

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable J. Derham Cole, Circuit Court Judge

ADONIS WILLIAMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001688

APPENDIX

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

PCR EXHIBIT NO. 4 (CD)

1 MS. CAMPBELL: He is on his way, Your Honor. As
2 soon as he gets here, I'll make sure there is no notes.

3 THE COURT: All right. Apparently, there are
4 notes, notes from last year. What else are you still
5 waiting on?

6 MR. SCHNEE: I believe there are a number of
7 things that they're still photo copying.

8 MS. CAMPBELL: The dog report.

9 MR. SCHNEE: The what?

10 MS. CAMPBELL: Just the dog report.

11 THE COURT: So the only thing you're waiting on
12 is Lasher notes?

13 MR. SCHNEE: Lasher notes, copies of the things

14 ---

15 THE COURT: They are getting those.

16 MR. SCHNEE: Right.

17 THE COURT: What else we got?

18 MR. SCHNEE: That and just any testimony about
19 the original Blankenbecklor ---

20 THE COURT: We'll put up the officer.

21 MR. SCHNEE: Yes, sir. I would like a couple
22 minutes to read through this and see what was actually
23 done.

24 THE COURT: Well, I'll give you a couple
25 minutes, but I suppose go over these motions and see what

1 we need to do. All right, and that includes your Rule 5
2 and Brady motions, right?

3 MR. SCHNEE: Yes, sir.

4 THE COURT: And then motion to exclude any
5 evidence obtained from a cell phone pursuant to Crawford
6 and hearsay. I don't know what you mean.

7 MR. SCHNEE: Yes, sir. Apparently, during the
8 course of the investigation, police officers served a search
9 warrant on I believe my client's sister's house. They --
10 or girlfriend's house. I believe it was Dawn Shea. It
11 was a cell phone recovered. They recovered a number of
12 text messages and various other things. They claim that
13 it's my client's cell phone, but I don't have any proof
14 that it's his cell phone. And if they're not going to be
15 able to prove that, I would ask to exclude anything from
16 it.

17 THE COURT: All right. What's he talking about,
18 Ms. Campbell?

19 MS. CAMPBELL: Your Honor, State's Exhibits
20 photographs 66 and 67 ---

21 THE COURT: Well, what are they?

22 MS. CAMPBELL: They're photographs of the text
23 messages from the phone. Two were allowed in the last
24 trial and one was excluded because it references his --
25 his screen saver says redrum, which is murder backwards.

1 The judge allowed the other two in.

2 THE COURT: Who tried the case?

3 MS. CAMPBELL: Newman. If I may approach?

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: Sixty-eight was excluded, 66 and
6 67 came in I believe ---

7 THE COURT: How did you get these photographs?

8 MS. CAMPBELL: Basically, we were able to link
9 the phone to his client.

10 THE COURT: How did you get the text message?
11 It was on the phone?

12 MS. CAMPBELL: Yes, sir. That's why they're
13 photographs of the screen.

14 THE COURT: Well, how is it you intend to link
15 the phone to his client?

16 Is that what you want to know?

17 MR. SCHNEE: Yes, Your Honor.

18 MS. CAMPBELL: Well, it's in the transcript.

19 MR. SCHNEE: There's no testimony about in terms
20 of any witness that can say, yes, that's his cell phone.
21 There's never -- anyone identified, no one testified that
22 it was his cell phone other than law enforcement officer,
23 but I would say that would be a lack of his personal
24 knowledge.

25 MS. CAMPBELL: Your Honor, at the appropriate

1 time I would lay the proper foundation to link the phone
2 to him. As far as it being a Crawford violation, I don't
3 think that would be a Crawford violation

4 THE COURT: All right. What else?

5 MR. SCHNEE: That ---

6 THE COURT: She says she's going to link it.

7 MR. SCHNEE: Okay.

8 THE COURT: What else?

9 MR. SCHNEE: The cell phone itself that would be
10 ---

11 THE COURT: All right, motion opposition to
12 admit under 403 and 4. What is it you're trying to keep
13 out here?

14 MR. SCHNEE: Judge, there were a number of other
15 crimes committed with a very short period of time prior to
16 this. And I ask that all -- any evidence of that be
17 excluded.

18 THE COURT: What kind of crimes were committed?

19 MS. CAMPBELL: He committed a separate strong
20 arm robbery situation. I believe was about a week before
21 this.

22 THE COURT: Why would that be admissible?

23 MS. CAMPBELL: We're not going into it unless he
24 opens the door.

25 MR. SCHNEE: That's fine, Your Honor.

1 THE COURT: Is that it?

2 MR. SCHNEE: I believe there were two of them,
3 but yes that's ---

4 THE COURT: What else we got?

5 MR. SCHNEE: There was a mention I believe last
6 trial Solicitor said they were not going to go into it.
7 There were some sort of gang paraphernalia or notebook or
8 something that they claim was recovered from one of their
9 searches. You said you weren't going into that last time?

10 MS. CAMPBELL: Correct.

11 MR. SCHNEE: Okay, that's fine. There's also a
12 number of guns found that were not on my client that
13 aren't obviously not linked to the offense in any way.
14 I'd ask any testimony about that be excluded.

15 MS. CAMPBELL: We agree to that.

16 THE COURT: All right.

17 MR. SCHNEE: Ask for a record of a rap sheet for
18 all the witnesses.

19 MS. CAMPBELL: Carol Wofford.

20 MR. SCHNEE: If there is anyone.

21 MS. CAMPBELL: She doesn't have one.

22 MR. SCHNEE: Okay.

23 MS. CAMPBELL: And prior to Mr.
24 Blankenbecklor or anyone else testifying, we'll provide
25 that.

1 MR. SCHNEE: Okay. Next I would like to exclude
2 any mention of CODIS or AFIS without a proper chain of
3 custody for the evidence that was submitted along with the
4 analyst that actually did ID or fingerprint. It was a
5 basis of apart of their search warrant and their
6 investigation. And I would move to exclude mentioning
7 that my client was a match in CODIS.

8 THE COURT: All right. What is this all about?
9 Y'all found his fingerprints?

10 MS. CAMPBELL: Basically, Your Honor, there was
11 a -- the DNA was recovered from a cigarette butt that he
12 dropped where he was dropped off. They then ran that
13 through CODIS. And at that point, it came back with a
14 match to the defendant. And at that point, they went
15 forward with their investigation.

16 THE COURT: All right. Well, he just didn't
17 want the word CODIS mentioned. Do you have to do that?

18 MS. CAMPBELL: We can refer to it as a data base
19 of known...

20 MR. SCHNEE: Well, I certainly not want it
21 stated that there's -- it's known as offender or anything
22 like ---

23 MS. CAMPBELL: No, it just be known DNA samples.

24 THE COURT: Just say from a data base.

25 MS. CAMPBELL: From a data base of DNA samples.

1 MR. SCHNEE: That'll be fine with me, that's
2 just ---

3 MS. CAMPBELL: We won't mention the word
4 offender or anything like that.

5 THE COURT: Or AFIS or CODIS. What else we got?

6 MR. SCHNEE: I will also move to exclude any
7 mention of my client's prior record, particularly during
8 this incident there's an allegation that the robber
9 mention that he got out of prison ten months earlier. And
10 I believe in the last trial, Ms. Campbell attempted to use
11 that as part of identification. While I admit that it is
12 somewhat probative, I would argue that it is highly
13 prejudicial especially if they can't show how many people
14 were in fact released from prison or that the statement
15 was anything remotely even truthful. I believe ---

16 THE COURT: He made the statement to somebody
17 that he just got out ---

18 MS. CAMPBELL: This is an ID case. He made a
19 statement to the victim he couldn't get a job, that he
20 just gotten out of prison about ten months prior to this,
21 Your Honor. That along with other factors we felt like
22 were identifying. Judge Newman did allow that testimony
23 in. It's just for the purpose of identification factor.
24 And we able to put in the fact he said that to the victim
25 and able to corroborate through the department of

1 corrections that he had been released in time within that
2 realm.

3 THE COURT: All right. Well, I'm going to admit
4 that. What else your motion mention of a man hunt?

5 MR. SCHNEE: Yes, Your Honor. There were a
6 number of witnesses in the first trial that discussed what
7 they called a sizeable man hunt. And then they described
8 all the circumstances of my client's arrest. All of those
9 -- there was a resisting arrest charge that resulted and
10 an assault while resisting. Those have already resulted
11 in an acquittal and a conviction. And I would ask that
12 none of that be brought up. And if it does, I argue that
13 it opens the door for me to bring up the fact that he was
14 acquitted of the assault while resisting.

15 MS. CAMPBELL: We plan on showing that -- we've
16 handed up case law, Your Honor, as far as flight is,
17 admissible. We only plan on going into the fact that he
18 did run, that they were able to catch him. We want go
19 into the exact assaults, if that's what you're objecting
20 to.

21 MR. SCHNEE: I'm not objecting to any mention of
22 any type of circumstances of the arrest. I certainly will
23 agree under the case law that state that my client was not
24 arrested immediately and they had to search for him. I
25 mean, if that's what they want to argue, that's fine.

1 THE COURT: Apparently, that's what they're
2 going to go into.

3 MR. SCHNEE: But if that's the extent of ---

4 THE COURT: He fled.

5 MS. CAMPBELL: He fled. I'm going to go into
6 the circumstances about how they were looking for him and
7 where he fled and that he was found hiding Lavon Sabb's
8 (sic) house.

9 MR. SCHNEE: And if that's the extent of it,
10 then that's fine, but I want to make sure it's limited to
11 that.

12 THE COURT: All right. Can't rule until I hear
13 it, so, I mean, she says she wants to get into the flight
14 and flights an element she's allowed to. What else we
15 got?

16 MR. SCHNEE: Your Honor, I think that's it.

17 THE COURT: All right.

18 MS. CAMPBELL: Your Honor, the only other thing
19 we have Your Honor is we did hand up the case law on
20 burglary in the first degree as far as the aggravated
21 circumstances. One of our aggravated circumstances is
22 evidence of two priors.

23 THE COURT: I didn't know that was an issue. I
24 didn't read that in the indictment. If it was not an
25 element in this case, I didn't want to prejudice the jury.

1 MS. CAMPBELL: Thank you. And we will limit to
2 -- there's more burglaries than just that, but we will
3 limit it to the two burglaries we're allowed to get into I
4 think pursuant to case law.

5 THE COURT: All right.

6 MS. CAMPBELL: And we handed up the case law on
7 that.

8 THE COURT: Well, I'm familiar with it.

9 MS. CAMPBELL: Yes, sir.

10 MR. SCHNEE: I believe that's all I have. I
11 would like some time to go through some of this.

12 THE COURT: Well, how about -- I don't want to
13 keep this jury. So how about during Ms. Campbell's
14 opening is that long enough? What are you going to do
15 with that?

16 MR. SCHNEE: Well, I don't even know what any of
17 this says yet, that's the problem.

18 THE COURT: Well, that shouldn't affect the
19 beginning of the trial, should it? Who is your first
20 witness?

21 MS. CAMPBELL: The victim, Your Honor.

22 MR. SCHNEE: That's part of what this statement
23 is. And I would also ask for an unredacted copy.

24 MS. CAMPBELL: That is what was approved by the
25 Court before as far as -- it's the victim impact statement

1 itself, Your Honor. We only provided -- and as an officer
2 of the Court, we provided the parts of the victim impact
3 statement that talked about the facts as she recalled
4 them. And we did make a complete disclosure on that.
5 Perhaps we need to be admissible for that, but we did it
6 to make sure ---

7 THE COURT: But do you have an unredacted copy?

8 MS. CAMPBELL: If I can get the file out of my
9 office, Your Honor, I'll give it to him.

10 THE COURT: Give him a copy of the unredacted.

11 MS. CAMPBELL: I'll hand up what we did redact,
12 Your Honor.

13 THE COURT: Well, I don't need that. I mean he
14 wants to see it, that doesn't mean he's going to be able
15 to do anything with it, but he wants to look at it.

16 MS. CAMPBELL: We have another issue in the
17 case, Your Honor.

18 THE COURT: What is that?

19 MR. SCHNEE: While I was waiting to go to lunch
20 outside the courthouse, there was a juror that approached
21 me. He asked if he could -- he wanted to ask me a
22 question. I said I couldn't talk to him. He said he
23 wanted to talk to me about courtroom procedure. And I
24 said I really can't talk to him. And actually Tracy
25 Pinnoit was standing next to me. She pulled him away and

1 talked to him and that was the extent of the conversation
2 I had. I brought it to the attention of Ms. Campbell.
3 Turns out, he was just curious about how jury selection
4 works. Nothing to do ---

5 THE COURT: So what do you want me to do?

6 MR. SCHNEE: Nothing, Your Honor. I just want
7 to bring it to the Court's attention.

8 THE COURT: You want me to do anything?

9 MS. CAMPBELL: Your Honor, just inquire of Ms.
10 Pinnoit about what was said.

11 THE COURT: All right. Ms. Pinnoit.

12 MS. PINNOIT: Yes, sir, Your Honor.

13 THE COURT: Tell me what you heard and saw?

14 MS. PINNOIT: The juror just had a question
15 about the preemptory strikes how many each side got, how
16 you decide, if all states were similar or varied by state,
17 varied by county.

18 THE COURT: And who was this juror?

19 MS. PINNOIT: I didn't get his name or his
20 number, an older gentleman.

21 MR. SCHNEE: He's the retired engineer.

22 THE COURT: Poulos?

23 MR. SCHNEE: Don't remember his name.

24 THE COURT: We can get rid of him if you want.

25 MR. SCHNEE: Certainly, I'm not asking for that.

1 I just want to have full disclosure.

2 MS. CAMPBELL: May I just ask one question?

3 THE COURT: Sure.

4 MS. CAMPBELL: What did you tell him?

5 MS. PINNOIT: I told him depending on the charge
6 some cases got five, some got ten. Counties in South
7 Carolina are pretty much the same, different states again
8 have different numbers, just depends on where you are.

9 THE COURT: Why would you tell him anything?

10 MS. PINNOIT: I was just standing outside and

11 ---

12 THE COURT: Did you know he was a juror in this
13 trial?

14 MS. PINNOIT: When he spoke to Mr. Schnee, he
15 said I couldn't talk to you. I pulled him to the side to
16 see if there was anything I could help him with.

17 MS. CAMPBELL: That's it.

18 THE COURT: I don't understand why you didn't
19 say look, sir, we can't talk to you about this case.

20 MS. PINNOIT: I didn't think it would be an
21 issue, sir, since I'm not connected to this case
22 whatsoever.

23 THE COURT: But he is.

24 MS. PINNOIT: Yes, sir.

25 THE COURT: What do you want anything?

1 MS. CAMPBELL: Could you just pull him out and
2 ask him if anything influenced him in anyway? I'm
3 somewhat concerned that she gave him information.

4 THE COURT: Does Judge Lee or do they tell them
5 not to have any contact with anybody they come up here at
6 the courthouse? Did they tell them that this morning?

7 MR. SCHNEE: She certainly did this morning,
8 yes.

9 THE COURT: Pull Mr. Poulos in if you would, Mr.
10 Hollis. Where you going? He's a juror.

11 (WHEREUPON, juror number 213 Peter N. Poulos
12 entered the courtroom.)

13 THE COURT: Mr. Poulos, it's been reported to
14 the Court that during our lunch break you approached one
15 of the attorneys involved in this case and had some
16 conversation with her? Is the fellow?

17 MR. SCHNEE: I don't believes so, no, Your
18 Honor.

19 THE COURT: Who was it then?

20 Sorry, we got the wrong juror. Mr. Poulos,
21 don't say anything to any juror about what's happened here
22 in the courtroom.

23 (WHEREUPON, juror number 213, Peter N. Poulos,
24 returned to the jury room.)

25 THE COURT: Who was the juror?

1 MR. SCHNEE: Really not sure, Judge.

2 THE COURT: Well, that's great.

3 MS. CAMPBELL: Could it be 22 maybe.

4 THE COURT: That was Poulos right there.

5 MS. CAMPBELL: Number 22.

6 THE COURT: Wasn't that Mr. Poulos?

7 MS. CAMPBELL: No, sir.

8 THE COURT: Who was it we just brought in?

9 MS. CAMPBELL: That was Mr. Poulos that came in.

10 number 22. Mr. Blicht from the description Mr. Schnee

11 provided.

12 MR. SCHNEE: I didn't get his name or his

13 number.

14 THE COURT: All right, bring him in let's see.

15 Bring him in Blicht.

16 BAILIFF: Twenty-two.

17 (WHEREUPON, juror number 22 Herbert M. Blicht,

18 Jr., entered the courtroom)

19 THE COURT: That's the gentlemen?

20 MR. SCHNEE: No, sir.

21 THE COURT: Wrong juror again. Bring all the

22 jurors in here. You can have a seat here, if you would.

23 (WHEREUPON, the jury came into open court.)

24 THE COURT: Which one, Ms. Pinnoit? Just stand

25 right there.

1 BAILIFF: The jurors are all present, Your
2 Honor.

3 THE COURT: Ladies and gentlemen of the jury,
4 did any one of y'all have a conversation with this young
5 lady at lunch?

6 (WHEREUPON, no response from the jury.)

7 THE COURT: Anybody?

8 MS. PINNOIT: No, Your Honor.

9 THE COURT: Could it have been somebody on
10 the...

11 MR. SCHNEE: It must have been, Your Honor.

12 THE COURT: All right. Ladies and gentlemen,
13 let me get you to stand and the clerk's going to swear you
14 in.

15 (WHEREUPON, the jury is sworn.)

16 THE COURT: All right. Ladies and gentlemen,
17 I'm going to explain to you and I wasn't in jury
18 qualification this morning, but I know what's standard
19 procedure that judges tell all the jurors during the
20 course of the week. They'll be in the courthouse moving
21 about in and out of the courthouse. They may come in
22 contact with people that they know or some people up here,
23 please not to have any interaction.

24 It was reported to me during lunch that one of
25 our jurors had contact with one of the lawyers involved in

1 this case. Well, apparently the people that were involved
2 that it may have been somebody that was on your jury panel
3 that did not get selected on the jury, but we'll track
4 that down from a little later.

5 Let me tell you a little bit about this process
6 in case you not served on a jury before. It has been
7 sometime since you served on a jury. Ladies and
8 gentlemen, this case is very very important to the State
9 and the defendant. Because they have now finally come
10 before an independent fact finding body you, the jury, for
11 you to listen to the evidence in this case and ultimately
12 make a decision about what you believe to be the facts in
13 this case and to determine what those facts are, apply the
14 law that the Court gives you and render a verdict on the
15 respective charges that have been brought against this
16 defendant.

17 As I told you earlier, Mr. Williams has been
18 charged with three offenses, been charged with the offense
19 of kidnapping. The State alleges or the indictment
20 alleges that the defendant did in Richland County on or
21 about March 22, 2009, unlawfully seize, confine, inveigle,
22 decoy, kidnap, abduct and or carry away the victim, Linda
23 Wafford, by any means whatsoever without authority of law.
24 In addition, the defendant has been charged with the
25 offense of arm robbery. And that indictment alleges that

1 Mr. Williams did in Richland County on or about March 22,
2 2009, commit an armed robbery by feloniously taking from
3 the person or presence of Linda Wofford by means of force
4 or intimidation, goods or monies of Linda Wofford and such
5 goods or monies being described as U.S. currency. And he
6 did so with the intent to deprive the owner permanently
7 of such property while armed with a pistol, a riffle, a
8 dirk, a slingshot, metal knuckles, a razor or other deadly
9 weapon or while alleging either by actions or words that
10 he was armed while using a representation of a deadly
11 weapon or any object which a person present during the
12 commission of the robbery reasonably believed to be a
13 deadly weapon.

14 And finally the defendant has been charged with
15 the offense of burglary. The indictment alleges that
16 Mr. Williams did in Richland County on or about March 22,
17 2009, unlawfully enter the dwelling of Linda Carol Wofford
18 at [REDACTED] Tama Road without consent and with the intent to
19 commit a crime therein. And the defendant while affecting
20 entry or while in the dwelling or while in immediate
21 flight therefrom was armed with a deadly weapon and or
22 displayed what is or appears to be a knife or pistol or
23 revolver, a shotgun, a machine gun or other firearm and or
24 used or threatened the use of a dangerous instrument and
25 or the burglary is committed by a person with two or more

1 prior convictions for burglary. Now, as I told you
2 earlier to these charges, the defendant has entered a plea
3 of not guilty, which brings us here.

4 The State must now prove this defendant guilty
5 of these offenses and prove him guilty beyond a reasonable
6 doubt. I also told you, ladies and gentlemen, that the
7 defendant is presumed to be innocent and that presumption
8 of innocence remains with him throughout the course of
9 this trial and would only change if after hearing the
10 evidence applying the law, determine the fact that the
11 defendant is guilty of one or more of these offenses.

12 I also told you earlier told today, ladies and
13 gentlemen, these indictments are not evidence. They are
14 documents that are used to put the defendant on notice of
15 these particular charges. They're not for any other
16 purpose and that's how you should consider them.

17 Now, the way a trial takes place, ladies and
18 gentlemen, first thing that happens is the lawyers are
19 given an opportunity to get up and speak to you. This is
20 called an opening statement. The State will go first in
21 the opening statement and will go first throughout the
22 course of the trial because the State has the burden of
23 proving these charges. The opening statement, ladies and
24 gentlemen, is the chance for these lawyers to introduce
25 themselves to tell you a little bit what they think will

1 come out during the course of the trial. So you'll have
2 some understanding of what to look for as this trial
3 unfolds. After both the State and the defendant have made
4 their opening statements, the State will go forward with
5 the presentation of its evidence. I would assume that
6 most of this evidence will come in by way of testimony
7 from witnesses. Most of those witnesses will be fact
8 witnesses. They will be witnesses that have some
9 knowledge about some fact in this case. They've seen
10 something, heard something, smelled something, tasted
11 something, felt something. One of their senses has given
12 them some information that they can tell you what that
13 factual information is. He also may have what we call
14 expert witnesses. An expert has specialize knowledge or
15 training in a particular field. By virtue of this
16 education or training, they can offer opinions in their
17 areas of expertise. Normally, fact witnesses can only
18 tell you what they see, what they know or what they heard.
19 Experts can offer opinions in their areas of expertise
20 generally an expert is something like a physician, an
21 engineer somebody that has specialize knowledge in a
22 particular matter.

23 Other types of that evidence that could be
24 introduced in this case could be things like documents,
25 photographs, that type of evidence is actually introduced.

1 It's given a docket -- I mean an exhibit number. And it
2 will go with you to the jury room, so that when you begin
3 your deliberations you will have that exhibit to review
4 during the course of your deliberations.

5 The testimony, ladies and gentlemen, will go
6 with you in your memory, so it's absolutely essential that
7 you pay close attention to what is said here in this
8 courtroom. If you can't hear somebody, don't understand
9 somebody, let me know, raise your hand, tell me in some
10 way. We'll make sure that person speaks up, speaks more
11 clearly whatever it takes because it's essential that you
12 hear what's being said in the courtroom.

13 A third type of evidence that could come in is
14 what we call a stipulation and that's where the parties
15 stipulate or agree as to some fact or some matter. If
16 there's a stipulation, the lawyers will tell me and I will
17 tell you. And you are to accept that as though it has
18 been proven in the courtroom.

19 Now, after the State has offered any evidence
20 the State wishes to offer, the defendant is given an
21 opportunity to offer any evidence the defense wishes to
22 offer, but, ladies and gentlemen, the defendant doesn't
23 have to prove anything in this case, but no burden on the
24 defendant whatsoever. So they may elect not to put up a
25 case. They probably don't know what they're going to do,

1 until after they see what the evidence has been presented
2 by the State. If the defense offers evidence, I would
3 assume most of it will be of a similar type to the State's
4 testimony from witnesses who will get into this witness
5 box and tell you what information they had.

6 When both sides have completed the presentation
7 of their evidence, then the lawyers are given another
8 chance to speak to you and this is called a closing
9 argument. Closing argument is a little different than the
10 opening statement in that the closing argument is a chance
11 for the lawyers to recap or review with you the evidence
12 that's come into the trial. A chance for these lawyers to
13 tell you what they think you need to seriously consider
14 and discuss during the course of your deliberations. It's
15 a chance for the lawyers to attempt to convince or
16 persuade you as to why you should ultimately return a
17 verdict for their respective client. When both sides have
18 completed their closing arguments and I will charge you or
19 instruct as to the law, you will then retire to the jury
20 room, begin your deliberations, determine the facts, apply
21 the law and render your verdicts.

22 Now, ladies and gentlemen, you are the fact
23 finders in this case. You're the sole fact finders.
24 Nobody else will participate in that process but you. My
25 role is different and my role is two fold. One I'm sort

1 of the referee in this case. In most structured events,
2 we have rules. And we have rules of evidence rules and
3 rules of procedure that dictate how we try a case. And
4 it's my responsibility to see that those rules are
5 followed. My other responsibility is I've told you on
6 several occasions is I'm the one that will tell you what
7 the law is, so you can apply the law to the facts when you
8 reach your verdict.

9 Now, ladies and gentlemen, I want you to pay
10 close attention to what these lawyers say during the
11 course of this trial. What they tell you is very very
12 important. But understand this, what they tell you is not
13 evidence. They are advocates for there respective
14 clients. The Solicitor represents the State of South
15 Carolina. Mr. Schnee represents Mr. Williams. They're
16 their representatives. They are their advocates. And
17 it's their responsibility to put in this case what they
18 think will be necessary for their clients intimately to
19 prevail. This case will last several days as I told you.
20 I also told you it's very very important, so we want to do
21 everything we can to see that both sides get a fair and
22 impartial trial. We have good lawyers in the case.
23 They'll move the case as quickly as they can, but they're
24 not going to do anything that would affect anything
25 adversely for their respective clients. I think with that

1 said I'll ---

2 Who's going to make opening statements? Ms.
3 Walker. All right.

4 MR. SCHNEE: Judge, may we approach?

5 THE COURT: Sure.

6 (WHEREUPON, a bench conference was held in the
7 presence of the jury, but out of the hearing of the
8 jury.)

9 THE COURT: Ladies and gentlemen, I need to take
10 up a matter of law. Please step back to the jury room,
11 but do not discuss the case while you're back there. And
12 we'll bring you back in just a moment.

13 (WHEREUPON, the jury retire to the jury room.)

14 THE COURT: All right, Mr. Schnee.

15 MR. SCHNEE: Please the Court, Your Honor, one
16 of the things that I just received was an investigative
17 follow up that was typed by Sergeant Robinson last night.
18 This details a lot of information that he did in his
19 investigation almost two years ago. I've never received
20 any of this.

21 Most importantly, it describes the vandalism and
22 the investigation into that from the victim's car. This
23 happened at the Citgo approximately within ten minutes of
24 her getting to the Citgo and going in to call 9-1-1. Her
25 truck windows were broken out. Originally, the officers

1 that viewed the video claimed it was a black male that fit
2 my client's description. They go through a copy of the
3 video. They view it multiple times and continue to say
4 that. It turns out it was someone else. There are
5 allegations that there may or may not have been another
6 black male in the car with him. The video was somewhat
7 fuzzy. The only video that was saved and turned over was
8 of the victim's car when she parked. There were numerous
9 other cameras. There were allegations by police ---

10 THE COURT: Well, Mr. Schnee, I know nothing
11 about this case. So talk about vandalism of the car, tell
12 me how that affects whatever it is involved in this case?

13 MR. SCHNEE: Well, Judge, there are a number of
14 other cameras at the Citgo and they claim ---

15 THE COURT: Somebody tell me what facts of this
16 case are?

17 MS. CAMPBELL: Your Honor, somebody came into
18 Linda Wofford's house. They forced her to get into her
19 car. They forced her to drive to an A.T.M. Once she went
20 to the A.T.M., she then gave them several hundred dollars.
21 Once she got the money out of the A.T.M. along with some
22 money out of her purse, he then got out of the vehicle.
23 At that point, he had a cigarette butt proves to be
24 instrumental that drops there at the scene. She then runs
25 to the Citgo. While she's in the Citgo, she leaves her

1 truck ---

2 THE COURT: She runs from where the A.T.M. ---

3 MS. CAMPBELL: She drives to the Citgo excuse
4 me, drives her pick-up truck to the Citgo.

5 THE COURT: Which is how far?

6 MS. CAMPBELL: Blocks.

7 MR. SCHNEE: Blocks.

8 THE COURT: All right.

9 MS. CAMPBELL: She then runs inside calls 9-1-1
10 deputies responded. They then drive her around, goes with
11 the deputies around. At some point during this time
12 period her truck the actual window is knocked out and her
13 truck by someone is on a video. This was all fully
14 fleshed out at the first trial and I know he has a
15 transcript of that. And Charles -- I can't say his name
16 Beken whatever was ultimately charged with malicious
17 injury to personal property and pled guilty to that
18 charge. This all came out in the prior trial. He's got a
19 transcript of everything. There's nothing in this that
20 I'm aware of that's new other than what was fleshed out
21 before.

