go assist Corporal Cain in Columbia with the --

16 Q Okay. And through your assistance of Corporal Cain did
17 you arrive at this Defendant's Apartment?

18 A Yes, ma'am.

19 Q And what was your role when you arrived at this
20 Defendant's apartment?

21 A When I got there, consent to search was already signed.
22 And I went in the residence with a investigator from Columbia
23 PD. And he was showing me around in the household the
24 evidence that we had found and I collected the evidence.

25 Q Okay. And was that evidence photographed as you were

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1 taking it?

2 A Yes, ma'am.

3 Q And were you the person that took possession and custody
4 of the evidence?

5 A Yes, ma'am.

6 Q Were you also shown to an area outside of a dumpster?

7 A Yes, ma'am.

8 Q And were you shown evidence there?

9 A Yes, ma'am.

10 Q I'm going to show you what was previously marked as
11 State's Exhibit 22. Was that the bag that was behind the
12 dumpster?

13 A Yes, ma'am. That bag was behind the dumpster.

14 Q And did you open that bag to collect its contents or did
15 somebody open that bag to collect the contents?

16 A Someone else opened the bag. I didn't, but I was
17 standing there.

18 Q Okay. And you assisted in collecting those contents;
19 correct?

20 A Yes, ma'am.

21 Q I'm going to show you what's been marked as State's 53.
22 Do you recognize that photograph?

23 A Yes, ma'am.

24 Q And what are the items in that photograph?

25 A That's the iPad that was in the bag.

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1 Q And is there another item in there too?

2 A I just remember the iPad.

3 Q Okay. Is there also a Samsung device in there?

4 A I think that was the iPad with the --

5 MR. MELLARD: Objection, Your Honor. She's
6 leading.

7 THE COURT: Sustained.

8 BY MS. CORNWELL:

9 Q Is this a true and accurate depiction of what you found
10 in that bag?

11 A Yes, ma'am.

12 MS. CORNWELL: Your Honor, the State would move
13 State's 53 into evidence.

14 THE COURT: Any objection?

15 MR. MELLARD: No objection.

16 THE COURT: It's in.

17 (State's Exhibit No. 53, photo, was
18 marked and entered.)

19 BY MS. CORNWELL:

20 Q I'm going to show you State's 21. Do you recognize that
21 item?

22 A Yes, ma'am.

23 Q And what is that?

24 A The iPad.

25 Q And where did you find that?

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1 A In the bag behind the dumpster.

2 Q Is that a true and accurate depiction of what you saw?

3 A Yes, ma'am.

4 MS. CORNWELL: The State would move State's 21 into
5 evidence, Your Honor.

6 THE COURT: Any objection?

7 MR. MELLARD: No objection.

8 (State's Exhibit No. 21, photo, was
9 marked and entered.)

10 BY CORNWELL:

11 Q So these were the items that were found in the blue bag
12 behind the dumpster; is that correct?

13 A Yes, ma'am.

14 Q And while you were inside the apartment, you also had
15 the occasion to collect evidence after it was photographed?

16 A Yes, ma'am.

17 Q Okay. And there was a lot of evidence; correct?

18 A Yes, ma'am, there was quite a bit.

19 Q Did you have occasion to lay out that evidence and
20 photograph it individually?

21 A I laid it out while the investigator from the Columbia
22 PD took the pictures.

23 Q Okay. And I'm going to show you a stack of photographs.

24 While they're looking through those, did you also find
25 any weapons in that apartment?

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1 A Yes, ma'am, it was two handguns.

2 Q And I'm going to show you what's been marked as State's
3 15?

4 A Yes, ma'am. That's the (inaudible).

5 Q Are those a true and accurate depiction?

6 A Yes, ma'am.

7 MS. CORNWELL: Your Honor, the State would move
8 State's 15 into evidence.

9 THE COURT: Any objection?

10 MR. MELLARD: No objection.

11 (State's Exhibit No. 15, photo, was
12 marked and entered.)

13 BY MS. CORNWELL:

14 Q And did you collect these guns?

15 A Yes, ma'am, I did.

16 Q And were you able to open up the guns see if there were
17 any -- if they were loaded, if they were not loaded?

18 A Yes, ma'am, I opened both of them up to see if they were
19 loaded or not.

20 Q And were they loaded?

21 A One of them was.

22 Q Let me show you what's been marked as State's Exhibit 69
23 and 71. Do you recognize those?

24 A Yes, ma'am, those are the guns.

25 Q And these are the guns that you collected?

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1 A Yes, ma'am.

2 Q These are the actual guns?

3 A Yes, ma'am.

4 MS. CORNWELL: Your Honor, at this time the State
5 would move State's 69 and 71 into evidence.

6 THE COURT: Any objection?

7 MR. MELLARD: No objection.

8 THE COURT: All right.

9 (State's Exhibit No. 69, gun, was
10 marked and entered.)

11 (State's Exhibit No. 71, gun, was
12 marked and entered.)

13 BY MS. CORNWELL:

14 Q And can you describe what these guns look like? I mean,
15 obviously we can see them?

16 A Two revolvers, handguns.

17 Q This one seems to be a little dirtier, older and
18 rustier?

19 A Yes, ma'am.

20 Q And you said one of them was loaded. Do you recall
21 which one was loaded?

22 A I cannot remember which one was loaded.

23 Q Okay. If I showed you a photograph, would that refresh
24 your recollection?

25 A Yes, ma'am.

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1 Q I'm going to show you State's 19. Do you recognize that
2 photograph?

3 A Yes, ma'am.

4 Q And what's that a photograph of?

5 A That's one of the guns that was in the apartment.

6 Q Is that the State's 69?

7 A Yes, ma'am.

8 Q And looking at State's 10, what is that?

9 A That's the gun that was loaded.

10 Q Okay. And are these true and accurate pictures of the
11 gun as you found it that day?

12 A Yes, ma'am.

13 Q Okay. So do you now recall which gun was loaded?

14 A Yes, ma'am.

15 Q And was that State's 69?

16 A That's it.

17 Q Did you collect the bullets from that as well?

18 A I just left it open. I didn't take anything out of it.
19 I left it open.

20 Q But the bullets were in the gun when you collected it?

21 A Yes, ma'am.

22 Q And looking at State's 70?

23 A Those look like the bullets that were in it.

24 MS. CORNWELL: Your Honor, the State would move
25 State's 70 into evidence at this time.

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1 MR. MELLARD: Your Honor, we would object. He said
2 he didn't collect those bullets.

3 MS. CORNWELL: He did collect them. They were in
4 the gun and he took the gun, which had the bullets in it.

5 THE COURT: Just further explore that on the record
6 regarding the foundation, please?

7 MS. CORNWELL: Thank you, Your Honor.

8 BY MS. CORNWELL:

9 Q When you collected this gun and took it to Orangeburg,
10 did it still have these bullets in it?

11 A Yes, ma'am.

12 Q And when you collect evidence and put it up in storage,
13 how do you store -- how does Orangeburg County store
14 firearms?

15 A Without any ammunition.

16 Q Okay. Why is that?

17 A Safety reasons. The gun could go off and hurt someone.

18 MS. CORNWELL: Your Honor, at this time, the State
19 would move State's 70 into evidence.

20 THE COURT: Any objection?

21 MR. MELLARD: Without objection.

22 THE COURT: Okay. Thank you.

23 (State's Exhibit No. 70, bullets,
24 was marked and entered.)

25 BY MS. CORNWELL:

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1 Q I believe you said you were collecting several items of
2 evidentiary value. The silver gun was not loaded; is that
3 correct?

4 A No, ma'am, it was not.

5 Q And looking at State's 31 and 20. Is that what's
6 reflected in these pictures?

7 A Yes, ma'am.

8 Q Are these true and accurate depictions of that?

9 A Yes, ma'am.

10 MS. CORNWELL: Your Honor, the State would move 20
11 and 31 into evidence.

12 THE COURT: Any objection.

13 MR. MELLARD: No objection.

14 (State's Exhibit No. 20, photo, was
15 marked and entered.)

16 (State's Exhibit No. 31, photo, was
17 marked and entered.)

18 BY MS. CORNWELL:

19 Q I'm going to have you look at several photographs.
20 These are State's 52, 51, 50, 49, 48, 46, 44, 43, 42, 41, 40,
21 39, 38, 37, 36, 35, 34, 9, and 8. A whole stack of pictures.
22 Will you just briefly look through those and see if you
23 recognize what's depicted in those photographs?

24 A These are the phones that we found in the apartment.

25 Q Okay. Are these true and accurate depictions of the

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1 items that were found within the apartment?

2 A Yes, ma'am.

3 MS. CORNWELL: Your Honor, the State would move to
4 have the exhibits that I just called out moved into evidence.
5 That would be State's --

6 THE COURT: Any objection?

7 MR. MELLARD: No objection.

8 MS. CORNWELL: Thank you, Your Honor.

9 THE COURT: How many of those are there?

10 MS. CORNWELL: Nineteen, Your Honor.

11 THE COURT: Nineteen. Thank you.

12 (State's Exhibit No. 8, photo, was
13 marked and entered.)

14 (State's Exhibit No. 9, photo, was
15 marked and entered.)

16 (State's Exhibit No. 34, photo, was
17 marked and entered.)

18 (State's Exhibit No. 35, photo, was
19 marked and entered.)

20 (State's Exhibit No. 36, photo, was
21 marked and entered.)

22 (State's Exhibit No. 37, photo, was
23 marked and entered.)

24 (State's Exhibit No. 38, photo, was
25 marked and entered.)

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1 (State's Exhibit No. 39, photo, was
2 marked and entered.)

3 (State's Exhibit No. 40, photo, was
4 marked and entered.)

5 (State's Exhibit No. 41, photo, was
6 marked and entered.)

7 (State's Exhibit No. 42, photo, was
8 marked and entered.)

9 (State's Exhibit No. 43, photo, was
10 marked and entered.)

11 (State's Exhibit No. 44, photo, was
12 marked and entered.)

13 (State's Exhibit No. 46, photo, was
14 marked and entered.)

15 (State's Exhibit No. 48, photo, was
16 marked and entered.)

17 (State's Exhibit No. 49, photo, was
18 marked and entered.)

19 (State's Exhibit No. 50, photo, was
20 marked and entered.)

21 (State's Exhibit No. 51, photo, was
22 marked and entered.)

23 (State's Exhibit No. 52, photo, was
24 marked and entered.)

25 BY MS. CORNWELL:

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1 house, this bag here, this other bag here, any tested for
2 DNA, fingerprints?

3 A I didn't. At the time I collected it with gloves and if
4 they wanted to do it later on.

5 Q Okay. So you actually had gloves on when you did it?

6 A Yes, sir.

7 Q Do you know if they did it?

8 A I have no idea.

9 Q But you would agree that we've been all touching this
10 thing. So if they didn't do it, it's a little too late on
11 that one?

12 A Yes, sir.

13 Q All right. Now, did you collect any mechanics gloves?

14 A (No response.)

15 Q Because I don't see any here?

16 A I don't remember.

17 Q Okay. What about a black baseball cap? Because, again,
18 I don't see no black baseball cap?

19 A I don't remember that?

20 Q Black sunglasses? I don't see a black sunglasses?

21 A I don't know --

22 Q How about any clothing? I don't see any clothing here?

23 A No, sir. I don't remember collecting clothing.

24 Q All right. Just the things that we've been over is what
25 you've collected?

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1 A Yes, sir.

2 Q Oh, one more thing. You didn't see anybody bringing
3 anything into the apartment in Columbia?

4 A No, sir. I was there after --

5 Q Okay. You don't know what time these items were brought
6 in?

7 A No, sir.

8 Q Okay. You don't know who brought them into the
9 apartment?

10 A I do not.

11 Q Okay.

12 MR. MELLARD: That's all I've got.

13 THE COURT: Any redirect?

14 MS. CORNWELL: Nothing further, Your Honor.

15 THE COURT: All right. You may step down, sir.

16 Thank you.

17 Would the attorneys please approach?

18 (Off the record bench conference with counsel and the Court.)

19 THE COURT: Ladies and gentlemen of the jury, it's
20 about 4:30 and it's been a long day. I certainly appreciate
21 how attentive y'all have been today. You've been on time and
22 have been with us here today. So it's a good time to take
23 our evening recess until in the morning. Again, please
24 remember my instruction to not discuss this case with anyone
25 or anyone to discuss this case with you or do any independent

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1 research or anything of that nature as we've previously
2 discussed. If you could report back to your jury room around
3 9:15 or so, that way we can get everybody together, and make
4 sure we start the trial back on time at 9:30. Have a good
5 evening.

6 MS. CORNWELL: Your Honor, may I get the pictures
7 back from the juror member?

8 THE COURT: Oh, we'll get the bailiff to do that.

9 MS. CORNWELL: Thank you.

10 (Jury out at 4:27 p.m.)

11 THE COURT: All right. Anything further before we
12 recess for the afternoon?

13 MS. CORNWELL: Nothing from the State, Your Honor.

14 MR. MELLARD: Nothing from the Defense.

15 THE COURT: All right. And counsel for the Defense
16 if you would, and just take your time before tomorrow
17 obviously, to go over with your client the fact that I will
18 place him under oath regarding his desire of whether or not
19 he wants to testify or not tomorrow.

20 MR. MELLARD: Yes, ma'am.

21 THE COURT: All right. Thank you. Have a good
22 evening.

23 (Court in recess February 26, 2015
24 at 4:31 p.m.)
25

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(Court in session February 27, 2015
at 9:53 a.m.)

THE COURT: Good morning, every one. Thank you.
You may have a seat. Everybody ready to proceed this
morning?

MS. CORNWELL: Yes, Your Honor.

THE COURT: You guys ready?

MR. MELLARD: Oh, yes, ma'am.

THE COURT: All right. Let's have our jury,
please?

THE BAILIFF: Yes, Your Honor.

(Jury in at 9:53 a.m.)

THE COURT: Welcome back ladies and gentlemen of
the jury. I hope you had a nice evening. I neglected in the
past during the trial to actually appoint a foreperson. So
the young lady sitting right there on the front row, I'm
going to appoint you since you usually take that seat. So
you will be our foreperson for this trial. And now we are
ready to proceed with the testimony.

(Court's Exhibit No. 5, foreperson,
was marked.)

You may call your next witness.

MS. CORNWELL: Thank you, Your Honor. The State
would call Steve Reynolds.

(WHEREUPON, Steve Reynolds was sworn

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1 to tell the truth.)

2 THE CLERK: Thank you. You may have seat. And
3 please state your name again for the record.

4 MR. REYNOLDS: Steve Reynolds.

5 THE COURT: Your witness.

6 MS. CORNWELL: Thank you, Your Honor.

7 STEVE REYNOLDS - DIRECT EXAMINATION

8 BY MS. CORNWELL:

9 Q Good morning, Mr. Reynolds, how are you doing?

10 A I'm all right. How are you?

11 Q I'm good. Mr. Reynolds, where are you from?

12 A I am from Rock Hill, South Carolina.

13 Q And what do you do?

14 A I am the CEO of Air Wireless, which owns six T-Mobile
15 Stores in South Carolina currently.

16 Q And is one of the stores that you're CEO of the one at
17 1638 St. Matthews Road here in Orangeburg?

18 A Yes, ma'am, it is.

19 Q And as CEO, what is your primary role?

20 A My role as the CEO is to administer all functions of the
21 business, payroll, management of personnel, management of
22 inventory, and other expenses, and reconciliation of all
23 income that's derived from the operation of the business.

24 Q Okay. And in managing the inventory, are you familiar
25 with inventory sheets and things that are taken throughout

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1 the business?

2 A I am. I look at them daily.

3 Q Okay. And where there's a theft or a robbery at the
4 store, are you involved with that as well?

5 A I am, yes, ma'am.

6 Q And did you have any involvement with the robbery at
7 this store at 1638 St. Matthews Road on May 16th of 2014?

8 A I was informed that a robbery had just occurred. And I
9 initiated the protocols that T-Mobile requires us to follow
10 after hearing that.

11 Q Okay. And with that, was an inventory sheet printed out
12 to show merchandise that was missing?

13 A We have -- part of our policy is to -- that we have to
14 do an inventory after any type of loss prevention, loss
15 action. So we did have an inventory done and we did have the
16 printout of the inventory report specifically for telephones.

17 Q Great. And how accurate was that inventory prior to the
18 robbery?

19 A We'd just done an inventory that Monday so the
20 inventory, minus the phones that were taken, was very
21 accurate.

22 Q Okay. I'm going to show you what's been marked as
23 State's Exhibit 81. Do you recognize that document?

24 A I do.

25 Q What is that document?

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1 A This document's an inventory variance report. It prints
2 out any skew that there's a variance. And a variance would
3 be where the quantity that we counted is less than or greater
4 than the book quantity that the system shows.

5 Q Okay. And there are some highlighted items on there.
6 What are those highlighted items?

7 A The highlighted items are the handsets that were taken
8 and were not in the store as we did this inventory.

9 Q Okay. And is that a true and accurate copy of the
10 inventory sheet as you did it that day?

11 A Yes, it is. It's generated direct from SAP.

12 Q Thank you.

13 MS. CORNWELL: And, Your Honor, at this time, the
14 State would move to have State's Exhibit 81 into evidence.

15 THE COURT: Any objection?

16 MR. MELLARD: No objection.

17 THE COURT: It's in.

18 (State's Exhibit No. 81, inventory
19 report, was entered.)

20 Q Now, I'm going to let you hold onto this. I've actually
21 --

22 MS. CORNWELL: Just for demonstrative purposes,
23 Your Honor, I've blown it up for the jury.

24 BY MS. CORNWELL:

25 Q And looking at these highlighted items, I believe that

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1 you stated that the highlighted items was what was taken or
2 what you believe to have been taken?

3 A Yes, they had

4 Q And of those items that were taken, what was the
5 approximate cost of the merchandise that was stolen from the
6 store that day?

7 A Thirty-seven thousand two hundred ninety-nine dollars.

8 Q Thank you. Thank you, Mr. Reynolds. Please answer any
9 questions Defense counsel may have for you.

10 THE COURT: Cross-examination?

11 STEVE REYNOLDS - CROSS-EXAMINATION

12 BY MR. MELLARD:

13 Q Just one question. You weren't present during the
14 robbery?

15 A No, I was not present during the robbery.

16 Q You didn't witness any robbery? Didn't see anybody do
17 any robber; correct?

18 A That's correct.

19 Q Okay. Thank you.

20 THE COURT: You may step down, sir. Thank you.

21 You may call your next witness.

22 MS. CORNWELL: The State would call Corporal Cain.

23 (WHEREUPON, Leonard Cain was sworn
24 to tell the truth.)

25 THE CLERK: Thank you. You may have seat. Please

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1 state your name again for the record?

2 MR. CAIN: Corporal Leonard Cain.

3 THE CLERK: Thank you.

4 THE COURT: Your witness.

5 MS. CORNWELL: Thank you, Your Honor.

6 LEONARD CAIN - DIRECT EXAMINATION

7 BY MS. CORNWELL:

8 Q Good morning, Corporal Cain?

9 A Good morning.

10 Q Where are you employed?

11 A Orangeburg County Sheriff's Office.

12 Q How long have you been employed by the Orangeburg County
13 Sheriff's Office?

14 A I've been employed six years.

15 Q And what is your position or rank with them?

16 A I'm a corporal and I'm assigned to the warrant division
17 and I'm also assigned to the U.S. Marshall's Task Force.

18 Q And were you working in that capacity on May 16th of
19 2014?

20 A Yes, ma'am.

21 Q In that capacity, did you assist in investigation of an
22 armed robbery that occurred in T-Mobile off of St. Matthews
23 Road?

24 A Yes, ma'am.

25 Q Please tell the jury how you became involved in this

1 case?

2 A That morning, I was en route from Rock Hill South
3 Carolina, U.S. Marshall's Task Force. And when I was around
4 -- in Columbia, around Garner's Ferry Highway, I overheard
5 investigators on my county radio advising dispatch that the
6 vehicle was now at Ft. Jackson Boulevard. I think made
7 contact with Sergeant Stokes asking if I could assist him
8 because I was on Interstate 77 in Columbia.

9 Q Okay. And did Sergeant Stokes advise you of what was
10 going on at that time?

11 A Yes, ma'am.

12 Q And what was your understanding of what happened?

13 A He advised me that a armed robbery had occurred at the
14 T-Mobile Store on St. Matthews Road in Orangeburg.

15 Q Okay. And did he give he you a description of any of
16 the suspects or the vehicle?

17 A Yes, ma'am.

18 Q And what was that description?

19 A The description of the vehicle was a gray in color
20 Toyota sedan. And it was two black males who were armed.

21 Q And was he able to give you a description of any of the
22 items that were stolen?

23 A Yes, he advised iPhones and an iPad.

24 Q Okay. And are you familiar with the locate my iPad
25 application?

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1 A Yes.

2 Q If you could, just give a layman's terms as to what your
3 understanding of that is?

4 A The iPad, Find My iPad App, is when you add your
5 username into the user ID and the your password. And then a
6 dot comes up on a map on the iPad or iPhone and it shows you
7 where that iPad or iPhone is at.

8 Q Okay. And while you were speaking with Sergeant Stokes,
9 were you instructed to go anywhere?

10 A Yes.

11 Q Where were you instructed to go?

12 A I was instructed to go Forest Drive and Trenholm Road.

13 Q Okay. And why were you instructed to go there?

14 A Because that's where the vehicle was at and the
15 suspects.

16 Q All right. And once you went to Trenholm Road, were you
17 able to locate the suspects or the suspect vehicle?

18 A When I got to Trenholm Road and Forest Drive, I was not
19 able to -- they were not there. I was then told that the
20 vehicle was on West Beltline Boulevard.

21 Q Okay. And did you go there?

22 A Yes, ma'am.

23 Q And were you able to make contact there?

24 A On West Beltline, no, ma'am.

25 Q Okay. Where did you go next?

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1 A From there I went to West Beltline and Edison Road in
2 Columbia.

3 Q And at that point were you able to make contact with the
4 vehicle and suspects?

5 A No, ma'am.

6 Q What did you do next?

7 A From there, I was instructed then that the vehicle was
8 now heading towards Farrow Road on West Beltline.

9 Q Okay. And did you make contact there?

10 A No, ma'am.

11 Q Then where did you go?

12 A Then I was instructed to go to Sunset Boulevard to the
13 Budget Inn Motel.

14 Q Okay. And when you went there, did you see the suspect
15 vehicle or the suspects?

16 A I saw a Toyota, gray in color, vehicle parked at the
17 motel's lobby door.

18 Q Okay. What did you do then?

19 A And then I informed Investigator Wade what I saw at the
20 hotel. And I informed the investigators from the sheriff's
21 office.

22 Q Okay. And why did you feel the need to inform
23 Investigator Wade?

24 A Because he's with the City of Columbia Police
25 Department.

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1 Q Okay. And is City of Columbia in your jurisdiction?

2 A No, ma'am.

3 Q Okay. After you made contact with Investigator Wade,
4 what did you do?

5 A I advised him that I made contact with the vehicle that
6 was possibly involved in the armed robbery from Orangeburg.
7 And that I also saw a male subject exiting the hotel lobby,
8 getting in the vehicle.

9 Q Okay. And do you see that male subject in here today?

10 A Yes, ma'am.

11 Q Where is he?

12 A Mr. Hardin with the gray color suit on and blue shirt,
13 black and blue tie.

14 MS. CORNWELL: Let the record reflect Corporal Cain
15 pointed out the Defendant.

16 THE COURT: Yes, ma'am.

17 BY MS. CORNWELL:

18 Q And once you saw the Defendant get into the car, what
19 happened next?

20 A From that point I went up Sunset Boulevard heading
21 towards North Main, made a u-turn and came back up towards
22 the hotel. And that is when I saw the vehicle pass in the
23 front of the hotel and making a right turn on the left side
24 of the building, facing the building.

25 Q Okay. And were you able to stop and speak with the

1 suspect at that time?

2 A No, ma'am.

3 Q Why not?

4 A Because I was informed that they were armed and I was by
5 myself.

6 Q Okay. And were you able to maintain visual contact with
7 that car at the motel?

8 A No, ma'am. I left there. I made another u-turn and I
9 went and met with Investigator Wade and an officer from the
10 City of Columbia in a parking lot down the road from the
11 motel.

12 Q Okay. And after that, were you instructed to go
13 anywhere else?

14 A While I was briefing Investigator Wade on the vehicle
15 that was at the hotel and the suspects, I was then instructed
16 by investigators from the Orangeburg County Sheriff's Office
17 that the vehicle had moved to Colonial Drive in Columbia.

18 Q Okay. At some point were you able to get information
19 from the Orangeburg County Sheriff's Office that assisted you
20 in where you needed to go in order to obtain the suspect?

21 A Yes, ma'am. I asked them the investigators would they
22 text me the username and the password for the iPad so I can
23 get a better visual on the location of the vehicle.

24 Q Okay. And did you have an iPhone or iPad or anything
25 that you could access that on personally?

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1 A No, ma'am.

2 Q Did anybody that you were with have that capability?

3 A Investigator Wade of the City of Columbia.

4 Q Okay. And did you see him password and login ID on his
5 iPad?

6 A Yes, ma'am.

7 Q And where was -- did you see where the dot was at that
8 time?

9 A Yes.

10 Q Where was the dot?

11 A It was on an apartment building off of Bentley Court.

12 Q Okay. And did you go to that location at that time?

13 A Yes, ma'am.

14 Q And when you arrived at that location, what did you see?

15 A We saw the vehicle parked in front of the apartment
16 building with the door open.

17 Q And did that vehicle match the description of what you
18 had been given?

19 A Yes, ma'am.

20 Q And did you see anybody in that vehicle?

21 A From Mr. Hardin coming down his stairs from the
22 building, approaching the vehicle.

23 Q Okay. And once you saw Mr. Hardin approaching the
24 vehicle, what did you do?

25 A We then made contact with him in the parking lot at the

1 vehicle.

2 Q And did Mr. Hardin make any statements as to who the
3 vehicle belonged to?

4 A Yes, ma'am.

5 Q Who did he say the vehicle belonged to?

6 A Said the vehicle belonged to him.

7 Q And while you were speaking with Mr. Hardin, did he tell
8 you what he was doing at the apartment complex?

9 A Said he was there visiting friends.

10 Q And through your investigation, were you able to
11 determine whether or not that was a truthful statement?

12 A That was not truthful.

13 Q Okay. Who actually lived at that apartment?

14 A Mr. Hardin.

15 Q Okay. And while you were standing there speaking with
16 Mr. Hardin, did you have the opportunity to take a photograph
17 of him?

18 A Yes, ma'am.

19 Q And what was the purpose in taking that photograph?

20 A For identification purposes.

21 Q Who did you send that photograph to?

22 A To investigators at the sheriff's office.

23 Q Okay. And to your understanding was that Defendant
24 identified by anybody?

25 A Yes, ma'am, by the victims.

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1 Q All three victims?

2 A All three victims, yes, ma'am.

3 Q After you identified the Defendant, did he make any
4 other statements to you about anything?

5 A Yes.

6 Q And what was that statement?

7 A He said to me that he saw me on Edison and West
8 Beltline.

9 Q Okay. So he saw you and knew you were following?

10 A Yes.

11 Q After you spoke with him and did that, at some point
12 were you able to locate the iPad?

13 A Yes, ma'am.

14 Q And where was that found?

15 A It was found near the trash dumpsters. If you're facing
16 the apartment building to the right of the building.

17 Q Okay. And approximately how far away are those
18 dumpsters from the Defendant's car and apartment?

19 A Thirty, forty yards or less.

20 Q So relatively close?

21 A It's close. Yes, ma'am.

22 Q Okay. Backing up just a little bit. Before you did
23 that, were you with Investigator Wade when he got a consent
24 to search from the Defendant?

25 A Yes, ma'am.

1 Q Did you hear everything that Investigator Wade said tot
2 he Defendant?

3 A Yes, ma'am.

4 Q And did Investigator Wade fully advise the Defendant of
5 his rights through the consent to search form?

6 A Yes, ma'am.

7 Q And before y'all looked for the iPad, did you go to his
8 apartment?

9 A Yes, we did.

10 Q Okay. And what happened at his apartment?

11 A Myself, Mr. Hardin, Investigator with the City of
12 Columbia went to his apartment, used his key to open the
13 door. And we did a protective sweep of the residence to make
14 sure that there was no one inside.

15 Q Okay. And was there anybody else inside the apartment?

16 A No, ma'am.

17 Q He was the only person that was at the apartment?

18 A Yes.

19 Q Okay. And I believe you said that Mr. Hardin was
20 present for that; correct?

21 A Yes.

22 Q Okay. After the protective sweep was done, what
23 happened?

24 A Investigator Wade made the iPad play music so we were
25 trying to locate it in the apartment. And when he did that,

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1 we did not hear any music in the apartment.

2 Q And at that point did you search the perimeter?

3 A Yes, we did.

4 Q And is that when you found it behind the dumpsters?

5 A Yes, ma'am.

6 Q Okay. Did you go into the apartment at any time?

7 A Yes.

8 Q Okay. And when you were in the apartment, did you see
9 any items of evidentiary value in there?

10 A After we found the iPad, yes.

11 Q Okay. And what items were those?

12 A Phones. Iphones.

13 Q Okay. At any time while this consent to search was
14 going on, was the Defendant in handcuffs?

15 A Yes.

16 Q He was? And he was being detained by you?

17 A Yes.

18 Q Okay. After y'all located the evidence and the iPad,
19 what were you instructed to do?

20 A I made contact with our dispatcher, had the vehicle
21 towed, and I was also advised to bring Mr. Hardin to
22 Orangeburg County Criminal Investigation Division.

23 Q Okay. And at that point did you read Mr. Hardin his
24 Miranda Rights?

25 A Yes, ma'am.

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1 Q And do you read those rights from memory or do you have
2 a card that you carry with you?

3 A I use my card.

4 Q Do you have that card with you today?

5 A Yes, ma'am.

6 Q Can you pull it out?

7 A (Witness complies.)

8 Q And is that the same card that you carry with you at all
9 times?

10 A Yes, ma'am.

11 Q Is that the card that you use to read rights to any and
12 every suspect or defendant you come in contact with?

13 A Yes, ma'am.

14 Q Can you read those rights as you read them to the
15 Defendant?

16 A Yes, ma'am. Suspect's rights Miranda warning. You have
17 the right to remain silent. Anything you say can and will be
18 used against you in a court of law. You have the right to
19 talk to an attorney and have him or her present with you
20 while you are being questioned. If you cannot afford to hire
21 an attorney one will be appointed to represent you before any
22 questioning if you wish. You can decide at anytime to
23 exercise these rights and not answer any questions or make
24 any statements. Do you understand each of these rights I
25 have explained to you? Having these rights in mind, do you

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1 wish to talk to us now?

2 Q And did the Defendant acknowledge those rights?

3 A Yes.

4 Q Did he state that he understood them?

5 A He was a little upset with me because he was in
6 handcuffs.

7 Q Okay. And just one other question. Actually, I've got
8 two other questions. In addition to stolen phones and
9 everything, were you aware of any weapons or firearms that
10 were located in the apartment?

11 A Yes.

12 Q How many were located?

13 A There was two.

14 Q And after you took the Defendant back to Orangeburg, did
15 you have any further involvement in this case?

16 A No, ma'am.

17 Q Thank you, Corporal Cain. Please answer any questions
18 Defense counsel may have.

19 THE COURT: Cross-examination.

20 LEONARD CAIN - CROSS-EXAMINATION

21 BY MR. MELLARD:

22 Q All right. So let me get this straight. On May 16th
23 you were driving on I-77 in Columbia?

24 A Yes, sir.

25 Q And you were coming, I guess, back from Rock Hill?

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1 A Yes, sir.

2 Q Okay. Okay. And then I think you heard that a vehicle
3 may be heading in your direction?

4 A I heard that the vehicle was at Ft. Jackson Boulevard,
5 almost at 77.

6 Q Okay. All right. Now, you didn't know who the suspects
7 were? They were unknown suspects?

8 A Yes, sir.

9 Q Okay. And you didn't know the number of the license
10 plate on the vehicle?

11 A No, sir.

12 Q It was an unknown tag?

13 A Yes, sir. It was unknown.

14 Q Okay. Now, at some point you drove by the Budget Inn on
15 Sunset Boulevard. I believe that's what you testified to?

16 A Yes, sir.

17 Q And I believe that you said you saw a gray Toyota
18 Corolla?

19 A A gray Toyota sedan parked in front of the hotel lobby.

20 Q Okay. All right. And you'd never seen this vehicle in
21 Orangeburg because you weren't in Orangeburg?

22 A Right.

23 Q And you didn't see it on I-77?

24 A No, sir.

25 Q Didn't see it on any of the roads she was talking about,

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1 Farrow Road, all those. Forest Drive, you didn't see it on
2 those?

3 A I first saw the vehicle at the hotel at Sunset..

4 Q The first time you saw it was at the Budget Inn?

5 A Yes, sir.

6 Q And when you saw this gray Toyota it was unoccupied;
7 correct?

8 A It appeared to be unoccupied. From where I was at
9 because I was on the roadway driving slow.

10 Q Okay. Well, let me ask you this. You didn't see
11 anybody in that vehicle?

12 A No.

13 Q Okay. And then I believe you said at some point you saw
14 black male exiting the hotel lobby wearing a blue shirt and
15 khaki pants?

16 A Yes, sir.

17 Q You didn't see any mechanics gloves on that person?

18 A Mechanics clothes?

19 Q Gloves. You didn't see any gloves on that person?
20 Didn't put that in your statement?

21 A No, sir.

22 Q No black hat? Didn't put anything in your statement
23 about a black hat?

24 A No, sir.

25 Q Didn't put anything in your statements about black

1 sunglasses?

2 A No, sir.

3 Q All right. Then you said you went down the street, made
4 a u-turn and came back. All right. Now, at any time did
5 you, after this, did you ever go back to the Budget Inn and
6 check the register to see who was staying at that place?

7 A Investigator Wade did.

8 Q He did.

9 A Yes.

10 Q All right. Well, that's news to me.

11 A I didn't.

12 Q Did you ever -- you, all right? Did you ever talk to
13 any of the employees at the Budget Inn?

14 A That day, no.

15 Q Okay. All right. Now, you didn't see the Toyota
16 Corolla again until you went to an apartment complex on
17 Bentley Drive; correct?

18 A Yes.

19 Q All right. And at some point you located an iPad;
20 correct?

21 A Yes, sir.

22 Q All right. Now, did you ever check the iPad for
23 fingerprints?

24 A I did not, no, sir.

25 Q Okay. How about DNA?

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1 A I did not.

2 Q All right. Now, you talked about a comment that Archie
3 Hardin made to you. Isn't he true that he made a comment to
4 you that he was with a person named Black?

5 A Yes, sir.

6 Q All right. And did the person named Black thought --

7 MS. CORNWELL: Objection, Your Honor. That's self-
8 serving hearsay.

9 MR. MELLARD: These were statements that were made.

10 THE COURT: Can you approach.

11 (Off the record bench conference with counsel and the Court.)

12 THE COURT: Overruled.

13 BY MR. MELLARD:

14 Q All right. And so he told you he was with a person
15 named Black?

16 A Yes, sir.

17 Q All right. And he told you that Black thought you may
18 be his probation officer?

19 A Yes, sir.

20 Q Okay. And you checked, actually checked with the
21 probation office in Columbia?

22 A Yes, sir.

23 Q And that was for a person named Black?

24 A Yes, sir.

25 Q And you found that there were actually three or four

1 people on probation in Columbia by the name of Black?

2 A Yes, sir.

3 Q All right. And you gave those names to, what, Sergeant
4 Stokes, I think?

5 A Yes, sir.

6 Q All right. Do you know if Sergeant Stokes ever followed
7 up on that?

8 A I think he did, yes, sir. I'm sure he did.

9 Q Okay. Do you know the results of that?

10 A I do not know what the results.

11 Q Okay. All right. And one more thing. Didn't you used
12 to be a probation agent?

13 A Yes, sir.

14 Q You were out -- I thought I recognized you.

15 A Orangeburg County.

16 Q Yeah. Right here. So you've seen a probation file
17 before?

18 A Yes.

19 Q All right. And you've handled a probation file?

20 A Yes.

21 Q Okay. So you know that probation files, there are
22 descriptions in that probation file?

23 A Yes.

24 Q There's a person name in that probation file?

25 A Yes.

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1 Q They keep the person's address in that probation file?

2 A Yes, sir.

3 Q They keep their next of kin's address in that probation
4 file?

5 A Yes, sir.

6 Q All right. And you need all that information because as
7 a probation person you need to get in touch with these
8 people?

9 A Yes, sir.

10 Q In fact, someone on probation has to actually report to
11 a probation agent at least one time per month, sometimes?

12 A Sometimes, yeah.

13 Q Sometimes it could be more.

14 A Sometimes.

15 Q All right. And when a person's on probation they have
16 to --

17 MS. CORNWELL: Your Honor, I'm going to object at
18 this point to relevance.

19 MR. MELLARD: I'll be glad to --

20 THE COURT: Overruled.

21 BY MR. MELLARD:

22 Q So when a person's on probation you have information
23 that you can find that person?

24 A Sometimes.

25 Q Sometimes?

1 A Yeah.

2 Q Sometimes you may have access to their fingerprints
3 their DNA?

4 A Yes.

5 Q Okay. And sometimes you may have access to their
6 aliases?

7 A Yes.

8 Q And that's how you knew there were three or four people
9 in Columbia named Black?

10 A Yes.

11 Q All right. Now, when somebody wants to find somebody
12 for probation, they come to y'all and you can look in that
13 file and you can locate them. You can tell where they live,
14 their next of kin's address. You have all that information?

15 A Yes, sir.

16 Q All right.

17 MR. MELLARD: That's all the questions, Judge.

18 THE COURT: Any redirect?

19 MS. CORNWELL: Two questions, Your Honor.

20 LEONARD CAIN - REDIRECT EXAMINATION

21 BY MS. CORNWELL:

22 Q Corporal Cain, were you aware that there was a second
23 subject involved in this armed robbery?

24 A Yes, ma'am.

25 Q And to your knowledge, is that investigation still on-

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1 going?

