

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAR 22 2019

CERTIORARI TO CHESTERFIELD COUNTY
The Honorable Roger E. Henderson, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No: 2018-001469

GARTHAREE JEQUA HINSON,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

ROBERT M. DUDEK
Appellate Defender

ALAN WILSON
Attorney General

S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29201
(803) 734-1330

JOHNNY E. JAMES JR.
Assistant Attorney General
SC Bar #101260

Office of the Attorney General
Post Office Box 77889
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR RESPONDENT

ATTORNEYS FOR PETITIONER

INDEX

INDEX	i
GENERAL SESSIONS TRIAL TRANSCRIPT.....	1
GENERAL SESSIONS INDICTMENTS.....	236
FINAL ANDERS BRIEF OF APPELLANT	257
SC COURT OF APPEALS OPINION 2016-UP-164.....	273
REMITTITUR	275
POST-CONVICTION RELIEF APPLICATION	276
AMENDED POST-CONVICTION RELIEF APPLICATION	286
RETURN.....	288
POST-CONVICTION RELIEF HEARING TRANSCRIPT	297
ORDER GRANTING POST-CONVICTION RELIEF	365
STATE’S 59(e) MOTION TO RECONSIDER.....	375
RETURN TO RESPONDENT’S 59(e) MOTION TO RECONSIDER.....	382
ORDER DENYING 59(e) MOTION TO RECONSIDER	384

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHESTERFIELD) COURT OF GENERAL SESSIONS
 No. 2013 GS 13 00089--00091

3
 4 STATE OF SOUTH CAROLINA)

5)

6 versus)

TRANSCRIPT OF RECORD

7)

8 GARTHAREE JEQUA HINSON)

9 Defendant)

10

Chesterfield, South Carolina

11

September 15-16, 2014

12

13 B E F O R E :

14 HONORABLE STEVEN H. JOHN, Judge, and a Jury

15

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

17 For the State: K. REDMOND, Esq.
 Solicitor

18 For the Defendant: T. COCKRELL, Esq.

19

20 Reporter Present: HATTIE GORDON

21

22 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 23 46 Regency Oaks Drive
 24 Summerville, S. C. 29485

25

1

I N D E X

2

Durect-Redirect Cross-Recross

3 Jury Voir Dire

6

4 Jury Selection

27

5 Indictment amended

30

6 Motions

33

7 Preliminary charge

36

8 Opening Statements:

9 By Solicitor

42

10 By Mr. Cockrell

48

11 ASHLYN BRIGGS

12 By Solicitor.

51

13 No Cross Exam.

14 CHRIS. MERRIMAN

15 By Solicitor

59-77

16 By Mr. Cockrell

73

17 DORSEY ENGLISH

18 By Solicitor

87

19 By Mr. Cockrell

90

20 BETH STEPP

21 By Solicitor

92

22 No Cross Exam.

23 WAYNE JORDAN

24 By Solicitor

98-141

25 By Mr. Cockrell

119-148

1 INDEX CONTINUED:

2

Direct-Redirect Cross-Recross

3 RICHARD MARTIN

4 By Solicitor

149-169

5 By Mr. Cockrell

164-170

6 Motions 175

7 Closing Statements:

8 By Mr. Cockrell 190

9 By Solicitor 198

10 Charge by the Court 211

11 Verdict 224

12 Motions 226

13 Sentencing 230

14

15

16

17

18

19

20

21

22

23

24

25

EXHIBITS

For the State:

	For ID	IN EV.
S-1 Gun (45)		32
S-2 Gun (Keltec)		32
S-3 Coveralls		32
S-4 Mask		32
S-5 Facebook picture		32
S-6 Evidence log		32
S-7 Contract for rental		32
S-8 Hinson picture		32
S-9 Miranda Form		32
S-10 DNA analysis report		142

1 EXHIBITS CONTINUED:

2

3 For the Defendant:

4

For ID. In EV.

5 D-1 Affidavit

134

6 D-2 Court Order

138

7 D-3 Motion

148

8 D-4 Merriman Statement

174

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The within matter came before the Court for hear-
2 ing on September 15, 2014)

3 THE COURT: We are about to select the jury for the
4 first case to be tried. Now, how the process is going
5 to work is that in some random order the Clerk is going
6 to call the name of a member of the jury and we'll go
7 through that in just a minute.

8 You will have to come forward, and the attorneys
9 will be able to select you through the process. We
10 will talk about that in just a minute.

11 The very first thing we're going to do though is ask
12 you a series of questions to see if there is any informa-
13 tion you might know about this particular case or have
14 some response to the particular questions that we have
15 that I might need to ask you some questions about.

16 This case is called the State of South Carolina ver-
17 sus the Defendant, Gartharee Jequa Hinson. Now, the State
18 of South Carolina has charged the Defendant with three
19 crimes. I'm going to read to you certain information
20 that is in the Indictments.

21 Now, before I do that, I want to tell you that the
22 Indictment is merely the charging document, the document
23 which brings the matter to Court. It is not evidence and
24 it cannot be considered by anybody as evidence in the
25 case.

1 The only reason I will read the information in the
2 charge -- that is what it is -- the State has charged
3 the Defendant with this crime -- is to see if you hap-
4 pen to know anything about this particular matter be-
5 fore we get started.

6 So the State of South Carolina has charged the De-
7 fendant again with three crimes. The first one being
8 the crime of armed robbery.

9 It says that Gartharee Jegua Hinson did in Chester-
10 field County on or about October 20, 2012, while armed
11 with a deadly weapon; to wit, a handgun, did take and
12 carry away the personal property of a Christopher
13 Merriman, M E R R I M A N, from or in the immediate
14 presence of Christopher Merriman, with the intent to
15 deprive him of the possession or the use of that prop-
16 erty by force or threats or intimidation, all of this
17 being in violation of the Code of Laws of the State of
18 South Carolina, 1976, as amended.

19 The State has also charged the Defendant with the
20 crime of kidnapping; that Gartharee Jegua Hinson did in
21 Chesterfield County on or about October 20, 2012, un-
22 lawfully seize or confine or enveigle or decoy or kid-
23 nap or abduct or carry away one Christopher Merriman,
24 without authority of law, this again being in viola-
25 tion of the Code of Laws of the State of South Carolina,

1 1976, as amended.

2 The third crime that the State has charged the
3 Defendant with is assault and battery, high and aggra-
4 vated nature. That Gartharee Jequa Hinson did in
5 Chesterfield County on or about -- I assume it's the
6 same date, Solicitor?

7 SOLICITOR: That's correct.

8 THE COURT: Okay, October 20, 2012 -- you'll have
9 to move to amend the Indictment to correct that typo-
10 graphical error.

11 October 20, 2012, unlawfully injure Christopher
12 Merriman, and that was accomplished by means likely to
13 produce death or great bodily injury, again in viola-
14 tion of the Code of Laws of South Carolina, 1976, as
15 amended.

16 Any member of the jury panel that knows anything
17 about this particular case or has any information about
18 this case, or anything they need to bring to the
19 Court's attention at this time? If so, please stand.

20 Very good. I'm sorry. Yes, maam, you need to
21 stand up, and I need first your name and your juror
22 number.

23 JUROR: I'm Shanger McLaurin, Juror 90.

24 THE COURT: All right, maam. You want to come
25 forward -- come over here and talk to me, please, maam.

1 (Juror coming forward for colloquy with the Court)

2 (Colloquy with the Court not audible on the re-
3 cord)

4 THE COURT: Okay, I find that it would put this
5 particular juror in a particularly difficult situation
6 so I am going to set this juror aside for this particu-
7 lar case only.

8 Thank you, maam. I appreciate it.

9 (Juror excused from service on this case)

10 THE COURT: Potential witnesses in this matter are
11 Christopher Merriman, Ashlyn Briggs, Hanna Gulledge,
12 Dorsey English of the Chesterfield City Police Depart-
13 ment, Joey Carnes of the Chesterfield County Sheriff's
14 Office, Lieutenant Wayne Jordan of Chesterfield County
15 Sheriff's Office, Beth Stepp, Cindy Zitaroff, Z I T A
16 R O F F, Phyllis Marshall, Robbie Adams of the Ches-
17 terfield City Police Department, Richard Smith, Maurice
18 Anderson, Richard Martin, Tommy Demby, D E M B Y, and
19 Gartharee Jequa Hinson.

20 Any member of the jury panel that's related by
21 blood or marriage, close personal friends, acquaint-
22 ances of, or knows any of these particular witnesses
23 named in any way, please stand?

24 (Jurors standing)

25 THE COURT: All right, we'll just start right here

1 on the end, maam. Your name and juror number,
2 please, maam?

3 JUROR: (Name and number not audible)

4 If it's the same person who works for the Sheriff's
5 Office, Thomas Demby is my half brother.

6 THE COURT: Solicitor, is he with the Sheriff's Of-
7 fice, the last name on your list?

8 SOLICITOR: He is with the Sheriff's Office.

9 THE COURT: He is with the Chesterfield County
10 Sheriff's Office, and that is your brother?

11 JUROR: My half brother.

12 THE COURT: All right. Well, with that we're going
13 to set that juror aside on this particular case. All
14 right, just on this case.

15 Yes, maam, right here. Your name and juror number?

16 JUROR: Pamela Quick, Number 113.

17 THE COURT: Who do you know?

18 JUROR: I believe I know Dorsey English from school.

19 THE COURT: All right, and that is with the Chester-
20 field City Police Department.

21 SOLICITOR: Yes.

22 THE COURT: All right. Now, I appreciate the fact
23 that you may know this individual, but the question I need
24 to ask you though is can you give to the State of South
25 Carolina and to the Defendant in this case a fair and

1 impartial trial?

2 That is, can you be a fair and impartial juror in
3 this case?

4 JUROR: Yes, sir.

5 THE COURT: All right. Yes, maam, right here.

6 JUROR: Number 6, Jessica Blackwell.

7 THE COURT: And who might you know?

8 JUROR: I am personal friends with Joey Carnes.

9 THE COURT: So Joey Carnes with the Chesterfield
10 County Sheriff's Office?

11 JUROR: Yes, sir.

12 THE COURT: All right, maam. Can you give to the
13 State of South Carolina and to the Defendant a fair and
14 impartial trial?

15 Can you be a fair and impartial juror in this
16 case?

17 JUROR: I don't think so.

18 THE COURT: All right. Come forward and talk to me
19 then.

20 (Juror coming to speak with the Court)

21 THE COURT: Whether you know the person or not, you
22 have to completely set that aside and you would have to
23 decide the case based upon the facts and evidence that
24 you hear in this Courtroom, and no other source.

25 Do you understand that?

1 JUROR: Uh hm.

2 THE COURT: So understanding that you would have to
3 be a fair and impartial juror, would that change what
4 your answer was to that question?

5 JUROR: I have family in law enforcement, so I do
6 not believe I could be impartial.

7 THE COURT: All right, we'll set this juror aside
8 for this particular case only.

9 All right, right here. Your name and juror number,
10 please?

11 JUROR: Julia Bridges, Juror Number 11. I know
12 Robbie Adams.

13 THE COURT: Tell me the name of the person you know
14 again?

15 JUROR: Robbie Adams.

16 THE COURT: All right. Can you give to the State
17 of South Carolina and to the Defendant a fair and impar-
18 tial trial? Can you be a fair and impartial juror in
19 this case?

20 JUROR: Yes, sir.

21 THE COURT: Thank you very much, maam.

22 Yes, maam?

23 JUROR: Casey L. Gooden, Number 45.

24 I know Dorsey English.

25 THE COURT: Can you give to the State of South

1 Carolina and to the Defendant a fair and impartial trial?

2 Can you be a fair and impartial juror in this case?

3 JUROR: Yes, sir.

4 THE COURT: Thank you very much, maam.

5 All right, yes, maam.

6 JUROR: (Inaudible response)

7 COURT REPORTER: I can't hear her.

8 THE COURT: I'm sorry. Tell me again who you might

9 know.

10 JUROR: Hannah Gullede.

11 THE COURT: Can you give to the State of South

12 Carolina and to the Defendant a fair and impartial

13 trial? Can you be a fair and impartial juror in this

14 case?

15 JUROR: Yes, I can.

16 THE COURT: Thank you very much. I appreciate it.

17 All right, ladies and gentlemen. There are a few

18 other questions I need to ask. Is there any member of

19 the jury panel that either you yourself or a member of

20 your immediate family who has ever had any matters

21 of any kind handled by the Fourth Circuit Solicitor's

22 Office?

23 Solicitor, I should have written this down, but you

24 are going to have to stand up and give me all the Coun-

25 ties of the Fourth Circuit.

1 SOLICITOR: I'll be glad to, Your Honor. May it
2 please the Court?

3 Ladies and gentlemen, the Fourth Circuit is composed
4 of four counties. Besides Chesterfield County, it is
5 made up of Darlington County, Dillon County and Marlboro
6 County.

7 THE COURT: Thank you very much. So when I say any-
8 thing about the Fourth Circuit Solicitor's Office, I am
9 talking about any of those Counties.

10 So if you yourself or any member of your immediate
11 family have had any matters handled by the Fourth Circuit
12 Solicitor's Office, please stand.

13 (Juror standing)

14 THE COURT: All right, sir. Your name and number,
15 please?

16 JUROR: Raymond Chavis, Juror Number 23.

17 THE COURT: And just tell me, was it yourself or a
18 family member?

19 JUROR: Myself.

20 THE COURT: All right, sir. Can you give to the
21 State of South Carolina and to the Defendant a fair and
22 impartial trial? Can you be a fair and impartial juror
23 in this case?

24 JUROR: Yes, sir.

25 THE COURT: Anyone else.

1 Oh, I'm sorry. Your name and juror number, please?

2 JUROR: I'm Juror 124.

3 THE COURT: All right, was it yourself or a family
4 member?

5 JUROR: Family member.

6 THE COURT: All right, sir. Can you give to the
7 State of South Carolina and to the Defendant a fair and
8 impartial trial? Can you be a fair and impartial juror
9 in the case?

10 JUROR: Yes, sir.

11 THE COURT: Thank you very much.

12 Anybody else?

13 (No response)

14 THE COURT: Solicitor, if you would stand up and
15 introduce yourself and your staff members there?

16 SOLICITOR: Thank you, Your Honor. May it please
17 the Court?

18 I am Kernard Redmond, Deputy Solicitor for this
19 Circuit and Chesterfield County, and I'll let Mr. Foard
20 introduce himself.

21 THE COURT: Very good, sir.

22 MR. FOARD: My name is Adam Foard, and I'm a full
23 time Assistant Solicitor here in Chesterfield County. I
24 am also in the private practice of law.

25 THE COURT: Very good, and from the Defense, if you

1 would please stand up and identify yourself to the jury,
2 please?

3 MR. COCKRELL: Thank you, Your Honor. I'm Trey
4 Cockrell, and I'm a lawyer in Chesterfield. This is Sara
5 Campbell, and she will be assisting me as well. She is
6 from my office.

7 THE COURT: Very good. Thank you very much.

8 All right, ladies and gentlemen. As far as these at-
9 torneys who have introduced themselves to you in this par-
10 ticular case, is there any member of the jury panel who
11 is related by blood or marriage, a close personal friend,
12 acquaintance of, these lawyers, or know them in any re-
13 spect, and also regarding the lawyers who are in the pri-
14 vate practice of law, have you ever been clients of theirs,
15 either currently or in the past?

16 If any of that applies to you, please stand.

17 (Jurors standing)

18 THE COURT: All right, tell me your name and juror
19 number, please?

20 JUROR: I'm Bernadine Harman, 53.

21 THE COURT: Let me ask the qualifying question,
22 ma'am. Can you give the State of South Carolina and to
23 the Defendant a fair and impartial trial? Can you be a
24 fair and impartial juror in this case?

25 JUROR: Yes, sir.

1 THE COURT: Thank you very much.

2 Yes, maam, name and juror number.

3 JUROR: Cindy Taylor, 131.

4 THE COURT: Can you give to the State of South
5 Carolina and to the Defendant a fair and impartial
6 trial? Can you be a fair and impartial juror in this
7 case?

8 JUROR: Yes, sir.

9 THE COURT: Thank you very much.

10 Anybody else?

11 (No response)

12 THE COURT: All right. Is there anybody in the jury
13 panel that is or that you are related by blood or marri-
14 age or a close personal friend or acquaintance of, any-
15 body employed at the Fourth Circuit Solicitor's Office in
16 any of those four Counties?

17 If that applies to you, please stand.

18 (No response)

19 THE COURT: All right. You will remember I told you
20 about this particular matter and the charges the State
21 has brought against the Defendant.

22 Does any member of the jury panel have any kind of
23 personal, political, religious or philosophical belief
24 that you believe will prevent you from being a fair and
25 impartial juror in this case?

1 If so, please stand.

2 (No response)

3 THE COURT: All right, the next question is about any
4 connection with law enforcement, so I will be asking you
5 is any member of the jury panel that you yourself is a
6 former member of law enforcement, or you have a current
7 family member who is now or in the past was in law enforce-
8 ment?

9 If I have already excused you from the case you do not
10 need to respond.

11 So if you were a former law enforcement members or
12 you have a current family member who is now with law en-
13 forcement or was in the past in law enforcement, please
14 stand.

15 (Jurors standing)

16 THE COURT: All right, sir. Right here in the mid-
17 dle, your name and number.

18 JUROR: Paul Williamson, 148.

19 THE COURT: All right, sir.

20 JUROR: I have a cousin who is with law enforcement.

21 THE COURT: Where might that be, sir?

22 JUROR: In Chicago.

23 THE COURT: All right, sir, so in another part of the
24 country?

25 JUROR: Yes.

1 THE COURT: Very good, sir. Can you give to the
2 State of South Carolina and to the Defendant a fair and
3 impartial trial in this case? Can you be a fair and im-
4 partial juror in this case?

5 JUROR: Yes.

6 THE COURT: Thank you very much.

7 All right, sir. Your name and jury number, please?

8 JUROR: Toby Miller, 95. They are in Florida.

9 THE COURT: Can you give to the State of South
10 Carolina and to the Defendant a fair and impartial trial
11 in this case? Can you be a fair and impartial juror in
12 this case?

13 JUROR: Yes, sir.

14 THE COURT: Thank you very much.

15 Yes, maam, name and juror number, please?

16 JUROR: Martha Hill, 64. In Chester County.

17 THE COURT: All right, maam. Can you give to the
18 State of South Carolina and to the Defenadnt a fair and
19 impartial trial? Can you be a fair and impartial juror
20 in this case?

21 JUROR: Yes, sir.

22 THE COURT: Thank you very much.

23 All right. Yes, your name and juror number, please?

24 JUROR: James Eason, Juror 37.

25 THE COURT: Yes, sir.

1 JUROR: I was in law enforcement for six years.

2 THE COURT: All right, can you give to the State of
3 South Carolina and to the Defendant a fair and impartial
4 trial? Can you be a fair and impartial juror in this
5 case?

6 JUROR: Yes, sir.

7 THE COURT: Thank you, sir.

8 Yes, maam?

9 JUROR: Juror Number 91, Sandra McQueen, family members.

10 THE COURT: All right, maam. Can you give to the
11 State of South Carolina and to the Defendant a fair and
12 impartial trial? Can you be a fair and impartial juror
13 in this case?

14 JUROR: Yes, sir.

15 THE COURT: All right. Thank you very much, maam.

16 All right. Is there any member of the jury panel
17 who either you yourself or a member of your immediate
18 family who is a member of any kind of victims' rights or
19 law enforcement support organization.

20 Let me give you some examples. This is not an ex-
21 haustive list of any kind but just to try to give you some
22 examples here, like Citizens Against Violent Crime,
23 Mothers Against Drink Driving, South Carolina Law Enforce-
24 ment Officers Association, South Carolina Sheriff's Asso-
25 ciation.

1 Just some kind of victims' rights organization or
2 law enforcement support organization, either you yourself
3 or a member of your immediate family is a member. If
4 so, please stand.

5 (No response)

6 THE COURT: Very good. This next question, ladies
7 and gentlemen, I'm going to ask you whether you yourself
8 or a member of your immediate family has ever been the
9 victim of a crime.

10 Now, I am not going to ask you what occurred. I do
11 not want you to volunteer any information to me about
12 what occurred.

13 The question is going to be straight forward. Was
14 it yourself or a family member, and then I'll ask you the
15 qualification question.

16 So is there any member of the jury panel that you
17 yourself, or a member of your immediate family,
18 who has ever been a victim of a crime? If so, please
19 stand.

20 (Jurors standing)

21 THE COURT: Yes, maam, your name and juror number,
22 please, maam.

23 JUROR: Racquel Smith, Juror 123. I was.

24 THE COURT: So you, yourself. Can you give to the
25 State of South Carolina and the Defendant a fair and

1 impartial trial? Can you be a fair and impartial juror
2 in this case?

3 JUROR: Yes, sir.

4 THE COURT: Thank you very much. All right.
5 Yes, maam, name and number?

6 JUROR: Number 28, Kelli Cross.

7 THE COURT: Was it yourself or a family member?

8 JUROR: Myself.

9 THE COURT: Can you give the State of South Carolina
10 and the Defendant a fair and impartial trial? Can you be
11 a fair and impartial juror in this case?

12 JUROR: Yes.

13 THE COURT: Thank you very much.
14 Yes, maam, on the end right there.

15 JUROR: Juror Number 8. Myself.

16 THE COURT: And your name?

17 JUROR: Kirtina Blakeney.

18 THE COURT: Can you give to the State of South
19 Carolina and to the Defendant a fair and impartial trial?
20 Can you be a fair and impartial juror in this case?

21 JUROR: Yes, sir.

22 THE COURT: Thank you, maam. I appreciate it.
23 Yes, maam, in the middle there.

24 JUROR: Tammy Griffin, 49. My middle son was . .

25 THE COURT: I appreciate that, but I don't want you

1 to explain anything to me. Very good.

2 Can you give to the State of South Carolina and to
3 the Defendant a fair and impartial trial? Can you be a
4 fair and impartial juror in this case?

5 JUROR: Yes.

6 THE COURT: Was that a yes?

7 JUROR: Yes.

8 THE COURT: Thank you, maam. I appreciate it.

9 Yes, sir, on the end.

10 JUROR: Juror 110.

11 THE COURT: And your name?

12 JUROR: Cleatus Pettus.

13 THE COURT: Was it yourself or a family member?

14 JUROR: A family member.

15 THE COURT: Can you give to the State of South Carolina
16 and to the Defendant a fair and impartial trial? Can you
17 be a fair and impartial juror in this case?

18 JUROR: Yes, sir.

19 THE COURT: Thank you. Yes, maam?

20 JUROR: Yes, sir. I'm Juror Number 15. It was a
21 family member.

22 THE COURT: A family member. Can you give to the
23 State of South Carolina and the Defendant a fair and im-
24 partial trial? Can you be a fair and impartial juror in
25 this case?

1 JUROR: Yes, sir.

2 THE COURT: Thank you very much, maam.

3 All right, yes, sir.

4 JUROR: I'm Juror Number 1, family member.

5 THE COURT: All right. Can you give to the State of
6 South Carolina and to the Defendant a fair and impartial
7 trial? Can you be a fair and impartial juror in this
8 case?

9 JUROR: Yes, sir.

10 THE COURT: Thank you very much.

11 All right, sir. Your name and juror number in the
12 back?

13 JUROR: I'm Ray Chavis, Number 23.

14 THE COURT: Yourself or a family member?

15 JUROR: A family member.

16 THE COURT: Could you give the State of South Carolina
17 and the Defendant a fair and impartial trial? Can you be
18 a fair and impartial juror in this case?

19 JUROR: Yes, sir.

20 THE COURT: Thank you very much.

21 Yes, sir, your name and juror number?

22 JUROR: James Eason, 37.

23 THE COURT: Yourself or a family member?

24 JUROR: Family member.

25 THE COURT: Can you give to the State of South

1 Carolina and to the Defendant a fair and impartial trial?

2 Can you be a fair and impartial juror in this case?

3 JUROR: No, sir.

4 THE COURT: All right. Come up and talk to me.

5 (Juror coming to the bench)

6 (Colloquy not audible on the record)

7 THE COURT: Very good, I will set this juror aside in
8 this particular case only.

9 Thank you, sir. Appreciate it.

10 THE COURT: All right, ladies and gentlemen, my
11 final question to you is what I call my general or catch-
12 all question.

13 Do any of you know of any reason or do any of you
14 have any question in your mind, any doubt in your mind,
15 that you cannot give to the State of South Carolina and
16 the Defendant a fair and impartial trial; that is, for
17 any reason whatsoever you believe you cannot be a fair and
18 impartial juror in this case? If so, please stand.

19 (No response)

20 THE COURT: Thank you. Any further questions from
21 the State?

22 SOLICITOR: None from the State, Your Honor.

23 THE COURT: Any further questions from the Defense?

24 MR. COCKRELL: None, Your Honor.

25 THE COURT: Thank you very much.

1 All right, ladies and gentlemen. This is how the
2 process is going to go. As I told you, the Clerk in some
3 random order is going to call out names. If and when your
4 name is called, you will stand up and you will come for-
5 ward.

6 You will come and stand at a place right here right
7 in front of the Clerk of Court. You will stand right
8 there and turn and face the back of the Courtroom. Then
9 at that point in time the Clerk will inquire of the State
10 to present or excuse the juror.

11 If you are excused by the State then you go back and
12 have a seat. If you are accepted by the State, the Clerk
13 will inquire of the Defense to seat or excuse the juror.

14 If you are seated by the Defense, the Clerk will in-
15 struct you to go over to the jury box and have a seat in
16 the jury box.

17 If you are excused by the Defense, you go back and
18 have a seat, back where you came.

19 If you happen to have anything with you like a purse
20 or a book or whatever it is, if your name is called you
21 bring that with you so that if you are seated you can go
22 directly to the jury box.

23 All right, Madam Clerk.

24 (Whereupon, the jury was drawn and struck as follows:

25 Juror 110, Cleatus Pettus, seated

Number 64, Martha Hill, excused by the Defense

1 Number 8, Kirtina Blakeney, seated
2 Number 119, Melissa Schoen, seated
3 Number 95, Toby Miller, excused by Defense
4 Number 87, Tiffany Little, seated
5 Number 148, Paul Williamson, excused by Defense
6 Number 92, Denise Melton, was not present
7 Number 94, Crystal Miller, seated
8 Number 40, Theatus Freeman, seated
9 Number 122, Kenneth Smith, excused by Defense
10 Number 78, Sandra Jowers, seated
11 Number 117, James Russell, excused by Defense
12 Number 62, Karen Henderson, seated
13 Number 47, Bethany Greene, excused by Defense
14 Number 86, David Little, Jr., not present
15 Number 103, Craig Oliver, excused by Defense
16 Number 131, Cindy Taylor-Lisenby, excused by the
17 State
18 Number 59, Janet Hayes, excused by Defense
19 Number 41, Angie Gaines, seated
20 Number 123, Raquel Smith, excused by Defense
21 Number 23, Raymond Chavis, seated
22 Number 150, Melissa Woods, seated
23 Number 91, Sandra McQueen, seated
24 THE COURT: All right, we're going to have one alter-
25 nate, Madam Clerk.

1 With that, that would be one and two on the alter-
2 nates.

3 CLERK: Number 125, Kimberly Sowell;

4 (Ms. Sowell seated as Alternate Juror)

5 THE COURT: All right, you are the alternate in this
6 particular case. Thank you, maam.

7 All right, any objections to the jury as impan-
8 eled, from the State?

9 SOLICITOR: One moment, please. No objection, Your
10 Honor.

11 THE COURT: Very good. Any objection to the jury as
12 impaneled from the Defense?

13 MR. COCKRELL: No, sir, Your Honor.

14 THE COURT: Very good, I find that the jury was prop-
15 erly impaneled pursuant to Battson versus Kentucky and
16 Jett versus Alabama.

17 All right, ladies and gentlemen of the jury, I am
18 going to ask that you do one thing for me in just a min-
19 ute, and that would be to select your Foreperson for this
20 particular jury.

21 Let me tell you what the Foreperson's duties and re-
22 sponsibilities are going to be in this particular case.
23 If we are here in the Courtroom and some matter comes up,
24 the witness needs to speak up or the lawyers need to speak
25 up or whatever it is here in the Courtroom, the Foreperson

1 will raise their hand and get the Court's attention and
2 we will handle the matter, whatever it is..

3 If you are back in your jury room and some matter
4 comes up you will take the pad and the pen that will be
5 provided to you in the jury room, and you will write it
6 out, sign it and give it to the bailiff. The bailiff
7 will come to me, and I will handle that matter, whatever
8 it is.

9 When we have gone through the evidentiary portion of
10 the trial, have heard all of the witnesses -- all the
11 witnesses have testified in this case, and you've heard
12 the closing arguments from the attorneys and I have given
13 to you the law that you will apply to the facts and evi-
14 dence you collectively find to be true in this case, I
15 will then submit the case to you for your deliberations
16 and your unanimous decision in this particular matter.

17 Now, in that room the Foreperson is going to act
18 like the Chairperson or the Chair, guide discussions as
19 are necessary to help things along. An important duty
20 the Foreperson has is to make sure that everybody that
21 wants to has an opportunity to speak, that everybody has
22 a voice and an opportunity to be heard before the unani-
23 ous verdict is decided by the jury.

24 Now, the Foreperson's vote carries no more weight
25 than any other member of the jury in that regard, but

1 somebody does need to be in charge and, again if neces-
2 sary, guide discussion.

3 The final duty -- again, if there is a question that
4 comes up, take the pad and pen in the jury room and write
5 out that note, sign it, and knock on the door and give
6 it to the bailiff who will come to me and we'll handle
7 the question, whatever it is.

8 The final duty and responsibility of the Foreperson
9 is that once the jury has well and truly deliberated and
10 you have come to a unanimous decision in this particular
11 matter, the Foreperson will take the printed verdict
12 form that the Court will provide to him and check the ap-
13 propriate block or write out the appropriate words and
14 thereafter sign their name as Foreperson with a correct
15 date on there.

16 Your signature will indicate that the verdict is in-
17 deed the unanimous verdict of each and every member of
18 the jury.

19 So with that understanding of the Foreperson's dut-
20 ies and responsibilities, I will ask that you go back to
21 the jury room, select a Foreperson, knock on the door and
22 let the bailiff know who the Foreperson is.

23 Now, as the alternate in this particular matter, Ms.
24 Sowell, you can vote on the Foreperson but you cannot be
25 the Foreperson.

1 Please go the jury room, and make sure they have
2 a pad and pen, please.

3 (jury excused from Courtroom)

4 THE COURT: All right, ladies and gentlemen of the
5 jury panel not selected for this particular case, I am
6 going to excuse you, and I want you to call back that
7 juror information number after six P.M. and follow the
8 instructions, whatever they might be.

9 (Jurors not selected for the within case were
10 excused by the Court)

11 SOLICITOR: On Indictment 2013 GS 13 91 where it ..

12 THE COURT: Hold on. She needs to get ready for
13 this.

14 All right, go ahead, Solicitor.

15 SOLICITOR: Thank you, sir. Briefly, Your Honor, on
16 the Indictment we would add to Indictment the same date
17 as reflected in the other two Indictments in the case.

18 THE COURT: Any objection as to that?

19 MR. COCKRELL: No, sir.

20 THE COURT: Very good. The amendment to the Indict-
21 ment that is 2013 GS 13 91 is amended to reflect the
22 the same date that is set forth on the other two In-
23 dictments; that is, October 20, 2012.

24 Anything further from the State?

25 SOLICITOR: One other brief matter, Your Honor.

1 THE COURT: All right.

2 SOLICITOR: A brief matter. I apologize to the Court
3 for this jury issue. We noticed that one of the jurors is
4 actually the wife of a current ^{Sheriff's} Deputy, and I just wanted
5 to put that on the record and say that during the jury
6 selection we observed that the Defendant was actively in-
7 volved in the jury selection process.

8 I apologize to the Court, but I did want to protect
9 the record for later on since she is on that . .

10 THE COURT: Well, I mean, that was -- all of that
11 information was fully disclosed in the questioning by the
12 Court and in the initial response by that particular juror.

13 So that information was fully available to the State
14 and to the Defendant for whatever purpose they would like
15 to use of it.

16 So that information was there, and that is all that
17 I think needs to be said.

18 SOLICITOR: Thank you. The State has nothing further
19 at this time.

20 THE COURT: How about the Defense? Anything from
21 the Defense?

22 MR. COCKRELL: Nothing from the Defense.

23 THE COURT: Very good. As I understand it, Solici-
24 tor, Judge Burch needs to use the Courtroom today at two
25 o'clock. Is that right?

1 SOLICITOR: Actually, it is my understanding that
2 the hearing they were supposed to have was before you
3 with the attorneys.

4 THE COURT: Well, that's not what I understood. I
5 understood he was to have this hearing at two o'clock.
6 No one scheduled it with me, and I didn't assume I was
7 having it.

8 SOLICITOR: Yes, sir. I apologize.

9 (Colloquy between Solicitor and the Court concerning
10 another matter)

11 THE COURT: Are you ready to mark the Exhibits now?

12 SOLICITOR: Yes, Your Honor. I don't think the De-
13 fense has any objection to these.

14 THE COURT: Is that correct, counsel?

15 MR. COCKRELL: Correct, Your Honor.

16 THE COURT: So that would be State's 1 through 9, is
17 that right?

18 SOLICITOR: That is correct, Your Honor.

19 THE COURT: So State's 1 through 9 then are in evi-
20 dence without objection. Very good.

21 (Following Exhibits were admitted in evidence with-
22 out objection: State's 1, forty-five gun; State's 2,
23 Keltic gun; State's 3, coveralls; State's 4, mask; State's
24 5, Facebook picture; State's 6 evidence log; State's 7,
25 contract; State's 8, Picture; State's 9, Miranda form)

1 THE COURT: Are we ready for the jury then, Solicitor?
2

3 SOLICITOR: I think Mr. Cockrell has a Motion, Your
4 Honor.

5 THE COURT: Yes, sir, Mr. Cockrell.

6 MR. COCKRELL: My first Motion would be to sequester
7 all witnesses, and then I've got a second Motion that I
8 would like to move . . .

9 THE COURT: Well, let's deal with the situation on
10 the witnesses.

11 Except for the victim and the chief investigating
12 officer, any problem with the State's witnesses being se-
13 questered?

14 SOLICITOR: Your Honor, the victim is Mr. Merriman
15 specifically, and I think Wayne Jordan is our chief inves-
16 tigator.

17 THE COURT: So with these two exceptions, the State's
18 witnesses are sequestered, and the same would go for the
19 Defense.

20 All right. Yes, sir, Mr. Cockrell.

21 MR. COCKRELL: Thank you, Your Honor.

22 At this time, looking at the investigative report, I
23 would additionally move to strike any kind of reference
24 to Gartharee, my client, with regard to this particular
25 matter as being suggestive in nature.

1 That is, in reference to the ID of my client, and
2 further that Lt. Davis of the Chesterfield Sheriff's
3 Office viewed a video and then interviewed the victim,
4 relaying to the victim what was in the video that my cli-
5 ent was in the video at the time in question.

6 I haven't seen the video. Although it was subpoenaed
7 it was not produced through discovery. I think that that
8 aspect of the case is highly suggestive with reference to
9 my client in this matter.

10 Additionally, there are some written statements that
11 I do not have, and I would respectfully request the iden-
12 tification of the Defendant be suppressed.

13 THE COURT: Well, I don't know about identification
14 but there is -- you know, obviously Mr. Merriman can't
15 testify as to what the Investigator told him, so . . .

16 MR. COCKRELL: Your Honor, that is not the way that
17 the State will proceed with the case.

18 THE COURT: All right, sir. Well, it seems to be
19 more an issue of a presentation by the -- or an issue
20 for a Motion by the Defense at the time some issue comes
21 up.

22 I don't see at the present time that there is some-
23 thing here to deal with, so I will leave it, Mr. Cockrell,
24 that if you anticipate some issue coming up by way of a
25 question asked or a response that I assume you will bring

1 it to my attention.

2 I just don't feel there is enough information here
3 for the Court to rule on the situation, or not at the
4 present time, if there even is one.

5 All right, I'll just leave it to you to bring it up
6 when the issue arises. All right.

7 MR. COCKRELL: Yes, Your Honor. I just wanted to
8 bring it to the Court's attention.

9 THE COURT: You brought it up and we will take up
10 the issue if it comes up. Hopefully, we won't have an
11 issue come up.

12 All right?

13 MR. COCKRELL: Thank you, Your Honor.

14 SOLICITOR: Your Honor, the State is ready to go
15 forward. At the appropriate time, if the Court would ad-
16 dress the issue of the Defendant's bond.

17 THE COURT: Well, we'll do that. The jury has been
18 sitting back there and we need to get them in and get
19 started with what we'll use them for today.