22 MR. SCHNEE: Judge, there is an extensive amount
23 of evidence.

24 THE COURT: What is the vandalism has to do with
25 this case?

1 MS. CAMPBELL: Nothing.

2 MR. SCHNEE: Judge, throughout multiple hearings
3 at the bond setting, at the preliminary hearing ---

4 THE COURT: Tell me what the vandalism has --
5 when I'm talking, you don't. What does the vandalism has
6 to do with this case?

7 MR. SCHNEE: Judge, the victim in her own victim
8 impact statement says it's part of the case, part of the
9 intimidation that my client did. The police officers
10 viewed the video and concluded that my client was the one
11 who did that. That was their initial conclusion. They
12 have alleged it. This was a very big part of the trial.
13 One of the main aspects is they claimed they watched a
14 black male on video. And for the very first time today I
15 hear there was another black male in the car. And
16 apparently I have his name is Issac Tucker, Jr., now.
17 They said that the entire allegations that this was all
18 connected. This happened within ten minutes or less of
19 the victim pulling up at the gas station to call the
20 police.

21 THE COURT: This woman drives to the gas
22 station, gets out of her car ---

23 MS. CAMPBELL: Goes inside.

24 THE COURT: --- goes inside.

25 MS. CAMPBELL: While she's inside or off with

1 the deputies once they drive her off, her car is
2 vandalized.

3 THE COURT: Do they know when the vandalism
4 occurred?

5 MS. CAMPBELL: It occurred sometime shortly
6 after she got to the Citgo.

7 THE COURT: Was she inside or was she riding
8 around with a deputy?

9 MR. SCHNEE: Based on the time, she was probably
10 inside.

11 THE COURT: Inside ---

12 MS. CAMPBELL: She did not witness it. She did
13 not witness it. She's never seen the video. She assumed
14 this is true at the bond setting that the person that had
15 abducted her then vandalized her car, that was an
16 assumption she made. One sentence which is in the victim
17 impact statement we turned over and turned over at the
18 prior trial.

19 THE COURT: All right. Now, there's a video?

20 MR. SCHNEE: There's one of the video, but not
21 of all the cameras. That was one of the big issues that
22 was brought up. The claim in the first trial is that
23 someone got out of the car, took the ashtray from the
24 front of the gas station and then they drove around back,
25 then mashed her window out. And based on the multiple

1 police officers viewing this video, they concluded it was
2 a black male. And they concluded at the bond setting and
3 at the preliminary hearing a month and a half later, two
4 months later that it was in fact my client ---

5 THE COURT: How do they conclude that?

6 MR. SCHNEE: They said it was a black male
7 fitting the description of my client never actually
8 charged him with it. It was a huge issue in terms of
9 identification because it is an identification case.

10 THE COURT: I don't know how that would be an
11 identification. So they exclude all that. Does it matter
12 who it is that did the vandalism?

13 MS. CAMPBELL: Not in our case, Your Honor.

14 MR. SCHNEE: Certainly does to me, Your Honor.

15 THE COURT: How?

16 MR. SCHNEE: Because the same person that they
17 originally blamed for the robbery they said it was
18 vandalism. It goes to the victim's ability to identify my
19 client, which she really can't do. She never has
20 identified my client specifically.

21 THE COURT: So you want to ask -- you talking
22 about Ms. Wofford?

23 MR. SCHNEE: I'm talking about all of law
24 enforcement officers that watched the video and saw the
25 events.

1 THE COURT: So what do you want to do you want
2 to continue it?

3 MR. SCHNEE: Well, Judge, I have just received
4 this. This apparently ---

5 THE COURT: Mr. Schnee, what do you want?

6 MR. SCHNEE: For right now I want a continuance.
7 I like to have a picture of this Issac Tucker who was in
8 the car, that's apparently a black male who's in the car
9 when the vandalism occurred and that is most fitting for
10 the description if he's the one who picked up the ashtray.

11 THE COURT: Let's say he's the one who
12 vandalized it, tell me what that has to do with this
13 particular crime.

14 MR. SCHNEE: Judge, there are one or two
15 scenarios that are possible. Either this is the
16 unluckiest victim in the world or my client is the
17 unluckiest defendant in the world. And that was brought
18 up by Ms. Campbell in her closing arguments ---

19 THE COURT: Well, we know she's not the
20 unluckiest victim in the world. Probably the unluckiest
21 victim in the world is no longer in the world.

22 MR. SCHNEE: Yes, sir, but in terms of being
23 kidnapped and robbed and then within ten minutes her car
24 being vandalized when she gets to the gas station. It's
25 very coincidental ---

1 THE COURT: All right. Well, tell me what it is
2 you want and then tell me why you want that? What it is
3 that you would do other than cross-examine these police
4 officers and say you really can't say who it is?

5 MR. SCHNEE: Well, for starters, I certainly
6 like to know who Issac Tucker, Jr., is in terms of what
7 they did. I like a picture of him. I like an opportunity
8 to actually investigate what this is. I've never seen any
9 of this before. This is all brand new. And it was typed
10 out last night. This case is two and a half years old.

11 THE COURT: Well, Mr. Schnee, nobody has seen
12 any of it because it was typed out last night.

13 MR. SCHNEE: Yes, but all of this is talking
14 about things that happened two years ago.

15 THE COURT: None of that's in the prior
16 testimony?

17 MR. SCHNEE: Nothing about a black male being in
18 the car, nothing about Issac Tucker, nothing about
19 confidential informants providing the names, nothing about
20 surveillance none of it.

21 THE COURT: I still don't know what you want.

22 MS. CAMPBELL: The video was in the prior
23 record. The video itself shows all this was in the
24 record.

25 MR. SCHNEE: It shows one camera. The police.

1 choose to only take one camera rather than a lot of
2 cameras and that was brought out in trial.

3 THE COURT: You don't have to argue your case to
4 me, Mr. Schnee.

5 MR. SCHNEE: I apologize.

6 THE COURT: That's something you can do with the
7 jury.

8 MR. SCHNEE: Yes, sir.

9 THE COURT: The police only choose to do -- I
10 don't know what the police choose to do.

11 MR. SCHNEE: I apologize, Judge. It's just
12 aggravating that this happened so long ago and now ---

13 THE COURT: How long you had this case?

14 MR. SCHNEE: I had it since October. And
15 technically originally for the first month or so after his
16 arrest.

17 THE COURT: All right. Did you do anything to
18 get all this stuff done before today.

19 MR. SCHNEE: Judge, I have asked multiple times
20 for any amount of information, any of the statements.

21 THE COURT: Did you ask the Court I can't get
22 discovery?

23 MR. SCHNEE: Ms. Campbell said she had given
24 everything she had and anything that I asked for ---

25 THE COURT: What has she not given you?

1 MR. SCHNEE: Well, apparently all this.

2 THE COURT: When did she get that, Mr. Schnee?

3 MR. SCHNEE: Judge, she only got it today.

4 However, the State ---

5 THE COURT: When was it prepared, Mr. Schnee?

6 MR. SCHNEE: Last night which is the problem.

7 THE COURT: I don't know why it was prepared if
8 somebody's going to wait until the night before a trial to
9 start preparing statements.

10 MR. SCHNEE: Under law by Supreme Court, the
11 State gets presumed to have knowledge of everything. Ms.
12 Campbell is presumed. I understand ---

13 THE COURT: Mr. Schnee, it didn't exist.

14 MR. SCHNEE: Well, it should have is the problem
15 and now it does. And now I need time to examine them.

16 THE COURT: You can't tell the police what
17 statements they got to write up and what reports they got
18 to prepare.

19 MR. SCHNEE: Judge, Brady and Rule 5 and Riddle
20 make it pretty clear what they have to do.

21 THE COURT: Doesn't tell them what statements
22 they have to prepare or what documents they have to
23 prepare, that deals with what they have to give you.

24 MR. SCHNEE: They can't actively hide it, Your
25 Honor, that's one of the main holdings in Riddle. They

1 can't actively hide it and say, well, we just didn't type
2 this up before.

3 THE COURT: Certainly, cannot type it up if they
4 don't want to type it up. Riddle says all policemen have
5 to prepare reports?

6 MR. SCHNEE: It says that they're required to
7 turn over all information they have and they have it.
8 They can't just willfully ignore the aspect of typing it
9 or giving it over.

10 THE COURT: All right. What are we going to do
11 in this case?

12 MS. CAMPBELL: Every bit of this information
13 down to the last little paragraph about who Boochi (sic)
14 is was concluded, that information apparently from me just
15 reading this and I just got it, was that in 2011 while
16 working a cooper theft an investigating officer arrested a
17 subject name Boochi. His real name is Issac Tucker, that
18 didn't come to their attention. And perhaps he didn't put
19 it together until getting ready for this case is what I'm
20 assuming, but that's information that he didn't have prior
21 to 2011. Everything else was fully fleshed out ---

22 THE COURT: Ms. Campbell, I mean, you got
23 policemen and they're preparing reports the night before a
24 trial. How does the defendant suppose to respond to
25 those?

1 MS. CAMPBELL: Your Honor, if this information
2 was all totally new information, I would agree with you.

3 THE COURT: I don't know what's new and what's
4 not new.

5 MS. CAMPBELL: I'm just saying.

6 THE COURT: Apparently, you say a good part of
7 it isn't. He says a good part of it is.

8 MS. CAMPBELL: But I can provide the prior -- I
9 have the testimony from a prior trial, which shows it
10 isn't new.

11 THE COURT: Does it say that there was somebody
12 name Issac Tucker ---

13 MS. CAMPBELL: The Issac Tucker identification
14 is the new part.

15 THE COURT: And what else is new?

16 MR. SCHNEE: It doesn't say anything about how
17 they met up with Charles. It doesn't say anything about
18 the surveillance. It doesn't say anything about a black
19 male name Boochi the nickname. It doesn't discuss
20 anything about that. It doesn't discuss the fact that
21 apparently they asked my client which leaves me to the
22 point of a Denno hearing about any knowledge of the
23 vandalism. It doesn't bring up the fact that they asked
24 Charles and showed him a picture of my client asked him if
25 he knew him. It doesn't bring up any of those things.

1 None of that was in the transcript.

2 MS. CAMPBELL: Your Honor, I mean we would like
3 the transcript of what came out before because this was an
4 issue that came up actually on the eve of trial last time
5 as far as Mr. Becken -- what's his name Beckler. If I
6 could just hand up the report, Your Honor, too for you to
7 review the amount of information.

8 THE COURT: I can't speak to what is valuable in
9 here and what is not.

10 MS. CAMPBELL: Your Honor, if I might address,
11 Your Honor, I was inquiring Investigator Robinson why this
12 wasn't produced before. He just found out about this last
13 week, so that's why the late producing of the report as
14 far as Boochi and who Issac Tucker is in his defense, Your
15 Honor.

16 THE COURT: I'm still not clear in my mind what
17 the vandalism has to do with this case.

18 MS. CAMPBELL: I'm with you.

19 THE COURT: Did y'all try and introduce evidence
20 about the vandalism last trial?

21 MS. CAMPBELL: We didn't. We put in the fact --
22 I mean, the trucks there. It's at a scene, it's
23 vandalized. And, of course, it's processed after that.
24 That's the only relevance to anything. We put in the
25 evidence of the truck being there. The defense went into

1 the fact that the car was vandalized and who did it, who
2 is Charles Blankenbecklor and that's all been turned over.

3 THE COURT: And tell me again -- let me try and
4 understand why this vandalism is important to you.

5 MR. SCHNEE: Yes, Your Honor, multiple police
6 officers reviewed the video of this and concluded that it
7 was a black male that did it and I'll get to it. In the
8 news releases, they said with my client's picture even
9 suspect drove up in a dark blue Grand Marquis struck a car
10 before fleeing. There's a BOLO put out on 9-1-1
11 describing my client and the car ---

12 THE COURT: So -- all right. Go ahead.

13 MR. SCHNEE: It all goes to identification of my
14 client and misidentification and that is almost the only
15 aspect of this case. It's the only issue in this case is
16 identification.

17 THE COURT: All right. So you got great things
18 to cross-examine them about, don't you?

19 MR. SCHNEE: Judge, I would like to have the
20 ability to even figure out who Issac Tucker is and see if
21 he would even fit the description of who the victim is.

22 THE COURT: What difference does that make?

23 MR. SCHNEE: It makes a difference because he's
24 in a car ---

25 THE COURT: Let's say he fits the description of

1 your client.

2 MR. SCHNEE: Well, that means he was in the
3 vicinity of the victim's truck within ten minutes of her
4 getting to a gas station, that's something I like to be
5 able to show.

6 THE COURT: All right. Don't the police know
7 what his description is?

8 MR. SCHNEE: I have no idea, Judge, I certainly
9 don't have anything for it.

10 THE COURT: Ask him did he have a report?
11 Listen to my question.

12 MR. SCHNEE: Yes, sir.

13 THE COURT: Did the police have a description of
14 Boochi?

15 MR. SCHNEE: I don't know.

16 THE COURT: Do you want to know?

17 MR. SCHNEE: Yes, sir.

18 THE COURT: Y'all have a description of Boochi,
19 got a mug shot, you got any kind of information?

20 POLICE OFFICER: I don't know. We can acquire
21 one for him.

22 THE COURT: So we can find out whether he's 6'5
23 or 3'6?

24 POLICE OFFICER: All that can be determine, yes,
25 sir.

1 THE COURT: We can find out if he's the same
2 height anything. What else you want?

3 MR. SCHNEE: Well, Judge, apparently he was
4 arrested. I'd certainly like to see his -- if his
5 fingerprints match anything or his DNA matches anything
6 from inside the car. There's a lot of unmatched DNA.

7 THE COURT: Inside what car?

8 MR. SCHNEE: The victim's car. There are at
9 least two separate DNA profiles from the passenger side of
10 the victim's car where the robber sat that do not match my
11 client and do not match the victim.

12 THE COURT: All right. What do you want, Mr.
13 Schnee?

14 MR. SCHNEE: Well, if he's been arrested ---

15 THE COURT: What do you want? Do you speak
16 English?

17 MR. SCHNEE: Yes, Your Honor.

18 THE COURT: What do you want?

19 MR. SCHNEE: I like to know if they have his DNA
20 profile.

21 THE COURT: All right. Do you have -- this is
22 all you want to know these are the things you want to
23 know?

24 MR. SCHNEE: This is what I want.

25 THE COURT: Do we have his DNA profile?

1 POLICE OFFICER: As to Tucker, Jr., I wouldn't
2 know unless ---

3 THE COURT: We're going to give you a chance to
4 find out.

5 POLICE OFFICER: I have to research rap sheets.

6 THE COURT: I know you don't have it here. Is
7 it within your control somewhere in the police department,
8 the sheriff's department? Can we check that out?

9 POLICE OFFICER: I have to research to find out
10 if there's a profile ---

11 THE COURT: What else you want? You want his
12 DNA profile.

13 MR. SCHNEE: And his fingerprints and his
14 picture, which I can probably get from the Alvin S. Glenn
15 web site.

16 THE COURT: What else do you want?

17 MR. SCHNEE: In terms of Issac Tucker, that
18 would be it.

19 THE COURT: All right. What else do you want?

20 MR. SCHNEE: I still need to know what was
21 discussed either last Friday or something with Charles in
22 terms of when police interviewed him.

23 THE COURT: Well, you get to find that out on
24 cross-examination.

25 MS. CAMPBELL: Get those from my investigator,

1 Your Honor. I believe we got those notes.

2 THE COURT: What else you want?

3 MR. SCHNEE: Those are the only new things, Your
4 Honor.

5 THE COURT: Now, when do you want them?

6 MR. SCHNEE: I prefer to have them today, but I
7 don't know if they can get it to me that quick.

8 THE COURT: I don't know. Somebody go call
9 whoever you got to call and get this thing started
10 immediately. And if they got to run it up here, tell them
11 to run it up here blue lights blazing.

12 What else you want anything? You ready to make
13 your opening?

14 MR. SCHNEE: I would like to see the results of
15 these things first.

16 THE COURT: Well, we won't do that.

17 MR. SCHNEE: I still like an unredacted copy of
18 the victim's statement.

19 MS. CAMPBELL: May I hand up to the Court.

20 THE COURT: Yeah. Why you giving it to me?

21 MS. CAMPBELL: Make sure we properly turned over
22 everything I'm sure.

23 THE COURT: What does he want?

24 MS. CAMPBELL: He wants the whole thing I
25 assume. He got the part she talks about the facts. We

1 turned that over a year and a half ago.

2 MR. SCHNEE: No, ma'am, I got this today.

3 MS. CAMPBELL: It was in the record.

4 MR. SCHNEE: I got this statement today in
5 court.

6 THE COURT: What is redacted? From having
7 trouble sleeping is that the stuff that -- and that's the
8 kind of stuff you want to read?

9 MR. SCHNEE: I don't know what's in here, that's
10 the issue I don't know what it says.

11 THE COURT: Y'all have a problem with letting
12 him see it?

13 MS. CAMPBELL: We trying to follow the Victim's
14 Bill of Rights is the only thing that's protected by the
15 Bill of Rights. We brought it up and we brought it out
16 because we thought it held -- it had parts about the facts
17 so we should ethically turn it over which we did. And, of
18 course, that was to his prior attorney.

19 THE COURT: And who was that?

20 MS. CAMPBELL: Mr. Gibson (sic).

21 THE COURT: You want to know about her mother's
22 health history and all that stuff?

23 MR. SCHNEE: Judge ---

24 THE COURT: Do you want to know about her
25 mother's health history?

1 MR. SCHNEE: No, sir, I just want to know what
2 was redacted?

3 THE COURT: Well, first thing I'm having trouble
4 sleeping because of the home invasion.

5 MR. SCHNEE: Yes, I have that paragraph that the
6 neighbors are in a state of panic.

7 THE COURT: Do you have that?

8 MR. SCHNEE: No, sir..

9 THE COURT: Invasion has caused immense pain in
10 my mother, that's the next paragraph talks about the mom
11 currently suffering from various health issues. Did you
12 want that?

13 MR. SCHNEE: I don't need that, Your Honor.

14 THE COURT: I'm suffering from anxiety, distress
15 to my immediate coworker. Cost my employer over a week
16 salary. Let me see what you got? Everything you have is
17 the only thing that relates to anything about the facts of
18 this case. The rest of it deals with things totally
19 outside the facts of the case such as her health,
20 coworkers health, anxiety, her mother's health. So you
21 got -- and the redacted copy.

22 Here you go, Ms. Campbell?

23 THE COURT: What else we got? Mr. Schnee.

24 MR. SCHNEE: I'm sorry. I'm just reading the -- I
25 guess the written statement that they took last Friday.

1 MS. CAMPBELL: No, those are investigators notes
2 from when they interviewed Charles Blankenbecklor at 7
3 o'clock on friday evening.

4 MR. SCHNEE: On last Friday?

5 MS. CAMPBELL: Yes.

6 MR. SCHNEE: Okay.

7 THE COURT: All right. Here's the deal, Mr.
8 Schnee, we're going forward. You will have tonight,
9 tomorrow as long as this trial goes on you'll have that
10 time to continue to read and study and learn and do
11 whatever you need to do. If at any time facts change such
12 that you feel like you need to make any motion, do
13 whatever you need to do based on something coming to your
14 attention of you're learning something, we'll deal with it
15 at that time. But I hadn't seen anything yet that is not
16 helpful to you that has come out and stopped us from going
17 forward. It appears to me you been given information here
18 today that would tend to cast some concerns on how the
19 police conducted this investigation.

20 MR. SCHNEE: Yes, Your Honor.

21 THE COURT: I'm sure you use that to great
22 benefit to your client, but seeing this picture finding
23 out the height or the weight or anything about this other
24 Boochi whoever it is, I don't see how that's going to lead
25 us to go conduct some great investigation.

1 MR. SCHNEE: I understand, Your Honor. Could I
2 have about 15 minutes to reorganize my opening?

3 THE COURT: All right. You can take 15 minutes
4 on your opening, Ms. Campbell?

5 MS. CAMPBELL: Ms. Walker.

6 THE COURT: Ms. Walker.

7 MS. WALKER: No, Your Honor, it want take that
8 long.

9 THE COURT: Well, take it.

10 MR. SCHNEE: Your Honor, I prefer not to be
11 doing that while she's doing hers.

12 THE COURT: I don't know what sort of
13 reorganizing you need to do. Have you written your
14 opening out?

15 MR. SCHNEE: I have notes of what I want to say,
16 but I just like a few minutes if I could to process all of
17 this and figure out how I want to fit it in.

18 THE COURT: Are you processing? Don't be
19 looking at me. We'll take a few minutes and then let
20 Schneid process.

21 MR. SCHNEE: Thank you, Your Honor.

22 (WHEREUPON, a break was taken.)

23 THE COURT: Okay. All right. We have been
24 talking and getting some additional information sent to my
25 office or brought to my office to give to Mr. Schnee to

1 the Solicitors. And apparently, we still have some things
2 that need to be done. What we're going to do is recess
3 for the day send the jury back -- I mean home. And then
4 we'll determine in the morning where we are with
5 Ms. Campbell can find out how long it's going to take to
6 do some of the things that the Court either has requested
7 or will request if it becomes necessary to get that
8 information.

9 Bring in the jury, if you would, Mr. Hollis.

10 BAILIFF: Be glad to you, Your Honor.

11 (WHEREUPON, the jury came into open court.)

12 THE COURT: Ladies and gentlemen, I apologize
13 for keeping you back in the jury room for so long, but
14 we've had a number of things that have come up, that are
15 requiring me to deal with them outside your presence. And
16 in fact, it's going to require me to be involved in it
17 some additional time. I'm going to let y'all go home for
18 the day and ask y'all to come back tomorrow morning at
19 9:30. A couple things I've already told you don't discuss
20 this case please with anybody while we're gone either.
21 Yourselfs when you get back in the morning or anybody you
22 come in contact with once you leave the courthouse. The
23 other thing I'm going to ask you to do during the course
24 of this trial is don't do any independent or private
25 investigations or make any independent or private

1 investigations or make any independant inquiry. Don't get
2 on the internet and do anything in the case if things come
3 up during the course of the trial or I had people ride by
4 scenes and look at that. This case has to be proven here
5 in this courtroom. And it's not based upon independent
6 knowledge that you may acquire during the course of the
7 trial. So don't do anything other than be prepared to
8 listen to the evidence here in court and make whatever
9 decisions you make based upon that evidence. We'll start
10 tomorrow morning at 9:30. Please do not discuss the case
11 as I said. Y'all have a nice evening and we'll see you
12 tomorrow morning.

13 (WHEREUPON, the jury excuse for the day.)

14 THE COURT: Before we leave, let's get straight
15 what it is we're going to try and accomplish tonight, Mr.
16 Schnee, Ms. Campbell and Ms. Walker. Ms. Campbell is
17 going to talk to DNA people.

18 MS. CAMPBELL: Yes, sir, they're on the way.

19 THE COURT: Pardon me.

20 MS. CAMPBELL: They're on the way to the
21 courthouse right now.

22 THE COURT: All right. And what is it we're
23 going to get from them?

24 MR. SCHNEE: Well, Your Honor, I certainly
25 hoping that they will not only do a comparison, but if

1 necessary re-run all the swabs from the car and the house
2 with what's called a mini profiler to get the complete DNA
3 profiles. They were all degraded to four samples and that
4 is a tool that is used to obtain DNA profiles from such
5 samples.

6 THE COURT: You'll make inquiry, Ms. Campbell,
7 to see what's involved, how long that would take.

8 MR. SCHNEE: The other aspect obviously with
9 Mr. Tucker have his prints compared to pretty much
10 everything in this case. Everything from the house, the
11 new letter we got last week all those issues. And if they
12 have any other booking information that's from the
13 sheriff's department on Mr. Tucker that isn't on the Alvin
14 S. Glenn web site. I don't know if they have anything.

15 MS. CAMPBELL: It should all be on the web site
16 what we have usually it's just date of birth, description
17 and subject.

18 THE COURT: Is there anything else you need?

19 MR. SCHNEE: I think that covers it, Your Honor,
20 with terms of what needs to be tested.

21 THE COURT: Maybe, you'll know something this
22 afternoon. We can meet at 9:15.

23 MS. CAMPBELL: As soon as I find out something
24 this afternoon, I'll pass the information along on to him.

25 THE COURT: All right. So y'all be in my office

1 9:15.

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: All right. Thank y'all stand in
4 recess.

5 (WHEREUPON, the proceedings were concluded for
6 the day to be reconvened on June 28, 2011.)

7 THE COURT: As everybody is aware since
8 yesterday we been fooling with some problems and concerns
9 relating to discovery, and testing, and DNA, and
10 fingerprints and all that kind of good stuff and the
11 reports. And we have Ms. Campbell has done her very best
12 to try and comply with request made by Mr. Schnee
13 regarding providing this information, but apparently it's
14 is going to take a lot longer than we feel comfortable
15 with in terms of going forward with the trial. I'm ready
16 to go forward, but my understanding is Mr. Schnee wants --
17 he believes he needs this information in order to proceed;
18 is that correct?

19 MR. SCHNEE: Yes, Your Honor.

20 THE COURT: Did you have a motion that you
21 wanted to make?

22 MR. SCHNEE: Yes, Your Honor, I move for a
23 mistrial at this time and I would ask that Your Honor
24 retain jurisdiction over the case?

25 THE COURT: Anything from the State?

1 MS. CAMPBELL: Your Honor, we would oppose the
2 mistrial. We believe this is a collateral issue the
3 testing that he is requesting and we would oppose mistrial
4 at this point.

5 THE COURT: All right. Well, I don't know
6 whether it's collateral or not, but I think we're going to
7 have to give Mr. Schnee an opportunity to review this
8 material, get it and review it and see how that would
9 affect any defenses that he has or any method of attacking
10 the state's case in the course of their putting up their
11 case. I'm going to find that there's manifest necessity
12 to grant a mistrial because the discovery has not been
13 completely provided and done and all testing hasn't been
14 done. That it would be essential for Mr. Schnee in the
15 preparation of this case. We will grant your motion.
16 It's my understanding that the State wishes to call this
17 case again September 5th; is that correct?

18 MS. CAMPBELL: That's when we anticipate, yes,
19 sir. I just need to check with the victim to make sure
20 that date works for her. It does. In addition to that,
21 Your Honor, we would request that Mr. Schnee has any
22 additional testing other than or even what's been
23 discussed that he submit that to you us in some type of
24 written ---

25 THE COURT: I'm going to direct that Mr. Schnee

1 in writing advise Ms. Campbell of any and everything that
2 you believe that you need or you're entitled to pursuant
3 to Rule 5 and Brady. And do that in writing and how long
4 will it take you to do that?

5 MR. SCHNEE: I can have that to her probably by
6 lunchtime, Judge.

7 THE COURT: I don't know that you need to have
8 it that fast, but if you can have it by noon on Friday.

9 MR. SCHNEE: Absolutely, sir.

10 THE COURT: And I'm going, Deputy, ask that you
11 make sure that everything in your file has been give to
12 Ms. Campbell so she can go through and see what she needs
13 to have out of that in order to comply with her discovery
14 requirements or respond to whether State meets defendant
15 discovery requirements.

16 POLICE OFFICER: It's already done.

17 THE COURT: I'm available the week of
18 September 5th. So if y'all want to file the case in front
19 of me, I'm happy do it. I also will be happy to retain
20 jurisdiction for purposes of any motions that need to be
21 made or any discovery problems that need to be handled
22 between now and the time this case comes up for trial
23 subject to our chief administrator judge deciding
24 something to the contrary, but I don't think that's going
25 to be a problem if I try the case.

1 MS. CAMPBELL: Judge, one other housekeeping
2 matter is the swabs that need to be tested they're still
3 sealed, but they were put into evidence and held in the
4 evidence room. We would just need to order from you
5 releasing those back to the county just the swabs in
6 question in order to for the mini file to move. I think
7 it's swabs number 2.2 through 2.7 and maybe 2.8. We just
8 need an order from you. I'm also preparing a written
9 order waiving releasing back to us.

10 MR. SCHNEE: I'll take a look to make sure to
11 exactly which swabs. I don't have a problem with that.

12 THE COURT: You have no objection to making that
13 stuff available to go back for retest?

14 MR. SCHNEE: Absolutely no problem, Your Honor.

15 THE COURT: If you will prepare me an order on
16 that and then I'll sign both the orders and getting the
17 evidence from the evidence custodian last Friday that I
18 orally directed that he provide you and Mr. Schnee.
19 Anything else?

20 MS. CAMPBELL: No, sir, I'm not aware of
21 anything. If anything comes up, of course, we'll of
22 course come to the Court.

23 THE COURT: Mr. Schnee, anything further?

24 MR. SCHNEE: No, Your Honor. Thank you.

25 THE COURT: Do y'all want to be here when I

1 bring the jury in?

2 MR. SCHNEE: Yes, sir.

3 THE COURT: Bring the jury in.

4 (WHEREUPON, the jury came into open court.)