2 A Yes, ma'am.

3 MS. CORNWELL: No further questions, Your Honor.

4 THE COURT: You may step down, sir. Thank you.

5 MR. CAIN: Thank you.

6 THE COURT: Call your next witness.

7 MS. CORNWELL: Your Honor, the State would rest.

8 THE COURT: Ladies and gentlemen of the jury, at
9 this point we must take some matters outside of your presence
10 so we will take a brief recess and have you back here in the
11 courtroom in about ten minutes.

12 (Jury out at 10:18 a.m.)

13 THE COURT: Any motions at this time?

14 MR. STEVENS: Yes, Judge. At this time the Defense
15 respectfully requests for the Court to direct a verdict of
16 acquittal on the charged offenses for lack of evidence
17 regarding the elements of armed robbery, kidnapping, ABHAN,
18 and possession of a firearm during the commission of a
19 violent crime.

20 Specifically, with regards to ABHAN, we'd like to focus
21 upon that -- particularly on the element of great bodily
22 injury. The only evidence regarding the level of injury on
23 the ABHAN was that she was hit in the back of the head with
24 something hard, and she had a knot on her head. There's no
25 medical information indicating that any damage was done to an

1 organ whatsoever. It just doesn't rise to the level of
2 ABHAN, specifically on that element. Not only that, it was
3 not done by a means likely to produce death or to create
4 bodily injury, of the definition provided by the section 16-
5 3-600(a)(1), which we agree is that great bodily injury means
6 bodily injury which causes substantial risk of death or which
7 causes serious permanent disfigurement protracted loss or
8 impairment or the function of bodily member. It is our
9 position that the evidence presented specifically on the
10 element is not sufficient to past muster --

11 THE COURT: Solicitor?

12 MS. CORNWELL: Your Honor, the Court knows that
13 when ruling on a motion for directed verdict the Court is
14 only concerned with the existence or non existence of
15 evidence, not its weight. The weight of the evidence is for
16 the jury to determine. In this case, there has been
17 substantial testimony from each of the victims regarding the
18 armed robbery, that this Defendant came into the store a gun,
19 stole merchandise not only from the store but from Mr. Sims.

20 There is more than enough testimony for the armed
21 robbery charge as well as the kidnapping. We heard each
22 victim describe they were forced in the back of the store,
23 they were put on the ground and duct taped. I believe that
24 would be more than enough evidence to move past the directed
25 verdict on kidnapping.

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1 As for the assault and battery of a high and aggravated
2 nature, we've heard testimony from Ms. Berry that not only
3 was she punched in the face, but she was pistol whipped in
4 the head with a weapon. Under the ABHAN statute, I believe
5 that the standard is by means that could likely produce
6 death. I think that we all know that guns produce death,
7 that being put on the back of head in a blunt trauma form
8 could also cause great bodily injury. And based on that, I
9 think that the weight of the evidence is for the jury to
10 decide on the assault and battery of a high and aggravated
11 nature charge.

12 As to the possession of a weapon during the commission
13 of a violent offense, obviously, we have two firearms that
14 were taken into custody and we've heard testimony that the
15 Defendant and his accomplice both held the victims at
16 gunpoint while they robbed the store.

17 I believe based on all the testimony and the evidence
18 that's been presented to the Court, there's more than enough
19 evidence not considering its weight to go to the jury and
20 have the jury make their decision.

21 THE COURT: Thank you. In regards to each of the
22 indictments the State has produced competent evidence tending
23 to establish the guilt of the Defendant. And as noted, it's
24 not the weight of the evidence, but the existence of the
25 evidence. Specifically in regards to the ABHAN charge and I

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1 think the others clearly, each and every element in regards
2 to your argument to the ABHAN charge, the testimony was that
3 the Defendant did beat Ms. Berry with a pistol and certainly
4 that, and threatened to kill her. And basically that is what
5 battery would have the means to produce that would have the
6 means to produce death. So certainly there is competent
7 evidence to establish that, and I respectfully deny your
8 motion.

9 MR. STEVENS: Thank you, Judge.

10 MS. CORNWELL: Thank you, Your Honor.

11 THE COURT: Does the Defendant intend on
12 testifying.

13 MR. STEVENS: We've had a chance to speak to Mr.
14 Hardin, Your Honor, and he does.

15 THE COURT: Okay. Mr. Hardin, would you please
16 stand.

17 MR. HARDIN: (Stands.)

18 THE COURT: Place him under oath, please?

19 (WHEREUPON, Archie More Hardin was
20 sworn to tell the truth.)

21 THE CLERK: Thank you.

22 THE COURT: All right. Mr. Hardin, at this time
23 I'm going to explain to you certain of your rights. If you
24 don't understand anything I say, please let me know. If you
25 want me to explain anything in more detail, please let me

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1 know.

2 You have now reached the stage of the trial where you
3 may present your defense. You have the right to claim the
4 protections given to you by the Fifth Amendment of the
5 Constitution of the United States and the amendment states in
6 part, that no person shall be compelled in any criminal case
7 to be a witness against himself. That means that you cannot
8 be required to testify in this case. You have the right to
9 testify on your own behalf. However, no one can make you
10 testify. This is a personal right and no one can waive this
11 right except for you.

12 If you decide to testify you will be subject to the same
13 rules that govern other witnesses and you may be examined and
14 cross-examined on any relevant issue in this case. In
15 addition, if you have any convictions involving dishonesty or
16 false statement or for crimes punishable by imprisonment for
17 more than one year and this court determines that the
18 probative value of admitting this evidence does not outweigh
19 the prejudicial effect to you, the Solicitor will be able to
20 use your record to attach your credibility.

21 If you decide to testify, this decision on your part
22 must be freely, voluntarily and intelligently made with the
23 knowledge of the protections give to you by the Fifth
24 Amendment and the consequences of your decision to testify.

25 If you decide not to testify I will instruct the jurors

1 that they cannot give the fact that you did not testify any
2 consideration whatsoever and that there is to be absolutely
3 no prejudice to you because you did not testify. It's left
4 entirely up to you whether or not you testify. You may talk
5 with your attorneys, your family, your friends, anyone else,
6 but the final decision is up to you as to whether or not you
7 are going to testify.

8 Do you understand what I have just explained to you?

9 MR. HARDIN: Yes, ma'am.

10 THE COURT: Do you have any questions about what
11 I've just explained to you?

12 MR. HARDIN: No, ma'am.

13 THE COURT: Have you discussed with your lawyers
14 whether or not you wish to testify?

15 MR. HARDIN: Yes, I have.

16 THE COURT: Do you wish to testify?

17 MR. HARDIN: Yes.

18 THE COURT: Do you need any more time to talk to
19 your lawyers?

20 MR. HARDIN: No. No. No, ma'am.

21 THE COURT: All right. You may have a seat. Thank
22 you.

23 MR. HARDIN: (Complies.)

24 MR. STEVENS: Judge, I do believe -- 609 analysis
25 of his prior record.

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1 THE COURT: All right. Do you have a --

2 MS. CORNWELL: Your Honor, I believe that the
3 record based on 609, I believe the only thing the State would
4 be allowed to impeach Mr. Hardin with would be his crimes of
5 dishonesty. There's a question about a drug charge in 2010,
6 but I don't think that's relevant to this case. I don't
7 believe that it would come in any way. The only things we
8 have as far as the crimes of dishonesty, he's got an '83
9 larceny from Virginia, an '86 concealment of merchandise out
10 of Virginia.

11 THE COURT: Hold on. Slow down.

12 MS. CORNWELL: I apologize.

13 THE COURT: Okay. '83?

14 MS. CORNWELL: Larceny out of Virginia.

15 THE COURT: Okay.

16 MS. CORNWELL: '86 concealment of merchandise out
17 of Virginia. A '93 larceny out of Virginia. And a 2006
18 receiving stolen goods out of Virginia.

19 THE COURT: All right. Mr. Stevens.

20 MR. STEVENS: Judge, our position is that while
21 these may have been crimes of moral turpitude under the old
22 standard after we have the rules of evidence the moral
23 turpitude standard is gone. You have to focus on whether
24 it's a crime of dishonesty. I believe we actually have to
25 get it the actual conduct of what was alleged to have

1 occurred in the larceny and concealment charge. And,
2 frankly, my understanding is Virginia's version of
3 shoplifting. And the same thing when it comes to receiving
4 stolen goods. There's nothing which really is here presented
5 to the Court to indicate that those were crimes of
6 dishonesty, other than simply the labels of the offenses
7 themselves. Our position is that the burden is upon the
8 State to show, but they were crimes of dishonesty rather than
9 simply offenses of moral turpitude under the old standard.

10 Accordingly, Judge, we would respectfully request that
11 they not be allowed to impeach on these grounds. In
12 addition, they're far over then ten-year benchmark, even if
13 they were found, which they're not. They're misdemeanors.
14 So our position is that they're inadmissible for impeachment
15 purposes against Mr. Hardin.

16 THE COURT: Okay.

17 MS. CORNWELL: That the age of the cases -- they
18 are crimes of dishonesty, and I believe that the Rules
19 clearly states that any crime of dishonesty may be used for
20 impeachment. As far as Mr. Stevens' argument against
21 shoplifting, State v. Johnson and State v. Shaw both held
22 that shoplifting is a crime of dishonesty. It may be used to
23 impeach. Also, under South Carolina law larceny and
24 receiving stolen goods would also be considered crimes of
25 dishonesty. And, therefore, it's the State's position that

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1 they would be admissible for impeachment purposes.

2 MR. STEVENS: And, Judge, my knowledge of State
3 versus Johnson is a 1978 case, which is well before the Rules
4 were actually imposed.

5 THE COURT: All right. Well, there is a United
6 States versus Foster case, a 2000 case that states that
7 receiving stolen property is a crime involving dishonesty.
8 That would be the 2006 conviction but this would be within
9 the ten-year limit -- the previous three convictions,
10 however, I think they're too remote. The prejudicial value
11 would outweigh their probative facts so those three will be
12 out. The 2006 receiving stolen goods conviction comes in.

13 MS. CORNWELL: Thank you, Your Honor. And for the
14 record, State v. Johnson is '99.

15 MR. STEVENS: Lots of State versus Johnson's Judge.

16 THE COURT: They're dismissed, right?

17 MR. STEVENS: Yes, ma'am.

18 THE COURT: All right.

19 MR. STEVENS: Specifically, as it refers to stolen
20 goods under -- analysis, we would also specifically request
21 that they may be able to impeach Mr. Hardin regarding that he
22 did have a prior conviction, but that receiving stolen goods
23 might not be able to be term that's actually used to reach
24 stolen goods. So we ask for a prohibition on using the
25 actual date and name of the offense.

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1 THE COURT: And your position on that, Solicitor?

2 MS. CORNWELL: Your Honor, the offense is charged
3 as receiving stolen goods. The conviction is for receiving
4 stolen goods so I believe that's what we should be able to
5 impeach him on.

6 THE COURT: And it's not substantially -- he's also
7 been charged with a different offense. If it was a previous
8 armed robbery or kidnapping or ABHAN, I could certainly
9 understand your argument, that the similarity in nature would
10 be more prejudicial than probative. However, considering
11 it's a different charge that's not similar in nature, I'll
12 deny your motion on that. I think he can be impeached on
13 that crime.

14 MR. STEVENS: Thank you, Judge.

15 THE COURT: Anything further at this time? Are we
16 ready to proceed?

17 MS. CORNWELL: No. Just for clarification as well.
18 Obviously, if the Defendant opens the door to any other
19 charges, we're allowed to go down that road.

20 THE COURT: Sure, if he opens the door.

21 MR. STEVENS: Could we just have about ten minutes
22 or so with Mr. Hardin to finish our conversation.

23 THE COURT: Sure. I think the only other concern
24 is the legs shackled situation. I just want make sure that
25 he didn't walk in front of the jury.

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1 Q Did you kidnap Mr. Thomas Sims, Jr., or Ms. Kirstie
2 Berry or Mr. Jarron Weaver?

3 A No, I didn't. No, sir.

4 Q Did you hit Ms. Berry in the head?

5 A No, no, I didn't.

6 Q Did you point a gun at anyone --

7 A No, I did.

8 Q -- on May 16th, 2014?

9 A No, sir.

10 Q Were you in Orangeburg that morning?

11 A No, I was in Columbia.

12 Q Okay. Let's talk about what did happen that day. Like
13 you said, where were you on the morning of March [sic] 16th?

14 A I was in Columbia in my apartment.

15 Q Okay. Did you meet anyone that day?

16 A About 7:00 or 7:30 that morning, I received a phone call
17 from Black, asking me to use my car, and I told him, yes.

18 Q Okay. And the name Black, is that a nickname?

19 A That's a nickname. Well, a street name.

20 Q Okay. And is that common to really only sometimes call
21 somebody you know by a street name or a nickname?

22 A Yes, it's common. Yes.

23 Q All right. And what was it that Black wanted to do?

24 A He asked me could he use the car, my rental car.

25 Q Was that unusual?

1 A Not really because I had let him use it a couple times
2 before.

3 Q All right. So did you let him borrow the car that
4 morning?

5 A Yes.

6 Q And about what time was that?

7 A About 7:30. It was early in the morning. About 7:30.

8 Q And about how long was Black gone with your car?

9 A Four and a half, five hours, something like that, about
10 -- somewhere -- four and a half, five hours.

11 Q Did you call anyone during that time?

12 A I called him -- see, I realized that the car had to be
13 back that day. I had to turn it back in that day.

14 Q So it was a rental car?

15 A Yes, it was a rental car. So about 9:30, 10:00, I
16 called him. And I asked him, you know, I said, when you
17 think you going to be back with the car. He said, I should
18 be back in a few hours. I'll call you when I get back.

19 Q Okay.

20 A So that ended that conversation.

21 Q And did he return that day?

22 A Yes, he did.

23 Q And about what time did he return?

24 A I want to say about 12:30, 1:00, somewhere like that.
25 12:30, 1:00.

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1 Q All right. Well, please tell the jury what happened
2 next after Black returned with your vehicle?

3 A I was in my apartment. He called me. He said, come on
4 downstairs. I'm out front. So I leave my apartment. When I
5 get downstairs, he's sitting there waiting. So when I got in
6 the car he said, you want to go get something to eat? He
7 said, you hungry? I said, yeah. Let's go get something to
8 eat.

9 Q Okay. Now, pause for just a second. When you went back
10 into the car was there more stuff in there or less stuff in
11 there than when you loaned it to him that morning?

12 A When I loaned him my car, it wasn't nothing in the car.
13 Wasn't nothing. But when I got in the car, I noticed he had
14 a laundry basket with dirty clothes. He had a couple Nike
15 boxes, tennis shoes. He had a brown box or a bag, a black
16 bag.

17 Q All right. And so did you say you were hungry?

18 A Yes.

19 Q So what did y'all do next?

20 A We went -- I'm thinking it was somewhere on Beltline
21 Boulevard. I'm not that familiar with Columbia because I
22 only had moved there about three and a half months. So
23 anyway, we go to this carry out, outside carry out window,
24 ordered our food and we was waiting for our food.

25 Q Did you get food?

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1 A Well, we ordered it but we never received it because --

2 Q And why?

3 A While we was waiting on the food I noticed Black. He
4 was acting, you know, kind of nervous. So I asked him, I
5 said, what's going on. He was pacing and turning. So I
6 said, what's going on? What's wrong with you? He said, you
7 see that black car? I said, what car? He said, a black
8 Dodge Charger with tinted windows. So I'm looking. I said I
9 don't see no car. But then when I looked further down, I
10 couldn't actually see the car but I could see black. I
11 couldn't tell what it was and it was parked in the parking
12 lot of a gas station. I think it was a Hess Gas Station.

13 Q All right. Did you stay at the carry out place?

14 A No.

15 Q Where did you go?

16 A He said come take me -- let's go, take me to go get a
17 hotel room. I said, well, what about the food? He said, I
18 don't want that food. Don't worry about the food. Take me
19 to go get a hotel. So we get in the car. I drive to a
20 hotel. I don't know the name. We pull in the parking lot.
21 So I'm thinking he going to get a room at this hotel, but he
22 don't. He said, I don't want no room here. Take me to
23 another one. So we leave and we ends up at the Budget Inn
24 Hotel.

25 Q What did you do at the Budget Inn?

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1 A When we got to the Budget Inn Hotel, I get fifty
2 dollars. He give me fifty dollars. He said go get me a
3 room. I used my license. Go in there pay the room, come
4 back. When I get back outside, he said that car, I saw that
5 car again. I said what car? He said that Charger. So I
6 looked. I don't see no car. So I said, man, what's going on
7 with you. Why you so paranoid? What's going on with you?

8 Q Uh-huh (affirmative).

9 A Oh, nothing, nothing. I said, well, the room is around
10 the back, on the back side. So I get in the car, pull around
11 the back side of the hotel. The room was on the back side on
12 the corner. When I get out of the car, I popped the trunk.
13 I got the back doors open. I'm getting ready to take some of
14 this stuff out. He's getting ready to get some of his stuff
15 to go in the room. I'm going to leave. But as we're doing
16 that he looks around. He said, there go that car again. So
17 at that time, I looked, and sure enough, there go the car at
18 the light, at the traffic light. A black charger with tinted
19 windows driving slow. So I say, you right. I say that is,
20 that is the car. He said, I think that's my parole officer.
21 I said, your parole officer? He said, yes. Someone told me
22 the other day that my parole officer was offering people
23 money to tell them my whereabouts. So I said, what you going
24 to do? I'm going to my apartment. He said, well, come on.
25 We go to my apartment. So we leave and drives to Bentley

1 Court to my apartment.

2 Q Okay. When you arrived at Bentley Court Apartments in
3 your rental car, where did you go next?

4 A When we pulled up he said -- it's a guy that I know. We
5 both veterans and we both had the same social worker and
6 that's how I know Joe. So he said take me down Joe. Let's
7 walk down Joe apartment. I'm going to see can I get Joe --
8 he was determined to get a hotel room. He said, I'm going to
9 see would Joe take me to go get a hotel room. Because I told
10 him, you know, I'm not going to be doing all this riding back
11 and forth. He said, well, take -- let's go down to Joe.

12 Q Is this the same apartment complex?

13 A Right. But Joe lived in the back. My apartment was up
14 front.

15 Q I see.

16 A So we walked down to Joe's apartment, knock on the door.
17 No one answered. So we hang around for maybe four five
18 minutes and we leaves, walked back to my apartment. While we
19 walking, he's on his cell phone. He's talking to someone.
20 So when we get to the car he said, I'm going to leave my
21 stuff at your apartment. You go turn the car in. When you
22 get another rental car, you call me and I'll let you know
23 where I'm at. And you come pick me up and I'll get my stuff.
24 I said, fine. So we pop the trunk, open the doors. We take
25 the stuff up to my apartment. By the time we do that --

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1 Q Just so we're clear. You were helping Black take it up?

2 A Yes.

3 Q Did you have any gloves on your hands at the time?

4 A No.

5 Q Did Black have any gloves on his hands at the time?

6 A No.

7 Q Okay. Just out of curiosity are you aware of who was
8 with Black when you had your car or no?

9 A No. When he done with the car, he was by hisself.

10 Q So you're not aware of what he did with your car?

11 A No, not while he was gone, no.

12 Q Who else may have been in it?

13 A I don't know. It could have been anybody.

14 Q Okay. So after you helped Black move his stuff into
15 your apartment, did he stay?

16 A Maybe -- I want to say maybe, maybe ten or fifteen
17 minutes. And a guy pulled up in a black Mitsubishi. I want
18 to say it was Mitsubishi or something and Black left.

19 Q Did you stay?

20 A Yes.

21 Q How long?

22 A About five, ten minutes.

23 Q Where'd you go after that?

24 A I come down -- first, I go get in the car but I forgot I
25 had some paperwork that I had to get to go turn the car in

1 with. That's why the -- they right about the car being open.
2 The door was open because I ran right upstairs real quick and
3 was going to run back down. When I come back down, I locked
4 my door and I get in the car. Before I could even start the
5 car I look in the rearview mirror and I see a bunch of police
6 cars pull up, surrounding the car.

7 Q Okay. Well, let's talk about what happened when you saw
8 the police, all right? Did they approach you in the car?

9 A No, because when I saw them, I got -- I proceeded to get
10 out the car with my hands up because all them had their guns
11 drawn. So I didn't want to do nothing, you know, for them to
12 shoot me or something. So when I got out, I did like this.

13 Q About how many officers did you see?

14 A I saw a lot. It was a lot.

15 Q Okay. And if you don't remember a specific number,
16 that's fine. Did more arrive later?

17 A Yes.

18 Q And did they want to search your home?

19 A Well, first thing they did they said who car is this?
20 And I asked them why? As a matter of fact, it was Officer
21 Wade was doing most of the talking to me initially. And the
22 other officers was just searching the car anyway. They just
23 start searching the car. And I know, you know, you supposed
24 to have a search warrant and all that. And they just was
25 searching it. But anyway, Officer Wade --

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1 Q Did they tell you what they were looking for?

2 A Not at that time. So I kept saying what's going on?

3 What's going on? So Officer Wade said -- I told him this my

4 car. Officer Wade said we have reason to believe that this

5 car been involved in a serious crime. So I said, well, I

6 don't know nothing about that. I don't know anything about

7 that. They said, we looking for a certain individual, 5'8"

8 something, walk with a limp. I said I don't know no one like

9 that. And said, well, where you live? I said, why? We want

10 to search your apartment. I said, do you have a warrant?

11 They said, no, but we could get one. I said, for what? I'm

12 under arrest? Have I did anything? They said, well, we

13 don't know that yet. So now I live here. I don't need all

14 this attention because at this time people, you know, it's so

15 many cars, polices lights and all this. Peoples is coming

16 out, being nosey. And I don't need to be getting evicted and

17 all this stuff. So I said, look, I'll sign the consent form.

18 He said you sign the consent for us to search your apartment?

19 I said, I'll sign it. I didn't have anything to hide. I

20 ain't did nothing. I didn't have anything to hide so I

21 signed it.

22 Q That's the consent form from the Columbia Police

23 Department?

24 A Yes.

25 Q And on that, that's where -- is that what it indicated

1 to you what they were looking for as well?

2 A Right. He said a certain individual had stolen
3 merchandise such as iPad.

4 Q Okay. So did everyone go upstairs?

5 A Well, I know it was myself, Officer Wade, Officer Cain,
6 maybe four other officers.

7 Q But did they bring you too?

8 A Well, I told them the only way I'm going to sign the
9 consent form if I'm present. So, yes, I went up too.

10 Q Okay. And did they enter your room?

11 A Did they enter my room?

12 Q Enter your home?

13 A Yes.

14 Q Okay. Did you bring you inside after they searched it?

15 A No. I went in -- I think I was like the third person.
16 Two officers went in, I went in, and then the other officers
17 came in.

18 Q Okay. And so total do you know about how many officers
19 were in your home?

20 A Five or six.

21 Q At some point did two officers leave?

22 A Officer Cain and Officer Wade. After -- they search,
23 you know. Some went in my kitchen. Some went in the
24 bedroom. They looking in the living room, closets. Because
25 I walked in my bedroom with two of the officers, you know. I

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1 want to be able to see too what's going on. The other ones
2 went in the other direction. And they looking. So I guess
3 they didn't see what they was looking for. Officer Cain and
4 Officer Wade left out.

5 Q Okay. Now, eventually did they take you outside of your
6 apartment?

7 A I stayed -- we -- well, myself and the other officers,
8 it was two Columbia officers and a couple officers in
9 civilian clothes and myself was still in my apartment. We
10 stayed in there maybe fifteen twenty minutes. They was
11 looking in my kitchen cabinets and closets looking. They
12 locked the door. We leave and leave out.

13 Q Okay.

14 A And they placed me in the Columbia car, the Columbia
15 police car.

16 Q I got you. From the parking lot, could you see the
17 dumpster near your apartment building?

18 A From?

19 Q The parking lot?

20 A What you mean? I don't quite understand.

21 Q Well, the car they put you in, was that in the parking
22 lot?

23 A Yes.

24 Q From the car you were in in the parking lot, could you
25 see where the dumpster is for your apartment building?

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1 A The car -- I think at that time my back was to the
2 dumpster where they had the car, the police car parked. But
3 from my apartment you have to come out, go to your left and
4 the dumpster sets down.

5 Q Did you go anywhere near those dumpsters on May 16th
6 yourself?

7 A No, no.

8 Q Okay. So let's pick up where we left off. You said you
9 were in a patrol car?

10 A Yes.

11 Q Or in a police car, let's say?

12 A Uh-huh (affirmative).

13 Q And did anyone return back up the stairs to your
14 apartment?

15 A I heard -- I overheard Officer Wade tell the officer,
16 where's his key? Where's his key to his apartment? Officer
17 Wade and Officer Cain went back in my apartment.

18 Q Okay. Did anybody late approach you after they went
19 back up into your apartment?

20 A Officer Wade approached me.

21 Q Okay. What did he want?

22 A He had the consent form that I signed for them to
23 search, he had it in his hand. And I noticed on the consent
24 form he had wrote firearms -- weapons -- firearms and
25 weapons, guns. And he had put it in parenthesis. And he

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1 asked for me -- he said, I want you to sign this consent form
2 again.

3 MR. STEVENS: Judge, may I approach?

4 THE COURT: You may.

5 BY MR. STEVENS:

6 Q This is State's Exhibit 1, Archie. Is this the
7 voluntary consent form you're talking about?

8 A Yes, sir.

9 Q This here, is that the extra language that was added
10 Officer Wade?

11 A Yes.

12 Q Okay. And so this is after they'd already gone back up
13 the second time, you're saying?

14 A Uh-huh (affirmative).

15 Q Okay. And at that time, did you go ahead and sign on
16 it?

17 A No. I told him I wasn't going to sign it no more.

18 Q Okay. Where did they take you next?

19 A They took me back into my apartment.

20 Q So even though you didn't sign it again --

21 A Uh-huh (affirmative).

22 Q -- after they altered it, they still searched anyway;
23 right?

24 A Yeah.

25 Q Were you free to go at that time?

1 A No.

2 Q When you went up there, what did you see?

3 A When I first walked in, I noticed a bag, a Nike Jordan
4 bag with a Jordan, you know, picture on it or whatever. Some
5 phones, I guess, some boxes and stuff on my sofa on the floor
6 and stuff.

7 Q All right. Did you see guns too?

8 A No. I saw -- well, eventually they went in that Nike
9 bag and took the guns, but I didn't see no guns at that time.
10 They didn't have them laying out.

11 Q I see. What did you tell them when you saw this?

12 A I asked them, what is this? What is this? Because when
13 we was in there, I didn't see it. They didn't find it. I
14 didn't see it. So, I guess when they went back in, evidently
15 they found it.

16 Q Did you tell them it was yours?

17 A No, I told them it was Black's, which is the truth. All
18 of that stuff was Black's. We had just took the stuff
19 upstairs. And when they said that, I immediately told them
20 right then and there, that's not my stuff. That's Black's
21 stuff.

22 Q So did you tell them how it got into your apartment?

23 A Yeah. I told them.

24 Q Did you tell them how to find Black to the best of your
25 knowledge?

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1 A Well, I tried. I tried. I even gave them a piece of
2 paper that had Black's girlfriend or one of his girlfriends
3 or whatever. I said y'all probably can find him with this.
4 And I tried to tell them. I say, let me call him. I say, I
5 can call him because I'm sure he didn't know. He had left.
6 He didn't know what was going on at my place. So I said all
7 I got to do is call him and get him to come over here. I
8 tried everything to try to -- to work with them, to get him.
9 Because I felt like I been setup. I was used. So I tried to
10 help him and they know that.

11 Q Okay. A little after, did they put you back in a police
12 car?

13 A Well, they called another lady and she was taking
14 pictures of the stuff. They took the stuff and myself and
15 had the car towed and brought me to Orangeburg.

16 Q Who was it that drove you to Orangeburg?

17 A Officer Cain.

18 Q Did you say anything to Officer Cain while you were in
19 the car with him riding back to Orangeburg?

20 A I told Officer Cain, look, I'll do anything that y'all
21 need me to do to help get this guy, Black. I said, y'all
22 could -- I could take y'all to some of the areas that I used
23 to drive, that I knew that he would go and probably would be
24 or hang out at and if we sit there long enough, he might show
25 up. They wouldn't trying to hear nothing. Officer Cain,

1 they wasn't trying to --

2 Q So eventually did they take you to a station here in
3 Orangeburg?

4 A Yes.

5 Q Did they take to a room there?

6 A Yes.

7 Q Was it a big room or a small room or medium room?

8 A It was about a medium sized room.

9 Q Did someone meet you in there?

10 A Sergeant Stokes.

11 Q Sergeant Stokes.

12 A Yeah.

13 Q Did Sergeant Stokes read you your Miranda warnings?

14 A Yes.

15 Q Okay. Did he ask you questions?

16 A Yeah.

17 Q All right. Was he armed?

18 A Uh-huh (affirmative).

19 Q Were there other officers in the building at that time
20 too?

21 A Yes.

22 Q Okay. Did you feel intimidated at all?

23 A Well, a little. A little.

24 Q Did you tell Officer Stokes or Sergeant Stokes that you
25 would write a statement?

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1 A No, I told him I wasn't going to write a statement, but
2 I'll talk. I told him I'd talk to him, but I'm not going to
3 write a statement.

4 Q Did you admit to robbing the T-Mobile?

5 A No, I never admitted it because I didn't do it.

6 Q Did you tell him that you were forced to do it?

7 A No, no, I never said that.

8 Q Did you tell Sergeant Stoke about Black?

9 A Yes.

10 Q What did you tell him?

11 A I told him that Black had my car. That if a store was
12 robbed that Black did it. And that I would do anything
13 possible to help him find Black.

14 Q Eventually, where did they put you next?

15 A In Orangeburg jail.

16 Q Okay. Did you get a bond hearing?

17 A Yes. I went to -- I think it was -- that was on Friday.
18 That Sunday afternoon I went to a building next door to the
19 jail for a bond hearing.

20 Q May 18th sound right? May 18th, 2014?

21 A Yes.

22 Q Does that sound right?

23 A Uh-huh (affirmative).

24 Q All right, Archie, let's talk about what happened at
25 your bond hearing, okay?

1 A Okay.

2 Q So you said you were brought to Magistrate's Court?

3 A Uh-huh (affirmative).

4 Q Were you still handcuffed?

5 A Yes.

6 Q All right. Did you tell the Judge you didn't do it?

7 A Yeah, I told the Judge that.

8 Q Okay. And around the middle of the hearing, did you try
9 and say something again?

10 A A couple times I tried to say things but the judge kept
11 cutting me off.

12 Q So were you able to say everything?

13 A No.

14 Q All right. And who was it that was cutting you off?

15 A The judge.

16 Q Okay. Now, at some point you started to say something
17 before you were cut off. What was it you were trying to say?

18 A Well, I felt that the Judge was allowing the victims to
19 say anything and everything they wanted to say. But every
20 time I said something, he was cutting me off. So what I was
21 trying to say is, I'm being treated like I'm guilty instead
22 of innocent before guilty. I was being treated like I'm
23 guilty before innocent. But I never said all of that because
24 he cut me off.

25 Q At some point after that, did the judge ask you if you

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1 had anything else to say?

2 A Yes.

3 Q Did you tell him that you could understand how people
4 feel, but they're speaking on you like you're guilty already?

5 A Right. And I told him also. I said y'all got the wrong
6 man.

7 Q Did you also tell them that I'm already found guilty;
8 this is crazy man? Did you say that?

9 A Well, something like. Yes, yes. Something like that.
10 It seemed -- yes.

11 Q And did you tell him that they got the wrong man?

12 A Yes.

13 Q All right. Archie, let's talk a little bit about your
14 past. Now, you've been to jail before; right?

15 A Yes.

16 Q Okay. In 2007 did you get a conviction for anything?

17 A For receiving stolen goods.

18 Q Receiving stolen goods?

19 A Yes, sir.

20 Q Receiving?

21 A Uh-huh (affirmative).

22 Q And is that a misdemeanor offense or a felony offense.

23 A A misdemeanor.

24 Q A misdemeanor offense. For receiving stolen goods?

25 A Yes.

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1 Q But Archie, did you commit armed robbery at T-Mobile on
2 May 16th, 2014?

3 A No, sir. No, I didn't.

4 Q Did you kidnap anyone that day?

5 A No, I didn't.

6 Q Did you even go to T-Mobile that day at all?

7 A No. I wasn't even in Orangeburg that day.

8 Q That morning or that afternoon?

9 A At all.

10 Q Until they brought you here?

11 A Until -- the first time I was in Orangeburg is when I
12 was transported by Officer Cain over here. Until then, I had
13 never even knew nothing about a town called Orangeburg.

14 Q All right, Archie. Please answer any questions the
15 prosecution may have.

16 THE COURT: Cross-examination?

17 MS. CORNWELL: Thank you, Your Honor.

18 ARCHIE MORE HARDIN - CROSS-EXAMINATION

19 BY MS. CORNWELL:

20 Q So you have a prior conviction for receiving stolen
21 goods?

22 A Yes, ma'am.

23 Q So you play the patsy a lot. You get stuck with all
24 kinds of stolen goods, don't you, Mr. Hardin? Stuck with
25 stolen goods in '06. Now, you get stuck with stolen goods

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1 now? Is that what you're telling the Court?

2 A Well, I got convicted in 2006, yes.

3 Q Okay. For having stolen goods in your possession?

4 A Receiving stolen goods.

5 Q And you had stolen goods in your possession when you
6 were arrested this time too; didn't you?

7 A They was in my apartment.

8 Q Okay. And you said that you told officers you were
9 trying to give them everything you could for Black because
10 you felt like you were the victim in this case; didn't you?

11 A Well, I mean, Black knew what he had done and he used my
12 apartment and my car to do it. So I felt like I was setup.
13 I was taken advantage of. I didn't have no knowledge of what
14 he'd done. So --

15 Q You were the victim?

16 A Well, I felt like I was taken advantage of. I'm a
17 victim, yes. That's how it felt.

18 Q You were a victim. Did you have a gun shoved in your
19 face and threaten your life and pushed in the back of a room,
20 duct taped? Were you told that you were going to be shot if
21 you looked at somebody? Did you have your merchandise taken,
22 thirty-seven thousand dollars worth of stuff taken?

23 MR. STEVENS: Judge, questions. I heard about
24 three or four questions all at one time.

25 THE COURT: Break them up.

1 BY MS. CORNWELL:

2 Q Did any of those things happen to you?

3 A Well, you asked me so many. I can only answer one at a
4 time, Ms. Cornwell.

5 Q Did you have a gun pointed at you?

6 A No.

7 Q Were you forced in the back of a store room?

8 A No.

9 Q Were you duct taped?

10 A No.

11 Q Were you threatened with your life?

12 A No.

13 Q Were you assaulted?

14 A No.

15 Q But you're the victim?

16 A I mean, my apartment got -- my car got used.

17 Q Okay.

18 A He used my apartment to put the stuff that he robbed.

19 Left me hanging in a situation like this. I get evicted from
20 my apartment. I get locked up for something I didn't do.

21 Yes, I'm sitting here now in court for something I didn't do.

22 Yes, I feel like I'm a victim. I didn't commit the robbery.

23 I didn't assault no one. I didn't kidnap no one.

24 Q Okay. And you previously lived in Virginia; didn't you?

25 A Yes, ma'am.

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1 Q Let's talk about when the officers came up to your
2 apartment. You said the car door was open, that you were
3 about to leave again and you forgot some paperwork. So you
4 ran back up to your apartment to get the paperwork and you
5 were coming out?

6 A Uh-huh (affirmative).

7 Q But you weren't holding any paperwork in your hand when
8 officers met up with you; were you?

9 A It was in the car.

10 Q It was in the car?

11 A Right.

12 Q But you weren't even in the car when officers came up.
13 Officers said they saw you coming down from the landing, out
14 of your apartment to get in the car?

15 A Well, that's what the officers said. I can only tell
16 you the truth. I'm not saying what they saying is a lie, but
17 I can only tell you my version of the story. And in my
18 version, I was in the car.

19 Q In your version?

20 A Right. The truth.

21 Q And your version's the truth?

22 A Well, I don't have no reason to lie.

23 Q You don't have a reason to lie?

24 A No, I don't have a reason to lie.

25 Q You've got thirty-seven thousand dollars worth of stolen

1 merchandise in your apartment. That's not a reason to lie?

2 A Well, at the time I didn't know that merchandise was
3 stolen. And I definitely didn't know where it came from, the
4 value of it. All I know is I was approached, scared, taken
5 up to my apartment. I don't know nothing about no
6 merchandise at the time.

7 Q I see. And you had two guns in your apartment. That
8 wasn't a reason to lie?

9 A I didn't know no guns was in my apartment. All that
10 stuff was Black's stuff.

11 Q All that stuff was Black's stuff. And you said that
12 when you were taken up and those items were in your living
13 room, you didn't know what they were?

14 A Excuse me?

15 Q You testified that when you went upstairs the second
16 time, the officers had all these items on the floor in your
17 living room. They had boxes and phones and bags and you
18 didn't know what that was. You said, what is this; didn't
19 you?

20 A Well, I didn't.

21 Q Okay. But didn't you also say you carried the stuff out
22 of the car and put it in your own apartment? So you did know
23 what the stuff was; didn't you?

24 A It was in boxes. That was that man's stuff. I wasn't
25 looking in his stuff. I didn't open no boxes, see what he

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1 had in the box. I didn't unzip no bag to see what he had in
2 a bag. We carried the stuff to my apartment, set it down.
3 He left. A short while later, I left.

4 Q But the box wasn't closed; was it? I mean, looking at
5 State's 17, that box is open. You could see what was in that
6 box when you took it out of the car; couldn't you? You knew
7 what was in that box?

8 A Maybe Black took that box upstairs. I don't know. It's
9 open now, but it could have been closed later. I don't know,
10 Ms. Cornwell. All I know is that that was his stuff. That's
11 all I know.

12 Q All right. And then you said that you were in the car
13 with Cain. And while you were riding back to Orangeburg you
14 told Cain, I'll do anything to help you find Black; is that
15 correct? That's what you said?