20 So bring in your victim and ask the jury to come in,
21 please.

22 (Jury returned to the Courtroom)

23 THE COURT: You are to occupy the end seat as the al-
24 ternate there. Okay, and move down so there are not any
25 empty seats here. You all are together.

1 Mr. Chavis, you have been selected by the jury to be
2 the Foreperson of the jury. Is that correct?

3 MR. CHAVIS: Yes, sir.

4 THE COURT: And they've instructed you that you are
5 always to be sitting in that chair. Correct?

6 MR. CHAVIS: Yes, sir.

7 THE COURT: And then whatever the end seat is, you
8 have the Alternate occupy that seat, whatever that happens
9 to be.

10 The rest of you ladies and gentlemen, however you
11 filter in from the jury room, just have a seat. There is
12 no other assigned seat. I just know where the Foreperson
13 and the Alternate are.

14 All right, the very first thing that's going to hap-
15 pen in this case is the Clerk is going to administer your
16 oath to you. So if you would all stand at this time for
17 that.

18 (Whereupon, the jury was sworn by the Clerk)

19 THE COURT: Now, is there any member of the jury that
20 did not affirmatively take the oath as just given by the
21 Clerk? If so, please stand.

22 (No response)

23 THE COURT: No one having stood, I find the jury
24 properly sworn in this particular matter.

25 All right, ladies and gentlemen, the way we are

1 going to proceed in this matter, I'm just going to give
2 you a very brief outline of the trial. We're going to
3 have -- first I will have some very brief opening comments
4 to you. Then we'll have opening statements of the attorn-
5 eys. Then we'll have the evidentiary portion of the trial.

6 Witness will come forward here and be placed under
7 oath and testify about whatever it is they happen to know
8 about this case.

9 There may be some documentary or some other kind of
10 evidence that might be introduced in this matter. I ex-
11 pect there will be some of that kind of evidence that will
12 be introduced through some of the witnesses that may tes-
13 tify in this case.

14 When we get done with the evidentiary portion of the
15 trial and have heard from all the witnesses and all the
16 exhibits that are going to come in are in evidence, we'll
17 then go into the closing arguments of the attorneys.

18 Then I will charge you on the law or give you that
19 law that you will apply to the facts and evidence you find
20 to be true in this particular case. Then I will give the
21 case to you for your deliberations and your unanimous de-
22 cision in this particular matter.

23 I want to tell you a couple of things here. The
24 opening statements by the attorneys and the closing argu-
25 ments by the attorneys are in Court but they are not any

1 evidence. The evidence comes to you from the witnesses who
2 testified under oath or some kind of physical or docu-
3 mentary evidence that comes in.

4 So, in the opening statements the attorneys are giv-
5 ing you their perspective or the way they view the case.
6 They are not testifying, they are not witnesses. They
7 are giving you their view of what they think is going to
8 happen during the trial.

9 In the closing arguments, they are giving you their
10 argument about how they believe the case has gone. You
11 ladies and gentlemen are the finders of facts, the judges
12 of the facts of this case.

13 That will be your job collectively, to be the judges
14 of the facts. I will not indicate to you in any way what
15 I think the facts in the case are because that is not my
16 job. That is your job and your responsibility, to look at
17 the facts and evidence in this case.

18 The State has the burden of proof in this case, and
19 the burden of proof is all on the State of South Carolina.
20 That burden of proof is to prove the Defendant guilty be-
21 yond a reasonable doubt.

22 That is through the presentation of evidence and the
23 testimony of witnesses and the physical or documentary
24 evidence that might be brought in in this case.

25 Based upon that evidence that the State produces,

1 it is going to be your job to look at that evidence and,
2 number one, find the evidence that you think is the truth,
3 the evidence that convinces you of its truth, and then,
4 secondly, you will take that evidence you find to be true
5 and you weigh it against the State's burden of proving
6 the Defendant guilty of the crime or crimes charged be-
7 yond a reasonable doubt.

8 The Defendant, as he sits there at the defense table,
9 is presumed innocent of the crimes that have been brought
10 or levied against the Defendant by the State in this case.

11 In fact, you are going to be trying three cases in
12 one because the Defendant is charged with three crimes.
13 He has been charged with the crime of armed robbery, kid-
14 napping and assault and battery of a high and aggravated
15 nature.

16 The State's burden of proof, or what the State has to
17 prove to you, is different for each one of those, and so
18 you are going to have to make a separate decision. You're
19 going to have a separate verdict form for each crime or
20 each charge.

21 You are going to have to make a decision separately
22 on each one of them. Just because you decide one way on
23 one charge doesn't automatically mean you've got to rule
24 the same way or find the same way on the other charge or
25 other charges.

1 They are each separate, and you make a separate de-
2 cision on each one of them based upon the facts and evi-
3 dence you find to be true and the law that I will give to
4 you at the very end.

5 When I give you the law, it is the law you will have
6 to apply to the facts you find to be true.

7 Being the judges of the facts, one of the things you
8 will be called upon to do is to be a judge when these wit-
9 nesses come before you as to their believability.

10 Now, you may be thinking, well, how am I going to
11 judge somebody's credibility? How do I do that? Well,
12 you do it every single day of your life. When somebody
13 tells you something, you are automatically judging or are
14 thinking in your mind whether or not you believe that per-
15 son, and how do you believe that person? How do you do
16 that?

17 You use your common sense, your good judgment that
18 you use in conducting your own affairs, and that is what
19 we ask you to do in this case, use your good common sense
20 and your good judgment. Listen to the facts and evidence
21 in the case. You find the evidence that convinces you it
22 is true and then look at whether or not that evidence you
23 find to be true the State has proven the guilt of the De-
24 fendant as to each crime beyond a reasonable doubt.

25 Now, I will define all of these for you at the end.

1 No sense in talking about them now. I will do that
2 right before you go into your jury room, but just remember
3 that you are the judges of the facts. Okay? You collec-
4 tively are the judges of the facts.

5 What is said in opening and closing, that is their
6 view. You must give that -- I know you will pay attention
7 and listen to the facts and evidence and find out what is
8 what you find to be true in this case.

9 Now, one last thing, I am going to ask that you not
10 talk about the case when you go into your jury room when
11 we take a break or, you know, at lunch if you happen to
12 see another juror, and I will tell you this again when
13 you go home for the evening.

14 Do not talk to anybody about this because they are
15 not on the jury, but do not talk about it even among your-
16 selves until I give it to you at the very end, and the
17 reason for that is you might have heard one witness, or
18 however many you have heard, but you haven't heard all of
19 the evidence in the case.

20 So if you start talking about it and you say, well,
21 I think so and so, and the very next witness may change
22 your mind because of what they say, and then you have al-
23 ready publicly stated a position and it may be kind of
24 hard to go back and retract that and say, well, now, I
25 think otherwise.

1 So don't talk about the case. Wait until we get all
2 of the facts and evidence in and I give you the law. Then
3 you will know the law you've got to apply. You will have
4 all the time to talk about it that you deem necessary be-
5 fore you come up with your unanimous decision in this par-
6 ticular case.

7 So with that, I will turn it over to the attorneys
8 for their opening comments to you.

9 Solicitor?

10 SOLICITOR: Thank you, Your Honor. May it please
11 the Court?

12 THE COURT: Yes, sir.

13 SOLICITOR: Ladies and gentlemen of the jury, again
14 -- I introduced myself to you earlier. I'm Kernard
15 Redmond, and I'm Deputy Solicitor here in Chesterfield
16 County.

17 I actually live in Chesterfield County, and with me
18 today is Adam Foard, and we are prosecuting the case
19 against Gartharee Hinson for the State.

20 Before I get into the crux of the State's case, let
21 me first thank you. I would be remiss if I didn't do it
22 first. Thank you for your willingness to serve here. It
23 is a very important duty that you have undertaken today,
24 and it is appreciated. I can assure you we will do every-
25 thing that we can not to abuse your time because we know,

1 of course, that your time is valuable.

2 This is a very important case that you all have to
3 decide, and I will get more into that in just a little
4 while.

5 Let me also talk about the burden of proof. As has
6 been indicated to you, the State has the burden of proving
7 beyond a reasonable doubt that the Defendant, Gartharee
8 Hinson, did in fact commit the crimes of armed robbery,
9 kidnapping and assault and battery of a high and aggra-
10 vated nature.

11 Now, beyond a reasonable doubt has been defined in
12 different ways. The Judge will define it for you again,
13 but what I might say or what some other attorney might say
14 is not evidence. The Judge will instruct you on the law
15 and that the evidence is what is presented to you from the
16 testimony and by exhibits.

17 The way that I define it would be that it is some-
18 thing that would cause a reasonable person to hesitate to
19 act, and, to go a little further with that, after you've
20 heard all the evidence are you firmly convinced of guilt
21 or innocence.

22 I would ask you to keep that in mind as you listen
23 to the testimony and see the exhibits and see what comes
24 out in the case.

25 The State would submit to you that we will be able

1 to prove the case, to prove beyond a reasonable doubt that
2 the Defendant is, in fact, guilty of the crimes I have men-
3 tioned to you.

4 Now, let's talk about the crimes themselves, and I'm
5 kind of going to go in reverse for you. As the Court indi-
6 cated, the Exhibits have been stipulated to and admitted
7 into evidence.

8 On the assault and battery of a high and aggravated
9 nature charge, the State would submit to you that the
10 gun used in the robbery was also used to assault the vic-
11 tim in this case, Chris Merriman, who will be here shortly.
12 or in a few minutes.

13 The State would argue that in the course of being hit,
14 repeatedly by this weapon and the nature of the injury
15 that could have happened when that occurred is enough to
16 convict the Defendant of assault and battery of a high and
17 aggravated nature.

18 It is not just whether it did inflict those injur-
19 ies but could it have inflicted those injuries. I can
20 assure you that with the size of this weapon if he was hit
21 in the head enough -- one time would be enough to kill
22 if he was hit in the right spot, and so that is why we've
23 brought the charge of assault and battery of a high and
24 aggravated nature.

25 You will hear more about the details and how that

1 transpired in the evidence and testimony shortly.

2 On the charge of kidnapping, that means liter-
3 ally taking somebody away or that's the way we see it on
4 TV and what usually comes into our minds. However, the
5 South Carolina law gives several considerations that fall
6 under kidnapping.

7 One of them is if someone is confined, and you will
8 hear from the testimony that Mr. Merriman and others
9 were actually confined during the course of this robbery,
10 and that leads to the kidnapping charge, which we submit
11 to you we will also prove to you beyond a reasonable doubt,
12 and the Court will instruct you on the law of these par-
13 ticular charges at the conclusion of the case.

14 So I would ask that you listen closely to that, and
15 then we get to armed robbery. You already have an idea
16 of what armed robbery is. It can happen at different
17 places, such as a store gets robbed or an individual gets
18 robbed such as Mr. Merriman, who was with his girlfriend
19 and the mother of his children, and with another indi-
20 vidual, as well as some children who I believe were two
21 and four years old at the time.

22 But, again, that will come out in the testimony in
23 the case. They were subjected to a robbery.

24 Even though this case is not going to be a long case,
25 I always ask juries to take into consideration that the

1 length of the case has nothing to do with the importance
2 of the case.

3 Just because you may not be here a long time hearing
4 an involved case, that does not mean that this case is
5 not of the utmost importance, especially to the victim
6 who had to live through that particular episode, having
7 guns directed and pointed at them during the course of
8 this robbery.

9 Yes, it is an extremely important case though it may
10 be a fairly short case.

11 What are we here about? What happened? Well, this
12 occurred on the 20th of August -- October, excuse me --
13 the 20th of October of 2012, at which time Mr. Merriman
14 was returning to Florence, and, again, I'm not going to get
15 into all of the details of the case, but he returned from
16 Florence.

17 He had been getting calls from an individual, Richard
18 Smith, and when he got home Mr. Smith actually comes to
19 his house and stays there a while and then leaves.

20 Shortly thereafter, Mr. Merriman actually walked out-
21 side. That's when he was approached by a gunman and then
22 there was another gunman that approached, a shorter gun-
23 man. We assert that's Richard Martin.

24 He had come in from Charlotte -- he was from here
25 originally but lived in Charlotte, and he had come in with

1 a Codefendant and met up with Richard Smith who was here
2 in Chesterfield, and that's when this plan began to take
3 effect.

4 You will hear from several witnesses, talking about
5 the whereabouts of these individuals at certain points of
6 the day in question.

7 Anyway, during the course of this robbery, Mr. Merriman
8 has to endure watching his wife -- excuse me, his girlfriend,
9 his children, and himself being subjected to mistreatment
10 during the course of the robbery, not knowing what the out-
11 come would be; worrying about what the outcome might be.

12 Fortunately, law enforcement was called and they then
13 heard the sirens and they leave, they being the Defendant
14 and Codefendant.

15 During the course of the investigation--you will hear
16 Lieutenant Jordan describe that and the evidence gathered
17 here in Chesterfield, and what ultimately led to these
18 charges that were brought.

19 Interestingly, you will hear from Mr. Merriman as it
20 relates to how the Defendant, Mr. Hinson, was actually the
21 first one that started the dominoes falling in this case,
22 because he knew him. He knew him from the time he was in
23 Chesterfield.

24 You will hear exactly how he was able to give the law
25 enforcement information that ended up connecting the dots.

1 that led to the arrest and prosecution of this Defendant,
2 Mr. Hinson.

3 Once you have heard all of the evidence -- again, I
4 have not gotten into everything about the case but I will
5 have the job of introducing the case to you and you will
6 hear the details as we go forward in the testimony.

7 At the conclusion of that, we submit to you that you
8 will find this Defendant, Gartharee Hinson, guilty of armed
9 robbery of Mr. Merriman and the other charges dealing with
10 Mr. Merriman and his family, especially with his children.

11 I thank you for the attention that I know you will pay
12 to this case, and I will have an opportunity to sort of
13 wrap it up at the end in closing argument.

14 Again, let me thank you in advance for your atten-
15 tion. We will do our level best not to abuse your time
16 in the matter. I will have a chance to speak to you again
17 at the close of the case.

18 Thank you.

19 THE COURT: All right, Mr. Cockrell.

20 MR. COCKRELL: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 MR. COCKRELL: Ladies and gentlemen, I represent Mr.
23 Gartharee Hinson, and he's here today actively assisting
24 me in this matter. He has been very helpful to me in the
25 investigation.

1 This is a matter of wrongful mistrust. There are four
2 individuals in this particular situation that are charged
3 as the matter was related by Mr. Redmond, and of those par-
4 ticular crimes Mr. Garth Hinson was involved in none of
5 them.

6 Mr. Garth Hinson is originally from Chesterfield. He
7 does know the victim. The situation that Mr. Merriman was
8 subjected to and had to endure and live through is horrific
9 and terrible. There's no question about that.

10 We are not here today to beat up the victim about it.
11 It is one of the most terrible events anybody could have
12 to endure.

13 However, Mr. Hinson's involvement is none. Mr. Hinson
14 was in Charlotte. Mr. Hinson is from another County that
15 Mr. Redmond referenced. In regards to, hey, let's go down
16 to Chesterfield and score some marijuana.

17 That was the intended purpose of the trip from Char-
18 lotte, was to come down to Chesterfield and get a free
19 high. I recognize when I'm talking about it that marijuana
20 is illegal but that was the purpose. No question about it.

21 However, that was the intent of the trip, and you're
22 going to hear testimony about he rented a car and all of
23 that. My client didn't even have a driver's license. How
24 could you rent a car without a driver's license?

25 He was a tag-along, hoping to get a free joint, and,

1 again, don't punish my client for that bad judgment, and
2 the bad judgment of paling around with some guys that ap-
3 parently had an alterative motive and an ulterior plan, and
4 that was to take advantage of the victim in this case.. So
5 they came down to Chesterfield.

6 They tried to get up with the victim here, trying to
7 contact him, and they meet up with the victim in the park-
8 ing lot and go over to the victim's house.

9 My client, the whole time, is in the parking lot at
10 the Piggly Wiggly here in Chesterfield. Everybody is fam-
11 iliar with that road and parking lot.

12 In any event, Mr. Merriman calls nine one one, and
13 the police come. Everybody scurries off. Mr. Richard
14 Smith, Mr. Anderson, everybody -- my client is left in the
15 Piggly Wiggly parking lot all by himself near Mr. Merriman's
16 house close to the Piggly Wiggly.

17 He starts walking off and actually spends the night
18 in Chesterfield County. The next day he is picked up by
19 his friends from Charlotte. His friends don't even men-
20 tion to him all the aspects of what went on in that parti-
21 cular matter.

22 This is a very important situation for everybody here.
23 This is the most important day for Mr. Gartharee Hinson.
24 You all are here to protect him from prosecution, and,
25 again, it is not my job, it is not Mr. Hinson's job to prove

1 his innocence.

2 It is the prosecution's job to prove he is guilty be-
3 yond a reasonable doubt, and the evidence will not prove
4 that.

5 Thank you.

6 THE COURT: All right, Solicitor. Call your first
7 witness.

8 SOLICITOR: Thank you, Your Honor. At this time the
9 State would call Ashlyn Briggs to the stand.

10 THE COURT: All right, sir.

11 ASHLYN BRIGGS, being duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. Would you state your full name for the record?

16 A. Ashlyn Briggs.

17 Q. And, Ms. Briggs, do you reside here in Chesterfield
18 County?

19 A. Yes, I do.

20 Q. And, in fact, do you still reside at [REDACTED]

21 [REDACTED] or Lane?

22 A. Yes, I do.

23 Q. And are you employed?

24 A. Yes, I am.

25 Q. Where are you employed?

51

MS. BRIGGS ON DIRECT

- 1 A. Chesterfield Bi-Lo.
- 2 Q. Okay, and do you have any children?
- 3 A. Yes, I do.
- 4 Q. And how old are they?
- 5 A. They are almost eight and almost five.
- 6 Q. Okay, and how old were they back in October of --
- 7 on October 20, 2012?
- 8 A. They were five and six.
- 9 Q. And do you know Chris Merriman?
- 10 A. Yes, I do.
- 11 Q. And what is your relationship with him?
- 12 A. He is my boyfriend.
- 13 Q. And was he your boyfriend back in 2012?
- 14 A. Yes, he was.
- 15 Q. And is he the father of your two children?
- 16 A. Yes.
- 17 Q. All right, and was there anyone else at your house
- 18 on October 20 of 2012?
- 19 A. I think Hannah Gullledge was there and her boyfriend.
- 20 Q. Now, let's go on to the 20th of October of 2012.
- 21 Can you tell us what you had done that day, leading up to
- 22 the events of this case?
- 23 A. I had to work that day. I don't remember if I got
- 24 off a two or twelve. After I got off work we sat around
- 25 and watched the game.

MS. BRIGGS ON DIRECT

1 Q. Let me stop you right there. After you got off work
2 you did what?

3 A. After I got off work we decided to go to Florence,
4 eat dinner and watch the game.

5 Q. Do you remember who was playing?

6 A. I know it was a game but I don't remember exactly.

7 Q. Go ahead.

8 A. Then we ate and we came back.

9 Q. And when you got home, do you know about what time
10 it was?

11 A. Maybe a little bit before two when we got back to
12 Chesterfield.

13 Q. Once you got back into Chesterfield, did -- did you
14 all go back to the house on Marigold?

15 A. I had dropped them off and went to the store, and
16 when I got back from the store Hannah had gotten there.

17 Q. Now, at any point that evening after you all got back
18 did Richard Smith come?

19 A. He was there when I got back, and he was leaving --
20 as I came in the door, he was going out the door.

21 Q. And for the rest of the evening were you all still at
22 the house?

23 A. Yes.

24 Q. Tell me -- tell the ladies and gentlemen of the jury
25 what happened. Later on that evening, tell us what

MS. BRIGGS ON DIRECT

1 happened?

2 A. Well, . . .

3 Q. Do you remember about what time it was?

4 A. It was probably around eight o'clock. It had just
5 gotten dark.

6 Q. So it was at night?

7 A. Yes. Chris went to check on (inaudible) who was in a
8 wheelchair because she wasn't answering the phone, and so
9 he was going to check on her. I was standing on the back
10 porch smoking a cigarette and Hannah was standing at the
11 door. She was saying something but I couldn't understand.

12 Then Chris was coming back, and as he come back two
13 guys came around the side of the house and told us to get
14 back in the house.

15 And Hannah got --- she was coming out of the back door
16 and she ran to the living room to get my kids, and she
17 took them to the other room.

18 Then the taller guy took us into the living room and
19 was like give us your money, get down on the floor, and
20 I kept saying, my kids are in the other room, and he said
21 he didn't care about the kids, and F the kids, or some-
22 thing like it.

23 Q. Who was saying this?

24 A. The tall guy, and then they took us into our child-
25 ren's bedroom and Hannah had them on the bed and she had

MS. BRIGGS ON DIRECT

1 covered them up and then she got on the floor, and I was
2 just frantic.

3 And that's when they told us they wanted our stuff;
4 wanted to take our phone, our TV, our car, and then the
5 taller one . . .

6 Q. I didn't ask you before, but did they have any
7 guns?

8 A. Yes, they had guns.

9 Q. And the taller one kept taking Chris into the other
10 room and the other one said let's get the stuff and get
11 out.

12 Q. Now, during the course of that time -- you talked a
13 lot about the taller person, but what was the other person
14 doing? How would you describe him during the course of
15 all of this?

16 A. He was quiet and he didn't say much. He seemed more
17 nervous, like he didn't want to be there, and the taller
18 one acted like he really wanted to be there, doing what
19 they were doing.

20 Q. Now, take us from the point that you left off and
21 on toward the end, how it went toward the end? In other
22 words, take us to the point that they finally left from
23 the residence?

24 A. The taller one had Chris in the other room, and the
25 shorter one said the cops are coming, and that's when they

1 ran out.

2 Then Chris came in and told us to get up and they
3 went out the back door.

4 Q. Now, did you recognize either one of them?

5 A. No, I didn't.

6 Q. And can you testify as to who it was that was in the
7 house based on your own personal knowledge?

8 A. I saw the tall one's face but I had never seen the
9 other one before.

10 Q. Well, let me ask you this. Did you -- did the pol-
11 ice come?

12 A. Yes.

13 Q. Okay.

14 A. They came immediately after they ran out.

15 Q. And I didn't ask you this. Let me back up a minute.
16 What did they take, to the best of your recollection?

17 A. At that point, they had our money, they had our keys,
18 and then they ran out the back door, and they did take a
19 small amount of jewelry.

20 Q. And if I understand correctly, they took some cell
21 phones?

22 A. Yes, they took cell phones -- Chris' cell phone and
23 my cell phone and another one.

24 Q. So three cell phones?

25 A. Yes.

MS. BRIGGS ON DIRECT

1 Q. Anything else?

2 A. Our keys.

3 Q. Did they take your purse?

4 A. They took Hannah's purse, I believe, when they left.

5 Q. Okay. Now, did you subsequent to the robbery -- were
6 you able to talk to the officers when they came to the
7 scene?

8 A. Yes.

9 Q. And did you tell them what happened?

10 A. Yes, I did.

11 Q. And after they left -- well, did they also have a
12 chance to talk to Chris?

13 A. Yes, they did.

14 Q. And at any time -- well, was there a time that you
15 and Chris were actually in different rooms?

16 A. Yes, there was.

17 Q. Okay. Did you see anything -- did you see everything
18 that happened to Chris?

19 A. No, sir, I did not.

20 Q. Now, let me ask you this. The children and you, how
21 would you describe how you all felt?

22 A. Scared. I was scared.

23 Q. How about the children?

24 A. They were terrified.

25 MR. COCKRELL: Objection to hearsay.

MS. BRIGGS ON DIRECT

1 THE COURT: She can't testify to what the child may
2 have said but she can testify as to her observations of
3 them and how they appeared.

4 She can certainly testify as to how she felt.

5 I'll allow it.

6 BY SOLICITOR:

7 Q. Without saying what they said, just from your obser-
8 vations can you tell us about their demeanor, their emo-
9 tions? How would you describe that?

10 A. Very scared.

11 SOLICITOR: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (Brief pause in proceeding)

14 BY SOLICITOR:

15 Q. Do you still reside in Chesterfield?

16 A. Yes, I do.

17 Q. At the time you were being held, were you -- did you
18 feel you were confined to whatever area you were told to
19 go to by these individuals?

20 A. Yes, I did.

21 Q. If you had tried to leave, did you fear harm?

22 A. Yes, I did.

23 Q. And were both the individuals you have spoken about,
24 were they both involved in the confinement you spoke about
25 in that household?

MS. BRIGGS ON DIRECT

1 A. Yes.

2 Q. And one final question. Based on your observations,
3 who seemed to be sort of the leader of this particular rob-
4 bery?

5 A. The taller one.

6 Q. Please answer any questions that Mr. Cockrell may
7 have for you.

8 THE COURT: Cross examination.

9 MR. COCKRELL: Thank you, Your Honor.

10 Your Honor, I have no questions.

11 THE COURT: Very good. Maam, you may step down then,
12 and you may stay in the Courtroom or leave as you so choose
13 to do.

14 (Witness excused from stand)

15 THE COURT: All right, call your next witness, please,
16 sir.

17 SOLICITOR: Thank you, Your Honor, may it please the
18 Court.

19 The State would next call Christopher Merriman.

20 CHRISTOPHER MERRIMAN, being
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Mr. Merriman, would you state your full name for the
25 record.

MR. MERRIMAN ON DIRECT

1 A. Christopher Merriman.

2 Q. And do you still reside at [REDACTED] here in
3 Chesterfield?

4 A. Yes, I do.

5 Q. Okay, and is that where you resided on the 20th of
6 October of 2012?

7 A. Yes, it is.

8 Q. And are you employed?

9 A. I run a business of my own, and I do some construc-
10 tion work with a friend from out of town.

11 Q. He lives in North Carolina?

12 A. Yes.

13 Q. Now, I believe Ashlyn Briggs is your girlfriend?

14 A. Yes.

15 Q. And do you have any children with Ms. Briggs?

16 A. Yes, I do.

17 Q. And how many children do you have?

18 A. Two.

19 Q. And what are their names? I don't believe I asked
20 her.

21 A. [REDACTED]

22 Q. And let me direct your attention to the events of the
23 20th of October of 2012.

24 I guess you all were in Florence earlier that day?

25 A. Yes, we were.

MR. MERRIMAN ON DIRECT

1 Q. And you were there to watch a ballgame?

2 A. Yes, we were.

3 Q. Once you got back home from Florence, did you at any
4 point encounter Richard Smith?

5 A. Yes, I did.

6 Q. Okay, but before we get into that, without saying
7 what he said, had Richard Smith been calling you earlier
8 that day?

9 A. Yes, he had.

10 Q. And did you inform him that you were not in Chester-
11 field?

12 A. Correct.

13 Q. And did you have the opportunity to inform him when
14 you were either on your way back to Chesterfield or actu-
15 ally back in Chesterfield?

16 A. Yes. He called.

17 Q. Did he come by your house after you arrived back in
18 Chesterfield?

19 A. Yes, he did.

20 Q. All right, and without getting into what he said,
21 which is hearsay, but did he -- was he at the house or
22 how long was he at the house?

23 A. About ten or fifteen minutes or so.

24 Q. Okay. Now, did he subsequently leave the house?

25 A. Yes, he did.

MR. MERRIMAN ON DIRECT

1 Q. And when he left the house, did you see him again that
2 night?

3 A. No, I didn't.

4 Q. Okay. Now, let's talk about what else happened that
5 night.

6 Had it gotten dark up until the time these events
7 happened?

8 A. Yes, it had just gotten dark.

9 Q. Okay, and at the time that you, I guess, were involved
10 in this terrible episode, can you tell us what you were
11 about to do at the time that all things changed?

12 A. Um, yes. My Aunt Christine called me and let me know
13 that (inaudible) wasn't answering the phone, and being
14 she was in a wheelchair I wanted to check on her.

15 Q. And did you ever get there to check on her?

16 A. No, I did not.

17 Q. And tell us why you didn't?

18 A. As I was leaving, I went out and I realized I didn't
19 have my cigarettes, so I went to come back to the house to
20 grab them, and as I was coming up to the porch area a tall
21 guy came from around the side of the house -- the taller
22 guy came from around the side of the house where my girl-
23 friend was standing on the steps, and I was told to go
24 back to the house.

25 Q. And did you comply?

MR. MERRIMAN ON DIRECT

1 A. Yes, I did.

2 Q. And once you got back in the house, did he follow you
3 into the house?

4 A. Yes, he did and another guy.

5 Q. Would you repeat that?

6 A. Yes, they did.

7 Q. And once you got back in the house, tell the ladies
8 and gentlemen of the jury what happened next?

9 A. Once we got into the house, we were separated.

10 Hannah had gone back in the door and grabbed the kids
11 and we were taken to the back room which was our bedroom,
12 and at that point they started asking for money and mari-
13 juana and different things.

14 Q. And at the time he was asking for these things, what
15 -- what would have been -- I'll ask it like this. Were
16 you able to hear the tall individual talk?

17 A. Right.

18 Q. And did you recognize that voice possibly, based on
19 your past experience?

20 A. Yes, I did, as well as I saw them come up. I kind
21 of thought I recognized him when they approached coming
22 around the building.

23 Q. Okay.

24 A. Because as stupid as it may sound, I saw them come
25 up and it was like it was perfectly normal, and so I then

MR. MERRIMAN ON DIRECT

1 thought everything was perfectly normal, and then we went
2 on in at that point.

3 Q. Let me just make sure this is abundantly clear. Did
4 you have any drugs or marijuana, I think you said?

5 A. No, I did not.

6 Q. Okay. Now, so you are in the house and they are ask-
7 ing for things, and did they just leave peacefully, or were
8 they still there?

9 Tell us what was going on?

10 A. No, it wasn't very peaceful. When they had taken us
11 back into the back room where the kids and Hannah were, at
12 that time the taller individual was in the living room and
13 he's pulling the couch cushions and moving things, and he
14 was asking me where is your stash and other things, and
15 to get him away from where the kids was and all, I said,
16 let me help you find what you're looking for and if you
17 want anything else in here let's get it; you know, you can
18 have it, and I was talking to him, and it kind of irritated
19 him, I guess, that I was talking to him or kept trying to
20 talk to him.

21 And that was the first time I got hit with the gun.

22 Q. How many times did you end up getting hit with the
23 gun?

24 A. Three, I believe. I'm not sure. Two or three.

25 Q. Now, let me talk to you about the voice, and I need

MR. MERRIMAN ON DIRECT

1 to lay some foundation here.

2 The person that you heard, the voice that you heard,
3 how -- why is it that you recognized that voice?

4 Before we identify who that person was, how -- tell
5 us some background as to how you knew and recognized that
6 voice?

7 A. Well, it was from when I was a kid. His grandparents
8 lived right down the road from my grandmother, so they
9 were friends, as well as we were in school at that point
10 in time.

11 I had been around him and seen him on a regular ba-
12 sis.

13 Q. And based on that knowledge of the person whose voice
14 you heard, whose voice was it that you heard that night?

15 A. It was him, Clay.

16 SOLICITOR: Let the record reflect that he has
17 pointed to the Defendant.

18 BY SOLICITOR:

19 Q. You referred to him as Clay?

20 A. Yeah, Gartharee. That's what I knew him as.

21 Q. And is that why you were so surprised when you first
22 saw him, just because of your knowledge . . .

23 A. Yes, I wasn't thinking Clay would do something like
24 that, but I just went ahead and did what he said.

25 Q. Now, you said you heard his voice and I think it was

MR. MERRIMAN ON DIRECT

1 at the point you had gotten hit.

2 Take us through that particular time and tell us what
3 was taking place? Everything else that was taking place
4 in your house?

5 A. Well, at that point in time I'm trying to get him
6 outside and the other guy wasn't doing a whole lot, so
7 on and so forth, so I was trying to convince him -- to
8 take him outside, to get him to let me take my items out-
9 side for him. If he starts taking things out of the house
10 and the neighbors see him, then they're going to call the
11 cops, and, you know, if the cops are called they will come
12 faster.

13 So I'm trying to make sure that . . .

14 Q. And this was with the tall one?

15 A. Yes.

16 Q. And it was the taller person whose voice you recog-
17 nized?

18 A. Right.

19 Q. Okay. Continue.

20 A. So at this point we're going through the house and
21 we start loading things into the car, putting things in
22 my vehicle. I tried to tell him that they could take that
23 vehicle. I would load it for them if they would just
24 leave.

25 And so I was taking items out through the back and

MR. MERRIMAN ON DIRECT

1 there were several different phone calls that occurred
2 during the process.

3 Q. And whose car was it that you were putting the items
4 in?

5 A. Mine.

6 Q. Okay, and did they take your car keys?

7 A. Yes, they did.

8 Q. And to put two and two together, what did you think
9 was about to happen to the car that you owned?

10 A. That it would be taken to meet someone else to be
11 unloaded into the other car and then dumped somewhere.

12 Q. I interrupted you and I apologize. Pick it up where
13 you left off when you helped him take these items out.

14 A. During this process there were several points in time
15 when the two guys talked back and forth, and they were de-
16 termined to get these things, so we went on putting stuff
17 in the car.

18 I come back into the house again and about that time
19 -- I go back in and about that time -- things were around
20 the car, and around that time one of them got another phone
21 call, and I just heard, yes, and they take me back to the
22 room and I heard yelling and everybody that was in there
23 I told to get on the floor. The kids were laying on the bed
24 and I just got over on top of them, and I hear then yell-
25 ing . .

MR. MERRIMAN ON DIRECT

1 Q. Could you repeat that last part again, please?

2 A. Which part?

3 Q. The last part . .

4 A. When I did hear the phone call, and they take me on
5 back to the room, and I told everybody to get on the floor
6 and I got on top of the kids.

7 Q. I didn't ask you this, so I'll back up. To the best
8 you can remember, what did each of them have on?

9 A. The first guy who came around had on like a overall
10 or jumpsuit, and it was at the top like a hoodie, and a
11 -- like a ski mask, a black mask. He had one of those on
12 his face, and some kind of cap that was bunched in the
13 back.

14 Q. Now, let me ask you what you did after they had
15 vacated the room?

16 A. After they had left, the officers arrived, and so I
17 go the back door at that time and there is an officer com-
18 ing in the door.

19 Q. Do you happen to know who actually called the po-
20 lice?

21 A. I believe the next door neighbor behind us called the
22 police. It was taking a long time for me to come back
23 -- the guy was at the car waiting for me to come back and
24 it was taking a long time for me to come back to the car
25 so he came to see what was taking so long.

MR. MERRIMAN ON DIRECT

1 At the point in time when he came and I saw him
2 out the window, that he saw what was going on, and he had
3 ducked down and, you know, pushed the door open.

4 Q. Did you ever talk to the police that night?

5 A. Yes, I did.

6 Q. And did you talk with a Lieutenant Jordan?

7 A. Yes, I did.

8 Q. And when you talked with Lieutenant Jordan, did you
9 tell him who you thought it was?

10 A. I told him who I thought it was, but I wasn't sure.
11 I said I had not seen him in so long that it might not be
12 him.

13 Q. Now, from what you heard and what you observed, was
14 there any point in which you went back to the Sheriff's
15 Department and actually provided more information regard-
16 ing the identity of the Defendant?

17 A. Yes. When I went back over there I went back over
18 my statement and I looked at pictures from a web site that
19 I had asked my girlfriend to pull up.

20 So I went up there and went over my statement, and I
21 went on Facebook and pulled up the page, and at that point
22 in time they said they had . .

23 Q. Don't tell us anything that they said.

24 A. Okay.

25 Q. So at that point you pulled up a picture that you had
69

MR. MERRIMAN ON DIRECT

1 had of the Defendant on Facebook?

2 A. Yes.

3 Q. And with that, the last thing I'm going to ask you
4 about is did you get any of the items back, the cell
5 phones, the keys, any of that?

6 A. Yeah, we got cell phones and our keys back, and Hannah
7 got her purse back.

8 Q. And the items that were missing-- what were some of
9 the items you didn't get back?

10 A. Yes, the Two Hundred Dollars, a camera and I had a
11 watch that was gone, I think it was, and that was about
12 it.

13 Q. Now, let me show you first what has been marked as
14 State's Exhibit Number 3. This has been admitted into evi-
15 dence as State's Exhibit Number 3.

16 Can you tell us what this is, to the best of your
17 recollection?

18 A. That's the jumpsuit the first guy that came around
19 the house had on.

20 Q. And was this the jumpsuit the shorter or the taller
21 guy was wearing?

22 A. The taller one.

23 Q. Okay, and based on your observation, who was it you
24 thought was the taller guy?

25 A. Gartharee Hinson. Clay Hinson.

MR. MERRIMAN ON DIRECT

1 Q. Okay. I just destroyed that bag. Let me show you
2 what's been marked as State's Exhibit Number 4. Does this
3 look familiar?

