

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to York County

Honorable J. Mark Hayes, Circuit Court Judge

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S.C. SUPREME COURT

DANTONYO ANDROPULIS HEATH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001145

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APPENDIX

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BETTY BUTLER: BY SOLICITOR NEWKIRK

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1 visual of every evidence to make sure it's properly sealed.  
2 Then they open it up and they do an inventory to make sure  
3 what it says that's in there, which is the white tee shirt.  
4 And after I do a visual, because the request was for  
5 ownership, I saw a red stain and I tested that and it  
6 tested positive for a presumptive test for blood. I made a  
7 cutting of that and then I also did scraping of the collar  
8 to swab for ownership.

9 SOLICITOR NEWKIRK: Your Honor, the State ask to move  
10 Exhibit Number One into evidence.

11 THE COURT: Any objection?

12 MS. BURRIS: Your Honor, it is my understand that it  
13 was actually taken from Ms. Salina Kinard in the Evidence  
14 Control Room. I'm not sure if the chain has actually been  
15 established since they have not actually called Salina  
16 Kinard to testify.

17 THE COURT: All right.

18 Let me let the jury go to the jury room while we take  
19 up a matter of law.

20 (JURY EXITS COURTROOM AT 02:43 P.M..)

21 THE COURT: Mr. Newkirk.

18 SOLICITOR NEWKIRK: Your Honor, as far as the chain  
19 being established, it was my understanding with the defense  
20 that certain chain witnesses were going to be waived as not  
21 needing to be present so we talked about that before trial

BETTY BUTLER: BY SOLICITOR NEWKIRK

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18

today.

1

MS. BURRIS: I think the one that I was actually -  
2 yeah, the one that I was actually specifically asked about  
3 was Ms. Patricia Crooks and I did say that I would waive  
4 her presence because mainly due to just timing problems  
5 getting here.

6

SOLICITOR SHELTON: Your Honor, and may I address this  
7 issue because I've actually --

8

THE COURT: Then we whoever - we only have one  
9 argument.

10

Do you object, Ms. Burris, to Ms. Shelton chiming in  
11 on this? Do you object to her participating argument?

12

MS. BURRIS: No, sir. It is no problem.

13

THE COURT: Subject to Mr. Newkirk - -

14

MS. BURRIS: No, sir, I don't mind.

15

THE COURT: Okay. Go ahead.

16

SOLICITOR SHELTON: Ms. Kinard no longer works at  
17 SLED. When we tried the case back in January and we made  
18 attempted to contact her, she no longer works there. Based  
19 on case law concerning *State versus Taylor* and then on  
20 forward, the internal chain has been established.

21

Ms. Butler has testified as to what SLED process is.

22

Mr. Hamilton has testified that he took the evidence there,  
23 that he signed the seal; that that evidence was turned over  
24 to SLED which Ms. Butler has testified that was Salina



BETTY BUTLER: BY SOLICITOR NEWKIRK

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1 Kinard. That the bag was signed. That she would not have  
2 accepted the bag and she would not have tested the  
3 substances within the bag if their procedure had no been  
4 followed so we have established the internal chain from  
5 SLED and who had contact with that bag and their procedure.

6 Also, this evidence is in reference - the evidence  
7 that is going to be deep gleaned from this piece of  
8 evidence would be referenced to Dantonyo Heath. Maquis  
9 Robinson doesn't have anything to do with the evidence that  
10 was collected from this piece of material.

11 THE COURT: You're presenting the case which her  
12 client's charged?

13 SOLICITOR SHELTON: I understand, Your Honor, but  
14 there will be no evidence linked from what was gathered  
15 from that tee shirt linked to him. I guess it would the  
16 absence of evidence would be linked to him, but we don't  
17 intend to introduce any DNA evidence linked to Maquis  
18 Robinson. But our argument would still be that we have  
19 established the chain on the item.

20 THE COURT: All right. Mr. Smith, before I rule,  
21 what's your position?

22 MR. SMITH: I'm not objecting, Your Honor.

23 THE COURT: All right. I'm going to deny -  
24 What is your motion? You object to it coming in?

25 MS. BURRIS: I do object to it, Your Honor, and it is

BETTY BUTLER: BY SOLICITOR NEWKIRK

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1 our position that any evidence against Dantonyo Heath is  
2 actually evidence, of course, against Maquis Robinson and  
3 even though, you know, I think Ms. Kinard she indicated was  
4 no longer working there, she actually at some point - or  
5 they actually do have, I'm sure, an evidence room  
6 technician which is whom Ms. Butler actually testified who  
7 she actually got the evidence from. And again, it is our  
8 position that this evidence should not be admitted or this  
9 exhibit should not actually be admitted into evidence  
10 simply because I do not believe that the chain has been  
11 established.

12 THE COURT: All right. Well I'm going to allow it in.  
13 I find that this is not plungable. This is a non-plungable  
14 item and that the chain has been sufficiently and  
15 substantially confirmed by the testimony and I overrule the  
16 objection.

17 Bring the jury back in.

18 SOLICITOR NEWKIRK: Thank you, Your Honor.

19 (JURY REENTERS COURTROOM AT 02:47 P.M..)

20 THE COURT: You may proceed.

21 SOLICITOR NEWKIRK: Thank you, Your Honor. We ask  
22 that State's Exhibit Number One be moved into evidence.

23 THE COURT: Over objection I'll allow it in.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE IDENTIFIED AND  
25 MARKED, RECEIVED INTO EVIDENCE.)

BETTY BUTLER: BY SOLICITOR NEWKIRK

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1 SOLICITOR NEWKIRK: Thank you, Your Honor.

2 Q. Ms. Butler, you mentioned that you did some collar  
3 scrapings on the tee shirt; is that correct?

4 A. That's correct.

5 Q. What is a collar scraping? What does that accomplish?

6 A. The request was for ownership. If you - Things  
7 that you wear and normally rub against your neck, and what  
8 we do, we scrape the inside of the collar, and the outside  
9 of the collar, and we should get skin cells off of that and  
10 that's what we use for the - when I say we scrape the  
11 collar.

12 Q. Thank you, Ms. Butler.

13 SOLICITOR NEWKIRK: Your Honor, may I approach the  
14 witness?

15 THE COURT: Yes, sir.

16 Q. I'm handing you what has been marked as State's  
17 Exhibit Number Forty-two for identification purposes.

18 Do you recognize that?

19 A. State's Exhibit Number Forty-two is SLED Items Number  
20 1.1 and 1.2.

21 Q. And what are SLED Items 1.1 and 1.2?

22 A. 1.1 is a swab from the scraping of the inside ahe  
23 outside of the collar. And SLED Item Number 1.2 is a  
24 cutting from the outside of the tee shirt that was for  
25 presumptive test for blood.

BETTY BUTLER: BY SOLICITOR NEWKIRK

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1 Q. So Items 1.1 and 1.2 came from the tee shirt?

2 A. That's correct.

3 Q. And what did you do with Items 1.1 and 1.2 after you  
4 gathered them from the tee shirt?

5 A. Once I gathered 1.1, I had to let the swab dry. It is  
6 a clean swab that we have to dry it. Then after it dries  
7 it goes into these envelopes. We seal it up. We put our  
8 initials on it and the date. And the cutting, we put the  
9 cutting in here and seal it up, put our initials and the  
10 date. We put it into a heat sealed pouch. We have to seal  
11 it and seal it. We put our initials on it, the date that  
12 we process it. Then we have to sign it and you have to  
13 date it.

14 Q. And you followed all of those procedures with Items  
15 1.1 and 1.2?

16 A. That's correct.

17 Q. After you filled out the appropriate information on  
18 SLED Item 1.1 and 1.2, what did you do with them then?

19 A. 1.1 and 1.2, I gave it to Patricia Crooks in the  
20 Evidence Control Department. Once she gets it, she secures  
21 it into our DNA refrigerator that's in the Evidence Control  
22 Department that only the forensic technician can get to it.

23 Q. Thank you, Ms. Butler.

24 SOLICITOR NEWKIRK: Your Honor, the State has no  
25 further questions for Ms. Butler.

BETTY BUTLER: BY MS. BURRIS

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1 THE COURT: Ms. Burris.

2 MS. BURRIS: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BETTY BUTLER BY MS. BURRIS:

5 Q. Ms. Butler, you seem to take your job real serious, do  
6 you?

7 A. Yes, I do.

8 Q. Okay. And you are well trained you would say?

9 A. Yes, I am.

10 Q. And you have how many years experience?

11 A. Nearly seventeen years.

12 Q. Nearly seventeen years. Pretty focused?

13 A. Yes.

14 Q. Pay attention to detail?

15 A. Yes.

16 Q. And you testified that typically when you do a visual  
17 test you look for blood.

18 A. When I do a visual test, I'm looking for anything that  
19 is out of the ordinary on a particular item.

20 Q. Anything that could be of value to the case?

21 A. Yes.

22 Q. Okay. And that includes blood?

23 A. Yes.

24 Q. That includes hair, hair fibers?

25 A. Yes.

BETTY BUTLER: BY MS. BURRIS

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1 Q. And skin cells?

2 A. Skin cells, actually you can't see it. You are  
3 actually scraping in the blind and then you use a clean  
4 swab and you swab it and you send it up to DNA for the skin  
5 cells.

6 Q. So if there are skin cells then you actually - it's a  
7 different process, of course?

8 A. Yes, from the presumptive test of blood.

9 Q. And bodily fluids?

10 A. Bodily, yes.

11 Q. Anything that could be of value to a particular case,  
12 you make sure that you try to either do the presumptive  
13 test or the visual test. Correct?

14 A. It depends on particularly the case itself and the  
15 request.

16 Q. Okay. And in this particular case the request was?

17 A. For ownership.

18 Q. For ownership.

19 A. Yes.

20 Q. Okay. And you were able to determine the ownership?

21 A. I don't determine it. What I do, I collect the  
22 evidence and I pass it on to the analyst and they establish  
23 the ownership.

24 Q. Okay. But you would agree that you actually did a  
25 pretty good job in looking for what you needed to look for.

BETTY BUTLER: BY MR. SMITH

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1 Right?

2 A. Yes.

3 MS. BURRIS: Thank you. I have no further questions.

4 THE COURT: Mr. Smith.

5 CROSS EXAMINATION

6 BETTY BUTLER BY MR. SMITH:

7 Q. Agent Butler, do you get in all kinds of different  
8 things to be tested?

9 A. Yes, I do.

10 Q. It could be cloth, metal, other materials, carpet,  
11 shoes, all things like that?

12 A. That's correct.

13 Q. And in some cases do you get just piles and piles of  
14 things and in some cases you may just get one item?

15 A. Sometimes we do. It depends on the case.

16 Q. Okay. And in this case you received how many items?

17 A. One.

18 MR. SMITH: No further questions.

19 THE COURT: Redirect?

20 SOLICITOR NEWKIRK: None, Your Honor.

21 THE COURT: You may step down. Thank you.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Of course I found that there was  
24 substantial chain but also that the evidence is relevant.

25 I find that too.

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 All right. Next witness.

2 SOLICITOR SHELTON: Your Honor, the State would call  
3 Lilly Gallman.

4 SOLICITOR SHELTON: Your Honor, may we approach?

5 THE COURT: Yes.

6 (BENCH CONFERENCE OFF THE RECORD AT 02:55 P.M..)

7 THE COURT: I'm going to excuse Ms. Shelton just for a  
8 moment.

9 (PAUSE/SOLICITOR SHELTON EXITS COURTROOM.)

10 THE COURT: Ms. Gallman, come on up and be sworn.  
11 There is a Bible up here, put your left hand on it and  
12 raise your right.

13 (WHEREUPON: LILLY GALLMAN, BEING  
14 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 MADAME CLERK: Thank you. You may have a seat.

16 (SOLICITOR SHELTON REENTERS COURTROOM.)

17 THE COURT: Ms. Shelton, Ms. Gallman has already been  
18 sworn in.

19 SOLICITOR SHELTON: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 LILLY GALLMAN BY MS. SHELTON:

22 Q. State your name for the record, please.

23 A. My name is Lilly Smalls Gallman.

24 Q. Ms. Gallman, where do you work?

25 A. I work for South Carolina Law Enforcement Division.



LILLY GALLMAN: BY SOLICITOR SHELTON

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1 Q. And where is that located?

2 A. In Columbia.

3 Q. And how long have you worked there?

4 A. Twenty-three years.

5 Q. And what is your job there?

6 A. I'm employed as a forensic DNA analyst.

7 Q. Has that always been your job with them?

8 A. Yes..

9 Q. What is the department called that you are assigned  
10 to?

11 A. I'm assigned to the DNA Casework working department.

12 Q. And what do you do there?

13 A. I receive evidence and standards for the purposes of  
14 identification.

15 Q. What is your educational background?

16 A. I have a degree in Biology from the University of  
17 South Carolina. Once I received my degree, I continued  
18 working there in the area of genetics in the genetics lab  
19 where I did sequencing of DNA. Then I began working with  
20 the South Carolina Law Enforcement Division in January 1990  
21 as a DNA Analyst. Since that time, I've attended the FBI  
22 DNA schools. I've been trained by serologists to do  
23 forensic serology. I've also taken advance courses in  
24 genetics and statistics to help me be able to do my job.  
25 And I've also taken advance courses in DNA to study

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 mixtures in different areas of DNA.

2 Q. And prior to working with SLED, did you have any other  
3 experience working in laboratories?

4 A. Yes. I worked at the University of South Carolina in  
5 a laboratory.

6 Q. How long were you there?

7 A. I worked in the laboratory for ten years prior to  
8 coming to SLED.

9 Q. And you've kind of already told me this, but what  
10 specific training have you had in forensics?

11 A. I've been trained by the FBI to work in the area of  
12 forensic DNA and I've also been trained in the area of  
13 serology where I'm able to process evidence and determine  
14 what type body fluids you might find on a piece of  
15 evidence.

16 Q. Have you been qualified as an expert in the field of  
17 forensics, serology and DNA prior to today?

18 A. Yes, I have.

19 Q. How many times?

20 A. Approximately sixty.

21 Q. And approximately how many times have you testified?

22 A. At least a hundred.

23 SOLICITOR SHELTON: Your Honor, at this time I would  
24 offer Ms. Gallman as an expert in the field of forensic DNA  
25 analysis.

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 THE COURT: Any voir dire?

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

3 MR. SMITH: No, Your Honor.

4 THE COURT: I find she is qualified in forensic DNA -  
5 Say again? Forensic DNA?

6 SOLICITOR SHELTON: Analysis.

7 THE COURT: Analysis. I find she is qualified.

8 BY SOLICITOR SHELTON:

9 Q. Ms. Gallman, could you explain to the jury in as best  
10 layman terms as possible what DNA is.

11 A. DNA stands for deoxyribonucleic acid. It is  
12 considered to be the blueprint of the body. You get part  
13 of your DNA from your mother and part from your father and  
14 since this is the case, except for everyone's DNA is unique  
15 except for identical twins, which they have the same DNA.  
16 We are able to compare DNA profiles from evidence and DNA  
17 profiles from standards, be it from the victim or the  
18 subject in a particular case, and determine whether it  
19 matches or it does not match.

20 Q. And in looking at DNA in what you do, what are you  
21 looking at and how do you test it or compare it?

22 A. What we do is we - the samples that we have are  
23 say a sample from a piece of evidence. We extract the DNA  
24 from that piece of evidence and we do what's termed PCR,  
25 Preliminary Chain Reaction, to be able to generate a DNA

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 profile from that evidence or a standard. We look at  
2 sixteen areas on the different chromosomes and look at that  
3 persons DNA profile.

4 Q. Can you explain to the jury the chain of custody  
5 process that SLED follows?

6 A. It depends on where the evidence is starting from.  
7 Let's take for instance in this particular case, the  
8 technician, Betty Butler, she processed the evidence and  
9 made cuttings and swabs, a cutting and a swab from let's  
10 say Item Number 1. That evidence is then packaged and  
11 sealed and then eventually it is transferred into my  
12 custody.

13 Q. And what about evidence that is received into SLED  
14 from outside locations?

15 A. We have an area which is called the log in area where  
16 if you are bringing evidence let's say from York County,  
17 they go in. The technician there assists whoever is  
18 bringing the evidence in, having that evidence submitted.  
19 It is packaged in our pouches. Sealed by the submitting  
20 agency and then distributed to what department it should go  
21 to.

22 Q. And when evidence is submitted from an outside  
23 department into SLED or even within SLED, what specifically  
24 is done to preserve the integrity of that evidence?

25 A. Well, the evidence is sealed first and then the

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 initials of the sealing person will be on that seal along  
2 with the date that the seal was done. The evidence is then  
3 kept in the log-in area until it is retrieved by whoever  
4 the case is assigned to. Once you pick up the evidence  
5 from log in, you check to see if the seals are intact or  
6 whether there is something different about the evidence.  
7 If not, then you would proceed. If there is a problem with  
8 the evidence, you will back track and find out why it is  
9 not sealed properly and who had the evidence last.

10 Q. And so - So does SLED maintain a list of everyone who  
11 touches any particular piece of evidence?

12 A. Yes.

13 Q. During the testing process, when you are testing a  
14 piece of evidence that you've received, what is done to  
15 prevent contamination from people, from you transferring  
16 your DNA to it, or from other evidence of being  
17 contaminated against each other?

18 A. Well, all the analysis is performed in a hood. There  
19 is a glass shield. We also wear gloves and we also make  
20 sure that the standards that come in, the known standard  
21 from the victim or subjects in a case are handled at a  
22 different time than the evidence so you won't cross  
23 contaminate that.

24 Q. What about the utensils that you use?

25 A. They are always sterilized in between different cases.

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 Q. And what about the areas that you are working?

2 A. It is also sterilized, wiped down with disinfectant  
3 and also with alcohol.

4 Q. Is there anything about the testing process that could  
5 change or alter DNA?

6 A. No.

7 Q. If you could just walk the jury through in detail when  
8 you're assigned a case, what do you do as far as DNA  
9 analysis?

10 A. In this particular case since it's a blood case which  
11 is handled different than a CSE case, the technique that  
12 you use in order to generate a DNA profile. Once I receive  
13 the evidence, I open the pouch and I check the paperwork to  
14 see what the request was on a particular case, whether it  
15 was for touch or whether it was for blood. It determines  
16 as to what I proceed to the next step.

17 If it's for blood, then I'll test the items with a  
18 presumptive test for blood and then go - The next step is  
19 to make a cutting from the cutting that I receive and  
20 extract the DNA from that.

21 Q. And in DNA testing are there controls that are used?

22 A. Yes. We always have a negative control, which is just  
23 the solutions that you are using to make sure that they are  
24 not contaminated. And also we have a positive control  
25 which lets us know that when we do what's termed the

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 amplification, that the procedure worked.

2 Q. What's the term amplification mean?

3 A. It's used with PCR. With PCR it's when - Take for  
4 instance if you are looking for touch DNA which would  
5 automatically says just touching you have a small amount of  
6 DNA, you are able to amplify that particular DNA. I guess  
7 you would call it make more of the same DNA that you have  
8 and then generate a DNA profile from it.

9 Q. So you are able to take the DNA that you have at the  
10 time and grow it?

11 A. Well, the - Just make more of the same. It's not  
12 growing because there's no change in it. It's - You're  
13 just making the same thing over ---

14 Q. Okay.

15 A. --- and over again.

16 Q. Why are controls important?

17 A. Well, as I stated, like we have a negative control  
18 that's carried through from the beginning of the extraction  
19 all the way until the end to make sure that none of the  
20 solutions that you are using are contaminated with anyone  
21 else's DNA, mine or anyone else's in the lab.

22 The positive control let's you know that the  
23 amplification step that you're doing, that DNA is being  
24 amplified in another tube, the same as the one from the  
25 evidence in the standards to let you know that that

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 procedure is working properly.

2 Q. And do you have a peer review process?

3 A. Yes we do.

4 Q. And what is that?

5 A. We have two reviews. The first one is the technical  
6 review and that's when another analyst in the laboratory  
7 looks at your case from start to finish, make sure that the  
8 results that you are planning on reporting are what you  
9 actually have. And there is another review which is the  
10 administrative review. That's the review where they make  
11 sure that your I's are dotted and your T's crossed.

12 Q. And when getting a DNA result, what possible results  
13 could you get?

14 A. You could have a match between the evidence or in the  
15 standards that are submitted. You could have where the  
16 evidence does not match any of the standards that were  
17 submitted to you. You can have mixtures where you can't  
18 distinguish whether you have a major contributor or a minor  
19 contributor in that particular mixtures. And in some  
20 cases, you can distinguish you've got a major so you can  
21 say that one of the standards that was submitted to you  
22 does match that particular item.

23 Q. So you have a match. Do you have a no match?

24 A. Yes. You can have a non match to any of the standards  
25 that were submitted to you. You have to have something to



LILLY GALLMAN: BY SOLICITOR SHELTON

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1 compare it to ---

2 Q. Okay.

3 A. --- so based on the standards that you have.

4 Q. Okay. And other than a match and no match, what else  
5 in between could there be?

6 A. You can have no conclusive statement can be made about  
7 that person. You can distinguish whether - You can't  
8 distinguish because - between the major and the minor -  
9 because you have such an equal mixture of the individuals  
10 that are involved. You can have like three, four, five  
11 people in that mixture and you would have to say no  
12 conclusive statement. You can have a problem where you  
13 can't distinguish exactly the minor contributor from the  
14 major contributor because they share - their DNA is  
15 similar. And in that case you would have to say this  
16 person cannot be excluded from that particular item.

17 Q. Do you ever use DNA evidence to exclude people?

18 A. Yes. Often.

19 Q. And if you can't exclude someone that's not a match,  
20 what is that?

21 A. Well, the first thing you are looking at, you have the  
22 standard and you have the evidence, that's say a mixture,  
23 and you're looking at all of the areas on the chromosome to  
24 see if this person is included at that particular locus and  
25 if you cannot exclude them because there is information

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 then that says that could possibly belong to them, you  
2 cannot exclude them, so you say I cannot exclude that  
3 person from this mixture.

4 Then on the other hand as you look at each one of the  
5 loci, and this person's DNA is not there, then you would  
6 exclude them and say they are excluded from this mixture.

7 Q. Did you receive any evidence in this case?

8 A. Yes I did.

9 Q. What evidence did you receive?

10 A. I'm going to look at my report here.

11 (WITNESS REVIEWING DOCUMENT.)

12 A. Okay. I received a swab and a cutting from Item  
13 Number 1, which is a tee shirt, a white tee shirt. I also  
14 received a swab from the shop floor. A swab from the tire  
15 rim. A swab from the toilet lid and a swab from the Toyota  
16 Camry. I also received standards, buccle swabs which mean  
17 that they are swabs from the inside of a person's mouth  
18 from Ernest Jordan, Jared Crane, and Dantonyo Heath. I  
19 hope I'm pronouncing it right.

20 Q. Excluding, I believe what you said was Item 1 which  
21 was the swab and the cutting from a tee shirt, excluding  
22 that, the rest of the swabs that you received, were you  
23 able to match someone conclusively to those swabs?

24 A. Okay. Item 2 matched Jared Crane.

25 Q. What is Item 2 again?

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 A. Item 2 is the swab from the shop floor.

2 Q. Okay.

3 Q. Item 3, which is from the tire rim, matched Ernest  
4 Jordan. I was not able to extract human DNA from Items 4  
5 and 5.

6 Q. And where were Items 4 and 5 located?

7 A. One from the toilet lid and one from the Toyota Camry.

8 There was an indication of blood on both of those  
9 items but I was not able to extract human DNA from those.

10 Q. There was an indication of blood?

11 A. Yes.

12 Q. But you could not extract DNA?

13 A. I was not able to obtain any human DNA from those  
14 items.

15 Q. What would result in that, there being an indicator  
16 of blood but no DNA?

17 A. Well, when you are looking at a swab that was taken  
18 and you do a presumptive test for blood, you are just  
19 looking at the heen that's found in the blood. But what  
20 we're interested is in the white blood cells that are  
21 located in the blood and if there is not a lot of cells  
22 there, then just a very, very, small amount of cells, then  
23 the indication for the human blood it would come up  
24 negative.

25 Q. Going back to Number Items 1 and 2, you said that

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1 there was a match for Jared Crane for Number 1 and a match  
2 for Ernest Jordan for Number 2. Any other - You've talked  
3 about previously - previously testified about mixtures, a  
4 major contributor, a minor contributor. From those two  
5 samples, could you extract any minor contributors?

6 A. Item 2 and 3 were single source meaning there was not  
7 a mixture there for those two items.

8 Q. Ms. Gallman, I'm going to show you what has been  
9 marked for identification as State's Exhibits Forty-one and  
10 Forty-two.

11 Could you identify State's Forty-one for me, please?

12 A. Item number - State's Forty-one is the buccal swab  
13 from Dantonyo Heath.

14 Q. And where did you receive that?

15 A. It was transferred in my custody from Pat Crooks in  
16 the log-in area.

17 Q. And when you received it, did it appear to have been  
18 tampered with in any way?

19 A. No it did not.

20 Q. How do you know it had not been tampered with in any  
21 way?

22 A. Well, I would have - I checked the seal to make sure  
23 that that's intact and it was. Otherwise, I would have had  
24 to backtrack and find out what's going on with it.

25 Q. And once you received it, was it within your entire -

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1 Was it within your custody and control the entire time?

2 A. Yes until I returned it to the log in area. Until it  
3 was returned to the log in area to be retrieved by the  
4 submitting agency.

5 SOLICITOR SHELTON: Your Honor, at this time I would  
6 ask to move State's Exhibit Number Forty-one into evidence.

7 MS. BURRIS: No objection, Your Honor.

8 MR. SMITH: No objection.

9 THE COURT: In without objection.

10 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-ONE,  
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 BY SOLICITOR SHELTON:

13 Q. And then if you would look at State's Exhibit Number  
14 Forty-two.

15 A. These are the cutting and swab made by evidence  
16 processing technician Betty Butler.

17 Q. And at some point did you have those in your custody?

18 A. Yes I did.

19 Q. Where did you get them from?

20 A. They were transferred into my custody from Patricia  
21 Crooks.

22 Q. And who had them before Ms. Crooks?

23 A. They were generated by Betty Butler.

24 Q. And when you received that package, had it been  
25 tampered with in any way?

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1 A. No it had not.

2 Q. And how do you know that?

3 A. Because the seal was intact.

4 SOLICITOR SHELTON: Your Honor, at this time I'd ask  
5 to move State's Exhibit Number Forty-two into evidence.

6 MS. BURRIS: Without objection.

7 MR. SMITH: No objection.

8 THE COURT: In without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO,  
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 BY SOLICITOR SHELTON:

12 Q. Now referring to State's Exhibit Forty-one, you said  
13 that that was the buccal swab from Dantonyo Heath?

14 A. That's correct.

15 Q. Were you able to develop a DNA profile from that swab?

16 A. Yes I did.

17 Q. Then with State's Exhibit Number Forty-two, you  
18 testified that those were the cuttings and the scraping  
19 from Item Number 1?

20 A. Yes.

21 Q. And were you able to develop a DNA profile from those  
22 cuttings and scrapings?

23 A. Yes I did.

24 Q. And that is Item 1.1?

25 A. 1.1 and 1.2.

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1 Q. What is Item 1.1?

2 A. 1.1 is the swab from the white tee shirt and 1.2 is  
3 the cutting from the white tee shirt.

4 Q. And looking at the cutting of 1.2, what were you  
5 looking for on that?

6 A. They asked for - 1.2. I checked it for the presence  
7 of blood and then also took it on to do DNA analysis on it,  
8 for 1.2.

9 Q. And was there presence of blood there?

10 A. Yes. Blood was indicated on that item.

11 Q. And were you able to develop a DNA profile from that  
12 cutting?

13 A. Yes.

14 Q. And were you able to make a conclusive match on that  
15 cutting?

16 A. Yes.

17 Q. And who is that to?

18 A. That item matched Jared Crane.

19 Q. And then referring to Item 1.1, that's the scraping?

20 A. Yes.

21 Q. Were you able to develop a profile or profiles from  
22 the scraping?

23 A. Yes. The DNA obtained from Item 1.1 was a mixture and  
24 the DNA profile the major contributor to Item 1.1 matched  
25 Jared Crane. And Dantonyo Heath could not be excluded as

1 the minor contributor to that mixture.

2 Q. Dantonyo Heath could not be excluded?

3 A. That's correct.

4 Q. And when you make a determination that someone could  
5 not be excluded, are you looking for a certain - I think  
6 you previously testified about looking at the low side.  
7 Are you looking for a certain number? Is there -Were you  
8 able to generate a statistic with a report for Dantonyo  
9 Heath?

10 A. Yes. This particular mixture, I could pull up out  
11 major contributor as being coming from Jared Crane. When  
12 looking at the minor contributor, Dantonyo Heath and Jared  
13 Crane shared the same repeats or aleos on many of the low  
14 side, so certain information I could not use in the  
15 calculation for the statistical value.

16 Q. Is that because they overlapped?

17 A. Yes.

18 Q. Their DNA overlapped. Is that what that means?

19 A. Yes. It means - Well I'm looking at a particular  
20 section on a chromosome that turned - repeats. And let's  
21 say Jared Crane had 11 repeats maybe from his mother and 13  
22 maybe from his father. I can't tell from this without  
23 having their standard. But then when you look at Dantonyo  
24 Heath, he has 13 repeats and 14 repeats so that would mean  
25 that 13, just showing that, it could be from both of them.



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1 Q. Okay.

2 A. And so that's how it went all the way through the  
3 profile.

4 Q. And when - You said that Mr. Crane was the major  
5 contributor?

6 A. Yes.

7 Q. And when you - I asked previously, is there a  
8 statistic related when you call someone a major  
9 contributor, a match, a minor contributor?

10 A. Well, what you do you are looking at the information  
11 that you have and it comes - it's generated in peak heights  
12 and depending on how high the peaks are whether you can  
13 tell whether this person is a major contributor to a  
14 mixture.

15 Q. And you do a probabilities?

16 A. Yes. I did not on that particular item. Because he  
17 is the major contributor I generated stats on his profile  
18 from 1.2.

19 Q. Okay. So you did not for Jared Crane?

20 A. I did for Jared Crane but I based it on Item 1.2.

21 Q. And what was that?

22 A. It was 1 in 11 quadrillion.

23 Q. Okay. So that would be - That means that there would  
24 have to be 1100 quadrillion other people and only one would  
25 have that DNA?

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1 A. And it could be outside that number also.

2 Q. And then were you able to develop a probability for  
3 Dantonyo Heath where you said he could not be excluded?

4 A. That's correct. It's 1 in 111 because of the amount  
5 of information I could use to generate the statistics.

6 SOLICITOR SHELTON: Please answer any questions the  
7 defense has for you.

8 CROSS EXAMINATION

9 LILLY GALLMAN BY MS. BURRIS:

10 Q. Ms. Gallman, you testified on direct that you are able  
11 to compare DNA known standard whether victim or subject.  
12 Correct?

13 A. Yes. Whatever standards are submitted to me, I can  
14 compare them to the evidence.

15 Q. And Maquis Robinson was listed as a subject in this  
16 case. Right?

17 A. Yes.

18 Q. And you testified earlier that you took swabs. There  
19 were swabs from the shop floor?

20 A. Yes.

21 Q. Toilet lid?

22 A. Yes.

23 Q. And tire rim?

24 A. Tire rim and the Toyota Camry.

25 Q. And the Toyota Camry. And there was no evidence that

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1 matches Maquis Robinson's DNA. Correct?

2 A. Well, I did not have a standard from him so I was not

3 --

4 Q. But you said that you could --

5 A. If I had a standard.

6 Q. Okay.

7 A. But now on my report no, there's nothing that said  
8 there was any foreign DNA that I couldn't match to anyone.

9 Q. Okay. So the answer is no.

10 A. Yes.

11 MS. BURRIS: Thank you.

12 THE COURT: Mr. Smith.

13 CROSS EXAMINATION

14 LILLY GALLMAN BY MR. SMITH:

15 Q. Ms. Gallman, you said that DNA is sort of the  
16 blueprints for a human. What is it? Is it cells? Is it  
17 membranes? Is it something different? What is DNA?

18 A. DNA is DNA. It's not a cell. It comes out of cells.  
19 It's not membrane either.

20 Q. So its even smaller than a cell?

21 A. That's correct.

22 Q. But it's in every human cell?

23 A. Yes. Well, it's in - When in terms of blood, it would  
24 be in the white blood cells.

25 Q. Okay. And you indicated that you have courses in

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1 statistics' is that right?

2 A. That's correct.

3 Q. And that's because part of what you do is not just the  
4 science in determining if DNA exists, but part of what you  
5 do is do this calculation of probability; is that correct?

6 A. Yes. Statistical courses like I took help me to  
7 understand how to apply the statistics to my results.

8 Q. Okay. Because probability is a different calculation  
9 than the process of actually finding and determining low  
10 side DNA.

11 A. Yes. The first thing you establish is the fact that  
12 you have a match before you even generate a statistics.

13 Q. Okay. And I believe you testified that everyone's DNA  
14 is unique?

15 A. Yes.

16 Q. We don't know that for sure do we?

17 A. Yes.

18 Q. Has everyone been tested?

19 A. No everyone has not been tested. We know that  
20 identical twins are the same but based on the information  
21 and the studies that have been done because they have  
22 sequence to complete genome we can say with confidence that  
23 that's not - that's the case.

24 Q. With confidence but not with absoluteness.

25 A. There are people that would beg to differ with you and

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1 I am one of them.

2 Q. What you said you do for DNA that the PCR testing that  
3 you do, you said you actually extract the DNA from the  
4 source; is that right?

5 A. That's correct.

6 Q. Okay. And then you said, I believe you said replicate  
7 or duplicate, DNA?

8 A. No. Amplify.

9 Q. Amplify. Is that the same as multiply?

10 A. I guess you could say yes. I'll go with that.

11 Q. Is it the same as cloning?

12 A. No.

13 Q. All right. Well, you locate a piece of DNA.

14 A. Yes.

15 Q. And then is that what you test or do you do some  
16 procedure to make multiple copies of it and then you test  
17 all those multiple copies?

18 A. We do what's termed, preliminary chain reaction, where  
19 that single piece of DNA is amplified. You're just making  
20 more of the same thing that you already have and then you  
21 look at the profile that's generated from there.

22 Q. But to me amplify means I turn up the stereo. It  
23 doesn't mean I build eight more stereos. This is actually  
24 you're replicating DNA aren't you?

25 A. No. The terminology I'm using is correct. There's

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1 just different definitions for the same word.

2 Q. Okay. But you've created other pieces. You didn't  
3 make just one big piece of DNA?

4 A. You're taking a section from the chromosome and that  
5 particular section is being amplified like this.

6 Q. You've created other sections?

7 A. Okay.

8 Q. You had one. Now you've got ten. You had 30, now  
9 you've got 300.

10 A. Of the same piece of DNA, yes.

11 Q. Yes. That you created in the lab?

12 A. That's amplified in the tube. Yes.

13 Q. Right. In the tube because they weren't found at the  
14 scene.

15 A. No.

16 Q. And what is tested is actually not what's found at the  
17 scene, it's what you've amplified; is that right?

18 A. Well, it's what was found at the scene what was  
19 amplified so it is what was found at the scene.

20 Q. Well it's an amplification of what was found or a  
21 replication or a multiplication.

22 A. It's an amplification of what was found at the scene.

23 Q. And you're trying to use that term when you testify.

24 A. No it's just --

25 Q. You say replicate --

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1 A. It's just the right term. It's just the right word.

2 Q. Well, okay. But you had a single piece of DNA.

3 Right?

4 A. Yes.

5 Q. And then when you say amplified, you didn't make it  
6 bigger or louder. You made multiple copies of that piece  
7 of DNA didn't you?

8 A. Yes, but it is called amplification. You've just got  
9 different definitions for the same word.

10 Q. And you use a PCR technique. But it's known that one  
11 of the difficulties for PCR technique determination is a  
12 mixture profile; is that right? It struggles in that area.

13 A. I don't understand your question.

14 Q. Okay. Let me back up. There are different DNA typing  
15 techniques that are done; is that correct? PCR is not the  
16 only one.

17 A. No it's not. It's not the only one.

18 Q. And PCR, one of its weaknesses, lesser strengths,  
19 whichever term you would wish to use, is that it struggles  
20 when you are trying to determine profiles in a mixture.

21 A. It doesn't struggle with it. It's the fact that you  
22 do have mixture and we look at it with caution to make sure  
23 you don't include somebody who is not there. The struggle  
24 is not with the PCR because the PCR is amp - the DNA that's  
25 there is going to be amplified. Whether there is more of

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1 one person or less of one person is based on the sample  
2 that you have. Not on the PCR technique itself.

3 Q. Okay. And when you received the items, did you  
4 receive the tee shirt itself or you only received the swab  
5 and the cuttings from the DNA?

6 A. The swab and the cutting.

7 Q. And you talked about the safeguards and concerns.  
8 What's an unlikely coincidence error?

9 A. Unlikely coincidence?

10 Q. Unlikely confidence error.

11 A. We don't normally use that terminology. Could you  
12 explain what you mean?

13 Q. No. If in determining within a mixture, if a sample  
14 exists, do you have concern or safeguards that you don't  
15 commit what would be called an unlikely coincidence error?

16 A. Are you referring to a contamination?

17 Q. Could be.

18 A. Okay. Well, the safeguards are that for instance I'll  
19 give you an example of one. Everyone that works in the  
20 laboratory, we have generated a DNA profile for them first,  
21 but we have systems where we would go in and take whether  
22 that person or anyone that's in the laboratory DNA is in  
23 that mixture. When you are actually doing the case  
24 yourself, you use safeguards that you are not contaminating  
25 with another case that you had previously done.



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1 Q. Okay.

2 A. So you use safeguards to make sure that tht's not  
3 what is happening and then once you have the profile  
4 generated. the DNA obtained, and then there is a mixture,  
5 you go back and check and see if there is a possibility it  
6 could be from any other case or any thing else that you've  
7 done. You want to safeguard everything to make sure you  
8 are not including someone who should not be there.

9 Q. Because if you had received a known swab from Jared  
10 Crane in this case, and from Dantonyo Heath in this case,  
11 if they touch together or they touch something that had  
12 touched then that could leave as mixture on that item; is  
13 that correct?

14 A. If they did what now?

15 Q. Of the swabs from the two known individuals came into  
16 contact, or touched another item, they could leave a  
17 mixture on that item; is that right?

18 A. The swabs from the two individuals, you're talking  
19 about their standards if the swab, the buccal swab from Mr.  
20 Heath and Mr. Crane were to touch like this?

21 Q. Yes.

22 A. Whether that could form a mixture?

23 Q. Yes..

24 A. But there are standards and once I extract the DNA  
25 from them and I generate a DNA profile there should not be

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1 a mixture in either case.

2 Q. And what if they both touched another item?

3 A. As in a piece of the evidence?

4 Q. Sure.

5 A. That's - yes, that's so. That's why they are not  
6 handled at the same time.

7 Q. Let me talk to you about the actual process that you  
8 use to determine these loci, these locations. Is this done  
9 via computer, via machine, via a chemical test? What's  
10 actually done to the DNA?

11 A. The DNA, once it is extracted and we take it through  
12 the application process, it is - the information is placed  
13 on another instrumentation and then the profile is  
14 generated through that.

15 Q. Okay. And do you get a printout with graphs or what  
16 do you do to look at?

17 A. We get an electropherogram printout.

18 Q. Okay. And what are off scale peaks?

19 A. We have what is called ladders and the alleles, or the  
20 numbers, or part of the ladder. If the peak falls within  
21 the rung of the ladder, like you have - and it falls in  
22 between, then it would be off scale. Yeah, off ladder  
23 peaks

24 Q. And split peaks is another potential problem with  
25 using this technique?

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1 A. It's not a problem, per se. They say that with using  
2 this technique, if you get split peak, what you would do is  
3 re-inject your sample to clear it up because it could be  
4 something with the instrument at that time. Over the years  
5 of doing this technique, you know what you need to do to  
6 clarify the information that you have.

7 Q. Okay. So if the reading doesn't come out, you shoot  
8 more of this amplified or copied DNA into the machine?

9 A. You just re-inject the same sample again.

10 Q. Allele drop out. Is that a problem?

11 A. Allele drop out? None of these things are problems.

12 They are just things that happen. When you have a small  
13 amount of a sample, you could get an allele to drop out and  
14 you know from training what to look for.

15 Q. Okay. And you'll have to help me with this  
16 pronunciation. The stochastic effect.

17 A. Sto --

18 q. I'm sorry, I messed you up.

19 A. Yes you did. Stochastic. Stochastic. Like you were  
20 saying, like the allele drop out ---

21 Q. Right.

22 A. --- if information falls in the stochastic region, we  
23 approach that with caution. If you can't say with  
24 confidence that this particular profile is there, then you  
25 don't report it as a match.

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1 Q. Okay. And that's something that occurs, that effect  
2 occurs with amplification; is that right?

3 A. It is really based on the amount of DNA that you have  
4 because if you have a small amount of DNA, you are going to  
5 have peaks that fall in the stochastic region. You can  
6 have allele drop out at those areas also.

7 Q. Okay. Ninety-nine point nine percent of our DNA  
8 itself is the same for all peoples; is that right?

9 A. That's what makes a human.

10 Q. Okay. It better be the same for us then. Right?

11 A. Yes.

12 Q. Okay. The test that you did here, do you run the test  
13 a number of times or did you just run it once?

14 A. You mean the three instrumentation?

15 Q. Yes.

16 A. In this particular case, I believe I only had to run  
17 it twice. I got useable data the first time around.

18 Q. Okay. And you have a report. You have a copy with  
19 you; is that right?

20 A. Yes.

21 Q. And in that report, there is - is it one, two. Let me  
22 get the number of pages right. Is it three pages?

23 A. Well I generated two reports.

24 Q. Okay.

25 A. Because once I received the standard from Mr. Heath, I

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1 compared him to the evidence that was submitted.

2 Q. Okay. And I represent Mr. Heath so let me to get you  
3 to look at the report that occurs after you received his  
4 standard.

5 A. Okay.

6 Q. How many pages is that report?

7 A. Three.

8 Q. All right. And the first page, is it fair to say that  
9 that described what you received and the item that you had  
10 to do testing on?

11 A. Yes.

12 Q. Okay. Then the second page tells the examination  
13 you did and the results you received?

14 A. Yes.

15 Q. And then the third page is labeled a table, table one  
16 identifier. Does this show the low side or the alleles and  
17 where they match for the various samples?

18 A. It's a chart of the information that I gathered to do  
19 the comparison.

20 Q. Okay. And based upon your report, and I'm turning to  
21 your results now, you said that from a DNA profile of Item  
22 1.2, you found a profile matching this item.

23 A. Yes.

24 Q. Okay. And then with DNA profile - and I'm sorry - it  
25 matched Jared Crane; is that correct?

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1 A. That's correct.

2 Q. And then the item of 1.1, you said that that matched  
3 the DNA profile of Jared Crane; is that correct?

4 A. I said the DNA profile, the major contributor, matched  
5 Jared Crane.

6 Q. Okay. So if we had a match of Item 1.2 to Jared Crane  
7 and a match of Item 1.1 to Jared Crane --

8 A. The major contributor.

9 Q. The major contributor. And then with Dantonyo Heath,  
10 it does not say matched. Correct?

11 A. It says cannot be excluded.

12 Q. Okay.

13 A. And I explain that the alleles that were generated  
14 from the different loci, they overlap in the number of  
15 repeats and there was information I could not use in  
16 generating the statistics for that item or to separate him  
17 out as to get a complete separation from the major and  
18 minor contributor.

19 Q. All right. So you did not say it matched. Correct?

20 A. I said I could not exclude him as a contributor to  
21 this mixture.

22 Q. Okay. Maybe I'm not asking it clearly. Did you say  
23 it matched or did you not say it matched?

24 A. I'm saying that I could not exclude him from this but  
25 I'm not saying - I'm not using the terminology "match"

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1 because I was not able to separate totally a major and  
2 minor contributor from the item so I am not using the  
3 terminology matched for him.