16 A Uh-huh (affirmative).

17 Q So you were going back to Orangeburg indicated you were
18 in Orangeburg earlier that day, because you were in
19 Orangeburg earlier that day; weren't you?

20 A No, I wasn't.

21 Q That's why you were going back to Orangeburg?

22 A What do you mean, back to Orangeburg. I don't
23 understand.

24 Q That's what you said. You said, I was going back to
25 Orangeburg. And to go back to someplace means that you were

1 previously there; doesn't it?

2 A I don't --

3 Q Because you were previously there on May 16th, that
4 morning when you robbed T-Mobile, when you kidnaped Jarron
5 Weaver, when you kidnaped Thomas Sims, and when you kidnaped
6 Kirstie Berry, when you beat them and you stole the stuff
7 from them. That's when you were originally in Orangeburg.
8 That's why Cain was taking you back to Orangeburg; isn't it?

9 A I don't recall saying back to Orangeburg. I do recall
10 saying the first time I ever came to Orangeburg was when
11 Officer Cain drove me to Orangeburg. Until then, I never
12 heard of Orangeburg.

13 Q Okay. So now you didn't say back to Orangeburg. So the
14 police have lied. You've been misunderstood in this
15 courtroom. Let's go ahead and move on. I don't want to get
16 anymore mis-confusion [sic] going on. Let's talk about the
17 bond hearing. This is the bond hearing where you're still
18 the victim; right? Because, you know, the victims, the
19 actual victims are being allowed to talk to the judge and
20 tell the judge exactly what they went through. But you
21 didn't want to hear all of that. You kept trying to
22 interrupt and interject your own opinions in that hearing;
23 didn't you?

24 A (No verbal response).

25 Q And that's why the judge had to keep telling you to be

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1 quiet, Mr. Hardin. It wasn't your time to speak. And you
2 got frustrated; didn't you?

3 A Well, I think I got frustrated when I was being called
4 an animal.

5 Q Okay.

6 A I mean, I'm not an animal. I got frustrated when I was
7 being treated like I'm guilty already. And I thought in this
8 country, you're innocent until you're proven guilty. So I
9 did get a little frustrated for being treated like I did
10 something when I didn't. I'm being accused of things that I
11 didn't. I can't get my point across. Yes, I did get a
12 little frustrated. Yes.

13 Q All right. And you kept interrupting. And finally, at
14 one point when Mr. Sims' father was talking about how
15 horrible what happened to Mr. Sims, Jr. was, and how it
16 affected his son, you got annoyed and you finally just said,
17 Your Honor, I'm guilty. And then the judge cut you off
18 because he didn't want hear anything you wanted to say
19 because it wasn't your turn to speak. It was their turn to
20 speak; right?

21 A I mean, I don't -- I'm not -- I don't know what you're
22 saying because first of all, I never said I was guilty.

23 Q You didn't say I'm guilty in open court?

24 A What I did say or tried to say before I got cut off is
25 that I'm being treated like I'm guilty when you're supposed

1 to be innocent until proven guilty. But like you said, the
2 judge kept cutting me off, Ms. Cornwell. So I never
3 finished.

4 Q You've heard, you've heard the recording of that bond
5 hearing; haven't you?

6 A Yes.

7 Q And nowhere in there when the judge cut you off. You
8 didn't say, your honor, I'm being treated. You said, your
9 honor, I'm guilty. Those were your words; weren't they?

10 A That's not, that's -- I mean --

11 Q It's a yes or no question, Mr. Hardin. Those were your
12 words. I'm guilty.

13 A Yes, and I got cut off.

14 MR. STEVENS: I'd ask that he be allowed to answer
15 the question.

16 A Yes, I mean, I can't answer the question. You're coming
17 at me --

18 THE COURT: Mr. Hardin, answer the question and you
19 can explain your answer, okay?

20 MR. HARDIN: Yeah. She coming at me so fast and
21 rapid, I can't -- she ain't giving me time to answer, Your
22 Honor.

23 THE COURT: Everybody slow down --

24 MR. HARDIN: Ms. Cornwell, slow down.

25 THE COURT: Mr. Hardin, when she ask you a question

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1 you can answer yes, no, or I don't know. And then you can
2 explain your answer, okay?

3 A What's the question again, Ms. Cornwell?

4 BY MS. CORNWELL:

5 Q Your words were I'm guilty; correct?

6 A Before I got cut off, yes.

7 MS. CORNWELL: Nothing further, Your Honor.

8 THE COURT: Any redirect?

9 MR. STEVENS: Very briefly, Judge, if I may.

10 ARCHIE MORE HARDIN - REDIRECT EXAMINATION

11 BY MR. STEVENS:

12 Q Archie, the items that you helped Black bring from your
13 car to your apartment --

14 A Uh-huh (affirmative).

15 Q -- did you look inside those bags?

16 A No. That was his stuff.

17 Q Did you snoop around in his boxes?

18 A I ain't have no reason to. That's his stuff. I don't
19 do that. I don't -- I don't do that.

20 Q Would you like it if other people were snooping around
21 in your stuff?

22 A No, I wouldn't.

23 Q Let's talk about the ride to Orangeburg. Were you taken
24 to Orangeburg by Corporal Cain?

25 A Yes.

1 Q Were you in Orangeburg, South Carolina at all that day
2 before you were brought here by Corporal Cain?

3 A No, I wasn't.

4 Q And at the bond court, the words, I'm guilty. Were
5 those in context --

6 A What you mean?

7 Q -- when they're actually said by the State to you?
8 When they're trying to say that you admitted, I'm guilty.
9 Were those words in context or were you cut off before you
10 had a chance to fully say what you were trying to say?

11 A I was cut off. I mean, Mr. Stevens, if I was going to
12 go to court and tell the judge I'm guilty of a crime, I would
13 have did that at the beginning. I wouldn't --

14 Q Well, let's talk about that. At the beginning --

15 A I would have did that at the beginning.

16 Q And at the beginning, did you admit guilt or did you
17 assert your innocence?

18 A I assert my innocence first.

19 Q And even afterwards, after this alleged confession, did
20 you still assert your innocence or did you admit guilt?

21 A My innocence. And I told the judge, I told him that
22 they have the wrong man.

23 Q Thank you, Archie.

24 MR. STEVENS: No further questions.

25 THE COURT: You may step down, sir, thank you.

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1 MR. HARDIN: Yes, ma'am.

2 THE COURT: You may call your next witness.

3 MR. STEVENS: Judge, at this time, the Defense
4 rests.

5 THE COURT: Thank you.

6 Ladies and gentlemen of the jury, at this point both
7 parties have rested their case. So the time -- let's see.
8 It's about 11:40. Prior to us going into the closing
9 arguments and jury instructions, I'm going to allow you to go
10 your jury room and select lunch. That way, by the time we
11 get through that, then by the time you go to deliberate
12 you'll have some lunch. So you won't be starving throughout
13 this process. We'll certainly try to take care of you.
14 Again, please remember not to discuss this case yet. Because
15 even although both parties have rested their case, you have
16 not heard the instructions on the law, nor have you heard the
17 closing arguments of the parties. So I'm going to ask you
18 again to please not discuss this case with anyone or allow
19 anyone to discuss this case with you. And we'll be with you
20 shortly. Thank you.

21 (Jury out at 11:40 a.m.)

22 THE COURT: I understand the parties need a couple
23 of minutes to prepare for closing. So what I would like for
24 y'all to do is give me about five minutes and then I would
25 like to see counsel in my chambers to go over the proposed

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1 jury instructions to make sure we're all on the same page.

2 MR. STEVENS: Yes, ma'am. And if I may at this
3 moment, at least since we did enter evidence in the record,
4 it's incumbent upon us to re-raise our motions for directed
5 verdict.

6 THE COURT: Yes, sir.

7 MR. STEVENS: Accordingly, we do so on the exact
8 same grounds as previously stated, Judge.

9 THE COURT: And, again, pursuant to the exact same
10 grounds as previously stated, your motion is respectfully
11 denied.

12 MR. STEVENS: Thank you, Your Honor.

13 THE COURT: Anything further at this time?

14 MS. CORNWELL: Nothing from the State, Your Honor.

15 MR. STEVENS: No.

16 (Court in recess for short break.)

17 (Court in session after short
18 break.)

19 THE COURT: Thank you everyone. You may have a
20 seat. Parties ready to proceed?

21 MS. CORNWELL: The State's ready, Your Honor.

22 MR. MELLARD: The Defense is ready.

23 THE COURT: Let's have our jury, please?

24 THE BAILIFF: Yes, Your Honor.

25 (Jury in at 12:18 p.m.)

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1 THE COURT: Welcome back, ladies and gentlemen of
2 the jury. We're now ready to proceed with the closing
3 arguments.

4 MS. CORNWELL: Thank you, Your Honor. May it
5 please the Court, Defense counsel.

6 STATE - CLOSING STATEMENT

7 BY MS. CORNWELL:

8 Good afternoon ladies and gentlemen. The good news is
9 there's light at the end of the tunnel. We're almost
10 finished. So if y'all will bear with me for a little bit
11 longer, I think we're going to finish up pretty soon.

12 What I'm going to do first is just thank y'all. I know
13 that none of you called the Clerk of Court's Office and said
14 hey, I want to serve jury duty this week. May I please serve
15 on a jury. If you did, let's not talk about that. But it's
16 a taxing service but it's a necessary service. It's what
17 makes our justice system so great. And that Defendant is
18 entitled to a jury in front of his peers. He's exercised
19 that right. So I want to thank you from our side for the
20 attention that you've paid and for sitting here and giving us
21 your week.

22 What I'm going to do now is I'm going to briefly go over
23 what the law in this case is. After I've had a chance to do
24 that, I'm going to get down, the Defense is going to get up
25 and they're going to talk to you for a little while, and then

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1 I'm going to wrap things up. I will tell you that if there's
2 anything that I say or Defense counsel says that is different
3 in any way to what the Judge says, then you should obviously
4 defer to the Judge because she is the judge on the law and
5 you will be judge of the facts.

6 As you've heard this case against Archie More Hardin,
7 Mr. Hardin is charged with an armed robbery. In the State of
8 South Carolina in order for the Defendant to be found guilty
9 of armed robbery, the State must prove that the Defendant
10 took and carried away the personal property of another with
11 the intent to deprive him of possession by use of force,
12 threats or intimidation. And while armed with a deadly
13 weapon, or while having the possession of an object which the
14 victim reasonably believed to be a deadly weapon, and by
15 alleging by actions and words that he is armed. Basically,
16 what that means is if somebody comes into a store, points a
17 gun at you and threatens to shoot you, duct tapes you, and
18 takes items from your person or from the store that you're
19 occupying, they have taken and carried away property --
20 obviously, it's with the intent to deprive. They're not
21 going to come back later and give it back to you -- by use of
22 force or threats or intimidation and while armed with that
23 deadly weapon. If you think that the State has proven each
24 and every one of these elements, then you would find the
25 Defendant guilty of armed robbery.

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1 The next charge, he's charged with three counts of
2 kidnapping, and that's for the kidnapping of Thomas Sims,
3 Jr., for Jarron Weaver, and for Kirstie Berry. Now, to prove
4 kidnapping, there's a lot of big words. It says that you
5 must prove that they were unlawfully seized, confined,
6 inveigled, decoyed, abducted or carried away a person by any
7 means without authority of law. It's a bunch of big words
8 and mumble jumble to basically mean if I take you and I
9 forcibly make you move from that box right there to that seat
10 right there against your will, I've kidnaped you. I don't
11 have to tie you up and throw you in the trunk of a car and
12 drive you across state lines or anything like that. Just by
13 making you move from one spot to another by force, without
14 authority of law, that means I've kidnaped you. And
15 certainly, if I put a gun in your face and force you to the
16 back of the store and duct tape you to where you can't leave
17 or to where you can't run away, then I've kidnaped you.

18 The Defendant is also charged with assault and battery
19 of a high and aggravated nature. That is for the injuries
20 that he gave to Ms. Kirstie Berry. The State must prove that
21 the Defendant unlawfully injured another. And this is the
22 important part. And that great bodily injury of another
23 resulted or the act was accompanied by means likely to
24 produce death or great bodily injury. So even if you don't
25 find that great bodily injury actually occurred, if the way

1 that they were injured could have produced death or great
2 bodily injury, that's enough. And, obviously, if somebody
3 takes a gun and hits you in the back of the head -- well, we
4 know guns kill people. That gun could have easily
5 discharged. That blunt force trauma to the back of the head
6 could have produced death or great bodily injury. So not
7 necessarily that it has to but that the act was accompanied
8 by means that could produce death or great bodily injury.

9 And finally, he's charged with possession of a weapon
10 during the commission of a violent offense. And in that, he
11 just has to have possession of a firearm or knife or visibly
12 display what appears to be a firearm or knife during the
13 commission of a violent crime. And in South Carolina, armed
14 robbery, kidnapping, and assault and battery of a high and
15 aggravated nature are all classified as violent crimes in
16 South Carolina.

17 The Judge is going to talk to you about a theory called
18 the hand of one is the hand of all. And in that, if a crime
19 is committed two or more people who are acting together and
20 committing a crime, the act of one is the act of all.
21 Further, a person who joins with another to commit an
22 unlawful act is criminally responsible for everything done by
23 the other person, which happened as a natural consequence of
24 the acts done in carrying out the common plan and purpose.

25 Now, in this case, that Defendant is alleged to have

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1 done most everything in this, the armed the robbery, the
2 kidnapping, the assault and battery, the possessing a weapon.
3 You heard in one situation that Mr. Weaver was actually held
4 at gunpoint and forced to the back by a co-conspirator in
5 this. Everything that the co-conspirator did in this that
6 you think that the co-conspirator did, if you think that he
7 was with the co-conspirator, you could find him guilty of
8 those charges as well. So the kidnapping of Jarron Weaver,
9 even if you don't feel that he committed, if you feel that
10 that was committed by his accomplice, you can still find him
11 guilty of that charge.

12 You're also going to hear about possession of recently
13 stolen goods. If you find the Defendant is found in
14 possession of stolen goods this may be used as evidence that
15 the Defendant actually stole those goods. This is simply an
16 evidentiary fact for you to take into consideration along
17 with the other evidence in the case, and it should be given a
18 weight that you decide it should have.

19 And, finally, you're going to hear a lot about
20 reasonable doubt. And what is reasonable doubt. Reasonable
21 doubt is the kind of doubt that would cause a person to
22 hesitate to act. Proof beyond a reasonable doubt is proof
23 that leaves you firmly convinced of the Defendant's guilt.
24 So if you did what you said you were going to do at the
25 beginning of the week and you came into this courtroom

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1 without knowing anything about this case, having no
2 knowledge, did no research on your own or anything like that
3 and you held to that oath where you would give a fair shake
4 to the State and to the Defendant, and you now, after hearing
5 all of the testimony from that stand and seeing all the
6 evidence, think that that Defendant is guilty of armed
7 robbery, kidnapping, assault and battery and possessing a
8 weapon, then we've proven our case beyond a reasonable doubt.
9 Because you didn't have any thoughts about it before, and if
10 you now think that he's guilty, well, that's beyond a
11 reasonable doubt.

12 I'm going to have a seat now and let the Defense counsel
13 talk to you. Then I'll be back up in just a moment to finish
14 up with you.

15 THE COURT: Counsel for Defense.

16 MR. MELLARD: Thank you.

17 CLOSING STATEMENT

18 BY MR. MELLARD:

19 I'm not going to keep y'all very long. Y'all just heard
20 from Mr. Archie Hardin. Y'all just heard his testimony, so
21 I'm not going to go all back through it with y'all. But I do
22 want to talk about one thing, and that is Archie Hardin is
23 not guilty of armed robbery. He's not guilty of kidnapping.
24 He's not guilty of assault and battery of a high and
25 aggravated nature. He's not guilty of any of the crimes he's

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1 charged with.

2 Now, when we get through with our closings, the Judge is
3 going to tell you about the presumption of innocence. And
4 she's going to tell you that this is an important rule of law
5 that a Defendant is always presumed to be innocent. She's
6 going to tell you how it's a substantial right to which every
7 Defendant is entitled. But as you've seen this whole week
8 during this trial, police officers never gave Mr. Hardin this
9 presumption. They never gave him the presumption of
10 innocence. From the moment they drove up to his apartment,
11 they presumed he was guilty. To the police, this case is
12 simple, follow the dot. That's their case. Follow the dot
13 on the map and whoever's around when you get to that dot,
14 arrest them. That's their theory. That's exactly what they
15 did. They followed the dot and they arrested the first
16 person that they saw. From day one, the police believed that
17 Archie Hardin was one of the people who robbed the T-Mobile
18 Store in Orangeburg, South Carolina. They feel the same way
19 today. They feel it's Archie Hardin and somebody else. They
20 have never even considered anything other than that. When
21 Mr. Hardin tried to tell the police that a person named Black
22 had borrowed his car, they didn't believe him. They didn't
23 care. The dot that lead them to Archie Hardin, and so Archie
24 Hardin must be guilty. When Mr. Hardin offered to help the
25 police find Black, they turned him down. We heard from

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1 Officer Wade of the Columbia Police Department that Archie
2 gave him an envelope, which he said could locate Black. WE
3 heard form Archie today that he gave a envelope which had
4 Black's girlfriend, her address, to the police. Nobody
5 followed that up. Nobody cared. We heard from Mr. Hardin
6 that he talked to Sergeant Stokes and he told Sergeant Stokes
7 about Black. Stokes didn't follow up. We heard from Officer
8 Cain today. Officer Cain used to be a probation officer.
9 All right. Officer Cain knows that in that probation file
10 you've got the person's name, you've got his alias, you've
11 got his picture,, you've got his address, you've got his next
12 of kin's address. You've got all the information you need to
13 locate a person on probation. When Mr. Hardin told Officer
14 Cain that Black was on probation in Richland County, Officer
15 Cain actually checked it out. And what did they find? They
16 found that four people, three or four people were in Richland
17 County on probation with the alias of Black. They never
18 checked it out. They never found out who this person Black
19 was, even though it was so simple to do.

20 There is no doubt that the T-Mobile was robbed, okay?
21 There's no doubt about that. And there's no doubt that the
22 employees of the T-Mobile went through a terrible, terrible
23 experience. And it's absolutely traumatic. The problem is
24 that human beings are not always perfect when we try to
25 identify somebody. We know that from our own experiences.

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1 We're not perfect when we're having a good day. And we're
2 not perfect when we're having the worst day of our lives.

3 Every person in this room has experienced a situation
4 where you have seen somebody and you thought you recognized
5 them. And you walk up to them -- maybe it's a former
6 boyfriend, girlfriend, maybe it's a friend to you from high
7 school. Maybe it's somebody you work with. And you've
8 walked up to them and you've turned them around and it's not
9 them. Or you started talking to them. And then once you
10 talked to them, you realize it's not them. Human beings are
11 not one hundred percent when it comes to identification.
12 We're not.

13 There are only so many body types in this world. There
14 are only so many facial features in this world. There are
15 only so many hairstyles in this world. People who have the
16 same features tend to look a like. Now, look at the
17 description given by the employees of T-Mobile. None of them
18 gave a description of hair color. None of the gave a
19 description of facial hair. None of them gave a description
20 of facial features. Instead, they focused on the clothing
21 that the robbers were wearing. Thomas Sims, he gave a couple
22 of descriptions and each one was different from the other.
23 In his written statement, he told police the robber was a
24 tall guy wearing a black shirt and khaki pants. That was it.
25 No hair, no facial features, nothing. In his 9-1-1 call,

1 Thomas Sims gives a different description. Now, the two
2 people are wearing masks. One has on khakis with a black
3 shirt. The other one has on shorts. In his testimony
4 yesterday, he gives a third description. Now the person has
5 on a baseball cap. Now the person has on dark glasses. And
6 now you can only see the person from the nose down. But,
7 again, he gives no facial features, no hair, no facial hair,
8 nothing. It's all about the clothes. Now, he was shown a
9 picture. He was shown a picture on a cell phone. You'll
10 have a big eight by eleven picture back there. But basically
11 what we hear on the stand, he was showed a picture on
12 something about like this. And the person in the picture was
13 not wearing any of the clothes described by Thomas Sims.
14 He's got a blue shirt on. There's no black hat. There's no
15 sunglasses. But he identified that person. And the only way
16 he could have identified that person is by his face, but he
17 didn't see his face. He never described his face to police.

18 | Look at Jarron Weaver. His description is entirely
19 different from Thomas Sims' description. Jarron Weaver says
20 the guy was wearing a gray undershirt, a black shirt over
21 that, a black baseball cap and khaki pants. But, again, Mr.
22 Weaver never described the face of the person. But when they
23 were shown that picture on that phone, it was a gray
24 undershirt on the person. It wasn't a baseball cap on the
25 person, but yet he identified the person. He identified the

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1 person's face.

2 Kirstie Berry, same thing. Her description is entirely
3 different from Thomas Sims or Jarron Weaver. Kirstie Berry
4 says a long sleeved white shirt. She says a black short
5 sleeved shirt beneath that. She says mechanics gloves.
6 Nobody has even mentioned mechanics gloves. And she says
7 white shirt and a black male about fifty. Again, she never
8 described the face of the person who robbed her.

9 Now, I want you to understand, nobody in this room is
10 saying that Mr. Sims or Mr. Weaver or Ms. Berry did anything
11 wrong. Right? They did the best they could with the
12 information they had. But think about the information that
13 they had. First, they had just experienced a very traumatic
14 event, probably the worst thing that has ever happened to
15 them in their life. Second, none of them could describe the
16 facial features, nothing. Third, and we heard it from all
17 three of them on the stand, all of them are aware that the
18 police are tracking the iPad of Thomas Sims. They all know
19 that. An hour or so later they're shown a single photo of a
20 single individual, leaning on a car with a police officer
21 standing in the background. And then these people are asked
22 to pick, you know, pick him out. I mean, how could they pick
23 out somebody like this? There was no six-pack lineup. On
24 TV, they'll six people in a room, they'll look at them. And
25 they say, yeah, I think it's number four. They'll compare

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1 them to other people. And all the people they bring into the
2 room are similar people. They didn't do that in this case.
3 They didn't prepare six photographs of similar people, put
4 them on a lineup and say, could you please tell us if any of
5 these people are a person that did the robbery. No. They
6 gave them one photo of one person with a police officer in
7 the background after these people were aware that they were
8 tracking the iPad.

9 In America, every person accused of a crime is
10 guaranteed a fair trial. But in order to have a fair trial,
11 the police have to conduct a fair and thorough investigation.
12 In this case, this investigation has been anything but fair
13 and has been anything but thorough. If you need proof that
14 Archie Hardin was presumed guilty from day one, just think
15 about the testimony of William Ketcherside. That was the guy
16 that was the State's experts in collection of DNA and
17 collection of fingerprints. And what do we hear from
18 Investigator Ketcherside? Well, the first thing we heard is
19 that each person's DNA is different. Mine is different than
20 the Solicitor's. The Solicitor's is different from the
21 Judge. The Judge is different from the Court Reporter,
22 everybody's different; right? And we heard that DNA is found
23 in a person's blood, a person's saliva, a person's body hair,
24 hair on a person's head, a person's skin cells. So DNA is a
25 crime fighting tool that can help the police identify people.

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1 We also heard about fingerprints. They're also a tool that
2 police can use to identify people involved in a crime.

3 Now, Ketcherside said on the day of the robbery he
4 collected some duct tape from the T-Mobile. And if you
5 remember the testimony of the T-Mobile employees, the duct
6 tape used in the robbery was brought into the store by the
7 robbers. I believe Mr. Weaver said we don't keep duct tape
8 in here. And I believe Mr. Weaver and Mr. Sims both said it
9 was brought in by the robbers.

10 Now, unless these robbers wear gloves twenty-four hours
11 a day, everyday of their lives, it's going to be reasonable
12 to think that their fingerprints are going to be on that duct
13 tape. And think about how people cut duct tape, right?
14 Usually, it's one of two ways. You either do it with scissors
15 or you tear it with your teeth. So DNA would be on that duct
16 tape. Duct tape is sticky. So it's reasonable to think that
17 the robbers skin cells and their hair would be on that duct
18 tape. There would be DNA on the duct tape. Did Ketcherside
19 bother to do anything with the duct tape? Did he bother to
20 test it for fingerprints? Did he bother to test it for DNA?
21 No. He didn't. He didn't need to because the cops have
22 already think Mr. Hardin is guilty.

23 When he was on that stand, Mr. Ketcherside or Officer
24 Ketcherside, we had to stop before he cut into those bags.
25 And we had to go get some latex gloves and put them on. And

1 he did that because he didn't want to contaminate that duct
2 tape. He did that because the duct tape could be tested for
3 fingerprints and DNA in some other case. That's what he
4 said. But he didn't bother to test it in this case. Think
5 about what else Ketcherside told you on the witness stand.
6 He found fingerprints on a Nexus box that was at the crime
7 scene, one of those phone boxes that was at the crime scene.
8 He did this -- he did test the item for fingerprints, he did.
9 And what came back? They didn't belong to Mr. Hardin. But
10 did he go further? Did he take the fingerprints from that
11 box and run them through his database so he could find out
12 who the person was? No. He didn't bother to do it. There
13 was DNA found on the Toyota that Mr. Hardin loaned to Black.
14 DNA was on the driver's side door, passenger's side door,
15 both back doors and the steering wheel. That DNA was never
16 tested. There was DNA on two guns that were used in the
17 robbery. They never tested the DNA. The State has in its
18 possession DNA and fingerprint evidence that could identify
19 the persons involved in the T-Mobile robbery beyond a
20 reasonable doubt. They have, in its possession, DNA and
21 fingerprint evidence that can prove Mr. Hardin is not guilty.
22 They refuse to test it.

23 The State, as you've heard here today, they have to
24 prove their case beyond a reasonable doubt. And in a minute
25 they're going to get up here and they're going to tell you

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1 they've met that burden. They're going to tell you they've
2 proven Archie Hardin guilty beyond all doubt. But if you're
3 left wondering whose DNA is on that duct tape, that's
4 reasonable doubt. If you're left wondering whose DNA is on
5 that Toyota Corolla, that's reasonable doubt. If you're left
6 wondering about whose DNA is on the guns, that's reasonable
7 doubt. If you're left wondering whose fingerprints are on
8 that Nexus box -- we know they're not Mr. Hardin's -- that's
9 reasonable doubt. If you were left wondering what role he
10 played in the T-Mobile robbery, that's reasonable doubt. If
11 you're wondering why nobody ever bothered to find Black. He
12 was a probation guy.

13 They only had to look for four people and once you look
14 in the files, it's easy to find. Reasonable doubt. If you
15 were left wondering whether the robbery could have been done
16 by someone other than Archie Hardin, that's reasonable doubt.
17 The State of South Carolina has presented half a case.
18 They've deliberately left out DNA evidence and fingerprint
19 evidence that could definitively point to the two people
20 involved in the robbery and could clear Mr. Hardin, and that,
21 ladies and gentlemen, is reasonable doubt.

22 THE COURT: Solicitor?

23 MS. CORNWELL: Thank you, Your Honor. Counsel

24 DEFENSE - CLOSING STATEMENT

25 BY MS. CORNWELL:

1 I was afraid for my life. I thought it would never end.
2 I was traumatized. Those are the statements that Thomas
3 Sims, Jarron Weave and Kirstie Berry made. You heard it on
4 the 9-1-1 tapes, the fear and the anguish in their voice as
5 they tried to tell 9-1-1 what happened. They were terrified.
6 They were afraid that that man and his accomplice would come
7 back. They were begging for help.

8 At the beginning of this trial, Defense counsel told you
9 a cute little cliché about how appearances aren't always what
10 they seem. Then they wanted to go into each and every one of
11 these victims' description of the victim [sic]. Well, was it
12 a gray undershirt or was it a white undershirt? Did you talk
13 about whether he had gray hair or black hair? You didn't
14 mention his goatee, did you?

15 Those people had just been through what is probably
16 going to be the most horrible that will ever happen to them.
17 They didn't know if they were going to come out of that store
18 alive that day. And they want to pick on whether or not they
19 wrote down and stating it was a gray shirt or a white shirt
20 or whether one person said gloves and another person didn't?
21 Come on now. Really?

22 Where I'm from -- actually, but what they can't argue is
23 that they all identified this Defendant as the man who robbed
24 them. They all identified that Defendant as the man who
25 kidnaped them and Kirstie Berry identified that man as the

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1 in the face by that Defendant when he wanted to bring here
2 back in the store. She told you she was face to face with
3 him when he punched her. She was the one that was told to
4 get on the ground, and being as afraid and scared as she was,
5 she couldn't get on the ground as quickly as this Defendant
6 wanted her to. So what did he do? He took this gun and he
7 bashed her in the back of the head causing her to fall on the
8 ground. Then he duct taped her hands and her feet, caused a
9 big knot in the back of her head. EMS had to be called. She
10 had to be checked out. She also had her hands duct taped and
11 her feet duct taped. She also was a hundred percent positive
12 that that's the man that did this to her.

13 We heard from Lieutenant Turkvant. She was the first
14 responder. She secured the scene. She's also the one that
15 found out that this Defendant stole the security equipment
16 from the store. Just trying to be savvy, didn't want to get
17 caught. We heard from Investigator Sam Norton. He responded
18 to the apartment complex behind T-Mobile where two
19 eyewitnesses lived. He was able to use surveillance video
20 and he told you he saw two black men jump the fence, one
21 carrying a box, get into a dark gray four-door Toyota. He
22 gave a description of suspects to the other investigators.
23 And remember the Defendant is found in possession of a dark
24 gray Toyota Corolla. We heard from Hyrett Hamilton. She
25 also said two black men jumped the fence with boxes in their

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1 hands. And she said they had black back packs. Mr. Sims'
2 back pack is a black back pack. She also described the
3 subjects dressed in black wearing black gloves and a black
4 hat, which despite defense counsel assertions, matches the
5 description that each and every victim gave. We heard from
6 Destiny Brown. Again, she saw the same thing. Black men,
7 black baseball caps, black gloves, black shirts, leave in a
8 gray Toyota.

9 You heard from lead investigator Sergeant John Stokes.
10 He spoke to the Defendant. He said Black made me do it.
11 Then he wanted to change his story again and say no, I didn't
12 have anything to do with it. Let me ask you how much sense
13 this makes? Somebody is a violent criminal and does
14 something as violent and horrifying as an armed robbery,
15 kidnapping, clearly they're doing that because they want
16 what's in that store. They want what those people have.
17 Does it make any sense that somebody that's going to force
18 somebody to do something would then let that person go to
19 their own apartment, put all of the items that they stole in
20 that person's apartment, along with both guns, and just leave
21 them there to come back later on? That doesn't make any
22 sense. The Defendant's story doesn't make any sense, because
23 he's lying. He's the one that committed these crimes. When
24 he was in bond court, he got angry that the victims got to
25 tell about their horrific events. And so why he wanted to

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1 tell the judge at the beginning and then again at the end,
2 oh, I'm innocent. He didn't want to hear that when the
3 victims were saying exactly what this Defendant did to them
4 and exactly how it effected their lives. He wanted to
5 interrupt and interject his own theory of that. And when he
6 did, he got angry and he admitted the truth. He said, I'm
7 guilty.

8 We also heard from Investigator Ketcherside. He
9 photographed and collected the evidence and talked about
10 fingerprints. He told you why he wouldn't have found the
11 fingerprints if the Defendant was wearing gloves. He also
12 explained to you that even if the Defendant wasn't wearing
13 gloves, fingerprints are not always there and they're hard to
14 get. If you've ever tried to give fingerprints for a job and
15 you've had to have your fingers rolled, sometimes they have
16 to roll them several times just to get proper fingerprints.
17 And that's when they're trying to get a fingerprint.

18 He talked about touch DNA and the fact that they didn't
19 need to test DNA in the car because the Defendant admitted
20 possession. He also told you that the Defendant was in
21 possession of both firearms and the SLED police is to have
22 all suspects before submitting touch DNA. SLED does all of
23 the DNA analysis for every county in the state. They have a
24 lot to do. But in addition to that, they want to talk to you
25 about you know, how this case hinges on DNA and why wasn't

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1 DNA tested. The DNA could have, you know, proven the
2 innocence. By the same token, if we would have tested the
3 DNA in the car and in the gun, which were both in possession
4 of the Defendant, which Defendant claimed was his, at least
5 in the car situation, and his DNA would have come back, then
6 what they would have said? Oh, well, they were found in his
7 possession. Of course, his DNA is going to be on there.
8 That doesn't mean he did anything. They want to have it both
9 ways and they can't do that.

10 You also heard a lot about this whole Black thing and
11 how DNA evidence could have pointed to Black. And how
12 fingerprint evidence could have pointed to Black. Well, we
13 know that there were two people involved in this robbery.
14 And you've heard testimony that it's an on-going
15 investigation. It's not as if they just haven't looked for
16 Black and haven't done anything with it, it's an on-going
17 investigation. But, again, that's Defense counsel's strategy
18 to distract you from the truth of the matter.

19 This trial and this case isn't about a co-defendant.
20 It's about that Defendant right there and the guilt that he
21 has in the armed robbery, kidnapping and assault and battery
22 of these victims.

23 We heard from Investigator Darius Wade. He's the one
24 that saw Thomas' iPad showing at the Defendant's apartment.
25 He pulled up to the apartment and found a dark gray Toyota in

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1 that Defendant's possession, which that Defendant claimed.
2 He got consent to search the apartment and inside the
3 apartment he found the stolen items from T-Mobile. He found
4 Thomas Sims' iPad several feet away and he saw the guns.
5 Sergeant Rashad Moore collected the evidence from the
6 Defendant's apartment. And, all the evidence that was in
7 this Defendant's apartment is the evidence that was stolen
8 from the T-Mobile, including the cardboard box. And we saw
9 the cardboard box in the pictures from the store. We also
10 saw the cardboard box in the pictures at the apartment. He
11 had Thomas Sims' book bag in there that they had put various
12 phones in. There was another black leather bag, a black
13 Jordan bag which had the guns, and you have both guns in
14 there.

15 We heard from Steve Reynolds who's the owner of T-
16 Mobile. He told you that the merchandise stolen numbered
17 thirty-seven thousand two hundred ninety-nine dollars and
18 fifty-seven cents. He also told you that when the
19 merchandise was returned, they got everything back. So even
20 if this second accomplice or whatever theory they want.
21 They're going to say they didn't split the evidence. They
22 didn't do anything, that man just got it and took it all in
23 his apartment. Does that make sense to you?

24 The last witness we called, Corporal Leonard Cain.
25 Corporal Cain tracked the Defendant on and went to Columbia

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1 and went to several different locations. He told you every
2 time he went to that location, when he went to the hotel, he
3 saw that Defendant with his gray car. You also heard that
4 when he got back to the Defendant's apartment, the Defendant
5 told him yeah, I saw you at another location and you left.
6 So admits that where Lieutenant or Corporal Cain was going,
7 that's where that man was. And that man was with Mr. Sims'
8 iPad the entire time. He sent a photograph of Defendant back
9 to officers at T-Mobile. And that's the photograph that each
10 and every victim identified as the person who robbed them.
11 And that picture is a picture of that man sitting right
12 there. Finally, he escorted the Defendant to the Orangeburg
13 County Sheriff's Office.

14 Finally, we got to hear from Archie Hardin himself. And
15 remember, he's the victims in this case. This is all about
16 Archie. He's the victim. He was taken advantage of. You
17 heard that he lived in Virginia, which is probably
18 coincidence, since the person that walked inside the store
19 was trying to find an iPad for his daughter in Virginia.
20 This isn't his first time for stolen goods. Apparently, he's
21 always the victim. He's always the patsy that happens to
22 have to stolen goods in his possession. You know, always
23 wrong place wrong time for Mr. Hardin. Everyone else in this
24 case is lying. The police are lying. I'm lying. I'm
25 tripping him up. His version is the only version that's the

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1 truth. You can't believe anybody else. You can't believe
2 the evidence. You can't believe the testimony. The only
3 testimony that's true is his. He says he has no reason to
4 lie. Well, I'd say it's a pretty good reason to lie when you
5 find stolen items and guns in your apartment. He also claims
6 that he was never in Orangeburg but then he discussed --
7 yeah, and then when I was taken back to Orangeburg. To take
8 him back somewhere, it means you've been there before. He
9 was there before. He was in Orangeburg that morning robbing
10 a T-Mobile and kidnapping each one of these victims. And
11 then, of course, not only was law enforcement unfair to him,
12 not only was I unfair to him, but the judge was unfair to him
13 too in the bond court because, you know, he wouldn't let him
14 talk. He would let him interrupt the victims and say what he
15 needed to say in bond court. So everybody else was unfair to
16 him, but his version, that's the truth. Commonsense tells
17 you better than that. Y'all are better than that.

18 The truth is the Defendant's guilty of armed robbery.
19 The State has to prove each and every element. Took and
20 carried away, well, he took items out of the office and
21 carried them to his apartment. Check that item off, we got
22 that element. He took the personal property of another.
23 Well, he took the personal property belonging to Mr. Sims and
24 to T-Mobile; check that one off. With the intent to deprive
25 them of possession. We know he wasn't going back to T-Mobile

1 to take them back their items. We know he wasn't going to
2 track down Mr. Sims and give him back the stuff. By use of
3 force, threats or intimidation. He had a gun and he told the
4 victims he would shoot them. And while he was armed with a
5 deadly weapon. Both of these items were used in the
6 commission of this crime. This one was loaded. That's a
7 deadly weapon.

8 The State has met each and every element of this crime
9 and proven them beyond a reasonable doubt. And as such, you
10 should find that Defendant, Archie Hardin, guilty of armed
11 robbery.

12 Now we're going to look at the kidnapping. He's charged
13 with three counts of kidnapping. To find kidnapping he
14 seized, confined, inveigled, decoyed, abducted or carried
15 away. Well, he forced Thoms Sims and Jarron Weaver in the
16 back of the store. He punched Kirstie Berry in the face and
17 pulled her back inside the store, all against their will. He
18 definitely unlawfully seized them, I would say that Thomas
19 Sims, Jarron Weaver, and Kirstie Berry are all people. By
20 any means. Well, in this case, the means was at gunpoint.
21 And without authority of law. Clearly, he didn't have the
22 authority of law to do that to those poor people. The State
23 has proven each and every element of kidnapping beyond a
24 reasonable doubt. And as such you should find that Defendant
25 guilty.