4 A. Yes, the mask he wore.

5 Q. And State's Exhibit Number 5, what is that?

6 A. That is the picture from Facebook. I showed the officer.

7 Q. And, finally, State's Exhibit . . .

8 SOLICITOR: If I may approach the witness, Your
9 Honor?

10 THE COURT: Yes.

11 BY SOLICITOR:

12 Q. And, finally, State's Exhibit -- not finally, but the
13 last two Exhibits were admitted in evidence.

14 State's Exhibit 1, is that familiar?

15 A. Yes, that looks like the gun.

16 Q. And who was holding that thing?

17 A. Clay Hinson.

18 SOLICITOR: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 SOLICITOR: Well, actually since these items are in
21 evidence, the State would actually, as to State's Exhibits
22 1, 2 and 5 -- like to publish them to the jury.

23 THE COURT: They are in evidence. You may show them
24 to the jury.

25 (Items shown to the jury by Solicitor)

MR. MERRIMAN ON DIRECT

1 SOLICITOR: Exhibits 1, 3 and 4, Your Honor.

2 THE COURT: Yes, sir.

3 (Brief pause in proceeding)

4 BY SOLICITOR:

5 Q. How many times did you say you were hit?

6 A. Two or three. I think three times.

7 Q. And where specifically were you hit?

8 A. The top of my head and down here.

9 Q. Did you require any medical treatment or anything?

10 A. No, sir, I did not. I was just feeling foggy.

11 Q. Okay. And just to be clear, which one hit you? Who
12 hit you?

13 A. The taller guy.

14 Q. And to be clear about this, did you feel that you
15 were free to leave during that time?

16 A. No, sir, I did not.

17 Q. What did you think would happen to you if you did try
18 to leave?

19 A. I thought I would be shot.

20 Q. And did you feel that way up until the time that they
21 left?

22 A. Yes, up until the time the police were there. They
23 had guns and there was nothing to protect myself or my
24 girlfriend and kids.

25 Q. I think that would be all the questions I would have.

MR. MERRIMAN ON DIRECT

1 Please answer any questions that Mr. Cockrell may have
2 for you.

3 A. Yes, sir.

4 THE COURT: All right, Cross Examination.

5 CROSS EXAMINATION

6 BY MR. COCKRELL:

7 Q. Mr. Merriman, on the night of this incident who re-
8 sponded? What police officers or deputies? Do you re-
9 call?

10 A. Who was it?

11 Q. From the Sheriff's Department, who did you speak to?

12 A. I don't recall the name of the officer who came in
13 the yard, in the driveway.

14 Q. Okay. Do you recall any names of officers that you
15 spoke with?

16 A. I spoke with Lieutenant Jordan.

17 Q. Okay. Lieutenant Wayne Jordan?

18 A. Yes.

19 Q. Was he one of the investigators you spoke with on
20 that night?

21 A. I know I spoke with him when I went back over there.

22 Q. And so you had another conversation with the depart-
23 ment?

24 A. Yes.

25 Q. How long after this night was it that you went back

1 to speak to the police?

2 A. It wasn't the next day but the day after that.

3 Q. Who did you speak to when you went there?

4 A. Mr. Jordan.

5 Q. Okay. You met with him again?

6 A. Yes, and also -- I can't remember the other one's
7 name.

8 Q. Okay. When you had meetings with the Sheriff's De-
9 partment, do you remember if you spoke with Deputy Carnes?

10 A. I don't recall.

11 Q. Okay, what was your conversation with Deputy Jordan the
12 second time? What was that about?

13 A. I wanted to give a written statement to the one I had
14 given the night before and to give him some more of my
15 thoughts of what had happened and who I thought it was.

16 Q. Okay, did you -- did you identify anybody?

17 A. I did write down the statement saying that.

18 Q. You hand-wrote a statement?

19 A. Yes, I did.

20 Q. Who took that statement from you?

21 A. Investigator Jordan.

22 Q. Okay, and did you sign it?

23 A. I don't remember.

24 Q. Okay. Did anybody witness that statement?

25 A. Mr. Jordan was in the room and also a female officer

MR. MERRIMAN ON CROSS

1 in there.

2 Q. Who would that be?

3 A. I don't know her name.

4 Q. A black lady?

5 A. Yes, sir.

6 Q. Okay. When is the last time after this -- after this
7 last meeting, when is the next time you went down to the
8 Sheriff's Office?

9 A. That was the only time I went to the Sheriff's Of-
10 fice after that night.

11 Q. Have you ever had any run-ins with Mr. Richard Smith
12 or any of the other CoDefendants in this matter?

13 A. Not bad, no.

14 Q. When you say not bad, what do you mean?

15 A. Well, I had an altercation at one time.

16 Q. Were you smoking marijuana?

17 A. Yes.

18 Q. Would it have been reasonable for Mr. Richard Smith
19 or somebody else to think they would be able to buy some
20 marijuana from you?

21 A. I hadn't had any marijuana for a while.

22 Q. Okay, did he call you this night to try to get some
23 marijuana?

24 A. No.

25 Q. What was he calling you about?

MR. MERRIMAN ON CROSS

1 A. He was calling about some money. He was supposed
2 to bring me some money he owed me.

3 Q. Did you ever smoke marijuana?

4 A. In the past, I did.

5 Q. Why did he owe you money?

6 A. Uh, if I had had marijuana and friends of mine come
7 around and they don't have anything to smoke, I might
8 say I will give you a little bit to smoke, and he had got
9 a little marijuana months before this point, and I told
10 his girlfriend I needed the money he owed me.

11 So that day he called me to see if we could set up
12 a time for him to come and bring it. I couldn't really
13 give him a time but he finally came by and brought me Forty
14 Dollars.

15 It was like, hey, here you go, man, and so on and so
16 forth, and then he left.

17 Q. Okay, so he was just paying you back for marijuana?

18 A. Yes.

19 Q. That he had smoked?

20 A. Yes.

21 Q. Okay.

22 MR. COCKRELL: Court's indulgence.

23 THE COURT: Yes, sir.

24 (Brief pause in the proceeding)

25 BY MR. COCKRELL:

MR. MERRIMAN ON CROSS

1 Q. Just one last question.

2 A. Yes, sir.

3 Q. You indicated that Mr. Richard Smith came to your
4 house before with another black gentleman. Who was the
5 other black gentleman?

6 A. I didn't see him personally. I don't know who it
7 was.

8 Q. Was he in the car with him?

9 A. The other person was in the car. He didn't get out
10 of the car.

11 Q. Okay. Who do you think that person was?

12 A. I think it was this guy named Mark or something like
13 that.

14 Q. And he was black?

15 A. I don't know if he was black.

16 Q. Did it turn out that it was a CoDefendant in this
17 case?

18 A. I don't think so.

19 Q. Okay, no further questions.

20 THE COURT: Any Redirect?

21 SOLICITOR: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. When you were questioned on Cross Examination about
25 Richard Smith coming to your house on the night of this

MR. MERRIMAN ON REDIRECT

1 incident, can you tell us about how long it was after he
2 left that the Defendant and the shorter guy came in and
3 robbed you?

4 A. I'd say probably about forty-five minutes or so.

5 Q. And, again, Richard had called you several times dur-
6 ing the course of the day?

7 A. Yes, he had. He called and was asking where I was
8 and when I'd get home. Then he comes and after about
9 forty-five minutes this happened.

10 Q. Based on what you said earlier, they had -- I guess
11 they -- did they seem to think you had some drugs?

12 A. Yes, they did.

13 Q. And I think you testified that they asked you?

14 A. They did.

15 Q. And when they found out you didn't have any drugs,
16 tell us whether or not there was any change in the atti-
17 tude or the aggressiveness of the Defendant in particular?

18 A. There was definitely a change. He made the comment
19 that my man who was just here told me you had some, and
20 that had to be Richard Smith because no one else had been
21 to my house.

22 Q. From the time Richard came and left, did anyone else
23 come to that house?

24 A. No. No one came but Richard Smith.

25 Q. That would be all the questions I would have. Thank

1 you, Mr. Merriman.

2 THE COURT: Anything on those particular questions?

3 MR. COCKRELL: No, Your Honor.

4 THE COURT: You may step down, sir.

5 (Witness excused from stand)

6 THE COURT: All right, Solicitor, would those be the
7 State's witnesses for today, or do you have any other wit-
8 nesses?

9 SOLICITOR: I don't have any more for today. We will
10 have more witnesses tomorrow.

11 THE COURT: Very good.

12 All right, ladies and gentlemen. We are going to
13 stop for today. I know when you came here this morning
14 you didn't know what to expect or if you would actually
15 be on a jury so there's been some waiting around as will
16 happen on the first day.

17 I'm going to let you go home for the evening. I do
18 want you to be back tomorrow morning by -- please be back
19 here, let's say, by nine twenty so that at nine thirty we
20 can get started in the trial and resume.

21 So you all make sure you get here by nine twenty or
22 so, and you all can get situated in the jury room and we
23 will get started at nine thirty.

24 When you go home for the evening and you see husband
25 or boyfriend or wife, person down the street, you can tell

1 them you are on a jury and that's it.

2 You can't talk about the case, you can't talk to any-
3 body about it until I tell you to at the very end. If
4 you start talking to anyone when you go home unintentionally
5 or intentionally they're going to give you their opinion
6 about it, and they're going to have one, but they are not
7 on the jury.

8 So please don't talk about the case. Remember what I
9 told you. You aren't researchers, you aren't investiga-
10 tors. You can't look up anything on the Internet. You
11 have to decide this case solely and completely on the
12 facts and evidence you hear here in the Courtroom and
13 from no other source.

14 So with that, you are excused. See you back tomor-
15 row morning about nine twenty.

16 Thank you very much.

17 (Jury excused for the evening)

18 THE COURT: So with that, is there anything from the
19 State at this point in time?

20 SOLICITOR: No, sir.

21 THE COURT: I know we have the issue of bond.

22 SOLICITOR: Nothing at this time.

23 THE COURT: All right, very good. Other than the
24 bond issue, Mr. Cockrell, is there anything else from the
25 Defense?

1 MR. COCKRELL: Your Honor, I would like an opportu-
2 nity to see the State's -- the victim indicated that he
3 has given a statement to Lieutenant Jordan, and I have
4 not seen that.

5 THE COURT: All right. Well, Solicitor, when we break
6 if you would see if you can locate that, and if you'd ask
7 the Officer for it so that Mr. Cockrell has an opportunity
8 to look at that.

9 SOLICITOR: Your Honor, we actually did supply dis-
10 covery but I have no problem whatsoever in giving that to
11 Mr. Cockrell.

12 THE COURT: Well, even if you supplied it in discov-
13 ery in the past, just so there isn't any question about it,
14 I ask that when we break you all look for it and let Mr.
15 Cockrell see it.

16 SOLICITOR: Yes, sir. I'll give it to him right now.
17 I actually have an extra copy.

18 THE COURT: Very good. Mr. Cockrell, would you like
19 your client to stay out on bond?

20 MR. COCKRELL: Yes, Your Honor. He has been out on
21 bond since November of last year, and he has regularly
22 checked in before every term of General Sessions Court and
23 has come by the office to check with us to see if his case
24 may be called for trial.

25 I don't believe there would be any problem or any

1 basis not to allow him to stay out. His wife is here in
2 the Courtroom. I don't see any reason why it should be a
3 problem.

4 He is eager to go forward and get this case behind
5 him and for justice to be served.

6 His bondsman has no problem with him staying on bond.

7 THE COURT: He has indicated that to you?

8 MR. COCKRELL: Yes, sir.

9 THE COURT: Okay. Tell me just for my own informa-
10 tion the name of that company?

11 MR. COCKRELL: Batts..

12 THE COURT: Batts Bail Bondsman?

13 MR. COCKRELL: Yes, Your Honor.

14 THE COURT: All right, very good. Just so we are
15 clear and you have communicated with them and they have
16 indicated they will stay on the bond?

17 MR. COCKRELL: Yes, Your Honor.

18 THE COURT: Very good. All right, Solicitor. Let
19 me hear from you.

20 SOLICITOR: Yes, Your Honor. May it please the
21 Court?

22 The case has begun and we are obviously concerned for
23 the victim's family. The evidence is that he has got Co-
24 Defendants who potentially will testify in the case, and
25 I can tell you that at least one CoDefendant will testify

1 in the case.

2 Without saying any more, let's just say that the Co-
3 Defendants may be in Chesterfield or may be in Charlotte,
4 so that would be a concern.

5 I can tell the Court in talking with my witnesses or
6 potential witnesses that once the case was called and I
7 provided my witness list there was concern, due to the na-
8 ture of this case.

9 So we would respectfully ask that that be denied in
10 the Court's discretion since the case has been called for
11 trial.

12 Again, this trial potentially will be in the jury's
13 hands tomorrow or Wednesday morning at the latest. With
14 that, Your Honor, we don't think that weighing those two
15 concerns that it would be unreasonable for him to be housed
16 in the Chesterfield County Detention Center.

17 THE COURT: Very good. Mr. Cockrell, you want to re-
18 spond?

19 MR. COCKRELL: Your Honor, if I may? This is not a
20 situation where threats have been made. My client has
21 moved for a speedy trial and, that being said, he is ready
22 to move forward and get this behind him.

23 He has been out since November of last year, and no-
24 body has had any problem with him. I recognize what the
25 Solicitor has said, but there is no -- this is the first

1 time I've seen the statement of Chris Merriman, and I
2 would like an opportunity to at least discuss it with my
3 client, and that would be very difficult to do if he is
4 being housed in the Detention Center.

5 THE COURT: All right, thank you.

6 Mr. Hinson, would you stand up, please, sir?

7 (Defendant standing before the Court)

8 THE COURT: I am going to allow the Defendant to re-
9 main out on bond under these terms and conditions: Num-
10 ber one, Mr. Hinson, this trial is going to continue whe-
11 ther or not you are present.

12 If you decide not to show back up, then the trial
13 will continue on. Your absence will not delay the trial.
14 What would happen is that the trial would go on to its
15 conclusion, and if at the end of it the jury's verdict is
16 that you are found guilty of one or more of the crimes,
17 what would happen is the Court would issue a sentence and
18 a bench warrant would be issued for your arrest, and then
19 when you are arrested at that point in time you would be
20 brought back to the Court for reading of the sentence, if
21 that is what occurs.

22 Second, I have given you a direct order to be here
23 tomorrow morning by nine twenty. What that means is that
24 should you not appear the trial continues on and the jury
25 finds you not guilty, again a bench warrant will be issued

1 for your arrest because you will have disobeyed a direct
2 order of the Court. You will be detained, you will be
3 held, until a Circuit Judge can hear the Contempt of Court
4 hearing.

5 I will tell you I've got another term of Court in De-
6 cember, so that means you'd be here in the County Jail
7 until I got back for that Contempt of Court hearing, and
8 for that I could send you to the Department of Corrections
9 for a period up to one year just for not doing what I've
10 told you to do.

11 You understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: Sir?

14 DEFENDANT: Yes, sir.

15 THE COURT: All right. Thank you.

16 With you being out, you will not yourself or anyone
17 on your behalf communicate, contact, go by, see, except
18 when you leave this Courthouse, the victims that have al-
19 ready testified.

20 There will be no communication with them, contact with
21 them, in any way, yourself or anybody on your behalf. Do
22 you understand that?

23 That is, in person, by others, or any kind of commun-
24 ication whatsoever. You understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Nor can you contact any CoDefendants in
2 any way in this matter. Again, neither you nor anyone in
3 your behalf in any way try to contact them by phone, by
4 Internet, in person; in no shape, manner or form will you
5 or anyone in your behalf attempt to contact them.

6 Do you understand that?

7 DEFENDANT: Yes, sir.

8 THE COURT: With that and under those terms and con-
9 ditions I'm going to let you stay out on bond.

10 DEFENDANT: Thank you. I understand, sir.

11 THE COURT: Thank you very much.

12 SOLICITOR: You said nine thirty?

13 THE COURT: I want you all here by nine fifteen or
14 nine twenty.

15 If you all have any kind of issue, we can discuss it
16 before the jury gets here.

17 All right.

18 (Whereupon, the Court stood in recess until Septem-
19 ber 16, 2014, when the case was continued)

20 THE COURT: All right, is the State ready to proceed?

21 SOLICITOR: State's ready, Your Honor.

22 THE COURT: Defense?

23 MR. COCKRELL: We're ready, Your Honor.

24 THE COURT: Very good. Have the jury come in, please,
25 sir.

1 (Jury returned to the Courtroom)

2 THE COURT: All right, Solicitor. You may call your
3 next witness.

4 SOLICITOR: Thank you, Your Honor. May it please the
5 Court?

6 The State would call Dorsey English.

7 THE COURT: Please come around and be sworn, sir.

8 DORSEY ENGLISH, being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY SOLICITOR:

12 Q. State your name for the record.

13 A. Dorsey English.

14 Q. Okay, Officer English, where are you employed, sir?

15 A. Chesterfield Police Department.

16 Q. And I need you to speak as loud as you can, and speak
17 into the microphone.

18 A. It's not on.

19 Q. Okay, and where are you employed outside of the Ches-
20 terfield Police Department?

21 A. I work part-time for the Police Department, mainly
22 on weekends.

23 Q. Where are you employed outside of the Police Depart-
24 ment?

25 A. (Inaudible response)

MR. ENGLISH ON DIRECT

1 Q. And how long have you worked part-time for the Ches-
2 terfield Police Department?

3 A. Going on two years.

4 Q. Okay, and in your role with the Chesterfield Police
5 Department were you on the 21st day of October of 2012 on
6 duty?

7 A. I was.

8 Q. And did you receive a call involving items that were
9 found at a house?

10 A. I did.

11 Q. Okay, and would you tell us where -- at what location
12 it was that you responded to?

13 A. [REDACTED].

14 Q. And is that address within the Town of Chesterfield?

15 A. It is.

16 Q. And at that time did you respond to that location?

17 A. I did.

18 Q. And would you explain to the ladies and gentlemen of
19 the jury what you observed and if you collected any items
20 there?

21 A. When I pulled up, the next door neighbor came up to
22 me immediately and said that she saw a jacket in some
23 bushes in a vacant lot and a mask and actually a cell
24 phone there. The jacket turned out to be coveralls.

25 Q. Okay, and did you find anything else there?

MR. ENGLISH ON DIRECT

1 A. Some of that was on her property near the fence line.
2 And a set of keys.

3 Q. Was there a set of keys there?

4 A. Yes, sir. There were keys.

5 Q. Okay, and, now, what did you do once you observed the
6 things at this location? What did you do?

7 A. I began to collect them to be placed with evidence.

8 Q. Okay, and were all the items that you collected put
9 into evidence in this situation?

10 A. No.

11 Q. And as a result did you then respond to another lo-
12 cation?

13 A. Yes, I did. A cell phone was found at the Piggly Wiggly.

14 Q. Let me show you what's been marked as State's Exhibit
15 Number 6.

16 A. . .

17 SOLICITOR: If I may approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 BY SOLICITOR:

21 Q. This is already in evidence, and is that the evidence
22 log that you submitted pursuant to your involvement in
23 this case?

24 A. It is.

25 Q. Okay, and does it reflect the two cell phones and the

MR. ENGLISH ON DIRECT

1 coveralls, the mask and the set of keys?

2 A. It does.

3 Q. And is that something that you do in the ordinary
4 course of your job when you collect evidence?

5 A. It is logged in and put in evidence at that point.

6 Q. And after that, were you actively involved in this
7 investigation of this case, other than what you've just
8 testified to?

9 A. No.

10 SOLICITOR: Beg the Court's indulgence.

11 Please answer any questions Mr. Cockrell may have
12 for you.

13 THE COURT: Cross Examination.

14 MR. COCKRELL: May it please the Court?

15 CROSS EXAMINATION

16 BY MR. COCKRELL:

17 Q. Mr. English, what is your official title with the
18 Police Department?

19 A. Police officer.

20 Q. And was it your job to investigate this incident?

21 A. Not on the 20th.

22 Q. What was the date you were involved? The 21st?

23 A. Yes, sir.

24 Q. Did you find the mask?

25 A. I did.

90

MR. ENGLISH ON CROSS

1 Q. Did you find a black cap?

2 A. I don't think so. Not other than the mask.

3 Q. And you found two cell phones?

4 A. Yes.

5 Q. Where were they located?

6 A. One that was located by the neighbor (portion of the
7 answer was inaudible).

8 Q. Okay. Did you, I guess, take these items and put
9 them into evidence?

10 A. I did. It was turned over to the Sheriff's Depart-
11 ment.

12 Q. When items get turned over to the Sheriff's Department
13 they get analyzed and examined?

14 A. I assume so.

15 Q. Okay, and did anybody claim ownership of the items?

16 A. I don't know.

17 Q. Did you return the keys or the phones?

18 A. I didn't, no.

19 Q. And do you have any idea what happened in the investi-
20 gation regarding those items?

21 A. No.

22 Q. And was there one cell phone found?

23 A. I found a cell phone and the other was pointed out to
24 me.

25 Q. But you took that cell phone and put it in evidence.

MR. ENGLISH ON CROSS

1 Did you examine it for fingerprints?

2 A. No, I didn't.

3 Q. Okay. Where was it found?

4 A. The Piggly Wiggly.

5 Q. Where at the Piggly Wiggly was it found?

6 A. Near the trash can.

7 Q. What time did you receive the call?

8 A. Around one o'clock.

9 Q. In the afternoon?

10 A. Yes.

11 Q. Thank you.

12 MR. COCKRELL: No further questions, Your Honor.

13 SOLICITOR: Nothing further.

14 THE COURT: All right, you can come down, sir.

15 Do you wish the witness to be excused?

16 SOLICITOR: Yes, sir.

17 THE COURT: All right, any objection?

18 MR. COCKRELL: No objection, Your Honor.

19 THE COURT: You're excused, sir.

20 Call your next witness.

21 SOLICITOR: The State would next call Beth Stepp.

22 THE COURT: All right, come up and be sworn, please.

23 Thank you, maam.

24 BETH STEPP, being duly sworn,

25 testified as follows:

1 DIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Please speak up as loud as you can for the jury so
4 they can all hear you.

5 Where are you employed, please?

6 A. Piggly Wiggly.

7 Q. And in what capacity?

8 A. (Inaudible)

9 Q. That's the Piggly Wiggly here in Chesterfield?

10 A. Yes, sir.

11 Q. Now, were you working at any time during the day of
12 the 20th of October, 2012?

13 A. Yes, sir, I was.

14 Q. And in relation to these offenses we are here about
15 today, was there anything that occurred at the Piggly
16 Wiggly that day that caught your attention and caused you
17 to take some follow-up action?

18 A. Yes, sir. I came into work -- I had to close that
19 night and I had been at work a little while.

20 Q. About what time would that have been that you are
21 fixing to talk about?

22 A. Probably around twelve, and one of the cashiers had
23 called me up front. They were a little concerned and
24 said that was a black car out in our parking lot that had
25 been in our parking lot, you know, before I got to work,

MS. STEPP ON DIRECT

1 and they were a little concerned about it.

2 They were concerned because it had come and got in a
3 parking place and then leave; then it would come back and
4 park someplace else, you know.

5 So I said, okay, and so we got to paying attention to
6 it and all, and I noticed that what they were saying was
7 true.

8 So I told one of the girls, why don't you just go
9 out and get the buggies and write the tag number down. I
10 said, you know -- I mean, sometimes it feels a little weird
11 and so you have to watch for stuff.

12 So the little girl went out and she got the tag num-
13 ber and brought it back in, and later on that day I was
14 the one who -- it was probably about three, and I went to
15 lunch and the car was in our parking lot at three, you
16 know, and all.

17 So I called one of the town officers and told him,
18 you know, that I had a car that was in my parking lot and
19 it made us a little nervous.

20 Q. Now, were you aware of anything that had happened up
21 to that particular time?

22 A. No. No, sir.

23 Q. Okay.

24 A. And I gave him the tag number, and then I had to
25 close that night, and later on that night we started seeing

MS. STEPP ON DIRECT

1 activity and blue lights going down.

2 Q. Please speak up, Ms. Stepp, so the jurors can hear
3 you.

4 A. Then someone comes in and tells me that we might have
5 to lock our door because there had been a robbery behind
6 our store -- an armed robbery is what he told me -- and I
7 was like, okay, and so we locked the doors, and I told one
8 of the officers there that night that, you know, we had
9 took the tag number down earlier because we thought it was
10 suspicious or it made us feel uncomfortable because -- it
11 is not unusual for cars to park in our parking lot but it
12 is really unusual for cars to stay parked in our parking
13 lot and come back off and on for many hours over a day.

14 Q. Let me ask you this. Why would that be unusual?

15 A. Well, parking at a grocery store -- I mean, you have
16 a fear that somebody will try to rob you.

17 Q. That's why you locked the doors?

18 A. Exactly.

19 Q. Okay. Now, after the event when you were informed
20 there had been a robbery, you said that you had passed the
21 information on the tag number over to law enforcement?

22 A. Yes, sir.

23 Q. And once you did that, were you in any way involved
24 in anything else about this?

25 A. No, sir.

MS. STEPP ON DIRECT

1 Q. And just to be clear, are you in a position to be
2 able to identify anyone?

3 A. No. I couldn't even tell you how many were in the
4 car.

5 Q. Okay, fair enough, but there were people in the car?

6 A. There was people in the car.

7 Q. And you passed the information to law enforcement as
8 to the tag number?

9 A. Yes, sir. I had passed them the tag number earlier
10 in the day. Long before . .

11 Q. But you don't know what happened?

12 A. No, I have no idea what happened.

13 Q. And did you pass it along again after you found out
14 about the robbery?

15 A. Yes, and I told them again later that night after they
16 were in the store -- I told them I had put the tag number
17 down.

18 Q. And do you know who you passed it to? Do you remem-
19 ber that?

20 A. That night?

21 Q. Yes.

22 A. I'm not really sure who I gave it to that night. It
23 could have been one of the deputies because there were sev-
24 eral of them in our store.

25 Q. Okay. Fair enough, and the last thing I'm going to

MS. STEPP ON DIRECT

1 ask you is after everything transpired were you in any
2 way actively involved in any investigation into the mat-
3 ter?

4 A. Not other than . .

5 Q. Giving them the tag number?

6 A. Yes, that was it.

7 Q. Thank you, maam.

8 SOLICITOR: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (Brief pause in proceeding)

11 BY SOLICITOR:

12 Q. You have video there at the store?

13 A. We do.

14 Q. But at that time was that video not operable?

15 A. I don't think so.

16 Q. Okay.

17 SOLICITOR: Beg the Court's indulgence for another
18 moment.

19 THE COURT: Yes, sir.

20 SOLICITOR: I don't have any other questions.

21 THE COURT: Cross Examination.

22 MR. COCKRELL: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. COCKRELL:

25 Q. Just a moment, please.

1 MR. COCKRELL: No questions, Your Honor.

2 THE COURT: Very good. Do you wish the witness to
3 be excused?

4 SOLICITOR: Yes, sir.

5 THE COURT: Any objection?

6 MR. COCKRELL: None, Your Honor.

7 THE COURT: All right, maam. You are released from
8 your subpoena and may go back to your regular activities.

9 WITNESS: Thank you.

10 (Witness excused)

11 THE COURT: Next witness.

12 SOLICITOR: Wayne Jordan, Chesterfield County Sher-
13 iff's Office.

14 THE COURT: All right, very good.

15 WAYNE JORDAN, being duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. State your full name for the record.

20 A. Anthony Wayne Jordan.

21 Q. And how are you employed?

22 A. Chesterfield County Sheriff's Office.

23 Q. And in what capacity are you employed?

24 A. Currently as Chief of Investigations. Lieutenant.

25 Q. And how long have you been employed with the Sheriff's

MR. JORDAN ON DIRECT

1 Office?

2 A. I've been with the Chesterfield Sheriff's Office since
3 2003.

4 Q. Now, were you called to an event on [REDACTED] on
5 the 20th of October of 2012?

6 A. I was.

7 Q. And would you tell us -- let's start at the beginning
8 once you were dispatched. What did you do when you were
9 dispatched?

10 A. I went to the scene. During that time I was sharing
11 my time with the dog unit, the Chesterfield County Blood-
12 hound Unit. I went and took the dogs to the scene and at
13 the time it seemed the bloodhounds were going to have to
14 track, and I started an on-scene investigation at the time
15 and met Mr. Merriman there.

16 Q. Now, let me ask you this. Did you -- where was the in-
17 terview with the victims in the case?

18 A. It was -- I found out what was going on in the resi-
19 dence.

20 Q. And at some point were they taken to the Chesterfield
21 County Sheriff's Office?

22 A. Yes, they were.

23 Q. And have you reached that point yet where they were
24 taken to the Sheriff's Office?

25 A. No.

MR. JORDAN ON DIRECT

1 Q. Continue then with what you were involved with on the
2 scene?

3 A. Well, at the scene I was contacted by somebody who
4 told about some evidence that they found on a track, being
5 two handguns and also found a wallet and found a hat and
6 mask on a track.

7 Q. And these items that you mentioned, specifically the
8 mask and the gun, were those items collected by you?

9 A. That's correct. They were picked up and bagged.

10 Q. Let's talk about the wallet that was found. Did you
11 get any information out of the wallet?

12 A. Well, it was a brown wallet, and a social security
13 card was found in the wallet.

14 Q. And did that aid in your investigation?

15 A. I'm sorry.

16 Q. Did that aid in your investigation?

17 A. Oh, yes.

18 Q. And were you able to subsequently locate and charge
19 Richard Smith for his involvement?

20 A. Richard Martin..

21 Q. Richard Martin -- okay. Excuse me.

22 A. Yes.

23 Q. Did you take that into custody? What did you do?

24 A. Yes, took it into custody and placed it in evidence,
25 and also the guns.

MR. JORDAN ON DIRECT

1 We did a trace on the guns.

2 Q. And who did they come back to, to the best of your
3 recollection?

4 A. Yes, with information from the trace we try to pull
5 up the purchasers.

6 Q. And was one of the guns actually registered to someone
7 who was not involved in this?

8 A. Yes, it was registered to a gentleman who had no in-
9 volvement in this.

10 Q. And what about the other gun?

11 A. It was registered to Maurice Anderson.

12 Q. Do you actually remember which gun was actually regis-
13 tered to Maurice Anderson?

14 A. I'd have to look. I believe it was the Keltec.

15 (Brief pause)

16 Yes, it was the Keltec that was registered to Maurice
17 Anderson.

18 Q. And as part of your investigation, was he ultimately
19 charged with being involved in this?

20 A. He was ultimately charged.

21 Q. Going back, what else did you do in your investigation?

22 A. We brought them to the Sheriff's Office to . . .

23 Q. When you are referring to them, who is them?

24 A. I'm talking about the victim, Mr. Merriman, and his
25 girlfriend was interviewed, and we also did as well

1 an interview -- let me look at the report -- also did an
2 interview with a Mr. Ellerby. I believe his first name
3 was S T A N T O.

4 Q. All right. Now, when you did these interviews, and
5 let's talk about Mr. Merriman specifically -- I think it
6 is noted in your report, but did he appear to still be in
7 distress?

8 A. Yes, all three of them were very upset, just as they
9 were that night. They were very upset.

10 Q. And when you talked to them at first was it pretty
11 shortly after this robbery occurred?

12 A. Oh, yes. Right after it happened.

13 Q. And as it relates to Mr. Merriman, did he give you
14 any information or any name of anyone he thought may have
15 been involved?

16 A. The second day when we talked he told me more, and
17 he gave a written statement.

18 Q. Let's talk about the oral statement that you took on
19 that night. Did he give you anything as far as recogniz-
20 ing anyone? In the first statement to you.

21 A. Yes, he said he recognized the voice, and he said he
22 thought he knew who it was but he said he wasn't sure. He
23 knew the voice but he wasn't sure of his name.

24 Q. Did he give you a name?

25 A. Yes.

MR. JORDAN ON DIRECT

1 Q. And what name was that?

2 A. He said a middle name but . .

3 Q. Did he say Qua?

4 A. I believe Qua is the name he gave us.

5 Q. Now, when you got a chance to get this information
6 from Mr. Merriman, at this point would it be fair to say at
7 least two of the names -- I guess three with the gun -- at
8 least three of the names had come to your attention?

9 A. Yes. Within ten to twenty minutes we had Richard Smith
10 had called him at least ten times, and the . . .

11 Q. That was the first one?

12 A. That was the very first one. Richard Smith had called
13 him ten to twenty times, and there had been a person who had
14 stayed in the car when it came to his house, but Richard
15 Smith had been calling him at the restaurant while he was
16 watching the game. Then he had come to the house after they
17 returned.

18 Q. So at this point you actually had four names -- at
19 least four names as being involved.

20 A. Yes.

21 Q. And to be clear, it was Richard Smith, Richard Martin
22 and Maurice Anderson, and then the Defendant.

23 Q. Richard Smith first and then Richard Martin second, and
24 when we ran the check on the gun Maurice Anderson.

25 Q. Tell us what you did next. What was the next steps you

MR. JORDAN ON DIRECT

1 took in your investigation?

2 A. We started running the tag number on the car that had
3 been given, and we traced it to Charlotte.

4 We actually went to Charlotte, myself and two other
5 detectives. We went to Charlotte and went to Enterprise
6 Rental Company which is on East Independence Road or
7 Boulevard up in Charlotte, and we talked to the branch man-
8 ager who was there at the time.

9 There we developed information on who had purchased
10 car or who had rented the car. We got information off the
11 contract on the car and we were also able to get a video of
12 the individual who had paid for the rental of the car.

13 Q. And so were you able to get snapshots from the video at
14 Enterprise?

15 A. Yes.

16 Q. And so you are up in Charlotte and I now show you what
17 is listed as State's Exhibit Number 7 first and then Number
18 8. Let me ask you to take a look at those.

19 SOLICITOR: I apologize. With permission of the Court.

20 THE COURT: Yes, sir.

21 BY SOLICITOR:

22 Q. Are those accurate copies of what is reflected or is
23 about to be reflected in the testimony?

24 A. Yes.

25 Q. Tell us about Exhibit 7 first.

MR. JORDAN ON DIRECT

- 1 A. Seven is . . .
- 2 Q. And that is already in evidence.
- 3 What is the name that is listed on that contract
- 4 as the -- what names are listed on the contract?
- 5 A. Last name Hinson, first name Gene.
- 6 Q. And were you able to get any information on a Gene
- 7 Hinson?
- 8 A. No, I wasn't.
- 9 Q. But Hinson is the last name?
- 10 A. That's correct.
- 11 Q. And is the signature to the best you can -- what is
- 12 the signature, or what does it look like?
- 13 A. I believe it to be Maurice Anderson, it appears to me
- 14 to be.
- 15 Q. And so Mr. Anderson's name shows up on the contract?
- 16 A. Yes, sir.
- 17 Q. And looking at that contract, can you tell when they
- 18 actually rented the vehicle? When did they enter this . . .
- 19 A. The contract was signed on 10 12 of 2012, or that
- 20 is what it looks like.
- 21 Q. Prior to this particular robbery?
- 22 A. Yes, sir.
- 23 Q. Now, when you -- I guess when you got what you were up
- 24 there in Charlotte -- you talked about the video, and now
- 25 let me turn your attention to this.

1 State's Exhibit Number 8 -- what kind of car was it
2 that was rented? What kind of car was it?

3 A. They rented a -- it was a white in color Dodge Charger
4 with a tag number of [REDACTED] [REDACTED]. That is what was on the con-
5 tract.

6 Q. And tell us briefly what kind of car did you have in-
7 formation on that was in the parking lot several times dur-
8 ing the course of the day of October 20, 2012?

9 A. It was a white in color Dodge Charger.

10 Q. Going to State's Exhibit 8, tell the ladies and gen-
11 tlemen of the jury what that particular Exhibit represents?

12 A. It is a picture of Mr. Hinson.

13 Q. And where was that picture taken? What is the signi-
14 ficance of that picture?

15 A. That is a picture from the snapshot on the video that
16 we got in Charlotte.

17 Q. And was that gotten in Charlotte at the Enterprise
18 Rental?

19 A. It was.

20 Q. And is that a snapshot of the -- is that from the video
21 that you saw in Charlotte at Enterprise?

22 A. It is.

23 Q. Now, did you also -- let me approach you with State's
24 Exhibit 5.

25 Did you also have a chance to view that particular

MR. JORDAN ON DIRECT

- 1 picture?
- 2 A. Yes, I did.
- 3 Q. And you got there -- where did you obtain that?
- 4 A. From Mr. Merriman.
- 5 Q. Okay. How did he provide that to you?
- 6 A. He brought it to me at the Sheriff's Office.
- 7 Q. Okay. Now, when you left the Enterprise Rental,
- 8 did you actually have that snapshot with you, or was it
- 9 subsequently sent to you after you were there?
- 10 A. It was sent to me.
- 11 Q. After you went up there?
- 12 A. Yes.
- 13 Q. So you had seen the video?
- 14 A. Yes.
- 15 Q. And then you received this?
- 16 A. I viewed the video there at Enterprise, and then we
- 17 got the picture sent to us.
- 18 Q. All right. Now, this photo you got from Mr. Merriman?
- 19 A. Yes.
- 20 Q. It was the Facebook photo?
- 21 A. Yes.
- 22 Q. And based on what you see, do you recognize one of
- 23 the people reflected in that picture?
- 24 A. In the picture from Mr. Merriman I recognized Mr.
- 25 Hinson, Gartharee Hinson.