4 Q. And you did use that terminology for Jared Crane for  
5 Item 1.1 and as the major contributor to Item 1.2?

6 A. That's correct because I was able to pull him out as  
7 the major contributor in that item.

8 Q. And in the other report that you have, you also  
9 indicated a match for the profile from Ernest Jordan; is  
10 that correct?

11 A. He matched Item number 3

12 Q. Okay. On one of the profiles that you determined, and  
13 I'm on your second report now, the Item 1.2, Jared Crane,  
14 you indicated that the probability of randomly selecting an  
15 unrelated individual having DNA profile matching this item  
16 is approximately one in eleven and that says quadrillion?

17 A. That's correct.

18 Q. All right. You've got to help me. Is quadrillion,  
19 that's 15 zeros? Eleven and then 15 zeros?

20 A. Yes, it is 15.

21 Q. Okay. That's a lot?

22 A. Yes.

23 Q. Way over what the population of the world is? Any  
24 idea of what the worlds population is?

25 A. Around seven billion.

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1 Q. Okay. So based upon your science, and your  
2 statistics, you would expect that the odds of randomly  
3 finding someone matching that profile, we could test  
4 everybody in the world some millions of times and still not  
5 have that covered?

6 A. Yes.

7 Q. And then the profile that is matched in Item 1.1 which  
8 is a mixture, did you do a profile of the odds of randomly  
9 finding a match for that for someone other than Jared  
10 Crane?

11 A. I did it based on a mixture.

12 Q. Okay.

13 A. And it's the probability of someone contributing to  
14 this mixture and based on the information that I could use  
15 in the calculation, which I could not use all of the loci

16 ---

17 Q. Right.

18 A. --- to calculate the statistics, the frequency was one  
19 in one hundred and eleven.

20 Q. Okay. And was that for the probability of Dantonyo  
21 Heath; the probability of Jared Crane; or both?

22 A. It's a mixture calculation, so the probability of  
23 both.

24 Q. Okay. So that's just one hundred and eleven?

25 A. Yes.



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1 Q. So what you are saying --

2 A. Based on the information that I could use.

3 Q. Right. Based on the test. What was taken from the  
4 scene is that you would expect through statistics to  
5 randomly find in every one hundred and eleventh person that  
6 same result?

7 A. The information that I used in the calculation.

8 Q. Correct.

9 A. Not in this particular profile that I have.

10 Q. Right. But if it were randomly you would expect if it  
11 were three hundred and thirty-three done, you would expect  
12 to find three profiles that would be in that same  
13 position?

14 A. Only based on the statistical information that I  
15 utilized.

16 Q. Correct. And you used statistics that you were  
17 trained in to come to your report that you put in here.

18 A. Yes. I was not able to use all of the information  
19 that was generated from it because of our protocol and the  
20 way statistics are suppose to be done.

21 Q. Okay. And if five hundred and fifty people were  
22 sampled, you would expect five to show up with that same  
23 representation?

24 A. It could be out of that number. Yes.

25 Q. Okay. But randomly you would expect through

LILLY GALLMAN: BY MR. SMITH

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1 statistics that five would not be the unexpected number.  
2 And part of what you deal with in DNA is data basing; is  
3 that correct?

4 (PAUSE.)

5 Q. I'll back up again.

6 A. Okay.

7 Q. You're numbers are based upon a SLED database; is that  
8 right?

9 A. It's based upon the FBI database.

10 Q. Okay. The FBI database. And how many people are in  
11 the FBI database?

12 A. I don't remember at this time.

13 Q. All right. But that is a number of people whose DNA  
14 has been tested and based upon that probabilities are  
15 calculated because you've looked to see what their DNA  
16 would reflect in these tests?

17 A. Yes. But the probability of an event does not depend  
18 on how many people are in the database. It's a calculation  
19 that's done on how frequently you should see this  
20 particular DNA profile.

21 Q. Right, but a larger database would have a bigger pool  
22 from which to pull to see how often you would expect  
23 someone's DNA to find in a specific loci.

24 A. Yes. But they have learned that the size of the  
25 database is not what is totally used.

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1 Q. Okay.

2 A. It's the frequency of that particular event.

3 Q. Okay. So if the FBI tomorrow comes in and says  
4 we've changed our minds. This database is too big. Our  
5 database is now going to be two people. Would you feel  
6 confident running tests based upon a database of two  
7 people?

8 A. No. Statisticians have found that there need to be at  
9 least a certain size but it does not need to be a gigantic  
10 data base.

11 Q. Well is the FBI database reflective of the population  
12 of South Carolina?

13 A. They have people in the database from South Carolina  
14 and from the whole United States because they gather the  
15 information like that from different parts of the United  
16 States.

17 Q. Okay. But you would expect family members to have a  
18 alleles hitting in the same area or more overlap amongst  
19 family members; is that correct?

20 A. The calculation that we do takes that into  
21 consideration.

22 Q. Okay. So if your database were from a region where  
23 there were a lot of family members, it would be more true  
24 to that local population; is that correct?

25 A. I still say that the database of size and exactly

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1 where it is from is not the avenue you go down for the  
2 frequency of that event. And we look at at least four  
3 different databases and we use the most conservative  
4 number.

5 Q. Okay. Which four databases do you use?

6 A. We use the Caucasian, the Black, the southeast  
7 Hispanic, and the southwest Hispanic databases. And we use  
8 the most conservative one out of those databases.

9 Q. And by most conservative, you mean the one that puts  
10 them the least likely in that number?

11 A. The smallest of the - like for instance when you  
12 said got the one in one hundred and eleven, that's the  
13 least. The most one was the one in two hundred and twenty  
14 which was twice that so we used the most conservative off  
15 the databases.

16 Q. So in your mind odds are one in one hundred and eleven  
17 that Dantonyo Heath is Hispanic?

18 A. No. Why --

19 Q. Caucasian?

20 A. We do not look at race at all. We just plug that  
21 particular profile into the databases and the one with the  
22 most conservative number is the one that is reported. We  
23 don't take into account race.

24 Q. All right. Let me ask you about the calculation you  
25 did with Mr. Jordan. What were the odds of a randomly

LILLY GALLMAN: BY MR. SMITH

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1 selected individual having a DNA profile matching the  
2 result for Mr. Jordan?

3 A. As I said, we used four databases and we used the most  
4 conservative result and that number would be one in six  
5 hundred quadrillion.

6 Q. Is it six hundred or six hundred and fifty?

7 A. Six hundred and fifty.

8 Q. Quadrillion. Again 6-5-0 with fifteen zeros  
9 afterward?

10 A. Yes.

11 Q. What are false positives?

12 A. You switched my whole train of thought. False  
13 positives. In DNA?

14 Q. Yes.

15 A. We don't use that terminology when it comes to DNA.

16 Q. Okay.

17 A. We have in serology when we identify like body fluids,  
18 we utilize the terminology false positive but a false  
19 positive would be a mis-identification. No.

20 Q. All right. How about error rates. Do you use that?

21 A. Yes.

22 Q. What is SLED's error rate?

23 A. I don't know it right now, right off hand. The last  
24 time I checked though it was zero.

25 Q. Zero?

1 A. Yes.

2 Q. A lab with a zero error rate?

3 A. Yes.

4 Q. Is that scientifically accepted for a lab to have a  
5 zero error rate?

6 A. Well, the last time anyone talked about this, they  
7 figured we should have an error rate so they assigned one  
8 to us based on what we should have. We did not have one.

9 Q. All right. You've got to have - Your error rate was  
10 zero. Somebody's decided, hey we ought to have an error  
11 rate so let's just assign an error rate to SLED?

12 A. And there was a judge that asked that same question  
13 that you just said. But - No, error rate is that we  
14 reported a result that of someone matching an item and  
15 they did not match the item.

16 Q. Right. All right. Let me ask you about your error  
17 rate. What is your error rate?

18 A. I don't have an error rate, recorded error rate. I  
19 don't have one.

20 Q. You don't make mistakes?

21 A. I'm not saying that. I do things to safeguard from  
22 not making errors.

23 Q. Okay. So before it hits your report, you've done all  
24 the safeguards to make sure there's no errors?

25 A. That's correct.

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1 Q. Okay. Let me get you to turn to the report concerning  
2 my client, Dantonyo Heath, to that first page. That  
3 indicates the --

4 A. You talking about the supplemental report?

5 Q. The report that --

6 A. Does the heading say Supplemental Report? Right above  
7 the items does it say Supplement?

8 Q. It does.

9 A. Okay.

10 Q. On that first page it lists DNA analysis in the top  
11 right side and it indicates who you received items from.

12 A. Yes, sir.

13 Q. Or it indicates the victim and the suspect; is that  
14 correct?

15 A. Yes.

16 Q. And it lists my client, Dantonyo Heath, as the  
17 suspect; is that right?

18 A. Yes.

19 Q. And that is D-a-n-t-o-n-y-o Heath; is that correct?

20 A. That's what's off to the right hand side.

21 Q. Okay. And that's because that's what you received  
22 from law enforcement. You wouldn't have known him  
23 personally. Right?

24 A. No.

25 Q. And there's eight letters in Dantonyo?

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1 A. Yes.

2 Q. But in your findings, you spell Dantonyo how?

3 A. His name was submitted both ways by law enforcement.

4 So when it was put in the computer, it was put in as  
5 D-o-n-t-y. I did not spell it.

6 Q. So the mis-spelling is not because you have an error  
7 rate. It must be someone else?

8 A. Well, in this particular case I'm not saying I'm  
9 without error. But I do - and that's why I do safeguards  
10 against having an error because I'm human just like  
11 everybody else.

12 Q. The best you can say per your training, per your  
13 protocol, that you can testify here today is that  
14 statistically you would expect any one hundred and eleven  
15 persons to have the same profile you saw showing assigned  
16 to Dantonyo?

17 A. Based on the information I could use in the  
18 statistics?

19 Q. Yes.

20 A. It would - If the statistic came back as one in one  
21 hundred and eleven, not saying that you will find that  
22 person within the one hundred and eleven, but that's the  
23 statistical value that was applied to the information that  
24 I was able to use.

25 MR. SMITH: Thank you.



LILLY GALLMAN: BY SOLICITOR SHELTON

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1 THE COURT: Redirect.

2 SOLICITOR SHELTON: Yes. I'll try to be brief.

3 Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 LILLY GALLMAN BY SOLICITOR SHELTON:

6 Q. Ms. Gallman, you testified about the amplification. I  
7 don't want to go back over the multiplying, growing, but I  
8 just want to ask you from the DNA that's found at the scene  
9 and I think you said you look at fifteen or sixteen loci.  
10 When you take that DNA found at the scene and amplify it,  
11 do you create different loci?

12 A. No. You don't create them. They are already there,  
13 so all you're doing is just amplifying what's already  
14 there.

15 Q. Taking the same sixteen loci of the DNA that was found  
16 and just making that over and over and over again?

17 A. That's correct.

18 Q. Why do you do that?

19 A. Well, when you have a - The technique has changed over  
20 the years. When we started out, we just extracted the DNA  
21 and used that to generate a DNA profile. But since the  
22 technique has improved, we are able to amplify the DNA and  
23 get more information from your sample. That's what we're  
24 using now.

25 Q. So you do that to be able to take a better look at it?

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 A. That's correct.

2 Q. But you're not creating anything?

3 A. No.

4 Q. And Mr. Smith asked - I wrote his words down -  
5 unlikely coincidence error.

6 A. Yes.

7 Q. And you are not familiar with that terminology?

8 A. No. We utilize whether you have a contamination or  
9 unintentional transfer but not the term he used.

10 Q. And he talked about touching Dantonyo Heath's swab  
11 with something else. Do you test multiple items at one  
12 time?

13 A. No. What is done, and this is our policy and the one  
14 that I follow, we do the evidence first and once you have  
15 processed the evidence, then you go back and you do the  
16 standards. And in this particular case, the evidence, the  
17 DNA profile was already generated from the evidence prior  
18 to receiving Mr. Heath's standard.

19 Q. So there was no touching of Mr. Heath's standard to  
20 any piece of evidence that you analyzed?

21 A. No. When I did the analysis on the evidence, his  
22 standard was not at SLED.

23 Q. And then he asked you a bunch of questions about thing  
24 that you could have happen with DNA. I got lost on some of  
25 them, but did you have an allele drop out with this case?

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 A. With the minor contributor for Item 1.1 where there  
2 was a mixture, the DNA profile from the - the alleles that  
3 could be assigned to Mr. Heath were in a low area and it  
4 was - it could have possible that there were allele drop  
5 off. I would need to look at the profile again to make  
6 sure.

7 Q. But would you have taken that into consideration in  
8 developing your statistics or your probability?

9 A. Yes. See, that's the reason why I could not use all  
10 of the loci in generating the statistics is because you  
11 have to approach it with caution and if there are alleles  
12 that are low or there are alleles that possibly not present  
13 or whatever, you have to take all of that into  
14 consideration, and that information, you couldn't use it in  
15 generating a statistics.

16 Q. And then he asked you about a stochastic effect?

17 A. Yes. That's called when you have a small amount of  
18 DNA it will fall in the stochastic region, which is below  
19 the threshold that we use for our alleles.

20 Q. And again did you take that into consideration in this  
21 case?

22 A. Yes.

23 Q. So you were able to recognize those as issues and take  
24 into consideration in developing your profile of your  
25 statistics?

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 A. Yes.

2 Q. And the error rate, who would assign the error rate?

3 Where does that come from?

4 A. We would look at how many errors that we have  
5 generated by saying someone match a piece of evidence and  
6 they did not and we don't have any of that on record as  
7 having an error rate in that way.

8 Q. And that would be reported as known errors?

9 A. Yes.

10 Q. Something that had been tested or compared later on  
11 down the road and found to be invalid?

12 A. That's correct.

13 Q. And to your knowledge, you don't have that?

14 A. That's correct.

15 Q. For you and to your knowledge I think you testified,  
16 you said that you testified about a hundred times?

17 A. Yes.

18 Q. To your knowledge, none of your prior tests have been  
19 found invalid?

20 MR. SMITH: Objection.

21 THE COURT: I sustain the objection.

22 BY SOLICITOR SHELTON:

23 Q. With the major contributor and the minor contributor,  
24 were you able to pull out a complete profile for the minor  
25 contributor on that 1., I think it was 1.1?

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 A. No, I was not. As I stated, Mr. Heath and Mr. Crane  
2 have overlapping alleles and I was not able to separate  
3 them as in the major minor. But I was able to pull out a  
4 major but when it came to the minor, I could not say with  
5 confidence that I could pull out at every loci.

6 Q. And why could you not do that?

7 A. Because of the small contribution from Mr. Heath.

8 Q. So the major contributor was --

9 A. That's correct.

10 Q. And did it overwhelm the major contributor in laymen's  
11 terms?

12 A. Yes.

13 Q. If you were - Are you able to get a better statistic  
14 when you are able to pull out a full profile?

15 A. Yes. If I'm able to separate a major minor - major  
16 minor contributors, I'm able to generate statistical value  
17 for the major and one for the minor.

18 Q. And you testified previously about a peer review and  
19 the things that you take into - safeguards that you do to  
20 protect cross contamination or false reports. Do you have  
21 a peer review for spelling?

22 A. That's the admin. The administrative review.

23 Q. But do you - Were all of your reports submitted for  
24 peer review for spelling?

25 A. They were submitted for peer review. When there are

LILLY GALLMAN: BY SOLICITOR SHELTON

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1 two areas on the submission form, one area is spelled Mr.  
2 Heath's name, D-a-n. And the other area it's spelled  
3 D-o-n. So the evidence area had D-o-n.

4 Q. And you weren't admitted as an expert for spelling?

5 A. No.

6 Q. And Mr. Smith asked you several times about the  
7 language on your conclusions on Dantonyo Heath's report.  
8 He asked you if you said it matched, and you kind of dodged  
9 him on that question, but did you use the word match with  
10 Dantonyo Heath?

11 A. No, I did not.

12 Q. What words did you use?

13 A. I said he could not be excluded as a contributor to  
14 the mixture.

15 Q. What words would you have used if he was a no match?

16 A. That he is excluded from this mixture.

17 Q. And in your twenty-three plus years of experience,  
18 have you reported a no match?

19 A. Yes.

20 Q. And how would you word that if someone is not a match?

21 A. With it being a mixture, I would say that this person  
22 is excluded as a contributor to this mixture.

23 Q. And that's not what you said in this case?

24 A. No, it's not.

25 SOLICITOR SHELTON: Thank you.

LILLY GALLMAN: BY MS. BURRIS

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1 THE COURT: Ms. Burris.

2 MS. BURRIS: Thank you, Your Honor.

3 RECROSS EXAMINATION

4 LILLY GALLMAN BY MS. BURRIS

5 Q. Ms. Gallman, you would have known if any foreign DNA  
6 other than the standards that you have, you would know if  
7 there were any foreign DNA other than the standards you  
8 had. Right?

9 A. With me not having any of the standards to compare, I  
10 could not say if this person would be included or excluded  
11 to this mixture, whoever, you know, I'm looking for in  
12 that particular mixture.

13 Q. Okay. So your answer is not to your knowledge there  
14 was not actually any foreign DNA that contributed to the  
15 standards?

16 A. Yes. Not to my knowledge.

17 Q. Okay. So if there was another DNA --

18 SOLICITOR SHELTON: Objection, Your Honor. We didn't  
19 go into this.

20 MS. BURRIS: We talked about this.

21 THE COURT: I'm allow this. It's cross.

22 Go ahead.

23 BY MS. BURRIS:

24 Q. So if there was another DNA profile contributing to  
25 the standard, you would have listed that on your report.

LILLY GALLMAN: BY MS. BURRIS

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1 Correct?

2 A. Well, I would not have speculated as to whether -  
3 based on information that I have there, I would not  
4 speculate whether there was an unknown or foreign DNA  
5 profile in this mixture.

6 Q. Would you know?

7 A. Based on the information I have from that item, I  
8 really don't want to speculate, but based on the  
9 information that I have, it does not look like there is any  
10 foreign - any one foreign to Mr. Crane or Mr. Heath to  
11 this.

12 Q. Okay.

13 MS. BURRIS: Thank you, Ms. Gallman.

14 MR. SMITH: No, Your Honor.

15 THE COURT: You can step down and be excused. We  
16 appreciate your time.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: We'll take our fifteen minute afternoon  
19 break. Smokers can smoke.

20 (JURY EXITS COURTROOM AT 04:03 P.M..)

21 (COURT BACK IN SESSION AT 04:03 P.M..)

22 (COURT BACK IN SESSION AT 04:30 P.M..)

23 THE COURT: Thank you. Take your seats. Get the  
24 defendants in and we'll be ready.

25 (DEFENDANT'S REENTER COURTROOM.)



SERGEANT TASHIA SMITH: BY SOLICITOR SHELTON

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

2 Ms. Shelton, for planning purposes, it's about 4:30.  
3 You got a number of other witnesses' listed. I know we're  
4 not gonna finish today obviously but I just wanted to see,  
5 and this is for Ms. Burris also, what else you got?

6 SOLICITOR SHELTON: I intend to call Sargent Smith  
7 now and my direct should not take more than half an hour,  
8 probably less than that, and then Detective Stokes and that  
9 would be it for the State's case.

10 THE COURT: We might not get to Stokes this afternoon.

11 SOLICITOR SHELTON: Yes, sir.

12 THE COURT: We'll see.

13 MS. BURRIS: So would it be fair to maybe have our  
14 witnesses here at ten, Your Honor?

15 THE COURT: Probably. We probably won't get to them  
16 until around eleven so. I've said enough.

17 MS. BURRIS: Thank you.

18 THE COURT: I'll say ten.

19 (JURY REENTERS COURTROOM AT 04:31 P.M..)

20 THE COURT: All right, call your next witness.

21 SOLICITOR SHELTON: Your Honor, at this time the State  
22 would call Sergeant Tashia Smith.

23 (WHEREUPON: TASHIA SMITH,

24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

SERGEANT TASHIA SMITH: BY SOLICITOR SHELTON

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1 SERGEANT TASHIA SMITH BY SOLICITOR SHELTON:

2 Q. State your name for the record, please.

3 A. Sergeant Tasha Smith.

4 Q. And, Sergeant Smith, where are you employed?

5 A. Rock Hill Police Department.

6 Q. How long have you been employed there?

7 A. Since 2006.

8 Q. Your current rank is Sergeant?

9 A. It is.

10 Q. What are your current duties?

11 A. I am the supervisor for community services division,  
12 the school resource officers.

13 Q. What were you doing back in June of 2011?

14 A. I was a detective with Criminal Investigations  
15 Division. Property side.

16 Q. And during that time, did you become involved in an  
17 investigation of an armed robbery and attempted murder and  
18 kidnapping from Five Star Customs?

19 A. Yes I did.

20 Q. What was your involvement in that case?

21 A. I was on call with Detective Stokes and we were called  
22 out to investigate the armed robbery and attempted murder.

23 Q. And when you say called out, did you go to the scene?

24 A. I did respond, I responded initially to the scene.

25 Q. Who was there when you responded to the scene?

SERGEANT TASHIA SMITH: BY SOLICITOR SHELTON

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1 A. When we got to the scene, I believe Officer Stivender  
2 was there; Officer Glenn and I think there were some people  
3 there from FSU. I'm not certain if they were there yet.

4 Q. Did you see the victims there?

5 A. I did not see the victims on the scene.

6 Q. Where were the victims?

7 A. At the hospital.

8 Q. How long did you stay at the scene?

9 A. We stayed there long enough to speak with Officer  
10 Stivender and Glenn and get their version of the story that  
11 they had gotten from the victims and then we went back to  
12 the law center and produced photographic lineups and went  
13 to the hospital to meet with the victims.

14 Q. And at that time to do the photo lineups did you have  
15 a suspect?

16 A. Yes, we did.

17 Q. And who was that?

18 A. Maquis Robinson.

19 Q. And where did that name come from?

20 A. I don't remember if Officer Glenn or Officer Stivender  
21 gave it to Detective Stokes, but Detective Stokes had that  
22 information.

23 Q. And where did they get the name?

24 A. From the victims.

25 Q. And you said that you and Detective Stokes went back

1 to the law center to prepare lineups?

2 A. Correct.

3 Q. Did you do that?

4 A. I did not. Detective Stokes did a lineup.

5 Q. What did you all do next?

6 A. We went to Piedmont Medical Center where the two  
7 victims were and Detective Stokes met with Mr. Jordan and I  
8 met with Mr. Crane and Mrs. Crane.

9 Q. And what did you do when you met with the Cranes?

10 A. I showed Mr. Crane a photo lineup.

11 Q. And did you say anything to him before showing him the  
12 lineup?

13 A. There is a cover sheet that we read before we show  
14 photographic lineups. I went in and I met with him and I  
15 read to him the disclaimer portion on that sheet.

16 Q. Let me show you what's been marked for identification  
17 as State's Exhibit Number Thirty-eight.

18 You said you read to him a portion of that sheet.

19 A. Correct.

20 Q. Without reading it to the jury, you can use it to  
21 refresh your memory, what did you tell Mr. Crane before  
22 showing him the lineup?

23 A. Pretty much what it says is I'm going to ask you to  
24 look at a group of photographs. The lineup may contain the  
25 picture of the person or it may not contain the picture of

SERGEANT TASHIA SMITH: BY SOLICITOR SHELTON

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1 a person and it tells them that you don't have to pick that  
2 person - pick a person out of the lineup. It's not  
3 necessary to identify somebody because basically it  
4 explains that it's just as important to indicate guilty  
5 parties as it is to indicate non guilty parties, or not to  
6 identify guilty parties, in a nutshell is what it says.

7 Q. And did you do or say anything to Mr. Crane to  
8 influence his selection?

9 A. I did not.

10 Q. Did you point to any picture?

11 A. No I did not.

12 Q. Did you mark any picture?

13 A. No.

14 Q. Did you provide Mr. Crane with any identifying  
15 information of the pictures?

16 A. No. I did not.

17 Q. Did you show Mr. Crane a single picture of Maquis  
18 Robinson and then the lineup?

19 A. No I did not.

20 Q. Did Mr. Crane appear to be under the influence to you  
21 at the time?

22 A. He didn't. He was speaking to me and he seemed like  
23 he was okay.

24 Q. What kind of mood was he in?

25 A. He was a little bit emotional. He was shaken up a

SERGEANT TASHIA SMITH: BY SOLICITOR SHELTON

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1 little bit when I got into the hospital room with him and  
2 he had just gone through something traumatic so he was  
3 upset.

4 Q. When giving him the lineup, was he able to select  
5 someone from the lineup?

6 A. He was.

7 Q. Did he seem to have a hard time doing that?

8 A. No he didn't.

9 Q. Did it take him a long time to do it?

10 A. It didn't take him very long. No, it didn't.

11 Q. Did he seem too upset to focus on the lineup?

12 A. No.

13 Q. Who did he select?

14 A. He selected Mr. Robinson from the lineup.

15 Q. And did he do anything to indicate his selection?

16 A. He circled it and initialed it.

17 Q. And the lineup that I've handed you, is that the same  
18 lineup that you showed him?

19 A. It is.

20 SOLICITOR SHELTON: Your Honor, at this time I would  
21 ask to move State's Exhibit Number Thirty-eight into  
22 evidence.

23 MS. BURRIS: Without objection, Your Honor.

24 THE COURT: In without objection.

25 SOLICITOR SHELTON: Your Honor, I believe Mr. Smith

SERGEANT TASHIA SMITH: BY SOLICITOR SHELTON

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1 was going to object.

2 THE COURT: Mr. Smith?

3 MR. SMITH: No, no, no. No objection.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-EIGHT,  
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 BY SOLICITOR SHELTON:

7 Q. Just briefly going back to the lineup, you said that  
8 his wife was present in the room?

9 A. Yes she was.

10 Q. Did she do or say anything to Mr. Crane to influence  
11 his decision?

12 A. No she did not.

13 Q. Did she have any input at all in his selection?

14 A. She did not.

15 Q. Did you show her the lineup?

16 A. I attempted to show her a lineup and Mr. Crane was  
17 very much against her being involved in any identifying  
18 elements of this case. He didn't want her in it at all.

19 Q. Did you take his statement at the hospital?

20 A. No we did not.

21 Q. What did you do next on the investigation?

22 A. At that point, Detective Stokes met me in the room and  
23 we spoke with Mr. Crane and Mrs. Crane and set up a time I  
24 think for the next day, I think we were working that next  
25 day, and set up a time for them to come in for interviews.

SERGEANT TASHIA SMITH: BY SOLICITOR SHELTON  
BY MS. CRUZ

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1 Q. And did they do that?

2 A. Yes, they did.

3 Q. Did you collect any further evidence?

4 A. None.

5 Q. Did you ever go back to the scene?

6 A. We didn't go back to the scene that night.

7 Q. Did you ever review any surveillance videos?

8 A. Not that night. We didn't get the surveillance video  
9 until later on.

10 Q. How did you get those videos?

11 A. Myself and Detective Stokes went to Five Star Customs  
12 and met with Mr. Jordan and we were able to pull up the  
13 video. I don't remember whether or not we were able to  
14 download it. I think we may have had to call FSU for that.  
15 Mr. Jordan was having some trouble using his system.

16 SOLICITOR SHELTON: Thank you, Sergeant Smith.

17 THE COURT: Ms. Burris.

18 MS. BURRIS: Ms. Cruz.

19 THE COURT: I'm sorry. Ms. Cruz.

20 CROSS EXAMINATION

21 SERGEANT TASHIA SMITH BY MS. CRUZ:

22 Q. Sergeant Smith, you testified that you were in  
23 training on the night of June 8th?

24 A. Previously yes, I was.

25 Q. Of 2011 you were in training?



SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 A. Correct.

2 Q. And how long had you been working there at that time?

3 A. With the detective division?

4 Q. Uh-huh.

5 A. I started with them I believe in March and this  
6 happened in June so I had been there for --

7 Q. Three months?

8 A. Several months yes.

9 Q. And how long was your training process?

10 A. What do you mean training process?

11 Q. Training. How long were you in training from the time  
12 that you started working until June 8th, 2011?

13 A. There wasn't really a training process so much. I was  
14 shadowing Detective Stokes because he was on call for the  
15 week and that next week I had on-call by myself so my  
16 supervisors wanted to make sure that I had the proper  
17 training for being on-call and giving me the experience for  
18 what to do in different cases.

19 Q. Okay. Had you done a photo lineup and presented a  
20 photo lineup to a victim or a witness by yourself previous  
21 to the night that you gave the one to Jared?

22 A. I had shown a few photo lineups, yes. When I say  
23 training in the detective division, you pretty much go to  
24 somebody and you say hey how do I do this. They tell you  
25 what to do. I mean they might show you a few times but by

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 the time you get to the detective division you have the  
2 experience to go in and do most things on your own.

3 Q. So it's not a real training program? You don't  
4 actually go through a training program? You just follow  
5 somebody around? Is that what you're saying? There is not  
6 like a set protocol or anything for how to do detective  
7 work?

8 A. There are training classes that I've attended.  
9 Detective training and different classes that are offered  
10 by the South Carolina Criminal Justice Academy, however, at  
11 the Rock Hill Police Department with an actual officer, no  
12 there is not a set program. There are different classes  
13 that are offered by different private companies that teach  
14 you how to investigate.

15 Q. Had you taken those classes before June 8th, 2011?

16 A. I had come back from a class in Durham. Actually when  
17 I was told I was going to be on call I was in training in  
18 Durham with another detective, Kathy Harveston.

19 Q. Had you taken classes on giving and presenting photo  
20 lineups before you did the one on your own on June 8th,  
21 2011?

22 A. I don't believe there is a class that specifically  
23 focuses on giving photo lineups. It would just be within  
24 the new detective training.

25 Q. So you're in training, no classes and no set program.

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 Right?

2 A. For?

3 Q. For photo lineups or for training in general.

4 A. That would have been included in the classes that are  
5 for new detectives, the photo lineup.

6 Q. Okay. But you said you hadn't actually done those or  
7 the one you did before June 8th was not one for photo  
8 lineups?

9 A. It was new detective class.

10 Q. New detective class. Okay. So you were a new  
11 detective on June 8th of 2011, just completing your new  
12 detective class. Right?

13 Am I following you?

14 A. Yes. I was coming out of new detective class. I had  
15 been an officer and had dealt with several different cases.  
16 I mean, patrol officers show photographic lineups. It's  
17 not something that you just learn in the detective  
18 division. It's not something that's detectives only can  
19 do. Patrol officers can do that also.

20 Q. Okay. And you had done maybe a couple, maybe like two  
21 or three, before this?

22 A. I wouldn't say two or three. I had been in the  
23 detective division for several months. I had shown a few  
24 lineups with people. I had shown a few lineups without  
25 people and there is a sheet, the sheet that I described

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 earlier, it pretty much gives you directions as to what you  
2 should do with a photographic lineup.

3 Q. Okay. I have a question about that sheet. So you  
4 testified that you read, you called it disclaimer language.  
5 You had read the disclaimer language to Jared when you gave  
6 him the photo lineup; is that right?

7 A. I referred to it as disclaimer, yes, but on the sheet  
8 it actually says viewer. It's for the viewer. It's  
9 directions.

10 Q. I like that terminology. I just meant you - my  
11 question was more towards you in fact read that to him.  
12 Right?

13 A. I did.

14 Q. And so would it surprise you to hear that he had said  
15 something otherwise?

16 A. Yeah, because I read it to him.

17 Q. Okay. And you said that his wife was in the room with  
18 him at the hospital when you gave him the photo lineup?

19 A. She was.

20 Q. And she was like sitting beside him?

21 A. I don't think she was sitting beside him. She was in  
22 the room. I can't tell you exactly where she was.

23 Q. Okay.

24 A. I know she wasn't hovering over his shoulder looking  
25 at the photographic lineup with him.

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 Q. Okay. And when Jared made the identification, did he  
2 say - he didn't say that's Maquis Robinson. That's him who  
3 did it right there. He just circled the picture. Right?  
4 He didn't actually say the name or identify him other than  
5 just circling a photo?

6 A. I don't remember what he said. What I would normally  
7 say in presenting a lineup is do you see the person  
8 responsible in this lineup and I guess he - I don't know if  
9 he would have said Maquis Robinson. I don't remember what  
10 he said. That was several years ago.

11 Q. Sure.

12 A. I don't recall the exact words.

13 Q. When you say do you see the person responsible, do you  
14 think that the person looking at that and hearing that  
15 statement would assume that they are in fact suppose to  
16 pick somebody?

17 A. They shouldn't because within that sentence, those  
18 directions that I explained about, it says that person may  
19 or may not be in this photographic lineup so they have fair  
20 warning prior to looking at the lineup that the person that  
21 they are looking for may not be in that lineup.

22 Q. Do you think that sentence on that page is more  
23 powerful than you making a statement to them about it with  
24 your police officer outfit on and all that? You think that  
25 they would take the sentence or your statement?

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 A. I didn't have a police officer outfit on. I had on  
2 jeans and probably a --

3 Q. But they knew you were an officer; is that right?

4 A. They did. I identified myself as a detective.

5 Q. And you said you didn't prepare the photo lineup of  
6 Maquis Robinson?

7 A. I did not.

8 Q. But you were there with Detective Stokes when he  
9 prepared it though weren't you?

10 A. I was.

11 Q. You were. You were sitting beside him?

12 A. I may have been sitting beside him or I may have been  
13 working on criminal histories. Usually when we have things  
14 like that where there are two of us, if there is something  
15 else that I can do to help the investigation go a little  
16 bit quickly for the evening just so we can wrap some things  
17 up, then we will separate. So I may have been looking at  
18 him for the first little section of it but I --

19 Q. But you were right there in the room sitting beside  
20 him. Right?

21 A. The detective division is - we have our own cubicles  
22 so I can't tell you where I was when he completed the  
23 lineup.

24 Q. Do you remember testifying previously about this case?

25 A. Previously?

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 Q. Just at a prior hearing do you remember testifying  
2 about this incident and about giving the photo lineup to  
3 Jared Crane and about Detective Stokes being the one who  
4 made it and where you were in the room and what you were  
5 doing. Do you remember testifying about that?

6 A. Where I was in the room? No, I don't.

7 SOLICITOR SHELTON: Objection, Your Honor. There  
8 hasn't been a question.

9 MS. CRUZ: My question was where was she and was she  
10 sitting beside him. I asked that question. She responded  
11 that she was not sitting beside him.

12 THE COURT: Show her what you want to show her.

13 MS. CRUZ: Thank you.

14 Q. This is a copy of your previous testimony. I just  
15 circled it. If that helps refresh your memory.

16 A. Okay.

17 Q. Okay.

18 A. Well I suppose I was sitting beside him.

19 Q. So you were sitting beside him while he was doing the  
20 lineup and --

21 A. But that says I was sitting beside him because I was  
22 training so I would imagine that I would assume that that's  
23 where I would be in training.

24 Q. Right. I just want to make sure. So when a photo  
25 lineup is created, right. You put the information in about

1 the physical characteristics of the defendant or of the  
2 suspect that you are looking for into a computer system.  
3 Right?

4 A. Yes.

5 Q. And it generates photos. Is that how it works?

6 A. You can enter the name. We have a system that  
7 includes arrests and includes photographs from previous  
8 arrests, and we can enter a person's name, pull up a  
9 photograph and the system will pull up people that are  
10 close in character - that have close characteristics to the  
11 person that's entered.

12 Q. Okay. But you also put in physical characteristics  
13 sometimes. Right? Like you say you are looking for ---

14 A. No.

15 Q. --- like say for - No?

16 A. I don't put in physical characteristics. I've never  
17 done a photographic lineup where I put in - I actually  
18 entered physical characteristics.

19 Q. Really?

20 A. It's always - When the person is arrested, that stuff  
21 is entered.

22 Q. Well what if the person hasn't been arrested and the  
23 victims at the scene have just said that they think that it  
24 was three black males in their twenties. One was tall and  
25 thin and the other was short and heavy set?



SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 A. If the person hasn't been arrested ---

2 Q. Yeap.

3 A. --- and is not in our database a name is given to us,  
4 I will contact SLED and go by their photos from their  
5 driver's license.

6 Q. Okay. So what if the name isn't given to you? There  
7 is no way to find a person using a photo lineup other than  
8 having a name?

9 A. If a name isn't given to you, it's difficult to do a  
10 photo lineup. You would just have to put random people in  
11 there.

12 Q. Okay. Even though you would have the physical  
13 characteristics?

14 A. Right.

15 Q. Okay.

16 A. Because there are people that can match that suspect's  
17 physical characteristics but I mean, you can't produce a  
18 photographic lineup without a suspect because then you  
19 would just be putting a bunch of people with similar  
20 characteristics into a photo lineup.

21 Q. I'm confused because I thought that was the point of a  
22 photo lineup. I thought that a photo lineup was used to  
23 find the suspect. Right? So if you only had physical  
24 characteristics, you are saying you cannot find the  
25 suspect?

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 A. The photo lineup is used to identify the person who  
2 was given to us just to make sure that, say there is  
3 another Maquis Robinson in Rock Hill. We want to make sure  
4 we have the right Maquis Robinson, therefore, we'll find a  
5 picture of that Maquis Robinson, put him in a photographic  
6 lineup and that's why it's used for that person to say yes,  
7 that's him. Not Maquis Robinson from the other side of  
8 Rock Hill. It's not just chose random people with similar  
9 characteristics and stick them in a lineup.

10 Q. So did the people in the photo lineup have different  
11 characteristics than each other or are they the same?

12 A. They should be similar.

13 Q. They should be similar. Okay. And when you, and this  
14 is you as in a general word, not you specifically, when you  
15 would develop a photo lineup or when a photo lineup is  
16 developed and printed off to be taken to a victim, does  
17 something else print off with it?

18 A. There is a list that prints off that tells you who  
19 each person is.

20 Q. What else does that list have on there?

21 A. I --

22 Q. And is that list called a photo image detail? Is that  
23 what it is called?

24 A. I think so. I can't tell you verbatim what it's  
25 called, but it has that person's name and I think their

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 date of birth. It may have their social. I'm not sure all  
2 the information that's contained on that sheet.

3 MS. CRUZ: Beg the court's indulgence for a moment,  
4 please.

5 (PAUSE.)

6 MS. CRUZ: May I approach the witness, Your Honor?

7 Q. Can you tell me what that is?

8 A. This is a lineup image details sheet.

9 Q. Okay. So the thing that prints out with the photo  
10 lineup, it would be that. Right?

11 A. Yes.

12 Q. Okay. And what all is on that sheet?

13 A. It includes the name, social, address, phone number,  
14 employer, height, weight, hair color, eye color, birth date  
15 and age.

16 Q. Okay.

17 May I approach the witness?

18 Thank you. Here I'll take that. Thank you.

19 Q. So it's pretty detailed. Right?

20 A. Yes.

21 Q. And those are all the identifying factors that a  
22 person would need in order to make sure they got the right  
23 man. Right? All that information. The name. How old  
24 they are. What they look like. How tall they are. How  
25 much they weigh. Everything. Right?

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 A. You mean as far as if that person were allowed to view  
2 that sheet would they be able to say this is the person  
3 that I'm looking for?

4 Q. No. Not the witness. No. Just that it would have  
5 all the information that a witness or a victim might give  
6 about a prospective suspect on that sheet. Right?

7 A. Well, as far as the address and the phone numbers and  
8 socials, most times victims don't have all that  
9 information. They'll give us a name and we would have to  
10 find a photograph of that person and put it in a lineup and  
11 take it to the victim which would help us with the  
12 identification.

13 Q. So it helps with the identification. So was a photo  
14 lineup image detail sheet printed off with the photo lineup  
15 that contained Maquis Robinson's photo?

16 A. Yes, it was. It prints out with every photo lineup  
17 that we do.

18 Q. Okay. So did you have it?

19 A. Usually we don't take those into the room with us when  
20 we take it for photo lineups. To present them to victims,  
21 you don't take that sheet. You don't want a victim to see  
22 that sheet because like you said, it has everything on  
23 there that a victim needs to say, yeah that's my guy  
24 including where his photograph is I believe in that lineup  
25 so I do not use that sheet.

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 Q. What happens to it then? Who has it?

2 A. Most times it's left in the car or in the file or at  
3 the office.

4 Q. That sheet with all that personal information on it  
5 isn't particularly placed in a very safe place and  
6 maintained in the file? It could be left in a car?

7 A. If we're somewhere on a scene and we're showing a  
8 photographic lineup, you keep it as part of your lineup.  
9 You just don't want to take it into the building with you  
10 so yes it would be secure in a locked vehicle ---

11 Q. So you wouldn't have it.

12 A. --- in a folder.

13 Q. Would Detective Stokes have it?

14 A. Most likely the folder that we had, we'll have  
15 temporary folders that we use when we're investigating, and  
16 to leave things like that in a vehicle you don't want to  
17 leave it on a seat to have everybody's information out for  
18 anybody passing by. You would secure it in a vehicle and  
19 put it in a folder so that it's not easily accessible.

20 Q. Would it surprise you to know that Detective Stokes  
21 doesn't have it. That the State doesn't have it. That we  
22 don't have it?

23 SOLICITOR SHELTON: Objection, Your Honor.

24 THE COURT: I sustain. We're not dealing with  
25 surprises. Just ask the question.

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 BY MS. CRUZ:

2 Q. So you testified earlier that Detective Stokes came in  
3 the room while you - right after or while you were in there  
4 with Jared; is that right?

5 A. Yes, he did.

6 Q. And that you all were talking about the incident, the  
7 three of you?

8 A. Not necessarily interviewing about the incident. We  
9 were asking him basic questions about the incident because  
10 like I said, this is the first time that we had met with  
11 the victims so we got very basic information from them and  
12 set up appointments for them to come in I believe that  
13 following day. I'm not one hundred percent certain. I  
14 would have to look at the statement dates but I believe we  
15 were working that next day.

16 Q. Okay. So not an interview but you all were talking  
17 about what happened. Right?

18 A. Correct. Usually when you respond as a police officer  
19 to something or a detective, when you get to your victim,  
20 you ask them questions about what happened. That's part of  
21 your investigation.

22 Q. Okay. Basic questions like, who did it. Right?

23 A. Or do you know the person responsible or do you know  
24 this person who did this to you.

25 Q. Did Jared Crane say to you that Maquis Robinson had

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 did it? Did he use that name to you or Detective Stokes  
2 while you all were talking about it?

3 A. We wouldn't have asked him that because that question  
4 had already been asked and answered at the scene. He had  
5 already given the responding officers that information so  
6 there was no need for us to ask him that again and we had  
7 shown him a photo lineup.

8 Q. But he didn't say that name?

9 A. I don't remember if he said the name, but he picked  
10 out Mr. Robinson.

11 Q. Okay. And so it was you and Jared and Amanda and  
12 Detective Stokes in the room. Right? All four of you?

13 A. Detective Stokes walked in shortly after Jared picked  
14 out Mr. Robinson, so it would have been me, Amanda and  
15 Jared during the photographic lineup. But after a little  
16 bit of time, after he showed Mr. Jordan his photographic  
17 lineup he came into the room with me.

18 Q. Did you ask Jared, or his wife, or a nurse, or a  
19 doctor, or any medical professional there what Jared's  
20 medical condition was?

21 A. No. I didn't ask them anything about his medical  
22 condition. Typically they won't give us that information.  
23 I mean, you've got HIPPA laws that protect that  
24 information.

25 Q. Sure. So you didn't know what his condition was. You

SERGEANT TASHIA SMITH: BY MS. CRUZ

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1 didn't know if he was on any kind of any medication. You  
2 didn't know if he was under the influence of any kind of --  
3 any thing from the hospital or anywhere else. Anything --

4 SOLICITOR SHELTON: Can she ask one question --

5 THE COURT: Let's just ask questions. You're  
6 stringing out these long statements.

7 MS. CRUZ: Sorry about that, Your Honor.

8 THE COURT: Let's ask questions.

9 BY MS. CRUZ:

10 Q. Did you know if he was under the influence of any  
11 medication?

12 A. I DO not.

13 Q. Or anything else?

14 A. No I do not.

15 Q. Do you know if he had a concussion?

16 A. I do not know if he had a concussion.

17 Q. Do you know if he suffered any injury that would have  
18 dulled his senses, including his eyesight or his mind?

19 A. I don't.

20 Q. And you didn't find out?

21 A. I went into the room and he acknowledged me and he was  
22 speaking with me and he seemed coherent at the time and he  
23 didn't seem like he was under the influence of anything. I  
24 mean, in the job that I do I see people a lot. I mean, I'm  
25 not an expert as in identifying people that are under the



SERGEANT TASHIA SMITH: BY MS. CRUZ  
BY MR. SMITH

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1 influence of drugs but I come across a few but he didn't  
2 seem to be under the influence of anything and he seemed  
3 coherent and he spoke with me. He knew where he was.