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1 He's also charged with assault and battery of a high and
2 aggravated nature. Here, he unlawfully -- well, yes, it was
3 unlawful. He was committing an armed robbery and kidnapping.
4 Injured another. He injured Kirstie Berry. And great bodily
5 injury of another results or the act was accompanied by means
6 likely to produce death or great bodily injury. Well, again,
7 guns kill people. We've heard how many awful stories of when
8 a gun accidentally discharged and killed somebody? We've
9 also know that being pistol whipped and beating somebody in
10 the back of the head can also caus death at times. So the
11 fact that it is an act accompanied means likely to produce
12 death or great bodily injury, we've met that burden as well.
13 The State has proven each and every element of assault and
14 battery of a high and aggravated nature beyond a reasonable
15 doubt.

16 Now, the Judge is also going to tell you about a couple
17 of other assault charges. She's going to tell you about
18 assault and battery first and assault battery second. If you
19 find the Defendant guilty of assault and battery of a high
20 and aggravated nature, you don't even need to consider those.
21 And the Judge will tell you that.

22 Finally, he's charged with possession of a weapon during
23 the commission of a violent offense. In this case the
24 Defendant possessed a weapon, a firearm or knife, and visibly
25 displayed it. Well, here are your two firearms, right here.

1 They were visibly displayed when they were pointed at the
2 victims as they were forced to the back when this T-Mobile
3 Store was being robbed. And during the commission of a
4 violent crime. And as I've stated and as the Judge will
5 inform you, if you find him guilty of armed robbery or
6 kidnapping or assault and battery of a high and aggravated
7 nature, and definitely find him guilty of all three, he's
8 definitely guilty of this crime as well.

9 And now that you've heard the testimony and you've seen
10 all the evidence, I'm quite certain that you are going to
11 find that the State has proven beyond a reasonable doubt that
12 Archie More Hardin, that Defendant, is guilty of armed
13 robbery. He's guilty of kidnapping Thomas Sims, Jr. He's
14 guilty of kidnapping Jarron Weaver. He's guilty of
15 kidnapping Kirstie Berry. He's also guilty of assault and
16 battery of a high and aggravated nature and he's guilty of
17 having those firearms in his possession during the commission
18 of those crimes.

19 COURT'S CHARGE

20 THE COURT: Ladies and gentlemen, now is the time
21 for me to instruct you on the law of this case. The
22 indictments in this case allege six different offenses
23 against the Defendant. There are three indictments for
24 kidnapping, one indictment for armed robbery, one indictment
25 for assault and battery of a high and aggravated nature, and

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1 one indictment for possession of a weapon during the
2 commission of a violent crime. Each indictment charges a
3 separate and distinct offense. You must decide each
4 indictment separately on the evidence and the law applicable
5 to it, uninfluenced by your decision as to any other
6 indictment. The Defendant may be convicted or acquitted on
7 any or all of the offenses charged. You will be asked to
8 write a separate verdict of guilty or not guilty for each of
9 the indictments.

10 The Defendant has pled not guilty to each of these
11 indictments and the plea of not guilty puts the burden on the
12 State to prove the Defendant guilty of each indictment before
13 he can be convicted of that indictment. A person charged
14 with committing a criminal offense in South Carolina is never
15 required to prove himself innocent. I charge you that it is
16 an important rule of the law that a defendant in a criminal
17 trial, no matter what the seriousness of the charge may be,
18 will always be presumed innocent of the crime for which the
19 indictment was issued unless guilty has been proven by
20 evidence satisfying you of that guilty beyond a reasonable
21 doubt. This presumption of innocence does not end when you
22 begin your deliberations but it accompanies the Defendant
23 throughout the trial until you reach a verdict of guilt based
24 on evidence satisfying you of that guilt beyond a reasonable
25 doubt. The presumption of innocence is like a robe of

1 righteousnes placed about the shoulders of the Defendant,
2 which remains with the Defendant until it has been striped
3 from the Defendant by evidence satisfying you of the
4 Defendant's guilt beyond a reasonable doubt. So presumption
5 of innocence is not a mere legal theory. It's not just a
6 legal phrase. It's a substantial right to which every
7 defendant is entitled unless you, the jury, are satisfied of
8 the evidence of the Defendant's guilt beyond a reasonable
9 doubt.

10 What is a reasonable doubt in the law? A reasonable
11 doubt is the kind of doubt that would case a reasonable
12 person to hesitate to act. The State has the burden of
13 proving the Defendant guilty beyond a reasonable doubt. Some
14 of you may have served as jurors in civil cases where you
15 were told it is only necessary to prove that a fact is more
16 likely true than not true, such as by a greater weight or the
17 preponderance of the evidence. In criminal cases the State's
18 proof must be more powerful than that. It must be beyond a
19 reasonable doubt. Proof beyond a reasonable doubt is proof
20 that leaves you firmly convinced of the Defendant's guilt.
21 There are very few things in this world that we know with
22 absolute certainty. And in criminal cases the law does not
23 require proof that overcomes every possible doubt, but if
24 based on your consideration of the evidence you are firmly
25 convinced that the Defendant is guilty of the crimes charged,

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1 you must find the Defendant guilty. If, on the other hand,
2 you think that there is a real possibility that the Defendant
3 is not guilty, you must give the Defendant the benefit of the
4 doubt and find him not guilty.

5 I remind you that during this trial you and I have
6 certain duties to perform. As a trial judge it's my
7 responsibility to preside over the trial of the case and I
8 also have the duty to rule on the admissibility of evidence
9 offered during the trial. You are to consider only the
10 competent evidence before you. If there is any testimony
11 ordered stricken from the record in this case during this
12 trial, you must disregard that testimony. You are to
13 consider only the testimony which has been presented from the
14 witness stand. Any exhibits which have been made part of the
15 record in this case and any stipulations of counsel. In this
16 case, there has been testimony -- in addition to that, you
17 have a duty to charge -- I have a duty to charge you the
18 applicable law in this case.

19 As the presiding judge, I am the sole judge of the law
20 in this case and it is your duty as jurors to accept and
21 apply the law as I now state it to you. If you already have
22 any idea as to what the law is or what the law is or what the
23 law ought to be and it does not agree with what I now tell
24 you the law is, you must abandon this idea because you are
25 sworn to accept the law and apply the law exactly as I state

1 it to you.

2 In ever case tried in this court before a jury, the jury
3 becomes the sole and exclusive judge of the facts in the
4 case. I cannot intimate, state, comment on or make any
5 statement to a trial jury about the facts in a case since
6 you, the jury, are the sole judge of the facts in this case.
7 You're not to infer from what I have said during the process
8 of the trial in ruling upon the admissibility of evidence or
9 otherwise or anything that I say now during the course of
10 this instruction to you, that I have any opinion about the
11 facts in this case. The law does not allow me to have an
12 opinion about the facts in this case. This is a matter
13 solely for you, the jury, to determine. As jurors, it is
14 your duty to determine the effect, the value, the weight, and
15 the truth of the evidence presented during this trial.

16 There are two types of evidence which are generally
17 presented during a trial, direct evidence and circumstantial
18 evidence. Direct evidence is the testimony of a person who
19 claims to have actual knowledge of a fact, such as an
20 eyewitness. It is evidence which immediately establishes the
21 main fact to be proved. Circumstantial evidence is proof of
22 a chain of facts and circumstances indicating the existence
23 of a fact. It is evidence which immediately establishes
24 collateral facts, in which the main fact may be inferred.
25 Circumstantial evidence is based on inference and not on

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1 personal knowledge or observation. The law makes absolutely
2 no distinction between the weight or value to be given to
3 either direct or circumstantial evidence, nor is a greater
4 degree of certainty required of circumstantial evidence than
5 of direct evidence. You should weigh all of the evidence in
6 a case. After weighing all of the evidence, if you're not
7 convinced that the Defendant -- of the guilt of the Defendant
8 beyond a reasonable doubt, you must find the Defendant not
9 guilty.

10 In order to establish criminal liability, criminal
11 intent is required. For example, the mental state required
12 to be proven by the State for a particular crime might be
13 purpose, intent, knowledge, recklessness, or criminal
14 negligence. Criminal intent must be proven by the State
15 beyond a reasonable doubt. Criminal intent is always a
16 matter that must be determined by the jury from the
17 circumstances surrounding the situation. There is no way to
18 prove criminal intent to a mathematical certainty. There is
19 no way medical science can dissect a person's brain and
20 determine what the person had in mind. The law says that
21 criminal intent may be inferred from the circumstances shown
22 to have existed. And this is how you make a determination of
23 whether or not the elements requiring intent was present. It
24 is not necessary to establish intent by direct positive
25 evidence, but intent may be established by inference in the

1 same way as any other fact by taking into consideration the
2 acts of the parties and all of the facts and circumstances of
3 the case. Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what the Defendant
5 intended to do based on the circumstances shown to have
6 existed. Criminal intent can arise from an action or a
7 failure to act. It may arise from negligence, recklessness
8 or an indifference to duty or to consequences that is
9 considered by the law to be equivalent of criminal intent.

10 If the Defendant is found possessing recently stolen
11 goods, this may be used as evidence that the Defendant stole
12 the goods. This would simply be an evidentiary fact to be
13 taken into consideration by you, along with the other
14 evidence in the case. And you may give it the weight that
15 you decide it should have. An issue in this case is the
16 identification of the Defendant as the person who committed
17 the crime charged. The State has the burden of proving
18 identity beyond a reasonable doubt. You must be satisfied
19 beyond a reasonable doubt that the accuracy of the
20 identification of the Defendant before you may convict the
21 Defendant.

22 Identification testimony is an expression of belief or
23 impression by a witness. You must determine the accuracy of
24 the identification of the Defendant. You must consider the
25 believability of each identification witness in the same way

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1 as any other witness. You may consider whether the witness
2 had an adequate opportunity to observe the offender at the
3 time of the offense. This will be affected by things like
4 how long or short a time was available. How far or close the
5 witness was, the lighting conditions and whether the witness
6 had a chance to see or know the person in the past.

7 Once again, I instruct you that the burden of proof is
8 on the State and extends to every element of the crime
9 charged. And this specifically includes of proving beyond a
10 reasonable doubt the identity of the Defendant as a person
11 who committed the crime. If, after examining the testimony
12 you have a reasonable doubt as to the accuracy of the
13 identification, you must find the Defendant not guilty.

14 If a crime is committed by two or more people who are
15 acting together in committing a crime, the act of one is the
16 act of all. A person who joins with another to commit an
17 unlawful act is criminally responsible for everything done by
18 the other person, which happens as a probable and natural
19 consequence of the acts done in carrying out the common plan
20 or purpose. For example, two people can be guilty of killing
21 another person when only one of the two had a gun. There was
22 only one bullet and only one of the two fired the shot that
23 caused the death. If two or more people are together, acting
24 together, assisting each other in committing the offense, the
25 act of one is the act of all or as it sometimes is referred

1 to as the hand of one is the hand of all. Prior knowledge of
2 that crime -- Prior knowledge that a crime is going to be
3 committed without more is not sufficient to make a person
4 guilty of that crime. Mere knowledge that another person is
5 going to commit a crime, even if the Defendant is present
6 when the crime is committed, is not sufficient to convict the
7 Defendant as a principal.

8 Guilt as a principal is shown by actual constructive
9 presence at the scene as a result of a prior arrangement.
10 Therefore, a finding of a prior arranged plan or common
11 scheme is necessary for a finding of guilt as a principal.
12 The State must prove beyond a reasonable doubt by competent
13 evidence the theory of the hand of one is the hand of all. A
14 principal in a crime is one who either actually commits the
15 crime or is present aiding, abetting or assisting in
16 committing the crime. When a person doesn't act in the
17 presence of and with the assistance of another, the act as
18 done by the -- where two or more acting with a common plan or
19 intent re present at the commission of a crime, it does not
20 matter who actually commits the crime. All are guilty. The
21 hand of one is the hand of all.

22 Present at the commission of a crime means to be
23 sufficiently near to aid and abet and assist in the
24 commission of the crime. However, mere presence at the scene
25 of a crime is not sufficient to convict one as a principal on

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1 the theory of aiding and abetting.

2 Intent is also a necessary element for there to have
3 been a common design or intent to commit the crime. And that
4 crime must have been committed pursuant thereto with the
5 person aiding and abetting by some overt act. Intent means
6 intending the result which actually occurs, not accidentally
7 or involuntarily. Intent may be shown by acts and conduct of
8 the Defendant and other circumstances from which you may
9 naturally and reasonably infer intent. The State must prove
10 these elements beyond a reasonable doubt.

11 Necessarily, you must determine the credibility of
12 witnesses who have testified in this case. Credibility
13 simply means believability. It becomes your duty as jurors
14 to analyze and to evaluate the evidence and determine which
15 evidence convinces you of its truth. In determining the
16 believability of witnesses who have testified in this case,
17 you may believe one witness over several witnesses or several
18 witnesses over one witness. You may believe a part of the
19 testimony of a witness and reject the remaining part of the
20 testimony of that same witness. You may believe the
21 testimony of a witness in its entirety or reject the
22 testimony of a witness in its entirety. You may consider
23 whether any witness has exhibited to you any interests, bias,
24 prejudice, or other motive in this case. You may also
25 consider the appearance and manner of the witness while on

1 the witness stand. There has been evidence presented that
2 witnesses have made prior statements, which are not
3 consistent with the witnesses' present testimony. You may
4 use this evidence to decide whether to believe the witness.
5 You may also use this evidence of the other contradictory
6 statements to determine the truth of those statements. It is
7 up to you to decide whether to believe the earlier statements
8 or the testimony given at trial. If a witness is shown to
9 have knowingly testified untruthfully concerning any material
10 matter, you may consider this in determining whether you
11 trust the witnesses' testimony as to other matters. You may
12 reject all testimony of that witness or give all or part of
13 the testimony the weight that you think it deserves.

14 You have heard evidence that the Defendant was convicted
15 of a crime, other than the one for which the Defendant is now
16 on trial. This evidence may be considered by you if you
17 conclude that it's true only in deciding the Defendant's --
18 only in deciding whether the Defendant's testimony is
19 believable and for no other purpose. You must not consider
20 the Defendant's prior record as any evidence of Defendant's
21 guilt of the charge we are here for today.

22 A statement alleged to have been made by the Defendant
23 has been admitted into evidence in this case. While the
24 Court has determined that the Statement is admissible, I
25 instruct you that you make the ultimate decision as to

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1 whether or not the Defendant made the Statement. If the
2 Defendant did make a statement, you must determine whether
3 the Statement was made by the Defendant voluntarily and of
4 his own free will. This means that the statement was not
5 caused by pressure, force, fear, threat, coercion or
6 intimidation or by hope of a promise of leniency or reward of
7 any kind. In determining whether the statement was
8 voluntary, you should consider both the characteristics of
9 the Defendant and the details of the questioning. Some of
10 the factors that you must consider are the age of the
11 Defendant, the Defendant's education or lack of education,
12 the Defendant's mental ability or capacity, the Defendant's
13 IQ or intelligence, the Defendant's background and
14 environment, the place and length of the detention. The
15 nature of the questioning and the advice or lack thereof to
16 the Defendant of his Constitutional Rights, including but not
17 limited to the right to remain silent that anything could be
18 used against him in a court of law, the right to have a
19 lawyer present, that if he could not afford a lawyer, a
20 lawyer would be appointed to represent him without any costs,
21 and that he could stop making a statement at any time. You
22 must carefully consider all of the surrounding circumstances
23 before you give any weight to an alleged statement. The
24 State has a burden of proving beyond a reasonable doubt that
25 the alleged statement was voluntary. If you determine that

1 it was, you may give the statement any -- if you determine
2 that it was, you may give the statement any further
3 consideration that you deem proper. You must decide what
4 weight, if any, should be given to the alleged statement. If
5 you determine the alleged statement was not free and
6 voluntary statement of the Defendant, you should not consider
7 the statement at all.

8 The rules of evidence ordinarily do not permit witnesses
9 to testify to opinions or conclusions. An exception to this
10 rule for witnesses we call expert witnesses, a witness who,
11 by education and experience, has become an expert in some
12 art, science, or profession or calling may state an opinion
13 as to relevant and material matters in which the witness
14 claims to be an expert and may also state the reasons for
15 that opinion. You should consider any expert opinion
16 received into evidence in this case, and like any other
17 evidence, give it the weight that you think it deserves. If
18 you decide that the opinion of an expert witness is not based
19 on sufficient education and experience or if you concluded
20 the reasons given in support of the opinion are not sound or
21 that an opinion is outweighed by other evidence, you may
22 disregard the opinion entirely. An expert witness testimony
23 is to be given no greater weight than that of other witnesses
24 simply because the witness is an expert. Further, you are
25 not required to accept an expert's opinion, even though it's

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1 not contradicted.

2 The Defendant is charged with kidnapping. The State
3 must prove beyond a reasonable doubt that the Defendant
4 knowingly and unlawfully seized, confined, inveigled,
5 decoyed, kidnaped, abducted, or carried away another person
6 without the authority of law. To do a thing unlawfully is to
7 do it willful, against the law -- willfully against the law.
8 Knowingly means with the knowledge, consciously, not
9 accidentally. Seize means to take hold of suddenly or
10 forcibly. Confine means to limit, restrict, or enclose
11 within bounds, imprison or shut or keep in. Inveigle means
12 to lure, entice, or lead astray by false representations,
13 promises or other deceitful means. Decoy means to lure by
14 decoy. And decoy is simply to entice a person into a trap.
15 Kidnap is to remove a person against his will by unlawful
16 force or by fraud. Abduct means to carry off secretly or by
17 force for an illegal person. Carry away means to remove.
18 The State does not have to prove the Defendant did all of
19 these things. Instead, if you find beyond a reasonable doubt
20 that the Defendant did any of these things, you may find the
21 Defendant guilty of kidnapping. Something done without the
22 authority of law is something which the law does not
23 sanction, permit, allow, condone or provide justification
24 for. The kidnapping does not have to be for any personal or
25 monetary gain, for any illegal purposes, but may be for any

1 reason whatsoever.

2 The Defendant is charged with armed robbery. In order
3 to prove this offense the State must prove, must first prove
4 beyond a reasonable doubt that the Defendant took personal
5 property from the person or presence of another person.
6 Property is in the presence of a person if it is within the
7 persons reach, inspection, observation or control so that the
8 person could, if not overcome with violence or prevented by
9 fear, keep possession of the property. The State must also
10 prove beyond a reasonable doubt that the Defendant carried
11 the property away intending to permanently deprive the owner
12 of the property, and to keep the property for the Defendant's
13 own use. The slightest removal of the property or the
14 complete possession of the property, even for an instant by
15 the Defendant is sufficient to show a taking and a carrying
16 away of the property. The taking and carrying away of the
17 property must have been done with violence or by putting the
18 owner of the property in fear of violence.

19 Finally, the State must prove beyond a reasonable doubt
20 that the Defendant was armed with a deadly weapon during the
21 robbery. A deadly weapon is any article, instrument or
22 substance which is likely to cause death or great bodily
23 harm, whether an instrument has been used as a deadly weapon
24 depends on the facts and circumstances of each case. The
25 following are examples of instruments which may be deadly

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1 weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a
2 knife, a slingshot, metal knuckles, a razor, gasoline or
3 firebomb or Molotov cocktail and lighter fluid. A gun may be
4 a deadly weapon even if it is not operating. A hand or fist
5 is not normally considered a deadly weapon. However under
6 some circumstances, depending on the manner and means of its
7 use, the wounds inflicted and other relevant facts, a hand or
8 fist may be considered a deadly weapon. It is for you to
9 decide in this case beyond a reasonable doubt whether or not
10 a hand or fist is a deadly weapon. Assault and battery of a
11 high aggravated nature.

12 A person commits the offense of assault and battery of a
13 high and aggravated nature if the person is unlawfully -- if
14 the person unlawfully injures another person and great bodily
15 injury to another person results, or the act is accomplished
16 by means likely to produce death or great bodily injury.
17 Great bodily injury means bodily injury which causes a
18 substantial risk of death or which causes serious permanent
19 disfigurement or protracted loss or impairment of the
20 function of a bodily member or organ.

21 Once you consider the charge of assault and battery of a
22 high and aggravated nature, if you find the Defendant not
23 guilty of that charge, then you can consider the lesser
24 included offense of assault and battery in the first degree,
25 which is defined as follows:

1 A person commits the offense of assault and battery in
2 the first degree if a person unlawfully injures another
3 person and the act either involves non-consensual touching of
4 the private parts of an adult either under or above clothing
5 with lewd and lascivious intent or occur during the
6 commission of a robbery, burglar, kidnapping, or theft.

7 Private means the genital area or buttocks or male or female
8 or the breast of a female. A person may also commit the
9 offense of assault and battery in the first degree if a
10 person unlawfully offers or attempts to injury another person
11 with the present ability to do so and the act either is
12 accomplished by means likely to produce death or great bodily
13 injury or occurred during the commission of a robbery,
14 burglary, kidnapping or theft. Great bodily injury means
15 bodily injury which causes a substantial risk of death or
16 which causes serious permanent disfigurement or protracted
17 loss or impairment of the function of a bodily member or
18 organ.

19 If you have gone to consider assault and battery first
20 degree, and if you find the Defendant not guilty of that
21 charge, you then may consider the lesser included offense of
22 that charge, which is assault and battery second degree,
23 which is defined as follows: A person commits the offense of
24 assault and battery in the second degree if a person
25 unlawfully injures another person or offers or attempts to

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1 injure another person with the present ability to do so and
2 either moderate bodily injury to another person results or
3 moderate bodily injury to another person could have resulted
4 or the act involves the non-consensual touching of the
5 private parts of an adult, either under or above clothing.
6 Moderate bodily injury means physical injury requiring the
7 treatment to an organ system of the body, other than the
8 skin, muscles, and connective tissues of the body, except
9 when there is a penetration of the skin. Muscles and
10 connective tissues that require surgical repair of a complex
11 nature or when treatment of the injuries requires the use of
12 regional or general anesthesia. Private parts means the
13 genital area or buttocks of a male or female or the breast of
14 a female.

15 The last charge is possession of a weapon during the
16 commission of a violent crime, which is defined as follows:
17 The Defendant is charged with the possession of a weapon
18 during the commission of or attempt to commit a violent
19 crime. The State must prove beyond a reasonable doubt that
20 the Defendant was in possession of a firearm or visibly
21 displayed what appeared to be a firearm during the commission
22 of a violent crime. A firearm means any machine gun,
23 automatic rifle, revolver, pistol or any weapon which is
24 designed to or may be readily converted to expel a
25 projectile.

1 In order to find the Defendant guilty of possession of a
2 weapon during the commission of a violent crime, you must
3 first find the Defendant guilty of either committing the
4 violent crime or attempting the commission of a violent
5 crime. Kidnapping, armed robbery and assault and battery of
6 a high and aggravated nature are all considered violent
7 crimes. The State must prove beyond a reasonable doubt that
8 the weapon further advanced or helped in the commission of
9 the crime.

10 Ladies and gentlemen, there are several different
11 verdicts as we have just discussed in which you might find
12 the Defendant. Madam Forelady, it will be your duty to fill
13 out the verdict form. And it's actually pretty self-
14 explanatory. It goes through each of the charges the
15 Defendant is facing. And take no inference as to which order
16 I state these as one must be stated before the other. But
17 the first charge says, as to the charge of kidnapping of
18 Thomas Sims, Jr., we, the jury, unanimously find the
19 Defendant, and you circle one, either guilty or not guilty.
20 As to the charge of kidnapping of Kirstie Berry, again, we,
21 the jury, unanimously find the Defendant either not guilty or
22 guilty. Same thing as to the charge of kidnapping Jarron
23 Weaver. We, the jury, find the Defendant, and you circle
24 either guilty or not guilty. And as to the charge of armed
25 robbery, you then go to that indictment and consider that one

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1 and circle the appropriate verdict. These must be unanimous.
2 And then you go the charge of possession during the
3 commission of a violent crime. And then again you -- we, the
4 jury, unanimously find and circle one, either guilty or not
5 guilty. When you get to the assault and battery of a high
6 and aggravated nature, the instructions, I just told you you
7 must first consider the assault and battery of a high and
8 aggravated nature. If at that stage of the game you find the
9 Defendant guilty, you don't have to consider the other
10 charges, the lesser included charges. If, however, you find
11 him not guilty of that charge, you then go on to assault and
12 battery in the first degree. And the same thing goes with
13 that. If you find him guilty of that, you don't have to
14 consider the lesser charge. If you find him not guilty of
15 that, then you consider the lesser charge of that. Again,
16 your verdict must be unanimous.

17 Once you consider everything and reach a verdict, Madam
18 Forelady, if you would sign the bottom of the verdict form
19 right here and knock on the door. We'll receive your verdict
20 at that time.

21 I'm going to ask you once again to go into the jury
22 room. But, again, you're not allowed to discuss the case
23 quite yet until you receive all of the exhibits and the
24 evidence that was compiled in the case and once you receive
25 that and the bailiff gets that to you, then you may begin

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1 your deliberations.

2 (Jury out at 1:23 p.m.)

3 THE COURT: Any exceptions or additions to the jury
4 charge from either the State or the Defense?

5 MS. CORNWELL: Nothing from the State, Your Honor.

6 MR. STEVENS: Yes, ma'am. At this time, we
7 respectfully again just reiterate our prior requests for the
8 circumstantial evidence charge pursuant to the State versus
9 Logan 405 South Carolina 83 from 2013. I went over the
10 instructions and listening to it we didn't hear the language
11 from State versus Logan even though we specifically requested
12 it.

13 THE COURT: Thank you, Mr. Stevens. The Court did
14 charge the applicable case law, which is relevant, and I
15 understand your objection.

16 MR. STEVENS: Yes, ma'am. Thank you. If I may,
17 Judge, respectfully would you make a copy of our request as a
18 Court's exhibit?

19 THE COURT: Certainly.

20 MR. STEVENS: Thank you, ma'am.

21 THE COURT: Y'all get together and go through all
22 the exhibits now.

23 MR. STEVENS: We already did that.

24 THE COURT: You already did that?

25 MR. STEVENS: Yes, ma'am.

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1 THE COURT: I don't want the bullets to go back
2 with the weapons.

3 MR. STEVENS: Sure.

4 THE COURT: Let's make sure that's separated.

5 COURT REPORTER: Judge, the charge to request is
6 Court's No. 6.

7 (Court's Exhibit No. 6 was marked.)

8 THE COURT: Okay.

9 (Exhibits and verdict forms
10 delivered to jury at 1:25 p.m.)

11 (Alternate jurors excused.)

12 (Jury deliberating at 1:25 p.m.)

13 (Court in recess at 1:25 p.m.)

14 (Court in session at 2:52 p.m.)

15 THE COURT: Thank you everyone. You may have a
16 seat. It's my understanding that we have a verdict.
17 Everyone ready to proceed?

18 MS. CORNWELL: The State is, Your Honor.

19 MR. MELLARD: The Defense is ready.

20 THE COURT: May we have our verdict, please?

21 THE BAILIFF: Yes, Your Honor.

22 (Jury in at 2:52 p.m.)

23 THE COURT: Madam Forelady, has the jury reached a
24 verdict?

25 MADAM FORELADY: We have.

State v Hardin

2/27/15

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1 THE COURT: Would you please hand it to the
2 bailiff.

3 (Madam Forelady complies.)

4 THE BAILIFF: Your Honor, May I approach?

5 THE COURT: Yes, ma'am.

6 (Bailiff hands verdict to the
7 Court.)

8 THE COURT: Madam Clerk, if you'd publish the
9 verdict.

10 THE CLERK: I bring the Court's attention to the
11 State versus Archie M. Hardin, indictment number 2014-GS-38-
12 0888 through 893.

13 As to the charge of kidnapping Thomas Sims, Jr., we, the
14 jury, unanimously find the Defendant guilty.

15 We, the jury, unanimously find the Defendant guilty in
16 the charge of kidnapping Kirstie Berry.

17 As to the charge of kidnapping Jarron Weaver, we, the
18 jury, unanimously find the Defendant guilty.

19 As to the charge of armed robbery, we, the jury,
20 unanimously find the Defendant guilty.

21 As to the charge of possession of a weapon during the
22 commission of a violent crime, we, the jury, unanimously find
23 the Defendant guilty.

24 As to the charge of assault and battery of a high and
25 aggravated nature, we, the jury, unanimously find the

State v Hardin

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1 Defendant guilty.

2 As to the charge of assault and -- I'm sorry.

3 As to the charge of assault and battery second degree,
4 we, the jury unanimously find the Defendant -- I'm sorry.

5 And it's signed and dated February 27th by Madam
6 Foreperson.

7 THE COURT: Would you please poll the jury Madam
8 Clerk?

9 THE CLERK: As I call your name, please stand.
10 Calicha Mack. Is this your verdict?

11 MS. MACK: Yes, ma'am.

12 THE CLERK: Is it still your verdict?

13 MS. MACK: Yes, ma'am.

14 THE CLERK: Thank you.

15 Lloyd Dantzler. Is this your verdict?

16 MR. DANTZLER: Yes, ma'am.

17 THE CLERK: Is it still your verdict?

18 MR. DANTZLER: Yes, ma'am.

19 THE CLERK: Thank you.

20 Christopher Worley. Is this your verdict?

21 MR. WORLEY: Yes, ma'am.

22 THE CLERK: Is it still your verdict?

23 MR. WORLEY: Yes, ma'am.

24 THE CLERK: Thank you.

25 David Dyal. Is this your verdict?

State v Hardin

2/27/15

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1 MR. DYAL: It is.

2 THE CLERK: Is it still your verdict?

3 MR. DYAL: Yes, it is.

4 THE CLERK: Thank you.

5 Devoni Middleton. Is this your verdict?

6 MS. MIDDLETON: Yes, ma'am.

7 THE CLERK: Is it still your verdict?

8 MS. MIDDLETON: Yes, ma'am.

9 THE CLERK: Thank you.

10 Donna Diamond. Is this your verdict?

11 MS. DIAMOND: Yes, ma'am.

12 THE CLERK: Is it still your verdict?

13 MS. DIAMOND: Yes, ma'am.

14 THE CLERK: Thank you.

15 Melvina Ackwood. Is this your verdict?

16 MS. ACKWOOD: Yes, ma'am.

17 THE CLERK: Is it still your verdict?

18 MS. ACKWOOD: Yes, ma'am.

19 THE CLERK: Thank you.

20 David Blanchard. Is this your verdict?

21 MR. BLANCHARD: Yes, ma'am.

22 THE CLERK: Is it still your verdict?

23 MR. BLANCHARD: Yes, ma'am.

24 THE CLERK: Thank you.

25 Sarah Monroe. Is this your verdict?

State v Hardin

2/27/15

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1 MS. MONROE: Yes, ma'am.

2 THE CLERK: Is it still your verdict?

3 MS. MONROE: Yes, ma'am.

4 THE CLERK: Thank you.

5 Henry Felder. Is this your verdict?

6 MR. FELDER: Yes, ma'am.

7 THE CLERK: Is it still your verdict?

8 MR. FELDER: Yes, ma'am.

9 THE CLERK: Thank you.

10 Shelby Profit. Is this your verdict?

11 MS. PROFIT: Yes, ma'am.

12 THE CLERK: Is it still your verdict?

13 MS. PROFIT: Yes, ma'am.

14 THE CLERK: Thank you.

15 Rosebud Johnson. Is this your verdict?

16 MS. JOHNSON: It is, yes.

17 THE CLERK: Is it still your verdict?

18 MS. JOHNSON: It's still my verdict, yes.

19 THE CLERK: Thank you.

20 THE COURT: Thank you ladies and gentlemen of the
21 jury. Your service is now completed. I will release you
22 back to your jury room. I'll come in there in about two
23 seconds to release you.

24 (Jury out at 2:56 p.m.)

25 THE COURT: Counsel, let's get ready to proceed

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1 with sentencing.

2 MR. MELLARD: And, Your Honor, we do have two
3 motions.

4 THE COURT: Yes, sir.

5 MR. MELLARD: At this time we'd renew all our prior
6 motions?

7 THE COURT: Yes, sir.

8 MR. MELLARD: Including the pre-trial motions and
9 the directed verdict motions. And we'd also make a motion
10 for a new trial. It's our position that there is no evidence
11 to support the conviction in this case, Your Honor.

12 THE COURT: Thank you, Mr. Mellard. Based upon the
13 previous arguments as well as the testimony and the evidence
14 presented, I will respectfully deny your motions.

15 (Court in recess for short break.)

16 (Court in session after short
17 break.)

18 THE COURT: I've released the jury; however,
19 they've indicated to the Court that they wish to come into
20 the courtroom for sentencing. Certainly that is their right.
21 So I've indicated to them that we would wait for them to come
22 into the courtroom and be seated in the gallery.

23 MS. CORNWELL: Yeah. I believe we're also waiting.
24 Mr. Bell is getting my sentence sheets for me.

25 THE COURT: Okay.

State v Hardin

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(Court stood at ease)

THE COURT: Are the parties ready to proceed?

MS. CORNWELL: We are, Your Honor.

MR. MELLARD: Yes, ma'am.

THE COURT: If the Defendant would please rise.

MR. HARDIN: (Defendant complies.)

THE COURT: I'm happy to hear any mitigation or
comments from the Defense?

MR. MELLARD: Briefly, Your Honor, he's fifty-five
years old. He has a mom in Chester, South Carolina. His
step-father is there. His three sisters, and six brothers
all live in Chester, South Carolina. He was in the army from
'77 to '83. He was a supply clerk. He rose to the rank of
Spec 4, which is a Sergeant rank, Your Honor. After the
Army, he got a job laying water pipe and he's worked
construction. And I don't believe he wants to address the
Court?

MR. HARDIN: No, ma'am.

MR. MELLARD: We just ask for the mercy of the
Court?

THE COURT: From the State?

MS. CORNWELL: No. I believe that the victims
would like to address the Court at the appropriate time.

THE COURT: Yes, ma'am.

MS. CORNWELL: I don't know if you want to hear

State v Hardin

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1 from them now and then go through his record or if you want
2 me to go through his record first.

3 THE COURT: I'll be happy to hear from the victims.

4 MS. BELL: Your Honor, I'm LaDosta Bell. I'm
5 Kirstie's mother. That's a phone call that no mother ever
6 wants to receive. And especially to be a work with no way to
7 get to her. I had dropped my vehicle off for maintenance and
8 I was stuck at Aiken County Courthouse. I see it everyday in
9 and out of our doors, criminal act, criminal act. I can deal
10 with that. When it happens to your child, it's a totally
11 different world. When I went into that bond hearing, I was
12 mad. As mad as I am now. He stole her innocence. She
13 hadn't been long had back surgery. He could have stepped on
14 her back instead of hitting her in the back of the head with
15 the gun. If he'd stepped on her back, she could have been
16 paralyzed. I'm glad the outcome ended the way it did if it
17 had to happen at all, that was best is a knot on the back of
18 the head. All I can say is, I'm asking you please give him
19 the max of everything you can give him. I said he was an
20 animal that day and I still feel that way today. Thank you.

21 THE COURT: Thank you, ma'am.

22 MR. SIMS: Your Honor, that day I went to work, you
23 know, as any other day to provide for my family, my wife and
24 daughter, I never thought that that morning I could have been
25 the last time I would ever see them. You know, I was

State v Hardin

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1 blessed, we were blessed to come out of it alive. You know,
2 I just hate thinking about what would happen if we would have
3 made the wrong move. If we would even be here today. And I
4 just say please have him spend the rest of his life in
5 prison.

6 THE COURT: Thank you, Mr. Sims.

7 MS. CORNWELL: And, Your Honor, you heard all the
8 testimony and saw all the evidence yourself, so you know how
9 this affected everybody. You've heard from the victims. The
10 only thing that the State would add is his prior record. He
11 does have a prior record, Your Honor. Starting back in 1982
12 he's got a distribution of marijuana, distribution of
13 cocaine. In '83, he's got a larceny and misdemeanor assault
14 as well as destruction of private property. In 1984 he has a
15 distribution of marijuana and another misdemeanor assault.
16 In 1986 he's got concealing of merchandise. In 1988 he had a
17 possession of cocaine, concealed weapon and distribution of
18 cocaine charge. In 1993, he had a larceny. In 2006,
19 receiving stolen goods. And I believe that that's it, Your
20 Honor. The 2010 that we saw does indicate the parole. So
21 I'm showing that may be a charge that carried over from
22 Virginia. Given the facts, his prior record, you know, this
23 wasn't a typical armed robbery where somebody just goes in
24 and holds the gun down by their side and makes a threat. The
25 Defendant duct taped these people, assaulted them. For those

State v Hardin

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1 reasons, we think that a maximum sentence on each charge is
2 appropriate.

3 THE COURT: Thank you, ma'am.

4 Mr. Hardin, you know, this case is somewhat troubling
5 because I've watched you this week. I've watched you
6 interact with your attorney. I've watched you interact with
7 the Court, with the court security. And quite frankly, it's
8 troubling because you have the capacity to be nice. And
9 whatever decisions you've made to put you down this road,
10 it's troubling for you to just throw that away. What you did
11 to these young people that came here into this courtroom, and
12 although they were composed and strong when they testified,
13 you clearly, clearly terrified them. They're working, going
14 to school, raising their families and you go into their place
15 of work, hold them at gunpoint, beating them with a gun, tie
16 them up, to make them reasonably think that that could be the
17 day that they die for cell phones. That is troubling.

18 On indictment 2014-GS-38-0891, the charge of armed
19 robbery, you are hereby committed to the State Department of
20 Corrections for a period of thirty years.

21 On indictment 2014-GS-38-0892, for assault and battery
22 of a high and aggravated nature, you are hereby committed to
23 the State Department of Corrections for a period of twenty
24 years.