MR. JORDAN ON DIRECT

1 Q. Now, tell us about that. Let's move forward.

2 I think you had started talking about Mr. Merriman
3 coming in to the Sheriff's Office and giving a written
4 statement?

5 A. Yes, sir.

6 Q. And is that the time that you were provided the
7 information about the Facebook photo?

8 A. Yes.

9 Q. Now, take us through your investigation. Was there
10 anything you actually did between the time you left Charlotte
11 and the time you met with Mr. Merriman in your investigation,
12 to the best of your recollection?

13 A. When we received on the rental agreement, we had
14 thought Mr. Hinson that was involved was in Charlotte.

15 Q. And without getting into anything that was said, was
16 he subsequently arrested?

17 A. Yes, he was.

18 Q. Keep going forward in the investigation. What
19 steps were take then?

20 What did you do next?

21 A. When we came back from Charlotte we brought Mr.
22 Merriman back in and we had him write up a statement, and
23 he started . .

24 Q. Now, to be clear and without getting into too much de-
25 tail, did he give you a written statement and was he telling

MR. JORDAN ON DIRECT

1 you more at this point?

2 A. Yes, he was telling us more.

3 Q. But he didn't put it in his written statement?

4 A. No, not all of it.

5 Q. Okay, let's go forward. You got the written state-
6 ment from Mr. Merriman, and I interrupted you again.

7 Keep going.

8 A. He was talking and he pulled that picture up and the
9 time he showed us the picture -- he pulled the picture up
10 and turned the screen to us, it was exact same picture that
11 we had or the same person as in the picture we had from En-
12 terprise Rental in Charlotte.

13 Q. So then what steps did you take after viewing that
14 picture? Take us through what you did next in your investi-
15 gation.

16 A. At this point and after seeing that, we went ahead and
17 he finished with the statement, and we got the picture he
18 had pulled up.

19 That pulls us to the next step where we got the call
20 saying that they found the cell phone, . .

21 Q. I'm going to get to that.

22 A. . . a set of keys, coveralls.

23 Q. And did you collect those items into evidence?

24 A. We did.

25 Q. All right, and did you at that point -- was that the

MR. JORDAN ON DIRECT

1 end of your investigation?

2 A. No, sir.

3 Q. What steps were taken next? Take us from that
4 point to what was the next step in the investigation.

5 A. I'm sorry.

6 Q. What was the next step in your investigation?

7 A. We brought these items to the Sheriff's Office
8 and examined them, and while looking at the coveralls I
9 could look inside the coveralls and see a tag on the cover-
10 alls, or some marks. (Short portion inaudible)

11 And so I called to find out who the company had
12 leased the coveralls to.

13 Q. Did you follow up on that?

14 A. Yes. I called and found that the coveralls were
15 leased to the company where Maurice Anderson worked in
16 Charlotte.

17 Q. And, again, was he subsequently arrested for being in-
18 volved?

19 A. Yes, he was.

20 Q. All right, and, I guess, take us through the steps
21 that led to the arrest of Richard Martin.

22 A. Take . . .

23 Q. Take us through what it was that led to the arrest of
24 Richard Martin.

25 A. (Portion inaudible) We found out where he lived, and
110

MR. JORDAN ON DIRECT

1 we sent a report to the Charlotte Police. They assisted us
2 in arresting Mr. Martin.

3 Q. Okay.

4 A. He was arrested and brought back to Chesterfield.

5 Q. All right. I asked you about Maurice Anderson and
6 asked you about Richard Martin. Let's get back and talk
7 about Richard Smith.

8 What in your investigation ultimately led to your ar-
9 rest of Richard Smith?

10 A. Mr. Merriman was telling us about the incident, and
11 we got information that he was involved with the three
12 CoDefendants.

13 Q. And taking that information, again did that ultimately
14 lead you to -- in your experience investigating robberies,
15 investigating the robberies you have had in your career,
16 and you already testified that Mr. Merriman indicated that
17 Richard Smith had been calling his cell phone many times.

18 What in your experience did that lead you to put into
19 place how he was involved? What did you surmise from it?

20 A. There was indication that he had been setting it up
21 beforehand.

22 Q. Now, let's talk about the Defendant for a bit. Take
23 us through your -- we talked about the snapshot and talked
24 about Mr. Merriman's comments.

25 We've talked about the rental agreement, the Facebook

MR. JORDAN ON DIRECT

1 picture.

2 Now, take us from that point to what it was that ultimately led to his arrest, and then I will ask you about
3 whether or not you had a chance to talk with him, with Mr.
4 Hinson.
5

6 A. Well, the fact that Mr. Merriman was knowing Mr. Hinson.
7 What he told us about knowing him.

8 Also, I was checking on what a witness had given us.
9 The name was . .

10 Q. Would that be Phyllis Marshall?

11 A. Yes, that would be Phyllis Marshall. She gave us information that . .

12
13 MR. COCKRELL: Your Honor, I'm going to object to
14 anything that Ms. Marshall may have said.

15 THE COURT: Yes, sir.

16 BY SOLICITOR:

17 Q. But after talking with Ms. Marshall, Phyllis Marshall,
18 did that lead you to follow up on . .

19 A. Yes, it led us to the car, the white car.

20 Q. And once you took those steps, tell me, did you ever
21 have a chance -- I guess, was the Defendant ever apprehended?
22

23 A. Yes, he was ultimately arrested. We had warrants for
24 his arrest, and we had information he was in Charlotte so
25 we sent the warrants to Charlotte PD and they arrested him.

MR. JORDAN ON DIRECT

1 Q. And was he brought back to Chesterfield?

2 A. Yes, he was.

3 Q. And when he was brought back to Chesterfield, did you
4 have a chance to ask him questions?

5 A. I did. We brought him to my office, and I want to say
6 he wanted to talk to (inaudible) first. We brought him in and
7 I read him his Miranda Rights.

8 Q. We'll get into that because I want to get into what he
9 told you, but let me show you what has been admitted as
10 State's Exhibit 9.

11 You mentioned Miranda, reading him his Miranda Rights.
12 What is State's Exhibit 9?

13 A. This is a copy of his Miranda Rights that were read to
14 him.

15 Q. And at that time, after he was read his Rights, did he
16 answer any questions or make any comments?

17 A. The only comment he made was that he didn't know any-
18 thing about the charges.

19 Q. And, specifically, to the best of your recollection,
20 what did the Defendant tell you about what was transpiring

21 . .

22 A. I'm sorry.

23 Q. What did the Defendant tell you about what transpired
24 that led to his being in Chesterfield?

25 A. He told us that Richard Martin had (portion inaudible)

MR. JORDAN ON DIRECT

1 and after talking to Richard Martin they had rented a car
2 and come to meet him; that the others had left him in the
3 Piggly Wiggly parking lot and after that he had run.

4 (Portion not audible on record)

5 Q. Let's break that down a little bit. This is when you
6 had a chance to talk to him after he was arrested and it's
7 what he told you?

8 A. Yes, sir.

9 Q. Let's go back a little. So did he place himself with
10 Maurice Anderson, Richard Smith and Richard Martin on
11 the day of this robbery on October 20?

12 A. Yes.

13 Q. By his own words?

14 A. By his own words. He said they were together.

15 Q. And did he indicate there was a white Charger they had
16 been in?

17 A. Yes, sir.

18 Q. And he said they had been in the Piggly Wiggly during
19 the course of the day?

20 A. Yes, sir.

21 Q. And did he claim it was Smith and Martin who got out
22 of the car, got out of the Charger?

23 A. Yes.

24 Q. But Mr. Merriman recognized him by his voice?

25 A. Yes, sir.

MR. JORDAN ON DIRECT

1 Q. And he specifically denied getting out of the car or
2 being in the robbery? Denied being in the robbery?

3 A. Right.

4 Q. But coincidentally he was involved with these people?

5 A. That's correct.

6 Q. Coincidentally Mr. Merriman recognizes Mr. Hinson's
7 voice?

8 A. Correct.

9 Q. And he was involved in it?

10 A. Yes, sir. That's correct.

11 Q. Based on your discussions with Mr. Merriman, did he
12 have any idea that Hinson or anybody else was in town other
13 than Richard Smith?

14 A. He only knew that he had talked with Mr. Smith.

15 Q. Based on your experience as an investigator and all of
16 that, did it strike you as coincidental?

17 A. Not very likely.

18 Q. Did that cause you in your investigation to actually
19 bring charges against Mr. Hinson?

20 A. That's correct.

21 Q. Now, in regards to the charges . .

22 MR. COCKRELL: Your Honor, I would object. He has tes-
23 tified in regard to the identification, but there has not
24 been a specific identification . .

25 THE COURT: I will allow you to cross examine him, as

MR. JORDAN ON DIRECT

1 those are cross examination questions. His testimony has
2 been clear so far.

3 SOLICITOR: Thank you, Your Honor.

4 BY SOLICITOR:

5 Q. Let me back up a second and make sure -- sometimes a
6 word can have many meanings.

7 When I say coincidental -- let me say it like this.
8 With everything that you had developed with Mr. Hinson and
9 others, that being what Mr. Merriman told you and that being
10 that he was putting himself being with the person whose gun
11 was actually found, did you think it was more than a mere
12 coincidence, based on your experience?

13 A. No question it was more than coincidence.

14 Q. When Mr. Hinson said he ran from the parking lot, where
15 did he say he ran to?

16 A. He ran to a location where he was picked up and went
17 back to Charlotte.

18 Q. And, again, based on all the things you have testified
19 to, and to be clear, did Mr. Hinson himself -- did he him-
20 self place himself in Chesterfield with the other Co-Defen-
21 dants during the day of this incident?

22 A. That's correct.

23 Q. And when you spoke with him, did he say the police had
24 come first and then he ran from the Piggly Wiggly?

25 A. Yes, that's what he said. He said that he ran a while

MR. JORDAN ON DIRECT

1 and then he walked to where he was picked up.

2 Q. And did he say he ran with anybody or was he running
3 by himself?

4 A. Him and Martin ran.

5 Q. Him and Martin ran?

6 A. Yes, sir.

7 Q. So basically as to the running and fleeing, he places
8 himself with Richard Martin. Is that correct?

9 A. That's correct.

10 SOLICITOR: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (Brief pause in the proceeding)

13 BY SOLICITOR:

14 Q. Let me ask you a couple of questions regarding the evi-
15 dence that was collected, and it's based on some questions
16 that were asked of another witness.

17 But was the evidence collected -- was it ever submitted
18 to any other agency -- any of the other evidence, was it
19 ever sent to Columbia to SLED or to any other agency?

20 As far as the gun or any other evidence that was col-
21 lected?

22 A. The cell phone and guns remained in my custody. The
23 coveralls were never sent for processing due to the fact
24 that we didn't ^{have} any suspect in custody at the time to be
25 sent off.

MR. JORDAN ON DIRECT

1 Q. And when you got suspects in custody and with the in-
2 formation that you had, was there any particular reason why
3 it was not sent?

4 A. There is no particular reason it was not sent off ex-
5 actly. We had people in custody.

6 Q. Thank you. That's all the questions I have at this
7 time.

8 SOLICITOR: Your Honor, I would ask permission to pub-
9 lish State's Exhibit Numbers 5, 7, 8 and 9.

10 THE COURT: They are in evidence. You may do so.

11 SOLICITOR: Thank you.

12 THE COURT: Let's just take a short break for about
13 five minutes and then we will resume.

14 All right, five minutes.

15 Mr. Foreman, ladies and gentlemen of the jury, you all
16 can go into the jury room for five minutes.

17 (Jury excused from Courtroom. The Court took a brief
18 recess after which the matter was continued)

19 THE COURT: All right, is everybody ready to proceed?

20 SOLICITOR: State's ready, Your Honor.

21 THE COURT: Defendant?

22 MR. COCKRELL: Ready, Your Honor.

23 THE COURT: Have them come in, please.

24 (Jury returned to Courtroom)

25 THE COURT: All right, Cross Examination.

MR. JORDAN ON CROSS

1 MR. COCKRELL: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. COCKRELL:

4 Q. Mr. Jordan, what is your exact title with the Sheriff's
5 Department?

6 A. At this time?

7 Q. Yes.

8 A. At this time, I'm Chief of Detectives.

9 Q. Okay. At the time of the incident, what was your
10 title?

11 A. At the time of the incident, I was Staff Sergeant.

12 Q. Staff Sergeant?

13 A. Yes.

14 Q. Okay. Were you the lead investigator in this matter?

15 A. Yes, I'm the lead.

16 Q. Okay, and prior to the time you were the lead inves-
17 tigator on this matter you had had a lot of opportunities
18 to investigate robberies and other crimes?

19 A. Yes. That was my primary job with the Sheriff's Of-
20 fice.

21 Q. Okay, and so one of the duties that you had as the
22 lead investigator was obviously in the crime to try to fig-
23 ure out who, what, when and where?

24 A. That's right.

25 Q. Tell me again what brings you to place Mr. Hinson at

1 the scene of this crime?

2 A. His self admission saying he was at the Piggly Wiggly
3 with the Codefendants who were arrested. Also, the witness
4 statements and also some evidence that we got from up in
5 Charlotte.

6 Q. Okay, and the picture in Charlotte -- who took that pic-
7 ture?

8 A. It was shot by Mr. Bryan Holmes.

9 Q. Isn't it true that one of your officers is the one
10 who identified Mr. Hinson in the picture?

11 A. Lieutenant Randall and Officer Scott.

12 Q. And what items of evidence did you come up with in the
13 investigation?

14 A. I'm sorry.

15 Q. What items of evidence . .

16 A. Two handguns, coveralls, mask, a set of keys.

17 Q. And what about -- was there a wallet?

18 A. Yes, a wallet was found.

19 Q. And the mask -- how many masks were found?

20 A. I want to say two.

21 Q. Okay, two masks?

22 A. I believe so.

23 Q. And some coveralls, how many coveralls?

24 A. Two

25 Q. And a wallet?

MR. JORDAN ON CROSS

1 A. Yes..

2 Q. And so as chief investigator, you sent these items off
3 to be analyzed?

4 A. At the time we didn't have a suspect in custody to
5 have anything to compare.

6 Q. Okay.

7 A. And with the amount of evidence collected every day,
8 the State will not collect -- or accept evidence unless we
9 have samples to go with that evidence.

10 Q. What identifying factors do you have on these items to
11 place them at the actual scene or the victim situation?

12 A. As far as the guns, they were found within ten yards
13 of the incident back door or incident location which the
14 victim indicated the suspects ran from his residence.

15 We had bloodhounds -- we ran a track straight across --
16 we ran a track and found the guns and found the wallet while
17 tracking the suspects.

18 Some of the evidence found was while tracking the sus-
19 pects. The coveralls were located the next day by a resi-
20 dent about a block from the incident location.

21 Q. Do you have any explanation as to why the coveralls
22 were not found by the bloodhounds that night?

23 A. That are variances -- a bunch of variances on that.
24 Then too, I don't know exactly where the coveralls were
25 found.

1 It could have been anything. I have no idea where the
2 coveralls were found.

3 Q. That's as far as the bloodhounds got?

4 A. To my understanding, they were on the east -- the west
5 side of Chester Park which would have been the neighborhood
6 right beside the Piggly Wiggly. Of that, I'm pretty sure.

7 Q. Okay, so did you -- do you know if the bloodhounds did
8 try to pick up a scent on the other side of I-95?

9 A. I don't know, other than what they specifically showed
10 me or told me near Chester Park. That's the only knowledge
11 I have of that.

12 Q. Okay, okay. Getting back to at the scene at Mr.
13 Merriman's home, when you commence an investigation one of
14 the things you do is get to the scene and try to figure out
15 -- look at the evidence and talk to the people, and you had
16 said you talked to Mr. Merriman and his girlfriend.

17 What did you see at the scene?

18 A. Um, I saw Mr. Merriman's vehicle, a Ford Taurus, I be-
19 lieve.

20 Q. Okay.

21 A. The trunk was open and he was back there. He was -- had
22 been wounded, and there really wasn't much to see. The house
23 was in disarray. They had ramsacked the house.

24 Q. Did he walk you through what had happened?

25 A. Yeah, we walked through the back door of the residence

MR. JORDAN ON CROSS

1 and I went as far as the living room. Actually, I went in
2 the bedroom and walked back through, and he showed me where
3 the two women were, their kids, and showed me where the keys
4 were at. He took me out the back door and showed me the car.

5 Q. What did he do when he showed you the car?

6 A. He described what had gone on.

7 Q. Okay, did he -- was the trunk open on the car?

8 A. Yes, the trunk was open.

9 Q. Okay, you come to the scene . .

10 A. I was dispatched there.

11 Q. . . and obviously now you recognize there had been a
12 robbery that had occurred?

13 A. Now when I was initially dispatched there I believe it
14 was to a robbery.

15 Q. Okay, and so you're there and obviously you talked to
16 Mr. Merriman?

17 A. Yes, sir.

18 Q. And you said that the first person you had knowledge of
19 was Mr. Smith?

20 A. A question I asked Mr. Merriman was did he have any
21 idea of who would have done this to him, and he told me Mr.
22 Smith had left his house twenty to thirty minutes prior to
23 this happening.

24 Q. And had you had or had your office investigated other
25 matters involving Mr. Smith?

1 A. Yes..

2 Q. Had he been involved in drug activity or robberies or
3 what?

4 A. I'm sorry. What was that?

5 Q. Did you or your office have other investigations in-
6 volving Mr. Smith?

7 A. He is currently in jail for burglary. He's got some
8 business right now where the Solicitor's Office is going to
9 check into involving more robberies.

10 Q. Did you -- were you able to get up with Richard Smith
11 that evening?

12 A. I did get up with Richard Smith after the bloodhounds
13 did their search. It was probably twelve thirty or one
14 o'clock in the morning. I ran into him at the gas station
15 in Chesterfield. He was a passenger in his mother's car.

16 His mother -- when I pulled in I saw the car so I pulled
17 in behind them and came up on the driver's side. I spoke to
18 the individuals in the car.

19 I asked his mother where Richard was at and she told me
20 he was a passenger in the car. I went on the passenger side
21 and talked to him.

22 Q. What did he indicate he had been doing that night?

23 A. I've been home all night. My momma just picked me up
24 -- same old stuff. He had been home. He was using her for
25 an alibi.

MR. JORDAN ON CROSS

1 Q. I got you. Did you -- was Mr. Richard Smith -- was
2 he arrested?

3 A. We started investigating and he was arrested.

4 Q. Can you tell us when he was arrested?

5 A. When he was arrested -- Richard was arrested on the 22nd
6 of October.

7 Q. So two days after the event?

8 A. Yes.

9 Q. Okay, so you get a call to the Merriman's house and you
10 start your investigation. The police bloodhounds find a wal-
11 let, and the wallet contains what?

12 A. The wallet came back to Richard Martin.

13 Q. And was there a warrant out then for Richard Martin?

14 A. That same day.

15 Q. So you immediately had that warrant issued?

16 A. Yes.

17 Q. So within forty-eight hours, it sounds like, you issued
18 a warrant for Mr. Richard Smith?

19 A. . .

20 Q. Is that correct?

21 A. I signed the warrant for Mr. Martin at four o'clock that
22 day, and I signed the warrant for Mr. Smith -- signed Mr.
23 Smith's warrants on the 21st and he was taken in custody on
24 the 22nd.

25 Q. Okay, okay, and then tell me about the other individual.

MR. JORDAN ON CROSS

1 How did you get a bead on the other individual?

2 A. . .

3 Q. I'm not talking about Garth Hinson, but the other in-
4 dividual.

5 A. We ran the information we had gotten on the car, and
6 we went to Enterprise Rental in Charlotte and got a copy of
7 the rental agreement, and Maurice Anderson was on the rental
8 agreement.

9 Well, actually we got the gun and ran a GPS tracking on
10 the gun. It came back to him, Maurice Anderson.

11 So we had Maurice Anderson twice, signing for the car
12 and on the gun.

13 Q. Okay.

14 A. On the 22nd is when we found out about the gun coming
15 back to Maurice Anderson, and then we followed up on the
16 rental car.

17 Then when we collected the coveralls and brought them
18 to the Chesterfield Police Department, there was a white tag
19 on the coveralls. When we run that tag it came back to
20 D and K Services, and those folks were out of Charlotte,
21 North Carolina.

22 So we called D and K and gave them the number on the
23 tag which came to rental to Maurice Anderson.

24 Q. So you had the gun found ten yards away from the
25 scene, is that right?

MR. JORDAN ON CROSS

1 A. Yes.

2 Q. And you had the rental agreement?

3 A. Yes.

4 Q. And then you had the coveralls that belonged to the
5 company that Mr. Anderson worked for?

6 A. No, he rented the coveralls from them.

7 Q. So he had specifically rented the coveralls from that
8 company?

9 A. Yes.

10 Q. Okay, thank you.

11 / And then you've got Richard Smith and you've got the
12 wallet and Richard Martin.

13 How quickly did you issue a warrant for Maurice
14 Anderson?

15 A. This was on the 24th as well, sir.

16 Q. So immediately or within a few days of the investiga-
17 tion you had these three warrants?

18 A. We had the information to obtain those warrants.

19 Q. On these three individuals?

20 A. On all four individuals.

21 Q. So you're saying that Mr. Hinson -- you had a warrant
22 for Mr. Hinson the same day?

23 A. Yes, sir.

24 Q. Okay, and when you were in the house, was it ramsacked
25 or was there any evidence of a struggle at all?

1 A. None that I saw.

2 Q. Okay. Merriman was in the yard, so there wasn't a
3 break-in of his home?

4 A. No, there wasn't.

5 Q. So no evidence of a break-in and no sign of a struggle?

6 A. None that I saw.

7 Q. Did Mr. Merriman indicate that any of the perpetrators
8 had gloves on?

9 A. No.

10 Q. Did you dust for fingerprints?

11 A. No.

12 Q. Did you try to find any other trace evidence at all?

13 A. No, the suspects stayed in two parts of the house, and
14 then Mr. Merriman was in and out of the house, so we
15 would have gotten his prints rather than the one who stayed
16 in the house.

17 Q. How about Mr. Merriman's vehicle? Did you dust the
18 trunk?

19 A. Mr. Merriman was the one who put items in the trunk so
20 again we would have lifted his prints. There was no evidence
21 that any of the suspects touched the vehicle.

22 Q. Okay. So moving along, you found the wallet, you lo-
23 cated Mr. Smith, located Mr. Anderson. Two days fast-forward
24 -- one day fast-forward to the 23rd. You got information on
25 the rental car?

MR. JORDAN ON CROSS

1 A. We had the information on the rental car.

2 Q. When did you contact the rental car company?

3 A. The next day we followed up on the rental car.

4 Q. Okay.

5 A. We had the tag information and the rental car company's
6 place of business.

7 Q. Okay, the very next day?

8 A. Yes, it was.

9 Q. Okay, and you contacted the manager of the rental car
10 company?

11 A. Yes.

12 Q. And I guess then you get to the Enterprise place and
13 that's where you got information as to Garth Hinson?

14 A. Right.

15 Q. So when you got to Enterprise Rental that was the first
16 you knew of Mr. Hinson?

17 A. Well, Mr. Merriman told us that night that -- he gave
18 us his information that night. We had the witness' state-
19 ment as well as the photo from the rental car company.

20 Q. Was there any other information that indicated -- did
21 you look at this contract for the rental car?

22 A. Yes. It had the Hinson last name on it.

23 Q. But was that one of the triggers to Mr. Hinson?

24 A. It was a trigger, yes. One of them.

25 Q. But everything on this document indicates that Maurice

1 Anderson's name is on the contract as the party who rented
2 the car?

3 A. Yes, but Mr. Hinson was with Mr. Anderson at the time
4 he rented the car.

5 Q. Okay.

6 A. Mr. Holmes said they put it in both of their names but
7 the information on here is about Mr. Anderson.

8 Q. All right. This is the document concerning the vehicle
9 that was, I guess, driven on the night of this incident?

10 A. That's the vehicle that was given to us by the Piggly
11 Wiggly employees. The tag number of that vehicle.

12 Q. And is this the only time -- when you went to Enterprise
13 Rental did you do a thorough investigation as to the rental
14 of this vehicle?

15 A. Yes, he gave us a copy of the contract. He also gave
16 me information that the rental fee was paid in cash. He gave
17 me all of the documents.

18 Q. Okay. Did he indicate that these two individuals had
19 rented this vehicle?

20 A. That's correct.

21 Q. I want to draw your attention to the signature at the
22 bottom, Maurice Anderson.

23 THE COURT: What number is that?

24 MR. COCKRELL: I'm sorry. This is State's Exhibit 7.

25 THE COURT: Go ahead.

MR. JORDAN ON CROSS

1 A. I see this, yes.

2 BY MR. COCKRELL:

3 Q. Okay, and what's the date on that?

4 A. It's 10 12 of 2012.

5 Q. And on the bottom, what date is that?

6 A. Which date?

7 Q. The first date.

8 A. It says he will return the car on 10 15.

9 Q. Okay.

10 A. That's what it says on this copy.

11 Q. Okay. Now, as the investigator in this matter, Lieuten-
12 ant Jordan, you've got a wallet, you've got a gun, you've
13 got a hat, coveralls.

14 You've got three -- your investigation has revealed
15 three individuals. Why did you not send this off to SLED?

16 A. We didn't have a source to compare what they would find.

17 Q. And after you arrested and retained at least Mr. Richard
18 Smith and Mr. Richard Martin, did you try to obtain DNA
19 swabs?

20 A. No, sir.

21 Q. So you didn't try to send DNA swabs to SLED?

22 A. No, we didn't.

23 Q. Why did you not try to obtain DNA swabs?

24 A. Well, two of them gave confessions and -- two of the
25 four CoDefendants, and also one became a witness.

- 1 Q. Which of the two gave confessions?
- 2 A. Maurice Anderson and Richard Martin.
- 3 Q. They confessed to the armed robbery?
- 4 A. They gave verbal confessions.
- 5 Q. Did they confess to kidnapping?
- 6 A. They gave confessions verbally as to what they did.
- 7 Q. Did they -- okay. Okay, are they serving time right
- 8 now?
- 9 A. They haven't come to Court yet; have not tried them.
- 10 Q. Mr. Richard Martin and Mr. Maurice Anderson . .
- 11 A. Yes. Richard Martin and Maurice Anderson.
- 12 Q. And the coveralls and one of the guns led directly to
- 13 the two gentlemen, is that correct?
- 14 A. That's correct.
- 15 Q. Okay. Two men confessed to a crime but a man asserts
- 16 his innocence, so do you not send it off to confirm the own-
- 17 ership of . .
- 18 A. He refused to give DNA.
- 19 Q. Did you not obtain a Court Order to get that?
- 20 A. No, I did not.
- 21 Q. You did not?
- 22 A. No.
- 23 Q. I'm going to hand you an affidavit. Can you identify
- 24 that?
- 25 Is that an affidavit you filed?

MR. JORDAN ON CROSS

1 A. Yes, it is.

2 Q. Would you read that affidavit?

3 A. The entire affidavit?

4 Q. Please. Starting with I am an investigator . .

5 A. I am an investigator with the Chesterfield County

6 Sheriff's Office (Reading Defense Exhibit 1 rapidly to the
7 jury)

8 I participated in the investigation of armed robbery and
9 assault and battery of a high and aggravated nature, the case
10 in which the Defendant, Gartharee Hinson, was charged. (por-
11 tion inaudible)

12 There were four suspects in the kidnapping, ABHAN and
13 armed robbery case which occurred on or about October 20 of
14 2012.

15 Evidence was collected and items were sent to SLED for
16 possible analysis. SLED requested a DNA sample be provided
17 for testing. (portion inaudible)

18 Q. Did we not have a hearing in which it was actually di-
19 rected that swabs be taken from the Defendant?

20 A. I was not here.

21 Q. So you are saying -- it is your testimony under oath
22 here today that no Order was issued?

23 A. I didn't say that. I don't recall that.

24 Q. Well, you recall all the other things, the exculpatory
25 evidence?

MR. JORDAN ON CROSS

1 A. . . .

2 Q. Is that your signature?

3 A. That is my signature.

4 Q. Okay.

5 MR. COCKRELL: I would move Defendant's 1 in evidence.

6 SOLICITOR: No objection.

7 THE COURT: All right, Defendant's 1 in evidence with-
8 out objection.

9 (Affidavit entered without objection as Defense Exhibit

10 1)

11 THE COURT: Mark the Affidavit in evidence he read
12 from, please.

13 You may proceed.

14 BY MR. COCKRELL:

15 Q. We've got SLED requesting DNA swab of Mr. Hinson and
16 he refuses?

17 A. . . .

18 Q. Is it not in your sworn affidavit where they request a
19 DNA swab?

20 A. They always request a swab. I'm not sure on that day,
21 if they actually requested a swab.

22 Q. Do you deny this is your affidavit?

23 A. Not at all. I am not aware of any Court Order.

24 Q. Does our affidavit provide that DNA requested a DNA sam-
25 ple be provided from the Defendant?

MR. JORDAN ON CROSS

1 A. It does say that. That comes from the Solicitor's Of-
2 fice.

3 Q. Okay.

4 A. They prepared this.

5 Q. So basically any statement in regard to any matter here
6 is not worth the paper it's written on?

7 A. No, sir, that's not correct. I'm saying this is my sig-
8 nature on this affidavit from the Solicitor's Office to get
9 the swab. I did not follow up or go to any hearing in ref-
10 erence to this.

11 Q. Let's check on that for you. Looking at what I've got
12 in my file in terms of what SLED got, they got a black hat
13 from a suspect, a black mask from a suspect, a forty-five, a
14 Keltec nine milimeter pistol, a swab from the pistol grip
15 and a swab from the pistol trigger, unfired cartridge, a swab
16 from the cartridge, a swab from the pistol magazine, a swab
17 from the unfired cartridge of the Winchester forty-five. car-
18 tridge, a swab from the cartridges or shells of the nine mili-
19 meter, swabs from the end of the pistol magazine, swab
20 from additional cartridge.

21 Don't you feel that it would be proper to have those
22 items analyzed for DNA analysis if SLED specifically had re-
23 quested it?

24 A. Other than Mr. Hinson there is DNA but I did not have
25 his DNA and I could not force him to give it.

MR. JORDAN ON CROSS

1 Q. Is it your testimony that you were not able to get it
2 from him?

3 A. I was not. It was not done, as he refused.

4 Q. Did we not have a hearing in which Judge Baxley directed
5 a swab to be taken?

6 A. I was not there. I was not at any hearing. If he had
7 directed me to get a DNA swab, I would have done it. I do
8 not recall this hearing.

9 I do recall signing this. I do recall this affidavit,
10 but I do not recall that hearing.

11 Q. Okay. So you've got three individuals. You go up
12 to Charlotte and get something with his name on it. You al-
13 legedly see pictures of the Defendant or Mr. Hinson that
14 still hasn't been produced to the Defense.

15 SOLICITOR: If Your Honor please, at the appropriate
16 time I would like to approach the bench.

17 THE COURT: All right, ladies and gentlemen. Go to your
18 jury room, please.

19 (Jury excused from Courtroom to jury room)

20 THE COURT: Mr. Cockrell, tell me what document you say
21 has never been provided to the Defendant.

22 MR. COCKRELL: Well, Your Honor, it's the video they
23 apparently have seen from Enterprise, from which they made
24 a photograph.

25 THE COURT: There is no indication in this trial that:

MR. JORDAN ON CROSS

1 the video was ever seen. All he said was he investi-
2 gated it with the rental company and they said they had to
3 check with their superiorrs, and thereafter they got
4 from Enterprise the photograph.

5 Are you telling me the State never supplied that photo-
6 graph to you?

7 MR. COCKRELL: I got the photograph.

8 THE COURT: The one that's in evidence. Correct,
9 Solicitor?

10 SOLICITOR: Yes, sir.

11 THE COURT: So your statement to the jury is wrong then?
12 Your statement in front of the jury is wrong. Is that cor-
13 rect?

14 MR COCKRELL: Yes, Your Honor, it is.

15 THE COURT: Okay, call the jury back out.

16 SOLICITOR: Thank you, Your Honor.

17 (Jury returned to the Courtroom)

18 THE COURT: All right, ladies and gentlemen, you will
19 disregard the statement of Mr. Cockrell regarding not receiv-
20 ing a document from the State. That is incorrect.

21 You may proceed, Mr. Cockrell.

22 MR. COCKRELL: Thank you, Your Honor.

23 BY MR. COCKRELL:

24 Q. Mr. Jordan . .

25 MR. COCKRELL: May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 Q. Let me hand you up Defense Exhibit 2.

3 THE COURT: Any objection to that?

4 SOLICITOR: No, sir.

5 THE COURT: Hand that up first to the Court Reporter so
6 she can mark it as Defense 2.

7 You may proceed, Mr. Cockrell.

8 MR. COCKRELL: Thank you, Your Honor.

9 Q. Lieutenant Jordan, do you see the Order here?

10 A. Yes, sir.

11 Q. Does that Order the Sheriff's Department to take a DNA
12 swab from Mr. Hinson?

13 A. Yes, sir.

14 Q. Does it indicate that is based on live testimony from
15 you, as well as your affidavit?

16 A. My affidavit. Yes, my affidavit.

17 Q. Read the last paragraph, please.

18 A. (Reading from Defense Exhibit 2 rapidly)

19 Q. On the first page does it not say, as a result of the
20 criminal investigation -- one of the investigators -- the
21 investigating officers was present at the hearing and offered
22 said officer's sworn testimony?

23 A. Yes, sir, it does.

24 Q. Thank you. So that Order has not been carried out,
25 has it? The Order that is Exhibit 2 was not carried out,

1 has it?

2 A. I never took a swab from him.

3 Q. Let me draw your attention to your incident report. On
4 page four . .

5 A. Yes.

6 Q. . . if you will look halfway down -- I'm on the wrong
7 page. Yes, the bottom of page four.

8 If you look at that, does it say also shown to investi-
9 gators was videotape of a tall black male who came into the
10 business to make payments on a rental.

11 A. Uh hm.

12 THE COURT: You need to say yes or no.

13 A. Oh, yes, sir.

14 Q. And it indicates a subpoena was sent to Enterprise to
15 obtain the videotape footage which they did produce -- see
16 video.

17 Do you see that?

18 A. They didn't send the video. They showed us the video
19 but they never sent it. He said he was going to send it to
20 us but he never sent the video.

21 The only video we saw was there at the store that one
22 time.

23 Q. So on October 23rd you went to Enterprise to meet with
24 the manager?

25 A. That's right.

1 Q. And you looked at the video at the same time?

2 A. Yes.

3 Q. Tell me how that was done.

4 A. He pulled it up for us to see and we didn't see it any
5 more. We came back and sent him a subpoena but he never sent
6 the video.

7 Q. So you are saying they never produced the video?

8 A. They never did.

9 Q. You came back to Chesterfield?

10 A. Yes, sir.

11 Q. And you meet with Mr. Rick Merriman?

12 A. He came to the office.

13 Q. And present were the same individuals who went with you
14 to Charlotte?

15 A. Yes, sir.

16 Q. Okay, and that is when you sit down with Mr. Merriman
17 and look at the picture on Facebook?

18 A. Yes.

19 Q. Okay, and is that when Detective Davis indicates is this
20 not the guy on the video?

21 A. That's correct.

22 Q. Now, during your investigation did you learn that it had
23 been a long time since Mr. Merriman had seen Mr. Hinson?

24 A. He said it was when he was a child.

25 Q. When Mr. Hinson and Mr. Merriman were children?

MR. JORDAN ON CROSS

1 A. That's right. He said they were in school together.

2 Q. So some five to ten years earlier?

3 A. Yes, sir.

4 MR. COCKRELL: Court's indulgence for one second.

5 THE COURT: Yes, sir.

6 BY MR. COCKRELL:

7 Q. Just one last follow-up, Lieutenant. You went
8 to Enterprise Rental Car the very next day after this or two
9 days after the incident, on October 22nd?