5 THE COURT: Good morning, ladies and gentlemen,
6 nice to see you this morning. As you know when we
7 selected you yesterday before we actually got started in
8 the trial turned it over to the attorneys, I had to start
9 taking up some matters of law. And all those situations
10 we're dealing with what we call discovery and discovery is
11 a method that we have in our rules that provide for the
12 exchange of information between the State and the
13 defendant such as police reports or DNA or fingerprints or
14 testing that's done on all that stuff. And some
15 information became available that affected both the State
16 and the defendant late. And we were trying to work
17 through how we were going to make all that information
18 available to the parties that were entitled to receive
19 that.

20 We ultimately determined this morning after the
21 Solicitor and Mr. Schnee worked through the issues some
22 late yesterday afternoon last night that we're not going
23 to be able to provide that information on a quick basis.
24 So the defendant has moved for a mistrial in order to
25 allow the -- this information to be provided. My option

1 was to go forward with the trial without seeing the
2 defendant had it. And the State had the information that
3 they needed and that just wasn't practical. So I granted
4 the mistrial, which means this case is now ended. It will
5 be tried again at some point in time in the future, but
6 obviously that want affect you with your jury duty.

7 Now, the good thing about this, ladies and
8 gentlemen, is not only am I going to be able to excuse you
9 from service on this jury. I'm going to be able to excuse
10 you for the rest of the week because we had another trial
11 that was scheduled for -- to go forward, but the defendant
12 ended up deciding that he wanted to plead in that case.
13 And so both of those cases would have taken a better part
14 of the week if either one had gone to trial. But because
15 of that, we've got enough jurors to handle the civil side
16 of our workload this week. And we have two terms -- two
17 courts going on general sessions criminal. One's a plea
18 court, that's where Judge Benjamin's handling pleas. And
19 I was going to do the trials. So I thank you for your
20 service. I'm sorry you didn't get an opportunity to
21 experience what you do on a jury and find out how
22 important you are to the whole process. You're the
23 linchpin that allows us to operate our judicial system
24 both on the civil and criminal side. We're going to turn
25 you loose. You will -- if you need an excuse for work,

1 Becky can meet you back in the jury room and give you an
2 excuse. You will be getting a large check in the not to
3 distant future. Maybe, it will cover the gas you had to
4 spend coming down here maybe not. Again, I thank you. I
5 know the State thanks you. Mr. Schnee thanks you for
6 making yourself available. Hopefully, you can get an
7 opportunity again in the future. You will readily make
8 yourselves available. But y'all have a nice week, a nice
9 Fourth of July and thank you again.

10 (WHEREUPON, the jury is dismissed.)

11 THE COURT: One other thing I want to add Mr.
12 Schnee submitted all these motions, ten motions yesterday.
13 I have ruled on them. So we don't need to go through them
14 again when we come up in September. Y'all remember what
15 my rulings were and we'll go from there. If there's any
16 other motions that pop up, we'll deal with them, but these
17 are taken care of. All right. Anything further from the
18 State?

19 MS. CAMPBELL: No, sir.

20 THE COURT: Anything from defense?

21 MR. SCHNEE: No, Your Honor.

22 THE COURT: Y'all have nice day.

23 END OF REQUESTED TRANSCRIPT

24

25

CERTIFICATE OF REPORTER

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3 STATE OF SOUTH CAROLINA)

4 COUNTY OF FLORENCE)

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I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 92, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Richland County, South Carolina, on the 27th and 28th day of June, 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 23rd day of March 2015.

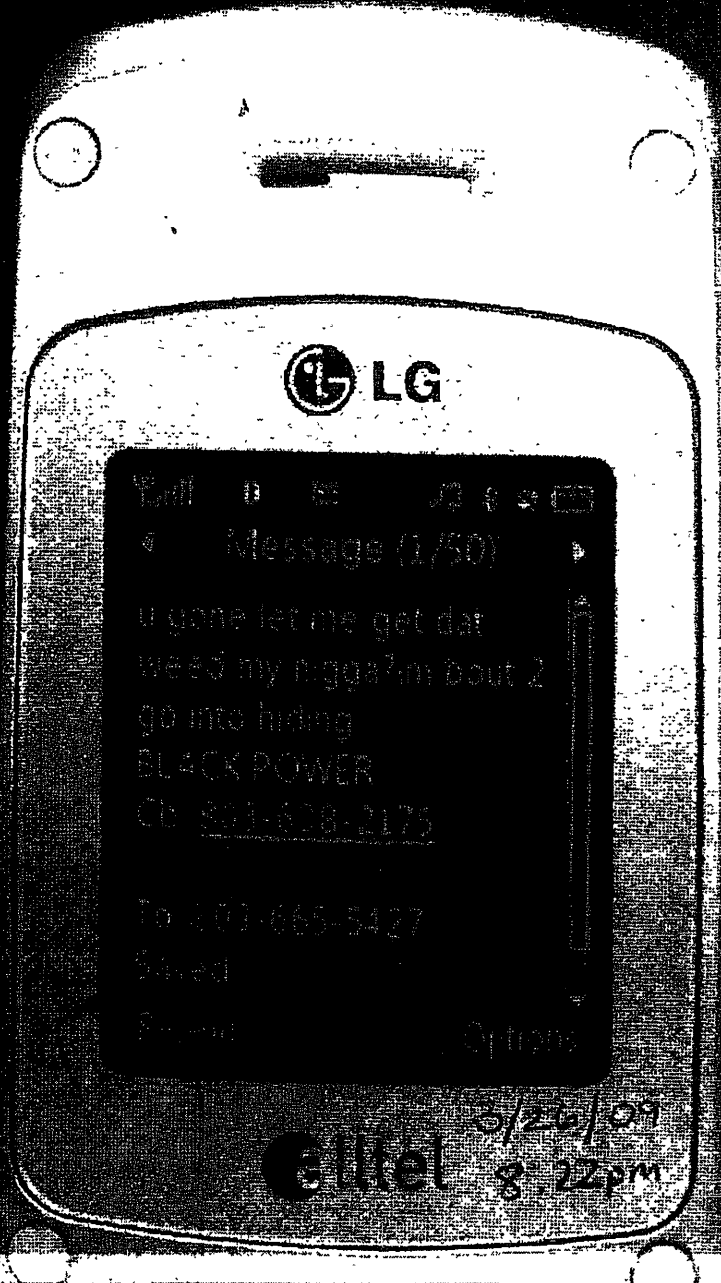
Keshia Reed, Court Reporter

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Call ID BE 2:42 PM

Message (1/30)

u gone let me get dat
 weed my niggas in bout 2
 go into hiding
 BLACK POWER
 CB 831-638-2175

To: 203-665-5427

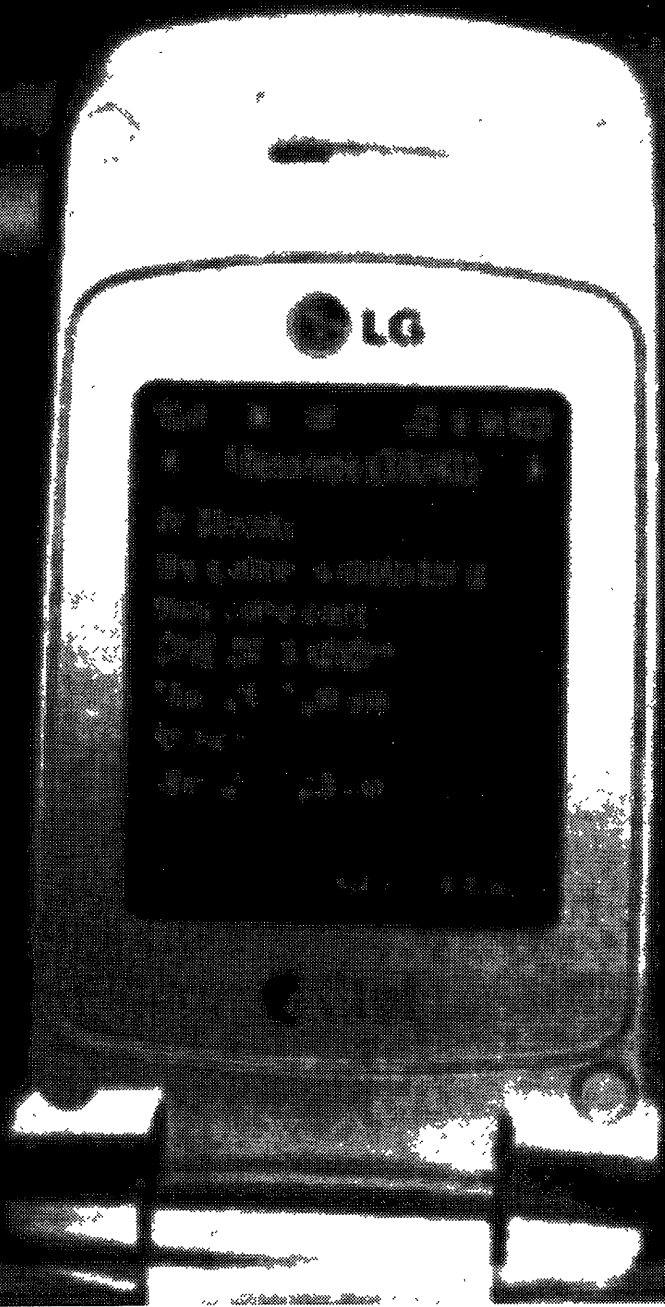
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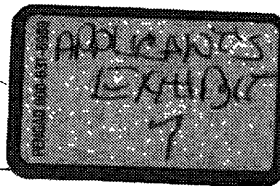
Reply Options



5/26/09

8:22pm





1 Adonis Williams did not do those things to
2 Ms. Wofford that the State is claiming that he did.

3 Thank you.

4 THE COURT: Let's stand just a moment, if you
5 would, before receiving the first witness.

6 (Complies.)

7 THE COURT: Okay.

8 MS. CAMPBELL: May it please the Court?

9 THE COURT: Yes.

10 MS. CAMPBELL: The State calls Carol Wofford.

11 (Witness approaches.)

12 THE BAILIFF: Place your left hand on the
13 Bible, raise your right hand, and face the clerk,
14 please.

15 (Witness complies.)

16 THE CLERK: Do you swear or affirm the
17 testimony you are about to give in this case will
18 be the truth, the whole truth, and nothing but the
19 truth, so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Have a seat in the witness box,
22 and state your full name for the record, please.

23 THE WITNESS: I'm Linda Carol Wofford.

24 LINDA CAROL WOFFORD,
25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MS. CAMPBELL:

Q And Ms. Wofford, do you live here in Richland County?

A Yes, ma'am.

Q And how long have you been living in the Columbia area?

A Since I was born.

Q And where do you live here in Richland County?

A I live on the East Columbia side of town near the VA Hospital.

Q And some of the roads that are near your house -- are you familiar with Leesburg Road?

A Yes, ma'am.

Q And is that close to where you live?

A Yes.

Q And you mentioned you live on Tama Drive. How long have you been living in that house, ma'am?

A Since 1988.

Q Who do you live there with?

A No one.

Q Are you employed?

A Yes, ma'am.

Q And what do you do for a living?

A I'm Director of Medical Staff Affairs at the

1 Palmetto Health Baptist Campus, First Palmetto
2 Health.

3 Q And how long have you been employed there, ma'am?

4 A Thirty years.

5 Q I want to turn your attention back to March of last
6 year, March the 22nd, the evening of March the
7 21st, morning of the 22nd. Were you home alone
8 that night?

9 A Yes, ma'am.

10 Q And can you tell the jury, coming up -- it was
11 still dark, but coming up on the early morning
12 hours about 6:00 a.m., what did you initially hear
13 that caught your attention?

14 A At 6:00 I didn't hear anything. I had gone to the
15 ladies' room. And I came back. And it was a
16 Sunday morning right before the sun was coming up,
17 so I decided I would lay down for a little slumber.

18 Q Okay. And once you had gotten back in bed, did you
19 hear something?

20 A It must have been about an hour later, I heard
21 something, and I was asleep, but I woke up and it
22 was like, did I really hear that or was I dreaming?

23 Then I heard another noise that was even more
24 where it shook my home. And the next thing I know
25 is I'm getting up to check it, because I knew -- I

1 have two cats, and I knew the cats couldn't make
2 the whole house move.

3 I started to get up out of my bed. And
4 Mr. Williams had opened my door and -- well, I
5 guess I should say a masked gunman opened my door,
6 with a revolver, a hat on, fully clothed, but did
7 not have gloves on.

8 Q Let me back up again. You were still in your
9 bedroom at this point?

10 A Yes.

11 Q And when you heard the second noise, the one that
12 actually shook your house, at that point you were
13 attempting to get out of bed to go see what was
14 happening?

15 A Yes, ma'am.

16 Q And before you could even exit your bedroom, you
17 mentioned someone came to the door?

18 A The bedroom door.

19 Q The bedroom door. I just wanted to clarify that.
20 And did he actually enter your bedroom?

21 A He stood outside and continued to watch the outside
22 door he had broken into and watched me at the same
23 time.

24 Q Okay. And let me get to that a little bit later.
25 When he first entered your bedroom, did he actually

1 walk into the bedroom or was he in the doorway?

2 A He was in the doorway.

3 Q And what did you notice -- what, if anything, did
4 you notice he had in his hand?

5 A The first thing was a gun.

6 Q And could you tell what kind of gun it was?

7 A I'm familiar enough with guns to know it was a
8 revolver.

9 Q And when he had the gun in his hand as he entered
10 the door, what, if anything, did he say to you?

11 A He said, I need somebody to take me to a teller
12 machine. I'm coming down. I'm coming down bad.

13 Q And at that point where was the gun pointed?

14 A He still had it in his hand.

15 Q What was going through your mind?

16 A That that -- that this is the way it is, this is
17 how you are going to die today.

18 Q The first thing he demanded from you is he needed
19 someone to take him to a teller machine?

20 A Yes, ma'am.

21 Q He needed money?

22 A Yes, ma'am.

23 Q And he was coming down?

24 A He -- yes, he -- yes.

25 Q And at that point did he instruct you to do

1 anything?

2 A I got up and I asked him, may I get dressed,
3 because I was not presentable. And he allowed me
4 to, but he --

5 Q Okay. Where was he at this point while you were
6 getting dressed, in your bedroom?

7 A He was still walking around looking where he could
8 see both doorways, my room and the outside door he
9 had broken into.

10 Q And then what happened?

11 A I got dressed and I went over to where my purse was
12 around my desk in the middle room where he had been
13 standing. And he watched me go through and get my
14 billfold.

15 Q Okay. And at this point -- this is a stupid
16 question -- did you feel like you were free to
17 leave?

18 A Not with a gun in the hand -- in someone's hand.

19 Q And he was basically directing you in what you were
20 to do?

21 A Yes.

22 Q What happened next?

23 A I had a shawl similar to this that I -- it was
24 cool. He allowed me to get something to keep warm.
25 And then he would walk on towards the door he had

1 broken into telling me to come that way, and, if
2 you do what I tell you to, I won't hurt you.

3 So I went over to the front door, because I
4 have a fireplace and I have hooks hanging from it
5 and I hang my keys there.

6 When I proceeded to go to the front door, he
7 appeared to get a little upset and said, no, no,
8 come this way.

9 So I went to go out the side door.

10 Q Were you able to get your keys?

11 A Yes.

12 Q Okay.

13 A I went out the side door. And the house next-door
14 was lost in a mortgage, and then there was my
15 house. And what he had done was go through the
16 side door carrying me between the two homes.

17 Q So the door -- the house next to you, that would be
18 next to the side door, that was an empty house?

19 A Yes, ma'am.

20 Q So when you were exiting your home through the door
21 he instructed you to go through, the house
22 next-door was empty?

23 A Uh-huh.

24 Q And is that the door you usually used?

25 A That -- that room has a lot of windows and arches

1 and transoms, and that type of thing. It is an
2 older home. And the only way that I can get
3 furniture located that looks sensibly with that
4 many openings in it, I have a large leather sofa
5 that was pushed up against that door and a large
6 recliner. For him to push that, he is also pushing
7 a coffee table. So I had to go out that way and
8 saw that my furniture was everywhere.

9 Q Okay. So prior to him entering your home that
10 morning, the couch had been up against the door?

11 A Yes.

12 Q And the recliner had been right next to it?

13 A Yes.

14 Q Once you exited your bedroom and went into the
15 living room area, you noticed the couch was
16 displaced?

17 A The couch was displaced and the recliner looked
18 like it had been thrown across the room because it
19 was upside down.

20 Q Okay. And when you went towards the front door,
21 that is when he became agitated and instructed you
22 to go out the side door?

23 A Yes, ma'am.

24 Q And the front door would be the door towards the
25 street?

1 A Yes.

2 Q Where there would be other people possibly out
3 there?

4 A Yes.

5 MR. GIPSON: Object to the leading, Your
6 Honor.

7 THE COURT: Don't lead the witness.

8 MS. CAMPBELL: Yes, sir.

9 Q Did you actually -- were you able to exit through
10 the side door as he instructed you?

11 A I did go through the side door, yes.

12 Q And at this point did he still have the gun?

13 A Yes.

14 Q And where was it pointed?

15 A I really wasn't concentrating on the gun that much.
16 At that point I knew what I had to do was to do
17 what he told me to. I was at his mercy.

18 Q Once you exited out the side door, where did you
19 proceed?

20 A We proceeded to my car.

21 Q And at that point did you have your keys with you?

22 A I had my keys with a remote and I mashed the remote
23 and he got very excited, what are you doing, what
24 are you doing?

25 And I said, I'm unlocking the door. But I

1 didn't realize he was thinking of cars that had
2 more than just an electrical system.

3 MR. GIPSON: Object to what he is thinking,
4 Your Honor.

5 THE COURT: Objection is overruled.

6 MS. CAMPBELL: Thank you.

7 Q You can go ahead. You can finish.

8 A Okay. I forgot where I was.

9 Q Are you a little bit nervous here today?

10 A Yes.

11 Q And once you exited you mentioned that you hit your
12 remote?

13 A Yes. I mashed the remote. He was upset and asked
14 me, what are you doing?

15 And I told him I was unlocking the car.

16 And we got in and I closed the door, and he
17 told me, don't you be pulling anything. As long as
18 you do what I tell you I won't hurt you.

19 So I buckled up and everything, and I
20 proceeded to pull out and go out the way where
21 Caroline Street is, which runs to the side of the
22 house next-door.

23 Q So at this point you were getting into your car?

24 A We got into my car.

25 Q And what kind of car was that?

- 1 A A Toyota truck.
- 2 Q A pick-up truck?
- 3 A Yes, ma'am.
- 4 Q And where were you sitting?
- 5 A On the driver's seat.
- 6 Q And where was he sitting?
- 7 A Passenger's seat.
- 8 Q And did he still have a gun?
- 9 A Yes, ma'am. It was laying in his lap a little bit
10 out from under the coat he had where I could still
11 see it. It was visible.
- 12 Q You said you were seated towards I believe Caroline
13 Street?
- 14 A Yes, ma'am.
- 15 Q And did you understand where you were going at that
16 point?
- 17 A To the teller because he had made it understood
18 that he needed to go to the teller.
- 19 Q And that would be to a teller machine where you
20 could withdraw money?
- 21 A Yes, ma'am.
- 22 Q Did he give you any instructions as y'all exited
23 your driveway and proceeded out?
- 24 A He told me which direction to go.
- 25 Q And did you follow those instructions?

- 1 A Yes, ma'am.
- 2 Q And what road did y'all end up going down to
3 proceed to the teller?
- 4 A We went to Caroline and we turned on Patricia, hit
5 the Leesburg Road, and went from there to the
6 teller machine.
- 7 Q And during the time period when y'all are in the
8 truck, were you able to get a good look at his
9 face?
- 10 A Yes.
- 11 Q And did he have part of his face covered?
- 12 A He -- he had it right like this.
- 13 Q It was a bandana?
- 14 A And a stocking cap.
- 15 Q And stocking cap?
- 16 A (Nods affirmatively.)
- 17 Q And did he keep those items on the entire time he
18 was in your presence?
- 19 A Yes, ma'am.
- 20 Q Were you able to get a look at his eyes?
- 21 A Yes, ma'am.
- 22 Q And specifically as you drove down the street in
23 the car, was it light at this point?
- 24 A Yes.
- 25 Q So were you able to get a good look at this side of

1 his face?

2 A I did.

3 Q Because you would have been the driver and he would
4 have been in the passenger's seat?

5 MR. GIPSON: Objection.

6 THE COURT: All right.

7 Q Did you notice anything about his eyes?

8 A When he would turn his eyes to the left to me, the
9 inside of his eyes were exposed. And it wasn't
10 like fresh red blood veins would look, but the
11 veins were dark in color, and he had a chicken pox
12 scar on his face.

13 Q And what part of his face did you notice the
14 chicken pox scar?

15 A It was on the left because he had to turn to look
16 at me. I was the driver.

17 Q On his left?

18 A Uh-huh. Right there.

19 Q So it would be right where I have got my hand?

20 A Uh-huh.

21 Q So that is where you noticed the chicken pox mark?

22 A Yes, ma'am.

23 Q And other than his eyes and that area above the
24 bandana and below the stocking cap, that was all
25 you could see?

- 1 A Yes, ma'am.
- 2 Q And how far was the stocking cap pulled down, do
3 you remember?
- 4 A It was probably just covering his hair because I
5 could see some of his hair, but I didn't know
6 how -- what the length or style was.
- 7 Q Did you proceed to an ATM?
- 8 A I did.
- 9 Q And what ATM did you drive to that morning?
- 10 A I went to the one that I always go to ever since I
11 was a child, which was across the street from the
12 VA Hospital.
- 13 Q And what road is that on?
- 14 A Garners Ferry.
- 15 Q Right down on Garners Ferry?
- 16 A Yes, ma'am.
- 17 Q Is that near the Big Lots on Garners Ferry?
- 18 A Yes, ma'am.
- 19 Q When you got there -- and what was the traffic like
20 that morning when you were going to the ATM?
- 21 A It was kind of dead outside. It was 7:00 in the
22 morning.
- 23 Q On a Sunday morning?
- 24 A (No response.)
- 25 Q When you got to the ATM, what happened?

- 1 A He became very agitated because I pulled in where I
2 did.
- 3 Q Where did you pull in?
- 4 A Well, first I did pull into a handicapped parking
5 place praying some authority would come by and
6 arrest us. But -- and thinking there was a camera
7 there. And he told me -- he wanted to know how
8 much money I had.
- 9 Q And did you tell him?
- 10 A I told him an approximate figure.
- 11 Q And what was that figure?
- 12 A Five hundred.
- 13 Q Did he ask anything else about your money?
- 14 A Not my money, no.
- 15 Q Did he instruct you to do anything about getting
16 him some money?
- 17 A Yes, he did.
- 18 Q And you said you first pulled in the handicapped
19 space?
- 20 A (Nods affirmatively.)
- 21 Q Did you -- you said you thought somebody might come
22 along and help you, or what did you say, a camera
23 might be there?
- 24 A The handicapped people, I just assume with
25 technology the way it is, they may have a camera in

1 case the -- someone like that is handicapped might
2 have gotten hurt or something. And it was right at
3 that space.

4 Q Were you able to stay in the handicapped space?

5 A Yes, ma'am.

6 Q And did you actually exit the vehicle?

7 A Yes.

8 Q Did you get out?

9 A Yes.

10 Q And did he stay in?

11 A Yes. But he opened the door.

12 Q He opened his door?

13 A Uh-huh.

14 Q And that would be the passenger side?

15 A Yes.

16 Q And what did he tell you to do?

17 A Well, he told me to go get the money and that he
18 would be watching me. But he seemed real irritated
19 that I had come to that particular bank.

20 Q Did you explain to him why you had gone to that
21 bank?

22 A That it was -- I didn't know what other bank to go
23 to. That is the only one I ever banked, really.

24 Q And that bank, can you do what is called a
25 drive-through ATM or do you have to get out?

1 A No, ma'am, you get out and it is a glass booth.

2 Q And where was your truck parked in relation to
3 where the glass booth you had to go in to get to
4 the ATM, was it close --

5 A It was right there and I could see, for example, in
6 this direction while I was putting my card in. It
7 would be more of the passenger's side of the car.
8 And he would keep watching around and watching me.
9 And he would -- he kept -- constantly did that the
10 whole time I was in there.

11 Q So he kept an eye on you?

12 A (Nods affirmatively.)

13 Q And did you go in and get the money?

14 A I went -- and the first time I put my card in I
15 couldn't remember the number.

16 At this table my body had taken on a shaking
17 and I couldn't remember, so I had to try to regain
18 my composure.

19 And then I remembered my number, and I got, I
20 want to say, I think it was about \$300 out, no \$200
21 out.

22 And he said, no, you go back. You know, that
23 is not what you said.

24 And I said, well, I don't know if it will give
25 me any more, because I know that banks limit how

1 much you can get.

2 So I went back. I told him I would try again
3 and I went back. And it was the last time the
4 machine would let me have any money at all. And it
5 was a \$100 withdrawal.

6 Q So the first time you got the \$200 out?

7 A (Nods affirmatively.)

8 Q You took it to him and he said, that is not enough?

9 A Yes.

10 Q And then you went back?

11 A Yes, ma'am.

12 Q And during this entire time that you are
13 withdrawing the money, is he able to see you?

14 A Oh, yes, ma'am.

15 Q And are you able to see him?

16 A Yes, ma'am.

17 Q Did you give him the additional \$100 out of the
18 initial \$200?

19 A I came out to the car and I gave it to him. And he
20 still acted a little agitated that he didn't get
21 the \$500. So I just opened my wallet and just
22 started throwing money at him.

23 Q Okay. And where were you at this point?

24 A I was standing outside the car to get in.

25 Q On the driver's side?

1 A Uh-huh. After I had already handed him the money
2 and he acted that way, I took my billfold and I
3 just started throwing money in the car, and he took
4 it.

5 Q And do you know how much money that was?

6 A No, I really don't.

7 Q At that point did he instruct you to do anything
8 else?

9 A I got in the car. And then he told me to go past
10 the Greenlawn Church, Baptist Church, and make a
11 right, which is True Street.

12 Q So at this point you are back in the car driving
13 again?

14 A Yes, ma'am.

15 Q And are you all having a conversation? Are you
16 trying to -- tell me what is going on.

17 A I was worried because he had taken me to a road
18 that is going to lead through some tunnels and --
19 under the street of 77, Highway 77 --
20 Interstate 77. And I was real worried about those
21 tunnels because I know another lady that has had
22 trouble trying to get through those tunnels before,
23 so I was really afraid to go that route, but I did.

24 And we came out at the corner of -- it is
25 right there at the Greenlawn Funeral home. And I

1 told him, I said, you see, there is no one out, you
2 know, because he had already said, if you do
3 anything, you know, don't attract attention to
4 anybody or anything, but there was really no one
5 out because it was so early.

6 Q So why did you tell him that there was no one out?

7 A I made it a point to let him know that I feel like
8 he had premeditated this. That was my feeling
9 because it just seemed really, really planned on
10 his part.

11 Q And were you trying to keep him calm?

12 A As much as I could.

13 Q During that ride, did he give you any information
14 about himself?

15 A He was upset because he couldn't get a job. He
16 said, I can't even get a job at McDonald's. I'm
17 having to feed the chickens and pigs and this. I
18 have a little girl. I need to have alimony, I
19 think it was, or child support.

20 Then he said, everything in this world is bad.
21 The whole world is bad. Maybe I should kill
22 everybody off and just be the general from then on.

23 Then he made some other remarks. And during
24 this whole time, I have to say, he was talking very
25 fast. And he has a bit of a dialect that was hard

1 for me to understand. And I would during the
2 course of the whole event ask him questions several
3 times. And I was afraid that I was going to upset
4 him from saying, excuse me, I didn't understand
5 you.

6 Q Okay. And did he ever tell you anything about the
7 reason why he couldn't get a job?

8 A He told me he had been in prison -- just got out of
9 prison about ten months past. And he -- I think
10 that was --

11 MR. GIPSON: Objection, Your Honor. Previous
12 objection.

13 THE COURT: Overruled.

14 MS. CAMPBELL: I'll stop at that point.

15 Q Once you had gotten -- I believe you mentioned that
16 you had driven through the tunnels and then over to
17 where Greenlawn Cemetery is?

18 A Uh-huh.

19 Q Did he instruct you to go anywhere else?

20 A We went back and he made -- he went past -- he had
21 me put him out at a certain place, but when we were
22 riding we went a couple of blocks past. And he
23 went sort of the back way.

24 He had me pull in -- and it is Patricia Drive.
25 There is some attorney offices there, but there is

a house right behind there. And he had me park in the driveway there. And he had a key in his hand.

And so -- he said he had a car parked, and he said for me to sit there in the car until he was gone.

Q During the course of driving around that morning -- and this is the first question -- do you smoke cigarettes?

A Now and again.

Q And that morning were you nervous?

A Yes. And I got a pack of cigarettes that happened to be in my home. And I knew I was going to be nervous, and so I smoked one on the way. And he asked me if he could have one. And I said yes. Because I was real nervous and I was shaking so, I had the car lighter, and he took my hand and lit his cigarette, he just sort of pulled it to light his cigarette.

Q He actually took the cigarette from you?