25 On indictment 2014-GS-38-0890, for the charge of

State v Hardin

2/27/15

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1 Kidnapping, you are hereby committed to the State Department
2 of Corrections for a period of thirty years.

3 On indictment 2014-GS-38-102140, charge of kidnaping,
4 likewise committed to the State Department of Corrections for
5 a period of thirty years.

6 On indictment 2014-GS-38-0888, charge of kidnaping,
7 likewise committed to the State Department of Corrections for
8 a period of thirty years.

9 And on indictment 2014-GS-38-0893, you are hereby
10 committed to the State Department of Corrections for a period
11 of five years.

12 Each of the first five indictments are concurrent. The
13 last indictment of 0893 is consecutive.

14 MS. CORNWELL: Thank you, Your Honor.

15 THE COURT: Court's adjourned

16 (Court adjourned February 27, 2104

17 at 3:12 p.m.)

18 (This proceeding was concluded.)
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State v Hardin

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C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 23, 25, 26 & 27 DAY OF FEBRUARY, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

June 23, 2015

WITNESSES

John C Stokes

Orangeburg County Sheriff

2014-4205

ARREST WARRANT NUMBER
2014A3810200141

Arrested: May 18, 2014

ACTION OF GRAND JURY

TRUE BILL

Michael S. Stur

Foreperson of Grand Jury
Date: SEP 03 2014
September 3, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0890

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE
vs.

Archie More Hardin

Indictment for
KIDNAPPING

JUST. TRUE
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

SC Code: 16-3-910

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2014 SEP -3 AM 10:13

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-0890

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about May 16, 2014, the Defendant, Archie More Hardin, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Kirstie Berry, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

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


Ashley B. Cornwell, Solicitor

WITNESSES

John C Stokes

Orangeburg County Sheriff

2014-4205

ARREST WARRANT NUMBER

2014A3810200140

Arrested: May 18, 2014

ACTION OF GRAND JURY

TRUE BILL

Date: SEP 03 2014

Foreperson of Grand Jury

Date: September 3, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS38-0889

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE
vs.

Archie More Hardin

Indictment for

KIDNAPPING

Wingy B. Clark
CLERK OF COURT
ORANGEBURG COUNTY

SC Code: 16-3-910

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2014 SEP -3 AM 13

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

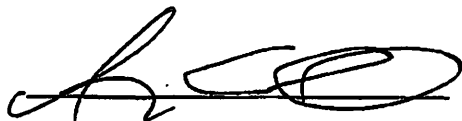
INDICTMENT
2014GS38-0889

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about May 16, 2014, the Defendant, Archie More Hardin, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Thomas Sims, Jr., without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

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



Ashley B. Cornwell, Solicitor

WITNESSES

John C Stokes

Orangeburg County Sheriff

2014-4205

ARREST WARRANT NUMBER
2014A3810200143

Arrested: May 18, 2014

ACTION OF GRAND JURY

TRUE BILL

SEP 03 2014

Foreperson of Grand Jury

Date: September 3, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS38-0892

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE
vs.

Archie More Hardin

Indictment for

ASSAULT / ASSAULT AND BATTERY
OF A HIGH AND AGGRAVATED
NATURE

WINGO B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-600(B)(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

SEP 3 12 13

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

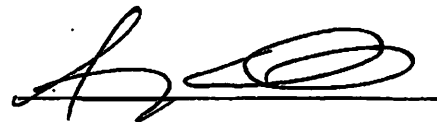
INDICTMENT
2014GS38-0892

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

**ASSAULT / ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
NATURE**

That the defendant, Archie More Hardin did in Orangeburg County on or about May 16, 2014 injure the victim, Kirstie Berry and either great bodily injury resulted or the act was accomplished using means that could have resulted in death or great bodily injury, by striking the victim in the back of the head with a gun, thereby violating Section 16-3-600(B) (1), Code of Laws of South Carolina, 1976, as amended.

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



Ashley B. Cornwell, Solicitor

WITNESSES

John C Stokes

Orangeburg County Sheriff

2014-4205

ARREST WARRANT NUMBER

2014A3810200144

Arrested: May 18, 2014

ACTION OF GRAND JURY
TRUE BILL

Date **SEP 03 2014**

Foreperson of Grand Jury
Date: September 3, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0893

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE
vs.

Archie More Hardin

Indictment for

**POSS. WEAPON DURING VIOLENT
CRIME, IF NOT ALSO SENTENCED TO
LIFE WITHOUT PAROLE OR DEATH**

Winniford B. Clark
CLERK OF COURT
ORANGEBURG COUNTY S.C.

SC Code: 16-23-480

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2014 SEP -3 AM 10:12

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-0893

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

**POSS. WEAPON DURING VIOLENT CRIME, IF NOT ALSO SENTENCED TO
LIFE WITHOUT PAROLE OR DEATH**

That in Orangeburg County on or about May 16, 2014, the defendant, Archie More Hardin did visibly display or have in his possession, a handgun during the commission of a violent crime, to wit: kidnapping; or armed robbery; or assault and battery of a high and aggravated nature. This offense in violation of Section 16-23-490, of the South Carolina Code of Laws, as amended.

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



Ashley B. Cornwell, Solicitor

WITNESSES

John C Stokes

Orangeburg County Sheriff

2014-4205

ARREST WARRANT NUMBER

2014A3810200142

Arrested: May 18, 2014

ACTION OF GRAND JURY

TRUE BILL

Michael J. [Signature]

Foreperson of Grand Jury
Date: September 3, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0891

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE
vs.

Archie More Hardin

Indictment for
ARMED ROBBERY

WINGIE B. CLAW
CLERK OF COURT
ORANGEBURG COUNTY
SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2014 SEP -3 PM 10:12
CLERK OF COURT
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

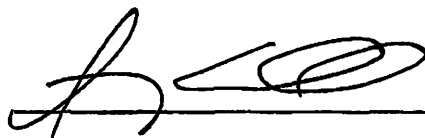
INDICTMENT
2014GS38-0891

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about May 16, 2014, in Orangeburg County, the defendant, Archie More Hardin did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, T-Mobile, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a handgun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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


Ashley B. Cornwell, Solicitor

WITNESSES

John C Stokes

Orangeburg County Sheriff

2014-4205

ARREST WARRANT NUMBER

2014A3810200139

Arrested: May 18, 2014

ACTION OF GRAND JURY

TRUE BILL

SEP 03 2014

Foreperson of Grand Jury

Date: September 3, 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS38-0888

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 8, 2014 TERM

THE STATE

vs.

Archie More Hardin

Indictment for

KIDNAPPING

WINGS B. CLARK

CLERK OF COURT

SC Code: 16-3-910

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2014 SEP -3 PM 10:13

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

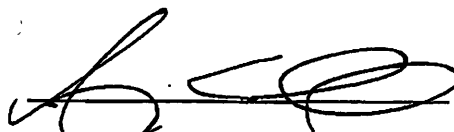
INDICTMENT
2014GS38-0888

At a Court of General Sessions, convened on September 8, 2014 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about May 16, 2014, the Defendant, Archie More Hardin, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Jaronn Weaver, without authority of law. This offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended.

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



Ashley B. Cornwell, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

731

COUNTY OF Orangeburg
 STATE VS.
Archie More Hardin

AKA:

Race:

Sex:

Age:

2015-MAR -2 PM 2:04

DOB:

SS#:

INDICTMENT/CASE#: 2014GS38-0888

A/W#: 2014A3810200139

Date of Offense: 5/16/2014

§ : 16-3-910

CDR Code #: 0095

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Kidnapping

SENTENCE SHEET

in violation of § 16-3-910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Cornwell, Ashley B.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 20146538-0889; 20146538-0890; 20146538-0891; 20146538-0892
☒ 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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90

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: _____

ORANGEBURG

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

709

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Orangeburg

VS.

Archie More Hardin

AKA:

Race:

Sex:

DOB:

SSN:

Address:

City, State, Zip:

DL#:

SID#:

*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#: 2014GS38-0889

A/W#: 2014A3810200140

Date of Offense: 5/16/2014

S.C. Code § : 16-3-910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Cornwell, Ashley B.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS38-0891; 2014GS38-0890; 2014GS38-0888; 2014GS38-0892
☒ 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	\$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 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL		\$133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 733

COUNTY OF Orangeburg

STATE VS.

Archie More Hardin

AKA:

Race:

Sex:

DOB:

Address:

City, State, Zip:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

INDICTMENT/CASE#: 2014GS38-0890

A/W#: 2014A3810200141

Date of Offense: 5/16/2014

S.C. Code § : 16-3-910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Cornwell, Ashley B.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS38-0892; 2014GS38-0893; 2014GS38-0891; 2014GS38-0899☒ 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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS.

Archie More Hardin

AKA:

Race:

Sex:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Poss. Weapon During Violent Crime, If not Also Sentenced to Life without Parole or Death

in violation of § 16-23-490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ 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

Cornwell, Ashley B.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation 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: 2014 GS 38 0892, 2014 GS 38 0891, 2014 GS 38 0888

☐ 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	\$ 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 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011).

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS38-0893

A/W#: 2014A3810200144

Date of Offense: 5/16/2014

S.C. Code § 16-23-490

CDR Code #: 0549

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 735

COUNTY OF
STATE

Orangeburg

VS.

Archie More Hardin

AKA:

Race:

Sex:

DOB:

S#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and Battery of a High and Aggravated Nature

INDICTMENT/CASE#: 2014GS38-0892

A/W#: 2014A3810200143

Date of Offense: 5/16/2014

S.C. Code § : 16-3-600(B)(1)

CDR Code #: 3411

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Cornwell, Ashley B.

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: 2014GS38-0892; 2014GS38-0891; 2014GS38-0890; 2014GS38-0889
☐ 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 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

713

has read and write
has a high school diploma

VOLUNTARY CONSENT TO SEARCH

5-16-2014

(Date)

1900

(Time)

Bentley St

(Location)

Columbia, SC 29207

I, Harold Archie do hereby consent to search of my premises and/or automobile with out a search warrant by Officers of The Columbia Police Department, Columbia, South Carolina. These Officers are authorized by me to take from the premises and/or automobile letters, papers, materials, or other property which they desire.

Description of property to be searched is described as follows:

B/m 5'10 190-200 lbs with Limp

Any stolen property (IPAD) Any Firearms Hand Gun

I am aware that any evidence obtained as a result of the search can be used against me in a court of law.

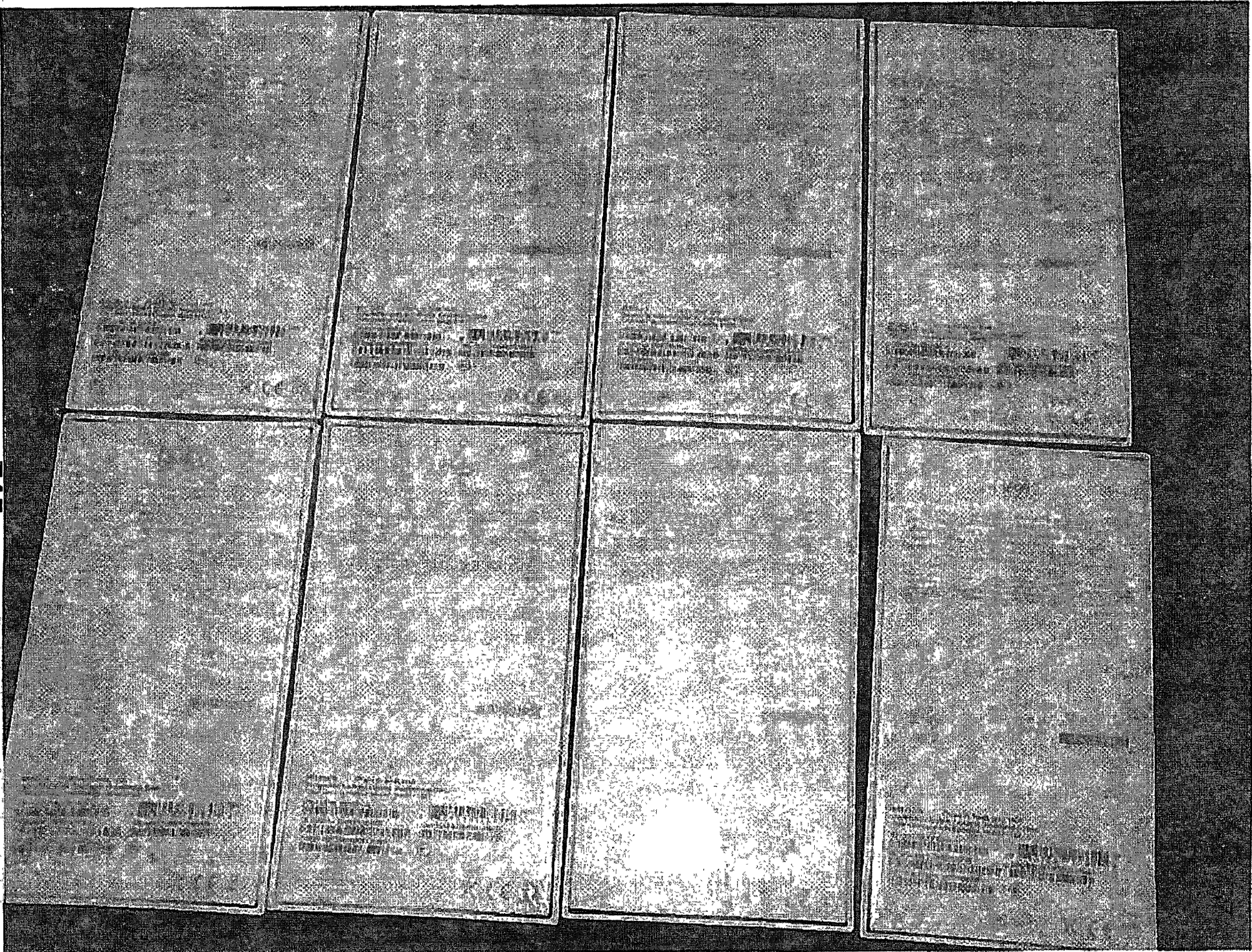
By signature below I understand at any time I can withdraw the consent.

This written permission is being given by me to the above officers voluntarily and without threats of promise of any kind.

[Signature]
PERSON AUTHORIZING CONSENT TO SEARCH

WITNESS: [Signature] 20318

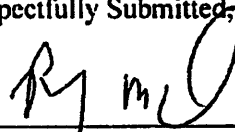
WITNESS: [Signature] 22317



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



DANIEL C. BOLES, ESQUIRE

23 Broad Street

P.O. Box 381

Charleston, SC 29402-3001

Phone: (843)-576-5775 Ext. 10

ROBERT M. DUDEK, ESQUIRE

Chief Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

This 7th day of April, 2017.

ATTORNEYS FOR THE APPELLANT

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions, First Judicial Circuit
The Honorable Maite Murphy

Circuit Court Case No. 2014-GS-38-0088-0093
South Carolina Court of Appeals Case No. 2015-000516

THE STATE,

RESPONDENT,

V.

ARCHIE MORE HARDIN,

APPELLANT

APPELLATE CASE NO. 2015-000516

FINAL BRIEF OF APPELLANT

DANIEL C. BOLES, ESQUIRE
23 Broad Street
P.O. Box 381
Charleston, SC 29402-3001
Phone: 843.576.5775 Ext. 101

ROBERT M. DUDEK, ESQUIRE
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
Phone: 803.734.1343

ATTORNEYS FOR THE APPELLANT

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STATEMENT OF THE ISSUES PRESENTED ON APPEAL

- 1) Archie Harding was deprived of the opportunity to have DNA evidence analyzed by an independent expert because the State, despite its representations and assurances to the Defendant that said DNA evidence would be sent to SLED for analysis, failed to have any DNA evidence analyzed by SLED prior to trial, and further, the State controlled the docket. **The trial court erred in refusing to grant Archie Harding's motion for a continuance so that he could have any DNA evidence analyzed by an expert, evidence which was possibly exculpatory.**
- 2) The alleged victims were shown only a single photograph of a solitary person on a law enforcement officer's, small, cell phone screen, and this highly suggestive photograph depicted Archie standing alone with a uniformed law enforcement officer in the background. **The cell phone photograph identification of Archie Harding was inherently flawed.**
- 3) The investigating officer obtained one, signed Consent to Search form from Archie Harding to search his residence, and despite the lack of exigent circumstances, a warrant-less search was carried out that yielded no evidence for collection. Following the discovery of evidence far away from Archie's residence, the investigating officer then amended the original Consent to Search form with additional, hand-written items to be seized, and Archie withdrew his consent and refused to re-sign the form, but law enforcement officers nevertheless conducted a second, warrant-less search of his residence. **The evidence collected in the second warrant-less search of his home was not properly admitted because Archie Harding effectively withdrew consent, thereby requiring a search warrant to search his residence for the second time.**

STATEMENT OF THE CASE

This is a criminal matter arising out of the armed robbery by two, disguised men of a T-Mobile store in Orangeburg County, South Carolina, on May 16, 2014. This matter, Circuit Court Case Number 2014-GS-38-0088-0093, was heard in the Orangeburg Court of General Sessions, First Judicial Circuit, before the Honorable Maite Murphy, on February 23, 25, 26 and 27, 2015. Archie More Harding of Columbia, South Carolina, was quickly indicted in this matter.

Following one day of pretrial motions and a three-day trial, the jury returned a verdict of guilty on each and every charge, namely two counts of kidnapping, and one count each consisting of armed robbery, possession of a weapon during the commission of a violent crime, assault and battery of a high and aggravated nature, and assault and battery second degree, within 87 minutes on a Friday afternoon. (R. 707, lines 12-14). This appeal arises out of this wrongful criminal conviction of Archie Harding pursuant to his indictment in this matter. This appeal to the South Carolina Court of Appeals for post conviction relief (PCR) was timely filed by counsel on behalf of the Petitioner on June 14, 2016.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Williams*, 386 S.C. 503, 509, 690 S.E.2d 62, 65 (2010) (quoting *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001)). Thus, an appellate court "is bound by the [circuit] court's factual findings unless they are clearly erroneous." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent

an abuse of discretion." *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (quoting *State v. Saltz*, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001)). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Black*, 400 S.C. at 16, 732 S.E.2d at 884 (quoting *State v. Jennings*, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011)). "To warrant reversal, an error must result in prejudice to the appealing party." *Black*, at 16–17, 732 S.E.2d at 884.

STATEMENT OF FACTS

On May 16, 2014, two, disguised, African-American men armed with revolvers entered the T-Mobile store in Orangeburg, South Carolina, and robbed it after binding the store's three employees in a back room with duct tape. Among the property stolen from this store was a personal iPad belonging to one of the store employees, Thomas Sims, Jr. (R. 372, lines 3-4). By using the "Find My iPad" application, law enforcement officers eventually and expertly "tracked the defendant" (R. 682, lines 24-26; R. 334, lines 1-4) through its transmissions to cell phone towers, to the Bentley Apartments, a large complex of multiple apartment buildings located in Columbia, South Carolina. (R. 250, lines 14-24). Upon arriving at the Bentley Apartment complex, Corporal Cain testified that a vehicle generally matching the description of the suspected getaway car, possibly either a "gray" or "dark" Toyota (R. 69, line10; R. 233, lines18-24), was seen with a door open in front of one of the complex buildings, and Archie More Harding, was seen to be walking down the apartment building's front stairs without a limp. (R. 601, lines 7-23). In fact, this car had been legally rented by Archie, and he had lent this vehicle to his friend nick-named "Black" earlier in the day. (R. 24, lines1-27; R. 628, lines1-7).

Archie resided at the apartment complex and he was immediately stopped by the law enforcement officers, subjected to a "Terry" frisk, was found to be unarmed, was informed that law enforcement was only looking for "an iPad" and a man who "walks with a limp," and his apartment key was then taken from him. (R. 562, lines1-15; R. 235, lines15-22). Archie was then requested to sign a Consent to Search Form, which he signed on the hood of the police car in front of his on-looking neighbors and he was hand-cuffed. (R. 231, lines1-21; R. 284, lines1-12; R. 635, lines13-18).

Corporal Cain further testified that law enforcement then conducted a warrant-less search of Archie's dwelling, as Investigator Wade activated the "play music" function on the iPad so that the iPad would emanate sound and could thereby be located. (R. 604, lines 24-25). No sound was heard from the iPad in Archie's apartment, and Archie, who had accompanied the officers on the first search of his apartment, was taken back downstairs to the parking lot and then detained in the back of a police car. (R. 241, lines 8-14; R. 637, lines 7-24). During a subsequent perimeter sweep, the iPad was then found emanating sound from a bag near an apartment dumpster located "about a hundred yards" from Archie's apartment building. (R. 605, lines 1-5; R. 353, lines 5-8; R. 549, lines 12-25).

Following this discovery of the iPad by one of the apartment complex's dumpsters, law enforcement then demanded that a now-detained Archie re-sign the original Consent to Search Form which had been modified by Officer Wade in different-colored ink to include additional items such as firearms. (R. 79, lines 16-23; R. 236, lines 23-25; R. 237, lines 1-5). In addition, at this time, uniformed officers may have reported to Investigator Wade that, in fact, during the protective sweep conducted at the onset of the first search of

Archie's domicile, a box of cell phones in "plain view" had actually been somehow overlooked. (R. 266, lines 24-25; R. 287, lines 6-8; R. 260, lines 16-24).

Archie unequivocally refused to consent to this second search, and although Officer Wade's modification to the Consent to Search form was not initialed by Archie, the officers nevertheless returned upstairs to search his apartment. (R. 287, lines 14-25; R. 639, lines 6-24; R. 736). A second, warrant-less search of Archie's domicile was then conducted while Archie was detained in the back of the police cruiser. (R. 639, lines 12-13; R. 282, lines 13-14). This second search of Archie's home was much more fruitful, and now produced all the evidence, namely a box of cell phones and firearms. (R. 61, lines 6-16; R. 518, lines 16-17).

Archie informed officers that these items belonged to his friend nicknamed "Black," and he offered to help officers find this friend, and provided law enforcement officers with a bill which was addressed to one of Black's girlfriends. (R. 300, lines 9-11; R. 267, lines 1-23). As of Archie's trial, his friend "Black" was currently still under active investigation. (R. 128, lines 7-11).

Corporal Cain further testified that, while other officers were searching for the iPad, he took a cell phone photograph of the Defendant with his cell phone and texted this picture (State's Exhibit 2) to Officer Schumpert, who was on-scene with some of the robbery victims. (R. 63, lines 1-10; R. 64, lines 9-15). This single photograph was then shown to the highly traumatized victims of the robbery who were still on-scene at the T-Mobile store, on a small cell phone screen which was held by a uniformed law enforcement officer, more than three hours after the robbery. (R. 329, lines 18-24). This single photograph (State's Exhibit 2) consisted of a solitary picture of Archie, with a fully-uniformed, law enforcement

officer featured very prominently in the background. (R. 322, lines 7-22; R. 329, lines 18-21; R. 194, lines 3-4).

This use of a single picture for identification purposes (State's Exhibit 2), rather than a traditional "six-pack" lineup, was an "exercise of officer's discretion." (R. 130, lines 12-21). Despite the fact that the victims' eye-witness descriptions of the suspects varied substantively (R. 668, lines 18-20; R. 669, lines 2-4), seeing only this single photograph on a very small cell phone screen in broad daylight (State's Exhibit 2), the victims positively identified Archie as one of the disguised suspects, and Archie was taken into custody. (R. 63, lines 7-12).

Archie was subsequently transported to Orangeburg County and placed in an interview room at the Criminal Investigation Division on Chestnut Street. (R. 99, lines 4-25). Although Archie was in the interview room for some time, he refused to give a written statement, and this interview was not taped also due to another exercise of "officer's discretion." (R. 101, lines 18-24). Thereafter, Archie was subsequently indicted, and then swiftly convicted of all charged offenses.

ARGUMENT

1. The trial court erred in refusing to grant Archie Harding's motion for continuance so that he could have any DNA evidence analyzed by an expert, evidence which was possibly exculpatory.

It is well-settled in South Carolina that a trial court's denial of a motion for continuance "will not be disturbed absent a clear abuse of discretion." *State v. Williams*, 321 S.C. 455, 459, 469 S.E.2d 49, 51 (1996) (citing *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989)). Reversals of a continuance are typically as "rare as the proverbial

hens' teeth.'" *Williams*, 321 S.C. at 459, 469 S.E.2d at 51 (quoting *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957)).

In pre-trial motions the Defense vehemently requested a continuance based in part upon "our understanding was that DNA especially was also being sent to SLED for analysis, and the fingerprints were being compared," and that such evidence, once provided to the Defense by the State, would be very "material" and even "critical" to Archie's defense. (R. 14, lines 1-1; R. 27, lines 20-24). This understanding between the State and the Defense was held until February 17, 2015, six days before the start of Archie's trial. (R. 15, lines 17-24).

Pursuant to *State v. Langford*, 223 S.C. 20, 73 S.E.2d 854, (1953), the Defense moved for a continuance, citing the State's inherent power to control the docket in this matter, and the fact that Defense had sought a scheduling order to sort these serious evidentiary matters out. (R. 25, lines 21-25). The Defense rightfully pointed out that, without this data, they were prevented from arguing a third party defense. (R. 23, lines 3-4). The State, in turn, argued the position that *Langford* was currently in abeyance, and the State controlled the docket for this case since it was less than a year old. (R. 28, lines 20-25). The Court ultimately denied the request for this continuance, holding that the "evidence that's sought by the Defense is potentially not exculpatory and I don't think it is exculpatory in nature." (R. 25, lines 8-10).

And whether exculpatory or inculpatory, a determination impossible to ascertain since none of it was actually analyzed, abundant physical evidence was indeed collected in this case. To wit, "Touch DNA" was collected from the two firearms and Archie's rental car, and the State repeatedly emphasized that this DNA was not analyzed because

it "is SLED's policy" not to analyze the evidence if one suspect is in custody while another suspect remains at large (R. 519, lines 1-11; R. 526, lines 10-23; R. 679, lines 20-22). Fingerprints were also collected from a "Nexus" box and an iPhone at the T-Mobile store and even Archie's rental car, and these prints did not match Archie's fingerprints under a direct comparison to his fingerprints, only. (R. 14, lines 3-6; R. 525, lines 1-12). None of the collected fingerprints were run through the Automated Fingerprint Index System, or AFIS. (R. 525, line 18).

Moreover, none of the duct tape used to bind the T-Mobile employees , which was collected from the T-Mobile store (State's Exhibits 73, 74, 75, 76, 77, and 78) was analyzed, much less even opened, prior to its appearance on the stand at Archie's trial in the rubber-gloved hands of the State's forensic witness, Officer Ketcherside. (R. 509, lines 18-24; R. 510, lines 20-21; R. 529, lines 19-21). In addition, some of the reports produced by investigating Officer Wade were actually lost (R. 262, lines 13-16), while Officer Stokes did not sign some of his reports. (R. 499, lines 15-24). Finally, the now decommissioned cell phones which were used to photograph Archie (State's Exhibit 2) and then text this picture, phones which had been saved in a box at the Orangeburg County Sherriff's Office, could not be produced by the police, even when subpoenaed. (R. 24, lines 10-24).

Witnesses for the State did note that there was an ongoing investigation (R. 29, lines 14-17; R. 523, lines 8-11), and that hopefully, maybe, some of the evidence might be tested in a later case. (R. 518, lines 10-12; R. 528, lines 101-11). Echoing the Court's holding on the Defense's motion of a continuance, the State's ultimate position at closing is that while the un-analyzed DNA, fingerprint, and duct tape evidence might very well

have proved that Archie was innocent and fingered his friend "Black" (R. 680, lines 1-2; R. 680, lines 10-15), it might just as well have pointed to Archie.

The South Carolina Supreme Court "has repeatedly upheld denials of motions for continuances where there is no showing that any other evidence on behalf of the defendant could have been introduced, or that any other points could have been raised, if more time had been granted to prepare for trial. *State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991), (citing *State v. Squires*, 248 S.C. 239, 149 S.E.2d 601 (1966)), *State v. William C. McKennedy*, 348 S.C. 270, 280, 559 S.E.2d 850, 857 (2002). As the record *supra* clearly indicates, there is more than a "showing that any other evidence on behalf of the defendant could have been introduced." *Id.*

Furthermore, in *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (S.C., 1989) the South Carolina Supreme Court ruled on an almost this exact fact pattern, holding that:

"In this instant case, blood, skin, and hair samples were taken from the Taylor-owned car after the accident and held in police custody. It appears from the record that Tanner's attorney may have become aware of the existence of these samples some time before trial. However, it is uncontroverted that in response to at least six inquiries and a Rule 8 discovery motion, Tanner's counsel was informed by the Solicitor's office that the samples were lost or misplaced. The samples were brought to the court by SLED and ten minutes before the pretrial hearing, the defendant's counsel was told of their availability.

The samples had not been tested and Tanner informed the trial court that he wished to conduct an independent examination of them, or at least to wait for a SLED analysis. Tanner therefore requested a continuance. The trial court ruled that the State could not use the samples in its case against Tanner and, on that basis, refused to grant Tanner's request for a continuance. The case proceeded to trial that day. We hold that the trial court erred in failing to consider the potential exculpatory value of the samples. We further hold that the defendant has satisfied the *Squires* criteria of demonstrating other evidence that could have been produced, and other points in his behalf that could have been raised." *Tanner*, 461-446.

"The trial court's refusal of a motion for continuance will not be disturbed on appeal absent a clear abuse of discretion resulting in prejudice to the appellant. *State v. Williams*, 321 S.C. 455, 469 S.E.2d 49 (1996); *State v. Babb*, 299 S.C. 451, 385 S.E.2d 827 (1989). See, *Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997)(denial of motion for continuance rests within trial court's sound discretion and will not be disturbed on appeal absent abuse of discretion resulting in prejudice to appellant)." *State v. Mansfield*, 343 S.C. 66, 73, 538 S.E.2d 257, 264 (2000).

Under the *Squires* standard, following the precedent of *Tanner*, and based upon the abundance of unanalyzed evidence reviewed herein which clearly prejudiced the Appellant, evidence which might well have been exculpatory for the Defendant, the Court's decision to deny the Defense's pre-trial motion for a continuance must be overturned, in both the interests of justice and the Defendant's Constitutional due process rights.

2. The cell phone photograph identification of Archie Harding was inherently flawed.

As noted in *State v. Moore*, 343 S.C. 282, 286, 540 S.E.2d 445, 449 (2000), a "criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. *Stovall v. Denno*, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967). Further, "an in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. *Manson v. Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977) (citing *Simmons v. United States*, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)); *State v. Stewart*, 275 S.C. 447, 272 S.E.2d 628 (1980)." *Moore*, at 449.

During pre-trial motions, the trial Court heard a *Biggers* motion utilizing the two-prong inquiry to determine the admissibility of an out-of-court identification based upon State's Exhibit 2. (R. 321-327). First, "[a] court must first determine whether the identification process was unduly suggestive [It] next must determine whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." *Curtis v. Commonwealth*, 11 Va. App. 28, 396 S.E.2d 386, 388(1990) (citing *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972)).

Single person show-ups are particularly disfavored in the law. *State v. Johnson*, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct.App.1993) (single person show-ups are particularly disfavored in the law). The Court in the current matter explicitly found that the cell phone identification picture of Archie (State's Exhibit 2) was "unduly suggestive." (R. 341, lines 2-5).

Only after a determination as to the reliability of a witness' identification has been made by the trial court may the witness testify before the jury. *State v. Patterson*, 337 S.C. 215, 522 S.E.2d 845 (Ct.App.1999). The trial Court in this matter then went onto examine the five, "totality of the circumstances," factors as to whether an identification is admissible as outlined in *Biggers*, namely "[T]he opportunity of the witness to view the criminal at the time of the crime, the witness's degree of attention, the accuracy of the witness's prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." *Neil v. Biggers*, 409 U.S. at 199, 93 S.Ct. at 382; *State v. Stewart*, 275 S.C. at 450, 272 S.E.2d at 629.

The trial Court ultimately found all of the *Biggers*' factors weighed in favor of admitting the cell phone picture (State's Exhibit 2) of a solitary Archie with a uniformed law enforcement officer in the background. (R. 342, lines 3-5). There was no weighing of the individual "totality of circumstances" factors against one another by the trial court. (R. 341, lines 2-24; R. 342, lines 3-5). In *Moore*, upon a close examination of the record, the South Carolina Supreme Court re-considered the lower court's application of the *Biggers*' factors, and came to a much different conclusion, after finding only one of the five "totality of circumstances" factors was met, namely the shortness of time factor, and moreover this timing factor was "clearly outweighed by the other factors." *Moore*, at 289.

In this case, one robber had a nylon stalking over his face, while the other robber had on sunglasses and a ball cap. (R. 383, lines 6-17). The three witnesses, who were all bound with duct tape and placed on the floor of a back room at the T-Mobile store, face - down, all give very differing descriptions of the robbers, yet all can now identify the disguised robbers with "100% certainty." (R. 341, lines 9-11). The victims were all bound in a back room while the robbers ransacked the front of the store, a robbery which only took ten to fifteen minutes. (R. 367, lines 16-22; R. 370, line 3). There is no video of the robbery. (R. 441, lines 14-16).

Although Archie was in full custody of the police, the use of a single picture for identification purposes (State's Exhibit 2), rather than a traditional "six-pack" lineup, was another "exercise of officer's discretion." (R. 130, lines 12-21). This single photograph was shown to the highly traumatized victims of the robbery who were still on-scene at the T-

Mobile store, on a small cell phone screen, which was held by a uniformed law enforcement officer, more than three hours after the robbery. (R. 329, lines 18-24).

Further, while State's Exhibit 2 clearly exists in paper form, all of the phones which took these digital images have been broken and none could be produced for the Defense, even under subpoena. (R. 21, lines 16-25). Finally, the State acknowledges that, in fact, two photographs were shown to the victims at the crime scene and that "two subjects were identified" and there is also an "independent witness," but they can elaborate no further due to an "ongoing investigation." (R. 21, lines 1-7; R. 17, lines 7-13).

The South Carolina Supreme Court in *Moore* conclusively stated that "an eyewitness identification which is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law. *Caver v. Alabama*, 537 F.2d 1333, 1335 (5th Cir.1976), cert. denied, 430 U.S. 910, 97 S.Ct. 1183, 51 L.Ed.2d 587 (1977), citing *Foster v. California*, 394 U.S. 440, 442-43, n. 2, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969)." *Moore*, at 451.

The identification of Archie in this matter was, by the Court's own admission "unduly suggestive," and the five "totality of circumstances" factors as outlined in *Biggers* were not weighed against one another by the Court (R. 341, lines 2-5; R. 341, lines 2-24). Based upon the facts of this case, and following the precedent of *Moore*, Archie's identification based upon State's Exhibit 2 is clearly inadmissible and should therefore have been excluded by the trial Court.

3. The evidence collected in the second warrantless search of his home was not properly admitted because Archie Harding effectively withdrew consent, thereby requiring a search warrant to search his residence for the second time.

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. U.S. Const. Amend. IV. The South Carolina Constitution provides similar protection against unlawful searches and seizures. *See*, S.C. Const. Art. I, § 10. Evidence obtained in violation of the Fourth Amendment is inadmissible in both state and federal court. *See*, *Mapp v. Ohio*, 367 U.S. 643 (1961); *State v. Austin*, 306 S.C. 9 (Ct.App.1991).

Under our state constitution, suspects are very free to limit the scope of the searches to which they consent. *State v. Forrester*, 343 S.C. 637 (2001). "When relying on the consent of a suspect, a police officer's search must not exceed the scope of the consent granted or the search becomes unreasonable." *Id.* at 648. Even in a situation where police have received a general and unqualified consent, " 'the police do not have *carte blanche* to do whatever they please.' " *Id.* at 648-49. The scope of the consent is measured by a test of " 'objective' reasonableness-what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Florida v. Jimeno*, 500 U.S. 248, 251 (1991).

Conduct falling short of "an unequivocal act or statement of withdrawal" is not sufficiently indicative of an intent to withdraw consent. *State v. Mattison*, 352 S.C. 577, 587 (Ct. App. 2003). Effective withdrawal of a consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two, that is inconsistent with consent previously given. *Id.*

Most withdrawal of consent cases focus on this unequivocal act or statement of withdrawal. *See, United States v. Dichiarinte*, 445 F.2d 126, 128-29 (7th Cir.1971) (stating defendant exclaimed, "The search is over. I am calling off the search."); *United States v. Miner*, 484 F.2d 1075, 1076 (9th Cir.1973) (finding a withdrawal of implied consent to airport search where prospective airline passenger balked at search of luggage, saying, "No, it's personal."); *United States v. Bily*, 406 F.Supp. 726, 728 (E.D.Pa.1975) (holding that defendant's statement, "That's enough. I want you to stop," was a withdrawal of consent); *United States v. Ibarra*, 731 F.Supp. 1037 (D.Wyo.1990) (noting motorist's act of closing and locking trunk of his car after a police officer's consensual warrantless search of trunk constituted withdrawal of that consent and barred further search); *Cooper v. State*, 480 So.2d 8 (Ala.Crim.App.1985) (ruling that although first search of airplane was pursuant to voluntarily and freely given consent of defendant, his act of locking plane after he taxied plane to hanger area and before being driven by police to nearby motel, effectively revoked defendant's consent to any future searches); *State v. French*, 203 Neb. 435, 279 N.W.2d 116, 119-20 (1979) ("[D]efendant's unequivocal 'no' could only be reasonably interpreted as revoking whatever consent might have previously been given, if any.").

The Consent to Search Form (State's Exhibit 1) which was initially signed by Archie Harding clearly stated: "By signature below I understand I can withdraw my consent," and Archie could read. (R. 541, lines 16-18; R. 540, lines 17-18). In this case, Archie Harding refused to re-sign the modified Consent to Search Form (R. 568, lines 1-4), and clearly could not accompany the officers on their warrant-less, yet highly productive, second search of his home. (R. 639, lines 12-13). Archie later initialed portions

of a waiver of his *Miranda* rights, but again he refused to ultimately sign this waiver during his unrecorded interview in the interrogation room (State's Exhibit 3), clearly indicating that he knew refusing to consent was an option. (R. 491, lines 1-20; R. 97, line 4).