10 A. . . .

11 Q. Is that correct?

12 A. The 23rd.

13 Q. Okay, was it the morning or the afternoon?

14 A. I'm not sure.

15 Q. Did you talk to any other employees at that Piggly Wig-
16 gly than Ms. Beth Stepp?

17 A. I think she's the only one.

18 Q. All right, thank you.

19 THE COURT: All right. Redirect?

20 SOLICITOR: Thank you, Your Honor. May it please the
21 Court?

22 REDIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. I have just a little follow-up on questions that were
25 asked on Cross.

1 SOLICITOR: I will move State's Exhibit 10 into evi-
2 dence after a couple of foundation questions of the witness.

3 THE COURT: All right, sir.

4 BY SOLICITOR:

5 Q. On State's Exhibit 10, can you tell me who this was
6 sent by?

7 A. This is the SLED Forensic Services Laboratory. It is
8 their report.

9 Q. Okay, and do you recall seeing that particular document?

10 A. Yes.

11 SOLICITOR: I would move State's Exhibit 10 in evidence
12 at this time.

13 THE COURT: Any objection?

14 MR. COCKRELL: No, Your Honor.

15 THE COURT: All right, Number 10 is in evidence without
16 objection.

17 (SLED DNA analysis report admitted without objection as
18 State's Exhibit 10)

19 THE COURT: You may proceed.

20 SOLICITOR: Yes, sir.

21 BY SOLICITOR:

22 Q. What was the nature of that letter? Why was that let-
23 ter sent to you; just for some background?

24 A. Because we didn't have some of what was required for
25 DNA analysis.

MR. JORDAN ON REDIRECT

1 Q. What does -- tell us about the work-up as done by you
2 all?

3 A. Well, we have our normal standard to go by to send to
4 them, such as on a fingerprint. They can run a fingerprint
5 through their data base.

6 But with DNA analysis from my experience, they need to
7 have something for comparison, knowing what they do..

8 Q. Now, and this is important -- I'll do this chronologic-
9 ally.

10 What is the date on that particular document?

11 A. Uh, November 26, 2012, is when they sent this to me.

12 Q. When the items were gathered and sent, at that time did
13 you have the Defendant's standards to be able to send them
14 to SLED?

15 A. No.

16 Q. Now, had you even talked to the Defendant at the time
17 they were sent?

18 A. I believe he was in custody.

19 Q. And I refer you to the last page of your -- the last
20 of several pages of the report.

21 A. He was the last one that was taken into custody.

22 Q. And he was taken into custody on what date?

23 A. He was brought to our office on the 4th of January.

24 Q. Of . .

25 A. Of 2013.

1 Q. So let's be clear. You get the letter from SLED on the
2 26th of November?

3 A. Yes.

4 Q. And you didn't have anything at that time from the De-
5 fendant to send to SLED?

6 A. That's correct.

7 Q. And you get him on the 4th and bring him to the Sher-
8 iff's Office and you mirandize him?

9 A. That's correct.

10 Q. And did you get some information from him?

11 A. Just some self-admission. Who he was with, where he was
12 at, how he left the scene.

13 Q. Okay. Now, on the 4th of January?

14 A. That's correct.

15 Q. And so after SLED had sent this letter back to you, did
16 you have a chance to talk to him?

17 A. Correct.

18 Q. And, again, did the Defendant place himself with Richard
19 Smith in any of the armed robberies or burglaries you were
20 asked about on Cross?

21 A. Yes.

22 Q. Okay, did he place himself with Maurice Anderson?

23 A. Yes.

24 Q. Did he place himself with Richard Martin?

25 A. Yes.

MR. JORDAN ON REDIRECT

1 Q. And this is by his own words, his own statement to you,
2 is where that came from?

3 A. Yes.

4 Q. At that point in your experience as an investigator,
5 based on what you had -- again, had you already talked to
6 Mr. Merriman and had he named this Defendant as being recog-
7 nized by his voice and what not?

8 A. Yes.

9 Q. So when you put all of that together in your investiga-
10 tion, at that point did you proceed any further as it re-
11 lates to any DNA?

12 A. No, sir, I didn't.

13 Q. Because . . .

14 A. I had all the Defendants, the statement from the vic-
15 tim.

16 Q. And he had placed himself with the other Defendants?

17 A. He had placed himself with them.

18 Q. Now, let me also ask you about what has been marked as
19 Defense Exhibit Numbers 1 and 2. I'll ask you about Number
20 2. As of today, had you ever seen that?

21 A. No.

22 Q. And, in fact, have they just gotten that Exhibit out of
23 the Clerk of Court's file?

24 A. Yes.

25 Q. Had you ever seen a copy?

MR. JORDAN ON REDIRECT

1 A. I had never seen it before today.

2 Q. Okay. Now, this is important. You talked about the
3 Affidavit. Did you initiate the desire to go forward with
4 any DNA testing that was brought to you by the Solicitor's
5 Office?

6 A. . .

7 Q. In other words, was that to the best of your knowledge
8 initiated by the Solicitor's Office?

9 A. It was initiated by the Solicitor's Office.

10 Q. And it's already in evidence but was the Assistant
11 Solicitor listed as being present?

12 A. The State was represented by Assistant Solicitor Mary
13 Thomas or Mary T. Johnson.

14 Q. And during that period of time did you have any other
15 discussions regarding this particular case with Ms. Johnson?

16 A. I don't ever recall speaking to her about it.

17 Q. Who did you deal with in this case after that
18 point?

19 A. It was you.

20 Q. Okay.

21 A. And I want to say Kirby Jones if I'm not mistaken I
22 dealt with.

23 Q. Okay, and at any time was there any discussion as it
24 relates to DNA in those discussions with either of them?

25 A. No.

1 Q. And, again, when is the first time that you became
2 aware of the existence of that Order?

3 A. This morning when Mr. Cockrell handed it to me.

4 Q. And did you -- during the investigation as the inves-
5 tigator did you go to the Solicitor's Office asking that
6 this work be done?

7 A. Did I ask . .

8 Q. Yeah, did you ask them?

9 A. No.

10 Q. And, in fact, again, on January 4, 2013, after you had
11 gotten the letter from SLED, after you had talked with all
12 of the Defendants -- did you yourself, from your own inves-
13 tigative experience, see the need to go further with any DNA?

14 A. No, I didn't see the need.

15 Q. And, again, in that vein, that was from what the Co-
16 Defendant and the Defendant told you?

17 A. Yes, the CoDefendant and the CoDefendant -- what they
18 told me.

19 Q. And, also, did the Defendant admit to having been or
20 being at the scene or near the scene and running upon hear-
21 ing of the robbery?

22 A. That's correct.

23 Q. So he was in the immediate proximity where law en-
24 forcement were, and he admitted to having run?

25 A. Yes, sir.

1 Q. And based on all of that, did you think he was in-
2 volved, based on the evidence you had?

3 A. Yes.

4 Q. And based on all of that, did you see the need to fol-
5 low any further?

6 A. No.

7 Q. I have nothing further.

8 THE COURT: Anything on those particular questions,
9 Mr. Cockrell?

10 MR. COCKRELL: Just briefly.

11 SOLICITOR: I have no objection to that, Your Honor.

12 MR. COCKRELL: Defendant's Exhibit 3.

13 THE COURT: Hand it to the Court Reporter. Did you want
14 to ask the witness some questions about that?

15 RE CROSS EXAMINATION

16 BY MR. COCKRELL:

17 Q. Lieutenant, what is the date of that Motion?

18 A. . .

19 Q. Look on the second page.

20 A. May 16, 2013.

21 THE COURT: So that's Defendant's 3 submitted in evi-
22 dence with no objection from the State. Defense 3 is in evi-
23 dence without objection.

24 (Motion and Order admitted without objection as Defense
25 Exhibit 3)

1 THE COURT: Anything further, Mr. Cockrell?

2 MR. COCKRELL: No, Your Honor. I don't have anything
3 further.

4 THE COURT: All right. Then you may step down, sir.
5 Thank you.

6 (Witness excused from stand)

7 THE COURT: The Exhibits -- if you would just hand
8 those up to the Court Reporter.

9 WITNESS: Yes, sir.

10 THE COURT: All right, Solicitor, who is your next wit-
11 ness?

12 SOLICITOR: Thank you, Your Honor. At this time I call
13 Richard Martin.

14 THE COURT: All right, sir. Come up here to be sworn,
15 sir.

16 RICHARD MARTIN, being duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR:

20 Q. Mr. Martin, would you speak as loud as you can so the
21 ladies and gentlemen of the jury can hear you.

22 A. Yes, sir.

23 Q. Mr. Martin, where -- do you live in Chesterfield County,
24 South Carolina?

25 A. No.

MR. MARTIN ON DIRECT

1 Q. Where are you from?

2 A. I'm from Charlotte.

3 Q. I need you to speak up, please. If I can't hear you:
4 I'm not sure the ladies and gentlemen of the jury can hear
5 you.

6 State your full name.

7 A. Richard Martin.

8 Q. Prior to October 20 of 2012, had you ever been to
9 Chesterfield County?

10 A. No, sir, I hadn't.

11 Q. Have you been charged in this particular offense?

12 A. Have I what?

13 Q. Do you have pending charges?

14 A. Yes, I do.

15 Q. And let's get this out in front here first.

16 Have you been promised anything in exchange for your
17 testimony?

18 A. No, sir.

19 Q. And why did you agree to testify here in behalf of the
20 State?

21 A. Because of the situation and I felt that something
22 should be done about it.

23 Q. Let's do this. Do you know the Defendant?

24 A. Yes, sir.

25 Q. About how long had you known him before October 20th?

MR. MARTIN ON DIRECT

1 A. I can't tell you, but I recognized him.

2 Q. Had you had a chance -- I guess before you met the De-
3 fendant before this incident -- were you asked to make a trip
4 down to Chesterfield County?

5 A. All he asked, he asked me to take a ride with him.

6 Q. Did you know you were coming to Chesterfield?

7 A. No, sir.

8 Q. Now, tell us about how that transpired. How did the
9 Defendant -- what happened between you and the Defendant be-
10 fore you took the ride?

11 A. . .

12 Q. What happened that day that caused you to go with him?

13 A. . .

14 Q. Did you know Maurice Anderson before that?

15 A. Yes.

16 Q. Did you know Mr. Smith?

17 A. Not then.

18 Q. And you had known the Defendant but only briefly?

19 A. Yes, sir.

20 Q. And you met the Defendant up in Charlotte, I guess, in
21 the day or two prior to coming to Chesterfield?

22 A. Yes, sir.

23 Q. And what made you decide to go on this ride with the De-
24 fendant?

25 A. I was just hanging out and he asked me.

1 Q. About what time was it that you all left Charlotte?

2 A. Early morning.

3 Q. Okay, early morning. Okay, and once you got to
4 Chesterfield tell us what transpired during the course of
5 the day once you got to Chesterfield?

6 A. We stopped in a parking lot, picked up somebody.

7 Q. And was this the area you were in and around the en-
8 tire time you were in Chesterfield?

9 A. Yes, sir. We picked up Richard Smith.

10 Q. All right, so tell us about that. What did you do then?

11 A. We went in another neighborhood.

12 Q. I know it was your first time in Chesterfield, but do
13 you remember about where it was that you picked Richard up
14 from?

15 A. No, I can't.

16 Q. Okay, and you went somewhere else after you picked him
17 up?

18 A. Uh hm. We went to the Piggly Wiggly.

19 Q. So you ultimately came back to the Piggly Wiggly?

20 A. Yes.

21 Q. Tell me what happened when you got back to the Piggly
22 Wiggly.

23 A. Richard Smith got in another car. A green car.

24 Q. And did you ever see him again?

25 A. No.

MR. MARTIN ON DIRECT

- 1 Q. Did he tell you specifically what you all were going to
2 do or what would take place during this ride?
- 3 A. Yes, sir.
- 4 Q. What did he say?
- 5 A. He said we was going to get some weed.
- 6 Q. Okay, going to get some weed?
- 7 A. Right.
- 8 Q. All right, so you all started down to Chesterfield?
- 9 A. Yes.
- 10 Q. In order to get some weed?
- 11 A. Yes, sir.
- 12 Q. So tell me about the ride down here. Who rode with
13 you?
- 14 A. It was Hinson and Maurice.
- 15 Q. Okay, Maurice Anderson and the Defendant?
- 16 A. Yes, sir.
- 17 Q. Okay. Now, when you all got -- did you all end up in
18 Chesterfield?
- 19 A. Yes, sir.
- 20 Q. What were you all riding in?
- 21 A. A white Charger.
- 22 Q. Okay, and who was driving?
- 23 A. Hinson.
- 24 Q. Okay, and you say Maurice was also with you all?
- 25 A. Yes, sir.

- 1 Q. He got in the green car and you all were back in
2 the Dodge Charger?
- 3 A. And did you -- tell me what you did after that?
- 4 A. We smoked some marijuana.
- 5 Q. Was Richard Smith involved with that?
- 6 A. No.
- 7 Q. And you all were back in the Dodge Charger?
- 8 A. Yes, sir.
- 9 Q. What did you do after that?
- 10 A. We back in a neighborhood.
- 11 Q. Was it daylight or dark out?
- 12 A. Dark.
- 13 Q. Okay, and let me ask you this. Had you your-
14 self been smoking marijuana?
- 15 A. Yes.
- 16 Q. Tell me what happened then?
- 17 A. We got to this house and somebody was in the yard.
- 18 Q. Was it Chris Merriman's house?
- 19 A. Yes, sir, and the Defendant handed me a gun.
- 20 Q. Who handed you a gun? Let me go back to that a little
21 bit.
- 22 Who handed you a gun?
- 23 A. The Defendant.
- 24 Q. Tell me about that. In relation to the Defendant
25 handing you a gun what did he -- give me the context of that.

MR. MARTIN ON DIRECT

- 1 Why did he hand you a gun?
- 2 A. At first I didn't know, you know, and then he told
- 3 me we was going to pull a job, and I was his back-up.
- 4 Q. And you did it?
- 5 A. I did it.
- 6 Q. And, again, had you known this man very long?
- 7 A. No.
- 8 Q. At that point, were you regretting getting in that car?
- 9 A. Yes, sir.
- 10 Q. All right. So -- but you went in the house with him?
- 11 A. Yes, sir.
- 12 Q. So tell me what happened then to the victim, Mr.
- 13 Merriman?
- 14 A. Well, he had come outside the house and the Defendant
- 15 told him to go back inside, and as soon as he said that he
- 16 hit him with the gun.
- 17 Q. Okay. Now, . . .
- 18 A. And I did act as his back-up. I wouldn't do that again
- 19 though.
- 20 Q. What were you all wearing?
- 21 A. I was wearing what I came up there in, and the Defen-
- 22 dant was wearing was coveralls and had a mask on.
- 23 Q. All right. Let me show you what's been marked as
- 24 State's Number 5. Does this look familiar?
- 25 A. Yes.

MR. MARTIN ON DIRECT

1 Q. And why does that look familiar?

2 A. That's the (inaudible)

3 Q. I'm going to ask you to speak louder. You are soft--
4 spoken so speak as loud as you can.

5 Repeat what you just said.

6 A. That's what he had on.

7 Q. Do you know where he got those from?

8 A. From Maurice.

9 Q. Okay, and do you recognize State's Exhibit 4?

10 A. The mask he had on.

11 Q. Now, I'm going to go back. I've kind of broken it up
12 a little bit.

13 So you get out of the car when you got to Mr. Merriman's
14 house. At that point, take us again through what happened?

15 A. He told Mr. Merriman to go back in the house and he
16 went in and he hit him.

17 Q. Okay.

18 A. And he told me to in the back room, so I went back in
19 there and then he . .

20 Q. Were items being taken from the victim at this time?

21 A. Yes.

22 Q. All right, and did you actually see when the Defendant
23 hit Mr. Merriman?

24 A. Yes.

25 Q. Okay, and do you recall about where you were in the house

MR. MARTIN ON DIRECT

1 when you saw that?

2 A. In the hallway and he hit him again. (Portion not aud-
3 ible)

4 Q. So you all were in the house during the rest of what
5 was in the house was going on?

6 A. I was in the house when (inaudible)

7 Q. Let me ask you to repeat that again, and I'll ask you
8 to back up a little bit so we can hear what you're saying.
9 Would you repeat what you just said?

10 A. We was still in the house and they went in and out.

11 Q. And did you say the Defendant told you to go in the
12 back room?

13 A. Yes.

14 Q. Why did he do that? You still had the gun?

15 A. Yes, and I would hold the gun down unless the Defen-
16 dant came back around.

17 Q. Why did you do that?

18 A. Because I didn't want it.

19 Q. Did you see the two little children in the house?

20 A. Yes, I did.

21 Q. You didn't know their names, but you saw them with two
22 adults in the house?

23 A. Yes, I did.

24 Q. And were they in there at the time that you were there
25 helping the Defendant in this robbery?

1 A. Yes..

2 Q. Now, you saw the Defendant taking stuff inside the
3 house?

4 A. Yes.

5 Q. And I guess he's being a little bit belligerent?

6 A. Yes.

7 Q. Take me through the rest of what happened? What ulti-
8 mately ended the robbery or what happened?

9 A. I didn't want to be doing what I was doing and I was
10 leaving.

11 Q. Did you hear anything or tell the Defendant you had
12 heard something?

13 A. Yes, that I heard sirens.

14 Q. What did you do?

15 A. I panicked and left. I ran around the house and he
16 went around me.

17 Q. Did you all stay together the whole time?

18 A. We were together a little bit.

19 Q. What did you all do? Do you know what he did?

20 A. No.

21 Q. Did you see him again?

22 A. Not that night.. I went back to the Piggly Wiggly.

23 Q. Did you leave the Piggly Wiggly?

24 A. Yes.

25 Q. All right, tell me what happened?

MR. MARTIN ON DIRECT

- 1 A. I called Maurice Anderson.
- 2 Q. Had you all exchanged phone numbers?
- 3 A. Yes.
- 4 Q. So you called Maurice Anderson and got together with him?
- 5 A. Yes. We got together.
- 6 Q. Was Maurice with Richard Smith already?
- 7 A. Yes.
- 8 Q. Okay, and where did they take you?
- 9 A. I'm not sure. It was a main road.
- 10 Q. The main road the Piggly Wiggly was on?
- 11 A. Yes.
- 12 Q. Did they pick you up going further into town or while
- 13 you were going out?
- 14 A. They picked me up and we were heading out of town.
- 15 Q. You were headed like you were going out of town?
- 16 A. Yes.
- 17 Q. And did you -- do you recall where it was you dropped
- 18 Richard Smith off?
- 19 A. His mother's house, I believe.
- 20 Q. His mother's house?
- 21 A. Yes.
- 22 Q. Going out of town as if you were then going out of
- 23 Chesterfield?
- 24 A. I think so.
- 25 Q. And, again, you are not familiar with the area around . .

1 A. No, sir.

2 Q. And when you dropped Richard off, tell me what hap-
3 pened then?

4 A. We just kept driving.

5 Q. Who was driving?

6 A. Maurice.

7 Q. And at any time did you ever talk to or get back up
8 with the Defendant?

9 A. No.

10 Q. Was that the last time you saw him?

11 A. Yes.

12 Q. We've talked about -- I've shown you a couple of things.
13 Let me show you -- I'm going to show you State's 1 and 2. I
14 believe you corrected me on something.

15 I want you to explain it to the jury, and I appreciate
16 your honesty -- which gun did you have? This one?

17 A. I had this one.

18 Q. And which one did he have?

19 A. That one.

20 Q. Did you hit anybody during the whole time?

21 A. No.

22 Q. Did you point your gun at anybody during the time,
23 sir?

24 A. No.

25 Q. Was there a lot going on at that particular time?

MR. MARTIN ON DIRECT

1 A. There was.

2 Q. Is there any question in your mind that you saw the De-
3 fendant actually hit Mr. Merriman several times?

4 A. He hit him.

5 Q. Let me ask you another question regarding what was
6 transpiring at the house.

7 Based on what was going on, were any of those folks,
8 Mr. Merriman, two ladies or the children -- were they free
9 to leave?

10 A. No.

11 Q. Were they being held against their will?

12 A. They were.

13 Q. And were you actually participating in holding them
14 against their will?

15 A. I did what he asked me to do.

16 Q. Okay. Now, when you -- let me ask you this.

17 Is there any question in your mind that the -- well,
18 let me ask it like this. Who was the mastermind in your
19 opinion? Who was the mastermind in this particular crime?

20 A. Richard and the Defendant.

21 Q. Say that again?

22 A. Richard and the Defendant.

23 Q. And are you referring to Richard Smith?

24 A. Yes.

25 Q. And let me ask you this question, just so the jury will

- 1 understand. Do you have a prior record?
- 2 A. Yes, sir, I do.
- 3 Q. In 2012 what were you arrested for?
- 4 A. I was arrested for breaking and entering.
- 5 Q. And what sentence did you receive?
- 6 A. Time served.
- 7 Q. All right, and did you do any probation or anything?
- 8 A. It was time served. Close to nine months.
- 9 Q. Would you repeat that?
- 10 A. Nine months.
- 11 Q. Was that in North Carolina?
- 12 A. Yes.
- 13 Q. Now, does the fact that you had that conviction in
- 14 2012 for which you got time served -- is that in any way re-
- 15 lated to what happened when you were here in Chesterfield?
- 16 A. No, sir.
- 17 Q. Does that in any way affect the truthfulness of what
- 18 you have testified here?
- 19 A. No.
- 20 Q. And, to be clear, who was it that -- who did you go
- 21 into the house with armed with those two guns?
- 22 A. The Defendant.
- 23 Q. And did the Defendant strike Mr. Merriman several times?
- 24 A. Yes, sir.
- 25 Q. And based on what he told you, did the Defendant insist

MR. MARTIN ON DIRECT

1 you keep the gun on those folks?

2 A. Yes, sir.

3 Q. And was that for the purpose of making sure that --
4 was that for the purpose of restraining their ability to
5 leave?

6 A. Yes, sir.

7 Q. And, again, and this is the last time I'll ask you.

8 Have I or has the State promised you anything in ex-
9 change for your testimony?

10 A. No.

11 Q. And you basically are testifying today not knowing what
12 will happen on your case?

13 A. Yes, sir.

14 Q. Do you understand you are charged with being in armed
15 robbery, kidnapping, and in witnessing an assault and bat-
16 tery?

17 A. Yes, sir.

18 Q. And yet you are still holding to your testimony?

19 A. Yes, sir.

20 Q. And would you point for the ladies and gentlemen of
21 the jury who it was that went in that house with you?

22 A. Mr. Hinson.

23 Q. I have nothing further.

24 THE COURT: All right. Cross Examination.

25 MR. COCKRELL: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. COCKRELL:

3 Q. Now, Mr. Martin, tell me about the events of the 2012
4 break-in conviction that you have? Breaking and entering.

5 A. . .

6 Q. Did you break into somebody's home?

7 A. I didn't break into anybody's home.

8 Q. Did you assist the State in that investigation?

9 A. No.

10 Q. Did you testify in that case?

11 A. No, sir.

12 Q. Did you give assistance in any way?

13 A. No, sir.

14 Q. Who else was involved in that?

15 A. I was with some old friends.

16 Q. Old friends?

17 A. Yes, sir.

18 Q. Okay, and what did you all do?

19 A. Well, they broke into somebody's home and I wasn't
20 there but I didn't say anything about it.

21 Q. Why didn't you say anything about it?

22 A. Because I didn't really think that it would go that
23 far.

24 Q. And when it did go that far, you just kept your
25 mouth shut?

MR. MARTIN ON CROSS

- 1 A. Yes.
- 2 Q. And you were able to get a sentence of time served?
- 3 A. I stayed in jail all during that time.
- 4 Q. How long were you in jail?
- 5 A. I think it was eight months.
- 6 Q. Eight months?
- 7 A. I think so.
- 8 Q. Was anything stolen?
- 9 A. I think some keys were stolen.
- 10 Q. Was there any drugs?
- 11 A. No.
- 12 Q. Do you do drugs?
- 13 A. No.
- 14 Q. Have you ever done drugs?
- 15 A. Yes, sir.
- 16 Q. When is the last time you did drugs?
- 17 A. The last time I did drugs was before this, in October
- 18 of last year.
- 19 Q. What made you quit using drugs?
- 20 A. Working.
- 21 Q. Where do you work?
- 22 A. I work at Lighthouse (inaudible).
- 23 Q. All right, and how long has it been since you talked
- 24 with the Chesterfield County Sheriff's Office or with the
- 25 Solicitor's Office?

MR. MARTIN ON CROSS

1 A. I hadn't talked with them until the end of last week.

2 Q. And what did you all talk about?

3 A. . .

4 SOLICITOR: Your Honor, I'm going to object to that
5 unless some foundation is laid for it. I would object at
6 this time.

7 THE COURT: All right, sir.

8 Why don't we be a little more specific first as to who
9 he was communicating with.

10 Let's do that first.

11 MR. COCKRELL: Thank you, Your Honor.

12 BY MR. COCKRELL:

13 Q. Let me back up a little bit, Mr. Martin.

14 You said you spoke with somebody at the Solicitor's
15 Office last week?

16 A. Yes, sir.

17 Q. And the subject of the conversation I assume was your
18 testimony today?

19 A. Yes, sir.

20 Q. Who did you speak with?

21 A. I don't remember the name . .

22 Q. Mr. Will Rogers?

23 A. No.

24 Q. Mr. Arquette?

25 A. Yes.

MR. MARTIN ON CROSS

1 Q. And your lawyer was present?

2 A. Yes, sir.

3 Q. Did your lawyer encourage or discourage you in any way
4 from talking with him?

5 A. He encouraged.

6 Q. Okay, and you are hopeful that you're going to receive
7 a beneficial result because of your assistance here today, of
8 your testimony here today?

9 A. I'm hoping for it but I don't know.

10 Q. You hope for some assistance?

11 A. I mean, I don't know.

12 Q. You hope you are going to get some assistance for ex-
13 posing your self to conviction . .

14 A. I mean, I don't know.

15 Q. That wasn't my question. My question is you hope you
16 are going to get some kind of assistance for exposing your-
17 self to that risk?

18 A. I can't answer that because I don't know.

19 Q. Do you anticipate getting time served?

20 A. I don't think so.

21 Q. Is there anybody else at the Solicitor's Office besides
22 Mr. Redmond that you have spoken to about this matter, Mr.
23 Martin?

24 A. About what?

25 Q. About this particular incident?

MR. MARTIN ON CROSS

1 A. No.

2 Q. And your lawyer has encouraged you to say everything/
3 that . .

4 SOLICITOR: Objection.

5 THE COURT: Sustained.

6 SOLICITOR: Thank you.

7 THE COURT: We're not going to talk about his conversa-
8 tions with his lawyer.

9 BY MR. COCKRELL:

10 Q. Were you with Maurice Anderson when he rented the car
11 at Enterprise?

12 A. No, sir.

13 Q. And I recognize that you indicate that Mr. Hinson and
14 Mr. Richard Smith were the ring-leaders or something to that
15 effect.

16 Is that -- if Mr. Hinson is the ring-leader in this mat-
17 ter, how come he was the one who got left?

18 A. I mean, he was the ring-leader.

19 Q. Why did he get left behind?

20 A. He just ran the way he did. It just . .

21 (Brief pause in proceeding)

22 THE COURT: Go ahead, Mr. Cockrell.

23 MR. COCKRELL: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 Q. Why did Mr. Hinson get left behind?

MR. MARTIN ON CROSS

1 A. I mean, I called Maurice.

2 Q. Is that why you didn't get left behind?

3 A. I don't know. I had my phone and I called Maurice.

4 Q. Were you talking on the phone the entire time you were
5 in Mr. Merriman's house?

6 A. No.

7 Q. Okay, so you were not the mastermind but you somehow
8 made it back to Charlotte?

9 A. I did get back.

10 MR. COCKRELL: Court's indulgence.

11 THE COURT: Yes, sir.

12 (Brief pause in proceeding)

13 MR. COCKRELL: Thank you. No further questions.

14 THE COURT: Any Redirect?

15 SOLICITOR: Yes, sir.

16 REDIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. You were asked by the Defense about what your hopes are
19 in this case, and I want to give you a chance to finish that
20 comment.

21 Tell the ladies and gentlemen why you have testified?

22 A. I . . .

23 Q. You said that's not right, so I want you to finish it.

24 When you said that's right, were you referring to testifying
25 -- it's not right to testify?

MR. MARTIN ON CROSS

1 A. It is.

2 Q. And, again, tell the ladies and gentlemen of the jury
3 why is it that you testified?

4 A. I'm testifying because I have a little girl and I
5 wouldn't want nobody to do that in her house. I wouldn't
6 want nothing like that to happen, and I just wanted to tell
7 what I know about the whole situation.

8 Q. I have nothing further.

9 THE COURT: Any Recross on that question and answer?

10 RECROSS EXAMINATION

11 BY MR. COCKRELL:

12 Q. Are you hopeful that you're going to be not given much
13 time or as little as possible?

14 A. I don't know what they'll give me. Whatever they
15 give me.

16 THE COURT: All right, you may step down, sir.

17 Do you wish to release the witness from his subpoena?

18 SOLICITOR: Yes, sir.

19 THE COURT: Any objection?

20 MR. COCKRELL: No, Your Honor.

21 THE COURT: All right, you are released from your sub-
22 poena.

23 (Witness excused)

24 THE COURT: You still understand you remain at the call
25 of the State but I release you from the subpoena?

1 Thank you.

2 SOLICITOR: Your Honor, at this point, if we could
3 take a break?

4 THE COURT: Well, what I'm going to do is break for
5 lunch, looking at the time. We will break for lunch and we
6 will have a discussion as to what remains with the State's
7 case and where we're going to go from there.

8 So, ladies and gentlemen, we're going to stop for lunch
9 and we're going to -- if you would -- you all be back at one
10 forty-five. Be back at one forty-five and we will resume
11 the trial at that time.

12 Remember now, don't talk about the case. Don't allow
13 anybody to talk to you about it.

14 If you are going to go to lunch and you go where --
15 we are close here and I'm not from here so I don't really
16 know, but if there is some place and you know that is where
17 you are going, how about if somebody else is going to be
18 around they don't talk about the case in you all's pres-
19 ence. Okay?

20 If you are going someplace not within two blocks of the
21 Courthouse, leave your button and get it when you come back.

22 Thank you very much.

23 (Jury excused for the lunch period)

24 THE COURT: All right, let's talk about where we are
25 with the rest of the case.

1 Solicitor, we need to put something on the record. We
2 had had the testimony of Lieutenant Wayne Jordan, and the
3 Court was apprised at a pre-trial conference in Chambers of
4 the fact that the Defendant made some statement to Lieutenant
5 Jordan that did not state he was involved in the matter, but
6 just that he had made some statement and in that statement
7 denied involvement in the crime.

8 That was a matter brought to the Court's attention by
9 the State, and at that point in time I was informed by the
10 Defense through Mr. Cockrell that he was not requesting and
11 did not want to have a Jackson v Denno hearing, so I want
12 to place that on the record, so that is on the record.

13 Is that your understanding?

14 SOLICITOR: Yes, sir, Your Honor.

15 THE COURT: Is that your understanding, Mr. Cockrell?

16 MR. COCKRELL: Yes, Your Honor..

17 THE COURT: All right, very good.

18 Solicitor, can you give me some idea of how many wit-
19 nesses remain? Do you have some idea?

20 SOLICITOR: I have a good idea.

21 THE COURT: All right.

22 SOLICITOR: In light of what has transpired this morn-
23 ing I am ninety-five percent sure we will rest at this point.

24 THE COURT: All right. Why don't we wait until we come
25 back from lunch?

1 SOLICITOR: Yes, sir.

2 THE COURT: And you might want to talk with your wit-
3 nesses and determine that.

4 So we will wait and see where we are, but, Mr.
5 Cockrell, just be aware that the State might rest and then
6 you would be called upon
7 to go forward with the Defense. Okay?

8 MR. COCKRELL: Yes, sir.

9 THE COURT: All right, gentlemen, I'll see you in
10 forty-five minutes.

11 (Whereupon, the Court stood in recess for the lunch per-
12 iod, after which the matter resumed)

13 THE COURT: All right, Solicitor, are you ready to pro-
14 ceed?

15 SOLICITOR: Yes, sir.

16 THE COURT: Mr. Cockrell, is the Defense ready to go
17 forward?

18 MR. COCKRELL: Yes, Your Honor.

19

20

21

22

23

24

25

1 THE COURT: Solicitor, what is the status of the State's
2 case at this time?

3 SOLICITOR: Your Honor, at this point the State would
4 respectfully rest.

5 THE COURT: Very good. All right, Mr. Cockrell.
6 Motions by the Defendant?

7 MR. COCKRELL: Your Honor, before we do motions, I do
8 have the statement of Christopher Merriman that I believe is
9 Defense Exhibit 3 -- that it was admitted into evidence.

10 THE COURT: I don't think it's 3. We already have a
11 3.

12 MR. COCKRELL: Defendant's Exhibit 4.

13 THE COURT: Yes, Exhibit 3 was a Motion for the DNA
14 swab. This would be 4.

15 MR. COCKRELL: We would move it be admitted into evi-
16 dence at this time.

17 THE COURT: Has it been marked yet?

18 MR. COCKRELL: No.

19 THE COURT: Hand it to the Court Reporter, please.

20 (Brief pause in proceeding)

21 THE COURT: So that is Defendant's Exhibit 4 in evidence
22 without objection. What document is that?

23 MR. COCKRELL: The statement of Christopher Merriman.

24 THE COURT: All right. Anything else before I hear the
25 Defendant's Motions?

1 MR. COCKRELL: No, sir.

2 THE COURT: Very good, be glad to hear from you.

3 MR. COCKRELL: Thank you, Your Honor.

4 Your Honor, at this time Mr. Gartharee Hinson would
5 move for a directed verdict of not guilty on the kidnapping,
6 on the armed robbery, as well as the assault and battery of
7 a high and aggravated nature charges pending, on the basis
8 that the State has failed to carry their burden and present
9 evidence so that the matters should be submitted to the
10 jury; that the matters were not proven beyond a reasonable
11 doubt.

12 On the kidnapping and robbery charges, it is the posi-
13 tion of the Defendant that those charges are mutually exclu-
14 sive, and that the one cannot necessarily trump the other.

15 You can't be robbing somebody and the robbery in and
16 of itself would create a situation where the person is de-
17 tained as they are being robbed. That was the testimony and
18 evidence presented by the State, and they have failed to
19 carry their burden of proof in that instance.

20 On the assault and battery of a high and aggravated na-
21 ture charge, the Legislature has under Code Section 16 3 600
22 said that if a person commits an ABHAN or if the person in a
23 robbery injures another person and great bodily injury to
24 another person results or the act is accomplished by means
25 likely to produce death or great bodily injury, and the

1 great bodily injury being defined as bodily injury which
2 causes a substantial risk of death or which causes serious
3 disfigurement or protracted loss of impairment.

4 There is testimony that Mr. Merriman did sustain some
5 strikes. However, there was no medical attention. There was
6 no bleeding, no great bodily injury and certainly not death.

7 We feel that that a directed verdict is warranted there
8 as well.

9 THE COURT: All right, Solicitor.

10 SOLICITOR: May it please the Court?

11 THE COURT: Yes, sir.

12 SOLICITOR: Obviously, we think the State has done what
13 it ought to do in terms of each charge as far as a directed
14 verdict is concerned.

15 I think the evidence is clear based on the victim's
16 testimony and Lieutenant Jordan's testimony -- well, Lieuten-
17 ant Jordan as well as the CoDefendant's testimony -- and that
18 we have met the burden on all of the charges.

19 Obviously, the Defendant has been named as being the
20 perpetrator so we think that is certainly sufficient for the
21 jury.

22 On the charge of kidnapping, it did happen inside the
23 residence and they were taken to an another area in there
24 and confined. I asked specific questions regarding that, so
25 obviously they were confined in their own home.

1 The law of South Carolina does not require that you take
2 and carry someone away, but confining or seizing someone can
3 qualify as kidnapping. The State has met its burden on that
4 particular charge.

5 There was clear from the victim and from the CoDefen-
6 dant.

7 Finally, Your Honor, and while there was not great bod-
8 ily injury, it is clear that great bodily injury could have
9 resulted to Mr. Merriman. A blow made to someone's temple
10 could kill them, and we have had cases in the past where in
11 fact that has resulted when someone was hit in the head.
12 If the Defendant had hit him in the right spot, he could
13 kill him, and, furthermore, I have had a case where there
14 was a victim hit in the head with a gun and the gun discharged,
15 killing the person being pistol-whipped.

16 The State would ask that that charge be submitted to
17 the jury.

18 THE COURT: All right. Mr. Cockrell, let me ask you a
19 question. On the assault and battery, high and aggravated
20 nature charge, the circumstances of the aggravation that the
21 State has to prove beyond a reasonable doubt -- are there
22 other circumstances of aggravation that the State could
23 prove beyond a reasonable doubt that doesn't necessarily
24 have to be infliction of a serious bodily injury?