A Yes, ma'am.

Q Before you lit it?

A Uh-huh.

Q Had you already put that in your mouth?

A No, I had my own.

Q But you touched the cigarette?

1 A I touched -- probably to pull it out for him.

2 Q So you would have touched the filter part?

3 MR. GIPSON: Object to the leading, Your
4 Honor.

5 THE COURT: Objection sustained.

6 Q What part -- you would have pulled it out of the
7 pack?

8 A Uh-huh.

9 Q And what part would you pull out?

10 A All you have to do is shake them. It could have
11 been the filter or it could have been the actual
12 cigarette part.

13 Q And at that point you handed him the cigarette?

14 A Yes, ma'am.

15 Q And once he got the cigarette from you, what did he
16 do with it?

17 A Well, he wanted -- he said, let me have a light,
18 because I was lighting mine. And so I tried to do
19 it, but I was trying to drive at the same time.
20 Excuse me. And him light the cigarette. So since
21 I had the lighter, he just sort of pulled my hand
22 to where he could have the cigarette lit.

23 Q And did he actually smoke the cigarette?

24 A Well, he complained about it. It didn't taste
25 right; what kind of cigarette is this.

1 And I just looked at him and I said, it is a
2 cigarette a girl would smoke.

3 Q And did he smoke the entire cigarette, or what did
4 he do with it?

5 A When I came back and we were riding back by, I
6 noticed he did have the cigarette in his hand. It
7 wasn't smoked. I don't know if he put the fire out
8 on the pavement when we were at the bank. I don't
9 know how he put it out, but it was out and he had
10 the remainder of the cigarette. I don't think he
11 cared for it, so there was probably a good bit left
12 on it.

13 Q Okay. But he had actually taken a couple of puffs
14 in your presence?

15 A Yes, ma'am.

16 Q And then at some point he got the cigarette out and
17 still had it with him?

18 A I assume he had taken it with him because it was
19 not in my car.

20 Q And what brand of cigarette was that that morning?

21 A A Virginia Slim menthol.

22 Q What happened to the cigarette you were smoking, do
23 you know?

24 A It was in my ashtray. I don't smoke in my car.
25 And if I smoked I smoke outside. So there was

- 1 nothing but the one that I had that day.
- 2 Q Once you let him out, you mentioned that you
- 3 stopped at an address on Patricia Drive?
- 4 A Uh-huh.
- 5 Q Did he get out of the car?
- 6 A He did.
- 7 Q And he instructed you where to let him out, right?
- 8 A Yes, ma'am.
- 9 Q Did you see what he had in his hand at that point
- 10 when he exited the car?
- 11 A Not really.
- 12 Q Did he still have the gun?
- 13 A He had the gun when he got out of the car, yes.
- 14 Q And do you know what happened to the money?
- 15 A The money?
- 16 Q The money you gave him?
- 17 A He had it. I don't know what he did with it.
- 18 Q Did he give you any further instructions as he was
- 19 getting out of the car?
- 20 A Yes. He told me to stay there and let him go to
- 21 his car and go on.
- 22 Q What did you do once he got out of the car?
- 23 A Once he got around the building, I cranked the car
- 24 up and I took off.
- 25 Q And where did you go?

- 1 A I went two blocks up to where there is a station
2 that I buy gas at all the time and asked the lady
3 there could I please call the police from her phone
4 because I had only gotten my billfold when we left.
5 I didn't have a cell phone. I couldn't call
6 anybody right away, so that is where I went. And
7 they helped me.
- 8 Q And did you actually get to call the police at that
9 point?
- 10 A Yes.
- 11 Q And did you stay there or did you go anywhere else?
- 12 A I stayed there. I wanted -- I was worried about my
13 home because it was unlocked, but the lady there
14 would not let me go, and she kept me there till the
15 police arrived.
- 16 Q Once the police arrived -- or did you actually get
17 on the phone with 9-1-1?
- 18 A I called 9-1-1 my first call.
- 19 Q And then did they dispatch someone to --
- 20 A Yes. They were very quick.
- 21 Q And that was at the Citgo?
- 22 A Yes, ma'am.
- 23 Q And did you talk to officers there?
- 24 A Yes, ma'am.
- 25 Q And when you talked to the officers there, did you

- 1 tell them what had happened to you?
- 2 A Yes, ma'am.
- 3 Q And did they ask you for a description of the man
4 who had robbed you?
- 5 A Yes, ma'am.
- 6 Q And were you able to give them a description?
- 7 A Yes, ma'am.
- 8 Q I will show you this questionnaire and just ask, do
9 you recognize this?
- 10 A It looks like part of the paperwork when they
11 questioned me, because they had questioned me and
12 we did a ride-around.
- 13 Q Okay. And when you described the person that had
14 robbed you -- let me -- during the time you were
15 with him -- do you know how long you were actually
16 with him?
- 17 A Not really, because some point along the line, it
18 seemed like 8:00 o'clock was documented, but it
19 really didn't take that long for us to go from my
20 house to there. And I remember walking out, and it
21 was light. *look outside I see whether it's light or not*
... I know ...
- 22 Q At any point did you recognize the person behind
23 the bandana?
- 24 A Never.
- 25 Q Had you ever seen him before as far as you know?

- 1 A No.
- 2 Q Ever recognize that voice?
- 3 A No, ma'am.
- 4 Q What description -- or what was the description of
5 the man that robbed you that morning, that broke in
6 your home?
- 7 A Description?
- 8 Q Uh-huh?
- 9 A He had a cap on, a cap that had a little bit left
10 to it after you put it on. It was black. He had a
11 blue bandana with white on it. The design was
12 white. He had on a beige coat with green lining.
13 On the back it had sort of a diamond symbol. I
14 assumed it was either some designer coat or some
15 company coat or something like that. And dark
16 pants.
- 17 Q Was that the information -- what about physically,
18 the build? Did you give the police basically
19 physical, what he looked like?
- 20 A What he looked like.
- 21 Q And what was that?
- 22 A Well, I observed his eyes, and I observed a chicken
23 pox mark.
- 24 Q You told the police about that?
- 25 A Yes, ma'am.

- 1 Q Okay. And you noticed what else about him? Was he
2 big, small, tall, short?
- 3 A He was taller than I was. I didn't think he was --
4 I thought he was about medium.
- 5 Q Medium? And did you give all that information to
6 the police?
- 7 A I did.
- 8 Q And you mentioned also once the police got there
9 that you actually rode around?
- 10 A Yes.
- 11 Q Did you also -- before I miss something -- did you
12 also describe the gun?
- 13 A Yes.
- 14 Q And what information did you give them about the
15 gun?
- 16 A It was a revolver. I could tell it is not a
17 collectable gun because it looked like it had
18 several scars on it over time. It had a black
19 embossed type handle with -- you could still see
20 the metal, but they had the handle embossed with
21 some sort of black material.
- 22 Q And do you recall whether or not as far as
23 describing the person that you gave an approximate
24 build and weight? Did you give them an approximate
25 build or height?

1 A Yes, as good as I could. I'm not good at that sort
2 of thing. But I gave what I thought might be
3 right.

4 Q And age that you approximated?

5 A Twenty-five or so.

6 Q Okay. Once you were able to give them the
7 information, the physical characteristics of the
8 person as far as what you were able to see, did you
9 also -- you mentioned that you rode around with
10 them?

11 A With the police officers?

12 Q (Nods affirmatively.)

13 A Yes, ma'am.

14 Q And where all did y'all ride around that morning?
15 What areas were you showing them?

16 A Where -- what roads that we went down?

17 Q Uh-huh.

18 A From my house where we came out to go to the bank
19 and where we were -- I parked when he got out.

20 Q Did you also show them where you actually dropped
21 him off?

22 A Yes.

23 Q And you actually rode around with them. You had
24 returned to your house by this time?

25 A No, ma'am, he took me back to the station where my

1 car was parked.

2 Q Uh-huh. And during the course of while your car
3 was out in the parking lot that morning, after you
4 went inside the Citgo and made your 9-1-1 call, was
5 your car actually vandalized that morning too?

6 A When the policeman and I came back from the drive,
7 both front windows were out of my truck.

8 Q Had been broken out?

9 A Uh-huh.

10 Q And that hadn't been like that. And you aren't
11 alleging the person that robbed you did any of
12 that?

13 A I -- I don't know.

14 Q And you didn't witness what happened to your truck?

15 A No, ma'am.

16 Q Once you came back to the Citgo and your truck
17 windows had been broken out, what happened next?

18 A Well, the young lady that was doing the
19 fingerprinting had some special paper that she put
20 in the seat where I could drive the car to my home
21 and then have my insurance company come out and
22 assess damage.

23 Q Okay. And when you returned home, did the police
24 actually meet you at your house as well?

25 A They were already there.

- 1 Q They were already there?
- 2 A (Nods affirmatively.)
- 3 Q And when you got there, once you went inside, did
4 you attempt to make any phone calls?
- 5 A The first call I needed to make was to my mother,
6 and the phone was not working.
- 7 Q And did your mother -- she didn't live with you?
- 8 A No.
- 9 Q And why did you want to call your mother that
10 morning?
- 11 A My mother needed to know it in case it got on the
12 news or something. I would not want her to not
13 hear it straight from me.
- 14 Q You needed to let her know you were okay?
- 15 A Yes. Yes.
- 16 Q And when you went inside the house, did you
17 actually use your house phone?
- 18 A When I went inside, yes, and it wouldn't work when
19 I told you, like that phone call we just made, it
20 didn't work. So I got a gut feeling, and I said,
21 this phone better go through because if not I know
22 what is happening. Sure enough it didn't go
23 through. So I went outside and went around the
24 back.
- 25 Q Were the police with you at this point?

1 A I went around there by myself.

2 Q Okay. Were the police still there on the --

3 A They were on the premises. I had been working in a
4 flower bed the day before, and there is a little
5 phone box that was on the wall, and I had put the
6 spade up on the top of the phone box because I knew
7 I was going to go back out there and work some more
8 and I would know where it was. And that is when I
9 saw it was on the ground and that the box had been
10 pulled away and wires to my home were cut.

11 Q Once you observed that, what did you do?

12 A I ran around the front and told the officers. And
13 one of the officers fingerprinted that box and
14 asked could she take it with her.

15 And I said, you can.

16 Q And after you observed the wires being cut and the
17 box, you didn't touch it or anything like that?

18 A No, ma'am.

19 Q Another stupid question, but prior to that man
20 entering your house, had the phone been working
21 just fine and the wires had not been cut?

22 A Yes, ma'am.

23 Q I want to show you a series of photographs, State's
24 Exhibits Numbers 2 through 27 -- let me stand
25 corrected, 2 through 23 -- and just ask you to look

1 through those and then I'll ask you if you
2 recognize those.

3 (Pause.)

4 Q And these photographs I just showed you, 2 through
5 23, do those fairly and accurately depict your home
6 as it appeared that morning when you returned with
7 the police?

8 A Yes, ma'am.

9 MS. CAMPBELL: Your Honor, at this time we
10 offer them into evidence. And they have been
11 provided to Defense on a prior occasion.

12 MR. GIPSON: No objection.

13 THE COURT: Admitted without objection.

14 (WHEREUPON, State's Exhibit Nos. 2 - 23
15 were marked for identification and
16 received into evidence.)

17 Q State's Exhibit Number 3, does that show the front
18 of your house?

19 A The front of my house.

20 Q And when you mentioned before in your testimony
21 that the -- did this exhibit show the door you
22 usually use to enter and exit your house on a daily
23 basis?

24 A The front door, yes.

25 Q And is that right here under this arch?

- 1 A Yes, ma'am.
- 2 Q And is that the door, though, that y'all did not
3 use, is that correct?
- 4 A We didn't use that door.
- 5 Q And you mentioned also -- and I believe you can
6 actually see your truck. Is that where it was
7 parked that morning?
- 8 A Yes, ma'am.
- 9 Q And if I point right here, is that correct?
- 10 A Yes, ma'am.
- 11 Q And the house that was abandoned, is it shown in
12 this photograph at all?
- 13 A No, ma'am, but there is another picture that does
14 show some of it. It is through an inside shot you
15 had. When the door is open you can see out and see
16 the house.
- 17 Q Okay. And I'll show you State's Exhibits Number 4
18 and 5. Do those show the side?
- 19 A Yes.
- 20 Q And is that the side entrance that usually you had
21 locked and that he entered -- or that someone
22 entered that morning?
- 23 A That -- that has not been used probably since I
24 bought the house. It is not -- that room has got a
25 lot of windows and doors so it is hard to decorate,

1 so every -- the furniture, a huge leather sofa and
2 recliner were there in the way. And nobody usually
3 used that way because you couldn't get in.

4 Q And, in fact, prior to someone entering your
5 house -- I show you State's Exhibits 8 and 9. Does
6 that actually show the lock area?

7 A Yes. And it had an old deadbolt. It stays shut
8 all the time.

9 Q And prior to the man entering your house that
10 morning, had the deadbolt been working properly and
11 it wasn't splintered as shown in here?

12 A No. I had to throw wood back in the house to get
13 the house shut when we left.

14 Q State's Exhibit 11?

15 A Yes, ma'am, uh-huh.

16 Q And that actually shows where the door was damaged
17 with the entry?

18 A (No response.)

19 Q State's Exhibit Number 12 and 13 is a close-up of
20 the door when it is open. What area of your house
21 does State's Exhibit 12 show?

22 A That shows where all the furniture would have been
23 up against that door. It is not up against it. I
24 did turn the chair up, but I left that open because
25 fingerprints were being taken, but that is the

1 other house right there that was next-door that is
2 empty -- was empty at the time.

3 Q And State's Exhibit Number 12, that night when you
4 went to bed prior to being awakened with someone in
5 your bedroom, the couch would have been actually up
6 against that door?

7 A Yes, ma'am.

8 Q And you mentioned in this, the recliner is actually
9 upright. Who actually made the recliner upright?

10 A Me.

11 Q And it had been turned over when you first went in
12 that area?

13 A Uh-huh.

14 Q I show you State's Exhibit Number 14. Is that a
15 shot of the other side of that room?

16 A Yes, ma'am.

17 Q And where is your bedroom area in this?

18 A You could -- he probably came from the side door
19 here.

20 MR. GIPSON: Object to speculation, Your
21 Honor.

22 A He did come from the side door here, all right, and
23 went through -- and, see, that is another door in
24 that room, but my bedroom wall is on this back
25 side, so he was sort of standing in there where he

1 could rock back and look at my bedroom and out the
2 window.

3 Q Is that where you are talking about?

4 A Uh-huh.

5 Q He would have been standing in that area looking at
6 you both in the bedroom and the living area?

7 A (No response.)

8 Q And State's Exhibit Number 15, is that a close-up
9 of your -- the door to your room?

10 A Yes, that would lead into --

11 Q And a small hall?

12 A (No response.)

13 Q State's Exhibits Number 17 and 18, what do those
14 show?

15 A My bedroom.

16 Q And that actually shows us how it was when the
17 police got back there that morning?

18 A Yes.

19 Q And that is where you were sleeping that night?

20 A Yes.

21 Q State's Exhibits Number 21 and 23 -- you mentioned
22 that on the -- I believe you went around the back
23 of the house after you tried to make the phone
24 call?

25 A Yes, ma'am.

1 Q And I show you 21 and 23. And what does that show?

2 A That shows the box that I went around the house to
3 see what had happened because my phone wasn't
4 working.

5 Q And is that how it looked when you got out there
6 that morning?

7 A Yes, ma'am.

8 Q And specifically a close-up of it is State's
9 Exhibit Number 23, is that correct?

10 A I'm sorry?

11 Q Is that correct that that is a close-up in State's
12 Exhibit 23?

13 A Yes. . . Yes.

14 Q And the police actually collected that item and
15 took it into evidence, is that true?

16 A She asked me if she could have it, and I said yes.

17 Q I'm going to show you State's Exhibit Number 28
18 through 36, and just ask if you can recognize
19 those?

20 A That is where I parked on the back side of the
21 service station where no one would see my car or
22 know where I was because I was trying to call for
23 help.

24 Uh-huh. These are all the pictures that were
25 taken after -- uh-huh.

1 Q And do those fairly and accurately depict your car
2 after it had been vandalized, after you parked at
3 the Citgo?

4 A Uh-huh.

5 Q That was at -- at the Citgo?

6 A Uh-huh.

7 MS. CAMPBELL: Your Honor, at this time --

8 MR. GIPSON: No objection, Your Honor.

9 THE COURT: Entered without objection.

10 (WHEREUPON, State's Exhibit Nos. 28 - 36
11 were marked for identification and
12 received into evidence.)

13 Q State's Exhibit Number 28, it shows where your car
14 was actually parked you mentioned?

15 A Yes, ma'am.

16 Q And what part of the store was that in?

17 A In the back, or the side view as you're going
18 around the back.

19 Q And you parked there for what reason?

20 A Because I was afraid that he had the car and he
21 would see that I was calling for help and maybe do
22 something to me, so I tried to hide it.

23 Q And while you were gone, I believe, riding around
24 with the deputy, your car actually got vandalized
25 that morning?

- 1 A Yes, ma'am.
- 2 Q And I show you State's Exhibits Number 32 and 33.
- 3 Is that the damage that was done to your car while
- 4 y'all were out -- you were showing them where you
- 5 went?
- 6 A Uh-huh.
- 7 Q The person that you saw that morning, had you ever
- 8 seen him before?
- 9 A Never.
- 10 Q As far as his physical characteristics, physical
- 11 build, do you remember general size?
- 12 A He wasn't big, I knew that, because the jacket he
- 13 had on was a little loose, maybe a little big for
- 14 him, really.
- 15 Q Okay. And over the last day or so or in court,
- 16 have you had an opportunity to observe the
- 17 Defendant, Adonis Williams?
- 18 A Yes, I have.
- 19 Q And are his physical size and shape and everything
- 20 consistent with the person that abducted you that
- 21 morning?
- 22 A Yes, ma'am.
- 23 Q And you weren't able to actually ever see his face
- 24 so you were never shown any photo line-up?
- 25 A I was never shown, huh-uh.

1 Q But the one thing you remember besides his eyes was
2 a pockmark on which side of his face?

3 A It was on the left side. He had like childhood --
4 a chicken pox scar.

5 Q And you actually told the police about that?

6 A Yes, ma'am.

7 MS. CAMPBELL: Beg the Court's indulgence.

8 (Pause.)

9 Q For the record, to make sure it is clear, did
10 Adonis Williams have permission to break into your
11 house that day?

12 A No, ma'am.

13 Q And did you willingly go with him that day?

14 A No, because he had a gun on me.

15 Q And did you willingly give him your money?

16 A He had a gun on me.

17 Q Prior to him breaking into your house, had you ever
18 had any dealings with Adonis Williams?

19 A No, ma'am.

20 Q Had you ever even heard his name?

21 A No, ma'am.

22 MS. CAMPBELL: That's all I have, Your Honor.

23 THE COURT: Ladies and gentlemen, we'll take a
24 break now. If you will go to the jury room.

25 Please do not discuss the case. Go to the jury

1 room.

2 (WHEREUPON, the jury retires to the jury
3 room at 11:42 a.m.)

4 THE COURT: All right, we'll take a break.
5 About ten minutes.

6 Ma'am, you can step down. Please do not
7 discuss your testimony with anyone during the
8 break.

9 THE WITNESS: I understand, sir.

10 (Witness steps down.)

11 (WHEREUPON, a break was taken.)

12 THE COURT: Bring the jury back.

13 (Witness returns to witness stand.)

14 (WHEREUPON, the jury came into open
15 court at approximately 12:01 p.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: Cross-examination.

18 MR. GIPSON: Thank you, Your Honor. May it
19 please the Court?

20 CROSS-EXAMINATION

21 BY MR. GIPSON:

22 Q And good afternoon, Ms. Wofford.

23 A Good afternoon.

24 Q My name is Byron Gipson, and I represent

25 Mr. Williams. And this is quite frankly the first

1 time you and I have spoken, correct?

2 A Yes.

3 Q Now, what I'm going to do is ask you a series of
4 questions. And what I would ask that you do is to
5 answer those questions with a yes or a no. And
6 then you will have ample opportunity to explain
7 your answers, okay? Is that fair enough?

8 A (Nods affirmatively.)

9 Q And one thing I'll ask you to do, and I'm not being
10 nasty to you, but the court reporter has to take
11 down what you are saying, so if you nod your head
12 sometimes she won't know if that is a yes or a no.

13 A Okay.

14 Q So if you can give a verbal answer, that will kind
15 of help us keep the record clear.

16 A Okay.

17 Q Now, you gave your direct testimony to Ms. Campbell
18 a couple -- well, several minutes ago. Is there
19 anything about that that you would like to change
20 before we begin?

21 A No.

22 Q And you are confident that what you said to her is
23 consistent with all of the details and all of the
24 facts in this matter?

25 A Yes.

1 Q All right. Now, you have spoken to law enforcement
2 several times in this matter, haven't you?

3 A Yes.

4 Q And your first encounter with law enforcement,
5 quite frankly, was just a few minutes after you
6 dropped off the person who burglarized you,
7 correct?

8 A Yes.

9 Q And your first contact with them was at the Citgo
10 station, which is on the corner of Leesburg and
11 Fairmont, correct?

12 A Yes.

13 Q And you said that you frequented that Citgo a good
14 bit, correct?

15 A I have lived in that neighborhood since 1988, and
16 that is where I buy my gas.

17 Q All right. So buying your gas there, being around
18 there, you would know there are cameras that are
19 all around that Citgo?

20 A Yes, I do.

21 Q And there are cameras on each corner, correct?

22 A Yes, sir.

23 Q And cameras inside of the Citgo as well?

24 A Inside, yes, sir.

25 Q All right. And those cameras are in angles -- or

- 1 at angles so they can pick up pretty much
2 everything that goes on in the area of the Citgo,
3 correct?
- 4 A Yes.
- 5 Q All right. And you are familiar with the manager
6 there as well, correct?
- 7 A I couldn't personally give you their names, no.
- 8 Q But you are there all the time?
- 9 A When I need gas. I use my credit card a lot,
10 though, and don't go in.
- 11 Q Now, the 9-1-1 call was made from that Citgo,
12 correct?
- 13 A Correct.
- 14 Q And you actually made the call?
- 15 A I did.
- 16 Q Okay. And did the clerk make a call as well or
17 there was just one call?
- 18 A I made the call.
- 19 Q And after that call or very soon after that, that
20 is when the officers arrived at the scene?
- 21 A Yes.
- 22 Q Several of them came, correct?
- 23 A Yes.
- 24 Q And at that point in time they started to ask
25 you -- well, first of all they wanted to make sure

1 you were safe, correct?

2 A Yes.

3 Q And they did that. And from there they started to

4 ask you questions about what happened, correct?

5 A Yes.

6 Q And they did that so that they could get a good

7 idea of what went on and what your perspective was

8 about what happened?

9 A Yes.

10 Q All right. Now, in speaking to them, you gave them

11 a written statement, correct?

12 A Yes.

13 Q And do you remember a written statement?

14 A Yes.

15 Q Okay. Let me just show you something. Just let me

16 know if you recognize that.

17 (Pause.)

18 A Do you want me to read the whole thing?

19 Q No, ma'am. Do you recognize that statement?

20 A Well, yes.

21 Q Okay. And is your signature on the last page of

22 that?

23 A Yes, it is.

24 Q Okay. And your signature is on each page as well?

25 (Pause.)

1 A Each page.

2 Q Thank you.

3 MR. GIPSON: And may I have this marked as
4 Defense Exhibit 1 For Identification Purposes at
5 this time?

6 (WHEREUPON, Defendant's Exhibit No. 1
7 was marked for identification only.)

8 MR. GIPSON: Thank you.

9 THE COURT REPORTER: You're welcome.

10 BY MR. GIPSON:

11 Q Now, Ms. Wofford, this is the written statement
12 that you gave to the police officers when they came
13 to the Citgo as a result of your 9-1-1 call,
14 correct?

15 A Uh-huh. Yes.

16 Q Okay. That means yes. Now, one of the things that
17 you did very early on is you gave a description of
18 the person who had picked you up and robbed you,
19 correct?

20 A Yes.

21 Q All right. And in that description, isn't it true
22 that you mentioned that there was a black male,
23 medium build, medium complexion, and with short
24 hair?

25 A No, I can't tell you about his hair. He had a hat

1 on.

2 Q Okay. Well, I just want you to look --

3 A I just saw hair around the edge of the hat.

4 Q Well, let me have you look at your statement that
5 you gave on, looks like 3/22/09 beginning at 8:39
6 in the morning. And I would like to point you to a
7 specific point -- part where it says, how would you
8 describe him. Will you take a look at that and
9 will you read that to the jury, please?

10 A You want me to read starting from the beginning of
11 this page?

12 Q Where the question I believe asks, would you
13 describe him, which is midway down that page. Do
14 you see that question and then your response?
15 (Pause.)

16 A Okay.

17 Q Will you publish that to the jury? Will you read
18 that to the jury your description?

19 A You want me to read it out loud?

20 Q Yes, ma'am, the description that you gave when the
21 officers came.

22 A How would you describe him, is the question.

23 And the answer is, medium complected, black
24 male, not real tall, medium build, a low haircut,
25 because of the cap had some extension up here, but

1 I didn't know how long or short.

2 Q Well, let me -- that commentary that you are adding
3 right now --

4 MS. CAMPBELL: Objection, Your Honor. If she
5 can finish reading her description before he goes
6 on I would appreciate it.

7 THE COURT: You want her to read it, you don't
8 want her to --

9 MR. GIPSON: Well, she commented. What she
10 just said is not in the statement so she is not
11 reading it.

12 THE COURT: The objection is overruled. You
13 may proceed, ma'am.

14 A Chicken pox scar on the left of side of his
15 eye, navy blue bandana around his face, beige and
16 green jacket, dark colored pants. He had a lot of
17 clothes because the jacket was zipped up.

18 Have you seen him in the area before?

19 Q Now, the piece that you just mentioned about this
20 hat and that kind of -- that is not written in
21 there, is there?

22 A Somewhere there is.

23 Q That wasn't my question, Ms. Wofford. The question
24 was, is it written in that statement?

25 A I realize what your question is, but what you are

1 asking me is in other documentation.

2 Q Is the question -- is the reference to the hat in
3 the statement that you gave the police that you are
4 looking at?

5 A Not this one.

6 Q It is not in that one?

7 A No, sir.

8 Q Okay. And in that statement you say he had short
9 hair, correct?

10 A No, I didn't say he had short hair. I could not
11 see his hair. He had a hat on.

12 Q May I see that, please?

13 A Yes, sir.

14 Q So are you suggesting to the jury that in your own
15 handwriting the statement that you said that you
16 gave you do not say that he had a low haircut?

17 A It might be the choice of the words of the officer,
18 the way he might describe it, but to me I really
19 didn't see his hair.

20 Q Is that your handwriting?

21 A No.

22 Q You didn't write that?

23 A Not this.

24 Q Okay. So the officer wrote this?

25 A Yes.

1 Q Did you read it?

2 A Yes.

3 Q Did you sign it?

4 A Yes.

5 Q Did you in this statement that we're looking at,
6 Defendant's Exhibit Number 1 For Identification
7 Purposes, say anything about a hat? That is my
8 only question to you.

9 A This is written by the officer. It does say --
10 doesn't say anything about a hat, but I'm going to
11 tell you there is a hat that was on top of his
12 head.

13 Q Thank you. Now, you gave other statements
14 throughout this case as well, correct?

15 A Yes. I have had to talk to a lot of people.

16 Q All right. And in this statement you describe some
17 of the acts that took place through the robbery and
18 just this entire ordeal, didn't you?

19 A Yes.

20 Q And as you described these things, you talked about
21 what happened beginning at your house on Tama Road
22 and you also described the vandalism of your truck,
23 your Toyota truck, at the Citgo, correct?

24 A Uh-huh. Yes.

25 Q All right. Isn't it true that in statements that

- 1 you have given to either the courts or to the
2 police that you said that the person who vandalized
3 your car is the person who robbed you?
- 4 A No, I didn't. We had no idea it was done when we
5 came back. There was no proof. We didn't see
6 anyone.
- 7 Q Have you ever alluded to the fact that the person
8 who vandalized your car is the person who robbed
9 you?
- 10 A I alluded to it in the fact that that happened and
11 I didn't know and I felt like my life was in
12 further danger.
- 13 Q Do you remember giving a statement at a bond
14 hearing in this courthouse with Judge Cooper
15 presiding where you said that -- where you -- where
16 essentially you stated that the person who robbed
17 you also vandalized you? Do you remember that?
- 18 A At that time it could have been or it couldn't have
19 been. I can't say that.
- 20 Q My question is, do you remember saying that that is
21 the person one in the same?
- 22 A (No response.)
- 23 Q Let me have you look at the document. Do you
24 remember preparing a document for the judge to take
25 a look at? Let me hand that to you. And don't

1 tell us what he --

2 A Oh, you are referring to my impact statement. That
3 would have helped.

4 Q If you would turn to Page 2.

5 A Is that where it is?

6 Q Actually, if I can just properly do that. Do you
7 remember an impact statement then? Is that what
8 you are calling it? Do you remember a victim's
9 impact statement you made?