4 Q. Okay. You didn't get an independent verification?

5 A. I'm sorry?

6 Q. You didn't get an independent verification?

7 A. I did not.

8 MS. CRUZ: Okay. Thank you.

9 THE COURT: Mr. Smith.

10 MR. SMITH: Thank you, Your Honor.

11 CROSS EXAMINATION

12 SERGEANT TASHIA SMITH BY MR. SMITH:

13 Q. Sargent Smith, the Rock Hill Police Department sort of  
14 has different divisions and you sort of talked about a  
15 distinction in some. Patrol officers are one area. Did  
16 you say you were a patrol officer at some point in time?

17 A. I was.

18 Q. And they sort of have to obviously patrol but respond  
19 to calls. They tend to be the first persons who get the  
20 calls when 9-1-1 is called or something like that?

21 A. Correct.

22 Q. And then detectives tend to have to take over from  
23 there. Is that fair enough to say with the investigation?

24 A. Correct.

25 Q. And that's what you were doing in this case?

SERGEANT TASHIA SMITH: BY MR. SMITH

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1 A. Yes.

2 Q. And that can involve doing interviews as you did?

3 A. Yes.

4 Q. That can involve doing photo lineups as you did in  
5 this case?

6 A. Yes.

7 Q. Could involve search warrants?

8 A. Yes.

9 Q. Did you do any search warrants in this case?

10 A. I don't recall doing any search warrants in this case.  
11 We had consent from the victims to process the scene,  
12 therefore I don't think there was a search warrant needed  
13 on this case.

14 Q. Okay. And you talked about another thing the officers  
15 do and that's go to a lot of training courses?

16 A. Correct.

17 Q. And you mentioned training courses and in part some of  
18 those courses covered interviews or a display of photo  
19 lineups; is that right?

20 A. Yes.

21 Q. And in addition to those courses, there are policies  
22 within Rock Hill Police Department about how to conduct  
23 those and what forms to use, et cetera?

24 A. Right.

25 Q. Because the form that you referenced on State's

SERGEANT TASHIA SMITH: BY MR. SMITH

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1 Exhibit Number Thirty-eight, that's not a form that you  
2 yourself prepared. That's a form that exists within the  
3 Rock Hill Police Department; is that right?

4 A. Correct.

5 Q. And the basis of that form as you summarized is to  
6 make sure that whoever you are showing that picture to  
7 doesn't get a suggestion as to who's been arrested or who  
8 you think the suspect is. Right?

9 A. Right.

10 Q. Because it wouldn't be fair for you to say I think  
11 it's this person?

12 A. No.

13 Q. Okay. And similarity, it wouldn't be fair if you just  
14 showed one picture. I'm going to show you this one picture  
15 and see if you think this is who did it. Or certainly it  
16 wouldn't be fair to show them one person in an orange  
17 prison jumpsuit and say is this the person. Right?

18 A. Correct.

19 Q. Okay. So you were trained and you have a form to make  
20 safeguards to make sure that those don't happen?

21 A. Correct.

22 Q. And you took a witness statement I believe from Mr.  
23 Jordan. Is it June 10th? Does that sound correct?

24 A. I don't believe I took a statement from Mr. Jordan. I  
25 took a statement from Mrs. Crane.

SERGEANT TASHIA SMITH: BY MR. SMITH

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1 Q. And I may be using the wrong term. Might you have  
2 witnessed the statement from Mr. Jordan?

3 A. I was probably a Notary on that statement, so I would  
4 have witnessed his signature.

5 (WITNESS REVIEWING DOCUMENT.)

6 A. Yes, I was - Actually not a Notary. I was a witness  
7 to his signature on this sheet here.

8 Q. Okay. And that sheet would be a?

9 A. This is our Notary form. It just basically tells them  
10 that they make the statement of their own free will without  
11 reward or hope of reward and that they've not been  
12 mistreated or threatened in any way and all of the above is  
13 true, the whole truth and nothing but the truth so help you  
14 God makes it a sworn statement.

15 Q. And that would have been on the tenth when Mr. Jordan  
16 gave his statement; is that's correct? Or when you  
17 witnessed his signature on that form?

18 A. Correct.

19 Q. And then you also talked about Mrs. Crane coming in  
20 for an interview sometime later; is that right?

21 A. Yes.

22 Q. And do you know that day off hand or would it help to  
23 see it?

24 A. It would probably help to see it.

25 (WITNESS REVIEWING DOCUMENT.)

SERGEANT TASHIA SMITH: BY MR. SMITH

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1 A. It looks like Mrs. Crane came on the ninth.

2 Q. All right. And on that one did you witness or did you  
3 prepare that statement?

4 A. I witnessed it and I prepared it.

5 Q. Okay. And when you say prepared, you mean she talks  
6 to you, you type, you give her the statement to review and  
7 she can make any changes she wants to?

8 A. Correct.

9 Q. And you mentioned that at the hospital she declined to  
10 make any photo lineup identification of any suspect at that  
11 point; is that correct?

12 A. It's not that she declined. Her husband was in fear  
13 for her safety and didn't want her involved ---

14 Q. Okay.

15 A. --- as far as the photo lineup is concerned.

16 Q. And then on the ninth when she came to the police  
17 department, I assume that's where this statement was  
18 prepared; is that right?

19 A. It was.

20 Q. When she came to the police department at that point  
21 she wasn't shown a photo lineup or anything at that point  
22 was she?

23 A. No, she wasn't.

24 Q. And to your knowledge, she's never indicated through  
25 any type of photo lineup that Dantonyo Heath was an

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 individual she saw that night?

2 A. Now, I don't know if she would have seen a  
3 photographic lineup of Mr. Heath later. He was from what I  
4 remember identified a little bit later down the line. I  
5 didn't show her a photo lineup of Mr. Heath.

6 Q. Yes, ma'am.

7 MR. SMITH: Thank you.

8 THE COURT: Redirect?

9 SOLICITOR SHELTON: Nothing, Your Honor.

10 MS. CRUZ: No, Your Honor.

11 THE COURT: You can step down and be excused.

12 SERGEANT SMITH: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (WITNESS LEAVING WITNESS STAND.)

15 THE COURT: Can I see counsel up here for just a  
16 minute?

17 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
18 THE JURY AT 05:05 P.M..)

19 THE COURT: Call your next witness.

20 SOLICITOR SHELTON: The State would call Detective  
21 Stokes.

22 (WHEREUPON: CEDRIC STOKES, BEING  
18 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 MADAME CLERK: Thank you. Have a seat.

20 DIRECT EXAMINATION

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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18 DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON

19 Q. State your name for the record, please.

20 A. Cedric Stokes.

21 Q. And you are a detective?

22 A. Yes, ma'am, I am.

1 Q. How long have you been with Rock Hill?

2 A. Since 2006.

3 Q. How long have you been in law enforcement?

4 A. Since '96.

5 Q. Where were you originally?

6 A. I held prior certifications in North Carolina and also  
7 in New Jersey.

8 Q. And you started here in 2006?

9 A. That's correct.

10 Q. When did you become a detective here?

11 A. It was in 2010.

12 Q. What were you doing before that?

13 A. I was assigned to the street crimes division. Street  
14 Crimes Unit.

15 Q. When you were in North Carolina and New Jersey, what  
16 did you do?

17 A. Patrol.

18 Q. Back on June - Detective now, in what division are you  
19 a detective?

20 A. I am in the criminal investigations division in the

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 persons crimes division.

2 Q. Can you be more specific than that?

3 A. Homicide. The actual Homicide team.

4 Q. But back on June 8th of 2011 what division were you  
5 in?

6 A. I was in the persons division just assigned to serious  
7 assaults at that time.

8 Q. Were you working on June 8th of 2011?

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

10 Q. Did you become involved in an investigation of some  
11 crimes committed at Five Star Customs in Rock Hill?

12 A. Yes, ma'am, I did.

13 Q. And what was your involvement in that investigation?

14 A. Okay. On June 8th of 2011, we - myself and  
15 Detective Smith were paged out by the patrol supervisor in  
16 reference to an armed robbery that happened at Five Star  
17 Customs. I think I got there just a few minutes before  
18 Detective Smith.

19 Mr. Crane was actually being transported when I was  
20 arriving at the scene by the patrol officers. When I got  
21 there, several of the patrol officers that were on the  
22 scene said that the victims had named Maquis Robinson as  
23 one of the suspects that were involved in the case.

24 Shortly thereafter Detective Smith arrived and just  
25 got a quick little rundown on what happened and we



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1 responded to our law center and there I produced photo  
2 lineups and together we went to Piedmont Medical Center to  
3 show the victims the lineups.

4 Q. And how did you go about producing those lineups?

5 A. I actually used our records management system. What I  
6 did is - When you produce a photo lineup what you do is, in  
7 this case we had a suspect name, once we put the suspect's  
8 name in, the computer automatically generates a list of  
9 people that matched his height, his weight, his facial  
10 features, his hair description and it produced a number of  
11 photos.

12 From those photos, we picked five other people that  
13 are of the same facial features, height, weight, and we put  
14 them into the photo lineup. Once we hit the print button,  
15 the computer generates where exactly on the form that  
16 person goes so we don't have any control over where in the  
17 lineup they sit.

18 Q. What happens if you have multiple Maquis Robinsons?

19 A. Then what we'll have to do is we'll have to go in and  
20 eliminate based upon height and weight. There is actually  
21 a way to edit it where you can hit a button and say okay,  
22 well Maquis Robinson, six foot, black male, skin color  
23 light skin. You can just click on the buttons and then hit  
24 a produce and it will narrow it down to that one Maquis  
25 Robinson.

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1 Q. And in addition to having the name Maquis Robinson,  
2 did you have other identifying information from the  
3 victims?

4 A. At that time I believed I received it from the  
5 officers. They said Maquis Robinson, black male, and they  
6 kind of gave me a gist of - I think they may have even done  
7 some preliminary work prior to us arriving to let me know  
8 exactly who it was.

9 Q. Did you have to - In putting this lineup together, did  
10 you have to narrow the field of Maquis Robinson's down to  
11 one photo?

12 A. No. It was just the one. Just the one.

13 Q. And then you personally picked the five other photos  
14 to go with his photo?

15 A. Yes, ma'am, I did.

16 Q. And you have nothing to do with the space where they  
17 come out in the lineup?

18 A. No, ma'am. Can't control it.

19 Q. And is there an additional report printed?

20 A. Yes, ma'am. There's actually - When you print the  
21 formal lineup, there is actually a secondary sheet that  
22 prints with it with the information as far as names, date  
23 of births, social security numbers, employer information,  
24 so that form we don't take into the formal lineup. Either  
25 we'll throw them into the file or we discard them because

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 we don't take it when we show photo lineups to our victims.

2 Q. Do you remember what happened in this case with the  
3 form that was generated with Maquis Robinson lineup?

4 A. No, ma'am. No, ma'am, I don't.

5 Q. Is it still in your file?

6 A. I couldn't find it in my file.

7 Q. After you generated this lineup, where did you go?

8 A. After the lineup was generated, myself and Detective  
9 Smith again we responded to Piedmont Medical Center. Once  
10 we got there, we split up. I gave her a photo lineup to  
11 show to Mr. Crane and I went into Mr. Jordan's hospital  
12 room. They were in a triage area in the emergency room. I  
13 went to speak with Mr. Jordan to give him his photo lineup  
14 and Detective Smith went into Mr. Crane's room.

15 Q. And did you meet with Mr. Jordan?

16 A. I did.

17 Q. And did you show him the lineup?

18 A. I did.

19 Q. And in showing him the lineup did you do or say  
20 anything to him to influence his selection?

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

22 Q. Did you indicate which picture he should pick?

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

24 Q. Did you show him an individual picture of Maquis  
25 Robinson and then show him the lineup?

1 A. No, ma'am.

2 Q. Was there anyone in the room with him?

3 A. I can't remember but I didn't think there was anybody  
4 in the room but Mr. Jordan at that time.

5 Q. Do you recall anyone saying anything to influence his  
6 decision on who to select?

7 A. No, ma'am. He was actually lying in the hospital bed  
8 when I went into the room.

9 Q. Let me show you what's been marked for identification  
10 as State's Exhibit Number Thirty-seven.

11 Can you identify that, please?

12 A. Yes, ma'am. It's the photo lineup that I showed  
13 Ernest Jordan at Piedmont Medical Center.

14 Q. How do you recognize that exhibit?

15 A. Because I had my signature on it. My signature along  
16 with Mr. Jordan's signature.

17 Q. And what is the first part of that? It's a two  
18 part, it's two pages to that exhibit. Correct?

19 A. Yes, ma'am.

20 Q. What's the first page?

21 A. It's actually a form that we use that we actually read  
22 to the victims of crimes. Basically, I don't want to call  
23 it a disclaimer, but a form that says that the person may  
24 or may not be - who committed the crime may or may not be  
25 in the photo lineup.

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 Q. And did you read that form to Mr. Jordan?

2 A. I did.

3 Q. And did he sign indicating that that form had been  
4 read to him?

5 A. He did.

6 Q. Was he able to pick out a picture?

7 A. Yes, ma'am, he did.

8 Q. And which picture did he select?

9 A. The picture of Maquis Robinson.

10 Q. And did he do anything to indicate his selection?

11 A. Ma'am, he circled and initialed on Mr. Robinson's  
12 photo.

13 Q. Did Mr. Jordan appear to be under the influence of  
14 anything to you?

15 A. No, ma'am.

16 Q. What was his emotional state, his mood?

17 A. He was pretty battered and bruised when I got to the  
18 hospital but he seemed fine. He was talking to me. He  
19 didn't seem like he, you know, he was under the influence  
20 of anything.

21 Q. Did his emotional state seem to have any impact on  
22 whether or not he was able to properly view that lineup?

23 A. As quick as he identified him, no.

24 Q. No hesitation?

25 A. No hesitation.

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1 Q. Has that exhibit been altered or changed in any way  
2 since you last saw it?

3 A. No, ma'am.

4 SOLICITOR SHELTON: Your Honor, at this time I'd ask  
5 to move State's Exhibit Number Thirty-eight into evidence.

6 MS. BURRIS: Without objection, Your Honor.

7 MR. SMITH: No objection.

8 THE COURT: In without objection.

9 MADAME COURT REPORTER: I'm sorry. Did you say  
10 Thirty-eight?

11 SOLICITOR SHELTON: I'm sorry, Your Honor. It's  
12 State's Exhibit Number Thirty-seven.

13 MADAME COURT REPORTER: That's in.

14 THE COURT: In without objection.

15 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SEVEN,  
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 BY SOLICITOR SHELTON:

18 Q. Once Mr. Robinson was positively identified from the  
19 lineup, what was the next step as far as he was concerned?

20 A. Once Mr. Robinson was identified, I left Mr. Jordan's  
21 room. Attempted to set up an interview but they were  
22 coming in the hospital room. They were coming in I believe  
23 to start working on him so I left out and walked over to  
24 Mr. Crane's room. There we set up appointments with Mr.  
25 Crane to come in to give us a statement. We got basic

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 information and then we left. Went back to the law center  
2 and there I drew the warrants for Mr. Robinson.

3 Q. That night before you took the statements?

4 A. Yes, ma'am.

5 Q. And what warrants did you seek?

6 A. Warrants for armed robbery.

7 Q. You want your file?

8 A. Yes, I do if I can have it, please.

9 Thank you.

10 Okay. This is for --

11 Q. Just on Mr. Robinson.

12 A. Mr. Robinson. Okay. There was a warrant for  
13 attempted murder, armed robbery, possession of a firearm  
14 through a crime of violence, criminal conspiracy and also  
15 kidnap.

16 Q. And when was Mr. Robinson placed under arrest for  
17 those charges?

18 A. His warrants were served on June 14th, 2011 it looks  
19 like here. Ma'am, I have a correction on one of the  
20 warrants.

21 Q. Uh-huh.

22 A. The kidnapping warrant was actually drawn on the 13th,  
23 a few days after.

24 Q. And then served on the 14th?

25 A. And then served on the 14th.

1 Q. Now let's talk about the - Were you ever looking for  
2 three suspects in this case?

3 A. Initially, no. Ma'am, initially we had information  
4 that there may have been a third suspect as a get away  
5 driver but it wasn't confirmed. We did know that there  
6 were two suspects inside of the business at the time of the  
7 incident, but we really wasn't sure about the third  
8 suspect.

9 Q. So were you ever looking for a third suspect? Did you  
10 have any information on a third suspect to look for?

11 A. No information at all. Just the ones named here  
12 today.

13 Q. What about the second suspect. Did you have some  
14 information on --

15 A. I did.

16 Q. And what information did you have about the second  
17 suspect as far as height, weight, that?

18 A. Yes, ma'am. Well, in speaking with Mr. Jordan, he  
19 said that - He gave me a nickname of a guy named Yodi and  
20 he said that's his nickname. I don't really know his real  
21 name but I do know that he has some family that lived in  
22 Crest Street, lived on Crest Street in Rock Hill. And he  
23 also gave me a vehicle description at that time of the  
24 vehicle that one of his family members drove.

25 I'm not sure if it was that day or the day after.



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1       Myself and Detective Smith rode down Crest Street and  
2       actually found the vehicle that he stated , you know, that  
3       he stated in his statement. I ran that tag and it came  
4       back with Dantonyo Heath's name on the tag and from there I  
5       went back, pulled his DMV information and I was able to  
6       develop him as a possible suspect at that time. .What I did  
7       from there was I, again produced another photo lineup to  
8       show to Mr. Crane and Mr. Jordan.

9       Q.    And when producing that photo lineup, did you do it  
10       the same way that you did for Mr. Robinson's photo lineup?

11       A.    The exact same way.

12       Q.    And did you meet with Mr. Jordan to show him that  
13       lineup?

14       A.    Yes I did.

15       Q.    And Mr. Crane, you met with both?

16       A.    I met with both.

17       Q.    Did you meet with both of them at the same time?

18       A.    No, ma'am.

19       Q.    Where did you meet Mr. Crane?

20       A.    I actually called Mr. Crane and I asked him to meet me  
21       at the Fast Buck's gas station between - it's right at the  
22       York County Lancaster County line. When I met with him  
23       there, I showed him the photo lineup and he couldn't  
24       identify Mr. Heath at that time.

25               So what I did then, is I called Mr. Jordan because I

1 was right on the border. He told me he was on the way to  
2 the beach. I said well hey, can you meet me since I was  
3 halfway into Lancaster. He said, okay I'll meet you at the  
4 Bojangles and I drove into Lancaster on Highway 5 and I met  
5 him in the parking lot at the Bojangles.

6 Q. And you testified about the form that you do with the  
7 lineup. Did you have a form with this lineup?

8 A. No, ma'am. That particular night, and I usually keep  
9 the forms in my vehicle, I didn't have one in the car the  
10 night that I showed Mr. Jordan his photo lineup.

11 Q. Is it required that you have that form?

12 A. It is not part of our general order that we do that.

13 Q. And I know you testified that you usually read from  
14 that form.

15 A. I usually do but it's not a part of our general order  
16 when showing photo lineups.

17 Q. Did you, when showing Mr. Jordan the photo lineup even  
18 though you didn't have the form to read, did you tell him  
19 anything beforehand?

20 A. Mr. Jordan - When I explained it to him I said, Mr.  
21 Jordan, it's the same rules apply that applied with the  
22 previous lineup, may or may not be a part of that lineup,  
23 and when I showed him the lineup, he immediately, "that's  
24 him right there."

25 Q. And did you do anything or say anything to Mr. Jordan

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 to influence his selection?

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

3 Q. Did you show him a picture of Dantonyo Heath first and  
4 then the lineup?

5 A. No, ma'am.

6 Q. Did you mark Dantonyo Heath in any way?

7 A. No, ma'am.

8 Q. Did you provide him with any identifying information  
9 of the folks in the photos?

10 A. No, ma'am. He - Actually prior to when he  
11 gave me that name Yodi, he told me he was six foot  
12 something, dark skin. About six foot, six foot, two, dark  
13 skin male, you know, so I kind of - When I pulled up his  
14 motor vehicle picture he fit the bill that what Mr. Jordan  
15 told me at the time of the interview.

16 Q. And did anyone, yourself included, or anyone else, do  
17 anything or say anything to Mr. Jordan to ---

18 A. No.

19 Q. --- influence his --

20 A. No, ma'am.

21 Q. Let me show you what has been marked for  
22 identification State's Exhibit Number Thirty-nine.

23 Do you recognize that exhibit?

24 A. Yes, ma'am, I do.

25 Q. And what is it?

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 A. It's the photo lineup that I showed Mr. Jordan at the  
2 Bojangles.

3 Q. When you showed that to Mr. Jordan, did he appear to  
4 be under the influence?

5 A. He was not.

6 Q. Did he appear to have a hard time looking at the  
7 photos?

8 A. No, ma'am, he didn't.

9 Q. Did he appear to be disorientated in any way?

10 A. No, ma'am, he didn't.

11 Q. Did he have a hard time picking out a photo?

12 A. Ma'am, he went as far as to write, "this is him"  
13 before initialing on this photo lineup

14 Q. And is that the same lineup that you showed him?

15 A. It is.

16 Q. Has it been altered in any way?

17 A. No, ma'am.

18 SOLICITOR SHELTON: Your Honor, at this time I'd ask  
19 to move State's Exhibit Number Thirty-nine into evidence.

20 MS. BURRIS: No objection, Your Honor.

21 THE COURT: In without object --

22 MR. SMITH: Prior objection.

23 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE,  
24 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 Q. Detective Stokes, I'm going to show you what has been

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 marked for identification as State's Exhibit Number Ten.

2 Do you recognize that?

3 A. I do.

4 Q. And what is that?

5 A. This is the cell phone that was located inside of Five  
6 Star Customs.

7 Q. And did you check that into evidence at some point?

8 A. I did.

9 Q. Why did you do that?

10 A. To do a search warrant on the phone. At the time of  
11 the incident I didn't know because Mr. Jordan when it was  
12 recovered, we didn't know if it was the victim's cell phone  
13 at the time or if it was possibly one of the suspects cell  
14 phone.

15 Q. And you did a search warrant for the phone?

16 A. Yes, ma'am. I did a search warrant so I could rip the  
17 content from the phone and try to figure out whose phone it  
18 was.

19 Q. Were you able to determine whose phone it was?

20 A. I was.

21 Q. And whose phone was it?

22 A. Ernest Jordan.

23 Q. So were you ever able - There were a couple phones at  
24 the scene. Were you ever able to determine that any of the  
25 phone belonged to either Maquis Robinson or Dantonyo Heath?

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

2 Q. As part of your investigation did you view the  
3 surveillance video?

4 A. I did.

5 Q. How many times have you viewed it?

6 A. Several times.

7 Q. Let me show you what's been marked for identification  
8 as State's Exhibits Forty-three, Forty-four and Forty-five.

9 Do you recognize those?

10 A. Yes, ma'am.

11 Q. And what are they?

12 A. These are still photos from the video. .

13 Q. And you have viewed the video several times. Do those  
14 appear to be fair and accurate reflections of images  
15 captured from the video?

16 A. Yes, ma'am, they are.

17 SOLICITOR SHELTON: Your Honor, at this time we'd ask  
18 to move State's Exhibits Forty-three, Forty-four and Forty-  
19 five into evidence.

20 MS. BURRIS: Without objection, Your Honor.

21 MR. SMITH: No objection.

22 THE COURT: In without objection.

23 (WHEREUPON: STATE'S EXHIBIT NUMBERS FORTY-THREE,  
24 FORTY-FOUR AND FORTY-FIVE, IDENTIFIED AND MARKED, RECEIVED  
25 INTO EVIDENCE.)

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 BY SOLICITOR SHELTON:

2 Q. Detective Stokes, you met with Ernest Jordan and Jared  
3 Crane after - outside of the hospital and interviewed them  
4 and talked with them.

5 A. I did.

6 Q. And can you explain the difference to the jury between  
7 a case summary and an incident report?

8 A. Yes. The case summary is actually a compilation  
9 between the actual incident report and all of the  
10 information that was gathered during the time of the  
11 investigation. So the case summary would basically  
12 summarize everything that happened in the case. As the  
13 incident report would be just basically the bare bones  
14 report of what happened before we took over the  
15 investigation.

16 Q. So which has more detail?

17 A. The case summary.

18 Q. The case summary. And who prepared the case summary  
19 in this case?

20 A. I did.

21 Q. And looking at your case summary, do you have any  
22 record of money that was taken from the victims?

23 A. Mr. Jordan, Seven Thousand dollars in cash. Mr.  
24 Crane, Eleven Hundred dollars in cash.

25 Q. And when would you have made this case summary?

1 A. The case summary is completed once the actual case -  
2 the suspects are arrested.

3 Q. And so that would have been back in June?

4 A. In June, yes.

5 Q. So back in June, that's when the victims told you that  
6 there were monies taken from them?

7 A. Correct.

8 Q. Is that what appears in the incident report?

9 A. It does not appear in the incident report, the initial  
10 incident report. But there is a supplemental report that  
11 was done later on I believe by Officer Stivender stating  
12 that the Eleven Hundred dollars in cash was missing as well  
13 as a cell phone.

14 Q. And at the time you made the case summary, did you  
15 know the names of both suspects?

16 A. I did.

17 Q. But in writing the case summary did you refer to them  
18 by name all throughout?

19 A. No. They're only referred to by name once they are  
20 named by the victims, once they are ID'd by the victims  
21 through their photo lineups.

22 Q. But before that you call them suspects?

23 A. Suspects or subjects.

24 Q. Was there a 9-1-1 call in this case?

25 A. Yes there was.



DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 Q. Have you done any follow up investigation as to that  
2 9-1-1 call?

3 A. Ma'am, I did. After the incident took place. It was  
4 some time after. I believe the 9-1-1 call was actually  
5 erased or overwritten. Our general orders says a certain  
6 amount of time - after a certain amount of time it could be  
7 erased and at the time when I went to get the 9-1-1 calls,  
8 they were gone.

9 Q. And how much was that time?

10 A. I think it's at a hundred and sixty days or a hundred  
11 and eighty days.

12 Q. And it was after that before you were asked to request  
13 it?

14 A. Correct.

15 Q. Who would have asked you to request it?

16 A. The solicitor, the prior solicitor on this case, or I  
17 would have requested it, but I believe the solicitor asked  
18 me to get the 9-1-1 call or did we get the 9-1-1 call.

19 Q. Do you have a physical description from your notes of  
20 both Maquis Robinson and Dantonyo Heath from June 8th of  
21 2011?

22 A. A physical description just - At the scene we were  
23 just given black male, six foot, six foot one, about 240,  
24 245 pounds, 250 pounds.

25 Q. For which suspect?

1 A. For Mr. Robinson at that time. We didn't have a  
2 physical description at the time for Mr. Heath at that time  
3 until I spoke with Mr. Jordan and actually took his - I'm  
4 sorry. He did tell me it was a dark skinned male when we  
5 were at the hospital. He said it was a dark skinned male,  
6 really tall, but he didn't give me any lock down physical  
7 description of how tall, just dark skinned black male.

8 Q. When did he give you that lock down physical  
9 description?

10 A. Once we did the actual sit down interview at the law  
11 center.

12 Q. What did he say?

13 A. Six foot one, six foot two tall, dark skinned black  
14 male.

15 Q. What about size?

16 A. Really skinny. He said he was kind of skinny.

17 Q. And you have personally viewed the videos. In  
18 comparison to the two suspects, how do they compare to each  
19 other.

20 A. One was a little heavier than the other. Light  
21 skinned black male of course, and then the other one you  
22 can tell was a slender dark skin male with a mask on his  
23 face.

24 Q. And did you see Maquis Robinson personally back then,  
25 back in June of - or around that time?

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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1 A. I did.

2 Q. Do you see him here today in the courtroom?

3 A. Yes.

4 Q. How has he changed?

5 A. Looks like he has lost a significant amount of weight.

6 You know, I would say maybe thirty pounds or better.

7 Q. So he was heavier back in June of 2011?

8 A. Yes, ma'am.

9 SOLICITOR SHELTON: Your Honor, at this time I would  
10 ask that both Dantonyo Heath and Maquis Robinson stand  
11 beside each other and face the jury.

12 THE COURT: I'm not going to make them stand beside  
13 each other. If you both would stand, please. Mr. Robinson  
14 and Mr. Heath.

15 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH  
16 STOOD.)

17 THE COURT: You may be seated. Thank you.

18 SOLICITOR SHELTON: Your Honor, I just want to make  
19 sure Exhibit Number Thirty-nine has been moved into  
20 evidence.

21 MADAME COURT REPORTER: Moved in on Mr. Stokes.

22 SOLICITOR SHELTON: Thank you, Your Honor.

23 I have no further questions, Your Honor.

24 THE COURT: All right. We won't do cross today.

25 We'll start back in the morning. We are not yet in a

1 position for you to make up your mind or do anything  
2 regarding trying to reach a conclusion in this case. I'll  
3 see you back at 9:30. Now I will tell you I do have  
4 something at 9:15 and I feel sure, reasonably sure, that  
5 I'll be through with it by 9:30 so please be here at 9:30  
6 and we'll start as promptly at that time as we can. Have a  
7 pleasant evening.

8 (JURY EXITS COURTROOM AT 05:34 P.M..)

9 THE COURT: You may step down. Of course you'll  
10 remain under oath and you're not in a position to discuss  
11 anything about the case with anybody. Do you understand  
12 that?

13 DETECTIVE STOKES: Yes, sir.

14 (WITNESS LEAVING WITNESS STAND.)

15 THE COURT: Anything before we leave?

16 MR. SMITH: It doesn't involve Detective Stokes.

17 Your Honor, at the pre-trial or before Mrs. Crane  
18 testified, I objected to her in-court identification. I  
19 don't think I put that on the record at the time she  
20 identified my client.

21 THE COURT: I'm noting that you object to that in  
22 court implication at this time.

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: Let's take a short break and then I want  
25 to see counsel in chambers. And if the State would bring

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1 copies with them of the warrants. We'll take about a five  
2 minute break.

3 (COURT IN RECESS AT 05:35 P.M..)

4 (COURT BACK IN SESSION THURSDAY, JULY 25TH, 2013 AT  
5 09:34 A.M..)

6 (DEFENDANTS REENTER COURTROOM AT 09:34 A.M..)

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

8 Good morning.

9 MS. BURRIS: Good morning, Your Honor. Your Honor,  
10 may I run to the restroom?

11 THE COURT: That's fine.

12 MS. BURRIS: Thank you.

13 (PAUSE.)

14 THE COURT: Detective Stokes, you can come on up and  
15 take the stand. Of course you're still under oath.

16 DETECTIVE STOKES: Yes, sir.

17 (WITNESS RETURNS TO THE WITNESS STAND AT 09:35 P.M..)

18 SOLICITOR SHELTON: You want your file?

19 DETECTIVE STOKES: Yehe

20 (ATTORNEY BURRIS REENTERED COURTROOM.)

21 SOLICITOR SHELTON: Your Honor, did you want to take up  
22 the matter of the indictments before or -

23 THE COURT: Well I'd like to just go ahead and put on  
24 the record we had a in-chambers conference yesterday and  
25 discussed various matters including the charge and

1 including some issues with the indictments that were raised  
2 by Ms. Burris Monday or Tuesday whenever we started this  
3 trial. And with that I think if you have any issues  
4 regarding the indictments we'll go ahead and take them up  
5 at this time.

6 SOLICITOR SHELTON: And, Your Honor, if I may, I did  
7 find a case. It's not specifically on point as to your  
8 concern about the indictment containing additional  
9 information than the warrant but it does - it is on point  
10 as to notice of the elements in the indictments.

11 And, Your Honor, if it's okay I'll just address the  
12 issues with Mr. Robinson's indictments since we decided  
13 that Mr. Heath's indictments weren't -

14 THE COURT: Basically the only issue had to do with the  
15 fact that in two of - I think it was kidnapping and armed  
16 robbery - the indictments in which Mr. Robinson set forth  
17 two victims whereas the warrant in which he was arrested  
18 set forth one. The victim I think was set forth in the  
19 warrant was Mr. Jordan. Whereas the indictment includes  
20 two victims Jordan and Crane.

21 SOLICITOR SHELTON: Yes, sir, Your Honor.

22 And, Your Honor, what I've given to the Court is State  
23 versus Ariail cite number 311 S.C. 35. And Your Honor,  
24 this is basically the holding of Ariail is that arraignment  
25 is just a formality. It is not a right in that as long as

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1 the State can establish that the Defendant was given notice  
2 there is no right to an arraignment. And the State's  
3 position is that Mr. Robinson was given ample notice. This  
4 case has been before Your Honor before, over six months  
5 ago, where we proceeded this week on the same indictments  
6 that we proceeded on that week. At no time during that  
7 trial did Mr. Robinson object to notice and required an  
8 arraignment. At no time since then has he made an  
9 objection to notice and required an arraignment. I believe  
10 the case - the *Ariail* case also says that if they do not do  
11 that before the start of the trial that that right would -  
12 that it would be waived and it would not be proper to raise  
13 that issue later on in the trial. And I would also, Your  
14 Honor, at the beginning of this trial Ms. Burris made a  
15 motion to quash those indictments because both of the  
16 victims were named in the indictments and she felt that to  
17 be duplicitous which is in and of itself evidence that they  
18 were put on notice that both of those victims were in the  
19 indictment.

20 THE COURT: Ms. Burris.

21 MS. BURRIS: Thank you, Your Honor. May it please the  
22 Court.

23 That in and of itself doesn't actually warrant notice,  
24 Your Honor. Of course this - What has been created is a  
25 very complex situation. Of course when an individual is

1 actually served with an arrest warrant, they are apprised  
2 of the detail of what they are being charged with.  
3 Specifically Marquis Robinson in the arrest warrant it  
4 actually had the allegations of what he was actually being  
5 charged with and it had one of the victims names and that  
6 of course was notice when it was actually served on the  
7 actual person, here Mr. Robinson. And then once the  
8 Solicitor's office gathered - Of course they actually used  
9 the warrant in order to generate the indictment from the  
10 warrant. Of course in looking at the case of *Samuels*,  
11 *Samuels* clearly says based on everything that has been  
12 presented it's clearly duplicitous. Now the question is  
13 whether or not it's impermissibly duplicitous. And then of  
14 course the Court in *Samuel* employed us to look at a federal  
15 case and it says let's look at the federal law and do the  
16 prejudicial analysis.

17 It again is my position that it is prejudicial simply  
18 because even in *Samuels* they had one defendant and actually  
19 two victims. In this particular case we actually have two  
20 defendants, we have two victims, of course and we know as  
21 in the evidence of course there's different evidence  
22 against each defendant who is actually being charged. That  
23 right there would actually go to the prejudicial analysis.

24 Now the question becomes whether or not this --

25 THE COURT: Slow down a little bit.



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1 MS. BURRIS: Yes, sir. The question becomes whether  
2 or not this court even has subject matter jurisdiction  
3 simply because when you're talking about a defective  
4 indictment and the - and Mr. Robinson is not actually being  
5 put on notice for that indictment, not just those  
6 particular two indictments those being armed robbery -  
7 excuse me, as well as kidnapping, but you're also talking  
8 about conspiracy and the substantive offense in the actual  
9 conspiracy are those two indictments that are duplicitous  
10 and defective. So you have conspiracy that's also  
11 defective because the question is - And of course there is  
12 case law that says subject matter jurisdiction cannot be  
13 waived. How I guess and I know one of the things that we  
14 discussed is an amendment but how can we allow the State to  
15 actually amend when --

16 THE COURT: They didn't ask to amend. Their position  
17 is that they can go forward with the indictment.  
18 Apparently - but they can go forward with the indictments  
19 as drafted.

20 SOLICITOR SHELTON: Yes, sir, Your Honor. And if - We  
21 would ask to amend if the Court disagrees with that  
22 position. But our position is that they have been given  
23 notice; that notice has been evident by Ms. Burris's  
24 arguments that she made on Monday and notice by the fact  
25 that we've tried this case before.

1 MS. BURRIS: And, again if I may, Your Honor?

2 THE COURT: Yeah.

3 MS. BURRIS: Thank you. Again it's our position that  
4 that is not proper notice. He was not arraigned on the  
5 charge in which he was indicted for. He was given a  
6 separate notice document, that being an informal arrest  
7 warrant versus a formal charging document, which was  
8 actually sent to the Grand Jury.

9 And again in *Samuels*, if you read the *Samuels* case,  
10 Your Honor, it does talk about whether or not the jury  
11 would be able to find a unanimous verdict. Here we have  
12 two different defendants, the evidence is different as to  
13 each defendant, very limited and over lapping evidence that  
14 which would warrant conspiracy in the conspiracy  
15 indictment.

16 Again it ask us - The *Samuels* case ask us to look at  
17 the federal courts. Let's look at the federal courts to  
18 employ a prejudicial analysis. It's our position that it's  
19 a danger of unfair prejudice. He lacked notice in the  
20 warrant. The warrant says one thing, the indictment says  
21 two things. And of course the indictment - the defective  
22 and duplicitous indictment because that's not questioned  
23 based on the case law that I've actually read. It's not a  
24 question as to whether or not its duplicitous and  
25 impermissible. The question is whether or not now it's

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1 prejudicial.

2 And it is our position that it is prejudicial simply  
3 because we have again two different defendant's and two  
4 different victims and, so, therefore he would actually -  
5 therefore we place him in a position of if we were to  
6 actually send this to the jury on these particular  
7 indictments, the conspiracy, the armed robbery and the  
8 kidnapping, the question is whether or not they would be  
9 able to come back with a unanimous verdict as to one or the  
10 other. I think that places him in a very difficult  
11 position and I think it's a violation and I definitely  
12 think it's prejudicial to Mr. Robinson.

13 THE COURT: And the alternative motion is to, again  
14 the kidnapping and armed robbery, to do what?

15 SOLICITOR SHELTON: We would elect to take out Jared  
16 Crane as the victim, Your Honor.

17 THE COURT: I'll will grant that motion. I will amend  
18 the kidnapping so that there will only be one victim, that  
19 is Ernest Jordan. I'll amend the armed robbery to include  
20 Jared Crane and leaving only one victim Ernest Jordan. I  
21 do not feel that is prejudicial when the - When I read the  
22 indictments I told the jury at the beginning the charges, I  
23 don't recall and I don't believe that I specifically  
24 referenced the victims. I just said that they were charged  
25 with kidnapping, each of these are charged with kidnapping,

1 armed robbery, attempted murder, criminal conspiracy and  
2 possession of a firearm during the commission of a violent  
3 crime. So the jury has not been informed that and we'll be  
4 doing the charge as to who are the victims of which crime  
5 as to which defendant. So I grant the motions to amend the  
6 drop Mr. Crane from those two indictments. I find that it  
7 is not prejudicial and we'll move forward.

8 MS. BURRIS: Okay, Your Honor. I just want to ask in  
9 regards to the conspiracy, conspiracy actually has the  
10 conspire to arm rob and then conspire to kidnap.

11 SOLICITOR SHELTON: Your Honor.

12 MS. BURRIS: I understand that the --

13 THE COURT: I understand what you're saying.

14 SOLICITOR SHELTON: The conspiracy is the conspiracy  
15 for the crimes that Mr. Heath is alleged to have committed  
16 which those indictments are armed robbery, kidnapping and  
17 attempted murder.

18 THE COURT: Well I think what she's saying though is  
19 that the jury could - Technically the way it's drafted they  
20 would have to find that they conspired to commit one or all  
21 three of these, one, two, or all three of these charges.

22 And your position is what now?

23 MS. BURRIS: My position is that again because when I  
24 made the motion to --

25 THE COURT: No, as to now.

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1 MS. BURRIS: My position in regards to the conspiracy  
2 because the indictments of armed robbery and kidnapping are  
3 number one impermissibly duplicitious.

4 THE COURT: I've already taken care of that. Let's  
5 move on.

6 MS. BURRIS: Okay. It has to do with substantive  
7 charges in there. It has the armed robbery and the  
8 kidnapping in there. And because it actually has the armed  
9 robbery and the kidnapping in there, if they were to  
10 actually find or that indictment was submitted to them in  
11 regards I understand the substantive is the agreement but  
12 that indictment was submitted then the question becomes as  
13 to do they find Mr. Robinson guilty of armed robbery but  
14 they agree to armed robbery and kidnapping as to one  
15 defendant or the other or both. It's confusing.

16 THE COURT: Well if they find he did that as to  
17 anybody then that's enough to support a finding of guilt.  
18 They got to find that he conspired with somebody to commit  
19 armed robbery or attempted murder of kidnapping.

20 What is your motion?

21 MS. BURRIS: Well let me just say this.

22 THE COURT: No. Just tell me what your motion is.

23 MS. BURRIS: My motion of course, Your Honor, we just  
24 for the record, my motion is to quash the indictment in an  
25 alternative a motion to dismiss conspiracy as well as the

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

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

8 Is the State ready to proceed?

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

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

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

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

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

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

9                SOLICITOR SHELTON: Your Honor, he had --

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

20 MS. BURRIS: Well one of my --

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

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

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

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

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

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

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

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

21 MS. BURRIS: Thank you, Your Honor.

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

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

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

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

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

18 You ready for the jury?

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

20 THE COURT: You ready for the jury?

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

22 MR. SMITH: Yes, Your Honor.

23 THE COURT: Bring in the jury.

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

25 THE COURT: Detective Stokes is still on the stand

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1 subject to cross examination.

2 Ms. Burris.

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

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 DETECTIVE CEDRIC STOKES BY MS. BURRIS:

8 Q. Good morning, Detective Stokes.

9 A. Good morning.

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

12 A. Yes, ma'am.

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

15 A. That's right.

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

18 A. That's correct.

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

22 A. I do.

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

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

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1       investigative notes.

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

3       Q.    And investigative notes you said yesterday.

4       A.    Yes.

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

9       A.    Yes, ma'am.

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

13      A.    Yes.

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

17      A.    They identified the subject. Yes.

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

20      A.    Yes.

21      Q.    Yes?

22      A.    Yes.

23      Q.    Okay. And the car?

24      A.    Yes.

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

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

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

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

5 A. Correct.

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

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

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

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

12 Q. Uh-huh.

13 A. There were potentially three suspects ---

14 Q. Uh-huh.

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

17 Q. Okay.

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

24 Q. Do an investigation?

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

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

3 A. Yes, ma'am.

4 Q. The officers?

5 A. Yes, ma'am.

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

7 A. Yes.

8 Q. Date of birth?

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

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

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

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

16 A. Black Jeep Cherokee. Correct.

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

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

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



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1 investigation. Right?

2 A. Supplemental reports, I'm sorry?

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

5 A. Yes.

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

11 A. A day or so later, yes.

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

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

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

18 Correct?

19 A. Correct.

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

22 A. That it was possibly three. Correct.

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

25 A. Yes.

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

3 A. That's correct.

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

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

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

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

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

15 A. In the incident report. Yes.

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

19 A. I was.

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

25 A. Yes, ma'am.

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

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

5 Q. And what are you reading from?

6 A. My operations report. CAD report.

7 Q. Okay. Your CAD report?

8 A. Yes. And --

9 Q. Did you turn that over in discovery?

10 A. This is my CAD report.

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

12 --

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

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

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

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

19 THE COURT: Ms. Burris.

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

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1 believe that we would definitely --

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

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

21 THE COURT: Mr. Smith?

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

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

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

11 THE COURT: Ms. Shelton.

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

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

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

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

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

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

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

20 Is this everything?

21 DETECTIVE STOKES: That's it.

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

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

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

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

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1 THE COURT: Thank you. Take your seats.

2 Detective Stokes, please take the stand.

3 (WITNESS RETURNED TO THE WITNESS STAND.)