When the issue of consent to the second search was raised at trial, the State, having it both ways, stated that while "there was more than enough probable cause to get a search warrant" (R. 314, lines 6-7), it proactively countered that even if there was a problem with Archie's consent to the second warrant-less search, they would have found the evidence under the "inevitable discovery" rule due to the cellular transmissions of the "Find my iPad application." (R. 313, lines 9-15; R. 315, lines 2-7).

Requiring no expert analysis at all according to the State, the "Find my iPad application" is both "a very common app" (R. 313, line 15) that only generally "shows you a map and it shows you a blue dot on where it is" (R. 372, lines 17-18), but in this specific case, the locational informational is somehow very precise, even though the data from this application was only being verbally relayed to officer Caine, not visually or directly. (R. 448, lines 202-25). The Bentley Apartment complex is, in fact, composed of numerous apartment buildings, and when located, the stolen iPad was in the woods next to a dumpster a far distance away from Archie's residence, a location at best tenuously connected with Archie's second-floor apartment. (R. 586, line 19).

The "Find My iPad" application cannot be both general, and expertly precise, for the purposes of the State. While it is possible that the discovery of the iPad might be argued to have been inevitable, assuming of course it never rained and its batteries never ran out, it is not inevitable that the iPad would inextricably lead to Archie, anymore than it would have lead to anyone else who might have used that dumpster in the large Bentley

Apartment complex. The inevitable discovery doctrine does not apply to these facts, and there is no evidence of Archie's consent to a second search, much less exigent circumstances for a warrant-less search.

Absent a renewed Consent to Search Form, the evidence collected only during the second search of Archie's home required a search warrant, as the officers themselves noted they could easily obtain (R. 314, lines 9-12), yet no such search warrant was acquired. And, "to excuse the failure to obtain a warrant merely because the officers had probable cause and could have inevitably obtained a warrant would completely obviate the warrant requirement of the [F]ourth [A]mendment" *U.S. v. Reilly* (9th Cir. 2000) 224 F.3d 986, 995. The evidence collected during the second search is therefore inadmissible, and must be suppressed.

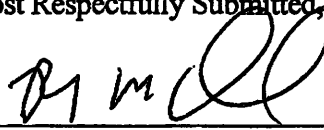
CONCLUSION

Following four days of pretrial motions and trial in February of 2015, Archie More Harding was convicted in Orangeburg Court of General Sessions of each and every charge upon which he was accused, following 87 minutes of jury deliberation on a Friday afternoon. The Appellant seeks review of his conviction of three primary points.

First, the trial court erred in refusing to grant the Defense's motion for a continuance so that it could have any DNA evidence analyzed by an expert, evidence which was possibly exculpatory. Second, the cell phone photograph identification of Archie Harding was inherently flawed. And finally, the evidence collected in the second warrant-less search of his home was not properly admitted because Archie effectively withdrew consent, thereby requiring a search warrant to search his residence for the second time.

Based upon the facts stated above, and the precedent reviewed *infra*, the Appellant request that this honorable court overturn his conviction in this matter in the interests of justice.

Most Respectfully Submitted



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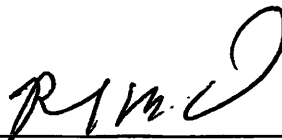
ATTORNEYS FOR THE APPELLANT

This 7th day of April, 2016.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 7th, 2017



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions, First Judicial Circuit
The Honorable Maite Murphy

Circuit Court Case No. 2014-GS-38-0088-0093
South Carolina Court of Appeals Case No. 2015-000516

THE STATE,

RESPONDENT,

V.

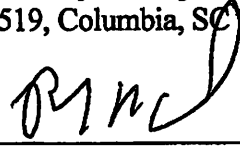
ARCHIE MORE HARDIN,

APPELLANT.

APPELLATE CASE NO. 2015-000516

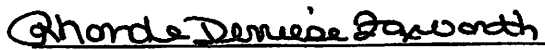
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of April, 2017.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of April, 2017.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2015-000516

THE STATE, ...RESPONDENT

v.

ARCHIE MORE HARDIN, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Appellant's motion for a continuance prior to trial where Appellant failed to establish the grant of any additional time would have enabled him to produce admissible exculpatory evidence or to raise additional points beneficial to his defense during trial.
2. Whether the trial court properly concluded that while the procedure used by the police was unduly suggestive, the out-of-court identification made by the three victims was nevertheless so reliable that no substantial likelihood of misidentification.
3. Whether the trial court properly admitted evidence collected during the search of Appellant's apartment where he gave written consent for the search of his apartment, he placed no specific or significant limits on the scope of that consent, and he made no unequivocal statement or act to withdraw that consent.

STATEMENT OF THE CASE

Archie More Hardin (Appellant) was indicted at the September 8, 2014 term of the grand jury for Orangeburg County for three (3) counts of kidnapping (2014-GS-38-888, -889, & -890), one count of armed robbery (2014-GS-38-891), one count of assault and battery of a high and aggravated nature (2014-GS-38-892), and one count of possession of a weapon during a violent crime (2014-GS-38-893). He was represented by Assistant Public Defenders Breen Stevens and Doug Mellard of the First Circuit Public Defender's Office. Respondent (the State) was represented by Assistant Solicitors Ashley Cornwell and Sarah Ford of the First Circuit Solicitor's Office. On February 23-27, 2015, Appellant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Maite D. Murphy to thirty (30) years' concurrent imprisonment for each count of kidnapping, thirty (30) years' concurrent imprisonment for armed robbery, twenty (20) years' concurrent imprisonment for assault and battery of a high and aggravated nature, and five (5) years' consecutive imprisonment for possession of a weapon during a violent crime, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.719-735; R.p.716-p.717). Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

As described by the solicitor in her opening statement, what started as a normal morning at the T-Mobile store in Orangeburg on May 16, 2014, soon turned into a terrifying day for three employees when the store was robbed by two, armed men. Shortly after 10 a.m., Appellant entered the store and talked with employee Jarron Weaver about getting an iPad for his daughter. He said he was going outside to call his wife and reentered a few minutes later to discuss getting his credit checked for the purchase. Appellant then left a second time; however, after the only other customer exited the store, he and another man came in waving guns while wearing masks and gloves. They pointed the guns at Weaver, forced him and the store manager, Thomas Sims, the back of the store, and then ordered them to the ground. The robbers used duct tape to bind Weaver's and Sims' hands behind their backs and their feet together. They then retrieved a third employee, Kirstie Berry, from behind the store where she had gone out to smoke a cigarette. Appellant punched Berry in the face, grabbed her by the hair, pulled her back into the store, and ordered her to the ground. He pistol whipped Berry in the back of the head and then duct taped her hands and feet.

Appellant and the other man ransacked the storage room and started filling two black bags with telephones, electronics, and other items. They exited the back of the store where two witnesses saw them jump a fence and drive off in a gray car. In addition to the items from the store, the robbers also stole Sims' book bag which contained a personal iPad which had the "Locate my iPad" app. By activating the app using Sims' father's phone, the police tracked the stolen iPad to an apartment in Columbia. When they arrived, they found a gray, four-door Toyota parked in front of an apartment and saw Appellant coming out towards the car. He admitted it was his car. The iPad was subsequently located behind a dumpster at the apartment, and during a search of Appellant's apartment, the police found the items stolen from the T-

Mobile store as well as two guns which matched the description of the guns used in the robbery. The police then took a photograph of Appellant and texted it to police in Orangeburg who showed it to the three victims, each of whom identified Appellant as one of the robbers. (R.p.349-p.355).

Pretrial Motions

Prior to the commencement of trial, the trial court held an extensive pretrial hearing on a number of motions, including Appellant's motion for a continuance (R.p.13-p.30), Appellant's motion to suppress evidence discovered during the warrantless search of his apartment (R.p.39-p.40; p.72), and Appellant's request for a Neil v. Biggers¹ hearing to challenge the reliability of his out-of-court identification by the three victims and the admissibility of their identification testimony which the State intended to offer at trial.

Motion for a Continuance

On February 23, 2015, the day Appellant's case was scheduled for trial, Appellant filed a written motion for a continuance in which he asked the trial court to continue his case and mandate a scheduling conference. He complained that although DNA swabs were taken from multiple locations associated with the charged offense, those swabs were never tested. Appellant asserted the results of such tests would likely be exculpatory in nature because they would indicate his DNA was not present in the tested areas. He argued he should be granted a continuance because: (1) the State utilized its unconstitutional control of the docket² to schedule his trial before forensic evidence in the possession of the State and its agents had been tested and turned over to the defense and (2) the State's denial of access to DNA evidence for testing

¹ 409 U.S. 188 (1972).

² See State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012) (holding that solicitor control of the docket violates the separation of powers doctrine).

effectively hindered his fundamental due process right to prepare and present a full and complete defense, such as any assertion of third-party guilt. (February 23, 2015, "Motion for Continuance"). The same day, the State filed a memorandum in opposition of continuance arguing that none of the evidence sought to be tested by Appellant is exculpatory or essential to his case. In regard to possible "touch" DNA taken from the vehicle, the solicitor noted Appellant had admitted ownership of the car and therefore DNA could only serve as neutral or inculpatory. In regard to touch DNA taken from the firearms, the solicitor noted they were recovered from inside Appellant's apartment and he was the only person with access to them at the time. She also noted the victims stated the armed robbers were wearing gloves during the robbery. Thus, similar to the car, DNA evidence could only serve as neutral or inculpatory. (February 23, 2015, "State's Memo in Opposition to Continuance and Disclosure of DNA Evidence.").

On the morning of February 23, 2015, the trial court convened a hearing to address pretrial motions. After denying Appellant's motion to relieve counsel and appoint a new attorney, the trial court heard arguments on his motion for a continuance. Appellant argued the same grounds set forth in his written motion, first claiming the results of the DNA testing would go directly and materially to his defense, which was third-party guilt. He argued he had a right to the information and that it was needed to be able to present a full, fair, and complete defense to the jury. Appellant offered that if the Court did not want to require the State to analyze the evidence, the defense team would do it themselves using funding already acquired ex parte from the court; however, Appellant would need a continuance to do this. (R.p.13-p.17). The State responded with the same argument set forth in its written response, arguing the touch DNA could not be exculpatory under the circumstances of the case and that there was no prejudice to Appellant by not having it tested. In regard to third-party guilt the solicitor explained that

Appellant was positively identified as one of two armed robbers and that any outstanding issues in regard to the second armed robber had no bearing on whether Appellant was guilty or not.

(R.p.17-p.22). Appellant continued to argue why he believed testing of the DNA touch evidence could be relevant to his defense. (R.p.22-p.25). Ultimately, the trial court ruled on the due process challenge as follows:

Based upon – I’ve had the opportunity to review both briefs as well as listen to the arguments of counsel. I’m going to respectfully deny your motion for continuance. The evidence that’s sought by the Defense is potentially not exculpatory and I don’t think it is exculpatory in nature. If anything, as the State said, it could be inculpatory in nature. Certainly nothing prevented the Defense from acquiring this type of evidence or testing prior to the State. The State’s not required to send everything to SLED to be analyzed. That’s certainly within their discretion as to how they want to proceed in the prosecution of a case. So your motion will be respectfully denied as outlined in the State’s response.

(R.p.25, lines 5-17).

Next, relying on Langford and Article I, Section 8 of the South Carolina Constitution, and the Sixth and Fourteenth Amendments to the U.S. Constitution, Appellant argued the solicitor’s control of the docket was a fundamental affront to due process and fairness because it effectively denied him access to information that was essential to the preparation of his defense. He again asked for a continuance a scheduling order. (R.p.25-p.28). The State responded by noting it had given Appellant notice over a month before trial that the case would be called so the defense would have time to prepare and look through the State’s case file. The solicitor also repeated her explanation for why the DNA evidence would not be exculpatory. (R.p.28-p.29).

The trial court ruled:

Based upon the case law of this State, to include Langford, which is held in abeyance pursuant to the Supreme Court Order at this time, that the Court will respectfully deny your motion for continuance. The Court finds that the Defense is not prejudiced by

the case being called to trial, that they have had ample notice and time and opportunity to prepare for trial. So your motion is respectfully denied.

(R.p.30, line 25-p.31, line 7).

Motion to Suppress Evidence from Search

At the pretrial hearing, Appellant moved to suppress the evidence obtained in the warrantless search of his residence on grounds that he revoked the initial consent he had given to that search before any of that evidence had been discovered by the police. (R.p.39-p.40). The State responded that it intended to call at least one witness on the consent to search issue. The solicitor also noted the Defense was likely to make a Biggers motion and a Denno³ motion and that because the same witnesses would also testify as to those two issues, the trial court may want to handle all three matters with each witness as they were called to the stand. (R.p.40-p.42.). Appellant agreed that he was seeking hearings pursuant to Denno and Biggers and agreed to the procedure proposed by the solicitor as long as everyone believed they could keep the three issues straight. (R.p.42)

First, the State called Corporal Leonard Cain of the Orangeburg County Sheriff's Office to the stand. He explained he assisted in the investigation of the armed robbery of the T-Mobile store and described how the police had used the "Find my iPad" application to track the stolen iPad to Appellant's apartment. Cain testified they located a gray vehicle with the door open parked in front of an apartment building, and then saw Appellant coming down the stairs towards the car. Appellant admitted the car belonged to him and initially claimed he was at the apartment visiting friends, but the police determined Appellant was lying and it was in fact his apartment. Cain said another officer, Investigator Wade, asked if Appellant would sign a consent form to search his residence and that Cain was present for the conversation between Appellant and

³ Jackson v. Denno, 378 U.S. 368 (1964).

Wade. He identified the consent to search form that was presented to Appellant and it was later admitted into evidence as State's Exhibit #1. Cain testified Appellant agreed to sign the consent form and Cain then read the language from the form into the record. The form is dated May 16, 2014, at 2 p.m. and identifies the address of the Apartment to be searched. (R.p.43-p.58; p.540).

The form is signed by Appellant and two officers who served as witnesses and it reads as follows:

I, Hardin, Archie, do hereby consent to search of my premise and/or automobile with out a search warrant by Officers of the Columbia Police Department, Columbia, South Carolina. These Officers are authorized by me to take from the premises and/or automobile letters, papers, materials, or other property which they desire.

Description of property to be searched is described as follows:

B/M 5'10 190-200 walks with limp

Any stolen property (IPAD) Any Firearms Hand Gun DW

I am aware that any evidence obtained as a result of the search can be used against me in a court of law.

By signature below I understand at any time I can withdraw the consent.

This written permission is being given by me to the above officers voluntarily and without threats or promise or any kind.

(R.p.736 (State's Exhibit #1). Cain testified that after receiving consent, police did an initial protective sweep of the apartment and looked for an iPad; however, when the iPad was subsequently located near a dumpster behind the apartment, officers went back into Appellant's apartment to do a second search, during which they discovered some phones. (R.p.59-p.62).

On cross-examination, Cain acknowledged there were four armed officers present when Appellant signed the consent form. He also acknowledged that the portion of the form

describing the property the police were seeking⁴ appeared to be written with two different pens because the part describing “any firearms” and “hand gun” was in slightly thicker writing and was followed by the initials “DW.” Cain said he was not sure when Wade added the second part. (R.p.72-p.80).

Next, the State called Sergeant John Stokes of the Orangeburg County Sheriff’s Office. He served as the lead investigator of the armed robbery. Stokes testified that once the consent to search form was signed, the police discovered several iPhones and iPads which were stolen from the T-Mobile store as well as two handguns in Appellant’s apartment. (R.p.81-p.86; p.90, lines 16-24).

The following day, after jury qualification and selection, the State called Investigator Darius Wade of the Columbia Police Department to the stand. He explained that on May 16, 2014, he had contact with Corporal Cain regarding an armed robbery that occurred in Orangeburg and that he assisted in the investigation. Using the “Locate my iPad” app, he helped track the movement of the stolen iPad, which eventually let him to an apartment complex in Columbia. Wade offered testimony consistent with Cain in regard to locating a car which matched the description of the vehicle used in the armed robbery, encountering Appellant coming from the apartment, and Appellant admitting it was his car. He testified he told Appellant they were looking for a man that walks with a limp and a stolen iPad and that Appellant consented to a search of his apartment. Wade identified the voluntary consent to search form and testified he was the officer who filled in the blanks on that form, including the “[d]escription of property to be searched.” He acknowledged the property was described using

⁴ The form used by the Columbia Police Department authorizes officers to search the premises for “letters, papers, materials, or other property which they desire” and then provides a blank for the executing officers to give a “Description of property to be searched.” Here, however, instead of simply describing the property to be searched, it appears Investigator Wade attempted to give a description of the particular items the police hoped to find during that search.

two different pens, but that both were in his handwriting. Wade explained the language about firearms and handguns and his initials "DW" were added later, but after the police had located the stolen property from the T-Mobile store. (R.p.229-p.237).

Wade testified he explained everything in the consent form to Appellant and asked him a few questions to ensure he could read and write and understand what he was signing. When he initially told Appellant the police wanted to go up to the apartment to search, Appellant asked if he would be allowed to accompany the officers. Wade advised Appellant he could be present and that Appellant could stop the search at any time. He had Appellant stand by the front door during the protective sweep and testified that while doing the initial search he and another officer saw a box in plain view which contained several different types of cell phones. He identified three photographs that were taken of the box and its contents and those photographs were later admitted at trial without objection. Wade then had the app play a sound on the stolen iPad, which he heard coming from the dumpster next to the building. The police located the iPad next to the dumpster, wrapped in a plastic bag. They then returned to the apartment to conduct a second search, at which point they questioned Appellant about the box of cell phones. Wade testified that during this second search they found a bag containing more cell phones and a second bag containing one or two handguns. He explained he added the additional language to the consent to search form before the second search and before they had discovered the guns. Wade explained to Appellant that he was adding this language while they were in Appellant's living room. He testified Appellant did not object to the second search or withdraw his consent in any way, even though he was told he could stop the search at any time and could require the police to get a search warrant. (R.p.237-p.246; p.546-p.547; State's Exhibit #1(p.736), State's Exhibit #17, State's Exhibit #24, & State's Exhibit #47).

On cross-examination, Wade agreed that there were three or four other officers present when they first approached Appellant and that they did a pat-down search for weapons before asking for consent to search the apartment. He also agreed that he was the one who added the language to the consent form regarding firearms and handguns between the initial sweep when they saw the box of cell phones, and the subsequent search when they then found the guns. Wade acknowledged Appellant's consent could have been withdrawn and that Appellant was free to tell the officers to stop searching; however, he offered no testimony to suggest Appellant actually attempted to withdraw consent at any point prior to the discovery of either the stolen property and the guns in his apartment. (R.p.254-p.266).

After the jury was sworn, the trial court gave preliminary instructions and excused the jury for the day. Appellant then testified on his own behalf in regard to the search. He claimed that on May 16, 2014, as he was coming out of his apartment and was getting into his car, the police approached with their guns drawn, so he got out with his hands up. Appellant said there were approximately eight officers with their guns drawn on him, and that they immediately began searching his car. He testified Investigator Wade asked to search his apartment and in response he said no, unless they had a warrant. Appellant claimed the police said they would detain him while they went back to Orangeburg to get a warrant, so in order to "alleviate the scene" he ultimately agreed to sign the consent form. He testified he did not feel pressured to sign the consent form, but he felt it would be best just to get it over with. Appellant said that when he first signed the consent form, the thick writing about firearms and handguns was not on the form and was added later. He testified he was handcuffed outside the door of the apartment during the initial search but that afterwards the police locked the door and he was then taken down to a patrol car, at which point Cain retrieved the key from another officer and went back up

to the apartment a second time. Appellant testified that when Cain came back down to the parking lot, Wade approached Appellant again with the consent form. He claimed Wade promised that if they found any handguns in the apartment he would not be charged by Columbia, and would leave any charges up to Orangeburg. Appellant testified Wade added the language about firearms and handguns and asked him to sign the form again; however, Appellant responded by saying: "I'm not going to sign that form no more. . . Y'all searched my apartment one time you didn't find anything. You went back in there without me being present. I don't know what you done or what you did do, but I'm not signing it." (R.p.279-p.287, line 25). Appellant testified he specifically did not give the officers permission to search a second time, but they did it anyway. (R.p.288).

On cross-examination, Appellant admitted it was his signature on the consent to search form and that he understood what he was signing. He testified he saw the part of the form saying he could withdraw consent and he signed the form with the understanding that he could withdraw his consent at any time. When asked if, at any time, he tried to withdraw his consent, Appellant said: "No. I didn't have no reason to." He testified he never told the police to stop or that he did not want them searching his apartment. Appellant then repeated his claim that he never withdrew his consent. (R.p.293-p.296). On redirect, Appellant claimed that when he said that he never withdrew his consent he was only referring to the first police search. He testified he never gave the police consent to search the apartment a second time and that when Wade added language to the consent form he did not sign it again. Appellant testified the police did not have his consent to search the apartment again. (R.p.307-p.308).

At the conclusion of the testimony, the parties argued their respective positions. Appellant did not claim he was coerced to give consent or otherwise challenge his initial consent

to the search of his apartment. Instead, he argued that when Investigator Wade altered the consent form by adding additional information, his consent was effectively revoked as evidenced by his refusal to sign the form a second time. Appellant argued his consent was withdrawn and therefore, it was an unconstitutional warrantless search. (R.p.309-p.312). The solicitor responded that, in looking at the evidence in the light most favorable to the non-moving party, the evidence showed Appellant voluntarily signed the consent form and thereby gave his consent to search his apartment. She argued Appellant was never pressured to sign the form, willingly gave his consent to the officers, and never withdrew that consent. The solicitor further argued that even if the trial court found consent was lacking, the discovery of the stolen property and guns would have been valid under the inevitable discovery doctrine because the iPad was tracked to Appellant's apartment building, he was driving a vehicle matching the one used in the armed robbery, and the three victims positively identified Appellant as one of the two robbers. She said this information was sufficient probable cause to get a search warrant for the apartment. (R.p.312-p.314). Appellant noted the proper standard was to evaluate consent under the totality of the circumstances and argued consent was not given. He also argued inevitable discovery does not apply to the apartment because the iPad was located outside. (R.p.314-p.315).

At the conclusion of the hearing, the trial court found "the consent was valid and voluntary" and therefore "the search is valid and the items that were found in the apartment and in the car are admissible." The trial judge found the officers' testimony was credible and that Appellant's testimony was contradictory which raised questions about his veracity. Ultimately, the trial court concluded "the added language in there was explained to the Defendant and the consent was never withdrawn and, therefore, the items that were found will be admissible." (R.p.340-p.341).

Motion to Suppress Identification: Neil v. Biggers

As noted above, Appellant requested a Neil v. Biggers hearing on the identification issue. (R.p.42). Testimony regarding identification was interspersed with testimony regarding the search of Appellant's apartment and the admissibility of his statements to the police. First, in regard to the identification, Corporal Cain testified that prior to locating the iPad and prior to Appellant's arrest he took a photo of Appellant with his county issued cell phone and sent it to Lieutenant Schumpert in Orangeburg. He was subsequently advised by Schumpert that Appellant had been identified by the victims of the armed robbery. Cain identified a printed copy of the photo he sent, which was marked and entered as State's Exhibit #2. (R.p.62-p.64).

Next, Sergeant Stokes testified he was the officer who instructed Cain to take the photo of Appellant to send to Lieutenant Schumpert. He explained the photo was shown to the three victims and they positively identified Appellant as having robbed the T-Mobile store that morning. (R.p.86; p.92). On cross-examination, Stokes acknowledged an officer in uniform is also visible in the photo, standing behind Appellant. He likewise acknowledged the photo was shown to the victims on a cell phone, not as a print-out or as part of a "six-pack" photo lineup. Stokes also acknowledged that during the investigation he took a statement from a Mr. Walters, an eyewitness who was nearby at the time of the crime, in which Walters said Schumpert had shown him two photographs. Finally, Stokes acknowledged that several days after the robbery the police put together a six-card photo lineup which did not include Appellant's photograph and that victim Thomas Sims, Jr., identified somebody from that lineup as one of the robbers. (R.p.118-p.127; p.129-p.132). On redirect Stokes explained the six-card photo lineup was presented to Sims on May 21, 2014, in an effort to ascertain the identity of the co-defendant, and

that he was not attempting to determine if Sims could further identify Appellant. (R.p.140-p.141).

Following jury qualification and selection, the State proceeded to call each of the three victims to describe the armed robbery as well as their out-of-court identification of Appellant. Store manager Thomas Sims, Jr., saw Appellant come into the T-Mobile store and watched him talk with his employee, Jarron Weaver, about getting an iPad for his daughter. Sims said he was able to view Appellant for five to ten minutes before he left the store first time, then saw Appellant briefly return, leave again, and then come in a third time with another guy. The two men had guns and told him and Weaver to get to the back of the store where they ordered them to the ground and duct taped their hands behind their backs and their feet together. Sims testified the police later showed him a photograph on a cell phone and asked if he could identify the person in the photo. He said he was immediately able to identify the person in the photograph as the person that robbed the store. (R.p.172-p.178). On cross-examination, Sims was questioned about his opportunity to see the men who robbed the store, discrepancies in the details he gave when describing those men to the police, and being shown a single photograph on a cell phone which included an officer in the background., (R.p.178-p.197).

Store employee Jarron Weaver testified he talked with Appellant, face to face, for ten to fifteen minutes the first time he came into the T-Mobile store and then again for another five to ten minutes the second time he came in prior to the robbery. He testified the robbery itself lasted ten to fifteen minutes during which he was taken to the back at gunpoint, ordered to the floor, and duct taped. Weaver described being shown the cell phone photograph of Appellant by the police. He testified he was taken over to the side, by himself, and shown the picture and was

able to immediately recognize Appellant as the person who robbed the store. Weaver said he was a hundred percent certain of the identification. (R.p.197-p.202).

Store employee Kirstie Berry testified about being outside on a smoke break when she was "snatched" into the back door of the T-Mobile store, ordered to the ground, hit in the back of the head before being duct taped on the floor. She said she got a good look at her assailant because she was turned directly face-to-face with him, less than a foot away, when she was pulled into the store. Berry testified about being shown the photo. She said she was immediately able to identify Appellant as the guy who robbed the store and who tied her up. Berry testified she was one hundred percent certain of the identification and then identified Appellant in the courtroom. (R.p.213-p.218).

At the conclusion of the testimony, the parties argued their respective positions in regard to the admissibility of Appellant's identification by the victims. Appellant referenced the two-pronged Biggers inquiry and argued the identification procedure used by the police was both unduly suggestive and so unreliable that it created a substantial likelihood of misidentification. He argued the act of showing the victims a single photo of him, with an officer standing directly behind, rather than a six-pack photo lineup or a traditional standup lineup with actual people was unduly suggestive. Appellant then argued that given the limited opportunity to view the robbers at the time of the offense, the degree of attention, the accuracy of the prior descriptions, and the length of time between the armed robbery and the identification of the photograph, there was a substantial likelihood of misidentification. He asked that the out-of-court identifications and any in-court identifications be suppressed. (R.p.321-p.327). The solicitor acknowledged that show-up identification procedures that involve a single suspect are generally disfavored; however, they may be proper when they occur shortly after the crime while the witnesses' memories are still

fresh and the suspect has not had time to alter his looks. She then went through the factors supporting admission of the identification including the substantial opportunity the victims had to look at Appellant, the fact that they continued to have a conversation in close proximity with the robber when guns were pointed at them, the relative accuracy of their descriptions of the robbers, and the fact that the identifications were made only three hours after the robbery while their memory was still fresh. The solicitor argued that even if the trial court determined the procedure was unduly suggestive, it still did not create a substantial likelihood of irreparable misidentification and therefore the motion to suppress should be denied. (R.p.327-p.331).

The following morning the trial court ruled on the identification issue. Although it found the procedure used by the police in showing the individual photograph to the victims was unduly suggestive, it nevertheless found the identification of Appellant was sufficiently reliable to allow admission of the testimony. The trial court examined the likelihood of misidentification by considering the totality of the circumstances. It specifically noted: (1) the victims had ample opportunity during daylight hours to view the robbers at the time of the crime, (2) the victims were able to pay close attention to what the person looked like, (3) the victims gave accurate descriptions of the perpetrator, (4) the victims testified their level of certainty was one hundred percent, and (5) the length of time between the armed robbery and the confrontation when they identified the photograph was short in nature. Ultimately, the trial court found the identification of Appellant was proper and denied Appellant's motion to suppress. (R.p.341-p.342).

Trial

After ruling on each pretrial motion, the case proceeded to trial and the parties gave opening statements. (R.p.342-p.358). First, the solicitor described the evidence that would be presented at trial, which would focus on testimony from the three victims working at the T-

Mobile store on the day of the robbery. (R.p.349-p.355). Next, Appellant presented his theory of defense, which consisted of the claim that he was not guilty of armed robbery or kidnapping because he was not in Orangeburg on the day the T-Mobile store was robbed. He noted the lack of any DNA evidence or fingerprint evidence tying him to the crime, and pointed out the fact that the DNA evidence which was collected was never even tested by the State. (R.p.255-p.358).

The State then called Sims, Weaver, and Berry to describe the armed robbery in detail to the jury. Each of the victims identified the guns recovered from Appellant's apartment as the guns used in the armed robbery, and they made in-court identifications of Appellant as one of the two armed robbers. Each victim testified he or she was one hundred percent sure of the identification. (R.p.358-p.438). The State then called a series of law enforcement officers to the stand to describe the response to, and investigation of, the armed robbery. These officers included: Lieutenant Antonia Turkvant, Investigator Samuel S. Norton, Sergeant John C. Stokes, Investigator William Ketcherside, Sergeant Rashad Moore, and Corporal Leonard Cain, all of the Orangeburg County Sheriff's Office; as well as Investigator Darius Wade of the Columbia Police Department. (R.p.438-p.456; p.469-p.588; p.595-p.615). The State also elicited testimony from Hyrett Hamilton, a resident of the apartment complex that was behind the T-Mobile store who saw two black males dressed in mostly black come over the fence with a box, and head towards the parking lot (R.p.456-p.461), and Destiny Brown, another resident of the apartment complex who saw two men carrying boxes who got into a small car and drive away shortly after the armed robbery, and who identified a photograph of Appellant's car as the car the two men were driving. (R.p.462-p.468). Finally, the State introduced testimony from Steve Reynolds, the CEO of Air Wireless, a company that owns six T-Mobile stores in South Carolina. Reynolds responded to the report of the robbery by producing an inventory report reflecting which items were stolen.

Those items were valued at thirty-seven thousand two hundred and ninety-nine dollars.

(R.p.591-p.594).

After the State rested, Appellant made a motion for a directed verdict and that motion was denied. (R.p.615-p.618). Appellant then testified on his own behalf. He testified he did not rob the T-Mobile store on May 16, 2014, did not kidnap the three victims, did not hit Berry in the back of the head, and did not point a gun at anyone. Appellant claimed he was never in Orangeburg the day of the robbery. According to Appellant, he lent his rental car to his friend "Black" on the morning of May 16, 2014, and that Black had the car for four and a half or five hours before returning it around 12:30 or 1:00 that afternoon. He said when he loaned the car to Black, there was nothing in the car, but when Black returned the car it contained a laundry basket with dirty clothes, two tennis shoe boxes, a brown box, and a black bag. Appellant said he and Black then drove around Columbia to find something to eat and to try to find a hotel room for Black, but ultimately ended up back at Appellant's apartment because Black kept seeing a Dodge Charger wherever they stopped and believed they were being followed by Black's parole officer. Appellant testified Black asked to leave his stuff at Appellant's apartment while Appellant went to return the rental car, so the two men carried the boxes and other items up to his apartment. He said neither was wearing gloves at the time. Appellant testified that Black walked towards the back of the apartment complex to see if their mutual friend "Joe" could take him to find a hotel, and as Appellant was about to leave his apartment to return the rental car, a bunch of police cars pulled up. (R.p.626-p.634).

Next, Appellant offered his version about the search of his apartment and his arrest. He admitted he told the police it was his car and admitted that he initially signed the consent form for the police to search his apartment because he did not have anything to hide. Appellant

claimed, however, that the officers went back up to his apartment to conduct a second search, after which Investigator Wade approached him about signing the consent form a second time after he had added language about firearms. He testified he told Wade he would not sign the consent form again but that the police searched the apartment a second time anyway, at which point they found Black's stuff. (R.p.634-p.646). On cross-examination Appellant admitted that during his bond hearing he said "I'm guilty" but claimed he got cut off before explaining he meant he felt like he was being treated like he was already guilty. (R.p.646-p.655).

At the conclusion of Appellant's testimony, the defense rested and re-raised Appellant's motions for directed verdict. The trial court denied those motions. (R.p.657-p.658). The State then made a closing statement on the law, and the parties made closing arguments. (R.p.659-p.686). Appellant argued he was not guilty of the crimes and that the police actions in charging him were a rush to judgment because they presumed him guilty from the start rather than conducting a fair and thorough investigation. He criticized the police for failing to try hard enough to identify and track down Black, and he attacked the identification testimony from the three victims by pointing out inconsistencies in their descriptions and the suggestiveness of the photo identification the day of the armed robbery. Appellant then criticized the police for failing to conduct DNA testing of the duct tape, the boxes, the car, or the guns, despite either actually collecting DNA or having the ability to collect DNA from these items. (R.p.664-p.673). In response, the solicitor detailed the testimony offered from each witness during the course of the trial and how they all pointed conclusively to Appellant's guilt for the crimes charged. She focused on the identification testimony from the three victims and the discovery of the stolen items in or near Appellant's apartment. (R.p.673-p.686).

The trial judge charged the jury on the State's burden of proof, the presumption of innocence, reasonable doubt, the roles of the judge and jury, direct evidence, circumstantial evidence, criminal intent, accomplice liability, mere presence, credibility of witnesses, expert witnesses, statements made by the defendant, and the elements of the crimes. (R.p.686-p.706).

In regard to identity, the trial judge specifically charged the jury as follows:

Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was available. How far or close the witness was, the lighting conditions and whether the witness had the chance to see or know the person in the past. Once again, I instruct you, the burden of proof is on the State and extends to every element of the crime charged. And this specifically includes of proving beyond a reasonable doubt the identity of the Defendant as a person who committed the crime. If, after examining the testimony you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

(R.p.692, line 22-p.693, line 13). Except for an objection to the trial judge's failure to give a circumstantial evidence charge pursuant to State v. Logan, Appellant made no other objections to the jury charge or verdict form. (R.p.706).

At the end of trial, after deliberating for approximately an hour and twenty-five minutes, the jury found Appellant guilty of each charge. Appellant renewed all prior motions, including pretrial motions and the directed verdict motions, and made a motion for a new trial, arguing there was no evidence to support the conviction. The trial court denied the motions and sentenced Appellant to thirty (30) years' concurrent imprisonment for each count of kidnapping, thirty (30) years' concurrent imprisonment for armed robbery, twenty (20) years' concurrent imprisonment for assault and battery of a high and aggravated nature, and five (5) years'

consecutive imprisonment for possession of a weapon during a violent crime, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.719-735; Tr.p.706-p.717).

ARGUMENT

I.

The trial court properly denied Appellant's motion for a continuance prior to trial because Appellant failed to establish the grant of any additional time would have enabled him to produce admissible exculpatory evidence or to raise additional points beneficial to his defense during trial.

Appellant argues the trial court erred in refusing to grant his motion for a continuance so he could have DNA evidence analyzed by an expert because he alleges that DNA evidence was possibly exculpatory. Relying primarily on our supreme court's opinion in State v. Tanner, 299 S.C. 459, 385 S.E.2d 832 (1989), he contends he made more than the required showing that other evidence on his behalf could have been introduced if he had been given more time prior to trial. Appellant argues that because the DNA evidence "might well have been exculpatory," the trial court's decision to deny his request for a continuance should be overturned in the interests of justice and his constitutional due process rights. (Brief of Appellant, p.9-p.13). The State disagrees and submits Appellant's argument is without merit. Contrary to Appellant's contentions, the trial judge committed no error in refusing to grant a continuance prior to trial because Appellant failed to establish the grant of any additional time would have enabled him to produce admissible exculpatory evidence or to raise additional points beneficial to his defense during trial.⁵ Appellant's convictions should be affirmed.

⁵ In addition to Appellant failing to make the requisite showing, the trial court also properly denied the request for a continuance where defense counsel knew of the existence of the DNA evidence well before trial and had sufficient time to seek independent DNA testing but instead waited in hopes the State would test the touch DNA first.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Gordon, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added). "In South Carolina '[t]he grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record.'" State v. Hill, 409 S.C. 50, 59, 760 S.E.2d 802, 807 (2014) (quoting Plyler v. Burns, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007)); see also State v. Squires, 248 S.C. 239, 244, 149 S.E.2d 601, 603 (1966) ("It is well settled in this jurisdiction, as well as in most others, that the trial court's refusal of a motion for continuance in a criminal case will not be disturbed in the absence of a clear and conclusive abuse of discretion."). As stated by our Supreme Court: "Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth." State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) (citing State v. Lytchfield, 230 S.C. 405, 95 S.E.2d 857 (1957)).

Discussion / Analysis

Here, a continuance was not warranted based on the State's decision not to have the touch DNA tested, because any such testing could not have proved exculpatory to Appellant or the allegations involved in his case and, thus, were not pertinent to his defense. See State v. Geer, 391 S.C. 179, 192, 705 S.E.2d 441, 448 (Ct. App. 2010) (holding the trial judge did not abuse his discretion in denying Geer's continuance request where "the State's late disclosure of the

evidence did not impair Geer's ability to present a defense regarding whether she possessed crack cocaine"). In arguing the trial judge erred by refusing to grant a continuance, Appellant contends the grant of a continuance would have permitted defense counsel to test the DNA evidence to possibly show his DNA was not on the guns used in the armed robbery or in his own car, "which might well have been exculpatory." (Brief of Appellant, p.13). He also suggests that without the DNA results, they were prevented from arguing a third-party defense and he claims that in closing, the State acknowledged "the un-analyzed DNA, fingerprint, and duct tape evidence might well have proved that [Appellant] was innocent and fingered his friend "Black." (Brief of Appellant, p.11-p.12).