25 Isn't it right that it can be the -- the examples or

1 what we normally talk about is the intent to commit a fel-
2 ony or you could have -- maybe it's not in this particular
3 case, but disparity between the ages or physical condition
4 of the parties, or a difference, I guess, in their relative
5 size and in their language that still is with us.

6 I am not sure that, you know, it will survive, but the
7 taking is described in law as taking indecent liberties with
8 a female. I mean, it just doesn't necessarily have to be
9 the infliction of bodily injury for circumstances of aggra-
10 vation. Right?

11 MR. COCKRELL: Well, the statute is pretty specific as
12 I read verbatim 16 3 600 B one. If the person unlawfully
13 injures another person and great bodily injury to another
14 person results by means likely to produce death or great
15 bodily injury, and then great bodily injury being defined
16 in 16 3 600 A one as bodily injury that results in substan-
17 tial risk of death, or which causes severe permanent dis-
18 figurement or protracted loss or impairment of a bodily mem-
19 ber.

20 I just -- I obviously take the position that Mr. Hinson
21 had nothing to do with this, but alternatively we are argu-
22 ing that there was no assault and battery of a high and ag-
23 gravated nature, no substantial injury.

24 There was no bruising, and there were three strikes ac-
25 cording to Mr. Merriman.

1 I think that . .

2 THE COURT: Give me the Code Section again, please.

3 MR. COCKRELL: Sixteen dash three dash six hundred
4 B one.

5 THE COURT: Okay.

6 (Brief pause in proceeding)

7 THE COURT: Just thinking about this out loud, what if
8 the jury would not find that there was great bodily injury,
9 or the act is accomplished by means likely to produce death
10 or great bodily injury?

11 Would the Court be required to include the lesser in-
12 cluded offense of assault in the first degree?

13 SOLICITOR: That's what we were just discussing, and
14 that would be the State's position on that.

15 THE COURT: In the first degree is when a person com-
16 mits the offense of assault and battery in the first degree
17 when the person unlawfully injures another person and the
18 act -- it wouldn't even go into that one -- or where during
19 the commission of a robbery or burglary, kidnapping or
20 theft, or offers or attempts to injure another person with
21 present ability to do so, and -- it would be those two, bas-
22 ically it occurred during the commission of a robbery, burg-
23 lary or kidnapping, and/or offers or attempts to injure some
24 other person with present ability to do so, and that act is
25 accomplished by means likely to produce death, great bodily

1 injury or during commission of a robbery, burglary, kidnap-
2 ping or theft.

3 What about that, Mr. Cockrell?

4 MR. COCKRELL: Well, Your Honor, on that basis we would
5 just renew our motion for directed verdict . .

6 THE COURT: On assault and battery of a high and aggra-
7 vated nature?

8 MR. COCKRELL: And on . .

9 THE COURT: Would you be asserting that on assault and
10 battery in the first degree?

11 I guess if you're arguing there wasn't enough proof of
12 armed robbery or kidnapping -- wasn't any proof of that, I
13 guess it wouldn't be such.

14 MR. COCKRELL: Your Honor, there is no evidence of any
15 injury sustained by Mr. Merriman that could produce death or
16 . .

17 THE COURT: Well, he did indicate that after the second
18 strike that it rendered him, for want of a better word,
19 foggy, or it impaired his ability to act, because he did
20 state that there was some type of physical manifestation to
21 him after the second strike.

22 So that kind of testimony I find -- the Court finds
23 would be an injury. Now, it may not be such that it would
24 be likely to produce death or great bodily injury, but
25 that is not the only determinative of the assault and battery

1 in the first degree or could be, or that it occurred that
2 the person offered or attempted to injure another person with
3 present ability to do so, and that occurred during the commis-
4 sion of a robbery, kidnapping or theft, which is encompassed
5 also in the other charges the State levied against the Defen-
6 dant.

7 So regarding your motions -- regarding the armed rob-
8 bery, I do find that there is more than sufficient evidence
9 regarding the directed verdict standard, to be clear about
10 it.

11 You can sit down, Mr. Cockrell.

12 The Defendant would be entitled to a directed verdict
13 when the State would fail to produce evidence of the offense
14 charged, but I am concerned with the existence of evidence.
15 I am not weighing the believability of it, just like I told
16 the jury in the very beginning.

17 That is their job and it is their responsibility. I
18 must look at whether or not evidence exists, was testified
19 to, or produced during the course of the trial, and I do
20 find that the evidence was produced.

21 If there is any direct evidence or substantial evidence
22 that reasonably tends to prove the Defendant guilty of the
23 crime, then the case would be submitted to the jury.

24 I don't have the same standard that the jury has that
25 is beyond a reasonable doubt. Mine is whether or not there

1 is evidence that reasonably tends to prove the Defendant
2 guilty of the crime or crimes charged.

3 So in that, I find that there is more than sufficient
4 evidence, if the evidence is so believed, to convict the
5 Defendant of all of the crimes the State has brought forward.

6 As far as the armed robbery, there is testimony of the
7 victim, testimony of the CoDefendant, that the Defendant was
8 armed with a deadly weapon; that -- again, testimony that
9 property or items or money of the victims was taken with the
10 intent to deprive them of their ownership.

11 There is more than sufficient evidence of armed rob-
12 bery. Regarding the kidnapping, as was said earlier, the
13 kidnapping would have to be the taking of someone to another
14 location, as defined in the law. If you are unlawfully
15 seized or confined or -- I'm not sure anybody knows what
16 enveigled means -- but enveigled or decoyed or abducted or
17 carried away without authority of law.

18 Clearly there is testimony from the victim and the Co-
19 Defendant that they were confined to certain areas; they did
20 not feel free to move.

21 The CoDefendant indicates that they were not free to
22 move while the parties were detained through the use of
23 weapons.

24 So there is more than sufficient evidence to convict
25 the Defendant of that crime, if the jury believes it.

1 Regarding assault and battery of a high and aggravated
2 nature, as well as the definition of that, in the Code Sec-
3 tion it says great bodily injury which causes a substantial
4 risk of death or causes permanent serious -- which causes
5 serious permanent or protracted loss of the function of a
6 bodily member -- that's what great bodily injury means.

7 A person commits the offense of assault and battery,
8 high and aggravated nature, if the person unlawfully injures
9 another, and I do find that there was an injury to one of
10 the victims, Mr. Merriman. I think from his testimony it
11 was clear that he did suffer some injury.

12 Then it says, and great bodily injury results or the
13 act is accomplished by means likely to produce death or
14 great bodily injury.

15 In that, the act of hitting someone in the head with a
16 deadly weapon -- I think there is substantial circumstantial
17 evidence in the record as to what occurred and that that
18 was accomplished by means that would be likely to produce
19 death or great bodily injury.

20 The jury may not so believe, but I'm saying evidence
21 exists. The jury may not believe it, looking at credibility
22 and believability and how they weigh the evidence.

23 So I will charge the jury the lesser included offense
24 of assault and battery in the first degree, and that would
25 be if the person unlawfully injures another person -- and I

1 again do so find there was an injury which the victim has
2 placed in evidence through his testimony, and the act oc-
3 curred during the commission of a robbery, burglary, kidnap-
4 ping, and that is clear from the evidence presented if they
5 believe that, or that there was an offer or an intent to in-
6 jure another person with the present ability to do so and
7 that act was accomplished by means likely to produce death
8 or great bodily injury or occurred during the commission of
9 a robbery, burglary or theft.

10 So I'm going to charge assault and battery of a high
11 and aggravated nature and the lesser included offense of as-
12 sault and battery in the first degree.

13 And just so we are clear, Section 16 3 600, subsection
14 C three, I believe it is, does simply state the statute of
15 assault and battery in the first degree is a lesser included
16 offense of assault and battery, high and aggravated nature
17 if there is any question about that.

18 All right, so in that respect, just so we are clear,
19 your directed verdict motions on all three charges is de-
20 nied in that there is direct evidence and circumstantial
21 evidence to prove guilt of the Defendant of those three
22 crimes with the inclusion of the lesser included offense of
23 assault and battery in the first degree.

24 So are there any motions by the Defense?

25 SOLICITOR: Nothing by the Defense.

1 THE COURT: Very good. All right, is your client pre-
2 pared for me to inquire of him regarding his constitutional
3 right to testify?

4 MR. COCKRELL: Yes, Your Honor, he is.

5 THE COURT: All right, as I've explained to you gen-
6 tlemen in Chambers, we will go through the State resting and
7 the Defense resting in front of the jury but I want to take
8 care of all of this out of the presence of the jury, so we
9 don't have to bring them in, send them out and bring them
10 in, to try to inconvenience them as little as possible.

11 All right. With that, then, Mr. Hinson, could you stand
12 up, please, sir? Madam Clerk, would you place him under oath?

13 (Whereupon, the Defendant was sworn by the Clerk for
14 purposes of the colloquy with the Court)

15 THE COURT: All right, Mr. Hinson. I'm going to ex-
16 plain to you certain of your constitutional rights. If at
17 any point in time in our discussion you don't understand me
18 or you have questions or want to bring some matter up, you
19 need to indicate that.

20 You can raise your hand. You can tell your attorney,
21 but you've got to do something affirmatively to let me know
22 you want to bring a matter to the Court's attention.

23 Are we in agreement there?

24 DEFENDANT: Yes, sir.

25 THE COURT: We have reached the stage in the trial where

1 you can present a case. You have a right to claim the pro-
2 tection given you by the Fifth Amendment to the Constitu-
3 tion of the United States of America.

4 Now, that Amendment states in part that no person shall
5 be compelled to be a witness against himself. That means
6 nobody can make you testify. You can testify if you want to,
7 but nobody can make you do so.

8 Do you understand that?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right, sir. If you decide to testify,
11 you will be treated just like all the other witnesses. You
12 will be asked questions and examined by your attorney. You
13 will be questioned or asked questions by the Solicitor as
14 to any matter the Court deems relevant or proper.

15 Is there any prior record you would attempt to question
16 the Defendant about, Solicitor?

17 SOLICITOR: Your Honor, he has a 2008 possession of a
18 firearm -- actually possession of a firearm by a felon.

19 We have talked to the Defense and we've agreed that es-
20 calates that charge and we would leave the felon part out.

21 THE COURT: All right, sir.

22 SOLICITOR: And in 2010 he has a possession of cocaine
23 charge in North Carolina.

24 THE COURT: Very good. All right, so regarding those --
25 well, the possession of cocaine charge in North Carolina, do

1 you know or are you familiar with the penalty statute for
2 North Carolina?

3 SOLICITOR: Beg the Court's indulgence.

4 (Brief pause in the proceeding)

5 SOLICITOR: Felony possession of cocaine, Your Honor,
6 and I'm looking for the -- it looks like he was sentenced
7 to six months with credit for thirty-four days time served.

8 It does not tell me whether it was suspended or he got
9 probation, but it does indicate a felony possession of co-
10 caine.

11 THE COURT: Very good. So, Mr. Hinson, if you testify
12 I would allow the State to ask you if you've been convicted
13 of those crimes, but they couldn't go any further. They
14 couldn't ask you what happened or any of that, but just if
15 you have been convicted of those crimes in the past in those
16 years.

17 Now, if you decide to testify it has got to be your de-
18 cision. You could ask your attorney questions. You could,
19 you know, discuss that with him, but it is your decision.

20 Do you understand that?

21 DEFENDANT: Yes, sir.

22 THE COURT: All right, sir, and understanding the
23 rights given to you by the Constitution, and everything we
24 have talked about, if you decided not to testify I would tell
25 the jury that they cannot give that fact any consideration

1 whatsoever.

2 They can't talk about it in the jury room. They can't
3 bring it up. They can't even use it mentally to make a de-
4 cision in the case.

5 Do you understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: All right, sir. Do you understand every-
8 thing we've talked about?

9 DEFENDANT: Yes.

10 THE COURT: Do you want to ask your attorney any ques-
11 tions or talk to him before I ask you what you want to do?

12 DEFENDANT: Yes.

13 THE COURT: All right, sir. Oh, I'm sorry.

14 (Defendant having discussion with his counsel off the
15 record)

16 THE COURT: All right, sir, did you have sufficient time
17 to talk with him?

18 DEFENDANT: Yes.

19 THE COURT: All right, sir. So do you wish to testify in
20 this case?

21 DEFENDANT: No, sir.

22 THE COURT: Thank you very much. You may have a seat.

23 All right: With that, are we ready for the jury?

24 (Affirmative response from State and Defense)

25 (Jury returned to the Courtroom)

1 THE COURT: All right, Solicitor. What is the State's
2 position?

3 SOLICITOR: At this time, Your Honor and ladies and
4 gentlemen, the State respectfully rests its case.

5 THE COURT: All right, very good.

6 And, Mr. Cockrell, what is the Defense position in this
7 matter?

8 MR. COCKRELL: Your Honor, the Defense rests.

9 THE COURT: Very good. All right, ladies and gentlemen,
10 we have concluded the evidentiary portion of this trial. We
11 will be receiving no other evidence in this matter for which
12 you will be required to consider regarding these charges.

13 Now, that does not end the trial. Where we are now is
14 we're going to have the closing arguments of the attorneys,
15 and after the closing arguments I will give you the charge
16 on the law. I will explain the law to you that you will use,
17 and you will use that along with your view of the facts you
18 find to be true in this case.

19 Remember about the closing arguments, just like the
20 opening statements -- the closing arguments are not evidence
21 and cannot be considered by you as the evidence in the case.

22 You have received all of the evidence you are going to
23 have in this case already.

24 Closing arguments are important. They are each side's
25 summation to you of what they believe the evidence has

1 shown to you during the course of the trial, remembering, of
2 course, that you are the judges of the facts of this parti-
3 cular case. So with that, I'll turn it over to the counsel
4 for their closing arguments.

5 Mr. Cockrell?

6 MR. COCKRELL: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 MR. COCKRELL: Ladies and gentlemen, you have heard for
9 the last day and a half the testimony and Exhibits -- seen
10 the Exhibits.

11 You have heard from the State and heard from other wit-
12 nesses concerning the events surrounding October 20th of
13 2012.

14 There was an unfortunate situation that occurred in
15 which Mr. Christopher Merriman sustained some very difficult
16 time, along with his girlfriend and the others in that parti-
17 cular home on that particular day.

18 However, the testimony and the evidence that you all
19 have seen, the witnesses' testimony and all of that aspect,
20 lead to a unique and almost crazy set of circumstances that
21 enthralled three specific individuals.

22 You've got an incident on October 20th where a Mr.
23 Richard Martin and Mr. Anderson called Mr. Hinson -- want to
24 come down to Chesterfield County and want to get some mari-
25 juana, smoke some marijuana?

1 Mr. Hinson does not disagree in any way, shape or form
2 with that. He has been known or has smoked marijuana.

3 They come down to Chesterfield County and one thing
4 leads to another.

5 There is a Richard Smith who is a Chesterfield County
6 resident. He is trying to get up with Mr. Merriman.

7 There is the State's chief investigator who put this
8 whole case together, and when I say this case I'm talking
9 about the case involving the people charged, all four people
10 charged, with this.

11 He put this case together on the basis that they had
12 been after Mr. Richard Smith and his activities for a long,
13 long time.

14 In any event, you heard testimony that they went to
15 the Piggly Wiggly. You heard testimony that they -- there
16 was some back and forth from the Piggly Wiggly parking lot
17 and the home of Mr. Christopher Merriman.

18 One thing that we know absolutely for sure and abso-
19 lutely beyond any question is that Mr. Hinson, Mr. Gartharee
20 Hinson, got left behind. Everybody else rode away but he
21 was left behind.

22 He supposedly -- they would want you all to believe him
23 to come across as the mastermind of this situation.

24 You have -- the investigation commences. Mr. -- at
25 the time Staff Sergeant, and now Lieutenant Wayne Jordan is

1 hot on the trail. He has learned of Richard Smith's in-
2 volvement, and he gets up with Richard Smith. Warrants are
3 issued for Richard Smith.

4 He got evidence of Maurice Anderson, a Codefendant, as
5 well as Mr. Richard Martin. Many warrants are issued.

6 The case is looked into first as they looked into mat-
7 ters of where the vehicle was from, and, praise be, they
8 find out that the vehicle was rented by Enterprise Rental in
9 Charlotte.

10 If you will look -- and you can take all of these Ex-
11 hibits back -- and I would encourage you to go over these
12 Exhibits and read through every one of them.

13 But if you'll look at them, their first in-
14 clination to say that Mr. Gartharee Hinson was involved in
15 the situation was the contract for the rental vehicle oc-
16 curred on October 12th and the vehicle was returned on
17 October 28th. That's their connection to Mr. Gartharee
18 Hinson.

19 The vehicle was rented and the key was turned over, and
20 we're not saying the vehicle was not rented, but Mr.
21 Gartharee Hinson had nothing to do with it.

22 The contract was signed by Maurice Anderson. His sig-
23 nature is on it. He had rented it on that day. If he had
24 rented it another time, we don't know. We don't have people
25 from Enterprise Rental here to explain what's going on or

1 have the testimony from them. We do have the testimony of
2 Lieutenant Wayne Jordan. He went through all of that in his
3 testimony, and he stated that was the only thing they had
4 that had anything to do with Mr. Hinson.

5 So after that, they -- excuse me. While they were in
6 Charlotte reviewing the document that is the contract for
7 the rental car, apparently some video transcript that has
8 Mr. Hinson was shown. Maybe it's there or maybe it's not,
9 and if it was the same date as on this document I don't
10 know that.

11 But then they came back to Chesterfield County and they
12 talked with Mr. Christopher Merriman again. They pulled up
13 a Facebook page of Mr. Hinson and they say, hey, that's the
14 guy that's in the video up at Enterprise. That's him. He
15 was there that day. He was there that day.

16 Now, don't you remember that? They want to take this
17 huge jumpsuit that, again, is connected to somebody else,
18 and they say, well; he was wearing this. Maybe -- maybe the
19 perpetrator was wearing this jumpsuit.

20 I don't know. I know that is what the testimony was,
21 and I do know that it doesn't belong to Mr. Gartharee Hinson
22 here.

23 They've got this mask and they've got a voice, and do
24 you recognize my voice? Could you identify me by that? I
25 don't think so.

1 Mr. Merriman didn't want to say who he thought it
2 was. He didn't want to say. He specifically said, I don't
3 know for sure.

4 But the State wants it to be him. The State wants
5 it. Why? I don't know, but Mr. Merriman did not want to
6 go that route. Why? Because he did not think it was him.

7 He said, it could have been; I don't know; I haven't seen
8 him in six or seven years. Not since we were in school.

9 But one thing you absolutely know for sure is that
10 Richard Smith was there, and he had known Richard Smith
11 a long, long time.

12 Maurice Anderson was there. They found a wallet.

13 Richard Martin was there, and he turned himself in to
14 them.

15 It wasn't until after they had gone up -- when I say
16 they, I'm talking about Lieutenant Wayne Martin and his
17 other detectives -- when they went to Charlotte and appar-
18 ently saw the video and they came back and convinced Mr.
19 Merriman to say, hey, that was him. He did it. He did
20 it.

21 But I would also encourage you to take back with you
22 and examine Exhibit 4 which is the handwritten statement
23 of Mr. Christopher Merriman. Look at it.

24 We know that this was written after they came back
25 on October 22nd -- when they came back from Enterprise

1 Rental Cars.

2 I know one thing. That document does not reference Mr.
3 Gartharee Hinson at all.

4 Mr. Merriman doesn't want to put that in writing, and
5 this is the State's theory that my client was involved. He
6 was not involved.

7 This is what the perpetrator was wearing, the coveralls.
8 That's a fact. You've got an affidavit from Lieutenant
9 Jordan specifically saying that SLED had asked for DNA and
10 there is an Order obtained by the Solicitor's Office saying we
11 need to get this DNA

12 We've got an Order for the Circuit Court ordering the
13 DNA that SLED is asking for.

14 I would draw your attention specifically to the
15 State's presentation of evidence relevant to the Defen-
16 dant's guilt or innocence -- relevant to the question of
17 the Defendant's guilt or innocence.

18 The Order mandates that they get this done, but they
19 didn't. Why not?

20 I'll tell you why not. Because they've got Hinson --
21 excuse me, they've got Mr. Smith, they've got Mr. Anderson,
22 they've got Mr. Martin.

23 They have proven that this belonged to Mr. Anderson,
24 but they still are trying to connect it to Mr. Hinson. That
25 is the Justice System we have.

1 You heard from Mr. Martin about these guns. He ap-
2 parently had this gun, Exhibit 2. The other gun was a
3 forty-five, but you heard from Mr. Martin that he had this
4 one. There's no question about it. You heard that from
5 Mr. Martin, and it was the bigger of the two.

6 You heard from Mr. Martin that Mr. Merriman got hit
7 with this pistol. He had that pistol. You heard from him.
8 I'll hold them up. No question this is the bigger of the
9 two.

10 You heard from Mr. Merriman that he was hit by a
11 person with a gun. I assert to you that Mr. Martin is the
12 one who assaulted Mr. Merriman.

13 You've heard his testimony, that he wasn't promised
14 anything to come in here and testify, but he is hopeful.
15 You know he is.

16 I believe he had this gun, and he wants to come and
17 testify with regards to all the events of that day in a
18 hope that maybe he'll get a break.

19 But it is amazing to me that he wants to pin the
20 assault on who he says was the ring-leader here when there
21 is no evidence at the scene other than the one who came
22 forward to tell the detective, hey, I want to tell you
23 what was going on here.

24 You don't have any items that belonged to him at the
25 scene or otherwise.

1 All we've got is Richard Martin, who is hoping to get
2 a break.

3 Of course, we've got the victims here, and it was an
4 unfortunate situation. No question about that.

5 Mr. Merriman specifically does not want to say it was
6 Mr. Hinson because he's not sure. The fact that he's not
7 sure goes to the basis of what a jury trial is all about.

8 You all have to find beyond a reasonable doubt that
9 these events occurred. Mr. Merriman doesn't want to put in
10 his statement that Mr. Hinson was even involved.

11 Clearly, he is not absolutely sure. He is not sure.
12 He doesn't know.

13 There were three people there, absolutely and
14 positively for sure. Nobody has given any evidence that
15 was absolutely sure that four people were involved.

16 I ask that you take into consideration everything that
17 has been brought to your attention. The lack of opportu-
18 nity for clear proof. The lack of SLED evidence which would
19 come through DNA, which was clearly requested and was clearly
20 available.

21 We wouldn't be here today if they had done that when
22 it was requested, or if it had been done at the time of the
23 incident. It would have been corroboration to clear these
24 issues for us, for my client.

25 Mr. Merriman's, the victim's, unwillingness to do a

1 thing that would tend to incriminate Mr. Hinson, as well as
2 the State's aggressiveness on attacking Mr. Hinson -- all
3 of it, all of these things, you must consider. Every
4 little thing you must consider.

5 All of these matters, all of these items I'm talking
6 about, have to be in your minds for you to find a verdict.

7 Mr. Hinson's guilt has to be proven to you beyond a
8 reasonable doubt in order for you to convict him. All of
9 these matters have to be shown to be clear beyond a rea-
10 sonable doubt.

11 You have to find that that was him wearing that mask.
12 That was him wearing that jumpsuit. That was him carry-
13 ing this big pistol. If so, there would have been DNA ev-
14 idence, but there was no testing done. They've had since
15 April of 2013 to do DNA testing, but they did not do
16 any. The analysis wasn't requested.

17 We ask that you find the right verdict, and that would
18 be a verdict of not guilty.

19 Thank you.

20 THE COURT: Solicitor.

21 SOLICITOR: May it please the Court?

22 THE COURT: Yes, sir.

23 SOLICITOR: I thought I heard him say cooperation, but
24 I'm not sure. I guess he was cooperating when he went from
25 the Piggly Wiggly -- I don't know if that is a definition

1 of cooperation or not.

2 I understand he is defending his client, but certainly
3 I have a duty to correct some of what I heard.

4 There was no evidence placing the Defendant at this
5 location. Think about it.

6 It is not in dispute that the Defendant in January of
7 2013 when he was picked up in Charlotte and transported back
8 to Chesterfield at that time -- not only did he place him-
9 self in Chesterfield but also placed himself with the other
10 CoDefendants on the day in question.

11 He has not cooperated as it relates to what he did. He
12 tried to minimize his role in all of this.

13 I asked Lieutenant Jordan about coincidences. How many
14 coincidences are you willing to believe in this case?

15 The night of this robbery, the night of this kidnap-
16 ping, the night of the assault on Mr. Merriman, what did he
17 tell law enforcement?

18 He didn't dispute the fact that it sounded like him. He
19 would have you believe that everything else is a coincidence.
20 The night of this incident Mr. Merriman thought he knew who
21 it was that had done this. Lo and behold, in the course of
22 the investigation what do we find out?

23 In fact, it was him. It was Mr. Hinson. He was at
24 the Piggly Wiggly. He was with the other CoDefendants, al-
25 though he would ask you to believe it was just a coincidence.

1 You know, one of the things I have seen defense at-
2 torneys sometimes have to do is engage in what I call smoke
3 and mirrors. (Sentence inaudible) Well, I'll take my
4 chances this time.

5 But sometimes smoke and mirrors isn't enough, es-
6 pecially in a situation where you've got people minding their
7 own business and their house broken into and robbed, with
8 small children in the house.

9 Sometimes smoke and mirrors need to be broken up, be
10 busted up.

11 So this may have been a short case, ladies and gen-
12 tlemen, but you do not leave your common sense in those
13 chairs when you walk back into the jury room. Your com-
14 mon sense goes with you everywhere you go.

15 Ladies and gentlemen, I submit to you that this Defen-
16 dant is in fact guilty of this particular armed robbery,
17 kidnapping and assault.

18 Now I'm going to digress just a little bit. I want to
19 take just a minute to talk about charges that have been
20 brought against the Defendant, and I want you to think about
21 this.

22 Obviously, you have heard about the Defendant being
23 armed when they went into the house. You heard about the
24 fact that they were confined, and during this time they
25 were not free to leave. Think about it.

1 If somebody is pointing a gun at you or has a gun in
2 the house and you are being told to stay in a room, most of
3 us are going to stay there for fear we might get shot. That
4 is kidnapping.

5 Assault and battery of a high and aggravated nature --
6 there will also be a lesser included offense of assault and
7 battery in the first degree.

8 That means that assault and battery, high and aggravated
9 nature, includes not only serious bodily injury or great bod-
10 ily injury, but also the chance that it could result in great
11 bodily injury or death.

12 I explained earlier that when you hit somebody in the
13 head we all know that people have died as a result of being
14 hit in the head.

15 You will be instructed on that, and you will also be
16 instructed on assault and battery in the first degree. His
17 Honor, the Judge, will read to you the law on being assaulted
18 during a robbery.

19 The fact that you are assaulted during several charges,
20 including armed robbery, makes him guilty of assault in the
21 first degree.

22 So on the charge of assault and battery, you will have
23 for your consideration those two charges in this particular
24 case.

25 Now let's talk about the witnesses themselves, and one

1 thing he failed to mention -- you heard a lot about rea-
2 sonable doubt, and you take the law as His Honor will
3 instruct it, but I would say to you that a reasonable doubt
4 is not the kind of doubt that removes all doubt, but it is
5 the kind of doubt that leaves a reasonable doubt.

6 You have to decide whether or not we have proved beyond
7 a reasonable doubt that the Defendant is guilty, and, as I
8 think I told you in my opening, I like to define reasonable
9 doubt as, in addition to being the kind of doubt that makes
10 a reasonable person hesitate to act, but also is the kind
11 of doubt that leaves you firmly convinced that the Defendant
12 is innocent.

13 You heard from Mr. Merriman. He said the Defendant's
14 name. The Defendant admitted to being in Chesterfield that
15 day. Mr. Merriman didn't know he was in Chesterfield that
16 day but he heard his voice.

17 Are we supposed to believe that was a coincidence? I
18 would stress that to you.

19 When you listen to what Lieutenant Jordan said, that
20 he found all of these Defendants had been in Chesterfield to-
21 gether during that course of time; when you look at the -- I
22 don't remember which exhibit it is, but those individuals
23 were in Chesterfield during that time with that car. The ex-
24 hibit indicates the car was to be returned on the 15th but
25 it was not returned on the 15th.

1 I would ask you to keep all of that in mind.

2 Then you heard from Mr. Martin, but let me go back a
3 little bit and start with Ms. Briggs, who was the first
4 person that you heard from.

5 She didn't know any of the people involved in it, but
6 she told you what she was going through, her home being
7 invaded by these individuals.

8 She told you about Richard Smith being at the house
9 earlier, and then she talks about her kids, the fact of her
10 kids being there and how she covered up her kids, because
11 with guns involved you never know what's going to happen.

12 The case was short but her testimony showed you how
13 important the case is, the importance of the case, so I'd
14 ask you to keep that in mind.

15 Then we've got Mr. Merriman, and I keep stressing that
16 -- I'll say this one more time -- he mentioned Richard Smith
17 had called him several times, had come to his house that
18 day, but the second name he mentioned was Garth Hinson.

19 Now, Mr. Hinson has admitted he was with those individ-
20 uals that day.

21 Mr. Merriman didn't see his face and he was cautious in
22 not -- think about this. If he really wanted to lie about
23 somebody, he would not have told you --- even sitting on the
24 stand he was hesitant, or that's what it sounded like. It
25 was like he didn't want to get somebody in trouble if they

1 were not really involved.

2 He wanted you to see Mr. Merriman's name because in the
3 statement he didn't mention Richard Smith's name, but he
4 had already told the officers about Richard Smith coming to
5 his house that night earlier and that he had called him
6 several times that day.

7 Even though he didn't write it in his statement, he had
8 already told the officers that, and that aspect of the in-
9 vestigation had already started before he even did that
10 written statement.

11 So take everything for what it is worth, is what I'm
12 getting at. Don't fall for smoke and mirrors, as I like to
13 call it.

14 I don't think -- no disrespect to him, but you saw
15 Mr. Martin and I don't think anybody would refer to him as
16 being tall. Mr. Merriman said the taller one.

17 The actions are the most important part of this -- the
18 actions of the parties. Mr. Merriman said it was a taller
19 man and a shorter man. Think about the actions that were
20 taken by them.

21 Think about the fact that it was said one of them did
22 not seem like he really wanted to be there or holding the
23 gun. Why would Ms. Briggs lie about that? Why?

24 This man was in her home but yet she told you that
25 about the shorter guy who was there with the taller guy.

1 She told you that, and I ask you to take that into consid-
2 eration in deciding what testimony you want to believe.

3 I would submit to you that Richard Martin's testimony
4 was extremely credible, as was Mr. Merriman's, so let me
5 finish with him.

6 No question he got hit. Mr. Merriman said he was hit
7 as did Mr. Martin. They said the Defendant is the one who
8 hit him.

9 Then we got to Lieutenant Jordan, and I apologize --
10 I do not want to belabor this so you can go ahead and have
11 a chance to deliberate.

12 I'm trying not to miss anything, and I apologize --
13 Lieutenant Jordan testified about the investigation and
14 how it transpired. The fact that they had the Defendant's
15 name that night.

16 The fact that they contacted the Charlotte Police De-
17 partment later on and the Defendant was arrested and later
18 on brought back to Chesterfield in January.

19 But a big deal was made by the Defense Attorney, and
20 I need to bring this up -- did -- I forget which Exhibit it
21 is, but on the 26th of November during the normal course of
22 business -- this is about the DNA -- at that time they did
23 not have anybody to compare anything with, but at the time
24 they were able to get this Defendant in January and talk
25 with the Defendant here in Chesterfield and charge him and

1 the CoDefendants, at that point Lieutenant Jordan was smart
2 enough, with everything they had already developed -- he
3 was smart enough to recognize the difference between fact
4 and coincidence.

5 Mr. Hinson was in Chesterfield that night with these
6 people, so Lieutenant Jordan put two and two together, and
7 sometimes it doesn't take a rocket scientist.

8 Let me talk about that for a minute. When you talk
9 about, well, DNA should have been gotten, should have been
10 sent to SLED -- number one, they don't guarantee they will
11 get any results. That's the first thing.

12 Then I think Lieutenant Jordan touched on that from an
13 administrative standpoint what he had at that point was
14 CoDefendants' statements, and he could place him where he
15 needed to place him from an evidence standpoint to estab-
16 lish the fact that he was involved in this particular armed
17 robbery and kidnapping.

18 Then, something else Mr. Cockrell mentioned, about --
19 correct me if I'm wrong, but I think he mentioned something
20 about that after going to Charlotte and getting this snap-
21 shot and coming back, that they were in essence convinced
22 that that's who it was and convinced the victim that it was.

23 No disrespect to Mr. Cockrell, but that is not what
24 happened. It is extremely far from the truth as to how
25 this transpired.

1 That did not occur. Nobody had to convince Mr. Merriman
2 that it was the Defendant. Instead, he was the one who said
3 Garth Hinson was in this.

4 He would indicate that they undertook this devious op-
5 eration to plant this seed in the head of the victim, that
6 Mr. Hinson was involved, blah, blah, blah.

7 Absolutely not true. I really and truly am confident
8 you will not follow that particular path, despite the
9 evidence, the testimony.

10 You heard the testimony of how this all developed, and
11 you have to make the determination on that.

12 Then you heard from Mr. Martin, and Mr. Martin told
13 you he had no idea of what was going to be the outcome of
14 his case. He is telling you the absolute truth.

15 Keep in mind we are talking about a home invasion in
16 which or where there were children.

17 Of course, he is hoping that as a result of turning him-
18 self in that on his charges he won't have to be away too long
19 from his child. But he knows there is nothing guaranteed
20 on that.

21 He said he wanted to come forward and do the right
22 thing. He did not deny it, as the Defendant did. He came
23 and told you what he did and told you what the Defendant
24 did, despite knowing that what he was involved in was wrong
25 and even though he did not know up until the time of the

1 robbery what was going to take place.

2 But he went in the house and he said he was involved
3 in that. Mr. Martin told you that, and he told you about
4 his prior record.

5 The thing that really points to his credibilty is Mr.
6 Martin -- you have to look to these things when you look to
7 somebody's credibility -- when I showed Mr. Martin the guns,
8 he corrected me and said, no, I had this one.

9 I ask you to take that into consideration when you are
10 considering his credibility. If he was just trying to get
11 Mr. Hinson, all he had to do was just agree with what the
12 State said, but he said, no -- he corrected me and said I
13 had the bigger one.

14 I ask you to take that into consideraton when you judge
15 his credibility. I don't want a witness to get up here and
16 lie or whatever. I want a witness to tell the truth, and if
17 something has to be explained, so be it.

18 But that does not change what happened. It does not
19 change what happened in that house, regardless of what they
20 want you to believe, the smoke and mirrors. You find what
21 the truth is in this case, ladies and gentlemen.

22 I'm about to close. I've gone into a lot of stuff,
23 and I apologize. It is late in the afternoon, I know.

24 You've got Mr. Merriman, you've got Ms. Briggs, and you
25 also have those two children in that house, coming back from

1 watching a Carolina football game. At that point they had
2 no idea their lives were going to change forever because of
3 what happened.

4 After you go through something like that, it is never
5 the same. They will never be the same after this was over
6 and these men walked out of their house.

7 This will change them forever, the two year old and
8 five year old, from what you heard in the testimony. They
9 didn't know what was going on. The two year old may not
10 remember what happened, but I remember a whole lot from the
11 time I was five years old. That five year old is going to
12 forever remember what took place in what was supposed to be
13 his safe place.

14 I submit to you that the State and the Defendant have
15 been given a fair trial. It is about to go into your hands,
16 and, on behalf of the victims and on behalf of the State, I
17 thank you in advance for your attention, for your delibera-
18 tions, and I again stress to you, ladies and gentlemen, re-
19 spectfully, that you return a verdict against this Defendant
20 of guilty on the assault charge, the kidnapping charge, and
21 the armed robbery charge.

22 We have proven our case and it is time now for justice
23 to be served on this Defendant.

24 Thank you.

25 THE COURT: All right, ladies and gentlemen, before I

1 give you the law, because it will take a few minutes, I
2 will give you a short break -- five minutes -- a five min-
3 ute break.

4 Then we will come back, and I will give you the law.
5 Then I will give the case to you for your consideration
6 and for your unanimous decision.

7 Go to your jury room at this time -- five minutes.

8 Thank you very much.

9 Everyone else remain seated while the jury retires.

10 (Jury excused from the Courtroom)

11 THE COURT: All right, a five minute break.

12 SOLICITOR: Thank you.

13 (The Court took a brief recess, after which the matter
14 was continued)

15

16

17

18

19

20

21

22

23

24

25

1 THE COURT: All right, State ready for the jury?

2 SOLICITOR: Yes, sir,

3 THE COURT: Defense?

4 MR. COCKRELL: Yes, sir, Your Honor.

5 THE COURT: Very good, have the jury come in, please,
6 maam.

7 (Jury returned to the Courtroom)

8 THE COURT: All right, ladies and gentlemen, it is
9 now my duty and responsibility to give you the law that
10 you will apply to the facts that you find to be true in
11 this case.