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

7 DETECTIVE STOKES: Yes, sir.

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

10 DETECTIVE STOKES: No, sir.

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

13 DETECTIVE STOKES: No, sir.

14 THE COURT: --- regarding this case?

15 DETECTIVE STOKES: No, sir.

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

20 MS. CRUZ: Yes, Your Honor. If it please the Court.  
21 This is the same violation as before. It's a *Brady*  
22 violation. This CAD report contains information that is  
23 potentially could be used to impeach and - sorry, that  
24 could have been used to impeach all the other witnesses --

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

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1 impeachment value.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

17 THE COURT: No.

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

21 THE COURT: All right. Mr. Smith.

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

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

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

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

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

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

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

4 DETECTIVE STOKES: No, sir.

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

7 DETECTIVE STOKES: No, sir.

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

9 DETECTIVE STOKES: No, sir.

10 THE COURT: Before this started?

11 DETECTIVE STOKES: No, sir.

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

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

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

22 THE COURT: I think so too but --

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

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

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

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

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

10 SOLICITOR SHELTON: No, sir.

11 THE COURT: Anything else?

12 MS. BURRIS: I do, Your Honor.

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

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

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

19 MS. BURRIS: Okay.

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

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

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

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

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

5 And now a new issue, Ms. Burris?

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

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

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

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

19 MS. CRUZ: Yes, Your Honor.

20 THE COURT: All right, Ms. Burris.

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

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

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

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

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

12 THE COURT: Apparently trying to assist your concerns.

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

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

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

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

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

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1 that conversation.

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

4 Do you want me to put her under oath?

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

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

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

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

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

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



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

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

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

7 THE COURT: Mr. Smith?

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

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

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

15 THE COURT: The State ready to proceed?

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

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

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

19 MR. SMITH: Yes, Your Honor.

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

22 (JURY REENTERS COURTROOM AT 10:37 A.M..) THE  
23 COURT: You may proceed.

24 MS. BURRIS: Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

1 CROSS EXAMINATION - CONTINUED

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1 DETECTIVE STOKES BY MS. BURRIS:

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

5 A. That's correct.

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

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

10 Q. Uh-huh.

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

14 Q. Okay. Within a twenty minute window?

15 A. Yes.

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

17 A. Correct.

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

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

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

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

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

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

11 A. Correct. That's correct.

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

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

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

21 A. I am.

22 Q. Lead detective.

23 A. I am.

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

25 A. That's correct.

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

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

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

9 A. Yes.

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

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

16 Q. Was?

17 A. Not at that address.

18 Q. Okay.

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

20 Q. They had located a vehicle?

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

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

25 A. Yes, ma'am.

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

4 A. Yes, ma'am.

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

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

8 Q. As the detective.

9 A. Yes.

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

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

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

17 A. I am responsible for investigating the crime.

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

20 A. You mean at that time?

21 Q. Now.

22 A. Yes. I have them.

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

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

2 Apparently --

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

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

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

12 A. Yes.

13 Q. Possibly three black males.

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

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

20 A. Yes.

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

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

24 A. Yes.

25 Q. And on the Communications CAD report, Mt. Gallant

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1 Road. Right? Yes?

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

3 Q. Yes. On the Communications CAD report, the address of  
4 Mt. Gallant Road was on there. Right?

5 A. Yes.

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

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

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

12 A. Yes.

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

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

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

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

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

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

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

25 A. No, ma'am.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

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

7 Q. They who wrote your name?

8 A. The supervisor.

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

11 A. That's correct.

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

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

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

21 A. Day or so after. Correct.

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

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



DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

4 A. Yes.

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

7 A. Yes.

8 Q. In developing the lineup?

9 A. Yes.

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

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

21 Q. Who? Who? Which deputy went?

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

24 Q. So as the lead investigator for this case, you never  
25 followed up with Mt. Gallant Road did you? No.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 A. Not that night. No.

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

5 A. No, ma'am.

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

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

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

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

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

20 A. Ma'am, no.

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

25 A. That's correct.

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

5 A. I did not.

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

9 A. That's correct.

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

15 A. Yes, ma'am.

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

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

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

21 A. That's correct.

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

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

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 Q. Yes.

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

3 Q. Information.

4 A. Correct.

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

8 A. That's correct.

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

12 A. Yes.

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

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

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

18 A. That's correct.

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

21 A. Not always.

22 Q. Not always?

23 A. No.

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

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 photographic lineup image detail is missing. Right?

2 A. Yes.

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

6 A. No, ma'am.

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

9 A. After producing the lineup.

10 Q. After producing the lineup?

11 A. That's correct.

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

13 A. Yes.

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

16 A. I do not.

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

19 A. That's correct.

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

22 A. No, ma'am.

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

25 A. I didn't.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

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

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

6 A. No, ma'am.

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

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

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

12 A. I didn't know.

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

16 A. That's correct.

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

19 A. I did.

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

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

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

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

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

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

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

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

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

16 A. Nope. Correct.

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

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

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

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

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

25 A. That's correct.

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

3 A. I can't remember.

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

6 A. I can't remember.

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

8 A. I do.

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

11 A. I remember.

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

13 A. Yes, ma'am.

14 Q. Is that your testimony?

15 A. Yes.

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

21 A. That's what it says.

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

24 A. No, ma'am.

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



DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

3 A. Yes, ma'am.

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

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

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

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

10 Q. Detective Stokes.

11 A. Ma'am.

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

14 A. That was located by the forensics team.

15 Q. Located by the forensics team. Right?

16 A. Yes, ma'am.

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

20 A. That's correct.

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

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

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

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1 phone records. Yes or no?

2 A. Yes.

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

4 A. Yes, ma'am.

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

8 A. I did.

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

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

13 Q. Rims.

14 A. Wheels? Yes.

15 Q. Wheels or rims? Wheels and rims?

16 A. Yeah. That's appropriate.

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

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

20 Q. That's okay.

21 A. Yes, ma'am.

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

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

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

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

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

4 A. Well I have different - which --

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

7 A. Okay. Yes, ma'am.

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

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

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

13 THE COURT: This is cross examination.  
14 Go ahead.

15 MS. BURRIS: Thank you.

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

20 A. Yes, ma'am.

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

23 A. Yes, ma'am.

24 Q. We on the same page?

25 A. That one?

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

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

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

7 A. Which page is that?

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

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

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

11 A. It's a hand.

12 Q. A hand.

13 A. With money.

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

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

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

20 SOLICITOR SHELTON: Objection, Your Honor.

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

23 BY MS. BURRIS:

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

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

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

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

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

9 Q. Okay.

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

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

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

19 Q. Correct.

20 A. Wasn't much time.

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

23 A. No, ma'am.

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

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1 A. No, ma'am.

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

4 A. Not at that time.

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

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

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

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

16 Q. About five to ten minutes?

17 A. Yes, ma'am.

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

23 A. Yes.

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

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1 A. Okay. Yes.

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

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

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

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

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

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

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

19 A. I am.

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

22 A. I am.

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

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

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1 Q. Right.

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

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

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

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

9 A. I don't.

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

12 A. No.

13 Q. Medication?

14 A. No.

15 Q. Anything?

16 A. No, ma'am.

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

19 A. Collected their statements, yes.

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

22 A. Yes, ma'am.

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

24 A. No, ma'am.

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



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1 A. Yes, ma'am.

2 Q. You ready?

3 A. Go ahead.

4 Q. Oh, okay.

5 A. Yes, ma'am.

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

8 A. Yes, ma'am.

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

12 A. Yes, ma'am.

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

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

20 Q. Uh-huh.

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

24 Q. From this older model Buick?

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

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

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

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

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

9 A. That's right.

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

11 A. Yes.

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

14 A. You mean the night of the incident?

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

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

22 Q. Okay.

23 A. If we spoke about it or not.

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

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1 A. Yes, ma'am.

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

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

5 Q. Later?

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

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

12 A. Yes.

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

17 A. Yes, ma'am.

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

20 A. Since '96.

21 Q. Since '96.

22 A. Correct.

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

25 A. I have.

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

3 A. I have.

4 Q. Right?

5 A. I have.

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

10 A. Yes, ma'am.

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

15 A. Yes, ma'am.

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

20 A. Yes, ma'am.

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

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

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

2 A. That's correct.

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

5 A. That's what he said.

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

8 A. He did.

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

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

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

16 A. Yes.

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

18 A. He didn't

19 Q. Never.

20 A. He didn't.

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

23 A. Are you referring to my file summary?

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

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1 generate that?

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

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

5 A. Yes. Well - yes.

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

10 A. Yes.

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

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

23 Q. And that was enough for you?

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

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

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

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

6 A. Please, please do.

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

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

16 Q. Answer the question.

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

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

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

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

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

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

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

8 Q. Okay.

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

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

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

18 Q. And you can say that under oath.

19 THE COURT: He just did. Move on.

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

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



DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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

2 Right?

3 A. Not in this case.

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

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

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

8 A. Not when he turned himself in.

9 Q. Detective Stokes.

10 A. Ma'am.

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

12 A. Thank you.

13 THE COURT: Mr. Smith.

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

16 THE COURT: Do you need a break?

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

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

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

23 DETECTIVE STOKES: Yes, sir.

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

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

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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

2 Is the State ready?

3 SOLICITOR SHELTON: Yes, sir, Your Honor.

4 THE COURT: Ms. Burris?

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

6 MR. SMITH: Ready, Your Honor.

7 THE COURT: Bring in the jury.

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

9 THE COURT: Mr. Smith.

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

11 CROSS EXAMINATION

12 DETECTIVE CEDRIC STOKES BY MR. SMITH:

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

16 A. Yes, sir. Yes, sir.

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

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

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

24 A. This is it.

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

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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

4 A. Yes.

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

8 A. No, sir.

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

12 A. Yes, sir.

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

14 A. Yes.

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

18 A. Yes.

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

21 A. It was on June the 11th.

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

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 A. I believe it was the 12th.

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

4 A. Turned himself in.

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

7 A. They were.

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

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

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

15 A. Yes.

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

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

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

21 A. I did not.

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

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

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 was a while ago.

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

4 A. No, sir.

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

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

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

12 A. Supplemental?

13 Q. Yes, sir.

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

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

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

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

18 A. Yes.

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

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

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

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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

2 A. Before the original incident report? Yes.

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

6 A. A sworn statement you mean?

7 Q. Yes.

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

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

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

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

15 A. Yes.

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

19 A. Yes.

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

22 A. Eleven Hundred Dollars.

23 Q. Not Eleven Hundred and Fifty?

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

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

DETECTIVE CEDRIC STOKES: BY MR. SMITH

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1 Supplemental Report is July the 1st?

2 A. That's correct.

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

5 A. It's not in the report.

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

7 A. No, sir.

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

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

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

13 A. Okay.

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

18 A. Yes, sir.

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

21 A. Seven Thousand Dollars in cash.

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

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

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

DETECTIVE CEDRIC STOKES: BY MR. SMITH  
BY SOLICITOR SHELTON

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1 A. It has robbing the victims.

2 Q. Okay.

3 A. Or Ernest Jordan and Jared Crane.

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

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

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

11 A. Yes it does say that.

12 Q. And no mention of marijuana there?

13 A. No, sir.

14 MR. SMITH: No further questions.

15 SOLICITOR SHELTON: Just very briefly, Your Honor.

16 REDIRECT EXAMINATION

17 DETECTIVE CEDRIC STOKES BY SOLICITOR SHELTON:

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

20 A. Incident Report. The original?

21 Q. The very very first Incident Report.

22 A. This one.

23 Q. I believe prepared by Officer Studivent.

24 A. Yes, ma'am.

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



DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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

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

7 A. Correct.

8 Q. Is that what it says?

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

10 Q. So not just short, shorter?

11 A. Shorter.

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

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

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

18 A. Yes.

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

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

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

DETECTIVE CEDRIC STOKES: BY SOLICITOR SHELTON

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

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

5 A. Yes, ma'am.

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

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

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

11 A. At the time.

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

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

16 Q. And when would you issue warrants?

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

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

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

25 SOLICITOR SHELTON: Thank you.

DETECTIVE CEDRIC STOKES: BY MS. BURRIS

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1 THE COURT: Recross?

2 MS. BURRIS: Just real brief.

3 CROSS EXAMINATION

4 DETECTIVE CEDRIC STOKES BY MS. BURRIS:

5 Q. Detective Stokes, ---

6 A. Ma'am.

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

10 A. Yes, ma'am.

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

13 A. Paged, dispatched. Correct.

14 Q. Paged, dispatched to the location?

15 A. Yes, ma'am.

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

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

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

23 A. Yes, ma'am.

24 Q. Possibly. Right?

25 A. Yes, ma'am.

1 MS. BURRIS: I have no further questions.

2 Thank you.

3 THE COURT: Mr. Smith?

4 MR. SMITH: Nothing further, Your Honor.

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

6 Thank you.

7 DETECTIVE STOKES: Yes, sir.

8 (WITNESS LEAVING WITNESS STAND.)

9 THE COURT: Call your next witness.

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

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

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

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

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1 THE COURT: Anything from the State?

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

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

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

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

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

15 (PAUSE.)

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

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

1 robbery we believe is a deadly weapon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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1 else on the attempted murder?

2 MS. BURRIS: I do.

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

5 MS. BURRIS: Nothing else for attempted murder.

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

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

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

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

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

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

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

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

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

12 MS. BURRIS: Thank you, Your Honor.

13 THE COURT: Mr. Smith.

14 MR. SMITH: Yes, Your Honor.

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

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

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

3 All right, anything else?

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

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

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

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

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

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1 State to prove your guilt beyond a reasonable doubt.

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

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

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

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

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

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

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

1 reasonable doubt each and every element of each offense.

2 Do you understand that, Mr. Robinson?

3 MR. ROBINSON: Yes, sir.

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

6 MR. ROBINSON: No, sir.

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

8 MR. HEATH: Yes, sir.

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

11 MR. HEATH: No, sir.

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

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

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

19 MS. BURRIS: Yes, sir.

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

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

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

24 MR. SMITH: I have, Your Honor.

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

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

11 Do you understand that, Mr. Robinson?

12 MR. ROBINSON: Yes, sir.

13 THE COURT: Any questions about anything?

14 MR. ROBINSON: No, sir.

15 THE COURT: Mr. Heath?

16 MR. HEATH: Yes, sir.

17 THE COURT: Any questions?

18 MR. HEATH: No, sir.

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

24 MS. BURRIS: Sure.

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

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

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

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

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

6 Is the State ready to proceed?

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

8 THE COURT: Defense?

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

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

12 (ATTORNEY PHIL SMITH REENTERS COURTROOM.)

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

14 MR. SMITH: I am, Your Honor.

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

17 SOLICITOR SHELTON: Yes, sir, Your Honor.

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



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

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

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

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

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

19          MR. ROBINSON: Yes, sir.

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

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

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

25          MR. HEATH: Yes, sir.

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

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

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

18 THE COURT: Mr. Smith?

19 MR. SMITH: No, Your Honor.

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

25 Unlike the opening statements where the attorneys gave

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

8 Counsel.

9 SOLICITOR SHELTON: Thank you, Your Honor.

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 (EXHIBIT PUBLISHED TO THE JURY.)

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

5 (EXHIBIT PUBLISHED TO THE JURY.)

6 SOLICITOR SHELTON: See it?

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

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

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

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

25 (EXHIBIT PUBLISHED TO THE JURY.)

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

13 (EXHIBIT PUBLISHED TO THE JURY.)

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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



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

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

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

10 (EXHIBIT PUBLISHED TO THE JURY.)

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

14 (EXHIBIT PUBLISHED TO THE JURY.)

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

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

25 (PHOTOS PUBLISHED TO THE JURY.)

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

17 (EXHIBIT PUBLISHED TO JURY.)

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 when collecting that evidence.

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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



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

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

7           So I want to talk specifically about each suspect.

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

11          (EXHIBIT/VIDEO PUBLISHED TO THE JURY.)

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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



CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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1 (SOLICITOR SHELTON POUNDED ON JURY BENCH.)

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

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

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

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

CLOSING ARGUMENT: BY SOLICITOR SHELTON

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

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

18 THE COURT: Ms. Burris.

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

2 (DEFENDANT'S EXIT COURTROOM.)

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

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

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

6 THE COURT: Bring in the jury.

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

8 THE COURT: Ms. Burris.

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

11 THE COURT: Yes, ma'am.

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

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

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



CLOSING ARGUMENT: BY MS. BURRIS

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

4           Go ahead.

5           MS. BURRIS: Thank you, Your Honor.

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

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

18          SOLICITOR SHELTON: Objection, Your Honor.

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

22          Just disregard that argument.

23          You may proceed.

24          MS. BURRIS: Thank you, Your Honor.

25          Now, Investigator Stokes, this lead investigator, he

CLOSING ARGUMENT: BY MS. BURRIS

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

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

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

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

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

25 Now, I ask Detective Stokes when you took that

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

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

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

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

CLOSING ARGUMENT: BY MS. BURRIS

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

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

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

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

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

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

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

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

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



CLOSING ARGUMENT: BY MR. SMITH

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1 Thank you for your time.

2 THE COURT: Mr. Smith.

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

5 THE COURT: Okay.

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

7 MR. SMITH: You've read it. Again the mind sort of  
8 fills in those blanks, you know, somebody projects  
9 something and you automatically think I ought to read it.  
10 And some of you have filed in what it says. Now some of  
11 you have said hold on that's where he started so let me  
12 wait and see where he's gonna try to go before I fill  
13 anything in. Again, because your mind fills in gaps.

14 But from the Pledge of Allegiance "with liberty and  
15 justice for all" for all here in this courtroom, for  
16 citizens, and as I'm speaking to you certainly for Dantonyo  
17 Heath.

18 The evidence against Mr. Heath. Solicitor said "this  
19 one's a little tricky" when she got to Dantonyo Heath. Did  
20 you catch that? She gave you all the way up to mention Mr.  
21 Robinson and then she said well this one's a little  
22 trickier, okay. That should have set off a flag to you, a  
23 buzzer. Uh-huh, a uh, oh. Sounds like that trailer is  
24 talking about a problem that's gonna be in this movie.  
25 That's your little trailer of the problem that's gonna

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1 exist in this movie. A little trickier.

2 Now what are they saying? Evidence against Dantonyo  
3 Heath. Do we take it in it's entirety, all the evidence  
4 that they have? Well there's Ernest Jordan's  
5 identification and they give you that. And they give you  
6 Amanda Crane's identification, they give you DNA, and they  
7 give you a video. Four things. All right.

8 I'll sort of go through them backward because I guess  
9 I sort of started backward when I went remember I started  
10 with the video and I said that might surprise you. Then I  
11 talked about DNA. Well, the solicitor's would have told  
12 you about the DNA. But I want to talk about  
13 identifications for a moment. With Mr. Jordan's  
14 identification he claimed he recognized immediately the man  
15 that was ducked down behind the vehicle.

16 I'm gonna submit to you when you view the evidence  
17 that that just cannot be so. So as a matter of fact there  
18 is no way that Mr. Jordan could have recognized who it was  
19 ducked behind the vehicle immediately, but because he  
20 claimed he did, that's how Dantonyo Heath ends up on trial.  
21 That's the original leap that sets everything in motion.

22 Ms. Crane: She made claims about what went on.  
23 Again, if you look at the video you're gonna see it can't  
24 be so. Not to say that she doesn't believe it because she  
25 had been through a very emotional and traumatic situation.

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1 But what she is remembering in her head just cannot be and  
2 just in fact isn't true. It's what he mind has filled in  
3 and it started with Mr. Jordan's leap to something that  
4 could not be true.

5 And then there's this. Why does Ms. Crane pick  
6 Dantonyo Heath? Cause before she was ever given an  
7 opportunity to view a photo lineup she saw him in an orange  
8 prison suit at a bond hearing having bond set for either  
9 one that attacked and beat her husband. Wouldn't you  
10 expect her to therefore and forever identify the man who  
11 walked in in that suit Dantonyo Heath? And that's what  
12 she's gonna do. And may well now dream about that as well.  
13 It's not as what she originally saw, it's because of what's  
14 happened since.

15 The DNA. The very bottom line they don't say it's a  
16 match. Now they can try to dance around that and hide  
17 that, but the DNA isn't a match, period, over.

18 The video: Let's watch just the video. Watch just  
19 the video as much as you've seen it and as much as you're  
20 going to see, ask yourself watching it, could you after  
21 having watched that video with confidence pick out the  
22 individual with his face covered with any group of a  
23 hundred other six foot tall, mid to dark complexed black  
24 males with any confidence? I submit to you you couldn't.  
25 And you can't because each of these pieces of evidence have

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1 a fatal flaw. And it's a little more than just a little  
2 tricker. What it is is Dantonyo Heath is not guilty. And  
3 when you try to prove somebody guilty who is not guilty  
4 it's a little tricky and there are gonna be problems.

5 So what leaps are being made? The very first one Mr.  
6 Jordan says as soon as I saw him duck down I knew exactly  
7 who it was. And you can't even see his face at that point.  
8 If you think he ever sees his face. Jared Crane sort of  
9 let it slip as well. He said once I seen the name with the  
10 face he knew who Dantonyo was. The name with the face,  
11 where would that be? The end of the line. That's what  
12 gets people so certain that they can come to the stand and  
13 act sure about their identification.

14 And then with the crime scene, it was our  
15 understanding that the suspects were known. You see the  
16 crime scene took that leap that was given to them by Mr.  
17 Jordan. And because of that law enforcement processed this  
18 entire case differently than they would have if he would  
19 have admitted to not knowing who that other person was.

20 What does the video show? Well that's the person with  
21 the mask on, whoever that mask man is you know he doesn't  
22 have gloves on. No doubt, clearly, cause everything that  
23 that mask man does inside that building there is a good  
24 chance of prints, of DNA, of whatever being around. Watch  
25 the video, watch it as many times as you want, as many

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1 angles, as many cameras, as many parts as you want to  
2 because I think it won't prove to you what really happened  
3 and what should be there if what they now claim happened  
4 had really happened.

5 In other words if they're movie were a documentary,  
6 what real proof would exist? Or is their movie a fictional  
7 block buster? From the video alone can you make a  
8 reasonable identification of anyone particularly of  
9 Dantonyo Heath? No. It just can't be done because he's  
10 wearing a mask.

11 (STATE'S EXHIBIT PUBLISHED TO THE JURY.)

12 MR. SMITH: Fighting, struggling, falling, touching  
13 the ground with that bare palm with no glove. If their  
14 movie were a documentary, we'd have a palm print of  
15 Dantonyo Heath. Its fiction so you don't, you won't, and  
16 you can't. No prints from Dantonyo Heath in that entire  
17 scene.

18 Leaning up against the pole struggling there, no DNA  
19 matching Dantonyo Heath found on that pole. Right here,  
20 Mr. Crane reaching back clawing, gouging with anything he  
21 can to get out of this choke hold. Anything about any sort  
22 of fingernail scrapings, anything like that from Mr. Crane  
23 at the hospital matching Dantonyo Heath? No. If this  
24 movie were a documentary, there would - Not a single hair  
25 anywhere matching Dantonyo Heath located. No shoe prints

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1 matching Dantonio Heath found at this scene. No money, no  
2 cell phone, no clothing, nothing et cetera found with  
3 Dantonio Heath linking him to this scene.

4 Not from the ground here, not from the items they  
5 claim this person is touching. Not from this bay door that  
6 is being opened and closed by the man in the mask. Not one  
7 single fingerprint of Dantonio Heath there. Why? Because  
8 it wasn't him.

9 The car outside. Part of the crime scene. Watch the  
10 video. The man in the mask touches the car, has the  
11 conversation with Ms. Crane, opens the car door reaches in,  
12 closes the car door. Any fingerprint from Dantonio Heath  
13 found on that car anywhere? No. Why? Because it's not  
14 him.

15 Then there's this. What do you see? Probably at  
16 first you see an individual being walked out, escorted,  
17 forced out, whatever language you want to use, by another  
18 person. What else do you notice?

19 (EXHIBIT CONTINUED TO BE PUBLISHED TO JURY.)

20 MR. SMITH: A cup. How did Mr. Jordan say he got that  
21 cup? The man in the bandana gave it to him. Or this Yodi  
22 person whoever Yodi is gave it to him. What would be on  
23 that cup if Dantonio Heath had touched it? His  
24 fingerprint. And you got to remember the director of the  
25 Multi-jurisdictional Forensic Service's Unit had been by

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1 the hospital before he comes to the crime scene. So don't  
2 let them just slough off and say well we didn't know what  
3 to look for and those kind of things. No. They had all  
4 the information they needed to figure out whether or not  
5 its Dantonyo Heath and the reason they don't have proof is  
6 it wasn't him. No prints recovered from Dantonyo Heath and  
7 were eliminated or any DNA from that cup. That's the  
8 video.

9 Let's talk about DNA. Was it odd to you that the DNA  
10 expert needs courses in statistics? Do you think DNA  
11 science is not actually projected in saying what things  
12 would be in calculations that you learned who it is? DNA  
13 extracted from a small source and then amplified. But  
14 amplified doesn't mean turned up and made bigger.  
15 Amplified means makes a whole bunch of copies. But they  
16 don't like to use that word copied or that word cloned so  
17 they just pick their own words and call it amplified. And  
18 always in that sort of last thing she sort of sheepishly  
19 say when talking about all these results she would say well  
20 I cannot exclude. Okay. It didn't match Dantonyo Heath.

21 And how about this. SLED, no we don't have an error  
22 rate. Well we kind of do. What do you mean? Well  
23 somebody thought we needed one and so they just assigned  
24 one. They didn't really look to see if there were errors.  
25 They just assigned an error rate? Yeah. Is that

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1 acceptable for the State Law Enforcement Division? Is that  
2 acceptable for evidence that's being brought to you by the  
3 State asking you to convict a man of attempted murder,  
4 kidnapping, some of the most serious crimes we have in this  
5 state?

6 And there is a partial profile from a minor  
7 contributor. Partial profile as in didn't get it all. As  
8 in half of it might match somebody but if we had the whole  
9 thing it might be somebody totally different. That's your  
10 trouble. One in eleven quadrillion on one of the results  
11 she had gotten, that's eleven with those fifteen zeros.  
12 The other one is six hundred and fifty quadrillion, that's  
13 6-5-0 to fifteen more zeros and then what they want to  
14 bring to you is evidence against Mr. Heath one in one  
15 hundred and eleven. Looks a lot different doesn't it?  
16 Population she said the world's eight billion, that would  
17 mean seven hundred and twenty million others would be  
18 expected to be included with the level of evidence of DNA  
19 result that exist for Dantonyo Heath.

20 Ms. Shelton wants to tell you what if we did one  
21 hundred and ninety nine in here. Well that would be nine.  
22 Yeah, nine. Nine, nine others from this room. Shouldn't  
23 that trouble a prosecutor? She said but how many of nine  
24 would Amanda Crane identify. Well how many of them are you  
25 gonna let her see in an orange jumpsuit at a bond hearing



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1 before you let her do the identification? That might  
2 change the odds a little bit. But we will never get to  
3 know because she didn't look at a lineup. She knew about  
4 lineup proceedings. She just jump on the internet and saw  
5 a picture and went to a bond hearing.

6 If this was just a DNA case the state would be in  
7 trouble. At least the solicitor admitted that. I would  
8 hope that if this were just a DNA case they wouldn't  
9 dismiss it. But apparently not. We'd still be here in  
10 front of the jury with having to being troubled, trouble  
11 for the state and still risk some innocent person might be  
12 convicted. But that's lawyer speak for this DNA evidence  
13 is no good. Doesn't work. The video doesn't prove, the  
14 DNA doesn't prove.

15 Amanda Crane the next thing they say. She first  
16 claims they were carrying Neal out of the building. I ask  
17 you to watch the video. It's just not what's there. It's  
18 just not what happened. And it doesn't mean she doesn't  
19 believe it as she sits here today because her mind will  
20 fool her and make that night horrible as it was to her.  
21 But just because she believes something does not make it  
22 so.

23 They were not carrying Neal out of the building. If  
24 you will watch the man in the mask, whoever he is, not only  
25 does not carry Neal out of the building, but turns and

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1 closes the bay door as Neal is coming out of the door. She  
2 had been testifying that she was able to observe for three  
3 to four whole minutes. But that changed once I asked her,  
4 or told her, the video showed her with him outside only  
5 thirty-five seconds. And if you'll take the time to watch  
6 you'll see that there is no way she could even seen Neal in  
7 that entire thirty-five seconds. Probably less than ten.  
8 Seemed longer, I'm sure it did. I'm sure it did. And  
9 that's what the mind does when it deals with these  
10 traumatic situations. The mind works the senses, makes  
11 things seem longer than they are and makes things that  
12 aren't true seem believable. But that's not your job.  
13 Your job is to find the actual truth.

14 She claims she wasn't in the room when Jared was read  
15 the disclaimer's for the lineups. But Jared, and now  
16 Sergeant Smith, said she was. Now why is that important?  
17 Well we'll get to those disclaimers and see what those  
18 disclaimers talk about. And I think you'll see that they  
19 talk about some of the things that end up later tainting  
20 her lineup. She saw Dantonyo Heath on the Moss web site,  
21 Moss Justice web site. And what does that tell you?

22 That's even after the bond hearing. Because remember  
23 Detective Stokes said yeah well he was arrested over in  
24 Rock Hill where he turns himself in and that's where he has  
25 his bond hearing. And then later he's transported to Moss

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1 Justice Center. So wait a minute. When she sees his  
2 picture on the web sites is when she knows who he is?  
3 That's after she had already seen him at a bond hearing.  
4 So is there any surprise that she can come in the courtroom  
5 now and he still sits at the defense table identify him.  
6 Wouldn't you be surprised if she did anything less?

7 In an orange jump suit. Talk about that with the  
8 photo line ups, but would it be fair if one of the persons  
9 in this photo lineup were wearing an orange jump suit that  
10 said York County Detention Center in it and they picked  
11 that person? Would that be a fair lineup? Would that be a  
12 lineup you would feel comfortable basing a conviction on?  
13 I submit to you no. But now, in court, she can make an  
14 identification and they ask you to use that as valid  
15 evidence against Dantonyo Heath. That evidence is simply  
16 not credible.

17 But they did one other thing with Ms. Crane. They had  
18 her introduce those photographs. They brought a wife whose  
19 husband had been beaten, put her on the witness stand, and  
20 made her identify the photos of his injuries. Why would  
21 they do that? You saw them. To cause the natural reaction  
22 that any wife would have when confronted with seeing the  
23 pictures of her husband that was that traumatic to get that  
24 emotion out of her on this stand hoping that you will then  
25 be clouded by it and just skip over the other problems with

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1 her testimony. That ought to bother you. The officer who  
2 took the photos could have introduced these photos. Mr.  
3 Crane himself could have introduced these photos. But they  
4 chose to have his wife Amanda Crane get up there and break  
5 down in front of you to show you those pictures.

6 Ernest Jordan when he testified said some interesting  
7 things. He talked about a gun going off twice. No, didn't  
8 happen. Might happen in the big block buster movie, but in  
9 the documented truth didn't happen. One bullet fragmented  
10 into two pieces. That's it. Said he's only ever seen  
11 Dantonyo Heath with Mr. Robinson. Seen him a couple of  
12 times with Mr. Robinson coming up to the shop asking  
13 something about putting wheels on this vehicle that he  
14 believes is his mothers. Well that's important cause that  
15 tells you when he thinks he sees Mr. Robinson he associates  
16 another person with him and who might it be? That Yodi  
17 fellow. That's where the leap starts. Claims he  
18 recognizes him immediately when he's ask. But do you  
19 notice when he testified at one point he said Dantonyo  
20 Robinson - I mean Dantonyo Heath. One of those little  
21 slips, doesn't mean a whole lot, but it sort of shows he  
22 associates Mr. Heath with Mr. Robinson. But the evidence  
23 doesn't.

24 He also told you I don't do not kind of drugs. He had  
25 a conviction that was introduced to allow you to weigh his

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1 credibility and it involved some kind of drugs. But I  
2 think he said that's a long story. He says he was shot  
3 despite what the officers and the medical evidence proves.  
4 Says to this day I think I got shot. Does it make sense?

5 Look at the photo. Look where the wound is that he  
6 believes is a shot. Look at the angle. Could the shot  
7 have come from this direction here, well no, because it  
8 would have gone through his nose. Could the shot have come  
9 from this direction here? Well no, it would have hit his  
10 nose. That one is not a shot. Still a wound. It  
11 shouldn't have happened to him and it's awful but it's not  
12 that he got shot. Again, maybe in a block buster  
13 production, but not in a documentary. That's why the  
14 officer said it is not serious, it's no bullet, and that's  
15 why they said it's a laceration and not a gun shot wound in  
16 the hospital. To this day he believes he got shot. He  
17 does. But it's simply not true. But the mind can allow  
18 you to believe things that aren't true. But that's not the  
19 role of you as jurors.

20 All of this evidence against Dantonyo Heath doesn't  
21 add up. Each and every item has a leap or a problem,  
22 something that it skips, something that it lacks.

23 Well let's talk about what you would expect to find.  
24 This long struggle with hats fallen off and phones flying  
25 off and wire and bay doors being opened, and water, and

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1 cars touched, phones being taken. Where is the piles of  
2 evidence or the results you would expect to have seen from  
3 this? If any of it matched Dantonyo Heath you'd see it,  
4 boxes of it. But you don't because it wasn't him.

5 Something else you didn't see. The responding  
6 officers. A whole line of questions about what was told to  
7 the first police officers that get there. Well hold on  
8 I'll check the report. What did he say was told to the  
9 first police officer? Well hold on didn't you tell him?  
10 Oh we just called the first police officers. Why didn't  
11 the state bring them in and swear them and put them on the  
12 stand? If they would have helped their case you would have  
13 heard from them but you didn't. Yet you're being ask to  
14 make a decision where you're given all the information you  
15 need to make that decision. No. Why? Because all that  
16 information doesn't help their case.

17 The 9-1-1 call. Where is it? The original  
18 description that was given out. A hundred and sixty days  
19 later it had been erased. But don't hold it against them.  
20 Really? What should we hold against them? Don't hold it  
21 against them and some how make a leap that there would have  
22 been evidence exculpatory or good for us? No. We needed  
23 that evidence, you needed that evidence, they didn't bring  
24 it to you. Yet they called us the magic show. Did I tell  
25 you to look anywhere other than that evidence. Am I

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1 telling you to avoid any piece? I'm the one showing you  
2 pictures on the rail. I started out by saying show the  
3 video. But they're gonna call me the magic show.

4 Early they said no no, the magic show is with this  
5 money. That's just a magic show, that's just a diversion.  
6 Okay, let's look at it. Right now how much money was  
7 taken? Anybody know? Any of you feel confident that right  
8 now based on the testimony of Mr. Jordan and Mr. Crane you  
9 could swear how much money was taken? Money taken, the  
10 basis of an armed robbery charge against these gentlemen.  
11 She wants to talk the magic show to set down historic  
12 numbers. Okay. Well let's see. Seven Thousand Dollars.  
13 Does anybody want to say that one. That one has been  
14 testified to. Ten Thousand Dollars. Anybody want to say  
15 that one? But that one's been testified to. Over Ten  
16 Thousand Dollars. Anybody want that one? That one's been  
17 testified to. Eleven Hundred Dollars. Anybody want that  
18 one? That one's been testified to. Eleven Hundred and  
19 Fifty Dollars. Anybody want that one? That one's been  
20 testified to.

21 Beyond a reasonable doubt is anybody confident how  
22 much money was taken? No. Why? Cause that story kept  
23 changing because you got inconsistent testimony from  
24 multiple individuals and even from the same and that should  
25 bother you.

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1           Let's talk about lineups. Mr. Robinson's was done  
2 with this cover sheet. Tells the viewer you will be asked  
3 to look at a group of photos. The fact that the photos  
4 shown to you should not influence your judgment in any way.  
5 You should not conclude nor guess that the photographs  
6 contain the picture of the person who committed the crime.  
7 You do not have to identify anyone. It is just as  
8 important to keep free innocent persons from suspicion as  
9 to identify guilty parties. That is important to be read  
10 to anyone who is shown a lineup. That's why this form was  
11 created, that's why it's required as Sergeant Smith  
12 explained.

13           It's a lot different than having somebody go on a web  
14 site and look at one photo or go to a bond hearing and see  
15 somebody. And it's a lot different than when you show a  
16 photo lineup - And folks, we forgot the cover sheet. Just  
17 didn't have it with me. Had it for these others, just  
18 didn't have it for the one that identifies Dantanyo Heath.  
19 And remember when that photo lineup was shown? Detective  
20 Stokes went and met Mr. Crane half way between Lancaster  
21 down there at the line and all of a sudden he looks at it.  
22 We don't know if he was shown that front copy of the form  
23 or not. He looks at it and says Naw, I can't ID the guy in  
24 there. Uh-oh. Well let's just get on the phone and go  
25 call now Mr. Jordan and get him to rush out and meet us.



CLOSING ARGUMENT: BY MR. SMITH

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1 You're on the way to the beach, hold on, I'll meet you  
2 anyway. I meet you outside Bojangles. I'll go meet you at  
3 Bojangles and show you and we don't do that cover form and  
4 they are shew, he picks Dantonyo.

5 Are you shocked? Wonder why it was missing that  
6 sheet? Mr. Heath had no cover sheet. None of this  
7 safeguard was done with Amanda Crane. She was in the room  
8 and heard those warnings when her husband was shown. But  
9 she was never given those warnings on the other form and  
10 yet they let her come take the stand and try to give you  
11 what they would say was is a valuable identification here  
12 in the courtroom. I say this form is for a purpose; that's  
13 why it's witnessed, that's why it's signed. That's what  
14 should have been done and the reason that it was never done  
15 in any identification that's picked Dantonyo Heath out is  
16 because he's not the person who was there.

17 How many pictures should they show? Well they show at  
18 least six. Can't be dressed differently, you have to all  
19 look the same. Can't be walking somebody in at a bond  
20 hearing. Mr. Jordan said no the person in the lineup he  
21 knew. Remember? And Ms. Burris began asking him well how  
22 did you know that person? And he said, well they bought  
23 tires and either then or when Ms. Shelton ask him on direct  
24 said, well it was since this time.

25 But when I was showing him you know I knew but he's

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1       come in since this time that lineup was done. If you knew  
2       that person, he knew this other person that night, but  
3       again the mind starts putting together things that just  
4       can't be true. In his mind since he recognized the man in  
5       a bandanna immediately as Yodi. How when he claims the  
6       bandanna was only there when the man was outside. There is  
7       the man in the bandanna. Here is where he comes, ducking  
8       down behind the car.

9               (EXHIBIT/VIDEO PUBLISHED TO THE JURY.)

10       MR. SMITH: Anyway, immediately he would know who that  
11       is. Anyway, immediately he know that's the man he's only  
12       seen a couple of times. Or would it be more likely he  
13       makes an assumption based on someone he thinks he's seen  
14       that person with. Obviously it's an assumption.

15       Jury instructions. The judge is gonna give you jury  
16       instructions. I ask you to listen carefully to all of  
17       them. But in particular he's gonna talk to you about the  
18       credibility of the witnesses, the believability, how you  
19       judge their testimony. He's gonna tell you you can believe  
20       part of it, all of it, or none of it. You have the right  
21       to believe none of the testimony of one or all of the  
22       witnesses. And one of the ways, the tools, that he's gonna  
23       give you to judge that is to look at the ability to know  
24       the things about which they testified. Do you see a face  
25       that ducks down when all you see is this much? No. Use

CLOSING ARGUMENT: BY MR. SMITH

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1 that to judge credibility.

2 Demeanor: How persons act on the stand. Use that to  
3 judge. And did they testify consistently. How much was  
4 taken? If they didn't then you can discard their  
5 testimony. You won't be given instructions that say well  
6 just speculate. Just look past something and make an  
7 assumption or just leap over some of these games. You'll  
8 never gonna be told that cause it's not your role. And  
9 you've got to fight against it because it's something the  
10 mind tends to want to do. So to uphold your oath you've  
11 got to make sure you don't do that. You were given an  
12 instruction already. You were told not to go look on the  
13 internet. Why? It wouldn't be fair. But how did Ms.  
14 Crane make her identification? Went and jumped and looked  
15 on the internet at one photo of a person she had seen at a  
16 bond hearing who was already been arrested and in prison.  
17 It's just not fair, it's just not. It's a leap and it's  
18 not true.

19 There is the shirt, Item 11, from which the DNA comes  
20 that we get the one in one hundred and eleven. I don't  
21 know where the shirt comes from, but this marker signifies  
22 it at the scene, at the shop. A couple of things to  
23 notice. First, would have been nice if we would have had  
24 somebody measure these footprints or these impressions to  
25 see what size shoe's there are to see if they match

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1 somebody. Don't know what you or don't know about shoes  
2 but they don't look like Nike Air Macs treads to me.

3 Another thing is the shirt is found laying at the  
4 shop. A shop where they say Dantonyo Heath had been by at  
5 some point maybe on a couple of occasions from a forensic  
6 unit agent who says was just going by somewhere where would  
7 have been most hundreds of people DNA and DNA can be there  
8 from breathing on it. The shirt didn't come off Jared  
9 Crane. This is where the shirt was found. That's why that  
10 cone is placed there. At the time this shirt is found,  
11 Jared Crane is here in the hospital with a white tee shirt.

12 She's already told you DNA doesn't mean much in this  
13 case. I agree. But I think there's an explanation of some  
14 things going on. And it's interesting that Betty Butler  
15 said she was testing for a question of ownership is why she  
16 did the collar scrape. If they were telling you hold on  
17 this is Jared Crane's shirt that he just took off why would  
18 they send it to SLED and say we got a question about  
19 ownership? Why would she test the collar area where she  
20 said the wearer is most likely to have left DNA? Something  
21 doesn't make sense.

22 The openings for the trailer of the case, Solicitor  
23 Newkirk told you there was one man with a gun, one man with  
24 a bandanna on his face. That's true. He's got a bandanna  
25 on his face any time you could see him in that video. Now

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1 they're gonna try to say there is some other times you  
2 might can speculate or their witnesses may say but their  
3 trailer told you what's really provable in that movie. A  
4 man with a bandanna on his face. And did you notice in  
5 their trailer, their opening, they didn't mention any items  
6 being taken from Jared Crane. No money, no marijuana.  
7 Why? If he had been robbed why wouldn't they talk about  
8 that? Sounds like a problem with the trailer.

9 And they described Ms. Crane's opportunity to observe  
10 as a brief encounter. There is something in the trailer  
11 that lets know there's a problem with the movie.

12 What crimes were committed? You're gonna be given a  
13 bunch of different indictments that you're gonna have to  
14 make a decision from. I won't go through them all but I'll  
15 tell you this. Whoever the man in the bandanna is, he  
16 prevents any potential murder. You've heard that from the  
17 testimony. You heard Mr. Crane say I was being told to go  
18 to sleep, drop the knife. That knife never used with him,  
19 he's never stabbed with that knife or anything like that.  
20 You heard Mr. Jordan say "it was the man in the bandanna"  
21 or "Yodi" as he calls him who stopped the fighting in there  
22 in the bath room.

23 He said originally he thinks he only got involved  
24 because Jared was coming into the bathroom. In other words  
25 the man in the bandanna who's ducked behind the car would

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1 have never gotten involved period if Jared hadn't -  
2 unluckily happened to go walk to hear what the noise was.  
3 That's Ernest Jordan's testimony. And he also said "I  
4 think if it wasn't for Yodi I think it probably would have  
5 been over." Whoever Yodi is, whoever the man in the  
6 bandanna is, prevented Ernest Jordan from being killed that  
7 night. And the man in the bandanna is not the one who took  
8 Ernest Jordan's money. That's what he testified to.

9 Yodi. They make a big deal about Yodi. You know this  
10 nickname Yodi, this nickname Yodi. Where is the proof that  
11 any man named Yodi applies to Dantonio Heath? Anybody hear  
12 a witness? Friends, family, coworkers, cohorts, anybody  
13 come in and say Yodi is the nickname that Dantonio Heath is  
14 know by. No. They just throw out a nickname Yodi and hope  
15 that you'll make that leap. It doesn't exist. If it were  
16 true, there would have been a lot of witnesses. You didn't  
17 get them. There is no evidence that Mr. Heath's nickname  
18 is Yodi.

19 Agent Buchannan started off by saying it's just like  
20 CSI on TV. He ended up backing off that and later saying  
21 it's not like TV. But that's how he began his testimony.  
22 And he also told you Dantonio Heath willingly gave his DNA.  
23 Take my DNA and compare it to whatever you got at that  
24 scene. Willingly. Does that sound like a guilty man?