10 A Uh-huh.

11 Q All right.

12 MR. GIPSON: Well, Your Honor, may I have this
13 marked as Defense Exhibit 2 For Identification
14 Purposes?

15 THE COURT: Yes, sir.

16 MR. GIPSON: Thank you.

17 (WHEREUPON, Defendant's Exhibit No. 2
18 was marked for identification only.)

19 Q Now, Defense Exhibit 2 For Identification Purposes,
20 as you have raised as an impact statement, you did
21 give that to the judge, correct?

22 A I -- at the time we truly did not know.

23 Q My --

24 A If I said that -- if it is there, I said it.

25 Q But my question is you gave this to the judge,

1 correct, this statement?

2 A Yes. He asked for it.

3 Q Okay. And in this statement you told the judge
4 your position about what happened on that
5 particular day, correct? And its effect on you,
6 correct?

7 A Yes.

8 Q All right. And I just want you to look -- and I
9 will point to the paragraph. It is Y Paragraph.
10 Will you take a look at that, please?

11 A Yes, I said that at that time, at that point in
12 time. That was all the information we knew.

13 Q Publish that to the jury, if you will, please.
14 Read what you handed up to the judge for him to
15 make a decision in this case.

16 A Why does this person feel like they are
17 entitled to cut my telephone lines, break into my
18 home, push heavy furniture around, come into my
19 bedroom while I was sleeping with a gun, kidnap me,
20 make me drive to a teller machine, rob me of my
21 hard earned money, and then vandalize my car when I
22 was in a place of business calling for help.

23 And at the time, that is what I felt.

24 Q And that is your statement that was made in this
25 court about what took place, correct?

- 1 A At that time.
- 2 Q Okay. May I have that back, please?
- 3 (Complies.)
- 4 Q Thank you. Now, I'm going to show you just a few
5 photos. State's Exhibit Number 30. Does that ring
6 a bell?
- 7 A That is a picture that Luck Campbell just showed me
8 of my car at the Citgo station.
- 9 Q Okay. Thank you. Number 32, State's Exhibit
10 Number 32?
- 11 A Same thing. Broken glass.
- 12 Q Okay. And that looks like the passenger side
13 broken glass?
- 14 A Yes.
- 15 Q And these are the things that happened at the Citgo
16 station after you arrived to call --
- 17 A When I was inside.
- 18 Q Okay. Did you ever tell the police that you felt
19 that you were -- this person did these things --
20 well, you are alleging Mr. Williams did this, but
21 Mr. Williams did these things in an attempt to
22 intimidate you?
- 23 A We didn't know that. The police nor I knew that.
- 24 Q What description did you give the police of the
25 person who did these things?

- 1 A It was a man with a mask, a gun, a hat.
- 2 Q The person who vandalized your car?
- 3 A I didn't know.
- 4 Q Okay. So you never --
- 5 A I told you I didn't know. It was done -- when the
6 officer took me for the ride, we came back by.
7 He said, were your windows broken out.
8 And I said no, sir.
9 So that is what we said.
10 And then we had to process the pictures and
11 stuff to get my car fixed.
- 12 Q Yes, ma'am. And you'll also notice in these
13 pictures, State's Exhibit Number 31, you'll see a
14 video camera?
- 15 A Yes. They are all over the place.
- 16 Q Was the vandalism of your car, to your knowledge,
17 caught on tape?
- 18 A Yes, it was.
- 19 Q Did you have a chance to see that tape?
- 20 A I didn't see the tape. I saw one picture where a
21 license plate was extremely blurry and could not be
22 identified.
- 23 Q So your only suggestion to the police is -- was
24 that the person who robbed you is the same person
25 that vandalized your car? That was your only

1 suggestion to the police? That is what you
2 believed? *I feel that she is a very good person.*

3 A At that time I believed that. And I was very
4 fearful that he was after me, again.

5 Q And, quite honestly, in your direct you said that
6 you were afraid -- you parked to the side of the
7 Citgo because you were afraid that that person
8 would come after you?

9 A Yes.

10 Q So you walked out and you see that your car is
11 vandalized, you believed that that person did come
12 after you?

13 A I didn't walk out. The police took me on a ride
14 and when we came back the car was vandalized.

15 Q So you believed that the person who -- you believed
16 that that is what took place when you saw the car
17 that that person had come back after you?

18 A There was no other reason in my mind at that time
19 that anybody else would have done it.

20 Q Exactly. It is just too coincidental?

21 A Right.

22 Q That you would be robbed and then within a few
23 minutes your windows would be busted out?

24 A Right.

25 Q So obviously -- even though -- you think that

- 1 person had to have done those things?
- 2 A Well, the thought was back there, if you didn't see
3 his face and that happened, I ought to be scared of
4 what is going to happen to me.
- 5 Q All right. And in thinking that, the police, to
6 your knowledge, began to take up leads and look
7 into this thing because they believed that that is
8 the person who did it as well, correct?
- 9 A I'm sure they had to cover their tracks to make
10 sure it wasn't, or was.
- 11 Q Okay. And they went after and tried to investigate
12 this matter because they felt the two were
13 connected, correct?
- 14 A That they were possibly connected.
- 15 Q Well, you stated that they were connected in
16 your -- you believed that they were connected --
- 17 A That is my belief. That is not what maybe the
18 officers believed. *It happens*
- 19 Q Okay. And all I can get in is what you believe.
- 20 A Right.
- 21 Q That they were connected. Okay. Now, isn't it
22 true the person who busted out your windows was a
23 white male?
- 24 A He was a young white male, 17 years of age.
- 25 Q With a short haircut?

- 1 A I had never seen him before until I went to court.
- 2 Q What did he look like when you went to court?
- 3 A He was a young man, 17 years old.
- 4 Q With a short haircut?
- 5 A Yes.
- 6 Q Okay. And you went to court with Magistrate Judge
7 Davis, correct?
- 8 A I did.
- 9 Q And what was the result of going to court with
10 Judge Davis with a young man, a white male who
11 busted your windows out?
- 12 A What you want to know, me to explain that trial?
- 13 Q I just want to know what the ultimate result was.
14 What happened?
- 15 A I --
- 16 Q Did he plead guilty?
- 17 A I -- yes, he did.
- 18 Q Okay. To busting your windows out?
- 19 A Yes, he did.
- 20 Q What, if any, additional investigation was done
21 with him versus any of the other acts that happened
22 at your house on 3/22/09?
- 23 A I don't know, I'm not the investigator.
- 24 Q Okay. Do you know the young man's name?
- 25 A The last name, I could find it for you in the phone

- 1 book, but that is about it.
- 2 Q Was it Blankenbecklor?
- 3 A Yes, sir.
- 4 Q Okay. Do you have any type of relation with
- 5 Blankenbecklor in any way, shape or form?
- 6 A I never seen him a day in my life till I went to
- 7 court.
- 8 Q But that is the person who busted out your windows?
- 9 A That is the man who admitted he --
- 10 Q Caught on tape?
- 11 A Yes.
- 12 Q Doesn't look anything like the person you are
- 13 alleging who robbed you?
- 14 A Allegedly robbed me, it doesn't look like the boy.
- 15 Q It doesn't look like the boy. Now -- and that
- 16 person -- and as we can see, there are -- there is
- 17 an actual cigarette ashtray outside. Again, you
- 18 said you never saw the video of this --
- 19 A No.
- 20 Q -- incident?
- 21 A No.
- 22 Q Okay. Well, on State's Exhibit Number 31, what do
- 23 you see right outside the passenger -- excuse me,
- 24 the driver's side door?
- 25 A It is an ashtray.

1 Q Okay. And it is better shown in State's Exhibit
2 Number 28? Is that a better rendition?

3 A Yes.

4 Q Okay. So you are alleging that he picked these
5 things up and bashed your windows out, correct?

6 Well, not -- he admitted to doing it, Mr.

7 Blankenbecklor?

8 A He admitted to doing it.

9 Q Okay. But this is what he did?

10 A Uh-huh.

11 Q Okay. Again, very coincidental that this would
12 happen the same morning that you are robbed?

13 A Right.

14 Q And coincidental enough to make you believe or
15 think in your mind that there is some kind of
16 connection between the two?

17 A That I didn't know.

18 MR. GIPSON: Court's indulgence, Your Honor.

19 (Pause.)

20 Q Now, back to the actual incident on the robbery,
21 let's focus back on to that. Now, you mentioned
22 that at around 7:00 o'clock that morning you said a
23 masked gunman came into your home, correct?

24 A Correct.

25 Q All right. And in order to get into your home,

1 that masked gunman would have had to open State's
2 Exhibit Number 13, correct?

3 A That's where he went. That is where the couch is
4 right smack up against the door there that he
5 pushed.

6 Q Okay. And you said there was banging on the door,
7 which is what got your attention early that
8 morning?

9 A I imagine he was pushing his body weight into the
10 door to get -- break it down. And I was asleep.

11 Q Yes, ma'am.

12 A And I woke up, and I wasn't sure if I was dreaming
13 or something was wrong. Then it happened again.
14 And that is when he had flipped the furniture
15 around the house. And the next thing he was
16 opening my bedroom door.

17 MR. GIPSON: And, Your Honor, may I publish
18 these photos to the jury?

19 THE COURT: Anything in evidence you may
20 publish to the jury.

21 MR. GIPSON: Thank you, Your Honor.

22 Q And so that person had to have come through this
23 side door?

24 A Exactly.

25 Q And you said pushed -- would have had to push

1 these --

2 A Physically bodily pushed it.

3 Q And why did you have those up against the door?

4 A Because I, as I stated earlier, I have three doors,
5 one arch and two windows and a fireplace, and it is
6 hard to arrange your house. So that door is never
7 used. The furniture is pressed up against it, a
8 big heavy leather sofa and a recliner.

9 Q Yes, ma'am. And that person also you said opened
10 your door?

11 A Yes.

12 Q Okay. And State's Exhibit Number 17 is a --

13 A That is the entry to my bedroom.

14 Q Yes, ma'am. No gloves, correct?

15 A He had no gloves on.

16 Q Okay. And this person coerced you with a gun to
17 get into your vehicle and to drive to essentially
18 Bank of America to make the withdrawals, correct?

19 A As I stated earlier, he said, I need somebody to
20 take me to a teller. I'm coming down bad. I
21 really need a teller.

22 Q And so you eventually got into the car and he got
23 into the car as well, correct?

24 A Yes, sir.

25 Q Or the truck. No gloves of any sort, correct?

1 A No gloves.

2 Q Okay. And this is a fair and accurate
3 representation of your car?

4 A It is.

5 Q I know that a glass is there, but aside from the
6 glass being in State's Exhibit Number 36 and
7 State's Exhibit Number 35, this is what your car
8 looked like that morning?

9 A Yes.

10 Q Okay. And minus the glass, this is what the
11 vehicle looked like when you got into the vehicle,
12 correct?

13 A Uh-huh, yes.

14 Q So you rode from Tama Road, you eventually found
15 your way onto Leesburg Road, drove up Leesburg
16 Road, and I guess that would take you underneath
17 I-77, and then taking a right or merging onto
18 Garners Ferry from Leesburg Road in front of
19 Wendy's, is that correct?

20 A That is not the way we went to the bank.

21 Q Okay. How did you go to the bank?

22 A Down Leesburg and to the right on Garners Ferry and
23 then right into the parking place of the bank.

24 Q So you go underneath 77 in order -- when you are on
25 Leesburg -- and you merge -- well, you take a

- 1 right-hand turn, but there is a turning lane, a
2 right-hand turn where you kind of merge into
3 traffic on Garners Ferry, correct, right in front
4 of Wendy's?
- 5 A Yes.
- 6 Q Okay. And you went from there, you passed
7 Wachovia, correct?
- 8 A Yes.
- 9 Q And then there is a hot dog stand or something that
10 used to be a little coffee place?
- 11 A Uh-huh.
- 12 Q And then from there there is Goodwill that is back
13 in that area?
- 14 A That is a shopping center. It is Landmark Shopping
15 Center.
- 16 Q Landmark Square?
- 17 A Yes, ma'am, Landmark Square. And that is the
18 branch that I go to.
- 19 Q Yes, ma'am. And your church is next-door? That is
20 Greenlawn?
- 21 A Yes, sir.
- 22 Q Okay. Then on the other side of Greenlawn there is
23 a Shell station, I believe?
- 24 A I have no idea.
- 25 Q Okay. But it is that -- is that where we got --

1 we're on the same page essentially in terms of --

2 A You turn right on True Street beside Greenlawn.

3 That's the way we went.

4 Q Okay.

5 A We went to the end of the road, turned right, and
6 went through the tunnels.

7 Q And that's how you went back?

8 A Right.

9 Q Okay. All right. So you pulled in. Now -- to the
10 Bank of America. Now, isn't there a police
11 substation in Landmark Square?

12 A Yes. I think that is why he had the attitude he
13 had.

14 Q Okay. And Columbia Police cars parked all across
15 there, correct?

16 A Yes.

17 Q Now, what, if any, receipts did you have at that
18 point in time after withdrawing the money from the
19 ATM?

20 A What receipts did I have?

21 Q Yes, ma'am?

22 A I gave them I believe to the bank because they had
23 to reimburse me.

24 Q So you gave them to the bank or you gave them to
25 Mr. Williams?

- 1 A My advocate and I went to the bank and took them.
2 Now, there may be one that might be missing, I
3 don't know. I threw money at him. I don't know
4 how much money I threw at him.
- 5 Q And you were actually on video withdrawing the
6 money, correct?
- 7 A Yes.
- 8 Q Okay.
- 9 A Uh-huh.
- 10 Q And is the assailant, the person who you were
11 alleging robbed you, is that person on that video
12 in any way, shape or form?
- 13 A No. People don't usually go inside but one at a
14 time anyway.
- 15 Q But he is not on that video. And you have seen the
16 still shots of you withdrawing money, correct?
- 17 A Yes.
- 18 Q Okay. Now, you talked about conversations that you
19 had on the way back from the bank or from the bank
20 back to your -- where you dropped the assailant
21 off, correct? You said you talked to him --
- 22 A I talked to and from, what did he need me to do and
23 I could help.
- 24 Q You mentioned in some of your statements that this
25 person grew up in Pennsylvania?

- 1 A I don't know that he grew up in Pennsylvania, but
2 he spoke of his position of not being able to be
3 employed and feeding chickens and pigs, and that
4 kind of thing.
- 5 Q And so working on a farm? And you mentioned the
6 person possibly being from Pennsylvania? ← side
- 7 A No, I didn't.
- 8 Q You never said anything --
- 9 A No.
- 10 Q -- to any officer in this case about the person
11 growing up in Pennsylvania?
- 12 A The only thing I said is that he had a dialect that
13 was not from the Columbia area, to me it sounded
14 more from the low country. This is a low country
15 Q You never said to -- and I'm just being clear --
- 16 A That is what I said, what I just said.
- 17 Q Okay. But you never said to any officer --
- 18 A I don't know anything about Pennsylvania.
- 19 Q Now, after you dropped the assailant off where he
20 directed you to drop him off, from that point until
21 you went to Citgo, I'm asking you these specific
22 questions, did you have a conversation with anybody
23 between the point of your dropping him off, the
24 assailant off, and going to the Citgo station?
- 25 A Nobody was with me, I was by myself.

1 Q Okay. So you had no other conversation between the
2 time that person got out of the car and the time
3 that you arrived and spoke to the store clerk at
4 the Citgo?

5 A As I said earlier, I did not have a cell phone. I
6 couldn't call an emergency on my cell phone even
7 because I did not have time to get it.

8 Q Did you ask anybody to use a phone?

9 A I asked somebody.

10 Q Let me ask my question now, and you'll have ample
11 time to answer. Did you ask anybody to use a phone
12 prior to going to the Citgo station to talk to the
13 clerk?

14 A Between here and there there were no phones.

15 Q Okay. Did you ask anybody to use a cell phone
16 prior to --

17 A No.

18 Q Did you tell anybody that you had been robbed
19 between the time that you dropped off the assailant
20 and the time that you went to the Citgo station?

21 A The lady that owned the store, because I wanted to
22 use her phone to call for help.

23 Q No one other than that lady?

24 A That -- she was there working. She works in the
25 mornings.

1 MR. GIPSON: Court's indulgence for a moment,
2 Your Honor?

3 (Pause.)

4 Q And lastly, Ms. Wofford, just in reference to the
5 cigarettes, on your direct examination you
6 mentioned that the assailant -- you had a cigarette
7 and the assailant asked for a cigarette of his own?

8 A (Nods affirmatively.)

9 Q And you -- and you had the internal lighter?

10 A (Nods affirmatively.)

11 Q And he lit his cigarette with that lighter,
12 correct?

13 A He took his hand --

14 Q Right. And essentially brought --

15 A -- like so, because I was holding the lighter, and
16 he pulled it towards his cigarette.

17 Q All right.

18 MR. GIPSON: That's all the questions, Your
19 Honor.

20 THE COURT: Redirect.

21 MS. CAMPBELL: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. CAMPBELL:

24 Q So when he was lighting his cigarette, you were
25 actually holding the cigarette lighter yourself?

1 A Yes.

2 Q Now, he has asked you several questions about
3 descriptions and he asked you about the vandalism
4 in your car.

5 You never told the police that you knew or saw
6 who vandalized your car?

7 A (Nods negatively.)

8 Q And, in fact, in your statement, the one you
9 referred to, you mentioned that you were glad you
10 stayed inside?

11 A Okay.

12 Q And what did that say?

13 A I stayed in because someone smashed out my
14 front side windows.

15 Q You were glad you stayed in because someone smashed
16 out your front windows.

17 So you have never -- you may have assumed it,
18 but you never told the police you saw the same
19 person smashing out your windows?

20 A No. And I felt the possibility was greatly there,
21 but I wasn't sure. No one could be sure.

22 Q He has asked you about the hat and the information
23 you gave to the police.

24 A Uh-huh.

25 Q The first officers on the scene.

- 1 A Uh-huh.
- 2 Q And I show you this incident report here in the
3 middle of the description of the person.
- 4 A Description, weight and height and --
- 5 Q Description of him right here. And then in the
6 second line you talk about the beige jacket?
- 7 A Uh-huh.
- 8 Q And what else is on that line that you told the
9 police immediately upon them responding to the
10 scene that day?
- 11 A Black sock hat.
- 12 Q And that is documented there in that document as
13 well?
- 14 A Yes.
- 15 Q And in addition to the information that you gave
16 the officers at the scene, and it -- maybe the
17 officer left it out of your written statement, but
18 it was given to the officers as soon as you made
19 contact with them?
- 20 A Uh-huh.
- 21 Q I show you what is marked as State's Exhibit
22 Number 57. What is the name of that document
23 again?
- 24 A This is the Richland County Sheriff's Department
25 Robbery Questionnaire.

1 Q And in that document, that was also filled out at
2 the scene that day, did you indicate whether or not
3 the Defendant was wearing a hat?

4 A Black sock hat, big.

5 Q And that is written on the questionnaire?

6 A (Nods affirmatively.)

7 Q And that was in the detailed description you gave
8 the police of the Defendant, is that correct?

9 A Yes.

10 Q You also mentioned at Landmark Square that there is
11 I think a CPD substation back there?

12 A (Nods affirmatively.)

13 Q It is on the front or the back of Landmark Square?

14 A It is on the back side.

15 Q And that morning did you encounter any police?

16 A It was --

17 Q Would you have been thrilled if you had?

18 A I would, yes.

19 MR. GIPSON: Objection to leading, Your Honor.

20 THE COURT: The objection is overruled.

21 MS. CAMPBELL: Thank you.

22 Q He also asked you whether or not when you were in
23 the still pictures from the ATM?

24 A Uh-huh.

25 Q And you testified earlier the Defendant didn't go

1 with you inside the ATM, did he?

2 A No. He was sitting in the car with his gun.

3 Q So the camera couldn't capture him?

4 A (Nods negatively.)

5 Q That day after you had been robbed and you parked
6 at the Citgo --

7 A Uh-huh.

8 Q -- were you pretty upset or traumatized by the
9 events that went on?

10 A Yes.

11 Q But you were still able to give the police a
12 detailed description --

13 MR. GIPSON: Objection to the leading, Your
14 Honor.

15 Q Were you able to give the police a detailed
16 description?

17 A Yes, ma'am.

18 Q And that included the top hat?

19 A Yes, ma'am.

20 Q And all the other details you told them just like
21 you told them back then?

22 A Yes, ma'am.

23 MS. CAMPBELL: Thank you, Your Honor. Nothing
24 further.

25 THE COURT: Any further questions?

1 MR. GIPSON: Yes, Your Honor.

2 RE-CROSS-EXAMINATION

3 BY MR. GIPSON:

4 Q Now, in your statement that Ms. Campbell just had
5 you reference, you mentioned that you are glad you
6 stayed inside because someone smashed your windows,
7 correct?

8 A Uh-huh.

9 Q All right. Now, in cross-examination you stated
10 that you weren't there when the windows were
11 smashed.

12 A I was inside.

13 Q You were inside while your windows were smashed?

14 A Yes. Yes, sir.

15 Q But you said that you and the deputy went out for a
16 ride and you came back and you noticed that your
17 windows were smashed?

18 A Yes.

19 MR. GIPSON: That's all my questions, Your
20 Honor.

21 THE COURT: Thank you, ma'am. You may step
22 down.

23 (Witness steps down.)

24 THE COURT: Next witness, please.

25 MS. McDUFFIE: The State would call Deputy

1 Lasher.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, raise your right hand, and face the clerk,
5 please.

6 (Witness complies.)

7 THE CLERK: Do you swear or affirm the
8 testimony you are about to give in this case will
9 be the truth, the whole truth, and nothing but the
10 truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Have a seat in the witness box,
13 and state your full name for the record.

14 THE WITNESS: Benjamin Lasher.

15 BENJAMIN LASHER,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. McDUFFIE:

19 Q Deputy Lasher, where are you currently employed?

20 A Richland County Sheriff's Department.

21 Q And what are your duties with the Richland County
22 Sheriff's Department?

23 A Part of Region 1 and Uniform Patrol Division.

24 Q And please tell the jury where Region 1 is.

25 A Lower side of Richland County. It basically covers

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Adonis Williams, SCDC #274626,)
)
 Applicant,)
)
)
 v.)
)
 State of South Carolina)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

ORDER
 GRANTING WHITE V. STATE APPEAL
 and
 DENYING OTHER RELIEF

Civil Action No. 2013-CP-40-02376

2010 SEP 10 PM 2:46
 JEANETTE W. HOGRIDE
 C. CLERK & C.S.
 RICHLAND COUNTY
 FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed April 19, 2013, by Adonis Williams (Applicant). The State (Respondent) made its Return on October 18, 2013, requesting an evidentiary hearing be held. Thereafter, on July 1, 2015, and January 21, 2016, through his counsel, Applicant filed an amended application for post-conviction relief and a second amended application for post-conviction relief, respectively. An evidentiary hearing was convened on February 1, 2016, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Kristy G. Goldberg, Esquire. Respondent was represented by Assistant Attorney General J. Clayton Mitchell, III, of the South Carolina Attorney General's Office.

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. During its July 2009 term, the Richland County Grand Jury indicted Applicant for kidnapping (2009-GS-40-2697), armed robbery (2009-GS-40-2698), and first-degree burglary (2009-GS-40-2701). Mark E. Schnee, Esquire, represented Applicant on these charges. On September 6-9, 2011, Applicant proceeded to a jury trial before the Honorable James R. Barber, III¹. Following deliberations, the jury convicted Applicant as indicted. Judge Barber sentenced

¹ Initially, on February 8-11, 2010, Applicant proceeded to a jury trial before the Honorable Clifton Newman, where he was represented by Byron E. Gipson, Esquire. That trial proceeded on the charges of first-degree burglary, armed robbery, and kidnapping, as well as additional charges of resisting arrest (2009-GS-40-2740) and assault on an officer while resisting arrest (2009-GS-40-2741). Following the presentation of all evidence, the jury convicted Applicant of resisting arrest and acquitted Applicant of assault on an officer while resisting arrest. Judge Newman sentenced

SCANNED

#1

him to a term of imprisonment of twenty-five years for kidnapping, twenty-five years for armed robbery, and twenty-five years for first-degree burglary. The sentences were to run concurrently.

Applicant filed a timely notice of appeal. By written Order dated March 30, 2012, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to timely order the transcript as required by Rule 207, SCACR. The Remittitur was issued on January 24, 2013.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "No DNA in house or truck;"
 - a. "They had DNA but its [sic] wasn't mine. They couldn't find a match."
2. "No video of me at bank on camera;"
 - a. "Video from teller at bank."
3. "Video at Citgo gas station shows a white male doing what police n [sic] victim accused me of. She accused me in impact statement, police in impact statement, police in preliminary hearing."
 - a. "Video from gas station (Citgo)."

In his amended application for post-conviction relief, Applicant raised the following grounds:

1. "Ineffective assistance of counsel – Trial counsel failed to properly object and/or request a mistrial to preserve the record for appellate review on several occasions, including specifically:"
 - a. "Trial transcript page 163, line 5-16 – Statement was sufficiently prejudicial that counsel should have requested a mistrial;"
 - b. "Trial transcript page 170, lines 1-16 – Missed objection to leading and failed to appropriately renew pre-trial objection contemporaneously;"
 - c. "Trial transcript page 389, lines 16-25 – Missed objection to bolstering and hearsay;"
 - d. "Trial transcript pages 558-559 – Delayed objection to re-called testimony of Dr. Gray Amick;"
 - e. "Trial Transcript pages 569 – Failed to renew pre-trial objection regarding evidence that [Applicant] had been out of prison 10 months – and failed to object regarding relevance as the actual evidence showed that [Applicant] had been out of prison 8 months;"
 - f. "Trial transcript page 652, lines 1-25 – Missed objection to Solicitor's question as calling for overly prejudicial and irrelevant testimony with no probative value – trial counsel

Applicant to a term of imprisonment of one year for resisting arrest. The jury could not reach a verdict on the charges of first-degree burglary, armed robbery, and kidnapping, so Judge Newman declared a mistrial with respect to those charges.

- should have requested that testimony be stricken from the record and requested a mistrial;”
- g. “Trial transcript pages 653-654 – Missed objection when Solicitor essentially offered testimony regarding the weather when there was no evidence offered on this topic;”
 - h. “Trial transcript page 669, line 4 – Failed to object when the Solicitor misstated the facts in evidence;”
 - i. “Trial transcript page 692, lines 18-22 – Failed to object when the Solicitor made an improperly prejudicial appeal to the jury.”
2. “Ineffective assistance of trial counsel – Trial counsel failed to properly object to the admissibility of evidence obtained from the cell phone on the grounds of an unconstitutional search and seizure under the 4th amendment and overly prejudicial content with no probative value (Trial transcript pages 493-499)[;]”
 3. “Ineffective assistance of counsel – Trial counsel failed to investigate and present possible evidence and witnesses[;]”
 4. “Ineffective assistance of counsel – Trial counsel failed to effectively cross examine the victim with her prior testimony[;]”
 5. “Ineffective assistance of counsel – Trial counsel failed to effectively argue the facts during closing argument[;]”
 6. “Ineffective assistance of counsel – Trial counsel failed to effectively argue the importance of DNA evidence during closing argument[;]”
 7. “Ineffective assistance of counsel – Trial counsel failed to request an alibi charge be included in the jury charges[;]” and
 8. “Ineffective assistance of trial counsel pursuant to White v. State – failure to properly initiate client’s direct [a]ppeal.”