Initially, the State submits Appellant misrepresents the State's closing argument. The solicitor never agreed or admitted the untested DNA evidence could be exculpatory. Instead, she was merely paraphrasing Appellant's argument that it could somehow prove his innocence, and was explaining how the defense would attempt to characterize DNA results as either favorable or neutral regardless of the result. (R.p.679-p.680). In any event, as argued by the State in both its written and oral responses to Appellant's motion, and as found by the trial judge, none of the evidence sought to be tested by Appellant could have been exculpatory or essential to his case. In regard to DNA taken from the vehicle, Appellant admitted ownership of the car and therefore DNA could only serve as neutral or inculpatory. In regard to DNA taken from the firearms, those guns were recovered from inside Appellant's apartment and he was the only person with access to them at the time of his arrest. Also, the victims gave statements that the armed robbers were wearing gloves during the robbery. Thus, similar to the evidence from the car, DNA evidence could only serve as neutral or inculpatory. In regard to Appellant's claim that he could use the possible absence of his DNA to pursue third-party guilt, Appellant was positively

identified as one of two armed robbers; therefore, any outstanding issues in regard to the second armed robber also could have no bearing on whether Appellant himself was guilty or not.

(February 23, 2015, "State's Memo in Opposition to Continuance and Disclosure of DNA Evidence"; R.p.17-p.22; p.25, lines 5-17). Thus here, as in Squires, there is no showing that any other evidence on behalf of Appellant could have been produced, or that any other points in his behalf could have been raised had more time been granted. With or without the actual DNA results, Appellant was able to make the same arguments in his defense.

Appellant's reliance on Tanner is unpersuasive. In Tanner, blood, skin, and hair samples were taken from the car Tanner was alleged to have been driving at the time of the felony DUI. Tanner, 299 S.C. at 462, 385 S.E.2d at 834. Although Tanner's attorney became aware of the existence of these samples some time before trial, in response to at least six inquiries and discovery motions, he was informed by the solicitor's office that the samples were lost or misplaced. Id. Here, Appellant was aware of the DNA samples well before trial and was never informed they were lost, misplaced, or otherwise unavailable. Also in Tanner, the trial court failed to even consider the potential exculpatory value of the evidence. Tanner, 299 S.C. at 463, 385 S.E.2d at 834. Here, the trial court considered the potential exculpatory value and found it had none. Finally, in Tanner the primary defense was that he was not driving at the time of the accident such that evidence of the victim's hair or blood on the driver's side of the vehicle could have supported Tanner's contention he was merely a passenger. Tanner, 299 S.C. at 463, 385 S.E.2d at 834. Here, as found by the trial court, Appellant failed to show how the presence or absence of his DNA in the car or on the guns could have actively supported his theory of defense. At best, the evidence would have been neutral, offering nothing exculpatory.

Under these circumstances, the trial court did not abuse its broad discretion by refusing to grant a continuance and delay the trial. See State v. Meggett, 398 S.C. 516, 523, 728 S.E.2d 492, 496 (Ct. App. 2012) (“The denial of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion resulting in prejudice.”). Accordingly, for all the foregoing reasons, Appellant failed to meet his burden of establishing the trial judge’s refusal to grant a continuance constituted a prejudicial abuse of discretion. See Squires, 248 S.C. at 244, 149 S.E.2d at 603 (“It is well settled in this jurisdiction, as well as in most others, that the trial court’s refusal of a motion for continuance in a criminal case will not be disturbed in the absence of a **clear and conclusive** abuse of discretion.” (emphasis added)). As a result, there is no basis to disturb the trial judge’s decision on appeal. See State v. Motley, 251 S.C. 568, 572, 164 S.E.2d 569, 570 (1968) (“When a motion for a continuance is based upon the contention that counsel for the defendant has not had time to prepare his case its denial by **the trial court has rarely been disturbed on appeal**.” (emphasis added)); see also Calderon v. California, 525 U.S. 141, 146 (1998) (“The social costs of retrial or resentencing are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error.” (citations omitted)). Appellant’s convictions should be affirmed.

II.

The trial court properly concluded that while the procedure used by the police was unduly suggestive, the out-of-court identification made by the three victims was nevertheless so reliable that no substantial likelihood of misidentification existed.

Appellant argues that although the trial court utilized the appropriate two-pronged Biggers inquiry to analyze the admissibility of the victims' out-of-court identifications, it erred when applying the second prong of that analysis because: "There was no weighing of the individual "totality of circumstances" factors against one another by the trial court." Relying primarily on our supreme court's opinion in State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000), Appellant argues his identification was "clearly inadmissible and should therefore have been excluded by the trial Court." (Brief of Appellant, p.12-p.16). The State disagrees and submits Appellant's argument is without merit. Under the totality of the circumstances, the three victims' out-of-court and in-court identifications were reliable. The trial court did not abuse its broad discretion in admitting those identifications and Appellant's convictions should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence rests within the sound discretion of the trial judge. State v. Johnson, 413 S.C. 458, 466, 776 S.E.2d 367, 371 (2015); State v. Simmons, 384 S.C. 145, 166, 682 S.E.2d 19, 30 (Ct. App. 2009). Accordingly, a circuit court's decision to allow the in-court identification of an accused will not be disturbed on appeal absent an abuse of discretion or prejudicial legal error. Simmons, 384 S.C. at 166, 682 S.E.2d at 30; State v. Govan,

373 S.C. 552, 556, 643 S.E.2d 92, 94 (Ct. App. 2007). “To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury’s verdict was influenced by the challenged evidence or the lack thereof.” State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting Fields v. Reg’l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

Law / Analysis

An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012); State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). A witness’s subsequent in-court identification is inadmissible “if a suggestive out-of-court identification procedure created a very substantial likelihood of *irreparable* misidentification.” State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added). Trial courts employ a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. Liverman, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from “unnecessarily suggestive” police procedures. Biggers, 409 U.S. at 198-99; Liverman, 398 S.C. at 138, 727 S.E.2d at 426; Traylor, 360 S.C. at 81, 600 S.E.2d at 526. If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong. State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). The defendant bears the burden of proving the identification procedure was impermissible suggestive. Id. at 561, 745 S.E.2d at 141 (“Our supreme court has

never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions regarding federal constitutional law are binding on us, has held the defendant bears the burden of proving the identification procedure was impermissibly suggestive.”).

If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless “so reliable that no substantial likelihood of misidentification existed.” Liverman, 398 S.C. at 138, 727 S.E.2d at 426. The inquiry must focus upon whether, under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007); Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36. When determining the likelihood of misidentification, courts must evaluate the totality of the circumstances using the following factors: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Turner, 373 S.C. at 127, 644 S.E.2d at 697; Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36.

In regard to the identification procedure, the testimony established that the police took a photograph of Appellant near the time of his arrest and showed that single photograph to the three victims approximately three hours after the armed robbery. Upon looking at the photograph, each victim identified Appellant as one of the people who robbed the T-Mobile store. An officer in uniform is visible in the photo, standing behind Appellant. (R.p.62-p.64; p.86; p.92; R.p.118-p.127; p.129-p.132; State's Exhibit No. 2). Based on these facts, the trial court concluded Appellant had carried his burden of proving the identification procedure was impermissibly suggestive and moved on to evaluate the reliability of the identifications under the

totality of the circumstances using the five relevant factors, concluding the identification was proper and should be admitted. (R.p.341-p.342). The State submits there was ample evidence in the record to support the trial court's ruling that the three out-of-court identifications were reliable under the totality of the circumstances.

When the police arrived at the scene, the victims gave statements describing the armed robbers, including descriptions of what they were wearing at the time of the armed robbery. At the pretrial hearing they also gave descriptions and detailed their opportunity to see Appellant during the encounter. Store manager Thomas Sims, Jr., testified he was able to view Appellant for five to ten minutes before he left the store first time, then saw Appellant briefly return, leave again, and then come in a third time with another man, both of whom were carrying guns. He said Appellant was wearing a black shirt and khakis as well as sunglasses and a hat when he first entered the store, and was still wearing the exact same clothing during the robbery. Sims testified he was immediately able to identify the person in the photograph as the person that robbed the store. (R.p.172-p.178). Store employee Jarron Weaver testified he talked with Appellant, face to face, for ten to fifteen minutes the first time he came into the T-Mobile store and then again for another five to ten minutes the second time he came in prior to the robbery. He said Appellant had on a baseball cap and sunglasses and acknowledged in his statement to the police he had noted not just the hat and glasses, but also described Appellant as wearing a black shirt over a grey shirt, and khaki pants. Weaver testified he was shown the picture and was able to immediately recognize Appellant as the person who robbed the store, and that he was one hundred percent certain of the identification. (R.p.197-p.202). Store employee Kirstie Berry testified she got a good look at Appellant because she was turned directly face-to-face with him, less than a foot away, when she was pulled into the store. She said he was wearing a lavender

shirt with a black t-shirt over it, blue jeans, a hat, and sunglasses. Berry testified she was immediately able to identify Appellant as the guy who robbed the store and who tied her up, and testified she was one hundred percent certain of the identification. (R.p.213-p.218).

Based on this testimony and the testimony of the police officers who took the photo of Appellant, sent it to Orangeburg, and showed it to the victims, the trial court evaluated the likelihood of misidentification by considering the totality of the circumstances. The court specifically noted: (1) the victims had ample opportunity during daylight hours to view the robbers at the time of the crime, (2) the victims were able to pay close attention to what the person looked like, (3) the victims gave accurate descriptions of the perpetrator, (4) the victims testified their level of certainty was one hundred percent, and (5) the length of time between the armed robbery and the confrontation when they identified the photograph was short in nature. The trial court found the identification of Appellant was proper and reliable and denied Appellant's motion to suppress. (R.p.341-p.342).

The evidence supports this finding; therefore, the trial court did not abuse its discretion and should be affirmed. Dukes, 404 S.C. at 563, 745 S.E.2d at 142. Each of the three victims had excellent opportunities to view Appellant before and during the armed robbery because they all saw Appellant's face. Weaver actually carried on a face-to-face conversation with Appellant for fifteen to twenty-five minutes. When the robbery occurred, the victims attention was heightened because they had guns pointed at them and were being ordered to the ground. Although not perfectly aligned in every single detail, the victims all gave very consistent descriptions of Appellant which focused on his hat, his sunglasses, and his black shirt. They also testified they were absolutely certain they had made a correct identification from the photograph. Finally, the photograph was presented only three hours after the crime, and it was presented

independently to each victim. Under the totality of the circumstances, the victims' out-of-court and in-court identifications were clearly reliable.

Appellant's reliance on Moore is misplaced. In Moore, our Supreme Court found that under the facts of that case, the identification was unreliable as a matter of law. Moore, 343 S.C. at 288, 540 S.E.2d at 447. Although the Court noted that only one of the five factors weighed in favor of reliability—the amount of time between the crime and the confrontation—and found that single factor was “clearly outweighed by the other factors,” the Court did not, as Appellant suggests, weigh the individual factors “against one another.” Id. at 289, 540 S.E.2d at 448-49. Instead, the Court applied the totality of the circumstances analysis just as it has been described, by evaluating the totality of the circumstances using the five identified factors. The facts in Moore are easily distinguished from the facts in this case. Moore was “not a case in which the witness had an opportunity to observe defendant in close proximity for some considerable period of time.” Id. at 289, 540 S.E.2d at 449. Instead, “the witness saw the two defendants for only a brief period of time, at some distance.” Id. Here, the victims all saw Appellant either for a long period of time, in very close proximity, or both. As to the second factor, the witness' attention in Moore “was likely not as acute as it might have been had she been the victim of a crime.” Id. Here, there were three witnesses and they were all victims of the crimes. In Moore, “the degree of accuracy of [the witness'] description [was] tenuous, at best.” Id. Here, the three victims gave consistent descriptions Appellant's attire during the crimes and, as noted by the trial court, their level of certainty was one hundred percent. Thus, unlike the facts in Moore, the facts in Appellant's case support the trial court's finding there was no substantial likelihood of these being irreparable misidentifications. Consequently, the trial court did not abuse its discretion in

denying Appellant's motion to suppress the identification testimony, and Appellant's convictions should be affirmed.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). An admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Here, the State submits any error in the admission of the identification evidence from the victims was harmless and not prejudicial. The identification evidence was undoubtedly strong because it directly implicated Appellant as one of the two armed robbers; however, there was significant and substantial direct and circumstantial evidence independently proving his participation in armed robbery. This includes the identification of Appellant's car as the car used in the robbery, the identification of the guns found in Appellant's apartment as the guns used in the armed robbery, and the discovery of the merchandise and personal property stolen from the T-Mobile store in or near Appellant's apartment less than three hours after the crime. See State

v. Simmons, 308 S.C. 80, 83, 417 S.E.2d 92, 94 (1992) (“We note that, under certain circumstances, if the identification is corroborated by either circumstantial or direct evidence, then the harmless error rule might be applicable.”). Furthermore, Appellant answered affirmatively during cross-examination at trial that after his arrest he was riding “back to Orangeburg” when he told Investigator Cain he would help them find Black (R.p.651, lines 12-16), despite testifying on direct that he had not been to Orangeburg at all on the day of the robbery. See State v. Kirkpatrick, 320 S.C. 38, 43, 462 S.E.2d 884, 888 (Ct. App. 1995) (“The erroneous admission of the key evidence was harmless inasmuch as Kirkpatrick admitted he rented the U-Haul in question and bought a lock, with two keys, to put on it. Thus, the evidence of the key linking Kirkpatrick to the U-Haul was merely cumulative.”). Because the challenged identification evidence was cumulative to other properly-admitted evidence, any error in the admission of that identification evidence was harmless and could not have affected the result at trial. See Singleton, 395 S.C. at 14-15, 716 S.E.2d at 336 (finding harmless error in the admission of identification testimony where two co-conspirators testified against Singleton and identified him as a participant in the robbery). Furthermore, the propriety of Appellant’s conviction is reinforced by the other protections he was afforded at trial, including his Sixth Amendment right to confront the victims, his right to the effective assistance of an attorney who attempted to expose the flaws in the victims’ testimony during cross-examination and focus the jury’s attention on the fallibility of such testimony during opening and closing arguments, the trial court’s eyewitness-specific jury instruction, and the constitutional requirement that the State prove Appellant’s guilt beyond a reasonable doubt. Liverman, 398 S.C. at 142-43, 727 S.E.2d at 428. For all of these reasons, Appellant’s convictions should be affirmed.

III.

The trial court properly admitted evidence collected during the search of Appellant's apartment where he gave written consent for the search of his apartment, he placed no specific or significant limits on the scope of that consent, and he made no unequivocal statement or act to withdraw that consent.

Appellant argues the evidence collected in the second warrantless search of his apartment was not properly admitted because, although he gave consent to the first search, he "effectively withdrew consent, thereby requiring a search warrant to search his residence a second time." The State disagrees and submits Appellant's argument is entirely without merit.

Standard of Review

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. State v. Brown, 401 S.C. 82, 87, 736 S.E.2d 263, 265 (2012), cert. denied, ___ U.S. ___, 133 S. Ct. 2779 (2013); State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. Brown, 401 S.C. at 87, 736 S.E.2d at 265; State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001). An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. Brown, 401 S.C. at 87, 736 S.E.2d at 265; State v. Jennings, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011); State v. Morris, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. Wilson, 345 S.C. at 6, 545 S.E.2d at 829. Thus, when reviewing a Fourth Amendment search and seizure case, an appellate court must affirm the trial court's ruling if there is any evidence to

support it; the appellate court may reverse only for clear error. Brown, 401 S.C. at 87, 736 S.E.2d at 265.

Law / Analysis

The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures and provides that no warrants shall be issued except upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized. U.S. Const. amend. IV. The South Carolina Constitution provides similar protection against unreasonable searches and seizures and unreasonable invasions of privacy. S.C. Const. art. I, § 10. A search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property. Brown, 401 S.C. at 88, 736 S.E.2d at 266; State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting Horton v. California, 496 U.S. 128, 133 (1990)). The Fourth Amendment itself provides no remedy for a violation of the warrant requirement. Davis v. United States, 564 U.S. 229, 231 (2011). However, the United States Supreme Court has fashioned a judicially-created remedy, the exclusionary rule, which is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment. Id.; Brown, 401 S.C. at 88, 736 S.E.2d at 266. Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement. Brown, 401 S.C. at 89, 736 S.E.2d at 266; Wright, 391 S.C. at 442, 706 S.E.2d at 327. These exceptions include the following: (1) search incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, (6) consent, and (7) abandonment. Brown, 401 S.C. at 89, 736 S.E.2d at 266; State v. Dupree, 319 S.C. 454, 456, 462 S.E.2d 279, 287 (1995); State v. Moore, 377 S.C. 299, 309, 659 S.E.2d 256, 261 (Ct. App. 2008).

Consent

Whether consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances. State v. Wallace, 269 S.C. 547, 550, 238 S.E.2d 675, 676 (1977); State v. Mattison, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (Ct. App. 2003). The State bears the burden of establishing the voluntariness of the consent. Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Mattison, 352 S.C. at 584, 575 S.E.2d at 855. The issue of voluntary consent, when contested by contradicting testimony, is an issue of credibility to be determined by the trial judge. Mattison, 352 S.C. at 584-85, 575 S.E.2d at 856; State v. Dorce, 320 S.C. 480, 482, 465 S.E.2d 772, 773 (Ct. App. 1995). A trial judge's conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion. Mattison, 352 S.C. at 585, 575 S.E.2d at 856.

Under our state constitution suspects are free to limit the scope of the searches to which they consent. State v. Forrester, 343 S.C. 637, 648, 541 S.E.2d 837, 843 (2001); State v. Funderburk, 367 S.C. 236, 240, 625 S.E.2d 248, 250 (Ct. App. 2006); Mattison, 352 S.C. at 585, 575 S.E.2d at 856. When relying on the consent of a suspect, a police officer's search must not exceed the scope of the consent granted or the search becomes unreasonable. Forrester, 343 S.C. at 648, 541 S.E.2d at 843; Funderburk, 367 S.C. at 240, 625 S.E.2d at 250; Mattison, 352 S.C. at 585, 575 S.E.2d at 856. Even in a situation where police have received a general and unqualified consent, "the police do not have carte blanche to do whatever they please." Forrester, 343 S.C. at 648-49, 541 S.E.2d at 843 (quoting 3 Wayne R. LaFare, *Search and Seizure* § 8.1(c), at 612 (3d ed. 1996)). The scope of the consent is measured by a test of "'objective' reasonableness - what would the typical reasonable person have understood by the exchange between the officer

and the suspect?" Florida v. Jimeno, 500 U.S. 248, 251 (1991); Mattison, 352 S.C. at 585-86, 575 S.E.2d at 856. Conduct falling short of "an unequivocal act or statement of withdrawal" is not sufficiently indicative of an intent to withdraw consent. Mattison, 352 S.C. at 587, 575 S.E.2d at 858; United States v. Alfaro, 935 F.2d 64, 67 (5th Cir. 1991). Effective withdrawal of consent to search requires unequivocal conduct, in the form of either an act, statement or some combination of the two that is inconsistent with consent previously given. Mattison, 352 S.C. at 585, 575 S.E.2d at 858; Burton v. United States, 657 A.2d 741 (D.C. 1994).

At the pretrial hearing, Appellant moved to suppress the evidence obtained in the warrantless search of his residence on grounds that he revoked the initial consent he had given to that search before any of that evidence had been discovered by the police. (R.p.39-p.40). The State responded by calling witnesses on the consent to search issue. Corporal Leonard Cain of the Orangeburg County Sheriff's Office was present for the conversation when another officer, Investigator Wade, asked if Appellant would sign a consent form to search his residence. He identified the consent to search form that was presented to Appellant and it was later admitted into evidence as State's Exhibit #1. Cain testified Appellant agreed to sign the consent form. The form is dated May 16, 2014, at 2 p.m. and identifies the address of the apartment to be searched. (R.p.43-p.58; p.540; State's Exhibit #1(p.736)). Cain testified that after receiving consent, police did an initial protective sweep of the apartment and looked for an iPad; however, when the iPad was subsequently located near a dumpster behind the apartment, officers went back into Appellant's apartment to do a second search, during which they discovered some phones. (R.p.59-p.62). On cross-examination, Cain acknowledged that the portion of the form listing the property the police were seeking appeared to be written with two different pens because the part describing "any firearms" and "hand gun" was in slightly thicker writing and

was followed by the initials "DW." Cain said he was not sure when Wade added the second part. (R.p.72-p.80).

Sergeant John Stokes of the Orangeburg County Sheriff's Office served as the lead investigator of the armed robbery and testified that after the consent to search form was signed the police discovered several iPhones and iPads which were stolen from the T-Mobile store, as well as two handguns in Appellant's apartment. (R.p.81-p.86; p.90, lines 16-24).

Investigator Darius Wade of the Columbia Police Department explained that on May 16, 2014, he had contact with Corporal Cain regarding an armed robbery that occurred in Orangeburg and that he assisted in the investigation. He testified he told Appellant they were looking for a man that walks with a limp and a stolen iPad and Appellant consented to a search of his apartment. Wade identified the voluntary consent to search form and testified he was the officer who filled in the blanks on that form, including the "[d]escription of property to be searched." He acknowledged the personal property he listed was described using two different pens, but both were in his handwriting. Wade explained the language about firearms and handguns and his initials "DW" were added later, but not until after the police had located the stolen property from the T-Mobile store. (R.p.229-p.237).

Wade testified he explained everything in the consent form to Appellant and asked him a few questions to ensure he could read and write and understand what he was signing. He advised Appellant he could stop the search at any time. Wade testified that while doing the initial search he and another officer saw a box, in plain view, which contained several different types of cell phones. Wade subsequently had the app play a sound on the stolen iPad, which he heard coming from the dumpster next to the building. The police located an iPad next to the dumpster, wrapped in a plastic bag. They then returned to the apartment to conduct a second search, at

which point they actually questioned Appellant about the box of cell phones they had previously seen. During this second search they found a bag containing more cell phones and a second bag containing one or two handguns. Wade explained he added the additional language to the consent to search form before the second search and before they had discovered the guns. Wade testified he explained to Appellant that he was adding this language while they were in Appellant's living room. Appellant did not object to the second search or withdraw his consent in any way, even though he was told he could stop the search at any time and could require the police to get a search warrant. (R.p.237-p.246; p.546-p.547; State's Exhibit #1(p.736), State's Exhibit #17, State's Exhibit #24, & State's Exhibit #47). On cross-examination, Wade acknowledged Appellant's consent could have been withdrawn and that Appellant was free to tell the officers to stop searching; however, he offered no testimony to suggest Appellant actually attempted to withdraw consent at any point prior to the discovery of the additional evidence in his apartment. (R.p.254-p.266).

Appellant testified on his own behalf and said that although he initially declined to consent, in order to "alleviate the scene" he ultimately agreed to sign the consent form and allow the search of his apartment. He testified he did not feel pressured to sign the consent form, but he felt it would be best just to get it over with. Appellant confirmed that when he first signed the consent form, the thick writing about firearms and handguns was not on the form and was added later. He testified he was handcuffed outside the door of the apartment during the initial search but that afterwards the police locked the door and he was then taken down to a patrol car, at which point Cain retrieved the key from another officer and went back up to the apartment a second time. Appellant testified that when Cain came back down to the parking lot, Wade approached Appellant again with the consent form. Appellant testified Wade added the language

about firearms and handguns and asked him to sign the form again; however, Appellant responded by saying: "I'm not going to sign that form no more. . . Y'all searched my apartment one time you didn't find anything. You went back in there without me being present. I don't know what you done or what you did do, but I'm not signing it." (R.p.279-p.287, line 25). Appellant testified he specifically did not give the officers permission to search a second time, but they did it anyway. (R.p.288).

On cross-examination, Appellant admitted it was his signature on the consent to search form and that he understood what he was signing. He testified he saw the part of the form saying he could withdraw consent and he signed the form with the understanding that he could withdraw his consent at any time. When asked if, at any time, he tried to withdraw his consent, Appellant said: "No. I didn't have no reason to." He testified he never told the police to stop or that he did not want them searching his apartment. Appellant then repeated his claim that he never withdrew his consent. (R.p.293-p.296). On redirect, Appellant claimed that when he testified he never withdrew his consent he was only referring to the first police search. He maintained he never gave the police consent to search the apartment a second time and claimed that when Wade added language to the consent form he did not sign it again. Appellant testified the police did not have his consent to search the apartment again. (R.p.307-p.308).

At the conclusion of the testimony, Appellant did not argue he was coerced to give consent or otherwise challenge his initial consent to the search of his apartment. Instead, he argued that when Investigator Wade altered the consent form by adding additional information, his consent was effectively revoked as evidenced by his refusal to sign the form a second time. Appellant argued his consent was withdrawn and therefore, it was an unconstitutional warrantless search. (R.p.309-p.312).

The trial court found “the consent was valid and voluntary” and therefore “the search is valid and the items that were found in the apartment and in the car are admissible.” The trial judge found the officers’ testimony was credible and that Appellant’s testimony was contradictory which raised questions about his veracity. Ultimately, the trial court concluded “the added language in there was explained to the Defendant and the consent was never withdrawn and, therefore, the items that were found will be admissible.” (R.p.340-p.341).

On appeal, Appellant continues to argue he withdrew consent, which invalidated the second warrantless search of his apartment. Appellant contends he effectively withdrew his consent when he refused/failed to sign the consent to search form a second time, after Wade had added language. However, as explained above, Appellant gave written consent for the search of his apartment, placed no specific or significant limits on the scope of that consent, and made no actual statement or act to withdraw that consent. At one point he even admitted he did not withdraw consent, although he tried to rehabilitate this admission by reversing his testimony on redirect. Ultimately, the trial court found Appellant’s claims in regard to withdrawing consent were not credible and Wade’s testimony that Appellant raised no objection to the added language or the second search was credible. Those credibility findings must be given great deference by this Court. Mattison, 352 S.C. at 584-85, 575 S.E.2d at 856. Appellant’s mere failure to re-sign form by which he previously gave his consent falls far short of an unequivocal act or statement of withdrawal, particularly where, as Wade testified, he explained to Appellant that he was adding the language and Appellant did not object to the second search or attempt to withdraw his consent in any way. See Mattison, 352 S.C. at 585, 575 S.E.2d at 858 (holding Mattison’s act of lowering his hands as the officer searched his groin area fell short of an unequivocal act or statement of withdrawal).

The trial court's denial of Appellant's motion to suppress did not constitute an abuse of discretion. Under a totality of circumstances, the evidence presented at the suppression hearing supports the trial court's determination that: "the added language in there was explained to the [Appellant] and the consent was never withdrawn." (R.p.340-p.341). Therefore, that determination and Appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

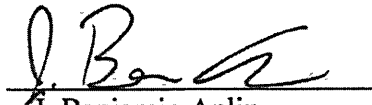
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
April 25, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2015-000516

THE STATE,.....RESPONDENT

v.

ARCHIE MORE HARDIN,.....APPELLANT.

CERTIFICATE OF COUNSEL

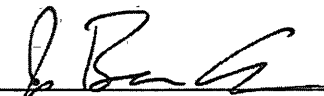
The undersigned hereby certifies the Final Brief of Respondent complies with Rule 211(b),
SCACR.

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STATE OF SOUTH CAROLINA
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APPEAL FROM ORANGEBURG COUNTY
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THE STATE, ...RESPONDENT

v.

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PROOF OF SERVICE

I, Angela Bennett, Administrative Coordinator, hereby certify that I have served the within *Final Brief of Respondent* dated April 25, 2017, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 25th day of April, 2017.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Archie More Hardin, Appellant.

Appellate Case No. 2015-000516

Appeal From Orangeburg County
Maité Murphy, Circuit Court Judge

Opinion No. 5589
Heard February 15, 2018 – Filed August 15, 2018

AFFIRMED

Daniel Carson Boles, of Charleston; and Chief Appellate
Defender Robert Michael Dudek, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General John Benjamin Aplin,
of Columbia; and Solicitor David Michael Pascoe, Jr., of
Orangeburg, for Respondent.

MCDONALD, J.: Archie More Hardin appeals his convictions arising from the armed robbery of an Orangeburg T-Mobile store, arguing the circuit court erred in (1) denying his motion for a continuance; (2) concluding the out-of-court identifications made by the victims were sufficiently reliable despite law

enforcement's unduly suggestive procedure; and (3) admitting evidence collected in a second search of Hardin's apartment. We affirm.

Facts and Procedural History

On the morning of May 16, 2014, Hardin entered a T-Mobile store on St. Matthews Road in Orangeburg, where he spoke with employee Jarron Weaver about purchasing an iPad. Hardin left the store to make a phone call, reentered a few minutes later to discuss a credit check for the purchase, and left again. Shortly thereafter, two armed and disguised men entered the store and held Weaver and store manager, Thomas Sims, Jr., at gunpoint. The armed men directed Weaver and Sims to the back room, forced them to the floor, bound their hands and feet with duct tape, and threatened to shoot them if they looked up. One of the armed men found employee Kirstie Berry outside—he punched her in the face, pulled her into the store, pistol whipped her, and duct-taped her hands and feet. After stealing cell phones and other electronics, including Sims's personal iPad, the men exited the rear of the store; two witnesses saw them jump a fence and drive away in a gray, four-door Toyota sedan.

Using the "Find My iPad" application, the Orangeburg County Sheriff's Office (OCSO), the Richland County Sheriff's Office, and the City of Columbia Police Department (CCPD) collaborated to locate the stolen iPad. Investigator Elizabeth Schumpert of the OCSO relayed the location information to Corporal Leonard Cain, who tracked the iPad around Columbia. Cain first spotted the suspected getaway car at the Budget Inn on Sunset Boulevard, where he witnessed "an individual with a blue shirt on come outside of the hotel lobby door and get inside the vehicle." Cain watched the car "make a right turn on the side of the hotel building. . . . [a]nd then saw two individuals a few minutes later peeking their heads around the corner looking at [Cain]." Eventually, Cain met up with CCPD Investigator Darius Wade, and they followed the iPad track until it ended at an apartment complex on Bentley Court in Columbia.

When they arrived at the apartment complex, Cain, Wade, and other CCPD officers found Hardin walking to a vehicle matching the description of the Toyota sedan used as the getaway car in the T-Mobile robbery. Hardin admitted he rented the car but claimed to have loaned it to his friend "Black" earlier that day. Hardin also stated that he and Black saw Cain at a gas station "at Edison and Beltline Boulevard" and thought Cain was Black's probation officer. The officers frisked Hardin, whom they found to be unarmed, and told him they were looking for a stolen iPad and a "black male, 5'10"[,] 190 to 200 pounds, [who] walks with a

limp." Hardin gave written consent for the officers to search his person and his apartment.

Law enforcement first conducted a perimeter sweep of Hardin's apartment. When officers were unable to locate the iPad inside the apartment using the "play music" function, they searched outside and found the device in a plastic bag near a dumpster "about a hundred yards" from Hardin's building. Hardin claims the officers subsequently demanded that he re-sign the consent to search, which the officers had amended to include "any firearms, handguns." Hardin refused to re-sign. During a more comprehensive search of Hardin's apartment, the officers found a box of cell phones and two guns matching the description of those used in the robbery. Hardin told the officers the items belonged to Black and offered to help find him.¹

While other police officers were searching for the stolen iPad, Cain texted a photograph of Hardin to Schumpert, who was still on scene at the Orangeburg T-Mobile; Schumpert showed the photo to the three employee victims. Despite their varying descriptions of the suspects' clothing, the victims positively identified Hardin as one of the armed robbers.

On September 3, 2014, the Orangeburg County Grand Jury indicted Hardin on three counts of kidnapping and one count each of armed robbery, assault and battery of a high and aggravated nature (ABHAN), and possession of a weapon during the commission of a violent crime.

On February 23, 2015, the circuit court heard Hardin's motions for a continuance, to suppress the evidence found in his apartment, and to exclude the victims' out-of-court identifications of the texted photograph. The court denied Hardin's pretrial motions and his subsequent motion for a directed verdict. Following the three-day trial, the jury found Hardin guilty of all charges. The circuit court denied Hardin's post-trial motions and imposed concurrent sentences of thirty years' imprisonment for armed robbery and each count of kidnapping, and twenty years' imprisonment for ABHAN. As to Hardin's charge for possession of a weapon during the commission of a violent crime, the court sentenced him to five years' imprisonment, to run consecutive to the other sentences.

Law and Analysis

¹ Law enforcement officers testified at trial that Black was still under investigation.

I. Motion for a Continuance

Hardin sought a continuance before his trial, which was set to begin on February 23, 2015, asserting that until February 17, 2015, it was his understanding that the State had sent certain DNA evidence and latent fingerprints to the South Carolina Law Enforcement Division (SLED) for testing. Citing *State v. Langford*, 400 S.C. 421, 735 S.E.2d 471 (2012)² and *Holmes v. South Carolina*, 547 U.S. 319 (2006),³ Hardin argued he was entitled to the continuance because (1) the State utilized its unconstitutional control of the docket to schedule his trial before forensic evidence had been tested, and (2) the State's denial of access to the DNA evidence for testing effectively hindered his fundamental right to prepare and present a full and complete defense, including a potential defense of third-party guilt. In response, the State argued the DNA taken from the Toyota and the firearms seized from Hardin's apartment could not possibly exculpate him because his co-defendant had not yet been apprehended. The State further argued it was proper that it controlled the docket in Hardin's case because the case was less than a year old. The circuit court ultimately denied Hardin's continuance motion.

Hardin argues the circuit court erred in declining to continue the trial because the DNA evidence the State failed to submit for analysis to SLED—and which he

² See *id.* at 436, 735 S.E.2d at 469 (holding "section 1-7-330 is unconstitutional beyond a reasonable doubt"); S.C. Code Ann. § 1-7-330 (2005) ("The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor[,], and the solicitor shall determine the order in which cases on the docket are called for trial. *Provided*, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.").

³ See *id.* at 329–31 (finding South Carolina's application of "arbitrary" third-party guilt rule focusing on strength of prosecution's case with "little, if any, examination of the credibility of the prosecution's witnesses or the reliability of its evidence" did not rationally serve the end third-party guilt evidentiary rules were designed to further and "violate[d] a criminal defendant's right to have 'a meaningful opportunity to present a complete defense.'" (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986))).

sought to have his expert examine—was possibly exculpatory in nature. Relying on *State v. Tanner*, 299 S.C. 459, 385 S.E.2d 832 (1989), Hardin contends he made more than the required showing that he could have introduced additional relevant evidence had he been given more time. Because of the nature of the evidence at issue here, we find Hardin's reliance on *Tanner* misplaced.

In *Tanner*, the defendant was arrested and charged with three counts of felony driving under the influence. 299 S.C. at 460, 385 S.E.2d at 833. Following the accident, law enforcement collected DNA samples from Tanner's vehicle. *Id.* at 462, 385 S.E.2d at 834. Although Tanner may have become aware of the existence of these samples prior to trial, the State informed him they were lost or misplaced in response to at least six inquiries and a discovery motion. *Id.* Nevertheless, SLED brought the untested DNA samples to court, where the State informed Tanner of their availability ten minutes before the pretrial hearing. *Id.* Tanner moved for a continuance to either conduct an independent examination of the DNA samples or wait for SLED to complete an analysis. *Id.* The circuit court ruled the State could not use the samples in its case but denied Tanner's request for a continuance. *Id.* Our supreme court reversed, holding the circuit court erred in failing to consider the potential exculpatory value of the DNA samples because "the defendant has satisfied the *Squires* criteria of demonstrating other evidence that could have been produced[] and other points in his behalf that could have been raised." *Id.*

The untested evidence in this case differs from that in *Tanner*. Here, the DNA evidence was not critical to the issue of Hardin's guilt or innocence. The three employee victims never claimed one perpetrator acted alone; all testified that two armed and disguised men held them at gunpoint, bound their hands and feet with duct tape, and robbed the store. At least one of the suspects is still at large, and the State repeatedly emphasized it did not submit the DNA evidence for analysis because it is "SLED's policy" not to analyze such evidence if one suspect is in custody while another remains at large.⁴ Law enforcement recovered two firearms from inside Hardin's apartment and collected DNA from the Toyota sedan, which Hardin admittedly rented and allegedly loaned to Black. Thus, the DNA evidence—from a rental car likely occupied by many individuals over time—could

⁴ It is unclear whether this was SLED's policy or simply a decision by the State in this case. In any event, witnesses for the State testified there was an ongoing investigation regarding the unapprehended accomplice and that some of the DNA evidence "may" be tested for any subsequent prosecution.

not have exculpated Hardin. The results of properly testing such evidence could only be neutral or possibly even inculpatory.

The primary defense in *Tanner* was that the defendant was not the driver at the time of the accident. Thus, any evidence of the victim's hair or blood on the driver's side of the vehicle could have supported Tanner's contention that he was merely a passenger. Here, however, Hardin failed to show how the presence or absence of his DNA in the rented Toyota or on the guns could have actively supported his third-party guilt defense when his co-defendant was still at large.

Law enforcement also collected fingerprints from a Nexus box,⁵ an iPhone, and the rental car; however, under direct comparison, these prints did not match Hardin's.⁶ Like the DNA, the State did not submit for analysis any of the duct tape used to bind the victims' hands and feet. But because the victims testified the robbers were wearing gloves, we agree with the circuit court that any latent fingerprints or "touch DNA" on the tape could not have been helpful to Hardin's defense.⁷

"The trial court's denial of a motion for a continuance will not be disturbed on appeal absent a clear abuse of discretion." *State v. Wrapp*, 421 S.C. 531, 535, 808 S.E.2d 821, 823 (Ct. App. 2017). "Where there is no showing that any other evidence on behalf of the [defendant] could have been produced, or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial, the denial of a motion for continuance is not an abuse of discretion." *State v. Williams*, 321 S.C. 455, 459, 469 S.E.2d 49, 51–52 (1996). Under our deferential standard of review, we cannot say the circuit court erred in denying Hardin's request for more time to examine the evidence or in finding Hardin was not prejudiced by the solicitor's handling of the evidence and setting

⁵ Sims testified T-Mobile kept old paperwork in Nexus boxes.