25 There were four agents there. The director of the

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1 unit had gone to the hospital first. DNA probably being  
2 left on papers that are up there being breathed on by  
3 Attorney Burris. Three to four agents processing this  
4 whole scene, see all the fluids, what could be prints, what  
5 could be impressions, all these things that could go on,  
6 and what they bring you are sixteen items. Is that enough?  
7 Enough to make you feel comfortable with your decision?  
8 And of those sixteen items, none match. There is one in  
9 one one hundred and eleven can exclude Dantonyo Heath but  
10 none match.

11 Jared Crane testified that money was taken from his  
12 pocket. He said he knew the amount exactly because of  
13 Family Court. But he'd forgotten he had purchased a half  
14 ounce of marijuana earlier that day. He was very sure  
15 about one thing. Grey, neon, yellow and white, Nike Air  
16 Max. And I said "Air Max?" And he said, "Air Max '95  
17 sneakers." Any testimony that any shoes like that had ever  
18 been seen on Dantonyo Heath? Did you find them in his  
19 property, find them at his house? Anything? No. Why not?  
20 It wasn't him.

21 His testimony broke at some point. On the stand he  
22 said that somebody told him "goons will be back for him."  
23 Or that there were threats made to his wife. And it's got  
24 to feel that way to him. But when you look at what was  
25 actually told to law enforcement at the time it just didn't

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1 sound right. I'm sure it feels worse than even now in his  
2 mind but it just isn't what happened. But even Mr. Crane  
3 couldn't pick Dantonyo Heath out of a lineup when he was  
4 shown him, not in an orange jumpsuit, but in a six person  
5 spread. The person who had the most contact with the man  
6 in the bandanna says no, no. And he never points in this  
7 courtroom to Dantonyo Heath and says that's him.

8 Mount Gallant. The GPS on the phone ever linked  
9 to Dantonyo Heath? No. Detective Stokes testified that  
10 there was no physical description of Heath at the scene.

11 Three black males. Solicitor says well that's no big  
12 deal, just three black males. There wasn't nothing about  
13 three black males, may have seen 'em in a car. No big  
14 deal? Really? Well how about in their twenties? Might  
15 that be an important description? Hum. Is that how  
16 Dantonyo Heath would be described by someone who just saw  
17 him?

18 Tried to locate a vehicle at . Jeep Cherokee.  
19 They said well, no, no, because they identified Mr.  
20 Robinson so why did it matter. Well it matters because  
21 there is no evidence for Dantonyo Heath that there is any  
22 tie to that address. Or, to that Jeep Cherokee. None.

23 Detective Stokes said Dantonyo Heath turned himself in  
24 the next day, the day after the warrant was drawn up. He  
25 said that per the CAD report one of the suspects possibly



CLOSING ARGUMENT: BY MR. SMITH

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1 had a stab wound. Dantonyo Heath never had a stab wound.  
2 The evidence they have against Dantonyo Heath they claim is  
3 Mr. Jordan's identification, Ms. Crane's identification,  
4 DNA and a video. None of those are credible. Look at them  
5 individually, look at them together, look at them up, look  
6 at them down. Look to see if they have no credibility  
7 evidence against Dantonyo Heath. Why? Because Mr. Heath  
8 is not guilty.

9 And that should be the curtain on the movie.

10 THE COURT: We'll take about a ten minute break before  
11 I give you the charge on the law. But don't start  
12 discussing the case yet, we're not quite there.

13 Take about a ten minute break.

14 (JURY EXITS COURTROOM AT 04:09 P.M..)

15 (COURT IN RECESS AT 04:09 P.M..)

16 (COURT BACK IN SESSION AT 04:21 P.M..)

17 THE COURT: Thank you. You may take your seats.

18 Is the State ready?

19 SOLICITOR SHELTON: State's ready, Your Honor.

20 THE COURT: Ms. Burris?

21 MS. BURRIS: Yes, sir, Your Honor.

22 THE COURT: Mr. Smith?

23 MR. SMITH: Ready, Your Honor.

24 THE COURT: Bring in the jury.

25 (JURY REENTERS COURTROOM AT 04:22 P.M..)

## CHARGE TO THE JURY

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1 THE COURT: Members of the jury panel, I appreciate  
2 your attention you've given all of us at this point. It's  
3 now my job to charge you the law that you are to apply to  
4 the facts in this case. Your job to apply what the law is  
5 as I charge it.

6 I'm going to go over now and at the end of the trial I  
7 will in summary go over this again because there are five  
8 charges against each defendant. The five charges are the  
9 same - charge the same offenses but there are a little  
10 different wrinkles to the charges and I'm going to try to  
11 distinguish them now, and I will at the end.

12 Each, both Mr. Robinson and Mr. Heath, are charged  
13 with kidnapping. Mr. Robinson is charged with kidnapping  
14 Mr. Jordan. Mr. Neal - Heath is charged with kidnapping  
15 Jared Crane, so they both are charged with kidnapping but  
16 it's two different alleged victims.

17 They both are charged with armed robbery. Mr.  
18 Robinson is charged with armed robbery regarding the victim  
19 Ernest Jordan. Mr. Heath is charged with armed robbery of  
20 both Ernest Jordan and Jared Crane.

21 Both are charged with attempted murder. Mr. Robinson  
22 is charged with attempted murder of Ernest Jordan. And Mr.  
23 Heath is charged with attempted murder of Jared Crane.

24 As to the other two charges, they are basically  
25 identical. They are charged with possessing a pistol

## CHARGE TO THE JURY

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1 during the commission of a violent crime. The violent  
2 crimes stated in the indictments are attempted murder and  
3 robbery. Both are charged with offense.

4 They both are charged with conspiracy. Both are  
5 charged with conspiring with another person to commit armed  
6 robbery or attempted murder or kidnapping. So while the  
7 charges are all the same as far as the title of the charge  
8 basically attempted murder, et cetera, there are some  
9 little differences. And the reason I tell you that is  
10 because when I charge you the law - and I'll tell you more  
11 about this in just a minute - it makes a difference in your  
12 consideration as to how you analyze the evidence, because  
13 you've got to know who the alleged victim is as to a  
14 particular perpetrator, and make a determination as to  
15 whether or not the State as to that particular person and  
16 as to that particular charge, has convinced you of that  
17 person's guilt beyond a reasonable doubt.

18 I charge you that in this case, as I said, the law and  
19 the evidence must be considered separately as to each of  
20 the defendants individually, and your verdict does not have  
21 to be the same as to each defendant, or as to each of the  
22 separate charges.

23 In fact you may find one of the defendant's guilty or  
24 not guilty. You should not control your verdict as to the  
25 other defendant or as to a particular charge. Where

## CHARGE TO THE JURY

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1 individuals are charged in a joint situation, the jury must  
2 determine whether or not as to the particular person  
3 whether the State has proven that person's guilt beyond a  
4 reasonable doubt. And this depends on your view of the  
5 testimony, the evidence and the exhibits, and the charge on  
6 the law.

7 Again, you consider the evidence as to each and write  
8 a verdict as to what you determine unanimously as to a  
9 particular defendant and as to a particular charge.

10 Again, each indictment charges a separate and distinct  
11 defense, and that's why I went through them just a moment  
12 ago. You must decide each indictment separately on the  
13 evidence and the law applicable to it uninfluenced by your  
14 decision as to any other indictment. A defendant may be  
15 convicted or acquitted on any, or all, of the offenses  
16 charged. I will at the end go over the verdict forms and  
17 ask you to write separate verdicts of guilt or not guilty  
18 as to each indictment as to each defendant.

19 Now the fact that Mr. Heath and Mr. Robinson have been  
20 arrested, the fact that they have been charged, the fact  
21 that they have been indicted, and the fact that they are on  
22 trial is not evidence. You cannot consider the fact that  
23 they are on trial as being any evidence of their guilt. It  
24 does not create the fact that they are on trial any  
25 presumption or inference of guilt. The fact that they have

## CHARGE TO THE JURY

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1       been charged, arrested, and indicted is just the way our  
2       system works. The indictments - and you will not have  
3       those back in the jury room with you, but I want to explain  
4       what they are.

5       The indictments are written instruments which contain  
6       the charges against an individual. The indictments are the  
7       formal charges and constitutes the paperwork by way of  
8       which this case is processed and ultimately will be where  
9       the jury's unanimous verdict is enrolled.

10       I told you earlier I am the sole judge of the law in  
11       this case and you must take, accept and apply the law as I  
12       charge it. I remind you that I told you that this is true  
13       even if you think I charge the law in error, or even if you  
14       think the law should be different. Your oath requires you  
15       to take, accept and apply the law as I charge it.

16       You are not to infer from anything that I have said or  
17       done as being an indication of an opinion of mine on the  
18       facts. Our law does not allow a trial judge to formulate  
19       or express to a jury any opinion on the facts. It is  
20       solely your job. And it is solely your job as the trial  
21       jury in this case to examine the evidence, and give to the  
22       evidence the effect, the value, the weight, and the truth  
23       you believe it should have. In doing this you may believe  
24       one witness as opposed to several. Several witnesses as  
25       opposed to one.

1           You may believe all, part, or none of a witnesses'  
2 testimony. Use your common sense, your sense of logic,  
3 your sense of reason. Use your experiences in life as you  
4 analyze the evidence. As judges of the facts you must  
5 necessarily judge the credibility of the witnesses' who  
6 have testified. In judging credibility use those things I  
7 have just talked about. And you use those things that you  
8 find in your day to day life as being indicators of  
9 truthfulness.

10           When accessing credibility, believability, of a  
11 witness you can use such things as their demeanor, how they  
12 act on the stand, whether they have any criminal record.  
13 You can consider the opportunity the witness had to know  
14 the things to which they testified. Look at the  
15 consistencies and inconsistencies of a witness testimony  
16 and when the testimony is given at trial or when compared  
17 with other testimony. And as to the demeanor of a  
18 witness, also, consider whether they respond hesitantly or  
19 straightforward. All these things you consider to  
20 determine the true facts, again, and you'll be able to  
21 return a verdict that speaks the truth.

22           Now in this case we've had experts testify. Generally  
23 individuals can only testify as to something they've  
24 observed with one of their five senses. Most of the time  
25 its something somebody has seen or heard but it could be

CHARGE TO THE JURY

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1 taste, touch, or smell. However, where an individual has  
2 certain training and experience, knowledge and education in  
3 a certain area that person can be qualified by the court as  
4 an expert and allowed to take facts and render an opinion.

5 My best example of that is a physician, of course we  
6 didn't have a physician in this case, but if have a child  
7 and that child is feverish, I feel the heat, the child may  
8 be throwing up, I can see that. The child may be groaning  
9 and complaining, I can see that. The child may not be able  
10 to sleep, I can see that. I can come in and testify to all  
11 of those things, but I couldn't tell you what's wrong with  
12 the child. However, if I take that child to a physician  
13 the physician could see the exact same things that I just  
14 talked about and render an opinion. In medicine it's  
15 usually called a diagnoses. But that's what an expert  
16 does, they take facts and because of their training they  
17 are able to reach an opinion based on those facts.

18 Now expert testimony is allowed into evidence to  
19 assist you, it is not binding on you. You look at the  
20 testimony of an expert just as you look at the testimony of  
21 any other witness. Use all those criteria I've already  
22 gone over. Additionally as to an expert look at that  
23 person's qualifications. I determined they were qualified  
24 to give an opinion but it is up to you to determine whether  
25 you think they were qualified to render an opinion. And

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1 you may also when examining the opinion of an expert look  
2 at the underlying reasons which lead to the expert to the  
3 opinion they reached. The opinion of experts are allowed  
4 into evidence to assist you, they are not binding on you.  
5 They are only to assist you and you may accept them or  
6 reject them in whole or in part just like you may any other  
7 witness.

8 Each of the defendant's, Mr. Heath and Mr. Robinson,  
9 have entered pleas of not guilty. This places on the State  
10 the burden of proving their guilt beyond a reasonable  
11 doubt. Each of these defendants is presumed innocent. A  
12 person charged with any offense in our legal system is  
13 presumed innocent until the State proves, if it can, that  
14 person's guilt beyond a reasonable doubt.

15 This is an important rule of law, it is not just a  
16 legal theory or a mere legal phrase. A presumption of  
17 innocence is a substantial right. A presumption of  
18 innocence attaches to an individual, again Mr. Robinson and  
19 Mr. Heath, at the time of their arrest and remains with  
20 them as their case is processed through our court system.  
21 The presumption of innocence remains in their favor even  
22 now as I speak. And even as you deliberate. The  
23 presumption of innocence remains in each defendant's favor.  
24 The presumption of innocence is removed if and when, and  
25 only, if and when you determine the State has convinced you



## CHARGE TO THE JURY

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1 of a defendant's guilt as to a particular offense, beyond a  
2 reasonable doubt.

3 Now the State is not required to prove one's guilt  
4 beyond all or beyond every doubt, but beyond a reasonable  
5 doubt. Our court's have described a reasonable doubt -  
6 defined reasonable doubt as the kind of doubt that would  
7 cause a reasonable person to hesitate to act.

8 The State has the burden of proving as to each  
9 defendant each element of an offense beyond a reasonable  
10 doubt before you could convict that defendant.

11 Proof beyond a reasonable doubt is proof that leaves  
12 you firmly convinced of someone's guilt. If based on your  
13 consideration of the evidence you are firmly convinced that  
14 one or both of the defendants are guilty of one or more of  
15 the offenses you would find them guilty. On the other hand  
16 if you think there is a real possibility that one is not  
17 guilty of one or more of the offenses, or both, are not  
18 guilty of one or more of the offenses, you would give them  
19 the benefit of the doubt and return a verdict of not  
20 guilty.

21 In cases such as this there are generally two types of  
22 evidence which are presented, direct and circumstantial  
23 evidence. Direct evidence is the testimony of someone who  
24 claims to have actual knowledge of a fact such as someone  
25 who is an eyewitness or someone who says they have heard

1 something. Direct evidence is evidence which immediately  
2 establishes the main fact which is sought to be proven.

3 Circumstantial evidence is proof of a chain of facts  
4 and circumstances which indicate the existence of a fact.  
5 Circumstantial evidence is evidence which immediately  
6 establishes collateral facts from which the main fact may  
7 be inferred. Circumstantial evidence is based on inference  
8 and not on personal knowledge or observation. Our law  
9 makes absolutely no distinction between those two types of  
10 evidence.

11 Our law does not require a greater degree of certainty  
12 to circumstantial evidence as opposed to direct evidence.  
13 What you should do in this case is weigh all the evidence.  
14 After weighing all the evidence, if you are not convinced  
15 of an individuals guilt as to an offense you would give him  
16 - beyond a reasonable doubt you would find him guilty.

17 I instruct you and emphasize the fact that either  
18 defendant testified is not a factor to be considered by you  
19 in any way whatsoever in your deliberations or in your  
20 consideration of the question of their guilt or innocence.  
21 It must not be considered by you in any manner whatsoever.

22 Any defendant in our system has a constitutional right  
23 to remain silent. And the assertion of that right must not  
24 be considered by you in your deliberations. You are to  
25 draw no conclusion from the fact that a defendant did not

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1 testify.

2 The fact that the defendant's did not testify cannot  
3 be even discussed by you in the jury room, and it cannot be  
4 used in your own mental consideration as what verdict to  
5 return. That is, in no way can the fact that they chose to  
6 exercise their constitutional right to remain silent  
7 mitigate against them in any way.

8 I remind you, they both are presumed innocent of all  
9 the charges against them, and the State has the burden of  
10 proving their guilt beyond a reasonable doubt.

11 An issue in this case is the identification of one of  
12 both of the defendants as the individuals who committed the  
13 charged crimes. The State has the burden of proving  
14 identify beyond a reasonable doubt. You must be satisfied  
15 beyond a reasonable doubt of the accuracy of the  
16 identification of a defendant before you could convict that  
17 defendant.

18 Identification testimony is an expression of belief or  
19 impression by a witness. You must determine the accuracy  
20 of the identification of the defendant by the witness. You  
21 must consider the believability of each identification  
22 witness in the same way as you look at any other witness's  
23 testimony. You may consider whether a witness had an  
24 adequate opportunity or capacity, to observe the offender  
25 at the time of the offense. This will be affected by

1 things like how long or short a time was available, how far  
2 or close the witness was. You can consider the lighting  
3 conditions and whether the witness had a chance to see or  
4 know the person prior to the alleged offense. You may  
5 consider whether the identification is a product of the  
6 witness's own recollection. The burden of proof extends to  
7 the State on each element of the crime charged and  
8 specifically includes identifying or proving beyond a  
9 reasonable doubt the identity of a defendant as the person  
10 who committed a particular offense.

11 If after examining the testimony, you have a  
12 reasonable doubt as to the accuracy of an individual's  
13 identification of a defendant you would find that defendant  
14 not guilty.

15 In our state we have a theory or concept and that  
16 applies to cases such as this called the hand of one is the  
17 hand of all, or accomplice liability. If a crime is  
18 committed by two or more people who are acting together in  
19 committing a crime, the act of one is the act of all. A  
20 person who joins with another to commit an unlawful act is  
21 criminally responsible for everything done by the other  
22 person which happens as a probable or natural consequence  
23 of the acts done in carrying out the common plan and  
24 purpose.

25 If two or more people are together, acting together,

## CHARGE TO THE JURY

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1 assisting each other in committing the offense, the act of  
2 one is the act of all. Again, sometimes as referred to as  
3 "the hand of one is the hand of all."

4 Prior knowledge that a crime is going to be committed,  
5 without more, is not sufficient to make a person guilty of  
6 that crime. Mere knowledge that another person is going to  
7 commit a crime, even if the a defendant is present when the  
8 crime is committed, is not sufficient to convict a  
9 defendant as a principle. The mere presence at the scene  
10 where an incident occurs is not sufficient to prove  
11 accomplice liability.

12 Guilt as a principal is shown by actual or  
13 constructive presence at the scene as a result of prior  
14 arrangement. Therefore, a finding of a prior arranged plan  
15 or common scheme is necessary for a finding of one being  
16 guilty as a principal. The State must prove beyond a  
17 reasonable doubt by competent evidence this theory, the  
18 theory of the hand of one being the hand of all.

19 A principal in a crime is one who either actually  
20 commits the crime or one who is present aiding and  
21 abetting, or assisting in committing a crime. When a  
22 person does an act in the presence of and with the  
23 assistance of another, the act is considered to have been  
24 done by both. Where two or more are acting with a common  
25 plan or intent, are present at the commission of a crime,

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1 it does not matter who actually commits the crime, all are  
2 guilty. The hand of one, again, is the hand of all.

3 Present at the commission of a crime means to be  
4 sufficiently near to aid, abet and assist in the commission  
5 of the crime. However, as I've already stated, mere  
6 presence at the scene of a crime is alone insufficient to  
7 convict one as a principal under this theory.

8 Intent is also a necessary element, for there must  
9 have been a common design or intent to commit the crime and  
10 the crime must have been committed pursuant thereto with  
11 the person aiding and abetting by some overt act. That is  
12 the person who is considered to be a principal by virtue of  
13 this theory. Intent means intending the result which  
14 actually occurs. Something intentional is something that  
15 is not accidental or involuntary. Intent may be shown by  
16 acts and conduct of a defendant and from other  
17 circumstances from which you may naturally and reasonably -  
18 from which you may naturally and reasonably infer intent.  
19 The State must prove this theory of the hand of one is the  
20 hand of all, accomplice liability, beyond a reasonable  
21 doubt.

22 The first charge I'm gonna go over is that of  
23 attempted murder. Mr. Robinson is charged with attempted  
24 murder of Ernest Jordan. Mr. Heath is charged with  
25 attempted murder of Jared Crane. In order to prove that

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1 one of the or both of the defendants are guilty of  
2 attempting - attempted to kill - I'm sorry, attempted  
3 murder, the State must prove that a defendant attempted to  
4 kill another person with malice aforethought, either  
5 expressed or implied.

6 Malice is hatred, ill will, or hostility towards  
7 another person. Malice is the intentional doing of a  
8 wrongful act without just cause or excuse and with an  
9 intent to inflict an injury or under circumstances from  
10 which the law will infer an evil intent.

11 Malice aforethought does not require that malice  
12 exists for any particular time before the act is committed,  
13 but malice must exist in the mind of a defendant just  
14 before and at the time an act is committed. Therefore,  
15 there must be a combination of the previous evil intent and  
16 an act.

17 Malice aforethought may be "expressed" or "inferred".  
18 These terms do not mean different kinds of malice but  
19 merely the manner in which malice may be shown to exist.  
20 That is either by direct evidence or by inference from the  
21 facts and circumstances which the State has proven beyond a  
22 reasonable doubt. Expressed malice is shown when a person  
23 speaks words which express hatred or ill will for another  
24 or when a person prepares beforehand to do the act which is  
25 later accomplished.

1 Malice may be inferred from conduct showing a total  
2 disregard for human life. Inferred malice may also arise  
3 when a deed with a deadly weapon. A deadly weapon is any  
4 article, or instrument, which is likely to cause death or  
5 great bodily harm. Whether an instrument has been used as  
6 a deadly weapon depends on the facts and circumstances of  
7 each case. A pistol is considered a deadly weapon.

8 If facts are proven beyond a reasonable doubt  
9 sufficient to raise an inference of malice to your  
10 satisfaction, this inference would simply be an evidentiary  
11 fact to be considered by you as the trial jury in this  
12 case.

13 A specific intent is not an element of attempted  
14 murder but there must be a general intent to commit serious  
15 bodily injury. Excuse me one minute.

16 (PAUSE.)

17 THE COURT: Another example of what you may consider  
18 to be a deadly weapon based on the circumstances and facts  
19 of the case would be any ordinary object including - I also  
20 charge you that a fist, depending upon the circumstances on  
21 which it is used, may be considered a deadly weapon.

22 A specific intent to kill is not an element of  
23 attempted murder but there must be at least general intent  
24 to commit serious bodily injury. Intent means intending  
25 the results which actually occurs. Again, I mentioned this



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1 a moment ago, but something intentional is not something  
2 that's accidental or involuntary. Intent may be shown by  
3 acts and conducts of a defendant and other circumstances  
4 from which you may naturally and reasonably infer intent.

5 Evidence of the character of the act, the character of  
6 the instrument used, the manner in which any instrument was  
7 used, the purpose sought to be accomplished, and the  
8 resulting wounds or injuries, if any, may be considered in  
9 determining the intent with which an act was committed.  
10 Intent may also be inferred when it is demonstrated that  
11 the defendant voluntarily and willfully committed an act,  
12 the natural tendency of which is to destroy another  
13 person's life.

14 Now the State must prove the charge of attempted  
15 murder beyond a reasonable doubt as I have defined it  
16 before you could convict either one or both of these  
17 defendants of attempted murder.

18 Now I believe it was mentioned by the Solicitor that  
19 there are lesser included offenses of attempted murder. I  
20 can best describe what this means by asking you to think  
21 about the stair steps and you have the top step which is  
22 the highest. And you step down you have the next step down  
23 which is a little lower. Step down, one is a little lower.  
24 And just like with the steps these lesser included offenses  
25 are steps down. They are lesser offenses even though they

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1 are not set forth in the indictment our law incorporates  
2 them as possibilities that a jury can consider under the  
3 charge of attempted murder.

4       They all involve assault and battery, so I will define  
5 assault and battery. An assault occurs when a person  
6 unlawfully attempts or offers to commit a violent injury  
7 upon another person and has the present ability to complete  
8 the attempted injury. An assault is the intentional  
9 creation of a reasonable fear of immediate bodily harm. It  
10 is not necessary that the attempted injury or harm actually  
11 take place. I always use this example. If I am close  
12 enough to strike you and I rare back my fist in a rude and  
13 angry manner, I'm close enough to strike you, and I put you  
14 in fear that you are to be - may be struck, that is an  
15 assault.

16       A battery is the unlawful touching of another person  
17 by one who has committed an assault. An unlawful touching  
18 can be caused by part of an accused's body or by objects  
19 which an accused has put into motion. A battery is the  
20 completion of the assault by using or applying force to  
21 another person, however slight, in a rude, angry, or  
22 resentful manner without legal justification for so doing.

23       In my earlier example if I rare back and commit an  
24 assault and I follow through and I strike you, no matter  
25 how slight, I have committed an assault and then I have

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1 committed a battery. The battery is the touching.

2 If you find the State has not proven as to a defendant  
3 that person's guilt beyond a reasonable doubt as to  
4 attempted murder you may consider whether or not the State  
5 has proven beyond a reasonable doubt that that individual,  
6 that defendant, committed assault and battery of a high and  
7 aggravated nature.

8 The State must prove beyond a reasonable doubt that  
9 there was an assault and a battery and that it was  
10 accompanied by aggravating circumstances in order for you  
11 to find the defendant guilty of this lesser included  
12 assault and battery of a high and aggravated nature.

13 Circumstances of aggravation include the use of a  
14 deadly weapon, the intent to commit a felony, the  
15 infliction of serious bodily injury, a great disparity  
16 between the ages or a great disparity between the ages or  
17 physical conditions of the parties. These are only  
18 examples of what you may consider as aggravating  
19 circumstances. You as the trial jury it is up to you to  
20 determine what if any circumstances you may think fall into  
21 the category of being an aggravating circumstance.

22 If the State has not proven this second step down,  
23 assault and battery of a high and aggravated nature, you  
24 may consider whether or not the State has proven one or  
25 both of the defendant's guilty of assault and battery in

1 the first degree. A person commits the offense of assault  
2 and battery in the first degree if the person unlawfully  
3 injures another person and the act occurred during the  
4 commission of a robbery, burglary, or kidnapping.

5 A person may also commit the offense of assault and  
6 battery in the first degree if that person unlawfully  
7 offers or attempts to injure another person with the  
8 ability to do so, and the act is either accomplished by  
9 means likely to produce death or great bodily injury; or  
10 occurred during the commission of a robbery, burglary or  
11 kidnapping.

12 Great bodily injury means bodily injury which causes a  
13 substantial risk of death or which causes serious,  
14 permanent disfigurement or protracted loss or impairment of  
15 the function of a bodily member or a bodily organ.

16 The next step down from assault and battery in the  
17 first degree is assault and battery in the second degree.  
18 If you find the State has failed to prove either of the two  
19 higher offenses you may consider whether or not the State  
20 has proven beyond a reasonable doubt that a defendant  
21 committed assault and battery in the second degree.

22 A person commits the offense of assault and battery in  
23 the second degree if the person unlawfully injures another,  
24 or offers or attempts to injure another with the present  
25 ability to do so, and moderate bodily injury to another

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1 person results or moderate bodily to another person could  
2 have resulted.

3 I used the term moderate bodily injury. This term is  
4 defined by our legislature. They have defined moderate  
5 bodily injury to mean physical injury requiring treatment  
6 to an organ system of the body other than the skin,  
7 muscles, and connective tissues of the body, except when  
8 there is penetration of the skin, muscles, and connective  
9 tissues that require surgical repair of a complex nature or  
10 when treatment of the injury requires the use of regional  
11 or general aesthetics.

12 Drop down to the last of the degrees of the lesser  
13 included offenses under attempted murder and that is  
14 assault and battery in the third degree. If you find the  
15 State has not proven the defendant's guilty of assault and  
16 battery in the first degree, or assault and battery in the  
17 second degree, you must then determine whether the state  
18 has proven one or both of the defendant's guilty of assault  
19 and battery in the third degree.

20 A person commits the offense of assault and battery in  
21 the third degree if the person unlawfully injures another  
22 or offers or attempts to injure another with the present  
23 ability to do so.

24 Now each defendant is charged with armed robbery. The  
25 armed robbery charge against Mr. Robinson is as to the

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1 victim Ernest Jordan. The armed robbery charge as to Mr.  
2 Heath is to Ernest Jordan and Jared Crane.

3 In order to prove this offense the State must first  
4 prove beyond a reasonable doubt that the defendant took the  
5 personal property from the person or presence of another  
6 person. Property is in the presence of a person if it is  
7 within that person's reach, inspection, observation, or  
8 control so that that person could, if not overcome with  
9 violence or prevented by fear, keep possession of the  
10 property.

11 As to armed robbery the State must also prove beyond a  
12 reasonable doubt that the defendant carried the property  
13 away intending to permanently deprive the owner of the  
14 property and to keep that property for their own use. The  
15 slightest removal of the property or the complete  
16 possession of the property, even for an instant, by the  
17 defendant is sufficient to show a taking and carrying away  
18 of the property.

19 The taking and carrying away of the property must have  
20 been done with violence or by putting the owner of the  
21 property in fear of violence.

22 Finally, the State must prove beyond a reasonable  
23 doubt that a defendant committed this robbery while armed  
24 with a deadly weapon. A deadly weapon is any article or  
25 instrument which is likely to cause death or great bodily

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1 harm. I've already defined for you deadly weapons to  
2 include a pistol, a fist, or ordinary objects. Whether an  
3 instrument has been used as a deadly weapon depends on the  
4 facts and circumstances of each case.

5 Now as to Mr. Heath, and as to Mr. Heath only, there  
6 is a lesser included offense on this charge.

7 And this will be, Mr. Foreman, on the verdict forms.  
8 Hopefully it will help you keep all of this straight. But  
9 of course if not you can always come back in and I'll  
10 recharge you and reexplain anything with which you are  
11 having difficulty.

12 The lesser included of armed robbery which applies  
13 only to Mr. Heath is what's called common law or strong  
14 armed robbery. In order to prove this the State must prove  
15 beyond a reasonable doubt all the elements of armed robbery  
16 except for they need not prove that the person committing  
17 the robbery was armed with a deadly weapon. It is simply a  
18 robbery effected by use of force but without a deadly  
19 weapon.

20 The defendant's are charged with conspiracy. Here the  
21 State must prove beyond a reasonable doubt that a defendant  
22 combined with one or more purpose - one or more persons for  
23 the purpose of committing an unlawful act or committing a  
24 lawful act by unlawful means.

25 There must be a mutual understanding, agreement, or

1 common intention and plan. Mere passive knowledge of or  
2 consent to the criminal conduct of another is not enough to  
3 make a person a conspirator. One must be - there must be  
4 guilty knowledge of a participant for that participant to  
5 be guilty as a conspirator.

6 The mere fact that a defendant may have associated  
7 with another person or met with another person and  
8 discussed common aims and interests is not of itself  
9 establish proof of the existence of a conspiracy or prove  
10 that a defendant was involved in a conspiracy.

11 On the other hand it is not necessary that any  
12 agreement be a formal one. It is not required that it be  
13 in writing or that the individuals hold meetings and  
14 expressly state the terms of the common plan, or an  
15 agreement. The agreement need not be stated in words  
16 between them. An agreement of a criminal conspiracy may  
17 come into being through an implied, mutual understanding.  
18 The willful, intentional, and knowing adoption by two or  
19 more persons of a common plan is sufficient.

20 NO overt act needs to be shown to establish a  
21 conspiracy. And a conspiracy may be shown by  
22 circumstantial evidence and by the conduct of the parties.

23 IN order to convict a defendant of conspiracy, the  
24 State must prove beyond a reasonable doubt not only that  
25 the defendant knew of the unlawful conduct, but that the



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1 defendant agreed to combine with the other person for the  
2 purpose of committing the unlawful conduct. Again, the  
3 State must prove that beyond a reasonable doubt.

4 Next, the defendants are charged with kidnapping. Mr.  
5 Robinson is charged with kidnapping Ernest Jordan. Mr.  
6 Heath is charged with kidnapping Jared Crane. Here the  
7 State must prove beyond a reasonable doubt that a defendant  
8 knowingly and unlawfully seized, confined, kidnapped  
9 another person without the authority of law.

10 To do a thing unlawfully is to do it willfully and  
11 against the law.

12 To do something knowingly means that it was done  
13 knowing with knowledge and that it was done consciously and  
14 not accidentally.

15 Seize means to take hold - Excuse me. Seize means to  
16 take hold of suddenly or forcibly.

17 Confine means to limit, restrict, or enclose within  
18 bounds, imprison, or shut or keep in.

19 Kidnap means removing a person against their will by  
20 unlawful force or by fraud.

21 The State does not have to prove that the defendant  
22 did all of these things. The state must prove beyond a  
23 reasonable doubt that a defendant did at least one of these  
24 before you could convict the defendant - a defendant guilty  
25 of kidnapping.

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1           Something done without authority of law is something  
2           which our law does not sanction, permit, allow, condone, or  
3           provide justification for.

4           The kidnapping does not have to be for any personal or  
5           monetary gain or for any illegal purpose, but may be for  
6           any reason whatsoever.

7           The last charge is that the defendant's possessed  
8           weapons during the commission of, or attempt to commit, a  
9           violent crime. Here each defendant is charged with  
10          possession of a weapon during the commission of or the  
11          attempt to commit a violent crime. The State must prove  
12          beyond a reasonable doubt the defendant was in possession  
13          of the firearm or visibly displayed what appeared to be a  
14          firearm during the commission of a violent crime. A pistol  
15          is a firearm.

16          In order to find a defendant guilty of possession of a  
17          weapon during the commission of a violent crime, you must  
18          first find the defendant guilty of either committing a  
19          violent crime or attempting to commit a violent crime.

20          Attempted murder and robbery are violent crimes. The  
21          State must prove beyond a reasonable doubt that the weapon  
22          furthered, advanced, or helped in the commission of one or  
23          both of these crimes.

24          Again, the State must prove that charge beyond a  
25          reasonable doubt.

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1 I'm going to go over the verdict forms with you in  
2 just a moment. Your verdict must be unanimous, all twelve  
3 jurors must agree before the jury foreman can write on the  
4 jury's behalf the verdict. The verdict may not be - Your  
5 verdict may not be based on sympathy, passion, prejudice,  
6 public opinion, public feeling, or matters outside the  
7 record.

8 While you are deliberating if you have any questions,  
9 Mr. Foreman, write them down and send them out. Write them  
10 down on a piece of paper and send them out. I will discuss  
11 the note with the attorneys and respond. It may be that I  
12 can write an answer on the note. And if I send back in to  
13 you any notes, please keep them and turn them in with the  
14 evidence because they have to be part of the record.

15 The State - I'm sorry, not the State. I will make  
16 arrangements for you to have the video to watch the videos  
17 that are in evidence. If you have trouble with that we  
18 have technical people and we will have to figure out a way  
19 to handle that and try doing that.

20 Again if you have any questions send them out by way  
21 of a note. If you want testimony replayed we can do that.  
22 We can have testimony replayed. If you want me to go over  
23 my charge with you, in South Carolina we do not usually  
24 send in a written charge on the law. If you want me to go  
25 over any part or all of the charge on the law, please come

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1 back out - let me know, and come back out and I will  
2 recharge you any part, or all, of the law.

3 When you've reached a verdict knock on the door and  
4 tell the bailiff and the bailiff will come and get us and I  
5 will send for you as promptly as I can. When you go into  
6 the jury room at this time, after I go over the verdict  
7 forms, do not start deliberating. We haven't gotten there  
8 yet. I have to go over my charge with the attorneys. If I  
9 have made an error, an omission, or an improper addition, I  
10 have to bring you back in and correct it cause you were  
11 mandated to apply the law as I charge it so I must make  
12 sure that I have not made an error.

13 Ms. Kimble and Mr. Lamb, you will remain in this time  
14 and you will not go out with the jury since you are the  
15 alternates.

16 Mr. Foreman, I have the verdicts forms for you as to  
17 the various offenses. I have them in two separate  
18 packages. One for Mr. Heath, and one for Mr. Robinson. As  
19 to the kidnapping, first, on the page they are in a certain  
20 order; one is above the other. Or where there are several  
21 one is above the others. The order they are in is of no  
22 importance. I have to put them in some order and this is  
23 the order in which I always put them.

24 As to kidnapping as to Mr. Robinson, the first line  
25 says "We find the defendant guilty of kidnapping Ernest

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1 Jordan." The second "We find the defendant not guilty."

2 As to Mr. Heath, kidnapping says "We find the  
3 defendant guilty of kidnapping." And "We find the  
4 defendant or we find the defendant not guilty."

5 You will, Mr. Foreman, depending on what the unanimous  
6 verdict of the jury is, put a check or an X in front of the  
7 form - in front of the verdict that the jury unanimously  
8 adopts. As to armed robbery as to Mr. Robinson there are  
9 two choices. As to Mr. Heath there are three. As to Mr.  
10 Robinson you will either find the defendant guilty of armed  
11 robbery or not guilty of armed robbery, putting a check in  
12 front of the appropriate line. As to Mr. Heath you have  
13 the option of the defendant being guilty of armed robbery  
14 if you so find unanimously. Or you may if you determine  
15 the State has not proven him guilty of armed robbery,  
16 consider, and if you do so find, find him guilty of a  
17 lesser included charge of strong armed robbery. That is  
18 robbery by force without being armed.

19 Also the third choice there, and again, the order they  
20 are in is of no importance, is "We find the defendant not  
21 guilty."

22 The verdict form on attempted murder are identical  
23 except for the fact that you would keep in mind that the  
24 attempted murder charge as to Mr. Robinson deals with Mr.  
25 Ernest Jordan being the victim. And the attempted murder

1 charge on Mr. Heath being that of Mr. Jared Crane.

2 Again they are in no particular order. I have set  
3 forth the various options which the jury may consider to  
4 determine on your view of the evidence and whatever verdict  
5 the jury finds you will put an X or a check in front of  
6 that line. As to both of the defendant's the options are  
7 "We find the defendant guilty of attempted murder." Then  
8 the step down would be the finding of the defendant guilty  
9 of the lesser included charge of assault and battery of a  
10 high and aggravated nature. Or a step down and a finding  
11 of guilty of assault and battery in the first degree. A  
12 step down, find the defendant guilty of assault and battery  
13 in the second degree. Or the third - I'm sorry, the next  
14 option of the lesser included charges would be a finding of  
15 the defendant guilty of assault and battery in the third  
16 degree. And of course if you find the State has not proven  
17 a defendant guilty of any of those charges beyond a  
18 reasonable doubt you would mark the line that says "We find  
19 the defendant not guilty.

20 As to the possessing a firearm during the commission  
21 of a crime the verdict forms are the same for each. There  
22 are two lines one saying "We find the defendant guilty of  
23 possessing a firearm during the commission of a violent  
24 crime." The other says "We find the defendant not guilty."

25 The same is true for the verdict forms on criminal

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1 conspiracy, they are the same, "We find the defendant  
2 guilty of criminal conspiracy." Or "We find the defendant  
3 not guilty." Marking again with a check or an X the jury's  
4 unanimous verdict as to that charge.

5 Now I'm gonna let you go to the jury room but do not  
6 start deliberating yet.

7 Ms. Kimbel, Mr. Lamb, please stay with us.

8 (JURY EXITS COURTROOM AT 05:05 P.M..)

9 THE COURT: I'll be with the two of you in just a  
10 minute.

11 Anything from the State?

12 SOLICITOR SHELTON: Nothing from the State, Your  
13 Honor.

14 THE COURT: Ms. Burris?

15 MS. BURRIS: No, sir, Your Honor. I just want to look  
16 at the verdict forms, that's all.

17 THE COURT: Okay.

18 MR. SMITH: No, Your Honor.

19 THE COURT: All right. Well look at the verdict  
20 forms, check the exhibits and make sure they are right and  
21 we'll send them in.

22 And, Ms. Kimball and Mr. Lamb, you are through for the  
23 week. You can certainly stay around and see what the jury  
24 does, in just a moment I will send back the exhibits and  
25 the verdict forms and the bailiff will tell the jury to

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1 start deliberating. If they deliberate for a while and  
2 need us to order a meal we will feed the jury tonight. If  
3 you stay around to see what the verdict is we will feed you  
4 too. And we'll make sure you have a comfortable place.  
5 But you are free for the week. We appreciate your  
6 assistance.

7 So we're gonna send the exhibits and the verdict forms  
8 back and we'll be at ease.

9 (COURT AT EASE AT 05:12 P.M..)

10 (WHEREUPON: COURT'S EXHIBITS NUMBER TEN, IDENTIFIED  
11 AND MARKED, RECEIVED INTO THE RECORD, TIME IS 06:35 P.M..)

12 (COURT BACK IN SESSION AT 08:47 P.M..)

13 THE COURT: We've got a note that says "Are there any  
14 transcripts of Mr. Jordan and Mr. Crane that we can listen  
15 to?"

16 I've written "We can play the testimony for you in the  
17 courtroom. Is there any particular part you wish to hear?  
18 Mr. Jordan's testimony is two hours; Mr. Crane's testimony  
19 is one hour."

20 Any objection to me sending that in?

21 MS. BURRIS: No, sir, Your Honor.

22 SOLICITOR SHELTON: No, Your Honor.

23 THE COURT: Go for it. We'll wait on the note.

24 (PAUSE.)

25 (DEFENDANT'S REENTER COURTROOM.)



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1 (COURT BACK IN SESSION AT 08:55 P.M..)

2 THE COURT: Get the defendant's in. Oh, their in.

3 Okay. We received a note from the jury, actually a  
4 couple of notes. They say that they want to hear the part  
5 where Mr. Jordan said he heard "him" - doesn't say who -  
6 heard "him" call Yodi name. We've isolated that and I'll  
7 bring the jury in and we'll play that.

8 Anything before we get the jury in from the State?

9 SOLICITOR SHELTON: Nothing from the State, Your  
10 Honor.

11 THE COURT: Ms. Burris?

12 MS. BURRIS: No, sir, Your Honor.

13 THE COURT: Mr. Smith?

14 MR. SMITH: No, Your Honor.

15 THE COURT: All right, bring in the jury.

16 (JURY REENTERS COURTROOM AT 09:00 P.M..)

17 THE COURT: We've isolated what we believe to be the  
18 testimony which you wish to hear concerning some testimony,  
19 we'll play it for you now.

20 (DIRECT TESTIMONY OF ERNEST JORDAN REPLAYED FOR THE  
21 JURY/TIME, ONE MINUTE, FOUR SECONDS.)

22 THE COURT: Is that the portion you wanted to hear?

23 I'm getting an indication that that's what the jury  
24 wanted to hear so we'll let you go back. If you want to  
25 hear more just let us know.

1 (JURY EXITS COURTROOM AT 09:02 P.M..)

2 THE COURT: Anything from the State?

3 SOLICITOR SHELTON: Nothing from the State, Your  
4 Honor.

5 THE COURT: Ms. Burris?

6 MS. BURRIS: No, sir, Your Honor.

7 THE COURT: Mr. Smith?

8 MR. SMITH: No, Your Honor.

9 THE COURT: We'll be at ease again.

10 (COURT IN RECESS AT 09:03 P.M..)

11 (WHEREUPON: COURT'S EXHIBIT NUMBER ELEVEN, IDENTIFIED  
12 AND MARKED, RECEIVED INTO EVIDENCE AT 09:24 P.M..)

13 (COURT BACK IN SESSION AT 09:52 P.M..)

14 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH  
15 REENTER COURTROOM.)

16 THE COURT: Take your seats.

17 All right, we've received two - a note, two messages.  
18 One says "Can we have the definition of attempted murder?"  
19 Again obviously we can do that very easy. The second  
20 question is "Do we have to give a verdict tonight?"

21 I have - I would suggest it's five 'till ten, that if  
22 they wish to reconvene in the morning when they are fresh  
23 that we give them that option.

24 But before I do that, what does the State have to say  
25 about that?

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1 SOLICITOR SHELTON: Is there any way we can ask them  
2 if hearing the definition of attempted murder - -

3 THE COURT: No. No. We can't ask them if -

4 SOLICITOR SHELTON: I would say wait a little bit  
5 longer. I'd ask to wait a little bit longer before going  
6 home.

7 THE COURT: For how long?

8 SOLICITOR SHELTON: Hour.

9 THE COURT: All right. What's - Ms. Burris, what's  
10 your position on it?

11 MS. BURRIS: Your Honor, I would actually rather just  
12 ride it out tonight also. As long as possible.

13 THE COURT: Okay.

14 MR. SMITH: I have no position, Your Honor.

15 THE COURT: All right.

16 MS. BURRIS: So, Judge, are you actually gonna respond  
17 to their note?

18 THE COURT: Oh, yeah, I always respond to their note.

19 MS. BURRIS: I just wanted to know what the actual  
20 response is gonna be. That's all.

21 THE COURT: Ain't decided yet. You're the first to  
22 know. Or a moment ago hadn't decided.

23 (PAUSE.)