12 I told you at the very beginning that I could not in-
13 dicate to you in any way what I think the facts and cir-
14 cumstances of the case were. That is your job and your
15 responsibility.

16 Now, the same thing -- if you came into the Court-
17 room with any preconceived notions of what the law is or
18 what it ought to be, you will disregard that. You will
19 take the law as I now give it to you and apply that to
20 the evidence that you find to be true in this case.

21 Now, I told you in the very beginning that one of
22 your jobs and responsibilities in this case was to be the
23 judges of the facts in the case. In doing that, you have
24 to judge the credibility, the believability, of the wit-
25 nesses that have testified before you in this particular

1 case, and I told you the way you do that.

2 The way to do it is the way you do everything in your
3 life. You use your good, common sense, and you use your
4 good judgment. That's what we're asking you to do here.

5 Now, in looking at credibility or believability, you
6 may believe one witness as against several or several as
7 against one.

8 You can believe a portion of what the witness says
9 and disregard the remaining portion. If you've got some
10 sound reason for doing so, you can disregard it in its en-
11 tirety, the testimony of a particular witness.

12 You look at whether or not that witness has exhibited
13 to you any kind of interest, motive, bias, prejudice in
14 the testimony they gave you from that witness stand.

15 Of course, you consider their opportunity for know-
16 ledge. How did they come about that information that they
17 gave you from that witness stand?

18 Your verdict cannot be the result of any kind of pas-
19 sion, prejudice or sympathy. You don't have any friends
20 to reward. You don't have any enemies to punish. It has
21 to be an examination of the facts -- examination of facts
22 in order to find the evidence that convinces you of its truth
23 and then you weigh that evidence.

24 It is the State's burden to prove the Defendant guilty
25 of the crime or crimes charged beyond a reasonable doubt.

1 In this case, there were two types of evidence pre-
2 sented that occurs in virtually every single case that is
3 tried, and they are direct and circumstantial evidence.

4 Direct evidence is the testimony of somebody who claims
5 or asserts to have actual knowledge of a fact from what they
6 saw, what they heard, what occurred in their presence.

7 Circumstantial evidence is a chain of facts indicating
8 the existence of a fact.

9 The law does not make any distinction between the two.
10 A greater degree of certainty of one over the other is not
11 required.

12 Now, to the extent that the State relies on circumstan-
13 tial evidence, all of the circumstances must be consistent
14 with each other and, when taken together, point conclusively
15 to the guilt of the accused beyond a reasonable doubt.

16 The prior record of a witness -- a witness who has a
17 past criminal record can testify in a trial. Their past
18 record does not affect their ability to testify.

19 The past record may be used by the jury, if at all, in
20 determining the believability or credibility of the witness.

21 You again are the sole judges of the facts in this case
22 in determining believability or credibility of every witness
23 who has testified.

24 A statement made by a Defendant was admitted as a part
25 of the evidence in the case. Now, while I determined it was

1 admissible and it could be a part of the case, you, the
2 jury, still make the ultimate decision of whether or not
3 the Defendant made the statement.

4 If you find he did make the statement, you must deter-
5 mine whether or not the statement was made by the Defendant
6 voluntarily, of his own free will, and wasn't caused by
7 pressure or fear, threats, coercion, intimidation, of hope
8 or promise of leniency or reward of any kind.

9 In determining whether or not a statement was volun-
10 tary, you decide whether or not -- you look at the charac-
11 teristics of the questioning. You can consider the age of
12 the Defendant, his education, lack thereof, mental ability
13 or capacity, the Defendant's background, place and length
14 of detention, nature of questioning, the advice or lack
15 thereof to the Defendant of his constitutional rights, in-
16 cluding but not limited to the right to remain silent;
17 that any statement he made could be used against him in a
18 Court of law; that he has the right to have a lawyer pre-
19 sent; that if he cannot afford a lawyer one will be appointed
20 to represent you without cost; and that you can stop making
21 a statement at any time you desire.

22 In this particular case, the Defendant did not testify.
23 I instruct you and tell you, and I emphasize to you, that it
24 is not a factor to be used by you in determining the case.
25 You may not use it in your deliberations. You may not talk

1 about it. You cannot use it mentally to decide the facts
2 and evidence in this case and whether or not the State has
3 proven the Defendant guilty beyond a reasonable doubt.

4 Every Defendant has a constitutional right to remain
5 silent, and that cannot be held against him. You cannot draw
6 any kind of inference from it.

7 As I told you at the beginning, the State is not re-
8 quired to prove anything to you. The State must prove this
9 case to you beyond a reasonable doubt. That is the State's
10 job, the State's duty, the State's responsibility to prove
11 the case to you beyond a reasonable doubt.

12 The Defendant has pled not guilty to the Indictment, and
13 that is when that burden went on the State of South Carolina
14 to prove the Defendant guilty of those crimes beyond a rea-
15 sonable doubt.

16 Now, this presumption of innocence didn't end at the
17 start of the trial. It hasn't ended now. It only ends if
18 and when you find the State has presented to you evidence
19 that you find to be true which proves the Defendant guilty of
20 the crime or crimes charged beyond a reasonable doubt.

21 We liken the presumption of innocence, to give you an
22 example, like a robe of righteousness. It is placed about
23 the shoulders of the Defendant and stays on the shoulders of
24 the Defendant until or if the State rips that robe of right-
25 ousness from the shoulders of the Defendant by proof that

1 convinces you of his guilt beyond a reasonable doubt.

2 So what is reasonable doubt? It is the kind of doubt
3 that would cause an ordinary, reasonable person to hesitate
4 to act.

5 Proof beyond a reasonable doubt is proof that leaves you
6 you firmly convinced of the Defendant's guilt.

7 Now, there are very few things we can know to a certainty,
8 and the law does not require the State of South Carolina to
9 give you that kind of proof. What is required is that, based
10 upon your view of the evidence, if you are firmly convinced
11 of the Defendant's guilt beyond a reasonable doubt of the
12 crime or crimes charged, you must find the Defendant guilty.

13 On the other hand, based upon your view of the evidence
14 that you find to be true, you cannot determine whether or not
15 the Defendant is guilty beyond a reasonable doubt of the crime
16 or crimes charged, you must give the Defendant the benefit of
17 the doubt and find him not guilty.

18 So, what are the three charges that the State has brought
19 and alleged against the Defendant?

20 As I told you at the beginning, you've got to
21 make three decisions. You make three separate decisions.

22 You will see there are different elements, different
23 things the State has to prove for each crime, so you have to
24 look at each crime. Did the State prove that to me beyond a
25 reasonable doubt?

1 You make three decisions, and just because you make a
2 decision on one, that doesn't mean that you have to find
3 the same thing on the other two in any combination. They
4 can all be the same, but they don't have to be.

5 So, the Defendant being charged with armed robbery,
6 the State has to prove to you beyond a reasonable doubt that
7 the Defendant took the personal property from the person or
8 the presence of another person.

9 Property is within your presence if it is within your
10 reach, your inspection or observation, or you control it,
11 so that the person could, if not overcome by violence or
12 prevented by fear, keep possession of that property.

13 It doesn't mean it has to be in your pocket, but just
14 in your control.

15 The State must also prove beyond a reasonable doubt
16 that the Defendant carried the property away, intending to
17 permanently deprive the owner of that property and to keep
18 the property for the Defendant's own use.

19 The slightest removal of property or the complete pos-
20 session of property just for an instant by the Defendant is
21 sufficient to show the taking and carrying away of the prop-
22 erty.

23 The taking and carrying away of property has to be done
24 by violence or putting the owner of the property in fear of
25 violence.

1 Finally, the State has to prove beyond a reasonable
2 doubt that the Defendant was armed with a deadly weapon
3 during the robbery.

4 A deadly weapon is any kind of article, instrument, sub-
5 stance, which is likely to cause death or great bodily injury
6 whether or not the article or instrument ever has been used
7 --whether or not the article or instrument or whatever has
8 been used or could be a deadly weapon, depending on the
9 facts and circumstances of each case.

10 Now, kidnapping -- the Defendant is charged with the
11 crime of kidnapping. The State has to prove to you beyond
12 a reasonable doubt that the Defendant knowingly and unlaw-
13 fully seized or confined or inveigled or decoyed or kidnapped
14 or abducted or carried away another person, or any one of
15 those without the authority of law.

16 Knowingly means consciously, not accidentally.

17 Seize means to take hold of or confine.

18 Confine means to limit, restrict or enclose within some
19 bounds or shut in a person.

20 Inveigle means to lure or entice or lead astray, to
21 decoy.

22 A person in kidnapping can be removed against their will
23 to another place but that does not have to be the case. You
24 can be confined.

25 Abduct would mean to carry away and take off.

1 The State doesn't have to prove to you all of the
2 things I just read. Those are all types of kidnapping,
3 abducting, carrying away -- those are all types of kidnapp-
4 ping, and the State only has to prove one of them to you
5 beyond a reasonable doubt.

6 Also, it is not an element of kidnapping that it be
7 done for any kind of personal or monetary gain, or for any
8 illegal purpose. It can be for any reason whatsoever.

9 That is not a part of the crime of kidnapping.

10 Assault and battery of a high and aggravated nature --
11 the State has charged the Defendant with the crime of as-
12 sault and battery of a high and aggravated nature.

13 A person commits the offense of assault and battery
14 of a high and aggravated nature -- the State has to prove it
15 beyond a reasonable doubt just like everything else -- if
16 the person unlawfully injures another person and there was
17 great bodily injury to another person, or the act was ac-
18 complished by means likely to produce death or serious
19 bodily injury.

20 Great bodily injury is defined as bodily injury which
21 causes a potential risk of death or causes serious or per-
22 manent disfigurement or protracted loss of impairment.

23 If the State has not proven to you beyond a reasonable
24 doubt that the Defendant has committed the crime of assault
25 and battery of a high and aggravated nature, there is included

1 within that what we call a lesser included offense or a
2 lesser included crime, and that crime is called assault and
3 battery in the first degree.

4 A person commits -- the State has to prove this to you
5 beyond a reasonable doubt -- a person commits an assault
6 and battery in the first degree if the person injures another
7 person and the act occurred during the commission of any
8 robbery, burglary, kidnapping or theft.

9 A person can also commit the offense of assault and
10 battery in the first degree if the person unlawfully offers
11 or attempts to injure another person with the ability to
12 do so and it is accomplished by means likely to produce
13 death or great bodily injury or it occurred during the com-
14 mission of a robbery, burglary, kidnapping or theft.

15 Now, regarding assault and battery, high and aggra-
16 vated nature, and assault and battery in the first degree,
17 if you have any reasonable doubt as to whether or not the
18 Defendant is guilty of the greater or the lesser offense be-
19 yond a reasonable doubt, it is your duty to resolve that
20 doubt in favor of the Defendant and find him guilty of the
21 lesser offense, if you find that from the evidence that you
22 find to be true, and, again, the State has proven it to you
23 beyond a reasonable doubt, which is the State's burden in
24 every case.

25 That's the law that you have to apply to the facts and

1 the evidence you find to be true.

2 Now, we have prepared for you a verdict form, and it is
3 straight-forward. It has the caption, State of South Carolina
4 versus Gartharee Jequa Hinson, and it says:

5 Armed robbery -- on the charge of armed robbery, we,
6 the jury, by unanimous consent, find the Defendant -- you've
7 got two choices and you've got to choose one or the other --
8 not guilty or guilty.

9 Don't assign anything to that as I have to put one be-
10 fore the other, not guilty or guilty. Once you resolve that,
11 you go on to the next charge.

12 Kidnapping -- on the charge of kidnapping,
13 we, the jury, by unanimous consent, find the Defendant not
14 guilty or guilty.

15 Again, when you resolve that, you go on to the third,
16 assault and battery of a high and aggravated nature.

17 On the charge of assault and battery of a high and ag-
18 gravated nature, we, the jury, by unanimous consent, find the
19 Defendant -- again two choices, not guilty or guilty.

20 Now, remember, assault and battery of a high and aggra-
21 vated nature has that lesser included offense. If you find
22 the Defendant not guilty of assault and battery, high and ag-
23 gravated nature, you must consider the lesser offense, the
24 lesser offense of assault and battery in the first degree,
25 so on the charge of assault and battery in the first degree,

1 we, the jury, by unanimous consent, find the Defendant --
2 again, two choices, guilty or not guilty.

3 Once you return a verdict on all of those, then knock
4 on the door and let the bailiff know the jury has returned a
5 verdict.

6 Now, of course, if you found him guilty of assault and
7 battery, high and aggravated nature, you obviously found him
8 guilty of the greater offense and you don't consider the les-
9 ser offense. It is only if you found him not guilty on that,
10 and that's the note down at the bottom of that. If you find
11 him not guilty, go on to the next one.

12 I've said unanimous I don't know how many times at the
13 beginning and now, and it means exactly what you think it
14 means. It means twelve-zero. It does not mean eleven-one
15 or any combination thereof.

16 Whatever the verdict is, it must be the unanimous ver-
17 dict of all twelve members of the jury. So, Mr. Foreman, you
18 take these verdict forms and you check the appropriate
19 blocks and sign your name, and you are saying every single
20 member of the jury -- that's their verdict.

21 So at the very end when you are called upon by the Clerk
22 of Court, you raise your right hand, indicating that was the
23 verdict of every single member of the jury, you can do so.

24 I'm going to ask you, Mr. Foreman, to take the twelve mem-
25 bers of the jury to the jury room. Madam Alternate, you will

1 stay with us. The twelve member of the jury will go to the
2 jury room, but do not begin your deliberations until the bail-
3 iff hands to you the verdict form and the Exhibits as were
4 stated in the record before. Do not begin deliberations until
5 then.

6 Obviously, the firearms have gun locks on them so they
7 are not operational, just so you know that.

8 When you get the verdict form and the Exhibits then you
9 can begin your deliberations.

10 Retire to the jury room, please.

11 (Jury members excused to jury room)

12 THE COURT: Madam Alternate, thank you for your ser-
13 vice. I'm going to have to ask that you come back tomorrow.
14 We've got one more case we're going to try this week. So
15 be back tomorrow at one thirty.

16 (Alternate juror excused for the balance of the day)

17 THE COURT: All right, exceptions, deletions, additions
18 to the charge from the State of South Carolina?

19 SOLICITOR: None from the State, Your Honor.

20 THE COURT: From the Defense?

21 MR. COCKRELL: None, Your Honor.

22 THE COURT: Thank you. Look at the verdict form and the
23 Exhibits. I want to thank the Solicitor's Office and I want
24 to thank the Defense for the way you all tried the case. I
25 think you did everything that was expected of you in the

1 representation of your respective clients in this matter.

2 I appreciate it. Thank you for that.

3 Look at the Exhibits and make sure all of them go to the
4 jury. After that, we'll be ease until the jury needs us.

5 (Whereupon, the Court stood in recess until the matter
6 continued)

7 THE COURT: I understand the jury has reached a verdict
8 in this matter. Is the State ready to receive it?

9 SOLICITOR: Yes, sir.

10 THE COURT: And the Defense?

11 MR. COCKRELL: Yes, Your Honor.

12 THE COURT: Ask the jury to come in, please, maam.

13 (Jury returned to the Courtroom)

14 THE COURT: All right, Mr. Foreman, has your jury
15 reached a verdict in these matters?

16 FOREMAN: We have, sir.

17 THE COURT: All right, could you pass the verdict forms
18 to the bailiff, please, sir. Thank you.

19 (Verdict forms handed to the Court by the bailiff)

20 THE COURT: All right, Madam Clerk, you may publish the
21 verdicts.

22 CLERK: State of South Carolina versus Gartharee Jequa
23 Hinson, as to the charge of armed robbery, we, the jury, by
24 unanimous consent, find the Defendant guilty. Signed by the
25 Foreperson.

1 State of South Carolina versus Gartharee Jequa
2 Hinson, as to the charge of kidnapping, we, the jury, by
3 unanimous consent, find the Defendant guilty. Signed by the
4 Foreperson.

5 State of South Carolina versus Gartharee Jequa
6 Hinson, as to the charge of assault and battery of a high
7 and aggravated nature, we, the jury, by unanimous consent,
8 find the Defendant not guilty.

9 State of South Carolina versus Gartharee Jequa
10 Hinson, as to the charge of assault and battery in the first
11 degree, we, the jury, by unanimous consent, find the
12 Defendant guilty. Signed by the Foreperson.

13 Mr. Foreman, was this your verdict, and is it still your
14 verdict?

15 FOREMAN: It is.

16 THE COURT: Is it still the verdict of all twelve?

17 (Affirmative response heard)

18 CLERK: Please raise your right hands if was your ver-
19 dict and is still your verdict.

20 THE COURT: Thank you very much. Does the State wish
21 the jury polled?

22 SOLICITOR: Your Honor, the State does not.

23 THE COURT: Does the Defense wish the jury polled?

24 MR. COCKRELL: Please, Your Honor.

25 THE COURT: Madam Clerk, if you would poll the jury,

1 please, maam.

2 THE COURT: When I call your name, please stand.

3 (Whereupon, each juror individually was asked if the
4 verdict was their verdict and if it is still their verdict as
5 their names were called, and each juror answered in the af-
6 firmative)

7 THE COURT: Thank you. The jury has been polled and
8 confirmed their verdict.

9 Is there anything else as to the jury from the State?

10 SOLICITOR: Not from the State.

11 THE COURT: From the Defense?

12 MR. COCKRELL: None, Your Honor.

13 THE COURT: Ladies and gentlemen of the jury in this
14 particular matter, I will have to ask you all to come back
15 as we only have about fifty of you and we need to pick a jury
16 in one more case at one thirty.

17 I appreciate your service, and I would let you go if I
18 could, but we just don't have enough of you.

19 (Jurors excused by the Court)

20 THE COURT: All right, Mr. Cockrell, any motions from
21 the Defense?

22 MR. COCKRELL: Not at this time, Your Honor.

23 THE COURT: All right, very good. I know that some of
24 the Resident Judges give you some time to file any
25 post-trial motions. Since I am a visiting Judge and have

1 other assignments after this week, I would prefer you to, if
2 you would, make your motions at this time.

3 MR. COCKRELL: Your Honor, I would move for a new trial
4 in this matter. I don't think the evidence was sufficient
5 to warrant a finding by the jury of guilty on the basis that
6 there was not enough evidence as to the robbery charge or the
7 kidnapping or the assault.

8 THE COURT: All right, sir. Very good.

9 The motion for a new trial in this matter is a motion
10 as to the sufficiency of the evidence. I have denied at an
11 earlier stage the motion for a directed verdict.

12 When there is competent evidence to sustain a jury ver-
13 dict, the Trial Judge may not, even if I wanted to -- not
14 that I would in this case, but even if I wanted to -- substi-
15 tute my judgment for that of the jury that returned that
16 verdict.

17 What I am looking at is that -- and I do find that --
18 there was more than sufficient evidence presented, and it is
19 obvious that the jury believed that evidence, to find the De-
20 fendant guilty of the crimes he was found guilty of beyond
21 a reasonable doubt.

22 I find that there was evidence presented to the jury and
23 which the jury could consider and find the Defendant to be
24 guilty beyond a reasonable doubt from that evidence that was
25 existing.

1 The jury found him guilty from that evidence, and I deny
2 your motion for a new trial at this time.

3 All right. Is the State ready with the sentencing
4 sheets?

5 SOLICITOR: Yes, sir.

6 THE COURT: All right. Hand them up, please. Thank
7 you.

8 All right, Solicitor, would you care to make any argu-
9 ments to the Court regarding the Court's sentence in this
10 matter?

11 SOLICITOR: Yes, sir, Your Honor. May it please the
12 Court?

13 THE COURT: Yes, sir.

14 SOLICITOR: I have been told the victims do not wish to
15 address the Court. I think the Court has knowledge of all
16 that occurred in this particular matter.

17 THE COURT: Yes, sir.

18 SOLICITOR: I think that would be sufficient. We did
19 discuss that there was one charge that we agreed we would
20 not present had the Defendant testified, it being a larceny
21 in 2003 in North Carolina, because it was outside of the ten
22 year limit.

23 We had discussed that earlier in advance of the trial,
24 but there was a conviction for that, and he also had an ar-
25 rest for cocaine in North Carolina.

1 That was for possession of cocaine, and in looking at
2 the rap sheet we noticed he was convicted of possession of
3 a weapon by a convicted felon, but I could not find what
4 the underlying felony was. The only other charge was a mis-
5 demeanor larceny.

6 But he does have a prior record and one that involved
7 possession of a weapon, which should be taken into consid-
8 eration. I think the most disturbing part, and what would be
9 disturbing to anybody, is the fact that they were held at
10 gunpoint in this fashion, and especially with the young child-
11 ren there in the house at the time this occurred.

12 And I was not being dramatic when I mentioned to the
13 jury the fact that the five year old -- I would be worried
14 about the fact that that five year old is going to remember
15 what happened. I hope the three year old ~~at~~ some point will
16 forget what occurred.

17 Given the fact, Your Honor, that all of that was involved
18 and guns were involved, I would ask the Court to sentence ac-
19 cordingly.

20 Thank you.

21 THE COURT: All right, sir. Mr. Cockrell, let me hear
22 from you, sir.

23 MR. COCKRELL: Thank you. May it please the Court, Your
24 Honor?

25 Mr. Hinson has advised me that he has had some issues

1 with drugs in the past, and that is one of the things that
2 is part of the events that were before the Court these past
3 few days.

4 He is disturbingly upset about this situation, but all
5 in all we would ask the Court to be as lenient as possible
6 as far as the amount of time given him.

7 THE COURT: All right, sir. Thank you very much.

8 (Brief pause in the proceeding)

9 THE COURT: The Court having heard the testimony and
10 the evidence in this matter, and the jury having found you
11 guilty of the crimes of armed robbery, kidnapping and
12 assault and battery, first degree, the sentence of the Court
13 is regarding the State of South Carolina, County of Chester-
14 field versus Gartharee Jequa Hinson, regarding armed robbery
15 the sentence of the Court is that the Defendant is committed
16 to the State of South Carolina Department of Corrections for
17 a term of twenty-one years, 2013 GS 13 0089.

18 Regarding kidnapping, the sentence of the Court is the
19 Defendant is committed to the State Department of corrections
20 for a term of twenty-one years, 2013 90, and for 2013 091,
21 assault and battery in the first degree, the Defendant is
22 committed to the South Carolina Department of Corrections
23 for a term of ten years, concurrent with 2013 89.

24 Thank you very much.

25 Regarding the crime of kidnapping, this crime did not

1 involve any sexual undertones of any kind, so, Solicitor, do
2 you take a position on that?"

3 SOLICITOR: No, sir.

4 THE COURT: The Court does not find registry is neces-
5 sarily required for kidnapping since there was not sexual
6 overtures in this matter at all.

7 Yes, sir, Mr. Cockrell.

8 MR. COCKRELL: If I may, Your Honor, I would ask that
9 he be given credit for . .

10 THE COURT: If I didn't say it, I have checked on the
11 sentencing sheets that he be given credit for time already
12 served.

13 MR. COCKRELL: Thank you.

14 THE COURT: Very good.

15 -- --END OF REQUESTED TRANSCRIPT OF RECORD-----

16

17

18

19

20

21

22

23

24

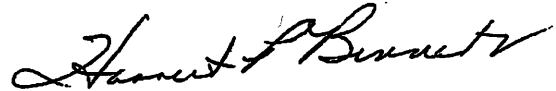
25

CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Hattie O. Gordon to the best of my ability, having been heard in the Court of General Sessions for Chesterfield County on September 15 and 16, 2014.

FURTHER, I certify that I am neither of kin nor of counsel to any party to this matter, nor do I have any interest in the same.

January 17, 2015



9-15-14

Chesterfield County Courthouse

RANDOM STRIKE SHEET

234

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : HINSON

COURTROOM CTRM

DESCRIPTION : State V. Gartharee J Hinson

Sorted by: Random Nbr

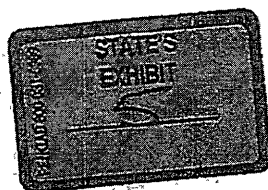
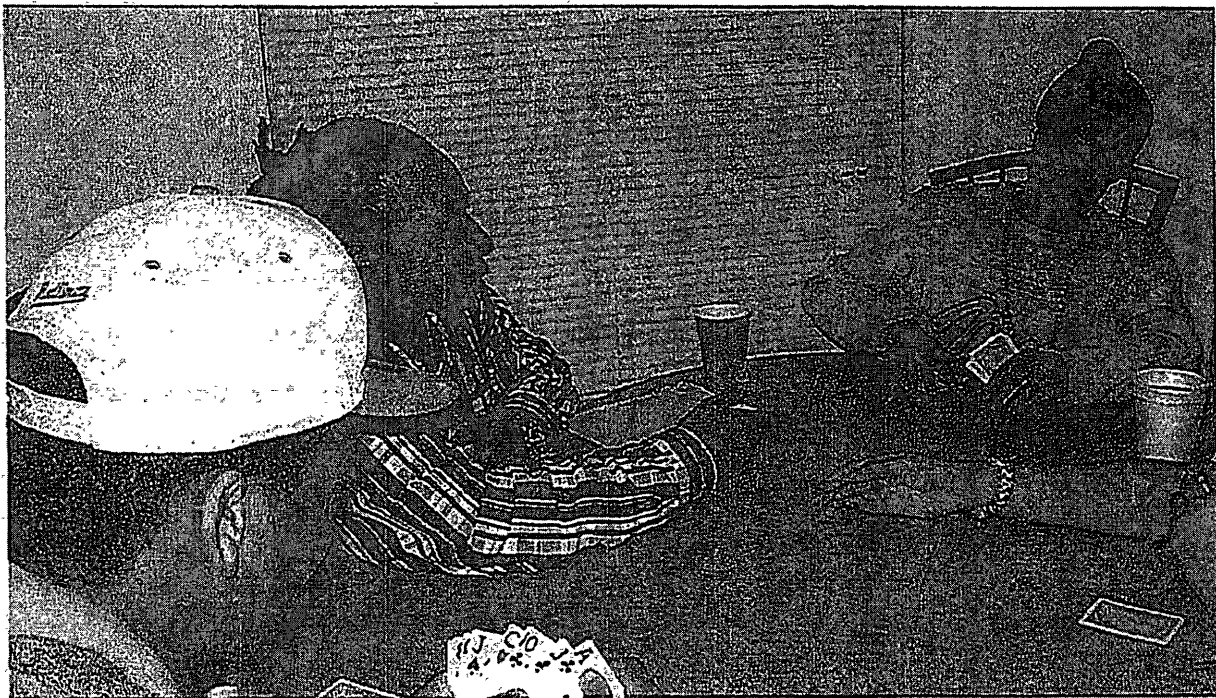
Trial

NAME	JUROR NBR	RACE	SEX	STATUS	DEF	GRT	REMARKS
1 Pettus, Cleatus	110	B	M	()	()	()	# 1
2 Hill, Martha D	64	W	F	()	(1)	()	-
3 Blakeney, Kirtina W	8	B	F	()	()	()	# 2
4 Schoen, Melissa S	119	W	F	()	()	()	# 3
5 Miller, Toby U	95	B	M	()	(2)	()	-
6 Little, Tiffany A	87	B	F	()	()	()	# 4
7 Williamson, Paul A	148	W	M	()	(3)	()	Not present
8 Melton, Denise L	92	B	F	()	(3)	()	-
9 Miller, Crystal R	94	B	F	()	()	()	5
10 Freeman, Theatus J	40	W	F	()	()	()	6
11 Smith, Kenneth P	122	W	M	()	(4)	()	-
12 Jowers, Sandra K	78	B	F	()	()	()	7
13 Russell, James D	117	W	M	()	(5)	()	-
14 Henderson, Karen M	62	B	F	()	()	()	8
15 Greene, Bethany J	47	W	F	()	(6)	()	-
16 Little, David A JR	86	B	M	()	()	()	not present
17 Oliver, Craig W	103	W	M	()	(7)	()	-
18 Taylor, Lisenby Cindy L	131	B	F	(1)	()	()	-
19 Hayes, Janet H	59	W	F	()	(8)	()	-
20 Gaines, Angie E	41	B	F	()	()	()	9
21 Smith, Raquel R	123	W	F	()	(9)	()	-
22 Chavis, Raymond L	23	W	M	()	()	()	10
Woods, Melissa W	150	W	F	()	()	()	11
24 Mcqueen, Sandra D	91	B	F	()	()	()	12

235**Chesterfield County Courthouse
RANDOM STRIKE SHEET****JUDGE NAME :****TRIAL TYPE :** Criminal**CASE ID :** HINSON**COURTROOM CTRM****DESCRIPTION :** State V. Gartharee J Hinson**Sorted by:** Random Nbr**Trial**

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Sowell, Kimberly M	125	W	F	()	()	()	<i>Alternates</i>
26 Hanman, Bernadine M	53	W	F	()	()	()	
27 Newsome, James R	101	W	M	()	()	()	
28 Bridges, Julia D	11	B	F	()	()	()	
29 Flowers, Mary L	39	B	F	()	()	()	
30 Barksdale, Lucinda	3	B	F	()	()	()	

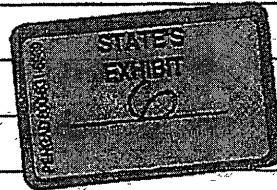
Total Number of Jurors:**30****** END OF REPORT ****



Chesterfield Police Department
Evidence Log

Date Seized: 10-21-12 Case # 12-1629
 Seizing Officer: Dorsey English Suspect(s): Unknown
 Type Incident: Home Invasion Victim(s): Unknown
 Date to Lab: _____ Date from Lab: _____
 Date and Disposition of Case: _____

Date and Method of Evidence Disposal / Return, etc.: _____



Signature of Disposing Officer: _____

Signature of Witness(s) _____

Inventory of Evidence:

Chain of Custody

Name

Date

1 Pair Blue Coveralls Found at 1313 W Blvd

1 Cell Phone found at 1315 W Blvd

1 Black mask found at 1313 W Blvd

1 Set of Key found at 1313 W Blvd

1 Pair Blue Coveralls

1 Cell Phone

1 Black mask

1 Set of Keys

1 Pair Blue Coveralls

1 Cell Phone

1 Black mask

1 Set of Keys

1 Cell Phone found at 1313 W Blvd

1 Cell Phone

1 Cell Phone

Dorsey English

Dorsey English

Dorsey English

Dorsey English

Evidence

~~Dorsey English~~ Evidence

Evidence

Evidence

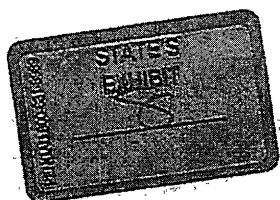
Dorsey English

Evidence

10-21-12 DE

238
53WNC 1 of 4NER OF VEHICLE: ENTERPRISE LEASING COMPANY - SOUTHEAST, LLC
ANCH ADDRESS: 5100 E INDEPENDENCE BLVD, CHARLOTTE, NC, 28212 (704) 531-2099

RENTAL TYPE: RETAIL		SOURCE: \$9.99 WEEK		ID: 999		RENTAL AGREEMENT NO. 331029	
RENTER: HINSON		EUGENE		DAY = 24 HOUR PERIOD			
ORIGINAL VEHICLE		STATE: NC		ZIP: 28227		VEHICLE \$12.00/HOUR \$35.97/DAY	
COLOR: WHITE		EMPLOYER: CARUSTAR		STATE: NC		\$29.99/DAY/SPECIAL	
MODEL: HAR		EXPIRES: 07/25/2017					
MILEAGE: IN 30568		BILL TO: N		PHONE:		\$0.20/MILE CHARGE ABOVE 100/DAY	
DRIVEN		REFERENCE NUMBER:		PHONE:		07/WEEK 0/MONTH 100/DAY/SPECIAL	
ADDITIONAL AUTHORIZED DRIVER(S) - EXCEPT AS REQUIRED BY LAW, NONE PERMITTED WITHOUT OWNER'S WRITTEN APPROVAL		NO OTHER DRIVERS PERMITTED					
PERMISSION GRANTED TO OPERATE VEHICLE ONLY IN THE STATE OF RENTAL AND THE FOLLOWING STATE(S):		NC SC NO SMOKING/FETS					
OPERATION IN ANY OTHER STATE OR COUNTRY WILL AFFECT YOUR LIABILITY AND RIGHTS UNDER THIS AGREEMENT.							
RENTER DECLINES OPTIONAL DAMAGE WAIVER (DW) AND ASSUMES DAMAGE RESPONSIBILITY. SEE PARAGRAPH 16.		RENTER ACCEPTS OPTIONAL DAMAGE WAIVER. (DW) AT FEE SHOWN IN COLUMN TO RIGHT. SEE NOTICE TO LEFT AND PARAGRAPH 16. DAMAGE WAIVER IS NOT INSURANCE.		RENTER: X			
RENTER DECLINES OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI). SEE PARAGRAPH 18.		RENTER ACCEPTS OPTIONAL PERSONAL ACCIDENT INSURANCE (PAI) AT FEE SHOWN IN COLUMN TO RIGHT. SEE PARAGRAPH 18.		RENTER: X			
RENTER DECLINES OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP). SEE PARAGRAPH 17.		RENTER ACCEPTS OPTIONAL SUPPLEMENTAL LIABILITY PROTECTION (SLP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE PARAGRAPH 17.		RENTER: X			
RENTER DECLINES OPTIONAL ROADSIDE ASSISTANCE PROTECTION (RAP). SEE PARAGRAPH 19.		RENTER ACCEPTS OPTIONAL ROADSIDE ASSISTANCE PROTECTION (RAP) AT FEE SHOWN IN COLUMN TO RIGHT. SEE OPTIONAL PRODUCTS NOTICE TO LEFT AND PARAGRAPH 19.		RENTER: X		RAP \$3.97/DAY	
ACKNOWLEDGMENT OF THE ENTIRE AGREEMENT, WHICH CONSISTS OF PAGES 1 THROUGH 4.							
REPLACEMENT VEHICLE		DATE: 10/12/2012				FUEL CHARGE \$5.25/GALLON	
OWNER REP: X		EMPL: EB35MM					
I WILL RETURN CAR BY:		DEPOSIT(S):					
DATE: 10/15/2012 TIME: 10:30 AM		AMOUNT: \$219.40 PAID BY: CHECK/CASH		10/12/2012			
ADDITIONAL INFORMATION							
Luggage Scratches							
TOTAL CHARGES							
DEPOSITS							
REFUNDS							
AMOUNT DUE							
CLOSED BY							
PAID BY: CASH CHECK CHARGE							
RECEIPT OF CASH REFUND							





6017 NABED 14115001 11111
8-18-82 251-75-5833

CHESTERFIELD COUNTY SHERIFF'S OFFICE

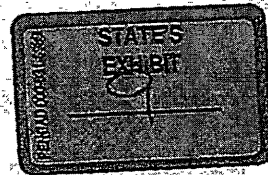
Sanford M. "Sam" Parker, Sheriff

240

Statement of Miranda Rights

Before we ask you any questions, you must understand your rights.

1. A. 11 You have the right to remain silent.
2. A. 11 Anything you say, can and may be used against you in a court of law.
3. A. 11 You have the right to talk with a lawyer and have him/her present with you while you are being questioned.
4. A. 11 If you can't afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. A. 11 You can decide at any time to exercise these rights and not answer any questions or make any statements.
6. A. 11 Do you understand the rights I have just read to you?
7. A. 11 With these rights in mind, do you wish to speak to me?
8. _____ Also be advised you are being audio and video recorded.



Signature [Signature] Date 1-4-13 Time 1051

Officer [Signature] Date 1-4-13 Time 1053

Witness _____ Date _____ Time _____

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signature [Signature] Date _____ Time _____

Officer _____ Date _____ Time _____

Witness _____ Date _____ Time _____

200 West Main Street ■ County Courthouse ■ Chesterfield, SC 29709
Phone: (843) 623-2101 ■ Fax: (843) 623-3534
www.chesterfieldsheriff.org

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

DNA ANALYSIS DEPARTMENT

Sgt. Wayne Jordan
Chesterfield County Sheriff's Office
200 Main Street
Chesterfield, SC 29709

November 26, 2012
SLED Lab Number: L12-14198
Your Case Number: 124120
Incident Date: 10/20/2012
[V] CHRISTOPHER MERRIMAN
(S) GARTHAREE HINSON
(S) RICHARD SMITH
(S) MAURICE ANDERSON
(S) RICHARD MARTIN

The requirements for routine analysis by the SLED DNA Casework Department have not been met.