In his second amended application Applicant raised the following grounds:

1. “Ineffective assistance of counsel – Trial counsel failed to properly object and/or request a mistrial to preserve the record for appellate review on several occasions, including specifically:”
 - a. “Trial transcript page 163, line 5-16 – Statement was sufficiently prejudicial that counsel should have requested a mistrial;”
 - b. “Trial transcript page 170, lines 1-16 – Missed objection to leading and failed to appropriately renew pre-trial objection contemporaneously;”
 - c. “Trial transcript page 389, lines 16-25 – Missed objection to bolstering and hearsay;”
 - d. “Trial transcript pages 558-559 – Delayed objection to re-called testimony of Dr. Gray Amick;”
 - e. “Trial Transcript pages 569 – Failed to renew pre-trial objection regarding evidence that [Applicant] had been out of prison 10 months – and failed to object regarding relevance as the actual evidence showed that [Applicant] had been out of prison 8

- months;”
- f. “Trial transcript page 652, lines 1-25 – Missed objection to Solicitor’s question as calling for overly prejudicial and irrelevant testimony with no probative value – trial counsel should have requested that testimony be stricken from the record and requested a mistrial;”
 - g. “Trial transcript pages 653-654 – Missed objection when Solicitor essentially offered testimony regarding the weather when there was no evidence offered on this topic;”
 - h. “Trial transcript page 668, line 17-24; Trial transcript page 670, line 10-11 and 15-16; Trial transcript page 672 Line 4-12 – Failed to object when the Solicitor improperly vouched for the victim and witness;”
 - i. “Trial transcript page 669, line 4 – Failed to object when the Solicitor misstated the facts in evidence;”
 - j. “Trial transcript page 667, lines 7-12 – Failed to object when the Solicitor asked the jury to convict [Applicant] on an improper basis;”
 - k. “Trial transcript page 692, lines 3-22 – Failed to object when the Solicitor made an improperly prejudicial appeal to the jury;”
 - l. “Trial transcript page 710-711 – Failed to object when the Judge talked to the jurors in the jury room, without either party present.”
2. “Ineffective assistance of trial counsel – Trial counsel failed to properly object to the admissibility of evidence obtained from the cell phone on the grounds of an unconstitutional search and seizure under the 4th amendment and overly prejudicial content with no probative value (Trial transcript pages 493-499)[;]”
 3. “Ineffective assistance of counsel – Trial counsel failed to investigate and present possible evidence and witnesses[;]”
 4. “Ineffective assistance of counsel – Trial counsel failed to effectively cross examine the victim with her prior testimony[;]”
 5. “Ineffective assistance of counsel – Trial counsel failed to effectively argue the facts to the jury during closing argument[;]”
 6. “Ineffective assistance of counsel – Trial counsel failed to effectively argue the importance of DNA evidence during closing argument[;]”
 7. “Ineffective assistance of counsel – Trial counsel failed to request the following law to be included in the Judge’s charge to the jury:”
 - a. “an alibi charge[;]”
 - b. “a mere presence charge;”
 - c. “A charge regarding lack of criminal intent.”
 8. “Due to the cumulative effect of counsel’s errors the Applicant suffered prejudice such that, but for the combination of these errors, the result of the proceeding would have been different[;]” and
 9. “Ineffective assistance of trial counsel pursuant to White v. State –

failure to properly initiate client's direct [a]ppeal."

At the hearing, Applicant proceeded forward on the claims of ineffective assistance of counsel raised in his second amended application for post-conviction relief.

STATEMENT OF FACTS ADDUCED AT TRIAL

During the early morning hours of March 22, 2009, at approximately seven o'clock, Linda Wofford (hereinafter "the victim") was asleep in her home when she heard a loud banging noise. Trial Tr. 154. When she woke up from the noise, she saw a masked man, wearing a dark blue and white bandana, black pants, a beige coat with a green diamond on the back of it, and a toboggan-type hat. Trial Tr. 154-55, 192. He was not wearing gloves, and he held a revolver. Trial Tr. 154, 155. The man had entered the victim's bedroom from the hallway and was standing between the hallway door and the victim's bed. Trial Tr. 155. The man then stated to the victim: "I'm coming down. I'm coming down bad. I need some money. I need you to take me to a teller." Trial Tr. 155. The victim then got out of her bed and began to get dressed. Trial Tr. 155. Meanwhile the man stayed in her bedroom in a location from which he could see both the victim and the side door, through which he broke into the victim's home. Trial Tr. 155-56.

As she walked through her home, she noticed her furniture had been knocked all over the room. Trial Tr. 156-57. The victim attempted to use her front door to exit her home, but the man insisted she use the side door. Trial Tr. 156, 157, 158. The man then instructed the victim to drive him to the A.T.M. Trial Tr. 158-59. The victim got into the driver's side of her Toyota Tacoma pickup truck, which was parked in her driveway right next to her house, and the man got into the passenger's side. Trial Tr. 159-60. The man gave instructions to the victim, dictating the manner in which she should leave her neighborhood. Trial Tr. 160. While driving, the victim was able to observe the left side of the man's face, where he had a chicken pox scar around his eye. Trial Tr. 161. She also observed dark blood veins in the man's eyes. Trial Tr. 162, 191.

As the victim drove away from her home, she proceeded down Caroline Street, turned right onto Leesburg Road, and then took a left towards the V.A. hospital. Trial Tr. 160. While on the way to the A.T.M., the victim lit a Virginia Slim Menthol cigarette, as did the man. Trial Tr. 167, 199. The man also told her he was "down and out because he had just gotten out of prison" ten

months before. Trial Tr. 170. The victim then drove to her usual A.T.M., which was located on Garners Ferry Road across the street from the V.A. hospital. Trial Tr. 160, 162.

When she arrived at the A.T.M., she pulled into a handicap parking space in the parking lot. Trial Tr. 162. The man instructed the victim to get the money from the A.T.M. while he stayed in the truck. Trial Tr. 163. The victim retrieved \$200 from the A.T.M, but the man told her to get more, so she tried again. Trial Tr. 164. On her second attempt to get more money from the A.T.M., the victim was only able to retrieve an additional \$100. Trial Tr. 164. The man stayed in the car each time she went to the A.T.M. Trial Tr. 185. The man still appeared to be upset, so the victim took out her billfold and began giving him anything she had in that. Trial Tr. 165.

The victim then got back in the car, and the man instructed her to drive back the way they had come to the A.T.M. Trial Tr. 165-66. At that point, the man had a key and the cigarette butt from earlier in his hand. Trial Tr. 168. The man then instructed her to stop at a home with a red door on Patricia Drive, where he indicated his car was located and further instructed her to stay in her truck. Trial Tr. 169, 195, 204. After the man exited her vehicle, with the cigarette butt, the victim immediately started her vehicle and drove to a Citgo gas station approximately two blocks away in order to call 911. Trial Tr. 169. While in the Citgo station, the victim left her car parked on the left side of the building. Trial. Tr. 171, 200, 212. She then informed the employees at the Citgo what had happened and called 911. Trial Tr. 171. She waited there until law enforcement arrived. Trial Tr. 171.

When law enforcement arrived, at approximately 8:30 in the morning, she filled out a robbery questionnaire and gave a statement, giving a description of the man. Trial Tr. 172, 189, 210, 265, 286-87. In her description, she indicated the man's height and build, as well as her observations of the man's left side of his face. Trial Tr. 174. Specifically, the victim described the man as a black male, who was taller than she was (approximately five feet, ten inches), slender, about 170 pounds, with short black hair, dark spots in his eyes, and a chicken pox scar². Trial Tr. 184, 190-91, 197-98, 203, 269, 273, 279, 512-13. She further described the man was wearing a mask, a dark blue and white bandana with a design, black hat, dark pants, beige windbreaker, and no gloves. Trial Tr. 184, 190, 192-93, 198, 273-74. She indicated she did not know if the man

² Applicant testified he does, indeed, have a mark on his temple, which he described as a "spot" or a "scratch." Trial Tr. 654.

had facial hair because he was wearing a bandana the entire time. Trial Tr. 190, 272. She also showed him the route she was forced to take, indicating the A.T.M. location and the location the man exited her truck. Trial Tr. 172-73, 262. When she returned to the Citgo station to retrieve her truck, she noticed the windows had been broken. Trial Tr. 182, 200, 212-13, 266. Initially, law enforcement believed the vandalism of the truck was connected to the victim's kidnapping, but another individual, Charles Alexander Blankenbecklor, who was with a man named Isaac Tucker a/k/a Boochee, was ultimately charged and convicted for that vandalism. Trial Tr. 480-84, 507-08, 510-11, 518-20, 536-38, 562, 564. Indeed, Blankenbecklor did not match the description of the assailant given by the victim and had no connection to Applicant. Trial Tr. 508-10.

Upon initial observation of the truck, law enforcement observed glass on both the inside and the outside of the vehicle, as well as personal belongings of the victim. Trial Tr. 214. Further, law enforcement had information the man did not leave anything in the victim's truck. Trial Tr. 214. Investigator Kristin Polis then processed the truck for fingerprints, focusing on the passenger side. Trial Tr. 216. In particular, she processed the passenger side door handle, the center console, the dash area around the glove box, and the exterior of the passenger door. Trial Tr. 221. She was unable to retrieve any usable fingerprints, which is not uncommon. Trial Tr. 221-22, 224, 252, 257, 343. Investigator Polis also processed a cigarette disposal container, which was left in the truck and was believed to be used to break the windows, for both fingerprints and DNA. Trial Tr. 222, 224. That did not produce any usable fingerprints. Trial Tr. 222. After processing the truck for fingerprints, Investigator Polis then processed the vehicle for DNA, swabbing the interior and exterior passenger door handle, the side of the center console, the passenger door latch, and the passenger door window and lock controls. Trial Tr. 222-23, 252.

Law enforcement released the truck to the victim, and she and law enforcement proceeded to the victim's home. Trial Tr. 174, 224. Upon entering the home, it was apparent damage had been done to the side door, and there was an area with some dirt around the door, and furniture had been pushed forward. Trial Tr. 225, 228, 241-43, 267-68, 288. Investigator Polis also walked through the home with the victim in order to determine the relevant areas to be processed. Trial Tr. 225, 241. The wires to the telephone line had been cut as well, and the area around the box which housed those wires had been freshly disturbed. Trial Tr. 175-76, 226, 230, 252. Fingerprints and some ridge detail were found on the box that housed the telephone wires, but Investigator Polis

was unable to lift them. Trial Tr. 231-32, 255. Consequently, the box was taken into evidence. Trial Tr. 232, 247.

Deputy Benjamin Lasher returned to the drop-off location on Patricia Drive and assisted in setting up a perimeter for a canine track. Trial Tr. 263. When the canine unit arrived, he indicated to those officers the direction in which the victim indicated the man had gone. Trial Tr. 264. Those officers then began a canine track, which was unsuccessful. Trial Tr. 264, 289.

The following day, law enforcement again went to the victim's home to speak with her and to go back through her home and her truck. Trial Tr. 302, 304, 470-71, 521. After speaking with the victim, they determined a cigarette butt could be pertinent to the investigation. Trial Tr. 304-05, 472-73, 527. As a result, he proceeded to the drop-off location on Patricia Drive. Trial Tr. 305, 315, 474-75. Upon searching the area, they discovered a Virginia Slims cigarette butt, which was collected into evidence. Trial Tr. 307-09, 475-77.

Subsequently, on March 25, 2009, Investigator Harold Bouknight made a comparison of the latent fingerprints found on the telephone box and Applicant's fingerprints. Trial Tr. 321-25. Investigator Bouknight determined Applicant's fingerprint was a match to that left on the telephone box³. Trial Tr. 326-27, 330, 487. Sergeant Stan Richards also did an independent comparison, which yielded the same results—the fingerprint on the telephone box was a match to Applicant. Trial Tr. 345-46. In addition to the box with the telephone wires, Investigator Polis also processed the side door, the storm door attached to the side door, and the bedroom doorknob for fingerprints and for DNA. Trial Tr. 234-36, 244-45. No usable fingerprints were discovered. Trial Tr. 235, 246.

DNA swabs from the victim's home, the victim's truck, the victim, Applicant, the cigarette butt found on Patricia Drive, an individual named Isaac Tucker, and Blankenbecklor were subsequently submitted for analysis. Trial Tr. 358, 361, 377, 381, 383, 505-06. From the DNA

³ Applicant testified he was storing drugs in the telephone box outside of the victim's house at the time, about one to two weeks prior to this incident, but he did not know her and did not know this house belonged to her. Trial Tr. 590, 610, 653. He explained he stored them there because, sometime before this incident, he was walking down Tama Road (where the victim's house is located) at night, and the police were driving down the road, shining a light at him. Trial Tr. 612-13. He further explained the police then shifted into reverse, and he thought they were going to come down the road on which he was travelling. Trial Tr. 613. Therefore, he ran across the street, jumped across the victim's fence, and ran into her backyard. Trial Tr. 613, 617. He testified he was so scared the police would catch him with drugs, he stashed them in the telephone box in her backyard. Trial Tr. 613, 617-18. Applicant testified he retrieved the drugs from the victim's backyard the same night he fled from the police and stored them there. Trial Tr. 618, 619.

on the cigarette butt, Dr. Gray Amick determined the DNA consisted of a mixture, from which Applicant and the victim could not be excluded as contributors. Trial Tr. 379, 388-90, 414-15. In fact, the likelihood of the victim and Applicant being the contributors to that sample was 140 times more likely than the mixture being from the victim and an unknown individual. Trial Tr. 389-90. Furthermore, the DNA from the cigarette butt was determined to be that of Applicant's through a CODIS search. Trial Tr. 434-35, 486. Blankenbecklor and Tucker were eliminated as potential contributors to the DNA sample. Trial Tr. 389, 390. Dr. Amick was able to exclude Applicant, the victim, Tucker, and Blankenbecklor as a contributor to the DNA mixture found on the interior passenger door. Trial Tr. 385, 414. In addition, the swab from the bedroom door handle matched the victim. Trial Tr. 387. Many of the swabs submitted, however, were too weak to interpret who could have been a contributor to that DNA profile. Trial Tr. 385-86.

After the fingerprint found at the victim's home and the DNA on the cigarette butt had been matched to Applicant, law enforcement began a search around the Garners Ferry Road and Leesburg Road area for Applicant. Trial Tr. 437-39, 451. The team encountered Applicant at a home located on True Street, which is located in the search area, and also encountered Applicant's girlfriend, Dawn Shea. Trial Tr. 439-40, 452-53, 460-61. When law enforcement first encountered Applicant at this home, they attempted to arrest him, but Applicant took off running. Trial Tr. 454, 457-58, 461. The search continued. Trial Tr. 454-55, 46, 5011. In continuing to search for Applicant, law enforcement also searched Applicant's sister's apartment pursuant to a search warrant. Trial Tr. 442-44, 490, 500-01, 533. Thereafter, law enforcement received information that Applicant was known to hang out with a friend, Zab. Trial Tr. 456, 462. Based on that information, law enforcement determined where Zab worked and lived, and ultimately apprehended Applicant in Zab's home. Trial Tr. 456-57, 463-64, 501-02.

Ms. Shea eventually gave law enforcement consent to search her home. Trial Tr. 440-41, 492, 533. During their search, law enforcement found a phone belonging to Applicant. Trial Tr. 441, 492-95. On the phone, law enforcement found text messages, which indicated the police were looking for Applicant and Applicant was about "to go into hiding". Trial Tr. 499. Law enforcement was unable to recover neither the items of clothing which the victim described nor the gun. Trial Tr. 500, 533-34.

At trial, Applicant testified he was at Michelle Wilcox's house⁴, located near Leesburg Road, until about seven o'clock in the morning on March 22, 2009. Trial Tr. 591. He briefly went out to sell drugs to an unknown individual at a dry cleaners on Patricia Drive, then returned to Ms. Wilcox's home. Trial Tr. 591-93, 621-29. Applicant also testified he stopped at another residence to sell drugs before returning to Ms. Wilcox's home. Trial Tr. 593. He explained as he walked up to the house, a truck, which he later learned belonged to the victim, was in the yard. Trial Tr. 594, 630-31. He spoke with the victim, thinking she would want to buy drugs, and asked her for a cigarette. Trial Tr. 594, 631-34. The victim gave him a cigarette and lit it for him, and the two talked. Trial Tr. 595. Applicant smoked the cigarette for a short time, then tore the butt off and threw it on the ground. Trial Tr. 636-37. He then threw the remainder of the cigarette on the ground next to the butt, but because it was paper and tobacco, "it burned up and there wasn't nothing but ashes left." Trial Tr. 637. After telling Applicant she had been robbed, the victim asked him if he had a cellphone with him, which he denied. Trial Tr. 595, 634-35, 639. As he walked back to Ms. Wilcox's house, Applicant's father called him to tell him he was close to picking him up. Trial Tr. 596-97.

He returned to Ms. Wilcox's house, dropped his drugs off in Ms. Wilcox's home, counted the money he had received from selling drugs, and then rode a green and black mountain bike to the Citgo station in order to buy some cigarettes. Trial Tr. 597, 639-41. Applicant testified when he arrived at the Citgo, there were two police cars there, and the victim was sitting in the back of one of the police cars. Trial Tr. 597, 642. Thereafter, he rode the bike to the front of the store and proceeded inside to purchase some cigarettes. Trial Tr. 597, 643. He then rode the bike to the back of the store, where he saw the victim's truck with the windows broken. Trial Tr. 597. When he was riding the bike back to Ms. Wilcox's house, he received a phone call from his father, who was waiting for him. Trial Tr. 597-98. He met up with his father, and the two of them went to his sister's house on Broad River Road. Trial Tr. 598, 644.

Applicant also testified he was at Ms. Shea's house when the police knocked on the door. Trial Tr. 599, 644. He opened the door, and the police asked him to identify himself. Trial Tr. 599-600. Applicant testified as soon as he said his name, the police grabbed his arm. Trial Tr.

⁴ Applicant testified he was unsure of the exact address of the house. Trial Tr. 606-07. In addition, he also testified in 2010 that Ms. Wilcox's last name was Sease. Trial Tr. 607. He explained he only learned her last name in 2011, nearly two years after this incident. Trial Tr. 607.

600. Applicant believed the police officer who grabbed him was trying to hurt him, so he "snatched away" and ran⁵. Trial Tr. 600-01, 646, 648. Thereafter, Applicant went to Zab's house to hide. Trial Tr. 648-49. The police eventually found him there, where he was hiding in a closet. Trial Tr. 650.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented the testimony of Gearand Williams, and Mark E. Schnee, Esquire (hereinafter "Counsel"). This Court also had before it a copy of Applicant's trial transcript, the records of the Richland County Clerk of Court, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant first testified on his own behalf. Applicant testified he was arrested for these crimes on March 27, 2009. PCR Tr. 14. He testified Counsel originally represented him at his bond hearing, but he later hired Byron E. Gipson, Esquire. PCR Tr. 14. He also testified, after hiring Mr. Gipson, he proceeded to a jury trial, where he was convicted of resisting arrest, acquitted of "resisting arrest B," and the jury was hung on all other charges. PCR Tr. 14-15. He elaborated he was sentenced to one year for resisting arrest, but he was not transferred to the South Carolina Department of Corrections (hereinafter "SCDC") at that time, but rather remained at the jail. PCR Tr. 15. He further elaborated at that point, Mr. Gipson no longer represented him, because he could not provide the necessary funds to retain Mr. Gipson. PCR Tr. 15. Applicant testified thereafter, his father retained Counsel to represent him at his second trial. PCR Tr. 15-16.

Applicant also testified Counsel visited him at Alvin S. Glenn Detention Center while he was awaiting trial. PCR Tr. 15. Applicant testified the victim and the police alleged a man fitting Applicant's description vandalized the victim's truck at a Citgo gas station, which they had on video. PCR Tr. 17. He elaborated the police further alleged this vandalism was an act of intimidation after-the-fact. PCR Tr. 17. He testified, however, the man who vandalized the

⁵ Applicant testified at that time he was aware of the arrest warrants out for him because people had told him he was on the news. Trial Tr. 601, 644-45. In fact, on March 26 at 7:20 in the morning, Applicant received a text message that the police were looking for him. Trial Tr. 648. He responded to Zab he was going into hiding. Trial Tr. 648-49.

victim's truck was a white man. PCR Tr. 23. Applicant further elaborated he told Counsel he was at the gas station that same morning, but it must have been after the vandalism occurred. PCR Tr. 17. He testified he wanted Counsel to obtain the video from the Citgo, but Counsel informed him he was not going to waste time in obtaining the video because the Richland County Sheriff's Office had already obtained the video. PCR Tr. 17. He further testified because of Counsel's refusal to obtain the video, his family fired Counsel. PCR Tr. 17-18. He elaborated Mr. Gipson went to the Citgo to obtain the video but was informed the video "sat in the corner [fifteen] days," so he, therefore "lost out on that video." PCR Tr. 18. Applicant also testified he gave counsel a list of witnesses' names, addresses, and phone numbers, but Counsel never contacted those witnesses. PCR Tr. 18. He elaborated on this list were Michelle Wilcox and his father. PCR Tr. 18. He further elaborated "[he] had spent a lot of time at Michelle's house. And the morning of the crime or whatever [he] was at her house, and my father came and picked me up that morning" in his old, powder blue Tempo. PCR Tr. 18, 39. He explained "me and my father also had several -- know what I'm saying -- conversations, phone conversations -- know what I'm saying -- throughout that night and that next morning." PCR Tr. 18. He further explained these witnesses could have testified as to his alibi. PCR Tr. 19. Applicant also testified he did not recall having a conversation with Counsel regarding whether or not to call these individuals as witnesses. PCR Tr. 19. Rather, he told Counsel he had been in contact with these individuals, and they had indicated they would testify, but Counsel never contacted them. PCR Tr. 19, 40. He elaborated Ms. Wilcox did, indeed, receive a voicemail at one time, but she never returned the call and was not contacted again afterwards. PCR Tr. 19.

Applicant testified he wanted Counsel to investigate the man who actually committed the vandalism of the victim's truck, Charles Alexander Blankenbecklor, who pled guilty to such. PCR Tr. 20, 40. He elaborated part of his defense was to blame these crimes on Blankenbecklor. PCR Tr. 40-42.

He testified he ran from law enforcement because a BOLO for him had been released to the news. PCR Tr. 39, 44. He elaborated the BOLO included the description of a car, which he had neither been in nor seen. PCR Tr. 39. He further elaborated while he was on the run, everyone was blaming him for these crimes, rather than looking for Blankenbecklor. PCR Tr. 40. He explained once he was arrested, unknown individuals called into Crime Stoppers, advising them

they had the wrong person because "his car still riding around." PCR Tr. 40-41. He further explained he could never identify who was calling in to Crime Stoppers because the State lost those tapes. PCR Tr. 41. He testified as a result, law enforcement searched neither Blankenbecklor's car nor his house. PCR Tr. 41. Applicant also testified when he was apprehended, he did engage in a physical confrontation with law enforcement and was convicted of resisting arrest as a result. PCR Tr. 44-45.

He further testified Blankenbecklor had been drinking at a bar approximately five miles from the Citgo, and there was also a club at the location where the victim alleged Applicant got out of her truck and ran. PCR Tr. 20. He elaborated he wanted Counsel to take pictures of the club at the drop-off location in order to show its operating hours and to indicate the person who vandalized the car was lying about his whereabouts, and the pictures the State introduced at trial did not depict the club. PCR Tr. 20, 43-44. Applicant explained the victim alleged the robber got out of her truck and indicated he parked a car around the corner from the house in front of which the victim dropped him off; however, there was no way to park a car around the corner, as there was only woods and a fence there and the only point of entrance was a parking lot. PCR Tr. 22, 43. He further explained next to that parking lot was an all-night club, called the Diamond Head Club. PCR Tr. 23. He testified he was in that area that morning—that he walked down Patricia Drive and went back into the neighborhood—but he never went to the club. PCR Tr. 23. He further testified the Citgo at which the victim's truck was vandalized was one street down from this location. PCR Tr. 23.

Applicant testified he wanted Counsel to introduce pictures of ditch, which is used as a path, behind the victim's home, and no pictures depicting this path were introduced at trial. PCR Tr. 24, 43. He elaborated he hangs out in that ditch. PCR Tr. 24. He further testified a couple of weeks before this incident, he was running from the police one night, when he hid some drugs behind the victim's house. PCR Tr. 24. He explained because he hid his drugs behind her house, his fingerprint was found at the scene. PCR Tr. 25. He further explained he testified at trial that he was on the path behind the victim's home. PCR Tr. 25.

Applicant also testified his "case was hurt in a lot of ways." PCR Tr. 25. He explained he believed "a lot of evidence that should have been presented weren't [sic] presented." PCR Tr. 25.

He further explained he believed the evidence was either altered with, tampered with, or disregarded. PCR Tr. 25.

He testified the victim stated she only smoked one cigarette the morning of this incident and she did not smoke in her car, but three cigarettes were found in the car. PCR Tr. 26. He elaborated based on the testimony at trial, it was unclear what happened to the cigarettes that were found in the car—that they were just thrown away⁶. PCR Tr. 26. He elaborated those cigarettes found in the victim's truck were never tested for DNA. PCR Tr. 26. He also testified the police found a cigarette butt at the drop-off location on Patricia Drive, but the victim alleged the robber had a cigarette that hadn't been smoked. PCR Tr. 30. He elaborated the cigarette the robber had would have had some of the actual cigarette left, but that was not found at Patricia Drive. PCR Tr. 30-31. He also testified the DNA on the cigarette butt that was found and tested came back with a match. PCR Tr. 38. He elaborated he obtained a cigarette from the victim outside of the drop-off location on Patricia Drive, but he was never in her truck. PCR Tr. 38. He further elaborated "every time I look around in the trial, it's like they getting more and more of this frivolous evidence putting up against me. And everything that could help me is -- getting neglected." PCR Tr. 26.

Applicant also testified Counsel should have gone through the cell phone, which was presented at trial, to obtain numbers to show the calls he made. PCR Tr. 26-27. He elaborated he told Counsel he was talking on his cell phone at specific times; and if those times coincided with the time of the crime, someone should have testified to that. PCR Tr. 27.

He also testified a lot of things changed between the first trial and the second trial. PCR Tr. 28. He elaborated things that had been stated previously changed during the second trial, and things that were stated in the second trial also changed. PCR Tr. 28. He further elaborated the victim, in her statement, alleged the robber told her he was robbing her in order to pay alimony and child support, but Counsel never argued against that. PCR Tr. 28. He explained he has paid neither alimony nor child support in the past. PCR Tr. 28, 30. Applicant also testified the victim alleged in her statement the robber told her he either grew up or worked on a farm. PCR Tr. 28. He elaborated he has neither grown up nor worked on a farm. PCR Tr. 28. Applicant testified the victim, in her statement, alleged the robber told her he was from Philadelphia, and he has neither been to nor is from Philadelphia. PCR Tr. 28-29. He testified he was born and raised in Bamberg,

⁶ Applicant admitted he did not know how Counsel could have investigated this issue. PCR Tr. 25.

South Carolina. PCR Tr. 29. He also testified the victim indicated in her statement she could not understand the robber's dialect. PCR Tr. 29. In addition, Applicant testified the victim stated the robber told her he had been out of prison for ten months. PCR Tr. 31-32. He explained, however, he had only been out of prison for eight months, which an SCDC employee testified to at trial. PCR Tr. 31. Applicant testified some of these inconsistencies were raised at his first trial with Mr. Gipson, but Counsel never brought up these inconsistencies. PCR Tr. 29. He explained because the jury did not hear these inconsistencies, they assumed these statements made by the victim were true. PCR Tr. 30.

Applicant further testified Counsel never brought up the inconsistencies with the cigarette at trial. PCR Tr. 30-31. He elaborated "the whole thing changed from the statement, which nothing was said about a cigarette to the first trial where the police are saying the victim told them." PCR Tr. 31. He further testified the victim told law enforcement she did not tell them about a cigarette—that she did not share a cigarette with the robber, but law enforcement insisted the victim told them she did share a cigarette with the robber. PCR Tr. 31. He also testified he was unsure how the robber could have smoked a cigarette when the victim alleged the robber wore a mask the entire time. PCR Tr. 32.

Applicant also testified Officer Lasher testified at trial he went to the Citgo gas station to see the victim, then immediately went back to the drop-off location on Patricia Drive. PCR Tr. 32. Applicant further testified the canine unit was called to track the robber, but the dogs did not go in the direction which the victim indicated the robber went. PCR Tr. 32. He elaborated the dogs also did not find a cigarette, but they should have. PCR Tr. 32-33. He further elaborated the canine unit went neither between the house nor towards the club, but rather went in the opposite direction from where the victim said the robber went. PCR Tr. 33.

Applicant further testified the robber did not wear gloves, and the DNA evidence and the fingerprints found in the truck was not matched to him. PCR Tr. 33. He similarly testified DNA found inside the home was not matched to him. PCR Tr. 33. Applicant testified the victim testified she did not share a cigarette with the robber. PCR Tr. 33. He elaborated "it's like when [Counsel] was arguing it, he was saying all of these big number and all of this math. And I'm thinking in my mind, like, what this right here got to do with it -- you know what I'm saying -- the -- the actual facts of what's going on." PCR Tr. 33. He further elaborated he believed Counsel "got way off

subject . . . I feel like he lost the jury.” PCR Tr. 34. Applicant testified during closing, Counsel was too technical when discussing the DNA evidence. PCR Tr. 37. He elaborated Counsel should have argued the fact the DNA expert did not test the cigarette butt, but it was his opinion the DNA was saliva or mixture, from which he could not discern a major or minor contributor. PCR Tr. 38.

Applicant also testified he believed Counsel should have requested an alibi charge. PCR Tr. 34. He elaborated he presented an alibi defense through his testimony at trial, and Counsel could have supported his alibi with the call log from his cellphone. PCR Tr. 34. He further elaborated he believed his testimony alone supported an alibi charge. PCR Tr. 34-35. Similarly, Applicant testified mere presence should have been charged at trial. PCR Tr. 35. He testified, however, Counsel did, in fact, object and preserve the record with respect to a mere presence charge. PCR Tr. 35. He also testified the jury should have been charged with criminal intent, which the trial court failed to do. PCR Tr. 35.

Applicant also testified he testified at both trials. PCR Tr. 36. He elaborated when he testified at both trials, his defense was that he did not commit these crimes. PCR Tr. 36. He further testified at the second trial, he attempted to explain why his fingerprints were found on the telephone box—explaining he was a drug dealer and had hidden drugs throughout the neighborhood. PCR Tr. 36-37. Applicant testified he testified similarly during the first trial. PCR Tr. 37.