24 THE COURT: Well I can sequester them. Your  
25 objection, we'll keep 'em here.

RECHARGE TO THE JURY:

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1 All right, bring in the jury.

2 MS. BURRIS: Your Honor, just let me make sure I  
3 articulate my client's position. May I do so?

4 THE COURT: Yeah.

5 MS. BURRIS: Okay. Thank you. My client's position  
6 is that he would actually rather send them home.

7 THE COURT: What about you, Mr. Smith?

8 MR. SMITH: I still have no position, Your Honor.

9 THE COURT: What about the State?

10 SOLICITOR SHELTON: We'll leave it to the Court's  
11 discretion, Your Honor.

12 THE COURT: Go tell them - -

13 MADAME COURT REPORTER: I got it, Judge.

14 (JURY HELD AT COURTROOM DOOR.)

15 MADAME COURT REPORTER: Right here at the door, Judge.

16 THE COURT: Well let me go ahead and recharge them and  
17 we'll keep them here for a little while and then see what  
18 we can do.

19 SOLICITOR SHELTON: Thank you, Your Honor.

20 THE COURT: All right. Bring in the jury.

21 And we'll be checking into a way to put them up for  
22 the night.

23 (JURY REENTERS COURTROOM AT 09:59 P.M..)

24 THE COURT: Members of the jury panel, I'm going to  
25 recharge you on attempted murder. Regarding whether or not

RECHARGE TO THE JURY:

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1 you have to reach a verdict tonight, an answer is kind of  
2 yes and no. It's no you don't have to but according to our  
3 rules of court if you don't reach a verdict I cannot let  
4 you go home. What I would have to do - and I can make  
5 arrangements to do it - is put you up in a hotel over  
6 night, what you hear on TV all time called sequester. It  
7 won't be that long and if we do that we can certainly make  
8 arrangements to have someone in your family come to  
9 wherever you are and bring you fresh clothes or whatever.

10 But the rules state pretty clearly that that's my only  
11 option. And I don't mind doing it, I've done it before but  
12 that's the rules that I have to operate on. So the answer  
13 is no you don't have to reach a verdict tonight. But the  
14 only other option would be that you get to spend the night  
15 on the county.

16 Now as to the attempted murder, the defendant's are  
17 both charged with that offense and as I told you we have  
18 the stair steps down with the lesser included's.

19 In order to prove attempted murder the State must  
20 prove that one or both of the defendant's attempted to kill  
21 another person with malice aforethought either expressed or  
22 implied. Malice is hatred, ill-will, or hostility towards  
23 another person. It is the intentional doing of a wrongful  
24 act without just cause or excuse and with intent to inflict  
25 an injury or under circumstances from which the law will

RECHARGE TO THE JURY:

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1 infer evil intent.

2 Malice aforethought does not require that malice exist  
3 for any particular time before the act is committed, but  
4 malice must exist in the mind of the defendant just before  
5 and at the time the act is committed. Therefore, there  
6 must be a combination of the previous evil intent and the  
7 act.

8 Malice aforethought may be expressed or inferred.  
9 These terms do not mean different kinds of malice but  
10 merely the way in which malice may be shown to exist. That  
11 is either by direct evidence or by inference from the facts  
12 and circumstances which are proven.

13 Expressed malice is shown when a person speaks words  
14 which express hatred or ill will for another or when the  
15 person prepared beforehand to do the act which was later  
16 accomplished. Malice may be inferred from conduct showing  
17 a total disregard for human life. Inferred malice may also  
18 arise when the deed is done with a deadly weapon. A deadly  
19 weapon can be any article, instrument, or substance which  
20 is likely to cause death or great bodily harm. Whether an  
21 instrument has been used as a deadly weapon depends on the  
22 facts and circumstances of each case. A pistol, a fist,  
23 and ordinary objects can be considered under your  
24 determination to be a deadly weapon.

25 If facts are proven beyond a reasonable doubt

RECHARGE TO THE JURY:

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1 sufficient to raise an inference of malice to your  
2 satisfaction, this inference will simply be an evidentiary  
3 fact to be considered by you along with the other evidence  
4 in the case, and you may give it the weight you decide it  
5 should receive.

6 A specific intent to kill is not an element of  
7 attempted murder but there must be a general intent to  
8 commit serious bodily injury. Intent means intending the  
9 result which actually occurs. Intent is something that is  
10 not accidental or involuntarily. Intent may be shown by  
11 acts and conduct of a defendant and from other  
12 circumstances from which you may naturally and reasonably  
13 infer intent. Evidence of the character of the act, the  
14 character of the instrument used, the manner in which it  
15 was used, the purpose to be accomplished, and the resulting  
16 wounds or injuries may be considered in determining the  
17 intent with which an act has been committed. Intent may  
18 also inferred when it is demonstrated that the defendant  
19 voluntarily and willfully commits an act, the natural  
20 tendency of which is to destroy another's life.

21 I told you that the State must prove those elements  
22 beyond a reasonable doubt before you could convict either  
23 of the defendant's of attempted murder.

24 The next step down it told you get into the category  
25 of assaults. And I explained to you that an assault occurs

RECHARGE TO THE JURY:

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1 when a person unlawfully attempts or offers to commit a  
2 violent injury upon another person and had the present  
3 ability to complete the attempted injury. An assault is  
4 the intentional creation of a reasonable fear of immediate  
5 bodily harm. It is not necessary that the attempted injury  
6 or harm actually take place.

7 I gave you my example about raising back my fist.

8 A battery is the unlawful touching of another person  
9 by a person who has committed an assault. An unlawful  
10 touching can be caused by a part of the accused's body or  
11 any object which an accused has put into motion. A battery  
12 is the completion of the assault by using or applying force  
13 to another person, however slight, in a rude, angry, or  
14 resentful manner without legal justification for doing so.

15 Using my earlier example, I have assaulted you if I  
16 come forward and actually touch you with my fist I have  
17 committed a battery. An assault and battery.

18 If you find the State has failed to prove beyond a  
19 reasonable doubt one or - a defendant guilty of attempted  
20 murder you may consider assault and battery of a high and  
21 aggravated nature which would be the first step down.

22 Assault and battery of a high and aggravated nature is  
23 an assault and battery - which I've already talked about  
24 just now - with an accompanying aggravating circumstance.  
25 So the State must prove an assault and battery and



RECHARGE TO THE JURY:

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1 accompanying aggravating circumstance beyond a reasonable  
2 doubt before you could convict either defendant of assault  
3 and battery of a high and aggravated nature.

4 Circumstances of aggravation include the use of a  
5 deadly weapon and I told you a pistol, fist, or other  
6 ordinary objects may be considered deadly weapons. In  
7 addition to an aggravating circumstance involving the use  
8 of a deadly weapon, also a circumstance of aggravation  
9 would include such things as the intent to commit a felony,  
10 the infliction of serious bodily injury, a great disparity  
11 between the ages or physical conditions of the parties or  
12 any other circumstance you deem to be an aggravating  
13 circumstance under the facts as presented.

14 If you find the State has failed to prove attempted  
15 murder or assault and battery of a high and aggravated  
16 nature, you may consider whether the State has proven a  
17 defendant guilty of assault and battery in the first degree  
18 beyond a reasonable doubt.

19 A person commits the offense of assault and battery in  
20 the first degree if the person unlawfully injures another  
21 person, and the act occurred during the commission of a  
22 robbery, burglary, kidnapping. A person may also commit  
23 the offense of assault and battery in the first degree if  
24 the person unlawfully offers or attempts to injury another  
25 person with the present ability to do so, and the act

RECHARGE TO THE JURY:

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1 either is accomplished by means likely to produce death or  
2 produce great bodily injury; or if it occurred during the  
3 commission of a robbery, burglary, or kidnapping.

4 Great bodily injury means bodily injury which causes a  
5 substantial risk of death or which causes serious, permanent  
6 disfigurement or protracted loss or impairment of the  
7 function of a bodily member or of a bodily organ.

8 The next degree down would be assault and battery in  
9 the second degree. If you find that the State has not  
10 proven Mr. Heath or Mr. Robinson guilty of one of the  
11 greater offenses you could consider whether or not the  
12 State has proven one or both guilty of assault and battery  
13 in the second degree.

14 A person commits the offense of assault and battery in  
15 the second degree if the person unlawfully injures another  
16 person, offers or attempts to injure another person with  
17 the present ability to do so, and moderate bodily injury to  
18 another person results or moderate bodily injury to another  
19 person could have resulted.

20 Moderate bodily injury means physical injury requiring  
21 treatment to an organ system of the body other than the  
22 skin, muscles, and connective tissues of the body, except  
23 when there is penetration of the skin, muscles, and  
24 connective tissues that require surgical repair of a  
25 complex nature or when treatment of the injuries require

RECHARGE TO THE JURY:

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1 the use of a regional or general anesthetic.

2 The third degree burglary which is the last rung on  
3 that - not a rung but a step on that stair step of degrees  
4 of lesser degrees under attempted murder. Here you may  
5 consider if the State has not proven one of the higher  
6 degrees of assault and battery or attempted murder, you can  
7 determine whether or not the State has proven beyond a  
8 reasonable doubt one or both of the defendants being guilty  
9 of assault and battery in the third degree.

10 A person commits the offense of assault and battery in  
11 the third degree if the person unlawfully injures another,  
12 or offers or attempts to injure another person with the  
13 present ability to do so.

14 Now of course if you find the State has failed to  
15 prove any of those attempted murder or the lesser  
16 included's down to third degree assault and battery beyond  
17 a reasonable doubt you of course would find a defendant not  
18 guilty.

19 So, I'm going to allow you to go back to the jury  
20 room.

21 (JURY EXITS COURTROOM TO CONTINUE DELIBERATING AT  
22 10:09 P.M..)

23 (WHEREUPON: COURT'S EXHIBIT NUMBER TWELVE AND  
24 THIRTEEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

25 THE COURT: Anything from the State?

RECHARGE TO THE JURY:

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1 SOLICITOR SHELTON: Your Honor, I don't - I don't mean  
2 to necessarily throw a wrench into the thing and I didn't  
3 catch it the first time around but I think the ABHAN charge  
4 was incorrect. I think it was charged under the old ABHAN,  
5 if I heard correctly, and I may not have.

6 THE COURT: It's the one I've used several times  
7 before.

8 SOLICITOR SHELTON: I will leave it up to the defense  
9 to object. I may be wrong.

10 THE COURT: What's the difference?

11 SOLICITOR SHELTON: I have a printout of the ABHAN  
12 stature if you would like a copy of it.

13 THE COURT: Let me see.

14 SOLICITOR SHELTON: And I apologize, I did not catch  
15 it the first time. And I may be wrong.

16 (DOCUMENTS RECEIVED UP BY THE COURT.)

17 THE COURT: What do you say about that, Ms. Burris?

18 MS. BURRIS: Your Honor, I actually do not have a copy  
19 of my charge.

20 SOLICITOR SHELTON: Be glad to share a copy, Your  
21 Honor.

22 THE COURT: I believe you are right.

23 SOLICITOR SHELTON: I am sorry I did not catch it the  
24 first time. I was zoned out I guess.

25 THE COURT: The only thing I know to do is bring them

RECHARGE TO THE JURY:

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1 back in and tell them to disregard what I told them; that  
2 this is the correct...

3 Look under 16-3-29(b)(1), and then it refers back up  
4 to great bodily injury with a definition.

5 (PAUSE.)

6 (JURY NOTE RECEIVED UP BY THE COURT AT 10:15 P.M..)

7 THE COURT: We've been sent a note. Apparently we're  
8 using a templet from a former trial. We got a - and I just  
9 noticed this.

10 Which one is it?

11 LAW CLERK: Criminal conspiracy.

12 THE COURT: On criminal conspiracy on the Indictment  
13 that's numbered for Mr. Heath somehow a different  
14 defendant's name got put on there. We can correct that.

15 All right, what do you say, Ms. Burris, about the  
16 charge?

17 MS. BURRIS: Your Honor, the Indictments weren't  
18 actually sent back there, right?

19 THE COURT: No. I'm talking about the verdict form.

20 MS. BURRIS: The verdict forms? Oh, okay.

21 In regards to - I know that the elements for this  
22 charge - for the ABHAN charge it looks like the elements  
23 were the ones that you actually charged were actually  
24 incorrect so if you could recharge them.

25 THE COURT: I agree. Not only now but it's been long

RECHARGE TO THE JURY:

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1 enough that the law's changed and I charged enough that I  
2 don't know how we all missed that.

3 But bring the jury back in.

4 (WHEREUPON: COURT'S EXHIBIT NUMBER FOURTEEN,  
5 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 (JURY REENTERS COURTROOM AT 10:18 P.M..)

7 THE COURT: I apologize for the error on the forms.  
8 We'll get that fixed up. It's just with all the paperwork  
9 we've been processing that just got inadvertently the wrong  
10 name on it.

11 But I also charged you what I call the old law on  
12 assault and battery of a high and aggravated nature. The  
13 legislature has changed the definition of assault and  
14 battery of a high and aggravated nature. And quite frankly  
15 I charged it wrong and nobody caught it until now and I  
16 apologize. I don't want to cause confusion but this  
17 applies only to what I charge you. I charged you assault  
18 and battery of a high and aggravated nature which was  
19 assault and battery accompanied by circumstances of  
20 aggravation. Forget everything I said about that.  
21 Disregard that.

22 Our legislature has defined assault and battery of a  
23 high and aggravated nature - and these are the elements  
24 which must be proven by the State beyond a reasonable doubt  
25 before you could convict either Mr. Heath or Mr. Robinson

RECHARGE TO THE JURY:

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1 of assault and battery of a high and aggravated nature,  
2 that second tier down from attempted murder.

3 The legislature has stated that a person - and this is  
4 what this offense is - a person commits the offense of  
5 assault and batter of a high and aggravated nature if the  
6 person unlawfully injures another person and either great  
7 bodily injury to that person results; or, the act is  
8 accompanied - accomplished by means likely to produce death  
9 or great bodily injury.

10 You recall I used the term moderate bodily injury when  
11 I was talking about second degree, first degree requires  
12 great bodily injury. This section of law defines great  
13 bodily injury to mean bodily injury which causes a  
14 substantial risk of death or which causes serious,  
15 permanent disfigurement or protracted loss or impairment of  
16 the function of a bodily member or organ.

17 So you got attempted murder, then assault and battery  
18 of a high and aggravated nature which requires either great  
19 bodily injury to another person or an act accomplished by  
20 means likely to produce death or great bodily injury. And  
21 as to that great bodily injury is defined as an injury  
22 which causes a substantial risk of death or which causes  
23 serious, permanent disfigurement or protracted loss or  
24 impairment of the function of a bodily member.

25 So that's the definition that applies to assault and

1 battery of a high and aggravated nature rather than the one  
2 I gave earlier. And I apologize greatly for me error but  
3 it was my error and nobody else's.

4 I'll let you go back to deliberating. And we'll send  
5 in the corrected forms in just a moment.

6 (JURY EXITS COURTROOM TO CONTINUE DELIBERATING AT  
7 10:21 P.M..)

8 THE COURT: Anything from the State?

9 SOLICITOR SHELTON: No, sir, Your Honor.

10 THE COURT: Ms. Burris?

11 MS. BURRIS: No, sir, Your Honor.

12 THE COURT: Mr. Smith?

13 MR. SMITH: No, Your Honor.

14 THE COURT: All right, we'll be at ease again.

15 (COURT AT EASE AT 10:22 P.M..)

16 (WHEREUPON: COURT'S EXHIBIT NUMBER FIFTEEN,  
17 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

18 (COURT BACK IN SESSION AT 11:37 P.M..)

19 THE COURT: Thank you. I understand the jury has  
20 reached a verdict. If we could get the defendant's in.

21 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH  
22 REENTER COURTROOM.)

23 THE COURT: Is the State ready?

24 SOLICITOR SHELTON: The State is ready, Your Honor.

25 THE COURT: Ms. Burris?



VERDICTS:

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1 MS. BURRIS: Yes, sir, Your Honor.

2 THE COURT: Mr. Smith?

3 MR. SMITH: Yes, sir.

4 THE COURT: Bring in the jury.

5 And while they are bringing in the jury, I do not of  
6 course know what the verdict is but we do not tolerate any  
7 outburst of anyone who believes whatever the verdict will  
8 be may upset them for any reason I suggest they if they  
9 believe they cannot control their emotions they will have  
10 to leave now because if they don't and we have any outburst  
11 of anyone doing so will be - certainly will find themselves  
12 being in contempt of court.

13 (JURY REENTERS COURTROOM AT 11:40 P.M..)

14 THE COURT: Mr. Foreman, I understand the jury has  
15 reached verdicts.

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Hand them to the bailiff and he will hand  
18 them up to me.

19 (VERDICTS RECEIVED UP BY THE COURT.)

20 THE COURT: All right, the note about the verdicts  
21 indicate the mistake was on one of the sheets marked wrong  
22 and had been initialed. I've seen that and I instruct the  
23 clerk to read the verdict that is not initialed and I don't  
24 think there will be any problems.

25 MADAME CLERK: Indictment 2011-GS-46-2905 the State

## VERDICTS:

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1 versus Marquis Robinson indictment for attempted armed  
2 robbery we find the defendant guilty of armed robbery of  
3 Ernest Jordan signed by the Foreperson dated today's date.

4 Indictment 2011-GS-46-2908 the State versus Marquis  
5 Robinson indictment for kidnapping we find the defendant  
6 guilty of kidnapping Ernest Jordan signed by the Foreperson  
7 dated today's date.

8 Indictment 2011-GS-46-2906 the State versus Marquis  
9 Robinson indictment for attempted murder we find the  
10 defendant guilty of the lesser included charge of assault  
11 and battery in the second degree signed by the Foreperson  
12 dated today's date.

13 Indictment 2011-GS-46-2907 the State versus Marquis  
14 Robinson indictment for criminal conspiracy we find the  
15 defendant guilty of criminal conspiracy signed by the  
16 Foreperson dated today's date.

17 Indictment 2011-GS-46-2909 the State versus Marquis  
18 Robinson indictment for possession of a firearm during the  
19 commission of a violent crime we find the defendant guilty  
20 of possession of a firearm during the commission of a  
21 violent crime signed by the foreperson dated today's date.

22 Indictment 2011-GS-46-2898 the State versus Dantonyo  
23 Heath indictment for armed robbery we find the defendant  
24 guilty of the lesser included charge of strong armed  
25 robbery signed by the Foreperson dated today's date.

## VERDICTS:

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1 Indictment 2011-GS-46-2901 the State versus Dantonyo  
2 Heath indictment for kidnapping we find the defendant  
3 guilty of kidnapping signed by the Foreperson dated today's  
4 date.

5 Indictment 2011-GS\_46-2899 the State versus Dantonyo  
6 Heath indictment for attempted murder we find the defendant  
7 guilty of the lesser included charge of assault and battery  
8 in the second degree signed by the Foreperson dated today's  
9 date.

10 2011-GS-46-2900 the State versus Dantonyo Heath  
11 indictment for criminal conspiracy we find the defendant  
12 guilty of criminal conspiracy signed by the foreperson  
13 dated today's date.

14 Indictment 2011-GS-46-2902 the State versus Dantonyo  
15 Heath indictment for possession of a firearm during the  
16 commission of a violent crime we find the defendant not  
17 guilty signed by the Foreperson dated today's date.

18 Ladies and gentlemen of the jury, if that be your  
19 verdict so say you all by raising your right hand.

20 Let the record show all jurors affirmed this verdict.

21 (ALL JURORS AFFIRMED BY RAISING RIGHT HAND.)

22 THE COURT: Obviously let counsel for both sides look  
23 at the verdict form. The verdict form that had a mistake  
24 on it was the one that was ultimately a not guilty finding  
25 and possession of a firearm they are marked out.

VERDICTS:

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1 Anything else before the jury is dismissed.

2 SOLICITOR SHELTON: Nothing from the State, Your  
3 Honor.

4 THE COURT: Ms. Burris, anything before - -

5 MS. BURRIS: Not from the Defense, Your Honor.

6 MR. SMITH: We request a poll, Your Honor.

7 THE COURT: All right. Members of the jury panel, the  
8 Clerk is gonna ask you a question about your verdicts but  
9 it's just an affirmation of whether or not these are your  
10 verdicts. If you will please follow the Clerk's  
11 instructions.

12 MADAME CLERK: If you all would please stand.

13 (JURY STOOD.)

14 MADAME CLERK: When I call your juror number if you  
15 will just raise your right hand.

16 Juror Number 264, is this your verdict?

17 A. Yes, ma'am.

18 MADAME CLERK: Is this still your verdict. .

19 A. Yes, ma'am.

20 MADAME CLERK: You may have a seat.

21 Number 52, is this your verdict?

22 A. Yes.

23 MADAME CLERK: Is this still your verdict?

24 A. Yes.

25 MADAME CLERK: You may have a seat.

VERDICTS:

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1           Number 252, is this your verdict?

2       A.    Yes.

3           MADAME CLERK:  Is this still your verdict?

4       A.    Yes.

5           MADAME CLERK:  You may have a seat.

6           Number 25, is this your verdict?

7       A.    Yes, ma'am.

8           MADAME CLERK:  Is this still your verdict?

9       A.    Yes, ma'am.

10          MADAME CLERK:  You may have a seat.

11          Number 235, is this your verdict?

12       A.    Yes.

13          MADAME CLERK:  Is this still your verdict?

14       A.    Yes.

15          MADAME CLERK:  You may have a seat.

16          Number 17, is this your verdict?

17       A.    Yes.

18          MADAME CLERK:  Is this still your verdict?

19       A.    Yes.

20          MADAME CLERK:  You may have a seat.

21          Number 130, is this your verdict?

22       A.    Yes, ma'am.

23          MADAME CLERK:  Is this still your verdict?

24       A.    Yes, ma'am.

25          MADAME CLERK:  You may have a seat.

## VERDICTS:

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1           Number 117. Sorry, that's the alternate.  
2           Number 83, is this your verdict?  
3       A.    Yes.  
4           MADAME CLERK: Is this still your verdict?  
5       A.    Yes.  
6           MADAME CLERK: You may have a seat.  
7           Number 182, is this your verdict?  
8       A.    Yes.  
9           MADAME CLERK: Is it still your verdict?  
10       A.   Yes.  
11          MADAME CLERK: You may have a seat.  
12          Number 169, is this your verdict?  
13       A.   Yes.  
14          MADAME CLERK: Is it still your verdict?  
15       A.   Yes.  
16          MADAME CLERK: You may have a seat.  
17          Number 85, is this your verdict?  
18       A.   Yes, ma'am.  
19          MADAME CLERK: Is this still your verdict?  
20       A.   Yes, ma'am.  
21          MADAME CLERK: You may have a seat.  
22          Number 78, is this your verdict?  
23       A.   Yes, ma'am.  
24          MADAME CLERK: Is this still your verdict?  
25       A.   Yes, ma'am.

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1 MADAME CLERK: You may have a seat.

2 THE COURT: Anything else from the State?

3 SOLICITOR SHELTON: Nothing from the State, Your  
4 Honor.

5 THE COURT: Ms. Burris?

6 MS. BURRIS: No, sir, Your Honor.

7 MR. SMITH: No, Your Honor.

8 THE COURT: I appreciate all your hard work and it was  
9 a hard case and you put in a long hard day and a long week  
10 so I'm gonna let you go without giving you anything other  
11 than our heart felt thanks and telling you that you will be  
12 mailed a check. And it should come next week and that's  
13 only a small token of our appreciation and the hard work  
14 you've done.

15 Now the foreman, Mr. Taylor, the Clerk is gonna have  
16 you sign the verdicts on the indictments because that is  
17 ultimately the record we keep so she will step across the  
18 hall with you to the library.

19 Everyone else is free to leave. We appreciate your  
20 help, thank you.

21 (JURY DISMISSED AT 11:51 P.M..)

22 THE COURT: Anything from the State? The jury has  
23 been dismissed.

24 SOLICITOR SHELTON: Nothing, Your Honor. I'm getting  
25 the sentencing sheets. I have them here, I'm just

SENTENCING:

-822-

1 finishing signing.

2 THE COURT: Ms. Burris, anything now that the jury has  
3 been dismissed?

4 MS. BURRIS: No, sir, Your Honor.

5 THE COURT: Mr. Smith?

6 MR. SMITH: Your Honor, we renew our earlier motions  
7 and ask for a judgment not withstanding the verdict or in  
8 the alternative a new trial.

9 THE COURT: All right. Motion is denied.

10 Now since we've - -

11 MS. BURRIS: Your Honor, I apologize. On behalf of my  
12 client I would like to join in on the motion judgment not  
13 withstanding the verdict. Thank you.

14 THE COURT: All right. The motion is denied.

15 If you'll bring the defendant's around for sentencing.

16 And, Mr. Newkirk.

17 SOLICITOR NEWKIRK: Sir?

18 THE COURT: The two of you are working together, if  
19 either of you would you check with the victims and see if  
20 either of them wish to make any further statements before  
21 sentencing?

22 SOLICITOR NEWKIRK: Yes, sir.

23 THE COURT: You may go ahead and the sentencing sheets  
24 are being filled out be glad to hear from Ms. Burris in  
25 regard to any kind of mitigation.



SENTENCING:

-823-

1 MS. BURRIS: Thank you, Your Honor, May it please the  
2 court. Standing beside me of course is Mr. Marquis  
3 Robinson. Mr. Robinson is actually thirty years of age.  
4 He actually has six children. He is supported in the  
5 courtroom by his mother, his sister, a close friend as well  
6 as his wife.

7 Your Honor, his six children are actually very young.  
8 He actually attended public schools of Rock Hill. Prior to  
9 this incident he was working at ADC which is actually  
10 located in York, South Carolina. They actually operate  
11 assembly military parts. Your Honor, we respectfully ask  
12 for your leniency in this case, in this particular case.  
13 Mr Robinson is still very young I would say. I definitely  
14 believe that, you know, once he is actually released from  
15 South Carolina Department of Corrections he still has a  
16 life ahead of him. He still has a family that he will  
17 definitely have to take care of. We respectfully ask that  
18 you will sentence him no more than fifteen years.

19 Your Honor, of course you had the opportunity to hear  
20 the facts in this particular case. Mr. Robinson throughout  
21 the trial has been extremely and in trial preparation has  
22 been extremely humbled throughout this situation. I think  
23 it's definitely a situation where, you know, in sitting in  
24 the detention center he's been concerned and conscientious  
25 about, you know, what's happening and what's going on with

SENTENCING:

-824-

1 the victims.

2 So, Your Honor, I just respectfully ask that you take  
3 all things into consideration and the fact that he's thirty  
4 years of age, has young children, and, Your Honor, we'd  
5 like to be able to see him get out and be able to take care  
6 of his children and live a productive life.

7 THE COURT: How long has he had - How many days has he  
8 had in jail?

9 MS. BURRIS: I'll get that calculation for you, Your  
10 Honor. He's been actually back and forth.

11 THE COURT: I just want the total number.

12 While she's calculating that, Ms. Shelton.

13 SOLICITOR SHELTON: Yes, Your Honor, I'm sorry.

14 THE COURT: Anything you want to say in regard to  
15 sentencing?

16 First, Mr. Newkirk, you checked with the victims,  
17 either one -

18 SOLICITOR NEWKIRK: Yes, sir, Mr. Crane does wish to  
19 address the court. Mr. Jordan does not.

20 THE COURT: Have Mr. Crane come around please.

21 Yes, sir, stand right there and tell me what - -

22 MR. CRANE: Well, Your Honor, as you and everyone else  
23 in this courtroom witnessed, you seen the video of what  
24 happened to us. I understand he has children, I have  
25 children too. I begged to be let go that night, told them

SENTENCING:

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1 I would leave and wouldn't say anything else about it, that  
2 was a problem between him and Mr. Jordan. I wasn't given a  
3 chance for any leniency. I was beat several times. Ask to  
4 stop, ask for him to make the guy stop. I was given no  
5 mercy. I ask that you give no mercy on these people, none  
6 whatsoever.

7 THE COURT: Thank you.

8 Did you figure out how many days?

9 MS. BURRIS: A total of three hundred and one days,  
10 Your Honor.

11 THE COURT: Three hundred and one?

12 MS. BURRIS: Uh-huh. Yes, sir.

13 THE COURT: All right, anyone want to speak on ---

14 MS. BURRIS: Mr. Robinson?

15 THE COURT: --- Mr. Robinson?

16 MS. BURRIS: Yes, sir.

17 THE COURT: All right. Have them come forward and  
18 tell me what --

19 THE COURT: Yes, ma'am, your name?

20 A. My name is Kayla Higgs.

21 THE COURT: Okay.

22 MS. HIGGS: The man that was in that video how he was  
23 portrayed is not Marquis Robinson. It is very hard and  
24 emotional but we do have children and I do ask that you do  
25 have leniency on him for our babies please.

SENTENCING:

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1 THE COURT: I understand. Thank you.

2 Mr. Robinson, anything you want to say?

3 Anything you want to say?

4 MR. ROBINSON: No, sir.

5 THE COURT: Did you get that? He said no, sir.

6 MADAME COURT REPORTER: Yes, sir.

7 THE COURT: All right. Mr. Smith.

8 MR. SMITH: Thank you, Your Honor, may it please the  
9 court.

10 Your Honor, Mr. Heath by my calculation has been in  
11 Seven hundred and seventy-five days. He never made bond  
12 from his arrest date of June 12th of 2011. He's had a  
13 difficult stay in the detention center. He last worked for  
14 Allied, he is from Rock Hill, did go to Rock Hill High. He  
15 does have a son, his mother has been in contact with me  
16 throughout my representation of him.

17 Your Honor, obviously you have a lot of discretion and  
18 potential sentences that you give. We would ask for the  
19 mercy of some reflection of the reduction that the jury  
20 gave both in the charges that Mr. Heath faced and in the  
21 disparity of those faced from amongst the two. Throughout  
22 the process Your Honor has seen Mr. Heath begin a trial  
23 without me and go forward some with me and then with me the  
24 entire time. He has always been respectful to this court  
25 and to this process. It's been difficult for him as would

SENTENCING:

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1 be anyone in his position but we would ask Your Honor to  
2 show some mercy to him for that. And he is simply here to  
3 ask for the mercy of the court.

4 THE COURT: All right, anyone want to speak on his  
5 behalf?

6 MR. SMITH: Only Mr. Heath, Your Honor.

7 THE COURT: All right, Mr. Heath, I'll be glad to hear  
8 from you now. Anything you want to say?

9 MR. HEATH: Yes, sir. I feel that if they feel that I  
10 did this I apologize but I didn't do this crime, Your  
11 Honor. So if they feel I did it I apologize to them.

12 THE COURT: All right, these are all to run  
13 concurrent.

14 Mr. Robinson, I'll give you credit for Three Hundred  
15 and One days. Your sentence are as follows:

16 The kidnapping, thirty years.

17 On armed robbery, thirty years.

18 On criminal conspiracy, five years.

19 On possession of a weapon during the commission of a  
20 violent crime, five years.

21 On assault and battery second degree, three years.

22 Do you understand that, Mr. Robinson?

23 MR. ROBINSON: Yes, sir.

24 THE COURT: Mr. Heath, on your charges these are all  
25 to run concurrent and given you credit for Seven hundred

SENTENCING:

-828-

1 and Seventy-five days.

2 On kidnapping, thirty years.

3 On strong armed robbery, fifteen years.

4 On criminal conspiracy, five years.

5 And on assault and battery second degree, three years.

6 Do you understand that?

7 MR. HEATH: Yes, sir.

8 THE COURT: Thank you.

9 SOLICITOR SHELTON: Thank you, Your Honor.

10 MS. BURRIS: Thank you, Your Honor.

11 (DEFENDANT'S MARQUIS ROBINSON AND DANTONYO HEATH  
12 ESCORTED FROM COURTROOM.)

13 THE COURT: Anything else for the record in this case  
14 from the State?

15 SOLICITOR SHELTON: No, sir, Your Honor.

16 THE COURT: Anything for the record, Ms. Burris?

17 MS. BURRIS: Your Honor, I just wanted to make sure I  
18 renew all of my previous motions.

19 THE COURT: Mr. Smith?

20 MR. SMITH: No, Your Honor.

21 THE COURT: All right, again, thank everybody for  
22 their courtesies. We'll stand at ease. We've got  
23 sheriff's deputies if anybody wants somebody to accompany  
24 them to their car we can make arrangements to do that.  
25 Just let 'em know.

-829-

1 All right, that's it for the night. We'll see you at  
2 ten in the morning.

3 (COURT IN RECESS AT 12:00 P.M..)

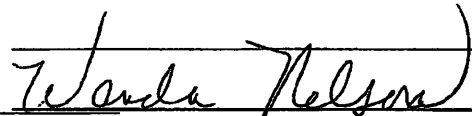
4 (END OF TRANSCRIPT OF RECORD.)  
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CERTIFICATE OF REPORTER

State of South Carolina    )  
                                          )  
County of York                    )

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 22nd through the 25th days of July, 2013

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

  
\_\_\_\_\_  
Wanda Nelson, CVR  
Certified Verbatim Reporter,  
Official Court Reporter,  
Notary Public, in and for  
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 11-4, 2013



County: York  
 Date: July 22-25, 2013

**VOIR DIRE**

Case No.: 2011-GS-46-02898  
2011-GS-46-02905

Judge: John C. Hayes, III

Plaintiff: State

Pl's Atty.: Sol. Misti H. Shelton  
Sol. Ryan Newkirk

Defendant(s): Dantonyo Heath  
Marquis Robinson

Def's Atty: Twana Burris; Phil Smith

Court Reporter: Wanda Nelson

| Juror # | Name                      | Sex | Race | Strikes |           |         |        |
|---------|---------------------------|-----|------|---------|-----------|---------|--------|
|         |                           |     |      | Court   | Plaintiff | Defense | Accept |
| 83      | Tamara N. Gary            | F   | B    |         |           |         | X      |
| 29      | Jonathan C. Brown         | M   | W    |         |           | X (R)   |        |
| 5       | Jeffrey S. Antinoro       | M   | W    |         |           | X (R)   |        |
| 207     | Bonnie K. StClair         | F   | W    |         |           | X (H)   |        |
| 182     | Alex H. Robertson         | M   | W    |         |           |         | X      |
| 108     | William Huffstetler       | M   | W    |         | X         |         |        |
| 76      | Randall R. Finn           | M   | W    |         |           | X (R)   |        |
| 213     | Cynthia M. Tadlock        | F   | W    |         |           | X (H)   |        |
| 177     | Eric C. Ramsdell          | M   | W    |         |           | X (H)   |        |
| 251     | Kevin S. Baker            | M   | W    |         |           | X (R)   |        |
| 169     | Jonathan M. Petty         | M   | W    |         |           |         | X      |
| 9       | Justin M. Baker           | M   | W    |         |           | X (R)   |        |
| 85      | Micah P. Gaylor           | M   | W    |         |           |         | X      |
| 142     | David E. McCauley         | M   | W    |         |           | X (H)   |        |
| 8       | Angela M. Baioni          | F   | W    |         |           | X (R)   |        |
| 124     | Ernest E. Lawing          | M   | W    |         |           | X (R)   |        |
| 233     | David A. Wendland         | M   | W    |         |           | X       |        |
| 78      | Dawn H. Styles            | F   | w    |         |           |         | X      |
| 264 *   | <b>Jermaine C. Taylor</b> | M   | B    |         |           |         | X      |
| 52      | Teresa D. Coulter         | F   | W    |         |           |         | X      |
| 201     | Sharon L. Smith           | F   | W    |         |           | X (H)   |        |

|        |                     |   |   |   |   |      |   |
|--------|---------------------|---|---|---|---|------|---|
| 191    | Lorraine Schwahl    | F | W | X |   |      |   |
| 79     | John H. Fowler      | M | W | X |   |      |   |
| 173    | Brandy N. Hagerman  | F | W |   |   | X(H) |   |
| 252    | Lindsey M. Campbell | F | w |   |   |      | X |
| 193    | Teresia C. Sexton   | F | W |   |   | X(H) |   |
| 25     | Joseph G. Brandon   | M | W |   |   |      | X |
| 235    | Jennifer P. West    | F | W |   |   |      | X |
| 17     | Ilse B. Bertilson   | F | W |   |   |      | X |
| 209    | Thomas k. Stevenson | M | W |   | X |      |   |
| 130    | Justin R. Lucas     | M | W |   |   |      | X |
| 117 ** | Lynn M. Kimble      | F | W |   |   |      | X |
| 64     | Susan L. Dove       | F | W |   |   | X(H) |   |
| 121 ** | Gary E. Lamb        | M | W |   |   |      | X |

\*For the Court column, indicate who made the motion to strike the juror "for cause".  
C-Court, P-Plaintiff, D-Defense \* Foreperson \*\* Alternate

(R) Strike for Defendant Robinson  
(H) Strike for Defendant Heath

## FORM 5

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

IN THE COURT OF COMMON PLEAS

County of

york

2015 NOV 25 AM 10:58

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SCDANIEL HEATH  
Full name and prison number (if any) of Applicant

v.

State of South Carolina

## APPLICATION FOR

## POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber C. T. P.O. Box 205  
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence York County Court  
of General Session
3. Name(s) of co-defendant(s) (if any) Marquis Robinson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2011GS4602898, 2011GS4602899  
Strong Arm Robbery Assault & Battery

*Conspiracy*                      *Kidnapping*

(b) 2011GS4602900, 2011GS4602901

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 7-25-2013

(b) \_\_\_\_\_

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty ☒ \_\_\_\_\_

(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. Appeal from Court of General Session York County

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. denied

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. OCT 14, 2015

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 4th, 5th, 6th, 8th, 13th, 14th Amend Violation: due process
- (b) Violation: Fraud upon the Court; Subject matter Jurisdiction
- (c) Ineffective Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Amended PCR will follow: Brief will follow
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. York County General Session Court
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. denied

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. 30th July 2013

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) did not discover Issue until Now
- (b) Counsel was Ineffective
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Philip L. Smith  
Asst Public Defender
- ii. Moss Justice Center York, S.C 29745
- iii. Susan B. Hackett Appellate Defender  
1330 Lady Street, Suite 401 Columbia, S.C 29201 P.O. Box 11580
- (b) the proceedings at which each such attorney represented you:
- i. Several Sessions  
Appeal
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Sentence and Conviction vacated; order Expunging Record  
alone and DNA Remove from all derogatory files, all money  
Returned by New Trial

20. Are you now under sentence from any other court that you have not challenged?

N/A  
N/A

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of York )

VERIFICATION

I, Danteo Heath 263884, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Danteo Heath  
Danteo Heath

SWORN to and subscribed before me this 17<sup>th</sup>  
 day of November, 2015.

Yvette B. Blane (L.S.)  
 Notary Public

My Commission Expires: 8/20/2016



**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, DANTONIO HEATH 263884, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Dantonio Heath  
Dantonio Heath  
Applicant

SWORN or affirmed to and subscribed before me this  
17<sup>th</sup> day of November, 2015.

Yvette B. Blum  
Notary Public

My Commission Expires: 8/20/2015

|                          |   |                                   |
|--------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS      |
|                          | ) | OF THE SIXTEENTH JUDICIAL CIRCUIT |
| COUNTY OF YORK           | ) |                                   |
|                          | ) | 2015-CP-46-3686                   |
| Dantonyo Heath,          | ) |                                   |
| S.C.D.C. No. 263884,     | ) |                                   |
|                          | ) |                                   |
| Applicant,               | ) | RETURN                            |
|                          | ) |                                   |
| v.                       | ) |                                   |
|                          | ) |                                   |
| State of South Carolina, | ) |                                   |
|                          | ) |                                   |
| Respondent.              | ) |                                   |
| _____                    | ) |                                   |

Respondent, making its Return to the application for post-conviction relief (PCR) filed November 24, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2011 term of the York County Grand Jury for kidnapping (2011-GS-46-2901), armed robbery (2011-GS-46-2898), criminal conspiracy (2011-GS-46-2900), and attempted murder (2011-GS-46-2899). Applicant was represented by Philip Smith, Esquire. On July 22, 2013, the State called the case for a jury trial before the Honorable John C. Hayes, III. Following the trial, Applicant was found guilty of kidnapping, guilty of strong armed robbery as a lesser included offense of armed robbery, guilty of criminal conspiracy, and guilty of second degree assault and battery as a lesser included offense of attempted murder. He was sentenced to imprisonment for thirty years for kidnapping, fifteen years for strong armed robbery, five years for criminal conspiracy, and three years for second degree assault and battery.

Applicant filed a notice of appeal and an appeal was perfected by Appellate Defender Susan B. Hackett. In an unpublished opinion filed October 14, 2015, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Heath, Op. No. 2015-UP-487 (Ct. App. filed October 14, 2015). The Remittitur was sent November 4, 2015.

## II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Due Process Violation
2. Ineffective Assistance of Counsel
3. Fraud Upon the Court
4. Subject Matter Jurisdiction

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

Attached herewith and incorporated herein are the York County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## IV.

Applicant also claims that the trial court lacked subject matter jurisdiction. An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court that stemmed from true-billed indictments. Thus, the circuit court had subject matter jurisdiction and this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC.

*[Signature Block on following page]*

V.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's plea counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

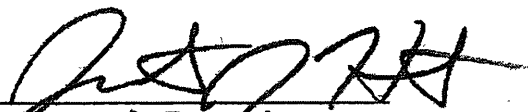
JOHN W. MCINTOSH  
Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

JUNE 23<sup>rd</sup>, 2016

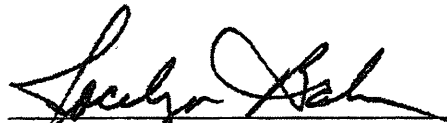
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|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF YORK           | ) |                              |
|                          | ) |                              |
|                          | ) | 2015-CP-46-3686              |
|                          | ) |                              |
| DANTONYO HEATH, #263884, | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) |                              |
| vs                       | ) | AFFIDAVIT OF SERVICE BY MAIL |
|                          | ) |                              |
| STATE OF SOUTH CAROLINA, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |

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1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire  
 Law Office of Leah B. Moody, LLC  
 PO Box 1015  
 Rock Hill, SC 29731-7015

DATED this 23<sup>rd</sup> day of June, 2016.

  
 Jocelyn Baker, Legal Assistant  
 For Respondent

**DuRant, LaNelle**

**From:** Justin J. Hunter <JHunter2@scag.gov>  
**Sent:** Monday, October 16, 2017 1:52 PM  
**To:** DuRant, LaNelle  
**Subject:** FW: amendments from Dantonya Heath  
**Attachments:** amendments.pdf

---

**From:** Leah Moody [mailto:lbmatty@comporium.net]  
**Sent:** Monday, January 30, 2017 3:04 PM  
**To:** Justin J. Hunter  
**Subject:** amendments from Dantonya Heath

Justin:

Please see the attached document that states the IAC for Mr. Heath. I will present information regarding the specific things listed in this document in addition to the already documented PCR allegations. Thank you.



LAW OFFICE OF  
**Leah B. Moody, LLC**

***Leah B. Moody***

235 East Main Street, Suite 115  
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 Rock Hill, South Carolina 29730  
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=====

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CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, UNLESS SPECIFICALLY INDICATED OTHERWISE, ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING TAX RELATED PENALTIES OR PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX RELATED MATTER ADDRESSED HEREIN.



11. State concisely and in the same order the facts which support each of the grounds set out in (10).

"INADEQUATE ASSISTANCE OF TRIAL COUNSEL PHILIP SMITH, ESQ."

1. Trial counsel inadequate for depriving the Petitioner of his constitutional and fundamental right to testify. See \* Rock v. Arkansas, 485 U.S. 52, 97, L.Ed.2d. 37, 107, S.Ct. 2704 (1987).
2. Trial counsel was inadequate and deprived the Petitioner of the right to receive effective assistance .
3. Trial counsel was inadequate for failing to challenge the State's case to a meaningful adversarial testing.
4. Trial counsel was inadequate for failing to investigate and properly prepare a defense.
5. Trial counsel was inadequate when he failed to challenge the State's DNA analysis expert by rebutting their testimony.
6. Trial counsel was inadequate and performance was deficient but, for the counsel's errors the results of the proceedings would have been different because Petitioner was denied effective assistance of counsel during an critical stage.
7. Trial counsel was inadequate for failing to raise the issue of Petitioner's fifth amendment rights to be protected against double jeopardy. Counsel failed to raise violation<sup>of</sup> due process.
8. Trial counsel was inadequate for failure to raise the sixth amendment violation to Petitioner's Confrontational Clause.