⁶ Investigator William Ketcherside conducted a direct comparison of the fingerprints collected in the investigation to Hardin's fingerprints; they did not match. None of the collected fingerprints were run through the Automated Fingerprint Index System (AFIS).

⁷ "The term touch DNA refers to DNA that is left behind after a person touches or otherwise comes into direct contact with a physical item." Daniel M. Hart, *Constitutional Issues Raised by the Development of Microbial Cloud Analysis*, 33 Syracuse J. Sci. & Tech. L. 74, 93–94 (2017).

the case for trial. *See Langford*, 400 S.C. at 436, 735 S.E.2d at 479 (explaining the "determination that section 1-7-330 violates separation of powers is not dispositive To warrant reversal, [a defendant] must demonstrate that he sustained prejudice as a result of the solicitor setting when his case was called for trial").

II. Suggestive Identification Procedure

Hardin argues the circuit court erred in concluding that despite the unduly suggestive identification procedure, the victims' out-of-court identifications were nevertheless so reliable that no substantial likelihood of misidentification existed. We agree the procedure was unduly suggestive, but find any error in admitting the photo identifications was harmless.

Testimony established that while other officers were searching for the stolen iPad, Corporal Cain photographed Hardin standing in front of a uniformed officer⁸ and texted the photograph to another OCSO deputy, who showed it to the victims still on-scene at T-Mobile. Despite their varying descriptions of the suspects, the victims positively identified Hardin as one of the assailants when they viewed the texted photo. The circuit court concluded Hardin carried his burden of proving the identification procedure was impermissibly suggestive. However, after evaluating the reliability of the identifications under the totality of the circumstances, the circuit court found the out-of-court identifications admissible as there was no substantial likelihood of misidentification.

At the pretrial hearing, the victims provided detailed descriptions of their assailants. Sims testified he was able to view Hardin for five to ten minutes before he left T-Mobile the first time; he then saw Hardin briefly return, leave again, and come in a third time with another man, both of whom were disguised and carrying guns. Sims described the guns as "revolvers"—one was "old looking" and "rusty" and the other was "newer"—and stated Hardin was wearing "sunglasses, a black hat, a black shirt, and khakis." Sims was immediately able to identify Hardin in the State's photograph as one of the men who robbed the store. In his statement to police, Sims noted the second robber was the shorter of the two, had a stocking over his face, and wore sunglasses; however, on cross-examination, Sims admitted the second robber was not wearing sunglasses.

Weaver testified he talked with Hardin, face-to-face, for ten to fifteen minutes when he first came into T-Mobile, and then again for another five to ten minutes

⁸ The uniformed officer is clearly visible in the photograph.

when he returned. Hardin had on a baseball cap and sunglasses. Weaver acknowledged that in his statement to police, he also described Hardin as wearing a black shirt over a grey shirt, and khaki pants. When shown the photograph, Weaver was immediately able to recognize Hardin as one of the men who robbed the store and explained he was one hundred percent certain of the identification.

Berry testified she got a good look at Hardin because she was face-to-face with and less than a foot away from him when he pulled her into the store. She noted Hardin was wearing a lavender shirt with a black t-shirt over it, blue jeans, a hat, and sunglasses. Like Sims and Weaver, Berry was immediately able to identify Hardin as the robber who tied her up when presented with the photograph, and she was one hundred percent certain of the identification.

Based on the victims' testimony as well as the testimony of the police officers who took the photograph of Hardin, texted it to Orangeburg, and showed it to the victims, the circuit court evaluated the likelihood of misidentification. In determining the out-of-court identifications were reliable and denying Hardin's motion to exclude them, the court noted: (1) the victims had ample opportunity during daylight hours to view the robbers at the time of the crime, (2) the victims were able to pay close attention to what the person looked like, (3) the victims gave accurate descriptions of the perpetrator, (4) the victims testified their level of certainty was one hundred percent, and (5) only a short amount of time elapsed between the armed robbery and the victims' identifications.

"Generally, the decision to admit an eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of such[] or the commission of prejudicial legal error." *State v. Moore*, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000). "However, an eyewitness identification [that] is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law." *Id.* "A criminal defendant may be deprived of due process of law by an identification procedure arranged by police [that] is unnecessarily suggestive and conducive to irreparable mistaken identification." *State v. Traylor*, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). "Single person show-ups are particularly disfavored in the law." *Moore*, 343 S.C. at 287, 540 S.E.2d at 448.

In *Neil v. Biggers*, 409 U.S. 188, 196–99 (1972), the United States Supreme Court set forth a two-pronged inquiry to determine whether due process requires suppression of an eyewitness identification. Initially, the trial court must determine whether the identification resulted from "unnecessarily suggestive" police procedures. *State v. Dukes*, 404 S.C. 553, 557–58, 745 S.E.2d 137, 139 (Ct.

App. 2013) (citing *Biggers*, 409 U.S. at 198–99). If the court determines the identification did not result from unnecessarily suggestive police procedures, the inquiry ends. *Id.* However, if the court finds law enforcement used "an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless 'so reliable that no substantial likelihood of misidentification existed.'" *Id.* (quoting *State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 426 (2012)). Under the totality of the circumstances, courts are to consider these factors in assessing the reliability of an otherwise unnecessarily suggestive identification procedure: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. *Manson v. Brathwaite*, 432 U.S. 98, 114–16 (1977).

Here, the victims testified one assailant had a nylon stocking over his face, while the other wore sunglasses and a ball cap. Although the record indicates Weaver spent a reasonable amount of time prior to the robbery interacting with a customer he believed to be Hardin, Sims and Berry did not. Sims only briefly saw the man he believed to be Hardin talking with Weaver prior to the robbery; however, Berry testified she was taking a smoke break behind T-Mobile during this time. In fact, Berry never saw the men until one of them pulled her back inside the store. The victims provided differing descriptions of the assailants' clothing. Considering all these facts, we have no doubt the single photograph of Hardin and a uniformed officer, shown to the victims on a cell phone screen by another uniformed officer in the hours after the robbery, was unduly suggestive.

Under the totality of the circumstances, we find the circuit court erred in assessing the reliability of an otherwise unnecessarily suggestive identification procedure. *See Manson*, 432 U.S. at 114–16 (explaining the factors courts must consider in assessing the reliability of an otherwise unnecessarily suggestive identification procedure). Our review of the record reveals (1) the victims did not have ample opportunity to view the disguised assailants at the time of the crime as the victims were face-down on the floor for most of the robbery; (2) based on their descriptions of the assailants, which focused on their clothing rather than their physical appearances, the victims did not and probably could not pay close attention to their appearances; and (3) the victims did not accurately describe the armed and disguised men to police—they merely noted the assailants were black males, one of whom was taller than the other, and what clothing they wore. *Cf. Moore*, 343 S.C. at 289, 540 S.E.2d at 449 ("Third, the degree of accuracy of [the

eyewitness's] description is tenuous, at best. Her descriptions were based primarily on the suspects' clothing and race, and that one was taller than the other. She really did not get a look at either suspect's face[] but saw one from the profile.").

Regarding the third factor, the State conceded as much in its brief: "Although not perfectly aligned in every single detail, the [v]ictims all gave very consistent descriptions of [Hardin,] *which focused on his hat, his sunglasses, and his black shirt.*" (emphasis added). While the victims testified they were one hundred percent certain that Hardin was one of the assailants, and the length of time between the robbery and the identifications was only a little over three hours, we do not believe these two factors alone suffice to support a finding that the out-of-court identifications were proper and admissible. *See Moore*, 343 S.C. at 288, 540 S.E.2d at 448 ("Generally, the decision to admit an eyewitness identification is at the trial judge's discretion and will not be disturbed on appeal absent an abuse of such[] or the commission of prejudicial legal error. However, an eyewitness identification [that] is unreliable because of suggestive line-up procedures is constitutionally inadmissible as a matter of law." (citations omitted)).

Still, we must determine whether any error in admitting the out-of-court identifications could have reasonably affected the outcome of the trial. *See State v. Adams*, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003) ("Error is harmless where it could not reasonably have affected the result of the trial."); *id.* at 381, 580 S.E.2d at 795 ("Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result."); *id.* ("Thus, an insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" (quoting *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989))); *see also State v. Kelley*, 319 S.C. 173, 460 S.E.2d 368 (1995) (explaining that when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, an appellate court will not set aside a conviction for insubstantial errors not affecting the result).

Aside from the cell phone photograph, admitted as State's Exhibit 2, and the identification testimony implicating Hardin, the State also presented substantial evidence independently establishing Hardin's participation in the T-Mobile armed robbery: the witnesses' identification of the getaway Toyota, the employee victims' identification of the guns found in Hardin's apartment as the guns used in the armed robbery, and law enforcement's discovery of T-Mobile merchandise and the stolen iPad in or near Hardin's apartment less than three hours after the crime. *See State v. Simmons*, 308 S.C. 80, 83, 417 S.E.2d 92, 94 (1992) ("We note that, under

certain circumstances, if the identification is corroborated by either circumstantial or direct evidence, then the harmless error rule might be applicable."). As the challenged identification evidence was cumulative to other properly admitted evidence, *see infra* section III, we find the erroneous admission of the out-of-court identifications was harmless beyond a reasonable doubt.

III. Motion to Suppress Evidence

Hardin argues the circuit court erred in admitting any evidence collected in what he characterizes as the "second search" of his apartment because he effectively withdrew consent by refusing to re-sign the consent to search form. Hardin contends law enforcement was required to obtain a search warrant prior to the second search. We disagree.

Pretrial, Investigator Wade testified he assisted Corporal Cain in tracking the movement of the stolen iPad; the track ended at Hardin's apartment complex in Columbia. Wade offered testimony consistent with Cain's regarding locating the car matching the description of the fleeing Toyota sedan and encountering Hardin as he exited the apartment. Hardin admitted to Wade that he rented the Toyota.

Wade told Hardin they were looking for a man who walked with a limp and a stolen iPad and that Hardin gave written consent for law enforcement to search his apartment. Wade testified that Hardin did not object to the second search, which followed the perimeter safety sweep, or otherwise withdraw his consent, even though Hardin knew he could stop the search at any time. On cross-examination, Wade admitted there were four officers present when they first approached Hardin and that they conducted a pat-down search for weapons before asking for his consent to search the apartment.

Hardin testified that as he came out of his apartment and was getting into the rented Toyota, eight officers approached him with their guns drawn, patted him down, and searched the Toyota immediately after he got out with his hands up. He claimed that when Investigator Wade asked to search his apartment, he responded, "[Y]'all don't have a warrant. No, you can't search my apartment." Hardin alleged Wade said they would detain him while they went back to Orangeburg to get a warrant, so in order to "alleviate the scene," he agreed to sign the consent to search form. He admitted he did not feel pressured to give the written consent but "felt it would be best just to get it over with."

Hardin was handcuffed outside the door of his apartment during the perimeter sweep, but the officers then locked the apartment door and took him down to a patrol car. Officer Cain retrieved the apartment key from another officer and went back to search a second time. Hardin testified that when Cain came back to the parking lot, Wade again approached Hardin with the written consent form. However, Hardin further contends he told Wade, "I'm not going to sign that form no [sic] more . . . [Y]'all searched my apartment one time [and] you didn't find anything. You went back in there without me being present. I don't know what you done [sic] or what you did [sic] do, but I'm not signing it."

On cross-examination, Hardin admitted he never told law enforcement to stop the search or that he did not want them searching his apartment. On redirect, however, Hardin claimed that when he said he never withdrew consent, he was only referring to the "first search." He reiterated that he never gave the police consent to search the apartment a second time and he did not re-sign the consent form after Wade added the additional language referencing firearms.

The circuit court held "the consent was valid and voluntary" and thus, "the search is valid and the items that were found in the apartment and in the car are admissible." The court found the officers' testimony was credible and Hardin's testimony was contradictory, which raised questions about his veracity. Ultimately, the circuit court concluded, "the added language in [the consent form] was explained to [Hardin] and the consent was never withdrawn and, therefore, the items that were found will be admissible."

"The Fourth Amendment guarantees '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'" *Whren v. United States*, 517 U.S. 806, 809 (1996) (quoting U.S. Const. amend. IV); *see also* S.C. Const. art. I, § 10 (protecting "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures"). The touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991).

The exclusionary rule is a deterrent sanction by which the prosecution is barred from introducing evidence obtained in violation of the Fourth Amendment. *State v. Brown*, 401 S.C. 82, 88, 736 S.E.2d 263, 266 (2012) (citing *Davis v. United States*, 564 U.S. 229, 231 (2011)). "Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement." *Brown*, 401 S.C. at 89, 736 S.E.2d at 266 (quoting *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011)). "These exceptions include the following: (1) search

incident to a lawful arrest, (2) hot pursuit, (3) stop and frisk, (4) automobile exception, (5) the plain view doctrine, (6) consent, and (7) abandonment." *Id.*

In *State v. Mattison*, 352 S.C. 577, 584, 575 S.E.2d 852, 855 (Ct. App. 2003), this court discussed the issue of voluntary consent to search:

Whether a consent to search was voluntary or the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances. The State bears the burden of establishing the voluntariness of the consent. The "totality of the circumstances" test applies whether the consent was given in a non-custodial or custodial situation. In a custodial situation, the custodial setting is a factor to be considered in determining whether consent was voluntarily given. Custody alone, however, is not enough in itself to demonstrate a coerced consent to search.

The issue of voluntary consent, when contested by contradicting testimony, is an issue of credibility to be determined by the trial judge. A trial judge's conclusions on issues of fact regarding voluntariness will not be disturbed on appeal unless so manifestly erroneous as to be an abuse of discretion.

(citations omitted). "Conduct falling short of 'an unequivocal act or statement of withdrawal' is not sufficiently indicative of an intent to withdraw consent." *Id.* at 587, 575 S.E.2d at 857. "Effective withdrawal of a consent to search requires unequivocal conduct, in the form of either an act, statement, or some combination of the two, that is inconsistent with consent previously given." *Id.*

Hardin contends he effectively withdrew his consent when he refused to re-sign the consent to search form, admitted as State's Exhibit 1, after Wade amended the form to include "any firearms, handguns." But our review of the record reveals Hardin had already given written consent for the search of his apartment and placed no limits on the scope of that consent. Although there is conflicting testimony as to whether Hardin attempted to withdraw consent prior to the "second search," Hardin admitted on cross-examination that he did not withdraw consent. We recognize that Hardin attempted to clarify on redirect that he meant he never withdrew

consent as to the *initial* search. However, the circuit court assessed the credibility of the various witnesses and declined to accept as credible Hardin's assertion that he withdrew consent; unequivocally or otherwise. *See Mattison*, 352 S.C. at 584–85, 575 S.E.2d at 856 ("The issue of voluntary consent, when contested by contradicting testimony, is an issue of credibility to be determined by the trial judge.").

Hardin's refusal to re-sign the consent form falls short of the necessary unequivocal act or statement of withdrawal, particularly in light of Wade's testimony that Hardin did not object to the search or otherwise attempt to withdraw his consent. *See id.* at 585, 575 S.E.2d at 858 (holding the defendant's act of lowering his hands as the officer searched his groin area fell short of an unequivocal act or statement of withdrawal). Under the totality of circumstances, the evidence presented at the suppression hearing supports the circuit court's finding that Hardin's consent was valid and the recovered evidence admissible.

Conclusion

Hardin's convictions are

AFFIRMED.

HUFF and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Maité Murphy, Circuit Court Judge

Opinion No. 5589 (S.C. Ct. App. filed August 15, 2018)

Appellate Case No. 2015-000516

THE STATE, ...RESPONDENT

v.

ARCHIE MORE HARDIN, ...APPELLANT.

PETITION FOR REHEARING

On August 15, 2018, this Court issued a published opinion that affirmed Appellant Archie More Hardin's convictions for three counts of kidnapping, one count of armed robbery, one count of assault and battery of a high and aggravated nature, and one count of possession of a weapon during the commission of a violent crime. *State v. Hardin*, Op. No. 5589 (S.C. Ct. App. filed August 15, 2018). Respondent (the State) respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR, solely in regard to the Court's conclusion that the circuit court erred in admitting the out-of-court identifications made by the three victims of Appellant's crimes.

The State seeks rehearing on the grounds that this Court may have mis-apprehended, overlooked, or failed to properly apply existing precedent and the appropriate standard of review in reaching its conclusion that the identification procedure utilized by the police was BOTH impermissibly suggestive AND conducive to substantial likelihood of misidentification. *See State v. Liverman*, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012) (noting an out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and creates a very substantial likelihood of irreparable misidentification). Specifically, this Court appears to have failed to consider whether the admittedly “unduly suggestive” procedure used by police was also “unnecessarily suggestive” such as to render it impermissible under the circumstances of this case. *See State v. Wyatt*, 421 S.C. 306, 308, 806 S.E.2d 708, 709 (2017) (finding the police identification procedure was not *unnecessarily suggestive*, and thus the trial court should have addressed the suppression question only under the first prong of *Neil v. Biggers*).

This Court also appears to have misapplied the “abuse of discretion” standard when reviewing the trial court’s analysis under the second prong of *Neil v. Biggers* by failing to give appropriate deference to the trial court’s conclusion that the identification was sufficiently reliable to allow it to go to the jury. That conclusion was reached after a thorough and proper examination of whether, under the totality of the circumstances, the identification procedure created a very substantial likelihood of misidentification. Where there was ample evidence in the record to support the conclusion that no substantial likelihood of misidentification existed, it should have been affirmed.

Finally, this Court appears to have given insufficient consideration to the gravity of its ruling, which would have excluded evidence from the jury. *See Harker v. Maryland*, 432 F.2d

437, 443 (“The exclusion of evidence from the jury is, however, a drastic sanction, one that is limited to identification testimony which is manifestly suspect. ‘Short of that point, such evidence is for the jury to weigh ... for evidence with some element of untrustworthiness is customary grist for the jury mill.’”) (quoting *Manson v. Brathwaite*, 432 U.S. 98 (1977)).

Although this Court ultimately affirmed the identification issue on harmless error grounds, the significance of a published decision which would otherwise supplant the trial court’s discretionary decision to admit relevant evidence while preventing victims of violent crimes from being able to identify their attackers to the jury cannot be overstated. See *Manson v. Brathwaite*, 432 U.S. 98, 110 (1977) (noting “the societal costs imposed by a sanction that excludes relevant evidence from consideration and evaluation by the trier of fact”). As explained by the United States Supreme Court: “. . . such evidence is for the jury to weigh. We are content to rely upon the good sense and judgment of American juries, for evidence with some element of untrustworthiness is customary grist for the jury mill. Juries are not so susceptible that they cannot measure intelligently the weight of identification testimony that has some questionable feature.” *Manson v. Brathwaite*, 432 U.S. 98, 116 (1977). The propriety of suppression, as suggested by this Court, would be a drastic sanction almost never imposed by the appellate courts of South Carolina, the notable and nearly exclusive example being *State v. Moore*, 343 S.C. 282, 540 S.E.2d 445 (2000), which is discussed in more detail below.

Thus, the State respectfully submits this Court should have affirmed the trial court’s refusal to suppress the identification evidence under the first prong of *Neil v. Biggers* without considering the second prong. To the extent it nevertheless considered the second prong, it should have also have affirmed the trial court’s refusal to suppress the identification evidence under that prong. As a result of affirming under either prong, this Court could have done so

without considering whether admission of the identification evidence was harmless beyond a reasonable doubt.

For these reasons, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an opinion affirming Hardin's convictions and sentence to include a finding the trial court did NOT err in refusing to suppress the identifications made by the three victims.

Statement of the Case

Appellant was indicted at the September 8, 2014 term of the grand jury for Orangeburg County for three (3) counts of kidnapping (2014-GS-38-888, -889, & -890), one count of armed robbery (2014-GS-38-891), one count of assault and battery of a high and aggravated nature (2014-GS-38-892), and one count of possession of a weapon during a violent crime (2014-GS-38-893). He was represented by Assistant Public Defenders Breen Stevens and Doug Mellard of the First Circuit Public Defender's Office. The State was represented by Assistant Solicitors Ashley Cornwell and Sarah Ford of the First Circuit Solicitor's Office. On February 23-27, 2015, Appellant proceeded to trial by jury pursuant to which he was found guilty as charged. He was sentenced by the Honorable Maité D. Murphy to thirty (30) years' concurrent imprisonment for each count of kidnapping, thirty (30) years' concurrent imprisonment for armed robbery, twenty (20) years' concurrent imprisonment for assault and battery of a high and aggravated nature, and five (5) years' consecutive imprisonment for possession of a weapon during a violent crime, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.719-735; p.716-p.717). He timely filed a notice of intent to appeal his convictions and sentences and the parties submitted briefs addressing the three issues raised by Appellant on appeal. On August 15, 2018,

this Court issued a published opinion that affirmed Appellant's convictions. *State v. Hardin*, Op. No. 5589 (S.C. Ct. App. filed August 15, 2018). This Petition for rehearing follows.

Statement of Facts

As described by the solicitor in her opening statement, what started as a normal morning at the T-Mobile store in Orangeburg on May 16, 2014, soon turned into a terrifying day for three employees when the store was robbed by two armed men. Shortly after 10 a.m., Appellant entered the store and talked with employee Jarron Weaver about getting an iPad for his daughter. He said he was going outside to call his wife and reentered a few minutes later to discuss getting his credit checked for the purchase. Appellant then left a second time; however, after the only other customer exited the store, he and another man came in waving guns while wearing masks and gloves. They pointed the guns at Weaver, forced him and the store manager, Thomas Sims, the back of the store, and then ordered them to the ground. The robbers used duct tape to bind Weaver's and Sims' hands behind their backs and their feet together. They then retrieved a third employee, Kirstie Berry, from behind the store where she had gone out to smoke a cigarette. Appellant punched Berry in the face, grabbed her by the hair, pulled her back into the store, and ordered her to the ground. He pistol whipped Berry in the back of the head and then duct taped her hands and feet.

Appellant and the other man ransacked the storage room and started filling two black bags with telephones, electronics, and other items. They exited the back of the store where two witnesses saw them jump a fence and drive off in a gray car. In addition to the items from the store, the robbers also stole Sims' book bag which contained a personal iPad which had the "Locate my iPad" app. By activating the app using Sims' father's phone, the police tracked the stolen iPad to an apartment in Columbia. When they arrived, they found a gray, four-door

Toyota parked in front of an apartment and saw Appellant coming out towards the car. He admitted it was his car. The iPad was subsequently located behind a dumpster at the apartment, and during a search of Appellant's apartment, the police found the items stolen from the T-Mobile store as well as two guns which matched the description of the guns used in the robbery. Before locating the iPad or searching the apartment, the police took a photograph of Appellant and texted it to police in Orangeburg who showed it to the three victims, each of whom identified Appellant as one of the robbers. (R.p.349-p.355).

Prior to the commencement of trial, the trial court held an extensive pretrial hearing on a number of motions, including Appellant's motion for a continuance (R.p.13-p.30), Appellant's motion to suppress evidence discovered during the warrantless search of his apartment (R.p.39-p.40; p.72), and Appellant's request for a *Neil v. Biggers* hearing to challenge the reliability of his out-of-court identification by the three victims and the admissibility of their identification testimony which the State intended to offer at trial. (R.p.36-p.39).

Testimony regarding identification was interspersed with testimony regarding the search of Appellant's apartment and the admissibility of his statements to the police. First, in regard to the identification, Corporal Cain testified that **prior to locating the iPad and prior to Appellant's arrest** he took a photo of Appellant with his county issued cell phone and sent it to Lieutenant Schumpert in Orangeburg. He was subsequently advised by Schumpert that Appellant had been identified by the victims of the armed robbery. Cain identified a printed copy of the photo he sent, which was marked and entered as State's Exhibit #2. (R.p.62-p.64).

Next, Sergeant Stokes testified he was the officer who instructed Cain to take the photo of Appellant to send to Lieutenant Schumpert. He explained the photo was shown to the three victims and they positively identified Appellant as having robbed the T-Mobile store that

morning. (R.p.86; p.92). On cross-examination, Stokes acknowledged an officer in uniform is also visible in the photo, standing behind Appellant. He likewise acknowledged the photo was shown to the victims on a cell phone, not as a print-out or as part of a "six-pack" photo lineup. Stokes also acknowledged that during the investigation he took a statement from a Mr. Walters, an eyewitness who was nearby at the time of the crime, in which Walters said Schumpert had shown him two photographs. Finally, Stokes acknowledged that several days after the robbery the police put together a six-card photo lineup which did not include Appellant's photograph and that victim Thomas Sims, Jr., identified somebody from that lineup as one of the robbers. (R.p.118-p.127; p.129-p.132). On redirect Stokes explained the six-card photo lineup was presented to Sims on May 21, 2014, in an effort to ascertain the identity of the co-defendant, and that he was not attempting to determine if Sims could further identify Appellant. (R.p.140-p.141).

Following jury qualification and selection, the State proceeded to call each of the three victims to describe the armed robbery as well as their out-of-court identification of Appellant. Store manager Thomas Sims, Jr., saw Appellant come into the T-Mobile store and watched him talk with his employee, Jarron Weaver, about getting an iPad for his daughter. Sims said he was able to view Appellant for five to ten minutes before he left the store first time, then saw Appellant briefly return, leave again, and then come in a third time with another guy. The two men had guns and told him and Weaver to get to the back of the store where they ordered them to the ground and duct taped their hands behind their backs and their feet together. Sims testified the police later showed him a photograph on a cell phone and asked if he could identify the person in the photo. He said he was immediately able to identify the person in the photograph as the person that robbed the store. (R.p.172-p.178). On cross-examination, Sims was questioned

about his opportunity to see the men who robbed the store, discrepancies in the details he gave when describing those men to the police, and being shown a single photograph on a cell phone which included an officer in the background., (R.p.178-p.197).

Store employee Jarron Weaver testified he talked with Appellant, face to face, for ten to fifteen minutes the first time he came into the T-Mobile store and then again for another five to ten minutes the second time he came in prior to the robbery. He testified the robbery itself lasted ten to fifteen minutes during which he was taken to the back at gunpoint, ordered to the floor, and duct taped. Weaver described being shown the cell phone photograph of Appellant by the police. He testified he was taken over to the side, by himself, and shown the picture and was able to immediately recognize Appellant as the person who robbed the store. Weaver said he was a hundred percent certain of the identification. (R.p.197-p.202).

Store employee Kirstie Berry testified about being outside on a smoke break when she was "snatched" into the back door of the T-Mobile store, ordered to the ground, hit in the back of the head before being duct taped on the floor. She said she got a good look at her assailant because she was turned directly face-to-face with him, less than a foot away, when she was pulled into the store. Berry testified about being shown the photo. She said she was immediately able to identify Appellant as the guy who robbed the store and who tied her up. Berry testified she was one hundred percent certain of the identification and then identified Appellant in the courtroom. (R.p.213-p.218).

At the conclusion of the testimony, the parties argued their respective positions in regard to the admissibility of Appellant's identification by the victims. Appellant referenced the two-pronged *Biggers* inquiry and argued the identification procedure used by the police was both unduly suggestive and so unreliable that it created a substantial likelihood of misidentification.

He argued the act of showing the victims a single photo of him, with an officer standing directly behind, rather than a six-pack photo lineup or a traditional standup lineup with actual people was unduly suggestive. Appellant then argued that given the limited opportunity to view the robbers at the time of the offense, the degree of attention, the accuracy of the prior descriptions, and the length of time between the armed robbery and the identification of the photograph, there was a substantial likelihood of misidentification. He asked that the out-of-court identifications and any in-court identifications be suppressed. (R.p.321-p.327).

The solicitor acknowledged show-up identification procedures that involve a single suspect are generally disfavored; however, she argued they nevertheless may be proper when they occur shortly after the crime while the witnesses' memories are still fresh and the suspect has not had time to alter his looks or dispose of evidence. She also noted how a show-up procedure might expedite a release of innocent subjects and enable the police to determine whether to continue searching. **Although the solicitor did not specifically use the phrase: "the procedure used for Hardin's identification was necessary under the circumstances," this is precisely the argument she made to the trial judge.** The solicitor then moved on to the second part of the analysis and went through the factors supporting admission of the identification under the totality of the circumstances including the substantial opportunity the victims had to look at Appellant, the fact that they continued to have a conversation in close proximity with the robber when guns were pointed at them, the relative accuracy of their descriptions of the robbers, and the fact that the identifications were made only three hours after the robbery while their memory was still fresh. The solicitor then reemphasized the **necessity** of the identification procedure used by the police under the circumstances in this case, because it "might have expedited the release of innocent suspects." In conclusion, the solicitor argued that

even if the trial court determined the procedure was impermissibly suggestive, it still did not create a substantial likelihood of irreparable misidentification and therefore the motion to suppress should be denied. (R.p.327-p.331).

The following morning the trial court ruled on the identification issue. Although it found the procedure used by the police in showing the individual photograph to the victims was “unduly suggestive,” it never addressed whether it was also “unnecessarily suggestive.” The trial court instead moved directly into the second stage of the analysis and found the identification of Appellant was sufficiently reliable to allow admission of the testimony. The trial court examined the likelihood of misidentification by considering the totality of the circumstances. It specifically noted: (1) the victims had ample opportunity during daylight hours to view the robbers at the time of the crime, (2) the victims were able to pay close attention to what the person looked like, (3) the victims gave accurate descriptions of the perpetrator, (4) the victims testified their level of certainty was one hundred percent, and (5) the length of time between the armed robbery and the confrontation when they identified the photograph was short in nature. Ultimately, the trial court found the identification of Appellant by the three victims was proper and denied Appellant’s motion to suppress. (R.p.341-p.342).

Argument

In its published opinion, this Court affirmed Appellant’s convictions. *State v. Hardin*, Op. No. 5589 (S.C. Ct. App. filed August 15, 2018). For the reasons noted above and argued in more detail below, the State respectfully requests that this Court grant this petition for rehearing solely in regard to the Court’s conclusion that the circuit court erred in admitting the out-of-court identifications made by the three victims of the crimes, reconsider and rehear this matter, and

issue an opinion affirming Hardin's convictions and sentence to include a finding the trial court did not err is refusing to suppress the identifications by the three victims.

The State seeks rehearing on the grounds that this Court may have mis-apprehended, overlooked, or failed to properly apply existing precedent and the appropriate standard of review in reaching its conclusion that the identification procedure utilized by the police was BOTH impermissibly suggestive AND conducive to substantial likelihood of misidentification. First, this Court appears to have failed to consider whether the admittedly "unduly suggestive" procedure used by police was also "**unnecessarily suggestive**" such as to render it impermissible under the circumstances of this case. *See State v. Wyatt*, 421 S.C. 306, 308, 806 S.E.2d 708, 709 (2017) (finding the police identification procedure was not *unnecessarily suggestive*, and thus the trial court should have addressed the suppression question only under the first prong of *Neil v. Biggers*).

In its published opinion, this Court affirmed Appellant's convictions and sentence in regard to the identification issue upon finding "the erroneous admission of the out-of-court identifications was harmless beyond a reasonable doubt." In regard to Appellant's argument that "the circuit court erred in concluding that despite the unduly suggestive identification procedure, the victim's out-of-court identifications were nevertheless so reliable that no substantial likelihood of misidentification existed," this Court concluded: "We agree the procedure was **unduly suggestive**, but find any error in admitting the photo identifications was harmless." (emphasis added). Specifically this Court held: "Considering all these facts, we have no doubt the single photograph of Hardin with a uniformed officer, shown to the victims on a cell phone screen by another uniformed officer in the hours after the robbery was **unduly suggestive**." (emphasis added). It neither addressed nor found the procedure was unnecessarily suggestive,

even though this issue was raised to the trial court and could serve as an additional sustaining ground to the trial court's decision to admit the identification evidence.

In *Wyatt*, our supreme court emphasized the focus of the first prong of the *Neil v. Biggers* inquiry is whether the identification resulted from an **unnecessarily suggestive** police identification procedure. *Wyatt*, 421 S.C. at 310, 806 S.E.2d at 710. In other words, due process concerns only arise when the procedure is both suggestive and unnecessary. The Supreme Court went on to examine other cases which explained situations in which circumstances may make suggestive police identification procedures necessary. *Wyatt*, 421 S.C. at 312-13, 806 S.E.2d at 711-12. Most of those circumstances were present here, including: "where [the identification procedure] occurred shortly after the alleged crime . . . as the witness' memory is still fresh, and the suspect has not had time to alter his looks or dispose of evidence, and the showup may expedite the release of innocent suspects, and enable the police to determine whether to continue searching." *Id.* (quoting *Gibbs v. State*, 403 S.C. 484, 744 S.E.2d 170 (2013)). As in *Wyatt*, the procedure used for Hardin's identification was clearly suggestive, but the suggestive procedure was necessary under the circumstances of the case. Under the first prong of *Biggers*, therefore, the trial court correctly denied the motion to suppress, and this Court should have affirmed for this alternative sustaining ground.

Second, even if the trial court's decision to address the second prong of *Neil v. Biggers* was appropriate, this Court appears to have misapplied the "abuse of discretion" standard when reviewing the trial court's analysis under the second prong of *Neil v. Biggers* by failing to give appropriate deference to the trial court's conclusion that the identification was sufficiently reliable to allow it to go to the jury. That conclusion was reached after a thorough and proper examination of whether, under the totality of the circumstances, the identification procedure

created a very substantial likelihood of misidentification. Where there was ample evidence in the record to support the conclusion that no substantial likelihood of misidentification existed, it should have been affirmed.

In its published opinion, this Court dispatched with the trial court's analysis of the factors to consider in assessing the reliability of the suggestive identification procedure. Instead, it conducted its own review of the record and assigned its own weight to those factors before concluding: "While the victims testified they were one hundred percent certain that Hardin was one of the assailants, and the length of time between the robbery and the identifications was only a little over three hours, we do not believe these two factors alone suffice to support a finding that the out-of-court identifications were proper and admissible." Relying on our supreme court's opinion in *State v. Moore*, 343 S.C. 282, 540 S.E.2d 445 (2000), this Court concluded that: "Under the totality of the circumstances, we find the circuit court erred in assessing the reliability of an otherwise unnecessarily suggestive identification procedure." However, the reliance on *Moore* is misplaced. In *Moore*, our supreme court found that under the facts of that case, the identification was unreliable as a matter of law. *Moore*, 343 S.C. at 288, 540 S.E.2d at 447. However, the facts in *Moore* are easily distinguished from the facts in this case. *Moore* was "not a case in which the witness had an opportunity to observe defendant in close proximity for some considerable period of time." *Id.* at 289, 540 S.E.2d at 449. Instead, "the witness saw the two defendants for only a brief period of time, at some distance." *Id.* Here, the victims all saw Appellant either for a long period of time, in very close proximity, or both. As to the second factor, the witness' attention in *Moore* "was likely not as acute as it might have been had she been the victim of a crime." *Id.* Here, there were three witnesses and they were all victims of the crimes. In *Moore*, "the degree of accuracy of [the witness'] description [was] tenuous, at

best.” *Id.* Here, the three victims gave incredibly consistent descriptions Appellant’s attire during the crimes and, as noted by the trial court, their level of certainty was one hundred percent. Thus, unlike the facts in *Moore*, the facts in Appellant’s case support the trial court’s finding there was no substantial likelihood of these being irreparable misidentifications. Consequently, the trial court did not abuse its discretion in denying Appellant’s motion to suppress the identification testimony under the second *Biggers* prong. For all of the reasons argued here and in the Final Brief of Respondent, which is incorporated herein by reference, that determination should have been affirmed.

For these reasons, the State respectfully submits this Court should have affirmed the trial court’s refusal to suppress the identification evidence under the first prong of *Neil v. Biggers* without considering the second prong. Similarly, it should have affirmed the trial court’s refusal to suppress the identification evidence under the second prong of *Neil v. Biggers*. As a result, this Court should have affirmed without considering whether admission of the identification evidence was harmless beyond a reasonable doubt.

Conclusion

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an opinion affirming Hardin's convictions and sentence to include a finding the trial court did not err in refusing to suppress identifications made by the three victims.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
August 30, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Maité Murphy, Circuit Court Judge

Opinion No. 5589 (S.C. Ct. App. filed August 15, 2018)

Appellate Case No. 2015-000516

THE STATE, ...RESPONDENT

v.

ARCHIE MORE HARDIN, ...APPELLANT.

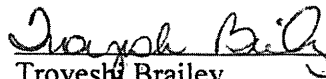
PROOF OF SERVICE

I, Troyeshi Brailey, Legal Coordinator, hereby certify that I have served the within *Petition for Rehearing*, dated August 30, 2018, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to each of his attorneys of record:

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I further certified that all parties required by Rule to be served have been served. This 30th day of August, 2018.


Troyeshi Brailey
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The South Carolina Court of Appeals

The State, Respondent,

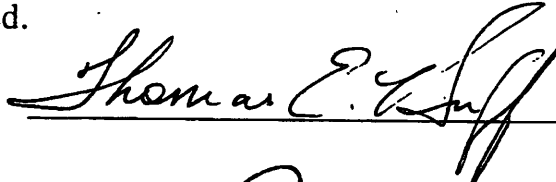
v.

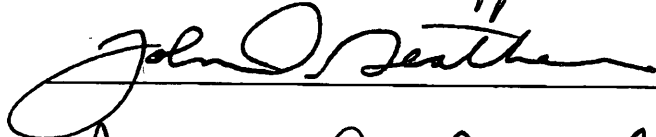
Archie More Hardin, Appellant.

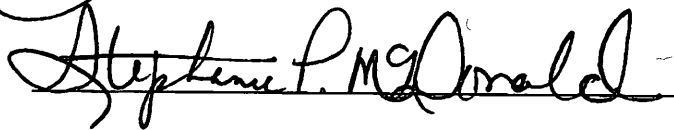
Appellate Case No. 2015-000516

ORDER

After careful consideration of the petitions for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Daniel Carson Boles, Esquire
John Benjamin Aplin, Esquire

FILED

October 19, 2018

David Michael Pascoe, Jr., Esquire
The Honorable Maité Murphy