Applicant then presented the testimony of his father, Gearand Williams. Williams testified he was aware Applicant sold drugs and was also aware Applicant used drugs. PCR Tr. 57. Williams testified he hired Counsel to represent Applicant. PCR Tr. 46. He also testified he met with Counsel approximately one or two times, but he does not remember what they discussed during those meetings. PCR Tr. 46. He further testified Counsel did not ask him to testify at Applicant’s trial, and he did not recall Counsel ever asking him if he had any alibi information. PCR Tr. 47, 50. He elaborated, however, he believed he told Counsel about this alibi information once, and, consequently, Counsel was aware of the fact he picked Applicant up the morning of these crimes. PCR Tr. 56.

Williams also testified Applicant was with him during the course of the robbery, but also testified: “I don’t know if he was with me when the crime was being done or if he wasn’t with me when the crime was being done.” PCR Tr. 47, 54. He elaborated he “kind of, sort of [remembered

the day of these crimes]. I mean, it's kind of vaguely in my head." PCR Tr. 47. He testified in 2009, he was working two different jobs. Williams also testified the day before these crimes occurred, Applicant called him, but he could not pick him up that day. PCR Tr. 48. Therefore, he told Applicant he would pick him up early the next morning before he went to work. PCR Tr. 48. He further testified he picked Applicant up from Michelle Wilcox's home early the next morning, approximately seven or eight o'clock in the morning—but not before, and dropped him off on Broad River Road, at his daughter's house. PCR Tr. 48, 50, 52-53, 54-55. Williams testified they stopped by a gas station on the way to Broad River Road, because Williams had to purchase some cigarettes. PCR Tr. 57. Williams speculated he picked Applicant up on a Sunday morning, but he wasn't sure. PCR Tr. 52. He stated he did, in fact, pick Applicant up on a weekend. PCR Tr. 52. When asked why he believed he picked Applicant up from Ms. Wilcox's home on March 22, 2009, Williams stated: "Well it's because of what you tell me. You just told me that that's what it was. So I'm going by what you say really." PCR Tr. 49. He explained: "Well, really I can't say that I honestly know that this was this day. I just know that when I went to pick him up it was shortly after that when they started chasing him and stuff like that and said he had robbed somebody. I really don't know when that robbery actually took place, or none of that." PCR Tr. 49. Ultimately, Williams could not be sure when exactly he picked up Applicant. PCR Tr. 51-52.

He testified he did not speak with Applicant again, but two or three days after picking him up, he called Applicant's phone. PCR Tr. 48. He elaborated someone from the Richland County Sheriff's Department answered when he called. PCR Tr. 48. He further elaborated at that time, he did not know that law enforcement was looking for Applicant. PCR Tr. 48. Williams testified law enforcement told him if he got in touch with Applicant before they did, to bring him down to the sheriff's department. PCR Tr. 48-49, 50.

Williams testified at that time, Applicant did not have a regular place in which he would stay. PCR Tr. 50-51. He testified, however, Applicant has always lived in South Carolina; and in 2009, he was not living on a farm. PCR Tr. 51. He further testified when Applicant was younger, they used to have farm animals. PCR Tr. 51.

Then, Applicant presented the testimony of Counsel. Counsel testified he has been practicing law since 2006, and he worked for the Public Defender's Office for three years immediately after passing the bar. PCR Tr. 95. He testified he was first appointed to represent

Applicant when he was still working for the Public Defender's Office, and he represented Applicant during his bond hearing. PCR Tr. 58. Counsel also testified he has represented numerous individuals who were charged with the same crimes as Applicant. PCR Tr. 96. He testified Applicant did not make any requests at the bond hearing regarding any investigation, and Applicant actually waived his bond. PCR Tr. 58. He elaborated he attempted to waive Applicant's presence, but the State refused. PCR Tr. 58. He further elaborated the State wanted to "make a very big production of it and blamed [Applicant] for the vandalism and quite a few other things, which turned out to be completely false, which was very beneficial for [Applicant's] first trial and even for the second one. PCR Tr. 58-59.

Thereafter, Counsel testified Applicant's family hired Byron E. Gipson, Esquire, to represent Applicant. PCR Tr. 58. He further testified he was only representing Applicant for a short period of time at that point, and he did not believe he had obtained all discovery at that point. PCR Tr. 58. Counsel also testified he became involved in Applicant's case again after the initial mistrial and the hung jury. PCR Tr. 59. He elaborated he was at the jail meeting with other clients when Applicant approached him and asked him if he would be interested in and willing to take his case again. PCR Tr. 59. He further elaborated at some point after that encounter, Applicant's family came to his office and formally retained him for the retrial. PCR Tr. 59-60. Counsel further testified he was retained approximately six to eight months prior to the trial. PCR Tr. 60.

Counsel testified this was a weak circumstantial case but also a very emotional case for the jury if they believed Applicant was the robber. PCR Tr. 111-12. He further testified it was an unusual case in that the victim did not identify anyone, despite the fact they were sitting next to each other in a car for a period of time. PCR Tr. 112. He elaborated there was nothing inside the victim's truck or her house which could be linked to Applicant, and the fingerprint found on the telephone box could have been from any period of time. PCR Tr. 112-13. He further elaborated he attacked the investigation by law enforcement in this case. PCR Tr. 112.

He also testified in preparing for the second trial, he reviewed a copy of the transcript of the first trial. PCR Tr. 60. He further testified he and Applicant reviewed issues with the transcript and with discovery in significant detail. PCR Tr. 60. Counsel testified he recalled reading in the transcript from the first trial the victim had mentioned the robber discussing chickens, pigs,

alimony, and child support, and he also remembered the victim testifying about the robber's particular dialect. PCR Tr. 90-91. He elaborated he did not question the victim about these things on cross-examination because the victim did not testify in the same way at the second trial. PCR Tr. 91. He elaborated he did not delve into such statements because he thought it might show to the jury the victim had very few details about the robber. PCR Tr. 91. Counsel further elaborated during his cross-examination of the victim, he attempted to bring out details about the robber's eyes, as Applicant had some unique features with respect to his eyes which the victim never discussed. PCR Tr. 113-14. He testified to his knowledge, Applicant did not have any pigs or chickens, and Applicant does not have a particular dialect. PCR Tr. 91. He also testified he had no knowledge of Applicant ever having alimony or child support payments. PCR Tr. 92. He testified highlighting such inconsistencies may have been used to show the robber was someone other than Applicant, as identification was a major issue. PCR Tr. 92. He testified, however, there was a major shift in his trial strategy a few days prior to the trial, specifically shifting to third party guilt based on receiving knowledge of the person who vandalized the victim's truck. PCR Tr. 92. He explained he wanted more time to investigate this issue, but was not permitted to do so. PCR Tr. 92-93.

Counsel also testified during the first trial the victim testified the robber did not like her Virginia Slim cigarette, and there was a good bit of the cigarette left. PCR Tr. 93-94. He elaborated the cigarette butt introduced at trial does not comport with the victim's testimony, because only the filter remained. PCR Tr. 94. He further testified he did not have a good reason for failing to highlight this discrepancy. PCR Tr. 94. He also testified he did not recall whether or not he argued that it did not make sense that Applicant would have smoked a cigarette while wearing a bandana to cover his face, but he intended to argue that point. PCR Tr. 94.

Counsel testified he had no particular reason for not requesting a mistrial when the victim testified at trial that the robber told her: "You know that man I had yesterday didn't have any money." PCR Tr. 61-62. He further testified he believed this comment was in reference to allegations Applicant had committed other robberies, which was why he would have objected to it. PCR Tr. 61-62. He elaborated he objected to the question, which was sustained, and he moved to strike the comment, after which the trial court gave a curative instruction. PCR Tr. 96. He elaborated at the time he did not feel he should move for a mistrial based on that comment. PCR

Tr. 96. Counsel also testified he was unsure if the curative instruction given by the trial court following this comment "was enough." PCR Tr. 96.

Counsel testified he objected when the solicitor asked the victim if the robber had told him anything specific about himself, which would motivate him to commit this robbery, based on a pretrial motion. PCR Tr. 62. He elaborated there was a pretrial motion dealing with the information that the robber had been out of prison for ten months. PCR Tr. 62-63, 101. Counsel explained he objected based on the State attempting to use this information in order to show Applicant's predisposition to commit these crimes, rather than as a form of identification, which they argued at trial. PCR Tr. 70-71, 101-02. The State, however, intended to admit this information as an aspect of identification, not to show motive. PCR Tr. 97. He further elaborated the trial court ruled this information would be admissible because it was being used for the purpose of identification, rather than Applicant's prior record. PCR Tr. 63. He explained following his objection to the initial question and a bench conference, the trial court instructed the State to follow the limiting instruction he had previously given. PCR Tr. 63, 102. He further explained he did, in fact, make a contemporaneous objection but did not reargue his entire pretrial motion. PCR Tr. 63.

Similarly, Counsel testified he did not object when the State called the SCDC employee to testify as to when Applicant was released from prison because he believed the issue had already been preserved at that point. PCR Tr. 71, 102-03. He elaborated he did not want to highlight the fact Applicant had been in prison previously by objecting because at that point the jury had already heard that fact. PCR Tr. 71. Counsel also testified the SCDC employee testified Applicant was released from prison July 1, 2008, which would have been approximately eight-and-a-half to nine months before the incident date. PCR Tr. 72, 98. He testified he did not believe this information was relevant to identification, and he also did not believe an objection would have made any difference with regards to preserving the record. PCR Tr. 72. He reiterated at that point of the trial, he was attempting to downplay the fact Applicant had been in prison. PCR Tr. 72-73. In addition, Counsel testified he did not recall if he considered arguing this "minor inconsistency" during his closing argument. PCR Tr. 73, 103. He further testified he was not sure he had counted the exact time Applicant had released from prison, but the solicitor's comment during closing

argument that Applicant would have been released from prison ten months prior was a misstatement of the evidence. PCR Tr. 79.

Counsel also testified he had no specific strategy based on bolstering when he did not object to the line of testimony, through Dr. Gray Amick, which elicited information that another DNA analyst concurred with Dr. Amick's results. PCR Tr. 64. Counsel elaborated DNA experts typically discuss the process of peer review during their qualifications, which is a requirement to being admitted as an expert in a scientific field. PCR Tr. 98. He further elaborated this line of testimony was simply detailing the analysis done on this particular DNA sample. PCR Tr. 98-99. He explained he was not concerned with this particular DNA sample. PCR Tr. 67. Counsel further explained the DNA match on the cigarette was not an issue because Applicant admitted he had a cigarette. PCR Tr. 65. Counsel elaborated Applicant testified in both trials that he was walking around the area in which these crimes occurred and approached the victim, asking for a cigarette. PCR Tr. 65. He further elaborated Applicant began smoking the cigarette and then dropped it. PCR Tr. 65. Counsel, therefore, testified his strategy was to essentially concede the DNA on the cigarette was Applicant's, but that did not necessarily prove Applicant committed the robbery. PCR Tr. 66, 99.

He elaborated his plan with respect to the DNA was to attack the way the State was utilizing it. PCR Tr. 64-65. He further elaborated his strategy was also to show that the DNA did not turn out the way in which the State was claiming it did, specifically highlighting the State refused to match other DNA found to someone else. PCR Tr. 65, 100. Counsel also testified he challenged the DNA for a number of items, in that there were no conclusive results or, in the alternative, there was no match for the DNA that was found. PCR Tr. 66, 99-100. Specifically, he testified he attempted to raise an inference that the DNA found in the victim's car was a match to Blankenbecklor. PCR Tr. 66-67, 100. He testified he believed he was able to poke holes in the DNA results quite extensively, both through cross-examination and closing argument. PCR Tr. 65, 113.

Counsel testified he objected when the State attempted to recall Dr. Amick, but he did not object immediately because he was unsure what the State was attempting to do. PCR Tr. 68. He elaborated he should have immediately asked for a mistrial and should have asked the trial court to hold the solicitors in contempt for prosecutorial misconduct. PCR Tr. 69. He further elaborated

based on the question the solicitor asked Dr. Amick, whether or not he could compare the DNA found to that of Blankenbecklor, she admitted that she had him investigate further during a nightly recess at trial and did not provide him with any documentation of that investigation, which was a clear violation of Rule 5, SCCrimRP, and *Brady*⁷. PCR Tr. 68-69, 101. Counsel testified, however, the jury ultimately did not hear the answer to the solicitor's question regarding a possible match, or lack thereof, to Blankenbecklor. PCR Tr. 69, 101. Counsel further testified the jury's inability to hear the answer to this question could have affected his strategy with respect to the DNA. PCR Tr. 69.

Counsel also testified he immediately objected when the solicitor attempted to ask Applicant about the meaning of his tattoos based on "Urban Dictionary," which was sustained. PCR Tr. 73, 104. He testified the absence of tattoos were somewhat relevant, and it surprised him when the solicitor began questioning Applicant as to the tattoos he had. PCR Tr. 73-74, 103-04. He elaborated any details as to the robber's physical appearance would have been relevant, and the victim had very few details about the robber's appearance. PCR Tr. 74.

Counsel testified it did not bother him when the solicitor asked Applicant whether or not he was aware it had rained after he allegedly stashed his drugs in the victim's telephone box. PCR Tr. 75. He elaborated the fact that it may have rained approximately three days prior to this robbery had no relevance to the trial, and he did not feel it was worthy of an objection at the time. PCR Tr. 75-76, 104. He further elaborated he was unsure what information the State was attempting to elicit by this line of questioning, and the information sought certainly was not elicited. PCR Tr. 76. He elaborated if the solicitor was attempting to suggest the fingerprints found on the telephone box had been washed off, there was no testimony elicited at trial that the fingerprints would have been washed off or if the telephone box was exposed to the elements. PCR Tr. 76. He further elaborated he did not recall arguing this point during his closing argument. He also testified a meteorological expert had not testified as to the weather conditions prior to the robbery. PCR Tr. 75.

Counsel similarly testified he did not object during the State's closing argument, specifically to comments made by the solicitor that the victim's report had been consistent, because he generally does not object during closing arguments unless there is something particularly

⁷ *Brady v. Maryland*, 373 U.S. 83 (1963).

egregious. PCR Tr. 77, 105. He elaborated this comment made by the solicitor was merely her interpretation of the testimony, even though it was slightly incorrect because there were, in fact, slight inconsistencies. PCR Tr. 77, 105-06. He further elaborated had the solicitor made up facts, he would have objected; but this was merely the State's interpretation. PCR Tr. 77, 106. For the same reasons, Counsel testified he did not object to the solicitor's comment during closing that law enforcement officers testified truthfully. PCR Tr. 78. He elaborated the State highlighted that the officer had thrown away his notes, thereby questioning his credibility herself. PCR Tr. 78.

Similarly, Counsel also testified he had the same reasons for not objecting to the solicitor's comment during closing argument regarding the chain of custody witnesses. PCR Tr. 78. He explained he almost never asks chain of custody witnesses questions during trials because they do not actually do anything. PCR Tr. 78. He further explained these witnesses merely sit in an office and receive sealed envelopes, having no idea what piece of evidence that envelope contains. PCR Tr. 78.

Counsel also testified the State's comment during closing that Applicant was a drug dealer had nothing to do with his guilt or innocence, but it was something he readily admitted at trial. PCR Tr. 79. Furthermore, he testified the State's comment during closing argument that Applicant was a convicted burglar was consistent with the facts presented at trial, as the two prior burglary convictions were an element of the offense of first-degree burglary. PCR Tr. 79-80. He further testified he did not see the benefit in objecting to such a comment. PCR Tr. 80. Counsel also testified he did not object to the State's reference to the terror attacks of 9/11, and he did not have a reason for failing to do so. PCR Tr. 80. He further testified this statement was made in order to invoke passion in the jury, and he should have objected. PCR Tr. 80-81. Counsel also testified had the solicitor continued with her statement "send [Applicant] a message," he would have objected; but the solicitor did not go any further than that, so he did not object. PCR Tr. 106.

Counsel testified he consented to allowing the trial court to go back into the jury room to answer a note received from the jury during deliberations, which was not unusual for the trial court to do. PCR Tr. 81, 107. He explained the jury had asked a very simple questions, which would take less than two seconds for the trial court to answer. PCR Tr. 81. He further explained had he insisted on the trial court answering in open court, it would have caused a substantial delay, as they would have had to brought Applicant back in the courtroom and he would have wanted Applicant's

family there as well. PCR Tr. 82. He elaborated no one was present for that conversation, except the trial court and the jury, and he did not believe the trial court said anything inappropriate. PCR Tr. 82.

Counsel also testified he made motions regarding content from a cellphone, in that the content from the phone had no relevance to the case and the text messages were the result of an illegal search. PCR Tr. 82, 107-08. He testified he objected on the basis that the text messages were hearsay and that they could not be authenticated, but they were entered into evidence. PCR Tr. 84. He further testified, however, the trial court denied his pretrial motions with respect to the cellphone and determined the search was valid. PCR Tr. 108. He elaborated the State attempted to use these text messages found on this cellphone, which was found at Applicant's girlfriend's home, to elicit evidence of flight. PCR Tr. 83. He testified Applicant's girlfriend did not testify at trial and, similarly, did not testify she had given law enforcement consent to search that phone. PCR Tr. 84. He testified he intended to preserve his objection to the text messages based on an illegal search; and if he had failed to do so, that was error. PCR Tr. 84-85. He further testified no one had directly testified at trial that Applicant had used that phone, but based on where the phone was found, it was insinuated that Applicant had used the phone. PCR Tr. 84. Counsel testified he objected to the text messages based on Rule 403, SCRE, because there was offensive language and discussion about some drug deals in the texts, which was not relevant. PCR Tr. 85. He elaborated almost everything Applicant said would have objectionable under Rule 403 as overly prejudicial with no probative value. PCR Tr. 85. He further testified the only relevant text was one from a woman informing Applicant law enforcement was looking for him. PCR Tr. 85. He also testified he was not sure if he ever asked these texts to be entered in a redacted format, but he probably should have. PCR Tr. 86-87. He elaborated he had no reason for failing to request a redacted format, but he was unsure if he saw those text messages prior to trial. PCR Tr. 86.

Counsel also testified he had a copy of the video from the gas station. PCR Tr. 87. He further testified he did not recall if Applicant had ever asked him to obtain a different video from the gas station. PCR Tr. 87. Similarly, Counsel did not recall whether or not Applicant asked him to take photographs of the crime scene, but he did not visit the crime scene in preparation for trial. PCR Tr. 89, 110. Counsel also testified he did not recall Applicant asking him to pull phone records. PCR Tr. 89.

He testified Applicant asked him to interview both Ms. Wilcox and his father, in preparation for the second trial. PCR Tr. 88. He elaborated he spoke with Ms. Wilcox one or two times, but she did not have any particularly useful information. PCR Tr. 88. He also testified he met with Applicant's father at least one or two times in order to establish an alibi for Applicant, but the information he provided did not provide a clear alibi. PCR Tr. 108-09. He further elaborated he did not receive any specific information which would have enabled him to assert an alibi defense. PCR Tr. 89. He also testified raising a new defense based on alibi at the second trial would have been difficult due to the testimony at the first trial. PCR Tr. 89, 109-10.

Counsel testified he did not recall requesting an alibi charge during the charge conference in chambers. PCR Tr. 94. He also testified he did not request anything specific with regards to criminal intent, other than the general charge. PCR Tr. 95. He elaborated the defense was Applicant did not commit these crimes and the State had the wrong person, "and if actually believed, I don't think anyone would believe that the acts were not with a criminal intent." PCR Tr. 95.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional

judgment. *Butler*, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to properly object and/or request a mistrial to preserve the record for appeal review

Applicant alleges Counsel was ineffective for failing to properly object and move for a mistrial in order to preserve the record for appellate review. Applicant contends Counsel should have objected, or in the alternative moved for a mistrial, at various points during the trial, which this Court addresses in turn.

First, Applicant alleges Counsel was ineffective for failing to move for a mistrial when the victim testified at trial: "[The robber] asked me how much money I had and I – I made up a figure of \$500, and he proceeded to say something to the effect that, 'You know that man I had yesterday.'" Trial Tr. 163. This Court finds Applicant has failed to establish any deficiency on the part of Counsel. Following the victim's statement, Counsel immediately objected to this line of testimony, which the trial court sustained. Trial Tr. 163. Thereafter, Counsel moved to strike the statement, at which time the trial court gave a curative instruction to the jury, instructing them to disregard the victim's comment. Trial Tr. 163. This Court finds Counsel was not defective in regards to this allegation, as he timely objected and thereafter, the trial court sustained the objection and gave a curative instruction.

Similarly, this court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. "Generally, a curative instruction is deemed to have cured any alleged

error.” *State v. White*, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) (quoting *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005)); *see also* 75B Am.Jur.2d Trial §, 1284 (1992) (“By striking the evidence and instructing the jury to ignore it, the court may often cure its error in admitting the evidence, or render such error harmless, even in criminal cases.”). “A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission.” *Walker*, 366 S.C. at 658, 623 S.E.2d at 130; *see also State v. Kelsey*, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (instruction to disregard inadmissible evidence is usually viewed as having corrected the error in its admission). If the trial judge sustains a timely objection to evidence and gives the jury a curative instruction that it be disregarded, the error is deemed to have been cured by the instruction. *State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 911-12 (1996). This Court, therefore, finds Counsel’s decision not to move for a mistrial was reasonable based on the proper curative instruction given by the trial court, which cured any possible error. Therefore, this allegation is denied and dismissed with prejudice.

Next, Applicant contends Counsel was ineffective for failing to object to leading questions and for failing to appropriately renew his pre-trial objection. *See* Trial Tr. 170. In particular, Applicant alleges Counsel was ineffective for failing to properly renew his pre-trial objection when the State elicited information through the victim that the robber indicated he had been released from prison ten months prior to these crimes. *See* Trial Tr. 170.

With respect to Applicant’s allegation Counsel was ineffective for failing to object to leading, “leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony.” Rule 611(c), SCRE. However, Applicant has wholly failed to establish any prejudice which would warrant a reversal. Indeed, it is extremely unlikely mere leading questions could garner the requisite prejudice to warrant a reversal here. Had Counsel objected to this line of questioning, the State simply would have rephrased its questions and still elicited the same testimony. Accordingly, this allegation must be denied and dismissed with prejudice.

With respect to Applicant’s allegation Counsel was ineffective for failing to appropriately renew his pretrial objection, this Court finds Applicant has failed to establish any deficiency on the part of Counsel. When the State asked the victim whether the robber had told her anything specific about himself, Counsel immediately objected based on his pre-trial motion. Trial Tr. 170.

In that pre-trial motion, Counsel moved to exclude any references to the fact Applicant had recently been released from prison based on Rules 403 and 404(b), SCRE, and under *Lyle*⁸. Trial Tr. 44. Counsel thoroughly argued this motion, particularly opposing the State's contention this was necessary as an identifying factor, as hundreds of people are released from prison each month. See Trial Tr. 44-46. Following arguments by both parties, the trial court ruled the evidence would be admissible, limited to its purpose as an identification factor. Trial Tr. 45-46; see also June 27-28, 2011 Tr. 43-44. Moreover, following Counsel's objection at trial, a bench conference was had regarding the pre-trial motion. Trial Tr. 170. At the evidentiary hearing, Counsel testified the trial court instructed the State at that bench conference to follow the limiting instruction he had previously given. Because Counsel properly renewed his objection to this line of testimony, this Court finds Applicant has failed to establish Counsel was deficient. Based on the foregoing, this allegation must be denied and dismissed with prejudice.

Next, Applicant contends Counsel was ineffective for failing to object to bolstering and hearsay during direct examination of the DNA expert, Dr. Gray Amick. Specifically, Applicant contends Counsel was ineffective for failing to object when the State elicited testimony from Dr. Amick that another DNA analyst independently reviewed his analyses and conclusions and, ultimately, agreed with his results. Trial Tr. 389. "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Strickland*, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (quoting *Massaro v. United States*, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). "Courts must be

⁸ *State v. Lyle*, 125 S.C. 406, 118 S.E.2d 803 (1923).

wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing *Goodson v. United States*, 564 F.2d 1071 (4th Cir. 1977)).

Here, Counsel testified his strategy regarding the DNA found on the cigarette butt was to concede the DNA was, in fact, Applicant's, but there was a reason for his DNA being found at the drop-off location. Indeed, Applicant admitted during his testimony at trial he had a cigarette, which he obtained from the victim, and dropped it in the driveway of the drop-off location. Accordingly, this Court finds Counsel employed a reasonable strategy with respect to this DNA sample, and, therefore, Applicant has wholly failed to establish any deficiency on the part of Counsel. Similarly, Applicant has failed to establish any resulting prejudice. Applicant conceded he did, in fact, have a cigarette and conceded the DNA found on the cigarette butt was his. Based on this foregoing, it is unlikely the result of the proceeding would have been different had Counsel objected to this line of testimony by the DNA expert. Accordingly, this allegation must be denied and dismissed with prejudice.

Applicant further contends Counsel was ineffective for failing to immediately object when the State re-called Dr. Gray Amick as a witness. Rule 611(d) provides: "A witness may be re-examined as to the same matters to which he testified only in the discretion of the court . . . After the examination of the witness has been concluded by all parties to the action, that witness may be recalled only in the discretion of the court." Rule 611(d), SCRE. Here, the State re-called Dr. Amick during the presentation of its case. When re-called the State questioned Dr. Amick regarding specific DNA swabs, which Counsel had questioned him about during cross-examination. Trial Tr. 558. After Dr. Amick was asked whether he could compare these DNA swabs to two other individuals, after a late request to test the DNA by the State, Counsel immediately objected. Trial Tr. 558. The trial court sent the jury out of the courtroom, and Counsel indicated he objected to this line of testimony under both *Brady* and Rule 5, as well as Rule 611(d). Trial Tr. 558. Although Counsel's initial objection was under *Brady* and Rule 5, Counsel indicated at the evidentiary hearing he was unsure exactly what information the State was attempting to elicit when it recalled Dr. Amick, which explained his delayed objection under Rule

611(d). Based on the foregoing, this Court finds Counsel's actions were reasonable under the circumstances, and Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Following Counsel's objection to the State recalling Dr. Amick, the trial court sustained his objection, and Dr. Amick was unable to testify any further. Moreover, Dr. Amick was only able to testify as to matters Counsel raised during cross-examination, specifically that certain DNA swabs were too weak to interpret and that Counsel asked about specific alleles in those samples. Trial Tr. 558. Indeed, Dr. Amick was unable to testify any further due to Counsel's immediate objection following the State's question as to whether or not Dr. Amick had compared those DNA swabs to any other individuals. Trial Tr. 558. As Dr. Amick merely reiterated points Counsel raised during his initial cross-examination of Dr. Amick, it is unlikely the result of the proceeding would have been different. Therefore, this Court finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. Accordingly, this allegation must be denied and dismissed.

Next, Applicant contends Counsel was ineffective for failing to renew his pretrial motion regarding evidence Applicant had been released from prison ten months prior to these crimes. Additionally, Applicant alleges Counsel was ineffective for failing to object when the evidence presented at trial indicated Applicant had been released from prison eight months prior. Specifically, Applicant contends Counsel should have objected when the State called Michael Stobbe, an SCDC employee, to testify regarding Applicant's release date from prison. See Trial Tr. 569-70. "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Strickland*, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. *Yarborough*, 540 U.S. at 8 (quoting *Massaro*, 538 U.S. 500). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith*, 386 S.C. at 567, 689 S.E.2d at 632 (citing *Caprood*, 338 S.C. at 110, 525 S.E.2d at 517). See also *Stokes*, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); *Ingle*, 348 S.C. at 470, 560 S.E.2d at 402 (holding

counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” *Whitehead*, 308 S.C. 119, 417 S.E.2d 529 (citing *Goodson*, 564 F.2d 1071). Here, Counsel testified he did not want to highlight the fact Applicant had, in fact, been in prison shortly prior to the time in which these crimes were committed. He elaborated at this point in the trial, the jury had already heard testimony the robber indicated he had been released from prison shortly before committing these crimes. This Court finds Counsel, therefore, employed a valid strategic decision in choosing not to object and, therefore, finds Counsel was not deficient in this regard.

This Court further finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. The victim testified the robber indicated he had been out of prison for ten months before he committed these crimes, whereas Mr. Stobbe indicated Applicant had been released July 1, 2008—approximately eight-and-a-half to nine months prior to the incident date. *Compare* Trial Tr. 170 *and* Trial Tr. 570. Because the jury was, indeed, presented with this inconsistency, there is no indication the result would have been different had Counsel objected to this line of testimony. Accordingly, this allegation must be denied and dismissed.