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

"CONTINUED INADEQUATE ASSISTANCE OF TRIAL COUNSEL"

9. Trial counsel was inadequate because he had an conflict of interest between the other attorney and his client, and the prosecutor.

10. Trial counsel was inadequate for being an friend to the Court's as opposed to being an adversary, because counsel helped bolster the case against his client during his closing argument.

11. Trial counsel was inadequate for failure to challenge the in court identification.

12. Trial counsel was inadequate for failure to impeach the State's witness testimony under the rules of evidence, Rule#608 in regards to truthfulness vs. untruthfulness, based upon the inconsistencies of testimony of detective's, Jordan's testimony, and last the testimony of Jared Crane.

13. Trial counsel was inadequate for failing to raise lack of subject matter jurisdiction.

14. Trial counsel was inadequate for failure to raise the issue of insufficiency of the indictment.

15. Trial counsel was inadequate for failure to raise the issue of fraud upon the Court through an "Sham" legal process.

16. Trial counsel's performance fell below the standards of norm of an criminal defense lawyer by allowing the Petitioner's Bill of rights to be violated which was very prejudicial.

17. Trial counsel was inadequate for failure to question the unreasonable search and seizure without probable cause.

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

"CONTINUED INADEQUATE ASSISTANCE OF TRIAL COUNSEL"

18. Trial counsel was inadequate for failure to raise the issue of prosecutorial misconduct and violations of the SCACR Rule#3.8(e) See Appellant Brief for Tr. page #'s.

19. Trial counsel was inadequate for violating the Professional Rules of Conduct and Responsibilities of the SCACR Rule#407.

20. Trial counsel was inadequate for failure to raise the issue of an Brady violation, when the prosecutor willfully withheld inculpatory evidence that was favorable to the Petitioner had the jury been aware of, the results may have been different. See Tr.p.620 lines 13- p.622 line 2.

21. Trial counsel was inadequate for allowing the co-defendant's statement to be used against the Petitioner which violated the Bruton rule. See \* Bruton v. United States, 391, U.S. 123, 88, S.Ct. 1620, 20 L.Ed. 2d. 476 (1968).

END OF TRIAL COUNSEL'S INEFFECTIVENESS"

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

"INADEQUATE ASSISTANCE OF APPELLATE COUNSEL"

SUSAN B. HACKETT, ESQ.

1. Appellate counsel denied the Petitioner the constitutional right to receive effective assistance under the sixth amendment.
2. Appellate counsel was inadequate for failing to raise the issue of abuse of discretion, when the Judge failed grant mistrial based upon the withheld evidence, also failed to grant the sever requested by both counsels to separate trials to give equal protection and fundamental fairness of the due process clause.
3. Appellate counsel failed to raise the issue of ineffective assistance of trial counsel which deemed appellate counsel inadequate.
4. Appellate counsel was inadequate for failure to raise the issue of double jeopardy violating the Petitioner's fifth amend. right to be protected from being tried twice for the same offense and violating his right to remain silent. Petitioner alleges prejudice and violation of his S.C. Constitutional Article#1 section#3 & #10.
5. Appellate counsel was inadequate for failure to raise the issue of violating the Petitioner's Confrontational Clause under the sixth amendment.
6. Appellate counsel failed to raise the issue of an Giglio error and perjured testimony of witness. See \* United States v. Agurs, 427, U.S. 97, if false testimony surfaces during a trial and the government has knowledge of it, the government has a duty to step forward and disclose; See \* Napue v. Illinois, 360 U.S. 264, citing Moohney, must fall under the 14th Amendment.

11. State concisely and in the same order the facts which support each of the grounds set out in (10).

"CONTINUED INADEQUATE ASSISTANCE OF APPELLATE COUNSEL"

7. Appellate counsel had an conflict of interest because counsel worked for the State at the same time being appointed which deemed counsel's performance deficient and very prejudicial.

8. Appellate counsel was inadequate for failing to consult with the Petitioner in regards to his appeal and what issues that were going to be raised. Because of counsel's negligence the Petitioner was prejudiced.

9. Appellate counsel was inadequate for failure to raise issues that were significant and obvious which deemed the counsel's performance to be deficient and prejudicial.

10. Appellate counsel was inadequate for failure to challenged the ineffectiveness of trial counsel when he failed to 1). demand a Wade hearing to challenge the showing of identification; 2). failed to suppress or to controvert the legality of the Petitioner and protect his fourth amendment rights against any unreasonable search and seizure or arrest; 3). failed to call an DNA expert to testify on the behalf of the Petitioner.

END OF APPELLATE COUNSEL'S INEFFECTIVENESS"

State of South Carolina.,) In the Common Pleas Court  
 ) Of York  
 )  
 ) Case No. 2015-CP-46-03686  
 County of York. )

Dantonyo Andropulis Heath.,)  
 )  
 Applicant., )  
 )  
 -vs- ) Transcript of Record  
 ) Post Conviction Relief  
 State of South Carolina., )  
 )  
 Respondent. )

January 31, 2017  
 York, South Carolina

B E F O R E:

The Honorable Mark Hayes, judge.

Ms. Leah B. Moody  
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 lbmatty@comporium.net  
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 (803) 734-3737  
 Attorney for the Respondent

Wanda S. Nelson, CVR-M  
 Official Court Reporter  
 Sixteenth Judicial Circuit  
 Union and York Counties  
 To the Honorable John C. Hayes, III

I-N-D-E-XE-X-A-M-I-N-A-T-I-O-N

| <u>WITNESS</u>                              | <u>BY:</u>          | <u>PAGE NO.</u> |
|---------------------------------------------|---------------------|-----------------|
| Dantonyo Heath                              | Ms. Moody . . . . . | P.5-24          |
| Phillip Smith                               | Mr. Hunter. . . . . | P.25-40         |
|                                             | Ms. Moody . . . . . | P.40-44         |
| Court Reporter's Certificate Page . . . . . |                     | P.46            |

I N D E XE X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
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No Exhibits were received into the record.

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1 (COURT IN SESSION, ON THE RECORD AT 10:34 AM.)

2 (APPLICANT, DANTONYO HEATH, ENTERS COURTROOM.)

3 MR. HUNTER: May it please the court, your Honor.

4 The next case is *Dantonyo Heath versus State of South*  
5 *Carolina*. It's 2015-CP-46-3686. Your Honor, he was  
6 indicted the September 2011 term of the York County Grand  
7 Jury for kidnaping, armed robbery, criminal conspiracy, and  
8 attempted murder. He was represented by Mr. Phil Smith.

9 On July 22nd, 2013 he proceeded to a jury trial before  
10 Judge Hayes along with his co-defendant. Following the  
11 trial he was found guilty of kidnaping, guilty of strong  
12 armed robbery as a lesser included of armed robbery, guilty  
13 of criminal conspiracy and guilty of assault and battery  
14 second degree as a lesser included of attempted murder.

15 He was sentenced to thirty years for kidnaping,  
16 fifteen for strong armed robbery, five years for criminal  
17 conspiracy, and three years for assault and battery second  
18 degree.

19 He did file a Notice of Appeal and an appeal was  
20 perfected by Appellate Defense. A briefing was done on the  
21 issues and in an unpublished opinion filed on October 14,  
22 2015 the Court of Appeals affirmed his convictions. A  
23 remittitur was sent November 4th, 2015.

24 He filed this current action on November 24th, 2015.  
25 He's present today represented by Ms. Leah Moody.

DANTONYO HEATH: DIRECT BY MS. MOODY

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1 MS. MOODY: Thank you, your Honor, may it please the  
2 court. At this time I would call Mr. Dantonyo Heath.

3 THE COURT: Sir, just come right up here and let the  
4 Clerk of Court swear you in.

5 MADAM CLERK: Mr. Heath, I'm gonna get you sworn.

6 Place you left on the Bible and raise your right as  
7 far as you can.

8 (WHEREUPON, DANTONYO HEATH,  
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 MADAM CLERK: Thank you.

11 THE COURT: Sir, just come right over here. Watch  
12 your step up and just have a seat in the chair.

13 MR. HEATH: Yes, sir.

14 THE COURT; Sir, the lady that's over to your left, a  
15 court reporter, she's taking down everything that's said.  
16 I need you to speak up loud enough so that both she and I  
17 can hear you as well as your lawyer who is on the other  
18 side of the courtroom. Okay?

19 MR. HEATH: Yes, sir.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION

22 DANTONYO HEATH BY MS. MOODY:

23 Q. Mr. Heath, can you please state your full name for  
24 the record?

25 A. Dantonyo Heath.

DANTONYO HEATH: DIRECT BY MS. MOODY

-6-

1 Q. Okay. And where are you currently incarcerated?

2 A. Lieber Correctional Institution..

3 Q. And the charges that you're incarcerated on are  
4 armed robbery, attempted murder, criminal conspiracy,  
5 kidnaping, possession of a firearm during a violent crime?

6 A. Yes, ma'am.

7 Q. And did you have an attorney -- Who was -- Excuse me.  
8 Who was your attorney during your trial?

9 A. Mr. Smith.

10 Q. Mitchell Smith?

11 A. No, Mr. Smith.

12 Q. Mr. Smith. Phil Smith?

13 A. Yes, ma'am.

14 Q. Was he your attorney throughout the entire process  
15 for these charges?

16 A. Yes, ma'am.

17 Q. Okay. And tell the court why you're here today.

18 A. Seeking relief on these charges.

19 Q. And what specific relief are you seeking?

20 A. Sentence vacated or a new trial.

21 Q. So sentence vacated and a new trial?

22 A. Or a new trial.

23 Q. Or a new trial?

24 A. Yes, ma'am.

25 Q. Do you realize that this judge can't release you

1 from prison today?

2 A. Yes, ma'am.

3 Q. Okay. But he can like find -- he can make a finding  
4 that your counsel was ineffective assistance of counsel.

5 A. Yes, ma'am.

6 Q. Okay. Now, you indicated in you application that  
7 your attorney was ineffective.

8 A. Yes, ma'am.

9 Q. Okay. And you indicated that your attorney failed  
10 to protect your rights in your trial?

11 A. Yes, ma'am.

12 Q. Okay. Can you describe to the court what rights were  
13 not protected?

14 A. Like the right ---

15 Q. Okay.

16 A. --- one of 'em confronting clause.

17 Q. Confrontation clause?

18 A. Yes, ma'am.

19 Q. Can you explain to the court what -- who you did not  
20 get to confront?

21 A. My co-defendant. He was gonna testify on my behalf.

22 By us going to trial together they made him -- not cause he  
23 didn't want to -- he didn't want to put himself in a bad  
24 predicament.

25 Q. So your co-defendant didn't want to testify against

DANTONYO HEATH: DIRECT BY MS. MOODY

-8-

1       you?

2       A.    Yes, ma'am.

3       Q.    Cause he didn't want to put himself in a situation  
4       where he would get in trouble?

5       A.    Yes, ma'am.

6       Q.    Okay. And when you said y'all went to trial together,  
7       can you explain to the court what you mean you went to  
8       trial together?

9       A.    They tried us together.

10      Q.    So, you didn't go -- have an opportunity to go by  
11      yourself and then you would call your co-defendant as a  
12      witness?

13      A.    No, ma'am.

14      Q.    Did you ask your lawyer about that?

15      A.    Yes, ma'am. They filed for to get the trial separate  
16      but it was denied.

17      Q.    And the court denied that?

18      A.    Yes, ma'am.

19      Q.    Is there anything else as to that?

20      A.    No, ma'am.

21      Q.    Okay. Can you explain to the court what you mean that  
22      your counsel was inadequate for failing to challenge the  
23      state's case in a adversarial -- meaningful adversarial  
24      testing?

25      A.    Cause I believe he ain't made them prove their case

1 beyond a reasonable doubt.

2 Q. But what if anything did you discuss with your  
3 attorney about him holding the state to this level?

4 A. What we discussed?

5 Q. Yeah. What did you discuss with your attorney about  
6 challenging the state's case against you?

7 A. Nothing. Nothing really.

8 Q. So did you have an opportunity to meet with your  
9 lawyer?

10 A. Yes, ma'am.

11 Q. Okay. And how often did you get to meet with him?

12 A. I stayed incarcerated in the county twenty-six months.  
13 We might a met about seven or eight times.

14 Q. Okay. And when you met those seven or eight times,  
15 what did y'all discuss?

16 A. We ain't discuss nothing about the trial.

17 Q. But did you discuss anything about your case?

18 A. Yes, ma'am.

19 Q. Okay.

20 A. Same thing.

21 Q. What did you discuss?

22 A. Really basically all we discussed was that the  
23 solicitor wasn't ready and things like that to that nature.  
24 We ain't never really discussed nothing about the case.

25 Q. Did you go over the evidence that the state had?

DANTONYO HEATH: DIRECT BY MS. MOODY

-10-

1 A. No, ma'am.

2 Q. Did you receive any documents that the state may have  
3 had?

4 A. The only document that I seen was they statements  
5 that he wrote.

6 Q. Whose statements?

7 A. The victims and that's it, things like that.

8 Q. Did you provide any information to your attorney  
9 regarding your side of what might have happened or whether  
10 you were even involved?

11 A. No. I said I ain't do it. When I first seen him I  
12 told him I ain't do it. I was ready to go to trial then.

13 Q. Uh-huh.

14 A. Yeah.

15 Q. And what did your attorney tell you?

16 A. She said okay then and he just kept saying we wait'n  
17 on the state. That's why I stayed incarcerated that long  
18 here.

19 Q. Did your attorney bring to you any plea offers?

20 A. When I was -- During trial the assistant who was  
21 helping him brung -- he brung me a plea during the trial.

22 Q. So at the trial you received a plea offer?

23 A. Yes, ma'am.

24 Q. Okay. And what was that plea offer?

25 A. I believe it was eight to fifteen or eight years.

1           Something like that.

2           Q.    So in the twenty-six months that you were being  
3           held in custody ---

4           A.    Uh-huh.

5           Q.    --- what if any plea offers did you receive?

6           A.    One right there near the end before the trial too  
7           long. Mr. Dest came he tried to -- he came to me and said  
8           they offered a plea eight to fifteen. I turned it down and  
9           that was it.

10          Q.    Okay. So now going back to the trial. What if  
11          anything did you want your attorney to challenge of the  
12          state? Of the state's case I should say.

13          A.    What I wanted him to challenge?

14          Q.    Yes.

15          A.    The one I wanted him to challenge the evidence.

16          Q.    What do you mean?

17          A.    Like for one like Jordan, - Like for one like Jordan  
18          identification of me cause the first --

19          Q.    The victim's identification of you?

20          A.    Yes, ma'am.

21          Q.    And what was wrong with the identification of you?

22          A.    Cause when Jordan wrote his own statement he said  
23          he heard the nickname. Then during trial he swears he  
24          seen, you know what I'm saying, he seen the person who  
25          ducked down behind the Jeep.



DANTONYO HEATH: DIRECT BY MS. MOODY

-12-

1 Q. And what was the significance of the person that  
2 ducked down behind the Jeep?

3 A. That if he tried to say it was me and he did a photo  
4 lineup saying it was me.

5 Q. And can you help the court understand what the person  
6 who ducked down behind the Jeep had on?

7 A. Yeah. And the whole time they said the person had on  
8 a mask the whole time throughout the video.

9 Q. Now did you know the victim?

10 A. Yes, ma'am.

11 Q. Okay. And the nickname that the victim is referring  
12 to in their statement would have been a nickname that they  
13 would have heard used with you?

14 A. Yeah, that's what he was trying to say yes, ma'am.

15 Q. Okay. But in trial he testified to something else?

16 A. Yes, ma'am.

17 Q. Okay. What else as far as the evidence did you want  
18 your attorney to challenge?

19 A. They stated I feel --

20 Q. When you say they, tell us who do you mean they?

21 A. The victim.

22 Q. Okay.

23 A. Cause I feel that he should a -- I feel he should a  
24 impeach the state's witness testimony cause they was  
25 inconsistent throughout the whole trial.

1 Q. Okay. And did you discuss this with your attorney?

2 A. No, ma'am. I mean we didn't talk.

3 Q. Did you talk to your attorney during the trial?

4 A. Yes, ma'am.

5 Q. Okay. And so you never pointed out to him that the  
6 statements were inconsistent?

7 A. Yeah, we talked about it, yeah. And he brung some of  
8 it to their attention.

9 Q. And so what other portion did you want him to bring  
10 to their attention?

11 A. Like what I just told you about him seeing me then  
12 a nickname and about Amanda Crane.

13 Q. What about Amanda Crane?

14 A. About how they did. How they did her identification.

15 Q. Okay. When you say her identification, the  
16 identification of you?

17 A. Yes, ma'am.

18 Q. Okay. Can you explain to the court what you mean by  
19 that?

20 A. Because before she did a photo lineup they let her  
21 see me in a bond hearing and on the internet before they  
22 let her do a in-court identification.

23 Q. Okay. And you discussed that with your attorney?

24 A. Yes, ma'am.

25 Q. Okay.

DANTONYO HEATH: DIRECT BY MS. MOODY

-14-

1 A. We talked about it.

2 Q. And he didn't challenge it?

3 A. Yeah, he challenged it.

4 Q. He challenged it?

5 A. Yes, ma'am.

6 Q. So he did something you wanted him to do?

7 A. Yes, ma'am.

8 Q. Was there anything that he didn't do that you wanted  
9 him to do?

10 A. I wanted him to challenge about where the money came  
11 from. They said it came out of a vehicle that we ain't  
12 never heard nothing about it.

13 Q. Okay. So what did he do or what did you all discuss  
14 about the vehicle?

15 A. Nothing.

16 Q. So he didn't challenge the existence of the money?

17 A. Yeah, the vehicle it came out of.

18 Q. Okay. In your application you also indicate that  
19 your trial counsel was inadequate and performance was  
20 deficient but for his errors you would -- if it would have  
21 been a different -- the proceedings would have been  
22 different because you were denied your affective assistance  
23 of counsel during a critical stage. What is the critical  
24 stage you indicate? Could you indicate what the critical  
25 stage is for the court?

1 A. The critical stage was the trial and on direct appeal.

2 Q. And can you explain to the court what you mean by  
3 the trial and the direct appeal? Something was left out of  
4 the trial that you couldn't appeal?

5 A. Yeah, the issues -- the issues that he didn't put in.  
6 I feel he should a put in more stronger issue than what he  
7 put in.

8 Q. Okay. Well you're talking about him objecting to  
9 something at the trial?

10 A. Yes, ma'am.

11 Q. What specifically did he not object to at the trial?

12 A. I feel he should object to prosecution of  
13 misconduct.

14 Q. Okay. And what was the misconduct by the prosecution?  
15 Well, what do you feel was the prosecution's  
16 misconduct?

17 A. Withholding information.

18 Q. What information was withheld?

19 A. By Jared -- About Jared Crane one of the victim.

20 Q. What about Jared Crane?

21 A. That he told her -- He said a while ago that he had  
22 mentioned that he had marijuana. He told her she withheld  
23 that information from us and she didn't tell us.

24 Q. Okay. When you say she and her you're talking about  
25 the prosecutor?

DANTONYO HEATH: DIRECT BY MS. MOODY

-16-

1 A. The prosecutor yes, ma'am.

2 Q. Okay.

3 A. The prosecutor.

4 Q. So the prosecutor didn't give you information that  
5 Mr. Crane had marijuana?

6 A. Yes, ma'am.

7 Q. Okay. And how did that affect your case?

8 A. The inconsistence, you know what I'm saying,  
9 throughout the trial. Like for instance, cause he said he  
10 told the detective, the detective said he -- they didn't --  
11 -- he didn't tell 'em so they kept going back and forth  
12 like that.

13 Q. So Jared Crane said he told the detective and the  
14 detective said for the -- denied that he told him about  
15 marijuana ---

16 A. Yes, ma'am.

17 Q. --- in his possession?

18 A. Yes, ma'am.

19 Q. Okay. And so you wanted your lawyer to challenge  
20 that information?

21 A. Yes, ma'am.

22 Q. And what did your lawyer say or what if anything  
23 did you discuss with your lawyer about challenging that  
24 information?

25 A. I can't remember at the time.

1 Q. But you remember that he didn't challenge it?

2 A. Yes, ma'am, I think so.

3 Q. All right. So, outside of your attorney challenging  
4 the evidence and preserving the record, making objections  
5 on your behalf, how do you feel that that prejudiced you?

6 Well not outside of. All those things taken in  
7 conjunction you feel your attorney prejudiced your case?

8 A. Yes, ma'am.

9 Q. Okay. How?

10 A. I feel that he -- I feel he was more a friend to the  
11 court than to me.

12 Q. So you felt like he was working with the state. Is  
13 that what you're saying?

14 A. Yes, ma'am.

15 Q. Okay. You also raised that your counsel failed to  
16 raise or protect your rights against double jeopardy?

17 A. No, he raised that.

18 Q. He raised it?

19 A. Yes, ma'am.

20 Q. Okay. You also indicated that your due process  
21 rights were not protected. Can you explain to the court  
22 what happened with your trial? Was this your first trial?

23 A. No, ma'am, this is the second trial.

24 Q. Okay. And when you talk about double jeopardy you're  
25 talking about the fact that you had a second trial?

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1 A. Yes, ma'am.

2 Q. Okay. Was there any other rights that you feel that  
3 your attorney did not protect in the full representation?

4 A. I feel he was inadequate for failure to question the  
5 unreasonable search and seizure without probable cause.

6 Q. Okay. And the search and seizure goes to what in  
7 your case?

8 A. For why -- The reason why they locked me up.

9 Q. Okay.

10 A. The reason why I got incarcerated.

11 Q. I understand the reason why you got locked up.

12 A. Yes, ma'am.

13 Q. But you're alleging that they searched you?

14 A. Yes, ma'am.

15 Q. Okay. And your attorney didn't challenge that?

16 A. Yes, ma'am. For the simple fact they -- they said  
17 the reason why they -- I became a suspect because they  
18 heard this nickname. And I figure -- I feel he ain't --  
19 and they came to my house searched my house and then I  
20 turned myself in. I feel he ain't challenged -- he ain't  
21 challenged that.

22 Q. Did they find any evidence at your house?

23 A. No, ma'am, they didn't find nothing.

24 Q. Okay. Now you also raised that the court -- the  
25 trial-- your trial counsel was inadequate for failing to

1 raise a lack of subject matter jurisdiction. What do you  
2 mean by that?

3 A. Cause I believed he allowed the duplicate indictment  
4 to be altered or amend which is for the jury to decide not  
5 the judge or the prosecutor.

6 Q. Can you repeat that?

7 A. He allowed the duplicate indictments to be altered  
8 or amend -- amended which is for the jury to decide not the  
9 judge or the prosecutor. I believe he let them --

10 Q. Amend the indictment? /

11 A. Yes, ma'am.

12 Q. Okay. And you felt like the jury -- When you say  
13 amend the indictment are you saying like reducing your  
14 charge? What do you mean by that?

15 A. I mean -- It's been so long. It's been so long. This  
16 case been going on so long.

17 Q. That's okay. Take your time.

18 A. Yes, ma'am. I can't remember right now.

19 Q. Okay. Well do you want to move on to one of your  
20 other allegations?

21 A. Yes, ma'am.

22 Q. Okay. You indicated that your trial counsel was  
23 inadequate for failing to raise the issue of fraud upon the  
24 court through a sham legal process. What do you mean by  
25 that?



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1 A. The introduction of evidence that was showed to the  
2 jury from the first trial.

3 Q. Who introduced evidence to the jury from the first  
4 trial? The State?

5 A. Yes, ma'am.

6 Q. And what specifically was that evidence?

7 A. The same -- the same evidence that was in the second  
8 trial.

9 Q. Okay. So, you realize that the same - the same  
10 charges that you face ---

11 A. Yes, ma'am.

12 Q. --- were the same as the first trial, right?

13 A. Yes, ma'am.

14 Q. Okay. And so they would use the same evidence ---

15 A. Yes, ma'am.

16 Q. --- against you in the second trial. But you felt  
17 they shouldn't have been able to use that evidence?

18 A. Yes, ma'am.

19 Q. Okay. Did you tell your lawyer that?

20 A. No, ma'am.

21 Q. What if anything did he say about the evidence?

22 A. Nothing.

23 Q. So before you went to trial the second time did you  
24 have an opportunity to talk to your attorney about the  
25 case?

1 A. Sometimes. Yes, ma'am, but we ain't talk, we ain't  
2 talked about the case.

3 Q. But what did y'all talk about?

4 A. Nothing. Before he ain't -- before the second trial  
5 they tried to -- Mr. Dest came and offered me a plea and we  
6 ain't talk about the case.

7 Q. Okay. So, after the mistrial that's when you received  
8 plea offers?

9 A. Yes, ma'am.

10 Q. Okay. And you declined those plea offers, correct?

11 A. Yes, ma'am.

12 Q. All right, you also allege that your trial counsel  
13 failed to challenge the prosecutorial misconduct and that  
14 is briefed in your appellate case?

15 A. Yes, ma'am.

16 Q. Okay. So you realize that because it was briefed  
17 your appellate counsel raised it on appeal, that that's no  
18 longer an issue for you to raise here?

19 A. She ain't really raised it as an issue. She just put  
20 it in there. She talked about it but she ain't raised it  
21 as an issue though.

22 Q. Okay.

23 A. Yes, ma'am.

24 Q. All right. And so you're saying that your lawyer  
25 should have objected during the trial as to that

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1 misconduct?

2 A. Yes, ma'am.

3 Q. Okay. And he did not do that?

4 A. Yes, ma'am.

5 Q. You indicate another rule of professional conduct,  
6 responsibility by your counsel, Rule 407. Can you tell the  
7 Court what your dor -- Excuse me -- what your trial counsel  
8 didn't do that you feel like violated the rules of  
9 professional conduct?

10 A. Because -- Because there was a breach of trust because  
11 counsel violated loyalty; failed to consult; and lack of  
12 communication. Nor did I feel that he prepared a proper  
13 defense.

14 Q. Okay. Let's talk about the defense. What did you  
15 want him to argue on your behalf as it relates to a defense  
16 in this case?

17 A. I wanted him like for instance call my witnesses.

18 Q. Call your witnesses?

19 A. Yes, ma'am.

20 Q. Okay.

21 A. My witness.

22 Q. Did you give him witness names?

23 A. Yes, ma'am.

24 Q. Okay. And what did he say as to those witnesses?

25 A. He got in contact with one of 'em but I ain't had but

1 one witness. He got in contact with her. But he kept  
2 stressing to me the whole time if I bring him the evidence  
3 forward I'll do the right to last argument.

4 Q. Okay.

5 A. Yeah.

6 Q. And was that witness -- What was that witness gonna  
7 testify about?

8 A. That I was at a certain place.

9 Q. So the witness was gonna say you were not there?

10 A. Yes, ma'am.

11 Q. Okay. And he talked to this witness?

12 A. The investigator, yeah, he seen her.

13 Q. The investigator talked to the witness?

14 A. Yes, ma'am.

15 Q. And did he tell you in addition to you not having the  
16 last argument, did he tell you anything else about this  
17 witness was not appropriate to go?

18 A. Forward no, ma'am, he didn't tell me that.

19 Q. So as far as you know it was just for the basis of  
20 having the last argument?

21 A. Yes, ma'am.

22 Q. Okay. Now did you -- I'm not sure and I want to touch  
23 it to make sure we have it on the record -- you talked  
24 about in your application the DNA ---

25 A. Yes, ma'am.

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1 Q. --- in your case?

2 A. Yes, ma'am.

3 Q. Can you explain to the court was there any DNA, your  
4 DNA anywhere in this case?

5 A. No. No, ma'am.

6 Q. Okay. And you wanted an expert in this case?

7 A. Yes, ma'am.

8 Q. Why did you want an expert?

9 A. Cause I feel that the prosecutor -- he let the  
10 prosecutor taint the jury mind that it was DNA by saying  
11 it's one and one tenth but it wasn't no match so I feel he  
12 should a had a DNA expert to testify on my behalf so they  
13 could a got a better understanding of the situation.

14 Q. Was there anything else that your lawyer did not do  
15 that you felt he should have done?

16 A. No, ma'am, that's all.

17 Q. And again, the relief you're seeking today is what?

18 A. Sentence vacated or a new trial.

19 MS. MOODY: No further questions for this witness.

20 Please answer any questions the State may have.

21 MR. HUNTER: I don't have any questions for this  
22 witness.

23 THE COURT: Thank you, sir. You may step down. Watch  
24 your step.

25 MR. HEATH: Yes, sir.

1 (WITNESS LEAVES WITNESS STAND.)

2 THE COURT: Any more witnesses from the applicant?

3 MS. MOODY: No, sir, your Honor.

4 MR. HUNTER: Your Honor, the State would call Phil  
5 Smith.

6 ((WHEREUPON, PHILIP LEE  
7 SMITH, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
8 FOLLOWS:))

9 DIRECT EXAMINATION

10 PHILIP SMITH BY MR. HUNTER:

11 Q. Good morning, Mr. Smith. Can you please state your  
12 name for the record?

13 A. Philip Lee Smith.

14 Q. And where are you employed?

15 A. York County Public Defender's Office.

16 Q. Is that where you were employed when you represented  
17 Mr. Heath?

18 A. It is.

19 Q. And were you the first attorney to be represented to  
20 him or appointed to him?

21 A. I was. The case history is a little complex. I was  
22 appointed to represent him. At some point he made a motion  
23 for me to be relieved and I was relieved. He spoke of his  
24 case going forward on two separate trials. That's correct.  
25 His first trial was in January of this same -- it would

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1 have been January of 2013. The day of trial he contacted  
2 Mr. Harry Dest in our office indicated he wanted me back on  
3 his case so the Public Defender Mr. Dest spoke with me,  
4 said he wouldn't force me to do it but if I would be  
5 willing Mr. Heath wanted me to help him out and come back  
6 and try his case. I agreed to. We began trial on that  
7 case.

8 At some point my recollection is about two thirds of  
9 the way through the case the Clerk of Court came to the  
10 courtroom informed the judge that our jury selection system  
11 for that year had been incorrect and that we had not  
12 included -- I forget if it was voter record or driver's  
13 license, one of the two, and so at that point Judge Hayes  
14 stopped the case and that case ended at that point. I  
15 remained his attorney throughout and through the second  
16 trial that he has described today.

17 Q. And can you just describe how often you met with him  
18 prior to trial, prior to the second trial.

19 A. Yes. I would meet with him a number of times. He  
20 describes a number of ranges of pleas that went on. That's  
21 true in the case. A lot of our discussion was about  
22 whether or not he would enter a plea. As Mr. Heath  
23 indicated the first time he met with me he told me he  
24 didn't do it he wanted to go to trial. As matters  
25 progressed it looked to me like there was some evidence

1 which could be persuasive to a jury that was largely our  
2 fall out the first time that led to him having me relieved  
3 but we would meet to discuss that. And he met not only  
4 with me as he indicated but he met with Mr. Dest of our  
5 office and with Monario Belton who was a law student and  
6 was working with us as well.

7 When we would discuss the case he was much as you  
8 saw him on the witness stand. He would not speak in much  
9 of a narrative; he would just sort of say yes or no. We  
10 did go through all the discovery. I was able to show him  
11 what is a very damaging video that was introduced in this  
12 case. But if you would ask him are there specific things  
13 that you wanted him to do he's not very verbose and would  
14 not make many request. He would just say that I needed to  
15 defend him. So, I did have probably -- he describes seven  
16 to eight meetings talking about the case, that's probably  
17 accurate.

18 Q. So as far as assisting in his defense he testified  
19 that he provided a witness name, an alibi witness. Can you  
20 explain that?

21 A He did. At a sort of an unusual point in  
22 representation he did that. As he indicated I sent  
23 an investigator out to talk to that person. That person  
24 was neither very willing to come forward nor did their  
25 alibi seem to have much credence and or fit the time range



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1 we needed so that is not a person who we thought would have  
2 been beneficial in his defense and was not called.

3 Q. Did you explain that to him?

4 A. I did. And he also mentioned talking about the loss  
5 of last argument. We did have that discussion. That  
6 discussion became pretty well moot because at that point we  
7 were expecting that counsel for the co-defendant was going  
8 to introduce some evidence so I would not have had a fear  
9 of losing last argument because approaching that trial I  
10 fully expected Ms. Burris to introduce some evidence and I  
11 even made a pretrial motion as part of my severance motion  
12 saying I will loose last argument under the current state  
13 of law if she goes forward so I had no fear of losing last  
14 argument.

15 Q. Okay. Now in getting ready for this trial, I believe  
16 you said y'all went to about two thirds of the way through  
17 on the first trial?

18 A. That's my recollection. I have not double checked  
19 that transcript but I do remember crossing the DNA expert  
20 at least during the pretrial portions.

21 Q. Okay. So y'all got that far?

22 A. Yes.

23 Q. Okay. Now let's talk about the DNA expert.

24 Can you explain, I guess if you remember, your  
25 cross-examination of that expert?

1 A. I do. It was a pretty extensive cross and I thought  
2 played pretty effectively showing highlighting the  
3 difference between someone who simply cannot be excluded  
4 versus someone who is what we would traditionally call a  
5 match. The number differences were very dramatic and I  
6 think effectively made the point to the jury that they  
7 weren't able to find a matching DNA for Mr. Heath at that  
8 location. And I used that for the point in closing of look  
9 at the video, look at all the things that this individual  
10 would have touched; all the places that the DNA would have  
11 been; if it would have been Mr. Heath his DNA would have  
12 been there, and I thought it worked well to highlight that  
13 point. And that was an extensive cross that I did on DNA  
14 both -- at both trials.

15 Q. And did you explain to him, I guess, the difference  
16 between DNA where it cannot be excluded versus whether it's  
17 a match or not a match?

18 A. I did talk to him about that, yes. And I gave him --  
19 showed him copies of those reports and went through all the  
20 discovery with him, yes.

21 Q. Okay. And did you go through the discovery again  
22 before the second trial?

23 A. Yes.

24 Q. Okay.

25 A. Now, at times he wouldn't want to watch the video

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1 again or things like that so I can't say how much of all of  
2 it we went through. And at times he would not want to hear  
3 more but it was certainly all made available to him and we  
4 talked about the issue.

5 Q. Okay. Can you explain this video? He said that was  
6 the -- you said was this evidence against him.

7 A. It is. It's a surveillance camera or multi-cameras  
8 from the custom tire shop that was the subject of the  
9 robbery or location of the alleged robbery. The most  
10 damaging portion of it involves the person who Jared Crane  
11 who Mr. Heath described as the victim; there are actually a  
12 couple of victims, but Mr. Crane is seen at one point sort  
13 of stunned, grabbed from behind and there is a long  
14 struggle that he is involved with with a person who is  
15 partially -- whose face is partially covered during that  
16 video. The person who the state alleged to be Mr. Heath  
17 got behind Mr. Crane and began choking him and on a couple  
18 of occasions you see Mr. Crane go limp. I believe he  
19 testified at trial that he thought he was about to die.  
20 And then at some point regained some movement, life, and  
21 gets choked out again. It was a damaging video.

22 Q. And you said you went over that video with him?

23 A. Yes. Showed it to him and at times he would not want  
24 to see it but yes, he was aware of the video and would have  
25 seen it both the first trial and the second.

1 Q. Okay. Now switching gears a little bit. Prior to the  
2 second trial when y'all were still in pretrial posture,  
3 you made a motion I guess for a mistrial due to double  
4 jeopardy; isn't that correct?

5 A. That's correct.

6 Q. And do you remember what the grounds were for that?

7 A. Mr. Heath told me he wanted me to do it so I did it.

8 It was based largely that the -- His opinion was since  
9 they had called him to trial once they could not call him  
10 to trial again. I did not think that was a correct status  
11 of the law. My motion sort of broadened that argument to  
12 say because it was the State's fault as to how the jury was  
13 selected that the State should be held responsible and that  
14 therefore the State should not allow him to be called again  
15 to trial; that basically it was their error that caused the  
16 first mistrial.

17 Q. So that motion was essentially denied, correct?

18 A. Quickly, yes.

19 Q. Okay. Now regarding confrontation clause issues, what  
20 motion did you make before this trial?

21 A. It changed. As you'll notice in the transcript  
22 originally I would have made a confrontation clause issue  
23 that Mr. Heath discussed because at the first trial it was  
24 the State's intent to introduce the statement of Mr.  
25 Robinson the co-defendant and he was not going to testify

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1 so my argument would have been confrontation clause that  
2 there was evidence that would have been provided against my  
3 client that we could not cross-examine on because he has a  
4 Fifth Amendment right not to go forward on a standard or a  
5 Bruton issue.

6 However at this trial if you notice in the transcript  
7 pretrial the State decided not to introduce that statement  
8 so my pretrial motion as part of my motion for severance  
9 changed at that point because as Mr. Heath indicated part  
10 of the evidence that the state wanted to use was this  
11 nickname that was claimed to have been heard at the scene  
12 and there was a statement given by Mr. Robinson that said  
13 he -- I believe the quote is, he don't know no Yody which  
14 was the nickname that was used and that Dantonyo Heath  
15 wouldn't be involved in anything like this.

16 So my argument was now that without the severance I  
17 was not able to call my -- to call the witnesses that Mr.  
18 Heath would have wanted to testify. That's not technically  
19 a confrontation clause argument. That was my motion for  
20 severance.

21 MS. MOODY: Your Honor, I hate to interrupt the  
22 testimony but he keeps referring to a previous transcript,  
23 the first trial transcript. I don't have a copy of that  
24 transcript. I'm not sure whether you introduced that or  
25 you've given to the court.

1 MR. HUNTER: I've not. I understand.

2 MR. SMITH: No, I mean this transcript. I'm sorry.

3 Did I say previous?

4 MS. MOODY: Okay.

5 MR. SMITH: I'm sorry.

6 MS. MOODY: I was trying to follow.

7 MR. SMITH: I'm sorry, your Honor. That should be in  
8 the motions at the second trial transcript.

9 THE COURT: Okay.

10 BY MR. HUNTER:

11 Q. So, could you just explain what your grounds for the  
12 severance motion, I guess as it changed what they  
13 eventually became?

14 A. I believe I cited three. The one was that we  
15 couldn't call the witness. Two was that I was afraid that  
16 we would loose last argument if they introduced any  
17 evidence. And three, or as I listed them it was actually  
18 my first prong, was that it would cause the video to be  
19 more prejudicial against my client. My argument there was  
20 there are two people on the video. One was Mr. Robinson  
21 who could be seen, his face can be seen. The other is a  
22 masked individual or a person whose face is covered at  
23 least a majority of the time on there. My fear is that  
24 the jury would see two people on the video, one that  
25 couldn't be identified, but then when you see two

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1 defendant's seated in the courtroom they would immediately  
2 draw the conclusion that ha, ha, this must be Mr. Heath so  
3 I argued that that was the basis for the case to be  
4 severed as well, those three grounds.

5 Q. And so you raised all three of those grounds and the  
6 judge denied it. Is that what eventually happened?

7 A. That's correct.

8 Q. Okay. And just to go through a couple of more  
9 allegations. Are you aware of any conflict of interest  
10 you would have with your opposing counsel or the solicitor  
11 in that case?

12 A. No. Now the solicitor in the case was -- I worked  
13 in the solicitor's office and she worked in a law firm with  
14 me at one point but I don't think that was raised nor do I  
15 think that's an issue.

16 Q. And I believe you testified that --

17 A. And I should say, I'm sorry, and I worked with  
18 opposing counsel. She worked with me in the solicitor's  
19 office -- not opposing counsel -- with co-defendant's  
20 counsel. She worked with me in the solicitor's office as  
21 well but I don't view that as a conflict.

22 Q. Okay. I believe you testified that you were -- I  
23 believe you were inadequate for being a friend to the court  
24 as opposed to an advisory. And I guess just a basic  
25 question, is there anything in your mind that any

1 relationship between you, the judge, anybody else in the  
2 courtroom that would cause concern?

3 A. No. I'm an officer of the court but I'm duty bound  
4 loyal to my client.

5 Q. Okay. Now regarding the in-court identification  
6 I believe that was done by Amanda Crane. Can you just  
7 discuss the circumstances surrounding that?

8 A. I can. I got a little confused during Mr. Heath's  
9 testimony. He talked about Jared Crane's identification.  
10 Jared Crane's identification was only of Mr. Robinson. Mr.  
11 Crane could not identify Mr. Heath so I did not oppose the  
12 in-court identification because it did not involve my  
13 client with regard to Jared Crane.

14 With regard to Amanda Crane you're correct. I made a  
15 motion to suppress the in-court identification. You - The  
16 transcript reflects that the pretrial motion basically that  
17 Detective Stokes goes out and shows Jared Crane an  
18 identifica - a photo spread of Mr. Robinson, he is able to  
19 identify Mr. Robinson. He shows a photo spread of Mr.  
20 Heath, no identification is made

21 It's apparent to me that at that time Amanda Crane is  
22 there as well. And she had been at the hospital where the  
23 detectives had been earlier. They apparently show no  
24 photos spread to her in my opinion because they didn't  
25 think she would be able to identify anyone because her



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1 contact would have been brief with whomever the individual  
2 was. She then testified that she was both at the bond  
3 hearing and then at some point when she looked on the  
4 internet and saw a picture, I believe to have been a  
5 booking photo of Mr. Heath, that then she was able to  
6 identify him and seated in the courtroom she believed that  
7 she could identify Mr. Heath as the individual who had  
8 approached her out at the tire shop as she was in the car  
9 on that evening. I made a motion to suppress that as  
10 unduly prejudiced by the prior bond court and the internet  
11 view of the photo but that motion was denied.

12 Q. Okay. Regrading the indictments and subject matter  
13 jurisdiction, did you see any problem with his indictments?  
14 Anything that would cause concern?

15 A. I did not.

16 Q. And I believe we touched on all of -- on his direct.

17 Were there any search and seizure issues with Mr.  
18 Heath?

19 A. No. I think he -- He seemed to be indicating he  
20 didn't think he should have been arrested. He is correct  
21 that they were searching out based on a nickname and then  
22 they had gotten a vehicle description and ultimately that  
23 was how law enforcement came into contact with him. There  
24 may have been some search done at the time but there was no  
25 evidence that was either searched or seized or introduced

1 at either of the trials with regard to anything found on  
2 Mr. Heath at the residence that he was arrested or from the  
3 vehicle that he would have been using supposedly at that  
4 time.

5 Q. Okay. Now let's talk about the marijuana issue with  
6 Mr. Crane. Can you describe how this came up during trial?

7 A. Yes. It came up in part in a conversation that was  
8 had in judges' chambers. Then the next morning -- and this  
9 would have been the -- after Mr. Crane had testified at the  
10 second trial. The next morning when court resumes, or  
11 after a break, co-counsel for the defendant, Ms. Crews,  
12 makes a motion concerning a mis-trial based upon this  
13 evidence that was not turned over by the state. It's a  
14 little unclear to me as to what they -- where they're  
15 saying the information came from.

16 We sort of heard that it might a been given to law  
17 enforcement or it might a been said to the prosecutor.  
18 Prosecutor thought that it might have been revealed that  
19 she had mentioned someone being impaired. I knew I had not  
20 heard of Mr. Crane either being under the influence of  
21 marijuana or possessing marijuana. So when that motion is  
22 raised Judge John Hayes turns to me at the end of the  
23 motion and ask me do I join in that motion and I did join  
24 in that motion which was denied.

25 Q. That motion was denied?

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1 A. It was.

2 Q. And as far as the other evidence, or evidence of  
3 misconduct, can you briefly explain the CAD Report  
4 situation?

5 A. I can. As we were in pretrial a -- a CAD Report  
6 surfaced that was being referenced by law enforcement that  
7 we had not received. Obviously this case had gone on for  
8 some time and had even in effect been tried once even  
9 though not to conclusion, so, I objected that it was a  
10 discovery violation, moved for a mistrial based upon that,  
11 and a hearing was held on that motion. They talked about  
12 when the CAD Report came to be, where it came from, those  
13 sorts of item -- those sorts of things. And then I made a  
14 motion for a dismissal and that was joined in by co-counsel  
15 but was ultimately denied.

16 Q. Okay. And just a few more things, Mr. Smith.

17 As far as certain evidentiary issues that he has  
18 concern with that he says you didn't challenge, the -- I  
19 guess the other victim, or Mr. Jordan's identification of  
20 Heath, did you -- were there any issues there?

21 A. I don't think Jordan Crane identifies Mr. Heath is  
22 why I got sort of confused in his testimony.

23 Q. Jared Crane did?

24 A. I'm sorry, Jordan, yes, yes. No.

25 Q. Jordan.

PHILIP SMITH: DIRECT BY MR. HUNTER  
CROSS BY MS. MOODY

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1 A. I'm sorry. Jordan, not Jared. Jared made no  
2 identification. Jordan's identification, yes, would  
3 have been challenged pretrial but I have no issue, correct.

4 Q. Okay. And can you just go over a little bit about  
5 how you attacked the inconsistencies in the state's  
6 witnesses' statements?

7 A. Did it both via cross-examination and during closing  
8 argument. Mr. Heath is correct, I did bring those up.  
9 Now, he argues I didn't do them forcefully enough which is  
10 probably correct given the verdict but I thought they were  
11 highlighted to the jury in a manner in which they should  
12 have been highlighted both inconsistent statements from  
13 statements to testimony and from prior transcript  
14 testimony's testimony.

15 Q. Okay. And can you discuss the issue of I guess not  
16 challenging where the money came from?

17 A. I can to some extent. There was a motion -- I'm  
18 sorry. There was a subpoena issued by co-counsel -- I'm  
19 saying co-counsel, I'm sorry, co-defendant's counsel Ms.  
20 Burris requesting tax records from the business owner.  
21 Ultimately that motion is withdrawn or that subpoena is  
22 quashed. The State moves to quash that subpoena and Ms.  
23 Burris withdraws that motion at the beginning of this the  
24 second trial.

25 But there was some allegation as to the amount of

PHILIP SMITH: DIRECT BY MR. HUNTER  
CROSS BY MS. MOODY

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1 monies claimed and how much they were. There was testimony  
2 that it did come from not inside the business but out in a  
3 vehicle. It seemed an unusual place for the amount of  
4 money that was claimed to have been stored. We chose to  
5 highlight that as seeming odd to the jury to cast some  
6 doubt on the testimony of the victim business owner, not  
7 Mr. Crane in that point, Mr. Jordan.

8 But there was no official motion that he seems to be  
9 requesting to determine where it came from. I mean the  
10 testimony was it came from out of the vehicle.

11 Q. Okay.

12 MR. HUNTER: Beg the Court's indulgence for one  
13 second.

14 (PAUSE.)

15 Q. And just to clarify again, the co-defendant's  
16 statement was not used in the second trial?

17 A. Co-defendant's statement. The State chose not to  
18 use it, correct.

19 MR. HUNTER: That's all I have for this witness.

20 Thank you.

21 CROSS-EXAMINATION

22 PHILIP SMITH BY MS. MOODY:

23 Q. Good afternoon, Mr. Smith.

24 A. Good afternoon.

25 Q. You discussed the video previously and you stated Mr.

1 -- Excuse me -- Mr. Heath didn't want to watch the video?

2 A. At times he wouldn't. He saw it but he wouldn't want  
3 to watch any more.

4 Q. What do you mean by that?

5 A. He would just say I don't need to see anymore.

6 Q. Oh, okay. When you discussed the double jeopardy  
7 motion, the grounds for the double jeopardy motion, isn't  
8 it true you talked to him about the double jeopardy?

9 A. He mentioned that he wanted me to raise it, that's  
10 correct.

11 Q. So it first came to your attention by him bringing  
12 it to your attention?

13 A. That's correct.

14 Q. Okay. And you discussed that with him; explained to  
15 him what double jeopardy was?

16 A. I explained to him what I thought it was and he told  
17 me he wanted me to raise the motion so I raised it.

18 Q. Okay. And then you indicated in -- Now in the  
19 transcript you talk about in the closing that they had no  
20 evidence and that the masked individual it's no way they  
21 that they could fill in the gaps and basically say that it  
22 was Mr. Heath.

23 A. Correct.

24 Q. And also your -- part of your argument was that there  
25 was no DNA so they just couldn't find that it would be Mr.

PHILIP SMITH: CROSS BY MS. MOODY

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1 Heath?

2 A. Yes, ma'am.

3 Q. Okay. But early on in testimony you testified that  
4 there was a damaging part of the video with a partially  
5 covered face individual. Did you believe that that  
6 individual was Mr. Heath?

7 A. My belief wouldn't be relevant.

8 Q. Okay. But when you say it's damaging, so it's  
9 damaging as to Mr. Heath, right?

10 A. Oh, I agree yes, ma'am.

11 Q. So how was it damaging to Mr. Heath?

12 A. In part because OF as I mentioned in my pretrial  
13 motion I think if they see two people on a video committing  
14 a robbery and then there are two persons sitting at defense  
15 counsel table that jury's make an assumption well it must  
16 be them. And then the person depicted in the video was not  
17 dissimilar from Mr. Heath in statute, complexion, what you  
18 could see from the video, and, it's just a chilling video.  
19 So when a jury sees a video of someone potentially nearly  
20 being killed I think it's damaging to anyone who's on  
21 trial.

22 Q. All right. I think you've corrected this, but as to  
23 Ernest Jordan, Ernest Jordan was the person that was -- who  
24 tried to make an identification of Mr. Heath?

25 A. That's correct.

1 Q. Okay. And you challenged that?

2 A. Yes.

3 Q. Okay. Earlier the State ask you friend of the - Well  
4 in an adversarial system you said you were duty bound, loyal  
5 bound to your client. Do you recall at any point where Mr.  
6 Heath might have thought that you were not working on his  
7 behalf and you were more friendly to the court instead of  
8 advancing his defense?

9 A. He moved to have me relieved once.

10 Q. Okay. And can you explain what was the basis for  
11 that?

12 A. He chose he wanted to forward but he largely felt  
13 that I did not believe him about his case and didn't think  
14 that he would win.

15 Q. That you didn't think that you would win the case?

16 A. Correct.

17 Q. Okay. And did y'all have a discussion about whether  
18 he would win or not?

19 A. He would ask me can I win the case and I would tell  
20 him that I can't guarantee that and I would go through what  
21 I thought were problems with the thing and he took that to  
22 mean that I did not believe and therefore I suppose would  
23 have worked for him in his case. I took it as a correct  
24 analysis of what the law and the evidence that was facing  
25 him at that point. He was not mean about it. There was



PHILIP SMITH: CROSS BY MS. MOODY

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1 nothing rude or anything like that. He just ask that I be  
2 relieved.

3 Q. Okay. But you then came back and wanted to do the  
4 second trial?

5 A. Came back for the first.

6 Q. Okay. Came back for the first.

7 A. The day of the first did it and then stayed on  
8 through the second.

9 Q. Okay. So you stayed his -- You remained his attorney  
10 from that point on without any problem?

11 A. Yes, ma'am, I did.

12 Q. Now you indicated that when you would talk to him  
13 he would either respond yes or no. There was no real  
14 discussion of the evidence?

15 A. Sort of like when you were questioning him on the  
16 stand. I don't mean he only said yes or no but he is  
17 somewhat sparing with his words. He does not go into large  
18 narrative paragraphs.

19 Q. But you felt that he understood what you all were  
20 discussing?

21 A. Oh, Yes, ma'am.

22 MS. MOODY: No further questions for this witness.

23 Thank you.

24 THE COURT: Any redirect on what she went into?

25 MR. HUNTER: No, your Honor.

1 THE COURT: Thank you, sir, you may step down.

2 MR. SMITH: Thank you, your Honor.

3 (WITNESS LEAVES WITNESS STAND.)

4 MR. HUNTER: Nothing else from the State, your Honor.

5 THE COURT: Okay. Any reply?

6 MS. MOODY: No, your Honor.

7 THE COURT: Okay. All right, I'll take it under  
8 advisement and let you know.

9 MR. HUNTER: Thank you, your Honor.

10 MS. MOODY: Thank you, your Honor.

11 THE COURT: Good luck to you, sir.

12 MR. HEATH: Thank you, sir.

13 (APPLICANT, DANTONYO HEATH, EXITS COURTROOM.)

14 MS. MOODY: Thank you, sir.

15 (SCHEDULING CONFERENCE HAD AT THE BENCH OFF THE RECORD  
16 AT 12:06 PM.)

17 MR. HUNTER: That's it today.

18 (COURT IN RECESS AT 12:11 PM.)

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina    )  
                                      )  
County of York                )

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 31st of January, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda S. Nelson

Wanda Nelson, CVR-M  
Certified Verbatim Reporter,  
Official Court Reporter,  
Notary Public, in and for  
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: July 15 / 2017

STATE OF SOUTH CAROLINA - RECEIVED IN THE COURT OF COMMON PLEAS  
 COUNTY OF YORK 2017 APR 27 PM 12:56 OF THE SIXTEENTH JUDICIAL CIRCUIT

Dantonyo Heath,  
 S.C.D.C. No. 263884,

DAVID HAMILTON  
 C.C.P. & G.S.  
 YORK COUNTY, SC

2015-CP-46-3686

Applicant,

v.

State of South Carolina,

Respondent.

## ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 24, 2015. Respondent made its Return on or about June 23, 2016. An evidentiary hearing into the matter was convened on January 31, 2017, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Leah Moody, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Phil Smith, Esquire, also testified. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

### I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the September 2011 term of the York County Grand Jury for kidnapping (2011-GS-46-2901), armed robbery (2011-GS-46-2898), criminal conspiracy (2011-GS-46-2900), and attempted murder (2011-GS-46-2899). Applicant was represented by Philip Smith, Esquire. On July 22, 2013, the

State called the case for a jury trial before the Honorable John C. Hayes, III. Following the trial, Applicant was found guilty of kidnapping, guilty of strong armed robbery as a lesser included offense of armed robbery, guilty of criminal conspiracy, and guilty of second degree assault and battery as a lesser included offense of attempted murder. He was sentenced to imprisonment for thirty years for kidnapping, fifteen years for strong armed robbery, five years for criminal conspiracy, and three years for second degree assault and battery.

Applicant filed a notice of appeal and an appeal was perfected by Appellate Defender Susan B. Hackett. In an unpublished opinion filed October 14, 2015, the South Carolina Court of Appeals affirmed Applicant's convictions. State v. Heath, Op. No. 2015-UP-487 (Ct. App. filed October 14, 2015). The Remittitur was sent November 4, 2015.

#### *PCR Application*

In his application for post-conviction relief, Applicant alleged ineffective assistance of counsel, ineffective assistance of appellate counsel, and subject matter jurisdiction.

## **II. APPLICABLE LAW**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable



professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

### III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and its amendment, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

#### Failure to Raise Confrontation Clause Violation

Applicant alleged that Counsel was ineffective for failing to raise a Confrontation Clause violation. Applicant testified that he thought his codefendant would testify for him and that

Counsel should have filed a motion to sever their cases. Counsel testified that Applicant's codefendant did not testify at trial and the State did not introduce a statement from him. Counsel testified that he made a motion to sever based on three grounds: that the jury would see a video of the codefendant with another person and assume that Applicant was the other person, to call the codefendant as a witness, and to be able to have the last argument to the jury.

This Court finds that Counsel was not ineffective as he did make a motion to sever Applicant's case from his codefendant so that he could call the codefendant as a witness. See Trial Transcript p. 28-30. The Trial Court denied this motion. See Trial Transcript p. 32. As Counsel did raise these arguments, he was not deficient for failing to do so. Accordingly, this allegation must be dismissed.

Failure to raise double jeopardy issue

Applicant alleged that Counsel should have raised the issue of double jeopardy since this was Applicant's second trial on these charges. Counsel testified that he explained to Applicant that there was no double jeopardy issue but Applicant wanted him to raise it at trial.

This Court finds that Counsel was not ineffective. This Court finds that Counsel made a motion to have the charges dismissed based on double jeopardy. See Trial Transcript p. 113, ll. 1-12. As Counsel did raise this argument, Applicant has failed to show that he was deficient. Accordingly, this allegation must be dismissed.

Failure to investigate

Applicant alleged that Counsel failed to investigate. He testified that he met with Counsel seven to eight times but did not discuss anything about the trial. He testified that they did not discuss the evidence although they did look at the victim's statements.



Counsel testified that the first trial was mistried due to a jury pool issue. He testified that he and Applicant went over the discovery materials, which included a video that was very damaging to Applicant's case. He testified that the video was very chilling and shows Applicant with a partially covered face.

This Court finds that Applicant has failed to show that Counsel was ineffective in his investigation. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). 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) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). This Court finds that Applicant has failed to show what additional investigation Counsel should have undertaken and has failed to show that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Failure to challenge the State's case

Applicant alleged that Counsel failed to challenge the State's case against him. He testified that Counsel should have challenged Victim Jordan's identification of Applicant and the use of his nickname. He testified that he should have challenged the inconsistencies in the witnesses' testimonies. Applicant also testified that Counsel should have challenged Amanda Crane's in-court identification of Applicant. Applicant testified that he should have challenged where the money came from. Applicant further testified that improper evidence from the first trial was introduced at the second trial and Counsel should have made an objection.





Counsel testified that he made a motion to suppress Amanda Crane's in-court identification of Applicant because her identification was based on seeing Applicant at a bond hearing and in an online photo. Counsel also testified that he pointed out the State's witnesses' inconsistent testimonies on cross-examination and during his closing argument.

This Court finds that Counsel was not ineffective. A Neil v. Biggers hearing was held on Victim Jordan's identification of Applicant and Amanda Crane's identification of Applicant. Counsel challenged these identifications and the Trial Court ruled them to be admissible. This Court also finds that Counsel challenged inconsistencies in the State's witnesses' testimonies through cross-examination. This Court finds that Applicant has failed to show that the outcome of his trial would have been different had Counsel challenged the State's case in the way he alleged. Accordingly, this allegation must be dismissed.

Failure to object to prosecutorial misconduct

Applicant alleged that Counsel should have objected to the solicitor's prosecutorial misconduct as the prosecutor withheld information about Victim Crane having marijuana on him at the time of the incident. Counsel testified that the issue of Victim Crane having marijuana was raised at the trial and he joined in the codefendant's motion for a mistrial, arguing that the State knew about this and did not turn it over in discovery.

This Court finds that Applicant has failed to meet his burden of proving that Counsel was deficient. This Court finds that Counsel did challenge this evidence and moved for a mistrial based on the State's failure to turn the evidence over. The record reflects that the Trial Court denied the mistrial, finding that no manifest necessity existed that would warrant the granting of a mistrial. See Trial Transcript p. 626. This Court finds that Applicant has failed to show that he



suffered prejudice, especially considering the fact that the Trial Court ruled on the mistrial motion. Accordingly, this allegation must be dismissed.

Failure to object to unreasonable search and seizure

Applicant alleged that Counsel should have objected to the unreasonable search and seizure. He testified that he was searched because of his nickname and no evidence was ever found at his house. Counsel testified that nothing was searched or seized from Applicant. Applicant has failed to meet his burden of proving that Counsel's actions were deficient in this regard and has failed to show that the outcome of his trial would have been different. Accordingly, this allegation must be dismissed.

Failure to challenge subject matter jurisdiction

Applicant alleged that Counsel should have challenged the Trial Court's subject matter jurisdiction over Applicant and alleged that Counsel allowed the indictments to be altered. Counsel testified that there was no issue with Applicant's indictment.

This Court finds that Applicant has failed to meet his burden of proving that Counsel should have objected to his indictments. Applicant has failed to show that specific defects existed in his indictments that would cause an issue with the Trial Court's subject matter jurisdiction. As such, Counsel's performance was not deficient.

Additionally, this Court finds that any allegation that the Trial Court lacked subject matter jurisdiction is without merit. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the York

County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. Accordingly this allegation must be dismissed.

Violation of Rules of Professional Conduct

Applicant alleged that Counsel violated the Rules of Professional Conduct as he failed to communicate or consult with Applicant. Applicant testified that he met with Counsel seven to eight times but did not discuss anything about the trial. He testified that they did not discuss the evidence although they did look at the victim's statements. Applicant testified that he told Counsel that he was innocent.

Counsel testified that he and Applicant met a number of times before the trial. He testified that they went over the discovery in the case which included a video that was damaging to Applicant's case. He testified that Applicant was not very talkative but seemed to understand what was going on in the case. Counsel testified that Applicant did not want to plead guilty but maintained that he wanted to pursue a trial. Counsel further testified that Applicant gave Counsel a list of alibi witnesses. He testified that he investigated these witnesses, however they were not willing to come forward and testify and the supposed alibi did not line up.

This Court finds that Applicant has failed to show that Counsel was ineffective for failing to communicate or consult with Applicant. This Court finds that Counsel met with Applicant prior to the trial and reviewed discovery, and investigated Applicant's alibi witnesses. This Court finds that Applicant has failed to show any specific shortcomings in Counsel's communication and has failed to show that Counsel's actions were deficient. This Court also finds that Applicant has failed to show that Counsel violated any of provision of the South Carolina Rules of Professional Conduct. This Court further finds that Applicant has failed to show that the outcome

of his trial would have been different had Counsel communicated differently. Accordingly, this allegation must be dismissed.

Failure to present a proper defense

Applicant alleged that Counsel failed to present a proper defense. Applicant testified that he wanted Counsel to call alibi witnesses but Counsel said he would not because he wanted the last argument. Counsel testified that he investigated Applicant's alibi witnesses. He testified that these witnesses were not willing to come forward and testify and the supposed alibi did not line up.

This Court finds that Counsel was not ineffective for failing to present a proper defense or call an alibi witness. To qualify as an alibi, a witness's testimony must account for the defendant's whereabouts during the time of the crime such that it would have been physically impossible for the defendant to commit the crime. Walker v. State, 397 S.C. 226, 237, 723 S.E.2d 610, 616 (Ct. App. 2012). In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. Id. This Court finds Counsel provided credible testimony that he did contact Applicant's witnesses but they were either unwilling to cooperate or they did not provide a proper alibi. Additionally, Applicant has failed to meet his burden as he has failed to produce these witnesses or their testimony at the PCR hearing. As Applicant has failed to show that Counsel was deficient and that he was prejudiced by Counsel's actions, this allegation must be dismissed.



Failure to challenge the DNA evidence

Applicant alleged that Counsel should have challenged the DNA evidence against him. He testified that there was no DNA evidence that could link him to the crime and he wanted an expert witness to testify to that. He testified that the State's expert witness said there was a chance the DNA could be linked to Applicant.

Counsel testified that he cross-examined the State's DNA expert extensively and believed it was very effective. He testified that he focused on the fact that there is a difference between someone who "cannot be excluded" based on DNA evidence and someone who is a "match" based on DNA evidence. Counsel testified that he explained this to Applicant.

This Court finds that Applicant has failed to show that Counsel was ineffective. This Court finds that Counsel cross-examined the State's DNA expert extensively regarding any possible link to Applicant and argued the issue to the jury in closing argument. As to any allegation that Counsel was ineffective for failing to call his own expert witness, this Court finds that this allegation must be dismissed as Applicant has failed to present such a witness or the witness's testimony at the PCR hearing. This Court finds that Applicant has failed to show that Counsel's actions were deficient and that the result of the trial would have been different but for the alleged shortcomings. Accordingly, this allegation must be dismissed.

**IV. CONCLUSION**

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at



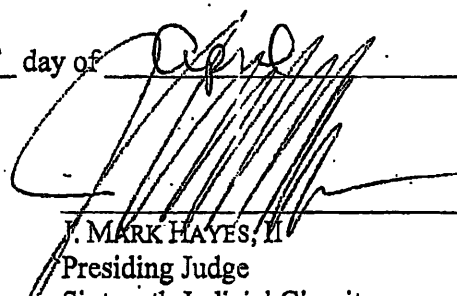
625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17<sup>th</sup> day of April, 2017.

  
J. MARK HAYES, II  
Presiding Judge  
Sixteenth Judicial Circuit

York, South Carolina

**WITNESSES**

RHPD\Stokes

In

**ARREST WARRANT NUMBER**

J-132890

**ACTION OF GRAND JURY**

**TRUE BILL**

Foreperson of Grand Jury

Date:

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-46-02898

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**September 15, Term 2011**

**THE STATE**

**vs.**

**DANTONYO ANDROPULIS HEATH**

**Indictment for**

**ARMED ROBBERY**

SC Code: 16-11-0330

CDR Code: 0138

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

**ARMED ROBBERY**

The Defendant, Dantonyo Andropulis Heath, did in York County, South Carolina, on or about June 8,, 2011, while armed with a deadly weapon, to wit: used a weapon during the robbery, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of the victim, by means of force or intimidation goods or monies of said victims, Ernest Jordan and Jared Crane such goods or monies being described as approximately Seven Thousand Dollars (\$7,000.00) in U.S. Currency and other property. All in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY  
2013 JUL 29 AM 11:55  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR



## WITNESSES

RHPD/Stokes

In

## ARREST WARRANT NUMBER

J-132889

## ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date: 9/15/11

## VERDICT

Guilty Assault and  
BATTERY in the second  
degreeForeperson of Petit Jury  
Date: 7-25-13

DOCKET NO. 2011-GS-46-02899

## The State of South Carolina

County of York

## COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

vs.

DANTONYO ANDROPULIS HEATH

Indictment for  
ATTEMPTED MURDERSC Code: 16-3-29  
CDR Code: 3410After being fully advised as to my  
legal rights, I hereby waive presentment  
to the Grand Jury.

Defendant

I  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)  
 )  
 COUNTY OF YORK )

## INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

**ATTEMPTED MURDER**

The Defendant, Dantonyo Andropulis Heath, did in York County, South Carolina on or about June 8, 2011, with malice aforethought, either express or implied, attempt to the kill the victim, Jared Crane, by striking him in the head and body and/or by choking him all with the intent to kill said victim. All in violation of Section 16-03-29 of the Code of Laws of South Carolina, (1976, 2010 as amended).

CERTIFIED TRUE COPY  
 2013 JUL 29 AM 11:56  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 ASSISTANT SOLICITOR

## WITNESSES

RHPD\Stokes

In

## ARREST WARRANT NUMBER

J-132891

## ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date: 9/15/11

## VERDICT

Guilty

Foreperson of Petit Jury  
Date: 7-25-13

DOCKET NO. 2011-GS-46-02900

## The State of South Carolina

County of York

## COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

vs.

DANTONYO ANDROPULIS HEATH

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410  
CDR Code: 049After being fully advised as to my  
legal rights, I hereby waive presentment  
to the Grand Jury.

Defendant

I  
hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )

## INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

**CRIMINAL CONSPIRACY**

The Defendant, Dantonyo Andropulis Heath, did in York County, South Carolina, on or about June 8, 2011, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have tacit understanding with another, for the purpose of committing the crime of Armed Robbery and or Kidnapping and/or Attempted Murder. All in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY  
 2013 JUL 29 AM 11:56  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 ASSISTANT SOLICITOR

## WITNESSES

RHPD\Stokes

In

## ARREST WARRANT NUMBER

J-132907

## ACTION OF GRAND JURY

## TRUE BILL

*Henry W. Huts*  
 Foreperson of Grand Jury  
 Date: 9/15/11

## VERDICT

*Guilty*

*Germaine LaRue*  
 Foreperson of Petit Jury  
 Date: 7-25-13

DOCKET NO. 2011-GS-46-02901

## The State of South Carolina

County of York

## COURT OF GENERAL SESSIONS

September 15, Term 2011

THE STATE

vs.

DANTONYO ANDROPULIS HEATH

Indictment for

KIDNAPPING

SC Code: 16-03-910  
 CDR Code: 0095

After being fully advised as to my  
 legal rights, I hereby waive presentment  
 to the Grand Jury.

Defendant

I  
 hereby appear in my own proper person and plead  
 guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )

## INDICTMENT

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of York County present upon their oath:

**KIDNAPPING**

The Defendant, Dantonyo Andropulis Heath, did in York County, South Carolina, on or about June 8, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Jared Crane, without authority of law, all in violation of Section 16-03-910 of the Code of Laws of South Carolina, (1976, as amended).

2013 JUL 29 AM 11:57  
 DAVID HAMILTON  
 CLERK OF COURT  
 YORK COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 ASSISTANT SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 917

Y OF

York

VS.

Dantonyo Andropulis Heath

INDICTMENT/CASE#: 2011GS4602898

A/W#: J132890

Date of Offense: 6/8/2011

Code §: 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: BLACK

Sex: M

Age: CERTIFIED TRUE COPY

DOB: [REDACTED]

SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

SC01221987

DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

SENTENCE SHEET

#2

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat ☐

In disposition of the said indictment comes now the Defendant who was

TO: Strong Armed Robbery

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-325 of the S.C. Code of Laws, bearing CDR Code #

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shelton, Misti H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections. 775 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

|                                        |         |        |
|----------------------------------------|---------|--------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$     |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$     |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$     |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$     |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$     |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$     |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$     |
| Proviso 90.5 (SCCA Surcharge)          | \$5     | \$ 5   |
| 3% to County (if paid in installments) | \$      | \$     |
| TOTAL                                  | \$      | \$ 130 |

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2019

7-25-13

918

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

York

VS.

Dantonyo Andropulis Heath

INDICTMENT/CASE#: 2011GS4602899

A/W#: J132889

Date of Offense: 6/8/2011

Case Code §: 16-03-0029

CDR Code #: 3410

ORIGINAL

AKA:

Race: BLACK

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

SC0122197

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat ☐ Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO:

Assault &amp; Battery 2nd

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-600 of the S.C. Code of Laws, bearing CDR Code #

3413

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Shelton, Misti H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ Set by SCDPPPS

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

|                                        |         |        |
|----------------------------------------|---------|--------|
| § 14-1-206 (Assessments 107.5 %)       |         | \$     |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$     |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$     |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$     |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$     |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$     |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$     |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$     |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5   |
| 3% to County (if paid in installments) |         | \$     |
| TOTAL                                  |         | \$ 130 |

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2049

7-25-13



SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 919

OF

York

VS.

Dantonyo Andropulis Heath

INDICTMENT/CASE#: 2011GS4602900

A/W#: J132891

Date of Offense: 6/8/2011

S.C. Code §: 16-17-0410

CDR Code #: 0049

AKA:

Race: BLACK

Sex: M

Age: 31

DOB: [REDACTED]

SS#: [REDACTED]

2015 NOV 30 AM 10:00

Address:

City, State, Zip:

DL#:

SID#:

SC0122198

DAVID HAMILTON

CLERK OF COURT

YORK COUNTY, SC

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410

of the S.C. Code of Laws, bearing CDR Code #

0049

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Shelton, Misti H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections,☐ County Detention Center,

for a determinate term of

5

days/months/years or

☐

under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea.

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

130

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Wanda Nelson

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

John A. [Signature]  
2011  
7-25-13

Y OF  
TE

York

VS.

Dantonyo Andropulis Heath

INDICTMENT/CASE#: 2011GS4602901

A/W#: J132907

AKA:

Race: BLACK

Sex: M

Age:

DOB: [REDACTED]

SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

SC01221987

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnapping / Kidnapping

Date of Offense: 6/8/2011

S.C. Code §: 16-03-0910

Code #: 0095

CERTIFIED TRUE COPY  
2015 NOV 30 AM 10:12DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC  
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTY:

Shelton, Misti H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment

of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

\*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$ \$

TOTAL \$ 130

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Wanda Wilson

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2049

7-25-13

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from York County

John C. Hayes, III, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

DANTONYO HEATH,

APPELLANT

APPELLATE CASE NO. 2013-001663

---

FINAL BRIEF OF APPELLANT

---

SUSAN B. HACKETT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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| <p style="margin-left: 40px;">The trial judge erred in failing to order a mistrial where the prosecution suppressed law enforcement's dispatch report, which was favorable and material evidence to Appellant, in violation of his state and federal constitutional rights to due process.</p> |    |
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to order a mistrial where the prosecution suppressed law enforcement's dispatch report, which was favorable and material evidence to Appellant, in violation of his state and federal constitutional rights to due process?

STATEMENT OF THE CASE

On September 5, 2011, a York County grand jury indicted Appellant for armed robbery (2011-GS-46-2898), attempted murder (2011-GS-46-2899), criminal conspiracy (2011-GS-46-2900), kidnaping (2011-GS-46-2901), and possession of a firearm during the commission of a violent crime (2011-GS-46-2902). R. 583. The prosecutor called the case for trial on July 22, 2013 before the Honorable John C. Hayes, III, and a jury. Misti Horton-Shelton represented the state, and Phil Smith represented Appellant. Twana Burris represented Appellant's co-defendant, Marquis Robinson, who was tried jointly with Appellant. R. 1.

Following the three day trial, the jury found Appellant guilty of strong arm robbery, assault and battery in the second degree, criminal conspiracy, and kidnaping. The jury found Appellant not guilty of possession of a firearm during the commission of a violent crime. R. 575, line 22 – R. 576, line 17. Judge Hayes sentenced Appellant to thirty years' imprisonment for kidnapping, fifteen years' imprisonment for strong arm robbery, five years' imprisonment for criminal conspiracy, and three years' imprisonment for assault and battery in the second degree. R. 578, lines 2 – 5; R. 588.

Appellant filed a timely notice of appeal. This brief follows.

### STATEMENT OF FACTS

On the evening of June 8, 2011, Ernest Jordan and Jared Crane were working late at Five Star Customs in Rock Hill. R. 44, line 17 – R. 45, line 19; R. 239, line 19 – R. 240, line 5. After hearing a door slam, Jordan was confronted by Marquis Robinson pointing a gun at him. Jordan saw another individual, whom he later identified as Appellant, running through the business. R. 46, lines 6 – 21; R. 51, lines 20-25; R. 78, line 16 – R. 82, line 5.<sup>1</sup> While Jordan and Robinson fought over the gun, two shots were fired, one of which grazed Jordan's face. R. 47, line 7 – R. 48, line 4. During the struggle, Jordan told Robinson that he had money in his truck ending the physical confrontation. R. 50, lines 4 – 13. After the Robinson and Appellant allegedly tied up Crane, the two escorted Jordan to his truck. When the trio arrived outside, Crane's wife, Amanda Crane, was sitting in her car. Appellant approached Crane's wife asking for her phone. R. 50, line 23 – R. 51, line 7.<sup>2</sup> Jordan claimed the perpetrators also took a sum of money from his truck. Initially, Jordan claimed \$5000 in cash was stolen. R. 62, lines 2 – 4. Later, Jordan insisted that over \$10,000 was stolen. R. 107, line 2 – R. 110, line 25.

Jared Crane claimed he saw Robinson run by with his face partially covered. Shortly thereafter, Crane was hit in the back of the head by an unknown individual. Crane and the unknown individual then fought with Crane pulling a knife. R. 240, line

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<sup>1</sup> Jordan claimed he had known Robinson, who often stopped at his shop, for several years. R. 51, lines 8 – 13. Jordan did not know Appellant, but claimed to have seen him at the shop with Robinson three or four times. R. 51, line 20 – R. 52, line 4. Although the shop had video surveillance cameras showing multiple angles, the identity of the perpetrators was not apparent on the video. R. 53, lines 6 – R. 61, line 4.

<sup>2</sup> Amanda Crane identified Appellant as the person who approached her outside the business asking for her phone. R. 217, lines 8-25; R. 218, line 15 – R. 220, line 19.



20 – R. 242, line 15; R. 279, line 19 – R. 280, line 8.<sup>3</sup> Eventually, when Crane stopped fighting, the perpetrators tied him up and left him in the bathroom. R. 243, line 12 – R. 244, line 3. Crane claimed the perpetrators took \$1150 and marijuana from his pocket. R. 245, lines 17 – 19; R. 265, line 25.

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<sup>3</sup> Although the police showed Crane a photographic lineup containing Appellant's photograph, Crane was unable to identify Appellant as one of the perpetrators. R. 253, line 24 – R. 254, line 9.

### ARGUMENT

The trial judge erred in failing to order a mistrial where the prosecution suppressed law enforcement's dispatch report, which was favorable and material evidence to Appellant, in violation of his state and federal constitutional rights to due process.

#### **Relevant facts**

On June 17, 2011, Appellant filed a motion for discovery. R. 582. When his case was called for trial on January 28, 2013, Appellant, who was representing himself at the time, moved for a continuance because he had received the discovery materials a mere eleven days prior to the trial date and required more time to prepare his defense. R. 1; R. 2, lines 1-6. The prosecutor responded that the "entirety of the discovery" was given to Appellant's counsel. When Appellant's counsel was relieved by the court, the solicitor "took [Appellant] all of the paper discovery, the incident report, the case summary, lineups, rap sheets; that sort of thing, everything that [she] had." R. 2, lines 13-16. The January 2013 trial ended in a mistrial due to an error in the preparation of the roll of eligible jurors provided by the Election Commission to York County.<sup>4</sup> R. 4, line 14 – R. 5, line 4; R. 15, lines 7 – R. 17, line 17.

Appellant's case was called for trial again on July 22, 2013. R. 20. When the lead detective, Cedric Stokes, testified, he began to read from the CAD report. R. 410, lines 1-11. Appellant and Robinson jointly moved for a mistrial based upon the prosecutor's failure to disclose the CAD report. Appellant noted the suppressed evidence

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<sup>4</sup> The list had not been merged with the list from the Department of Motor Vehicles. R. 4, line 14 – R. 5, line 4.

“would have been valuable [to use] to cross examine the other witnesses” in light of the numerous discrepancies among the witnesses’ statements, including the timing of events. R. 410, line 20 – R. 412, line 10. The prosecutor admitted she had failed to disclose the CAD report, but claimed she had never seen it. R. 412, lines 12-14.<sup>5</sup> Then, the prosecutor argued that because the CAD report was not a “secret,” Appellant and Robinson should have asked for the report specifically, but had not. R. 413, lines 1-11. The judge ordered that copies of the report be made for Appellant and Robinson during a break. R. 413, lines 15-25.

Appellant argued that the CAD report’s note that “one of the suspects possibly ha[d] a stab wound” was exculpatory information as the stabbing may have established a basis for the alleged fight between Appellant and Crane. The evidence of a stabbing by one of the alleged victims provided the potential of a self-defense claim or of a lesser offense. R. 416, line 22 – R. 417, line 4. Appellant also pointed to the language used in the CAD that the suspect was “possibly” Robinson. This equivocal language differed sharply from the absolute certainty language used by other witnesses during the trial. Thus, the CAD report offered both exculpatory and impeaching evidence for Appellant. R. 417, line 7 – R. 418, line 2.

Concerning the stab wounds, Judge Hayes determined Appellant would not have been able to impeach Jordan or Crane without knowing the identity of “F14” because the

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<sup>5</sup> It is important to note that during Jared Crane’s testimony, Appellant and Robinson learned that he had marijuana in his pocket, which was allegedly stolen. The prosecutor admitted that Crane revealed this information to her in a meeting in preparation for trial. The prosecutor further admitted that she “did not specifically tell either one of them.” However, the prosecutor denied “willfully withhold[ing]” because she simply “didn’t think about telling them.” R. 397, line 13 – R. 399, line 2.

CAD report attributed the statement to F14. R. 418, lines 14-19. Next, Judge Hayes held the CAD report was exculpatory and should have been provided. However, he found no prejudice to Appellant and Robinson because there were no “real” differences between the CAD report and the trial testimony. Although the information about a stab wound “may have had some value,” the judge determined it was not “to the point of being sufficiently prejudicial.” He noted the suspects were not arrested that night. He expressed his doubt “that the stabbing would have to be self-defense.” Judge Hayes then appeared to change his mind and found the CAD report was not exculpatory. R. 419, line 22 – R. 421, line 4.

#### **Discussion**

In the seminal case of Brady v. Maryland, 373 U.S. 83 (1963), the United States Supreme Court held that prosecutors must disclose any evidence in the prosecutor’s possession that may be favorable to the accused and material to guilt or punishment. See also Kyles v. Whitley, 514 U.S. 419 (1995); Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012); Porter v. State, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006). Evidence is favorable to the accused if it is either favorable exculpatory evidence or favorable impeachment evidence. Porter, 368 S.C. at 384, 629 S.E.2d at 356 (citing United States v. Bagley, 473 U.S. 667, 676 (1985)). Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense. Id. A reasonable probability is one that undermines confidence in the outcome of the trial. Bagley, 473 U.S. at 678. “[A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence

would have resulted in the defendant's acquittal." Kyles, 514 U.S. at 434.<sup>6</sup> It is enough that it undermines confidence in the verdict. Id. at 435. A defendant need not request Brady evidence; it is incumbent upon the prosecutor to provide such evidence even without a request. United States v. Agurs, 427 U.S. 97, 107 (1976); see also Rule 3.8(d), RPC, Rule 407, SCACR.

Brady requires that prosecutors fully disclose to the accused all exculpatory evidence in their possession. Decisions from the United States Supreme Court have elaborated the Brady obligations to include (1) the duty to disclose impeachment evidence, (2) favorable evidence in the absence of a request by the accused, and (3) evidence in the possession of persons or organizations. See Giglio v. United States, 405 U.S. 150 (1972); Agurs, supra; Kyles, supra.

In Riddle v. Ozmint, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006), the South Carolina Supreme Court confronted a Brady violation arising during post-conviction relief (PCR) proceedings. Days before Riddle's trial, police officer interviewed a key witness in the case who provided a statement inconsistent with his previous statement. The prosecutor failed to disclose this interview to Riddle. The PCR court held the statement was available to Riddle because he could have interviewed the officer who took the statement. This Court disagreed, holding "[n]ot only is it unrealistic to require [Riddle] and his attorneys to reinterview all officers and investigators in the days before the trial, but that is not what

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<sup>6</sup> Material must be disclosed "when prejudice to the accused ensures . . . [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler v. Greene, 527 U.S. 263, 281-82 (1999).

Brady requires.” As explained by this Court, “[t]he burden is on the solicitor to disclose material evidence which is exculpatory or impeaching.” Id.

As the representative of the sovereign, the prosecutor’s interest in a criminal prosecution is not to win, but to see that justice is done. State v. Kennerly, 331 S.C. 442, 454, 503 S.E.2d 214, 220 (Ct. App.1998).

The prudent prosecutor will resolve doubtful questions in favor of disclosure. This is as it should be. Such disclosures will serve to justify trust in the prosecutor as the representative ... of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done. And it will tend to preserve the criminal trial, as distinct from the prosecutor’s private deliberations, as the chosen forum for ascertaining the truth about criminal accusations.

Riddle v. Ozmint, 369 S.C. 39, 46, 631 S.E.2d 70, 74 (2006).

Similarly, the Rules of Professional Conduct impose certain duties upon prosecutors. Specifically, the Rules require a prosecutor “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.” Rule 3.8(e), SCACR. The special duties imposed upon prosecutors are due to the prosecutor’s “responsibility of a minister of justice and not simply that of an advocate.” Thus, the prosecutor has “specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.” Rule 3.8, cmt. 1, SCACR.

Without question, the prosecution had possession of the CAD report as it was in the custody and control of the lead investigator on the case. Additionally, it is undisputed the prosecution failed to disclose the CAD report to Appellant and Robinson. The only issues were whether the CAD report was favorable to Appellant and whether the nondisclosure was material.

The narrative contained within the CAD report provided a plethora of favorable evidence for Appellant because it impeached the state's witnesses and exculpated Appellant. An examination of the CAD report chronologically demonstrates how it was favorable. The initial complaint was of a "shooting victim" and another victim having "been hit in the head by the gun." R. 579. Neither Crane nor Jordan testified about anyone being hit in the head by a gun. In fact, Crane testified that when he was hit in the back of the head initially, he did not see who hit him and did not "see it coming." R. 241, lines 10-15. Crane's testimony was that he and the perpetrator fought using their bare hands, and that Crane introduced a knife into the fight. Further, Crane claimed that Jordan was in the bathroom when the fight occurred and was unable to see him. R. 242, line 5 – R. 243, line 3. Jordan also testified that when he and Robinson were fighting in the bathroom, he could not see Crane. Although Jordan claimed he saw Appellant beating Crane, he never stated that he saw Appellant or Robinson use a gun to hit Crane. R. 48, lines 5-18.

Within four minutes of the initial call, the CAD report indicated the alleged victims would not speak to the police because they were "talking to each other." R. 579. This directly impeached Crane's claim that he and Jordan were not having a conversation after the police arrived. Crane testified that Jordan was "a grown man" and was "taking care of his self." R. 255, lines 4-9. Additionally, the CAD report impeached Crane's testimony that he "passed out" after calling 911. R. 70, line 25 – R. 71, line 1. The CAD report demonstrated that Crane and Jordan got their stories straight prior to speaking to police.

According to the CAD report, the "suspect is possibly Marquise Robinson." R. 579. This note was made thirteen minutes after the initial call was received. R. 579. This language of the report – "possibly" - was a far cry from the testimony of Crane and Jordan

concerning their certainty level of the identity of Robinson. Crane claimed that he was “[a] thousand percent sure” that Robinson was involved in the robbery. R. 252, lines 21-22. Jordan also testified that he was “sure” it was Robinson. R. 76, line 23 – R. 77, line 5.

Possibly the most crucial aspect of the CAD report was the indication near the end of the report that one of the suspects “possibly ha[d] a stab wound.” R. 579. As explained by Appellant at trial, had this information been available prior to trial, Appellant may have developed a self-defense strategy or mutual combat. The record already contained evidence that Crane pulled a knife during the altercation. Similarly, the CAD report showed that police went to a particular address to locate the suspect. According to the report, the suspect was not at the particular address. R. 579. The record contained no evidence connecting Appellant to the address or indicating why the police were investigating the address. Thus, Appellant may have used this evidence to establish third party guilt, or, at a minimum, to demonstrate that he was not associated with the address claimed to be the residence of the perpetrator by the alleged victims.

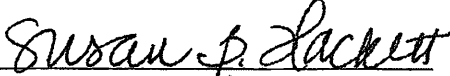
A review of the CAD report easily demonstrated its favorability to Appellant as impeaching evidence or exculpatory evidence. The review of the report also revealed the materiality of the evidence due to the use of the evidence contained within the report to contradict the eyewitness testimony and point to the guilt of some other individual. There is a reasonable probability that the result of the proceeding would have been different had the CAD report been disclosed to Appellant.



CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial due to the prosecution's suppression of favorable and material evidence.

Respectfully submitted,

  
Susan B. Hackett  
Appellate Defender

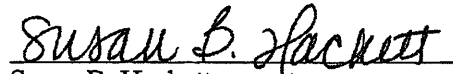
ATTORNEY FOR APPELLANT

This 8th day of December, 2014.

## CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

December 8, 2014

  
Susan B. Hackett  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

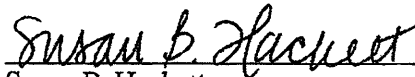
V.

DANTONYO HEATH,

APPELLANT

CERTIFICATE OF SERVICE

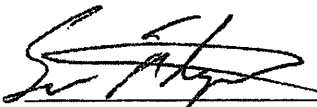
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blicht, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 8th day of December, 2014.



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 8th day of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Dantonyo Andropulis Heath, Appellant.

Appellate Case No. 2013-001663

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Appeal From York County  
John C. Hayes, III, Circuit Court Judge

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Unpublished Opinion No. 2015-UP-487  
Submitted September 1, 2015 – Filed October 14, 2015

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**AFFIRMED**

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Appellate Defender Susan Barber Hackett, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General William M. Blitch, Jr., both of  
Columbia; and Solicitor Kevin Scott Brackett, of York,  
for Respondent.

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**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following  
authorities: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In

criminal cases, the appellate court sits to review errors of law only."); *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) ("[A *Brady*<sup>1</sup>] claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." (footnote omitted)); *State v. Taylor*, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998) ("Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." (alteration and internal quotation marks omitted)); *id.* ("A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." (internal quotation marks omitted)).

**AFFIRMED.**<sup>2</sup>

**SHORT, GEATHERS, and MCDONALD, JJ., concur.**

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<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.