Applicant further alleges Counsel was ineffective for failing to object when the State questioned Applicant about his tattoo. *See* Trial Tr. 652. Specifically, Applicant contends Counsel should have objected to this line of testimony in that it was overly prejudicial and had no probative value. Furthermore, Applicant contends Counsel should have moved to strike this line of testimony and should have moved for a mistrial. “Evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” Rule 403, SCRE. Evidence is unfairly prejudicial if it suggests a decision on an improper basis. *State v. Huckabee*, 419 S.C. 414, 423, 798 S.E.2d 584, 589 (Ct. App. 2017) (quoting *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). When weighing the prejudicial effect of such evidence against the probative value, the entire record must be considered and great deference must be given to the trial court. *Id.* Counsel testified when the State began eliciting testimony about Applicant’s tattoo, he was unsure exactly for what purpose the State intended to introduce this testimony, as the victim had not testified to the robber having any tattoos. He did, however, testify he immediately objected when the State attempted to elicit the meaning of this tattoo based on “Urban Dictionary.” Because

Counsel did, in fact, object when the purpose of this line of questioning became apparent, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice. The victim never testified that the robber had any tattoos. In fact, the victim's description of the robber revealed very little details about the robber, except for a pock mark on the left side of his face. Counsel also testified the absence of tattoos, rather, were relevant. Based on the foregoing, Applicant has failed to establish any prejudice, and this allegation must be denied and dismissed.

Next, Applicant alleges Counsel was ineffective for failing to object when the State offered testimony about the weather in the days leading up to the incident date when there was no evidence offered on this topic. In particular, Applicant contends Counsel should have objected when the State asked Applicant whether or not he was aware it had rained five of the eight days leading up to this incident date. Trial Tr. 653-54. Trial counsel must be given leeway to make reasonable strategic decisions. Indeed, "no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 689. Furthermore, "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 693. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992).

Here, Counsel testified the fact it may have rained approximately three days prior to this robbery had no relevance to the trial, and he did not feel it was worthy of an objection at the time. He further elaborated he was unsure what information the State was attempting to elicit by this line of questioning, and the information sought certainly was not elicited. Based on the Counsel's strategic decision not to object to this line of testimony, this Court finds Applicant has failed to establish any deficiency on the part of Counsel. Furthermore, because the State was unable to elicit any damaging information to Applicant from this line of testimony, Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. This allegation must be denied and dismissed with prejudice.

Applicant's next allegations assert Counsel was ineffective for failing to object to varying alleged improper comments made by the solicitor during closing argument. Specifically, Applicant contends Counsel was ineffective for failing to object when the solicitor "improperly vouched for the victim and the witness." See Trial Tr. 668, 670, 672. Applicant further contends Counsel was ineffective for failing to object when the solicitor misstated the facts in evidence, specifically when the solicitor stated Applicant had been released from prison ten months prior to the commission of these crimes. Trial Tr. 669. Moreover, Applicant alleges Counsel was ineffective for failing to object when the solicitor asked the jury to convict Applicant on an "improper basis," namely asking the jury to "send a message" to Applicant. Trial Tr. 677. Finally, Applicant contends Counsel was ineffective for failing to object when the solicitor made an "improperly prejudicial appeal to the jury," in that "in the wake of the anniversary of one of the largest crimes committed on U.S. soil, we should be thanking law enforcement for what they do to protect us." Trial Tr. 692.

With respect to closing arguments generally, Closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions."

State v. Mouzon, 321 S.C. 27, 31-32, 467 S.E.2d 122, 124-25 (Ct. App. 1995) (quoting *Herring v. New York*, 422 U.S. 853, 862 (1975)). Moreover, "a solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." *Id.* at 609-10, 602 S.E.2d at 744. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.*

Moreover, a solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences. *Matthews v. State*, 350 S.C. 272, 276, 565

S.E.2d 766, 768 (2002) (citing *State v. Caldwell*, 300 S.C. 494, 388 S.E.2d 816 (1990)). A solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record. *State v. Kelly*, 343 S.C. 350, 540 S.E.2d 851 (2001). Vouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known by the prosecution which supports conviction and is impermissible. *Id.* Here, Counsel testified at the evidentiary hearing he does not typically object during closing arguments, and he did not feel the solicitor's comments about the witnesses' consistency or truthfulness rose to the level of misconduct, which would warrant an objection. Based on the foregoing, this Court finds Counsel was not deficient. This Court further finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. At trial, Counsel consistently attacked the veracity of the victim's statements to law enforcement and also attacked the processes by which law enforcement investigated this case throughout trial. Therefore, this Court finds the solicitor's comments regarding the credibility of the witnesses were based on the record and its reasonable inferences. Accordingly, this allegation must be denied and dismissed with prejudice.

With respect to the solicitor's statement Applicant had been released from prison ten months prior, this Court finds it is inconceivable this minor inconsistency "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Humphries*, 351 S.C. at 373, 570 S.E.2d at 166. The victim testified the robber told her he had been out of prison ten months, whereas the SCDC employee testified Applicant had been released approximately eight-and-a-half months prior. Although the State introduced this is an identifying factor, this was not the only identifying factor of the robber introduced at trial. In particular, the victim testified the robber had a pock mark on the left side of his face, which Applicant has. Furthermore, Applicant's fingerprint was found on the telephone box outside of the victim's home, and his DNA was found on a cigarette butt at the drop-off location. Based on the foregoing, this Court finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. This allegation must be denied and dismissed with prejudice.

Applicant further challenges the following comment in the State's closing argument: "Ladies and gentlemen, I ask you to send a message to [Applicant]. Please tell [Applicant] that the State of South Carolina, the citizens of Richland County will not tolerate drug dealers,

convicted burglars from coming into the home of innocent people.” The Supreme Court of South Carolina has previously held such “send a message” language does “not rise to the level of arousing juror passion or prejudice.” *State v. Cain*, 297 S.C. 497, 509, 377 S.E.2d 556, 563 (1988). Accordingly, this Court finds the solicitor’s comment was not improper, and Counsel cannot have been deficient for failing to object to such a comment. Accordingly, this allegation must be denied and dismissed.

Applicant contends Counsel was ineffective for failing to object when the solicitor made the following comments: “In the wake of the anniversary of one of the largest crimes committed on U.S. soil, we should be thanking law enforcement for what they do to protect us. Heroes do not always wear capes. They were badges, too.” Trial Tr. 692. Counsel’s strategy at trial was to attack the credibility of law enforcement and question the manner in which they investigated this case. As a result, the solicitor was fully permitted to comment on the credibility of law enforcement. *See State v. Ellenberg*, 367 S.C. 66, 69, 625 S.E.2d 224, 226 (2006) (“Once the defendant opens the door, the solicitor’s invited response is appropriate so long as it does not unfairly prejudice the defendant.”); *see also State v. Patterson*, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997) (finding solicitor’s closing argument comments were an invited response and did not render the trial fundamentally unfair); *State v. Meggett*, 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012) (finding solicitor’s statement that there was no evidence the victim was a prostitute was a comment on the evidence, or lack thereof, presented during trial, and did not improperly shift the burden of proof or suggest that the defendant’s guilt could be inferred from his failure to testify or present a defense). Based on the foregoing, this Court finds Applicant has failed to establish Counsel was deficient.

Even assuming Counsel should have objected to these comments, Applicant has failed to establish any resulting prejudice from this alleged deficiency. At multiple points throughout its final charge to the jury, the trial court instructed the jury to only consider the evidence and testimony presented throughout trial. In particular, the trial court instructed the jury: “You are to decide this case according to the testimony that you’ve heard from the lips of the sworn witnesses along with other evidence introduced.” Trial Tr. 706. The jury was clearly instructed not to take into account any statements made by the State or by Counsel during their arguments, therefore, it

is unlikely the result of the proceeding would have been different had Counsel objected. Accordingly, this allegation must be denied and dismissed with prejudice.

Finally, Applicant contends Counsel was ineffective for failing to object when the trial court talked to the jurors in the jury room without either party present. This Court finds Applicant has failed to establish Counsel was ineffective. Counsel testified he consented to allowing the trial court to answer the jury's very brief question, and neither party was present in the jury room when the trial court spoke with the jury. Furthermore, he testified had he objected, this would have caused a significant delay. Accordingly, this Court finds Counsel's actions were reasonable under the circumstances. Moreover, there is no indication the trial court did anything improper in speaking with the jury privately, so Applicant has failed to establish any prejudice. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object to the admissibility of evidence obtained from the cellphone

Applicant alleges Counsel was ineffective for failing to properly object to the admissibility of evidence obtained from the cellphone, which was found at Applicant's girlfriend's home and was admitted into evidence at trial. Specifically, Applicant contends Counsel should have objected to the admissibility of such evidence based on an unconstitutional search and seizure under the Fourth Amendment. Applicant further contends Counsel should have objected to such testimony on the grounds it was overly prejudicial with no probative value.

This Court finds Applicant has failed to establish any deficiency on the part of Counsel. During pre-trial motions, Counsel moved to suppress the text messages law enforcement obtained from Applicant's cellphone on the basis the cellphone and messages were obtained without a search warrant. Trial Tr. 86, 88-89. He further argued when law enforcement did search Dawn Shea's home, where they found Applicant's cellphone, they were looking for any relevant evidence to this robbery, and the cellphone did not constitute such evidence. Trial Tr. 88-89. Counsel further argued the text messages should be excluded under *Crawford*⁹ and the rule against hearsay¹⁰, elaborating another individual was sending these messages to this phone. Trial Tr. 92.

⁹ *Crawford v. Washington*, 541 U.S. 36 (2004) (holding out-of-court statements by witnesses that are testimonial in nature are barred under the Confrontation Clause, unless the witness is unavailable and the defendant had a prior opportunity to cross-examine that witness).

¹⁰ Rule 802, SCRE.

Counsel also argued the text messages should be excluded under Rule 403, SCRE. Trial Tr. 92. Specifically, Counsel argued: "I would argue that some of the language in there – they're going to attempt to use that as some sort of identification in terms of how he says black power. Part of the testimony that the victim in this case brought up was that the suspect made statements to the effect that all white people are bad and it's all their fault." Trial Tr. 92. Following argument, the trial court determined the cellphone was abandoned property and, therefore, would be admissible. When the State offered the cellphone into evidence during trial, Counsel again renewed his pre-trial motion to suppress the phone, which was again overruled. Trial Tr. 441-42. Similarly, when the State later attempted to introduce the text messages into evidence, Counsel again objected to the content of the text messages. Trial Tr. 496. Counsel specifically argued the State could not pinpoint exactly when the cellphone was abandoned, could not prove who sent or received the text messages, and objected under Rule 403, SCRE. Trial Tr. 497. The trial court again overruled Counsel's objection, ruling the messages were admissible to show evidence of flight. Trial Tr. 497-98. Based on the foregoing, this Court finds Counsel thoroughly objected to both the cellphone and the text messages being introduced on a number of grounds, and, therefore, Counsel was not deficient.

Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. The Fourth Amendment guarantees us the right to be free from unreasonable searches and seizures. U.S. CONST. amend. IV; *see also* S.C. CONST. art. I, § 10. Generally speaking, warrantless searches are considered to be unreasonable *per se* unless they fall under an exception to the warrant requirement, and any evidence seized as the result of an unreasonable search must be excluded from trial. *State v. Weaver*, 374 S.C. 313, 319, 649 S.E.2d 479, 482 (2007); *see State v. Peters*, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978) (instructing searches conducted without a warrant are *per se* unreasonable unless an exception to the warrant requirement is applicable). However, "warrantless searches are allowed when the circumstances make it reasonable . . . to dispense with the warrant requirement." *Kentucky v. King*, 563 U.S. 452, 462 (2011). Regarding the situations where a warrantless search is considered to be constitutionally reasonable, South Carolina courts have recognized several exceptions to the warrant requirement, including: (1) the search incident to lawful arrest exception; (2) the hot pursuit exception; (3) the stop and frisk exception; (4) the automobile exception; (5) the plain view

exception; (6) the consent exception; (7) the abandonment exception; and (8) the exigent circumstances exception. *State v. Brown*, 401 S.C. 82, 89, 736 S.E.2d 263, 266 (2012); see *State v. Herring*, 387 S.C. 201, 209, 692 S.E.2d 490, 494 (2009) (“A fairly perceived need to act on the spot may justify entry and search under the exigent circumstances exception to the warrant requirement.”).

Under the abandonment exception, “abandoned property has no exception from either the search or seizure provisions of the Fourth Amendment.” *State v. Dupree*, 319 S.C. 454, 457, 462 S.E.2d 279, 281 (1995) (citing *California v. Greenwood*, 486 U.S. 35, 40-41 (1988)). When determining whether property has been abandoned, “the question is whether the defendant has, in discarding the property, relinquished his reasonable expectation of privacy.” *Id.* (quoting *City of St. Paul v. Vaughn*, 237 N.W.2d 365, 371 (Minn. 1975)). “When a person voluntarily abandons his privacy interest in property, his subjective expectation of privacy becomes unreasonable.” *United States v. Stevenson*, 396 F.3d 538, 546 (4th Cir. 2005). When the property is a cellphone, the standard abandonment analysis applies. *State v. Lamar Sequan Brown*, Op. No. 27841 (S.C. Sup. Ct. filed June 13, 2018).

In determining the petitioner had abandoned his cellphone following a burglary, the South Carolina Supreme Court noted the petitioner’s decision not to attempt to recover the phone constituted his abandonment of such. *Id.* Specifically, the Supreme Court noted the phone remained in law enforcement’s possession for six days, during which time there was no evidence the petitioner attempted to call the phone, text the phone, or contact his service provider to determine its whereabouts. *Id.* Under the circumstances, it was reasonable for law enforcement to assume the cellphone was abandoned. *Id.*

Here, Applicant left his cellphone at Ms. Shea’s home, where he would occasionally stay. After obtaining consent to search her residence, on March 25, 2009, law enforcement found a cellphone in the residence. Law enforcement “maintained possession of the phone for a while,” during which time Applicant made no effort to regain possession of it. Trial Tr. 494. In fact, Applicant’s phone received numerous calls and texts after Applicant left it at Ms. Shea’s residence, but there is no evidence Applicant made or initiated any of those calls or texts. See *Id.* n.2. Based on the foregoing, it is reasonable for a law enforcement officer to assume the cellphone was abandoned. Consequently, law enforcement did not need a search warrant in order to obtain

information from the phone. Accordingly, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to investigate and present possible evidence and witnesses

Applicant alleges Counsel was ineffective for failing to investigate and present possible evidence and witnesses. Specifically, Applicant alleges Counsel was ineffective for failing to obtain a video of the gas station, at which the vandalism of the victim's truck occurred, and for failing to introduce photographs of the crime scene. Furthermore, Applicant contends Counsel should have introduced photographs of a path behind the victim's house, as well as a club located near the drop-off location. In addition, Applicant alleges Counsel should have obtained his cellphone records, which purportedly would have showed the phone calls Applicant made during the time these crimes were committed. Applicant also contends Counsel was ineffective for failing to fully investigate Applicant's purported alibi, namely Counsel failed to investigate Applicant's alibi through his father and Michelle Wilcox.

With respect to Counsel's investigation generally, "although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client." *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). Moreover, "failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result." *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836, 839 (2018) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003).

As an initial matter, Applicant has wholly failed to provide this Court with the specific phone records, which Applicant alleges would have been beneficial to his case had Counsel obtained them. Without such evidence, Applicant merely speculates as to what these records would have shown. Such speculation does not rise to the level of proof required in order for

Applicant to meet his burden. Accordingly, this allegation must be denied and dismissed with prejudice.

With respect to the allegation Counsel was ineffective for failing to investigate a video from the vandalism crime scene, Applicant has failed to provide this Court with the video which he wished for Counsel to obtain during his investigation. Without the precise video Applicant hoped had been obtained, this Court is left to merely speculate as to what this video would have shown. Additionally, Counsel testified he, in fact, obtained a video from the Citgo gas station, which showed the vandalism of the victim's truck. Based on the foregoing, this Court finds Counsel's investigation into the gas station video was reasonable under the circumstances. This Court further finds that this allegation must be denied and dismissed with prejudice.

Regarding Applicant's allegation Counsel should have introduced photographs of the victim's home and the surrounding area of the drop-off location, this Court finds Applicant has failed to establish Counsel was ineffective. The photographs Applicant submitted into evidence at the evidentiary hearing depicted an area behind the victim's house, which Applicant described as a path by which he frequently travelled. Applicant argues these particular photographs would have corroborated his story at trial. In addition, the photographs introduced depicted a nightclub, which was located in the surrounding area of the drop-off location. Applicant's contention is Counsel should have used the pictures of the nightclub in order to place blame on Blankenbecklor.

With respect to photographs of the victim's home Applicant alleges Counsel should have introduced at trial, this Court finds Applicant has failed to establish any deficiency on the part of Counsel or any resulting prejudice. Numerous photographs of the victim's home were introduced into evidence at trial, including a picture of the back of the victim's home. *See* Trial Tr. 177-82. As Counsel is not required to uncover every scrap of evidence that could be potentially beneficial and numerous photographs of the crime scene were introduced into evidence, this Court find Counsel's actions were reasonable under the circumstances. Moreover, Applicant was able to testify at length regarding this path behind the victim's home, which he would frequent. *See* Trial Tr. 610-11, 616-17. Indeed, Applicant at his own trial criticized law enforcement for failing to take pictures of this path. Trial Tr. 617. Given the jury was presented with this theory Applicant used the path behind the victim's home in order to stash his drugs and the jury was able to pass on his credibility then, it is unlikely the result of the proceeding would have been different had

Counsel presented these photographs at trial. Accordingly, this allegation must be denied and dismissed with prejudice.

With respect to Applicant's allegation Counsel was ineffective for failing to investigate the nightclub located in the surrounding area of the drop-off location in order to place blame on Blankenbecklor, the admissibility of evidence of third-party guilt is governed by *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941). In *Gregory*, the South Carolina Supreme Court held evidence of third-party guilt that only tends to raise a conjectural inference that the third party, rather than the defendant, committed the crime should be excluded. *Id.* at 105, 16 S.E.2d at 534. Furthermore, to be admissible, evidence of third-party guilt must be "limited to such facts as are inconsistent with [the defendant's] own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence." *State v. Cope*, 405 S.C. 317, 341, 748 S.E.2d 194, 206 (2013) *cert. denied*, 135 S. Ct. 400, 190 L. Ed. 2d 289 (U.S.S.C. 2014) (citing *Gregory* at 104, 16 S.E.2d at 534) (internal quotations omitted). Pursuant to this standard, this Court finds the evidence of the nightclub, which Blankenbecklor may or may not have attended, are not facts raising an inference or presumption of innocence because they are not facts or circumstances that tends to clearly point out this individual as the guilty party. Evidence of the individual's guilt is not inconsistent with Applicant's guilt, nor does it raise a "reasonable inference"—and certainly not a presumption—of Applicant's innocence. *See Id.* Therefore, this Court finds that Counsel did not perform deficiently. Furthermore, Applicant cannot establish any prejudice, as the trial court was hesitant to admit evidence of third party guilt at other points in the trial. *See* Trial Tr. 186-87. This Court finds that this allegation must be denied and dismissed with prejudice.

With respect to Applicant's allegation Counsel was ineffective for failing to investigate an alibi defense, through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law s 136)). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." *Id.* Furthermore, the alibi must account for the entire time during which these crimes were committed. *Id.*

As an initial matter, Applicant wholly failed to present the testimony of Michelle Wilcox, whom he alleges can provide alibi information. Furthermore, Counsel testified he spoke with Ms.

Wilcox in preparation for trial, but she did not provide him with any information that would have been helpful at trial. Applicant's mere speculation as to what Ms. Wilcox would have said does not constitute the level of proof required to establish his burden. Additionally, as Counsel did indeed interview Ms. Wilcox in preparation for trial, this Court finds Counsel's conduct was reasonable under the circumstances, and Applicant was not prejudiced by this alleged deficiency. Accordingly, this allegation must be denied and dismissed with prejudice.

Moreover, Williams testified Counsel did not ask him to testify at Applicant's trial, and he did not recall Counsel ever asking him if he had any alibi information. He believed, however, he told Counsel about Applicant's alleged alibi once, and, consequently, Counsel was aware of the fact he picked Applicant up the morning of these crimes. He testified he picked Applicant up from Michelle Wilcox's home early the one weekend morning, possibly Sunday morning, at approximately seven or eight o'clock in the morning—but not before, and dropped him off on Broad River Road, at his daughter's house. Williams also testified he could not be completely sure whether or not he picked Applicant up on Sunday and also was not sure if Applicant was, in fact, with him during the commission of these crimes.

Alternatively, Counsel testified he did speak with Williams regarding Applicant's whereabouts on the day of these crimes, but the information provided could not establish a complete alibi. Indeed, the information provided a very weak, indeterminate alibi. Consequently, Counsel testified he was unable to present an alibi defense at trial.

In light of Williams' inability to recall specifically whether or not Applicant was with him during the commission of these crimes, coupled with Applicant's testimony both at trial and the evidentiary hearing placing him at the crime scene during the time in which these crimes were committed, this Court finds Williams' and Applicant's testimony not credible, whereas Counsel's testimony is very credible. Counsel did, indeed, investigate Applicant's alleged alibi; and based on the information he obtained from these alleged witnesses, Counsel made a strategic decision not to present an alibi defense at trial. In fact, Counsel testified it would have been difficult to present such a defense, as there was no information through which he could establish a clear information. Accordingly, this Court finds Counsel's investigation into the purported alibi was reasonable under the circumstances, and Applicant has wholly failed to establish any deficiency on the part of Counsel.

Similarly, Applicant has failed to establish any resulting prejudice from this alleged deficiency. As Applicant's whereabouts could not be definitively accounted for, there is no indication the result of the proceeding would have been different if these purported alibi witnesses were presented at trial. In particular, Applicant's alleged alibi places him at or near the crime scenes during which these crimes were committed. Based on the foregoing, it is unlikely the result of the proceeding would have been any different. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to effectively cross-examine the victim with her prior testimony

Applicant alleges Counsel was ineffective for failing to effectively cross-examine the victim with her prior testimony. Specifically, Applicant contends Counsel was ineffective for failing to highlight inconsistencies in the victim's various statements and her testimony at the second trial. Trial counsel must be given leeway to make reasonable strategic decisions. Indeed, "no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 689. Furthermore, "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 693. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992).

Here, Counsel testified he did not delve into such prior descriptions of the robber the victim had given because he thought not highlighting those inconsistencies might show to the jury the victim had very few details about the robber. He further testified during his cross-examination of the victim, he attempted to bring out details about the robber's eyes, as Applicant had some unique features with respect to his eyes which the victim never discussed. Because Counsel wanted to highlight the victim, in fact, knew very little identifying information about the robber, this Court finds Counsel employed a valid trial strategy in not questioning the victim about prior statements, which gave more details about the robber. Accordingly, this Court finds Counsel was not deficient. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to effectively argue the facts during closing argument

Applicant alleges Counsel was ineffective for failing to effectively argue the facts during his closing argument. In particular, Applicant contends Counsel should have argued the victim's inconsistencies in her statements, as well as the inability of the robber to smoke a cigarette while his face was covered with a bandana, during his closing argument. This Court finds Counsel effectively argued the facts *presented at trial* during his closing argument. In particular, Counsel argued the victim was unable to testify the robber was Applicant. Trial Tr. 688. Furthermore, Counsel argued the victim was unable to identify Applicant's voice as that of the robber. Trial Tr. 688. In addition, Counsel cast blame on Blankenbecklor and Tucker throughout his closing, which was consistent with his theory of the case—that another individual committed these crimes. *See generally*, Trial Tr. 678-88. Accordingly, this allegation must be denied and dismissed.

Counsel's alleged failure to effectively argue the importance of DNA evidence during closing argument

Applicant alleges Counsel was ineffective for failing to effectively argue the importance of DNA evidence during closing argument. Specifically, Applicant contends Counsel did not argue the DNA evidence found on the cigarette butt effectively. This Court finds the record completely refutes this allegation. Specifically, Counsel highlighted in his closing law enforcement was unable to match a palm print and another fingerprint which were found on the telephone box. Trial Tr. 679, 681. He further criticized law enforcement for wholly failing to test these prints for DNA. Trial Tr. 679. Moreover, Counsel pointed out that law enforcement entirely failed to collect and test items found within the victim's truck. Trial Tr. 684. Still further, Counsel questioned law enforcement's probability statistics for the cigarette butt, particularly highlighting although law enforcement alleged there was a very slim chance of another match, the sample size compared to was much smaller. Trial Tr. 684-85. Counsel also described how other DNA swabs matched Blankenbecklor and Tucker, not Applicant. Trial Tr. 685-86. Based on the foregoing, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to request specific charges on the law

Applicant alleges Counsel was ineffective for failing to request specific charges on the law. Specifically, Applicant alleges Counsel was ineffective for failing to request an alibi charge, a mere presence charge, and a charge regarding the lack of criminal intent.

With respect to Counsel's alleged deficiency for failing to request an alibi charge, as aforementioned there was no evidence of an alibi. Furthermore, Applicant, during his testimony at trial, placed himself at or near the crime scene during the time these crimes were committed. See Trial Tr. 591-94, 597, 621-31, 639-42. As there was no evidence of alibi, this Court finds Applicant has failed to establish Counsel was deficient for failing to request an alibi charge. This allegation must be denied and dismissed with prejudice.

With respect to Applicant's allegation Counsel was ineffective for failing to request a mere presence charge, this Court finds Applicant has failed to establish Counsel was deficient. In fact, Counsel did request a mere presence charge during the charge conference in chambers and renewed that request on the record. Trial Tr. 709. Similarly, this Court finds Applicant has failed to establish any resulting prejudice from this alleged deficiency. Following Counsel's request to charge mere presence, the trial court reiterated it would not charge the jury on this matter of law. Trial Tr. 709. Accordingly, this allegation must be denied and dismissed with prejudice.

Regarding Applicant's allegation Counsel was ineffective for failing to request a charge on criminal intent, this Court finds Applicant has failed to establish Counsel was deficient. Trial counsel must be given leeway to make reasonable strategic decisions. Indeed, "no particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." *Strickland*, 466 U.S. at 689. Furthermore, "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 693. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Here, Counsel testified he did not request a specific charge on criminal intent, rather than the general intent charge given. He elaborated his defense at trial was Applicant did not commit these crimes, and "if actually believed, I don't think anyone would believe that the acts were not with criminal intent." PCR Tr. 95. Based on the foregoing, this

Court finds Counsel employed a reasonable strategic decision in not requesting a specific charge on criminal intent based on his defense.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from this alleged deficiency. In reviewing jury charges for error, the charge must be taken as a whole in light of the evidence presented at trial. *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). Moreover, a jury charge is correct if, when it is read as a whole, it contains the correct definition and adequately covers the law." *Id.* at 318, 577 S.E.2d at 464. A jury charge which is substantially correct and covers the law does not require reversal. *State v. Foust*, 325 S.C. 12, 479 S.E.2d 50 (1996). Furthermore, "the substance of the law is what must be charged to the jury, *not* any particular verbiage." *Adkins*, 353 S.C. at 318-19, 577 S.E.2d at 464 (emphasis added). Here the trial court charged: "Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent." Trial Tr. 701. He further charged: "To do a thing unlawfully is to do it willfully against the law. Knowingly means with knowledge, consciously, not accidentally." Trial Tr. 703. Taken as a whole, this Court finds the trial court's charge on criminal intent contained the correct definition and adequately covered the law. This Court further finds Applicant has suffered no prejudice from this alleged deficiency. This allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to properly initiate Applicant's direct appeal

Applicant alleges he was denied the effective assistance of counsel when trial counsel failed to properly initiate his direct appeal. At the evidentiary hearing, Respondent consented to allow Applicant to file his belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974).

This Court agrees Applicant's allegation he was denied a direct appeal is meritorious. Trial counsel must ensure that a criminal defendant is made fully aware of his appeal rights. *Id.* at 118, 208 S.E.2d at 39. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure required by *Anders v. California*, 386 U.S. 738 (1967). *Id.* Where the post-conviction relief judge determines the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to *White v. State*. Rule 243(i)(1), SCACR; *see*

also *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) ("Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a *White v. State* review."). This Court affirmatively finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. This Court further concludes Applicant is entitled to a belated review of his convictions.

Cumulative Error

Applicant alleges that the cumulative effect of Counsel's alleged errors constitutes ineffective assistance of counsel. "Whether the cumulation of several errors, which by themselves are not prejudicial, would warrant relief is an unsettled question in South Carolina." *Green v. State*, 351 S.C. 184, 197, 569 S.E.2d 318, 324 (2002); see also *Lorenzen*, 376 S.C. at 535 n. 3, 657 S.E.2d at 779 n.3. Moreover, the Fourth Circuit has held that "ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively" and, therefore, does not recognize a cumulative error analysis. *Fisher v. Angelone*, 163 F.3d 835, 852 (4th Cir. 1998). This Court finds that a cumulative error analysis would be inappropriate and therefore finds that this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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1. That Applicant be granted a belated appeal pursuant to *White v. State*;
2. That this application for post-conviction relief with respect to all other grounds must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 6 day of September, 2018.

Asantambay, South Carolina

J. Derham Sole
J. DERHAM SOLE, Presiding Judge
The Fifth Judicial Circuit Court

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