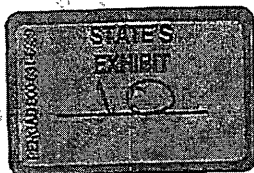
Known DNA standard(s) are needed to initiate DNA testing. Please submit a buccal swab (preferred) or liquid blood sample from the subject(s) for comparison purposes.

If the requested DNA standards are not submitted within three months, the evidence will be returned to the submitting agency without analysis. If a standard cannot be obtained or analysis is necessary prior to the submission of the requested standard(s), please contact the SLED DNA Casework Department at (803) 896-7383.

Sincerely,

A handwritten signature in cursive script, reading "Lorian S. Pitts".

Lorian S. Pitts
Administrative Specialist



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
vs.)

IND. NOs: 2013-GS-13-89 THROUGH -91

AFFIDAVIT FOR
COLLECTION OF SUSPECT
STANDARDS

GARTHAREE JEQUA HINSON,)
Defendant.)

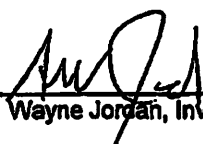
I am an Investigator for the Chesterfield County Sheriff's Office and participated in the investigation of the armed robbery, kidnapping, and assault and battery of a high and aggravated nature case in which the defendant Gartharee Jequa Hinson is charged. Saliva samples are needed to complete the investigation in this case.

The Defendant, Gartharee Jequa Hinson, has been identified as one of the four suspects in this Kidnapping, ABHAN, and Armed Robbery case, which occurred on or about October 20, 2012, in Chesterfield County, South Carolina.

Evidence was collected at and near the scene, including two guns, a black hat, black mask, and jumpsuit. These items have been sent to SLED for possible DNA analysis.

SLED has provided a request that DNA samples be provided from the defendants in order to initiate the testing.

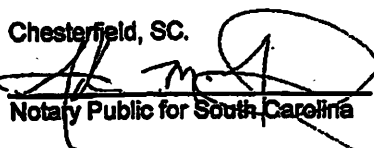
The samples will be taken via buccal swab by me so there will be minimal intrusion.


Wayne Jordan, Investigator for MCSO

SWORN TO BEFORE ME THIS

16th DAY OF APRIL, 2013, at

Chesterfield, SC.


Notary Public for South Carolina



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

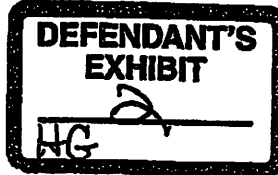
IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
vs.)

IND. NOS: 2013-GS-13-89 THROUGH -91

ORDER FOR
COLLECTION OF SUSPECT
STANDARDS

GARTHAREE JEQUA HINSON,)
Defendant.)



2013 APR 16 PM 4:21
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

COMES NOW, the State of South Carolina, moving this Honorable Court for an Order to collect standards from the Defendant in this matter. The State is represented in this matter by Assistant Solicitor Mary T. Johnson-Lee, and the Defendant is represented by Melvin W. Cockrell, III, Esquire.

The State requests certain saliva samples from the Defendant in order to further proceed with the investigation of this case. A court order may be issued pursuant to S.C. Code Section 17-13-140 upon a finding of probable cause or by consent of the parties. *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826 (1966); *In re Snyder*, 308 S.C. 192, 417 S.E.2d 572 (1992); *State v. Register*, 308 S.C. 534, 419 S.E.2d 771 (1992). The State asserts the following:

1) The Defendant, Gartharee Jequa Hinson, has been identified as one of the four suspects in this Kidnapping, ABHAN, and Armed Robbery case, which occurred on or about October 20, 2012, in Chesterfield County, South Carolina. Evidence was collected at and near the scene, including two guns, a black mask, black bandana, and jumpsuit.

As a result of the criminal investigation of this matter, the Defendant has been charged with Kidnapping, Assault and Battery of a High and Aggravated Nature, and Armed Robbery. An affidavit from one of the investigating officers was presented at the hearing along with said officer's sworn testimony.

The Court finds probable cause to believe that a crime has been committed by the Defendant and further finds probable cause to require that the Defendant provide the aforementioned samples in connection with the investigation of the alleged crime. The State has shown a clear indication that material evidence relevant to the question of the Defendant's guilt or innocence could be determined by

scientific or forensic testing related to said samples. Furthermore, the methods used to secure such evidence from the Defendant are medically safe and reliable, and the taking of said samples are reasonable and justifiable intrusions which do not violate the Defendant's Fourth Amendment Rights.

Accordingly, it is hereby ordered that the Defendant, Gartharee Jequa Hinson, give a saliva sample via buccal swab to the State for scientific analysis. The sample may be taken by a representative of the State.

AND IT IS SO ORDERED.



The Honorable Paul Burch

Chesterfield, South Carolina

April 16, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

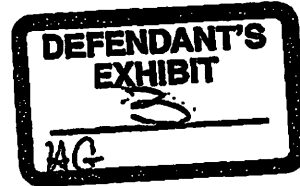
IN THE COURT OF GENERAL SESSIONS
FOR THE FOURTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
vs.)

IND. NOS: 2013-GS-13-89 THROUGH -91

MOTION FOR
COLLECTION OF SUSPECT
STANDARDS

GARTHAREE JEQUA HINSON,)
Defendant.)
_____)



COMES NOW, the State of South Carolina, to move this Honorable Court for an Order to collect standards from the Defendant in this matter. The State is represented in this matter by Assistant Solicitor Mary T. Johnson-Lee, and the Defendant is represented by Melvin W. Cockrell, III, Esquire.

The State requires certain blood and/or saliva samples from the Defendant in order to further proceed with the investigation of this case. A court order may be issued pursuant to S.C. Code Section 17-13-140 upon a finding of probable cause or by consent of the parties. *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826 (1966); *In re Snyder*, 308 S.C. 192, 417 S.E.2d 572 (1992); *State v. Register*, 308 S.C. 534, 419 S.E.2d 771 (1992). The State has sufficient evidence in order to establish probable cause for the collection of and certain blood and/or saliva samples from the Defendant in order to further proceed with the investigation of this case, including but not limited to the following facts or assertions:

1) The Defendant, Gartharee Jequa Hinson, has been identified as one of the four suspects in this Kidnapping, ABH, and Armed Robbery case, which occurred on or about October 20, 2012, in Chesterfield County, South Carolina. Evidence was collected at and near the scene, including two guns, a black mask, black bandana, and jumpsuit.

As a result of the criminal investigation of this matter, the Defendant has been charged with Kidnapping, Assault and Battery of a High and Aggravated Nature, and Armed Robbery. An affidavit from one of the investigating officers will be presented at the hearing along with said officer's sworn testimony.

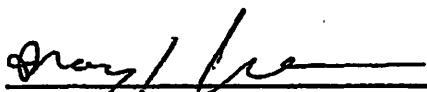
The State believes that a crime has been committed by the Defendant and that there is probable

pl 62

cause to require that the Defendant provide the aforementioned samples in connection with the investigation of the alleged crime. The State has shown a clear indication that material evidence relevant to the question of the Defendant's guilt or innocence will be determined by scientific or forensic testing related to said samples. Furthermore, the methods used to secure such evidence from the Defendant are medically safe and reliable, and the taking of said samples are reasonable and justifiable intrusions which do not violate the Defendant's Fourth Amendment Rights.

THEREFORE, the State requests that the Defendant, Gartharee Jequa Hinson, give a saliva sample via a buccal swab to the State for scientific analysis.

BY:


Mary T. Johnson-Lee, Assistant Solicitor

Chesterfield, South Carolina

April 16, 2013

b242

CPD
94VOLUNTARY STATEMENT
(NOT UNDER ARREST)I, Christopher D. Merrimon, am not under arrest for, nor am I being detained forany criminal offenses concerning the events I am about to make known to
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.I am 34 years of age, and I live at [REDACTED] Chesterfield SC 29709I ☒ cannot (circle one) read and write and completed the 12 grade in school. DOB: [REDACTED] 78

I was called by my aunt to go and check on my Aunt Barbara because she wasn't answering the phone. I proceeded to leave and noticed I left my cigarettes inside. I got out of the car to return to the house. As I approached my steps in back and a man got in a car and a hooded and half mask came around the back corner of my trailer and ordered that my girlfriend and I go back in the house. As we go in I noticed that there were two males both with guns. We go inside where they force us into the same room and get us down in the room. They started to ask for drugs and money and we told them there were none there. They held us at gun point while plundering through the house. Finally they got me up and moved me about the house while still searching. They took me back to the room where everyone else was took our phones, money, purses from the females and my pants and keys throughout this time the taller of the two males hit me 3 plus times with the gun. He was crying. Eventually I convince the taller one to let me load the car for him we grab some things begged them we exited the rear and I put several bags in the trunk of my car. I looked up and saw lights at the end of my road.

DEFENDANT'S
EXHIBIT
4I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.This statement was completed at 10:36 A M. on the 22nd day of October, 2012SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS DAY OF , 20

Signature of person giving voluntary statement

WITNESS: [Signature]NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: WITNESS:

STATE OF SOUTH CAROLINA
COUNTY OF Chesterfield
STATE Chesterfield VS.

AKA: Gartharee Thigmon Hinson

Sex: Female Age: 37

Address: [REDACTED]

City, State, Zip: [REDACTED]

DI #: [REDACTED] SID #: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery (10-30 yrs)

In violation of § 16-11-330(A) 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) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 066583

Solicitor 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 21 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 § 17-25-45

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100

§ 56-5-2995 (DUI Assessment) \$12

§ 56-1-286 (DUI Breath Test) \$25

Proviso 47.9 (Public Def/Prob) \$500

§ 14-1-212 (Law Enforce. Funding) \$25

§ 14-1-213 (Drug Court Surcharge) \$150

§ 50-21-114 (DUI Breath Test Fee) \$50

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

Proviso 90.5 (SCCA Surcharge) \$5

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-13-89

A/W#: 2012-A-1310400174

Date of Offense: 10-20-12

S.C. Code §: 16-11-330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

RECEIVED

SEP 22 2014

SC Court of Appeals

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]

Judge Code: 127

Sentence Date: 9/16/14

WITNESSES

Ssgt. Wayne Jordan

Chesterfield County Sheriff

Law Enforcement Case #: 12-4120



WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
2012A1310400174

ARRESTED ON: 2012-11-21

ACTION OF GRAND JURY

True Bill



Grand Jury Foreperson

2-26-13

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-13-0089

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Gartharee Jequa Hinson

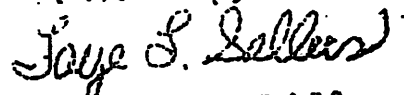
INDICTMENT FOR

Robbery / Armed Robbery, robbery while
armed or allegedly ar

§16-11-0330(A)

CDR Code: 0139

A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF CHESTERFIELD)

Robbery / Armed Robbery, robbery while armed or
allegedly ar

§16-11-0330(A)

At a Court of General Sessions, convened on February 26, 2013, the Grand Jurors of Chesterfield County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Gartharee Jequa Hinson did in Chesterfield County on or about October 20, 2012, while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of Christopher Merriman from or in the immediate presence of Christopher Merriman with intent to deprive Christopher Merriman of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

A True Copy, Attest

*Joyce E. Sallier*CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

251

SEP-17-2014 15:42 From:CHESTERFIELD-CO.-COC 8436236944

To:96235700

P.2

STATE OF SOUTH CAROLINA

COUNTY OF ChesterfieldSTATE VS.AKA: Anthony Legua, HibsonRace: TC Sex: M Age: 32

City, State, Zip:

DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Ridgely (0-30)in violation of § 16-3-910 of the S.C. Code of Laws, hearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSCw/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: [Signature]066583

Solicitor

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 21 ~~years~~ years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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: 2013-60-13-89☒ 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 16-3-5-20 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 PTUPTotal: \$ 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/ca \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 3% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-65-13-0090A/W#: 2012A1310400178Date of Offense: 10/30/12S.C. Code § : 16-3-410CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

SPECIAL CONDITIONS:

Obtain GED ☐Attend Voc. Rehab. or Job Corp. SEP 22 2014

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge [Signature]Judge Code: Sentence Date: 9/16/14

SC Court of Appeals

CLERK OF COURT

RECEIVED

SEP 22 2014

PM 5 36

WITNESSES

Ssgt. Wayne Jordan

Chesterfield County Sheriff

Law Enforcement Case #: 12-4120



WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
2012A1310400178

ARRESTED ON: 2012-11-21

ACTION OF GRAND JURY

Time 8:11



Grand Jury Foreperson

Date 2-26-13

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-13-0090

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Gartharce Jequa Hinson

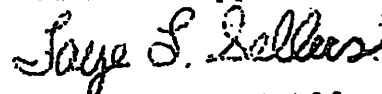
INDICTMENT FOR

Kidnapping / Kidnapping

§16-03-0910

CDR Code: 0095

A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

INDICTMENT FOR
Kidnapping / Kidnapping

§16-03-0910

At a Court of General Sessions, convened on February 26, 2013, the Grand Jurors of Chesterfield County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That Gartharee Jequa Hinson did in Chesterfield County on or about October 20, 2012, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Christopher Merriman, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

A True Copy, Attest

Loyle S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers
WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Chesterfield

STATE

VS. Gertharue Jeana Hinson

AKA:

Race: DSex: M

Age:

DOB: SS

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery 1st (10-10)in violation of § 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd 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:

Solicitor

SC Bar# 066583

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 10 ~~years~~ 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: 2013-65-312-89
☒ 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 _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fino:

§ 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 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 1.90
TOTAL	\$	\$ 137.90

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:

9/16/14

WITNESSES

Ssgt. Wayne Jordan

Chesterfield County Sheriff

Law Enforcement Case #: 12-4120

WAIVER OF PRESENTMENT

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

ARREST WARRANT NUMBER
2012A1310400182

ARRESTED ON: 2012-11-21

ACTION OF GRAND JURY

True Bill

William C. Miller

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-13-0091

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
February 2013

THE STATE

vs.

Gartharee Jequa Hinson

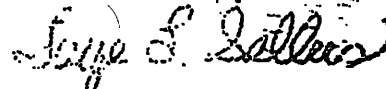
INDICTMENT FOR

Assault/Assault & Battery of a high and
aggravated nature

§16-03-0600(B)(1)

CDR Code: 3411

A True Copy, Attest



CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF CHESTERFIELD

Assault/Assault & Battery of a high and aggravated nature

§16-03-0600(B)(1)

At a Court of General Sessions, convened on February 26, 2013, the Grand Jurors of Chesterfield County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

CDR: 3411, 16-3-600(B)

That Gartharee Jequa Hinson did in Chesterfield, on or about 13700, unlawfully injure Christopher Merriman and the act was accomplished by means likely to produce death or great bodily injury, in violation of Section 16-3-600(B) of S.C. Code of Laws, 1976, as amended.

A True Copy, Attest

George S. Sellers

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY. -SC

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Steven H. John, Circuit Court Judge

ORIGINAL

RECEIVED

JUL 27 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GARTHAREE JEQUA HINSON

APPELLANT

APPELLATE CASE NO. 2014-002000

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	
The trial judge erred in allowing a voice identification of Appellant when the State failed to lay the proper foundation for admission of the voice identification.....	5
CONCLUSION.....	10

TABLE OF AUTHORITIES**Cases**

<u>State v. Heller</u> , 399 S.C. 157, 731 S.E.2d 312 (Ct. App. 2012).....	8
<u>State v. Smith</u> , 307 S.C. 376, 415 S.E.2d 409 (Ct. App. 1992).....	9
<u>State v. Stewart</u> , 275 S.C. 447, 272 S.E.2d 628 (1980).....	9

Rules

Rule 104(c).....	8

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in allowing a voice identification of Appellant when the State failed to lay the proper foundation for admission of the voice identification?

STATEMENT OF THE CASE

In February of 2013, the Chesterfield County Grand Jury indicted Hinson for armed robbery, kidnapping and assault and battery of a high and aggravated nature, indictments #2013-GS-13-0089, 90, 91. On September 15, 2014, Hinson proceeded to jury trial before the Honorable Steven H. John. M.W. Cockrell, III represented Hinson at trial. Kernard Redmond prosecuted the case. The jury returned verdicts of guilty of armed robbery and kidnapping and guilty of the lesser included offense of assault and battery first degree. Judge John sentenced Hinson to twenty one (21) years for armed robbery, a concurrent twenty one (21) years for kidnapping and ten (10) years concurrent for assault and battery first degree. A timely notice of intent to appeal was served on September 17, 2014. this appeal follows.

ARGUMENT

The trial judge erred in allowing a voice identification of Appellant when the State failed to lay the proper foundation for admission of the voice identification.

On the evening of October 20, 2012, Christopher Merriman, his girlfriend, Ashlyn Briggs, their two children and a friend, Hannah Gullledge were at Merriman and Briggs' home. (R. p. 55, lines 2-19). As Briggs and Merriman were outside on the porch, two men approached and forced them inside the house at gunpoint. (R. p. 57, line 2 – p. 58, lines 1-8). Once inside the house the men demanded money and marijuana. (R. p. 66, lines 11-13). According to Briggs the men took money, keys, three cell phones and a small amount of jewelry. (R. p. 59, lines 15-24). Merriman testified that the men forced him to load items from the house into Merriman's vehicle. (R. p. 69, line 20 – p. 70, lines 1-17). Merriman believed that a neighbor called the police and the two men fled. (R. p. 71, line 19 – p. 72, lines 1-3; p. 58, line 24 – p. 59, line 1). Merriman described the first man as taller wearing an overall jumpsuit with a hoodie and a black ski mask. (R. p. 71, lines 7-13). Merriman claimed that the taller individual hit him with a gun. (R. p. 67, lines 10-24).

Prior to the robbery, Richard Smith stopped by the house. According to Merriman, Smith came by to pay Merriman back for marijuana he had given Smith earlier. (R. p. 79, lines 1-21). Richard Smith, Richard Martin, Maurice Anderson and Appellant were all arrested in connection with the robbery. On the night of the incident law enforcement recovered two handguns, a wallet, a hat and a mask. (R. p. 103, lines 1-9). One of the guns was registered to Maurice Anderson. (R. p. 104, lines 1-11). The wallet belonged to Richard Martin. (R. p. 103, lines 10-21).

On the night of the incident an employee of the Piggly Wiggly noticed a suspicious black vehicle in the parking lot, noted the tag number and provided the tag number to law enforcement. (R. p. 96, line 22 – p. 99, lines 1-19). The day after the robbery an officer with the Chesterfield Police Department recovered a cell phone at the Piggly Wiggly. (R. p. 92, lines 11-15). The officer recovered coveralls, keys, a mask and a cell phone in a yard close by. (R. p. 91, line 18 – p. 92, lines 1-9).

Law enforcement learned that the tag number reported on the suspicious car at the Piggly Wiggly was registered to a white¹ Dodge Charged owned by Enterprise Rental in Charlotte, North Carolina. (R. pp. 107 – 109). The rental contract was signed by Maurice Anderson on October 12, 2012. (R. p. 108, lines 11-22). Lieutenant Wayne Jordan with the Chesterfield County Sheriff's Department testified that the name Gene Hinson also appeared on the contract. (R. p. 108, lines 3-10). Lieutenant Jordan viewed a video from Enterprise showing the person who rented the car. (R. p. 107, lines 9-15). According to Lieutenant Jordan, Appellant is seen in the video. (R. p. 109, lines 10-21). Although the video was not introduced in evidence, a snapshot from the video was introduced, without objection, as State's Exhibit #8. (R. p. 35, lines 19-25; R. p. 239). Lieutenant Jordan determined that the recovered coveralls were leased by a company in Charlotte where Maurice Anderson worked. (R. p. 113, lines 7-16).

Richard Martin testified as a State's witness. According to Martin, he rode from Charlotte to Chesterfield with appellant and Maurice Anderson to get some weed. (R. p. 155, lines 1-25). Once in Chesterfield they met Richard Smith. (R. p. 158, lines 1-15). After dropping Smith off at the Piggly Wiggly, Martin, Anderson and Appellant smoked some marijuana. (R. p. 157, lines 1-6). Then, according to Martin, he and Appellant

robbed Merriman. (R. p. 157, line 17 – p. 158, 159, 160, 161, lines 1-12). Martin testified that he heard sirens and fled. (R. p. 161, lines 13-25). According to Martin, Smith and Anderson picked him up, Anderson dropped Smith off at his mother's house in Chesterfield and Martin and Anderson returned to Charlotte without Appellant. (R. p. 162, line 1 – p. 163, lines 1-11).

At trial Lieutenant Jordan testified that Appellant admitted² that he was with Smith, Anderson and Martin on the night of the robbery but that it was Smith and Martin who robbed Merriman and left Appellant in the Piggly Wiggly parking lot. (R. p. 117, lines 1-23). At trial Lieutenant Jordan also testified that Merriman, on the night of the robbery, told him that he thought he recognized the voice of one of the robbers as Qua. (R. p. 105, line 21 – p. 106, lines 1-4). Merriman later took a Facebook photo of Appellant to Lieutenant Jordan. (R. p. 109, line 23 – p. 110, lines 1-25).

At trial Merriman testified that he recognized the taller robber's voice as Appellant's. (R. p. 68, line 13 – p. 69, lines 1-18). Before Merriman made the voice identification, the State attempted to lay a proper foundation and asked Merriman how he knew the voice. Merriman testified, "Well, it was from when I was a kid. His grandparents lived right down the road from my grandmother, so they were friends, as well as we were in school at that point in time. I had been around him and seen him on a regular basis." (R. p. 68, lines 7-12). The trial judge erred in allowing a voice identification of Appellant when the State failed to lay the proper foundation for admission of the voice identification.

¹ It is unclear why the Piggly Wiggly employee described the car as black.

² The trial court did not conduct a Jackson v. Denno hearing. (R. p. 172, lines 1-12).

First, the trial court in the present case should have conducted a hearing, outside the presence of the jury, to determine the admissibility of the voice identification of Appellant. Rule 104(c) provides as follows:

Hearing of Jury. Hearings on the admissibility of confessions or statements by an accused, and pretrial identifications of an accused shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

If the trial court had conducted a hearing, as required by Rule 104(c), the trial court should have found that the State failed to lay the proper foundation for admission of the voice identification. The State failed to establish that Merriman had a recent opportunity to hear Appellant's voice, only indicating that he recognized the voice from when he was a kid. Merriman did not testify to any unique characteristics that might allow him to identify Appellant's voice. Merriman did not testify that he would recognize the voice if he heard it again. In State v. Heller, 399 S.C. 157, 178, 731 S.E.2d 312, 323 (Ct. App. 2012) the Court of Appeals found no error in the admission of an in-court voice identification because, in part, the solicitor laid a proper foundation before the trial court allowed the voice identification into evidence. The State failed to lay the proper foundation in the present case.

In State v. Smith, 307 S.C. 376, 415 S.E.2d 409 (Ct. App. 1992), the South Carolina Court of Appeals noted that a witnesses' identification of a person by having heard his voice before is legitimate and competent evidence to establish identity in a criminal case. In Smith, however, a dispatcher heard an anonymous caller's voice on May 25, 1987. She described the caller as a white male, over forty years old with a "very country and rugged, scratchy like voice." That voice particularly stuck out in the dispatcher's mind because "it

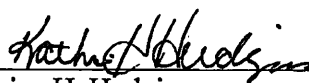
was so country it kind of had a ring to it." State v. Smith, 307 S.C. at 386, 415 S.E.2d at 415. Less than twenty-four hours later Smith came to the sheriff's office and told the dispatcher he was there to talk to the detective. The dispatcher immediately recognized Smith's voice as the anonymous caller.

In State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980) the Court found the identification of the robber's voice was based on his "distinctive voice" and was properly admitted when that voice was later heard again. In both Smith and Stewart the State laid the proper foundation for the admission of the voice identification. In the present case, the State failed to lay the proper foundation for the admission of the voice identification. The error in admitting the voice identification without the proper foundation requires reversal in light of the limited evidence placing Appellant at the scene of the robbery.

CONCLUSION

Based on the above argument this Court should reverse Appellant's convictions and sentences and remand for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2015.

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARTHAREE JEQUA HINSON

APPELLANT

APPELLATE CASE NO. 2014-002000

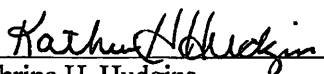
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Gartharee Jequa Hinson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Steven H. John, which was held on September 16, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Gartharee Jequa Hinson.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARTHAREE JEQUA HINSON

APPELLANT

APPELLATE CASE NO. 2014-002000

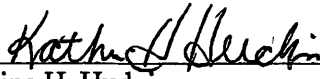
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments and sentencing sheets;
- (2) Trial transcript;
- (3) State's Exhibit #5 – Facebook Photo;
- (4) State's Exhibit #6 – Evidence Log;
- (5) State's Exhibit #7 – Contract for Rental;
- (6) State's Exhibit #8 – Hinson Photo;
- (7) State's Exhibit #9 – Miranda form;
- (8) State's Exhibit # 10 – DNA analysis;
- (9) Defense Exhibit #1 – Affidavit;
- (10) Defense Exhibit #2 – Court Order;
- (11) Defense Exhibit #3 – Motion;
- (12) Defense Exhibit #4 – Merriman statement.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 27th, 2015


Kathrine H. Hudgins
Appellate Defender

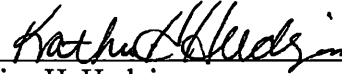
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 27, 2015



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

JUL 27 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 27 2015

SC Court of Appeals

Appeal from Chesterfield County

Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

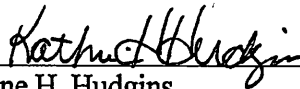
GARTHAREE JEQUA HINSON

APPELLANT

APPELLATE CASE NO. 2014-002000

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Gartharee Jequa Hinson, #272766 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 27th day of July, 2015.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2015.

(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.

Gartharee Jequa Hinson, Appellant.

Appellate Case No. 2014-002000

Appeal From Chesterfield County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2016-UP-164
Submitted December 1, 2015 – Filed April 6, 2016

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Interim
Senior Assistant Deputy Attorney General John
Benjamin Aplin, both of Columbia; and Solicitor
William Benjamin Rogers, Jr., of Bennettsville, for
Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, A.C.J., and WILLIAMS and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 03, 2016

The Honorable Faye L. Sellers
PO Box 529
Chesterfield SC 29709-0529

REMITTITUR

Re: The State v. Gartharee Jequa Hinson
Lower Court Case No. 2013GS1300089, 2013GS1300090, 2013GS1300091
Appellate Case No. 2014-002000

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Gartharee Jequa Hinson, 272766
Alan McCrory Wilson, Esquire
Kathrine Haggard Hudgins, Esquire
William Benjamin Rogers, Jr., Esquire
John Benjamin Aplin, Esquire

NOTE: 3 ATTACHED PAPERS

276

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Chesterfield)

IN THE COURT OF COMMON PLEAS

Bartharee Jequa Hinson
Full name and prison number (if any) of Applicant.

2016 OCT 3 AM 11 08 20 16-CP-13 735

272766

v.

CHESTERFIELD

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - 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 Lee Corr. Inst., Bishopville, SC 29010
2. Name and location of Court which imposed sentence 4th Cir Judicial Court
3. Name(s) of co-defendant(s) (if any) See Attached Sheet
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) See attached Sheet
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Armed Robbery 21 years - 9/16/14
 - (b) Kidnapping 21 years - 9/16/14

CLERK OF COURT, C.P. & C.S.
CHESTERFIELD COUNTY, SC

(c) Assault & Battery high/aggravated Nature 10 years - 9/16/14

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ✓ _____
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

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. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See Attached Sheet
- (b) See Attached Sheet
- (c) See Attached Sheet

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See attached sheet
- (b) See attached sheet
- (c) See attached sheet

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

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) N/A
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. M. W. Crockett / Old Town Centre - 159 Main (see attached)
 - ii. Katherine H. Hudgins (See attached sheet)
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - ii. Direct appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Conviction set aside or vacated, alternatively a new trial

20. Are you now under sentence from any other court that you have not challenged?

NO

①

2. 4th Judicial Circuit, Chesterfield County
General Sessions Court

3. Maurice Anderson, Richard Smith, Richard Anthony Martin, Jr

4. 2013-GS-13-0089 / Armed Robbery
2013-GS-13-0090 / Kidnapping
2013-GS-13-0091 / Assault & Battery of high/aggravated Nature

10(a) Denial of Counsel at Critical Stage of Proceedings

(b) Prosecutorial Misconduct

(c) Ineffective Assistance of Counsel

11.

(a) Immediately after his arrest Applicant requested a preliminary hearing. A preliminary hearing was held in this case without the assistance of Counsel. The reason for this is a conflict of interest with the Public Defender.

2016 OCT 3 AM 11 08
FAXED
CLERK
CHESTER

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

②

11. Cont'd

There is no waiver of Right to Counsel.

(b) During Applicant's trial, an agent of the Chesterfield County Sheriff's Office, among other things, viewed a video and then interviewed the victim relaying to the victim what was in the video at the time in question. This aspect of the case is highly suggestive with reference to the identification of the Applicant.

(c) Counsel failed to investigate adequately the facts and circumstances surrounding Applicant's case. Counsel's failure to conduct such an investigation deprived the jury of critical information relevant to an accurate assessment of Applicant's guilt or innocence.

18. Cont'd

i. Street, Chesterfield, SC 29709

ii. South Carolina Commission on Indigent Defense
Division of Appellate Defense

2 of

(3)

18. Cont'd

ii. P.O. Box 11589
Columbia, SC 29211-11589

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Arthur J. Hinson

SWORN to and subscribed before me this 28
day of Sept, 2016.

Debra Eastwood (L.S.)
Notary Public

My Commission Expires: 3/3/2020

2016 OCT 3 AM 11 08
FBI
CLERK
CHESTERFIELD COUNTY, SC

A True Copy, Attest
Laye S. Lallier
CLERK OF COURT Revised 3/2003
CHESTERFIELD COUNTY, SC

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

220 16-CP-13 735

I, GARTHAGE J. Hinson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of my application I declare under penalty of perjury that the following facts are true:

- (a) I am the applicant in this action and I believe I am entitled to redress.
- (b) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Garthage J. Hinson
Applicant

SWORN or affirmed to and subscribed before me this

28 day of Sept. 2016

Debra Eastridge
Notary Public

My Commission Expires: 3/3/2021

Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

2016 OCT 3 AM 11 08
CLERK OF COURT
CHESTERFIELD COUNTY, SC

A True Copy, Attest

Jay S. Salter
Revised 3/2003
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	C/A NO: 2016-CP-13-735
	)	
Gartharee Hinson, #272766,	)	
	)	
Applicant,	)	
	)	AMENDMENT TO PCR APPLICATION
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Counsel failed to move to suppress evidence or contemporaneously object.

(b) Counsel failed to act when a current sheriff deputy's wife was seated on the jury. The issue was then brought to the attention of the Court by the State. Tr. p. 31. The Court own its own removed a potential juror when it was revealed his half-brother worked for the Chesterfield County Sheriff's office. Tr. p. 10.

(c) Counsel failed to object or otherwise act when alleged victim identified Defendant as perpetrator based on recognizing his voice. Tr. p. 65.

(d) Counsel failed to object to the State's improper vouching for witnesses during closing remarks. Tr. pp. 207-208,

(e) Counsel was ineffective for failing to request a hearing pursuant to Jackson v. Denno.

(f) Applicant believes counsel failed to adequately cross-examine Ms. Briggs.

Respectfully submitted,



Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
October 24, 2017

AFFIDAVIT OF SERVICE

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Johnny E. James, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
October 24, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	
Gartharee Jequa Hinson,	)	Case No.: 2016-CP-13-00735
S.C.D.C. No. 272766,	)	
	)	
Applicant,	)	
	)	RETURN AND
v.	)	PARTIAL MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the application for post-conviction relief filed by Gartharee Jequa Hinson (Applicant) on October 3, 2016, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chesterfield County Clerk of Court. Applicant was indicted at the February 2013 term of the Chesterfield County Grand Jury for armed robbery (2013-GS-13-00089), kidnapping (2013-GS-13-00090), and assault and battery of a high and aggravated nature (2013-GS-13-00091).

Underlying Crime

On October 20, 2012, Chris Merriman and Ashlyn Briggs were together at Briggs' home along with their two children and a friend when, at around eight o'clock that evening, two masked, armed men appeared, ordered them into the living room, separated them, struck Merriman with a gun, and robbed them. Tr. 55-59; 63-67. During the burglary, Merriman recognized the taller gunman's voice as that of Applicant. Tr. 68. The men stole money, keys, jewelry, cell phones, and a purse. Tr. 59-60. Merriman coaxed the men into allowing him to

help load the loot into his vehicle outside, in the hope of triggering a 911 call from observant neighbors. Tr. 69-71. After one of the men received a phone call, the burglars ordered Merriman into the back room with the other victims and promptly departed. Tr. 70-71. Law enforcement arrived shortly thereafter, at which time Merriman provided them with pictures of Applicant from Facebook. Tr. 72-74. Responders to the scene were led to evidence “found on a track,” including two handguns, a wallet, a hat, and a mask. Tr. 103, 123-25. On October 21, 2012, the following day, law enforcement responding to a call additionally found coveralls, a mask, two cell phones, and a set of keys. Tr. 91-93, 113, 123.

The same day as the burglary, employees of a neighboring Piggly Wiggly, concerned about a suspicious vehicle coming and going to and from its parking lot, recorded its license plate and reported it to law enforcement. Tr. 96-97. Later that evening, after the burglary, an employee again reported the license plate, which led back to a white Dodge Charger rented from an Enterprise Rental Car in Charlotte, NC by a “Gene Hinson.” Tr. 97-99, 107-09. Video from Enterprise recorded Applicant in the process of renting the car. Tr. 109-10, 142-43.

Applicant was arrested by the Charlotte Police Department. Tr. 114-15. Applicant gave a post-Miranda statement placing himself at the scene at the time of the burglary—that he knew nothing about the charges, but that the others had left him in the car in the Piggly Wiggly parking lot, after which he ran and returned to Charlotte. Tr. 116-20, 122-23. Co-defendants Maurice Anderson and Richard Martin each confessed after their respective arrests. Tr. 134-35. Co-defendant Martin ultimately testified against Applicant at trial and confessed to being the second gunman. Tr. 152-66.

Trial and Appeal

M.W. "Trey" Cockrell, Esq. represented Applicant, and Kernard E. Redmond, of the Fourth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Steven H. John and a jury. The jury found Applicant guilty as indicted for kidnapping and armed robbery, and of the lesser-included offense¹ of assault and battery in the first degree on September 16, 2014. Judge John sentenced Applicant to imprisonment for concurrent terms of 21 years for armed robbery, 21 years for kidnapping, and 10 years for assault and battery, first degree.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and granted counsel's motion to be relieved. State v. Hinson, Op. No. 2016-UP-164 (S.C. Ct. App. filed April 6, 2016). The Remittitur was issued on May 3, 2016.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Denial of Counsel at Critical State of Proceedings"
 - a. "Immediately after his arrest Applicant requested a preliminary hearing. A preliminary hearing was held in this case without the assistance of counsel. The reason for this is a conflict of interest with the Public Defender. There is no waiver of right to counsel."
2. "Prosecutorial Misconduct"
 - a. "During Applicant's trial, an agent of the Chesterfield County Sheriff's Office, among other things, viewed a video and then interviewed the victim relaying to the victim what was in the video at the time in question."

¹ The sentencing sheets indicate that Applicant was convicted as indicted on 2013-GS-13-00091. Review of the transcript reveals that this is an error. See Tr. 228, ll. 5-12.

This aspect of the case is highly suggestive with reference to the identification of the Applicant.”

3. “Ineffective Assistance of Counsel”

- a. “Counsel failed to investigate adequately the facts and circumstances surrounding Applicant’s case. Counsel’s failure to conduct such an investigation deprived the jury of critical information relevant to an accurate assessment of Applicant’s guilt or innocence.”

By amendment filed October 26, 2017, by and through counsel Lance S. Boozer, Applicant further alleges the following additional claims for relief:

1. Ineffective assistance of counsel, in that:

- a. “Counsel failed to move to suppress evidence or contemporaneously object.”
- b. “Counsel failed to act when a current sheriff deputy’s wife was seated on the jury. The issue was then brought to the attention of the Court by the State. Tr. p. 31. The Court [on] its own removed a potential juror when it was revealed his half-brother worked for the Chesterfield County Sheriff’s Office. Tr. p. 10.”
- c. “Counsel failed to object or otherwise act when alleged victim identified Defendant as perpetrator based on recognizing his voice. Tr. p. 65.”
- d. “Counsel failed to object to the State’s improper vouching for witnesses during closing remarks. Tr. pp. 207-208.”
- e. “Counsel was ineffective for failing to request a hearing pursuant to Jackson v. Denno.”
- f. “Applicant believes counsel failed to adequately cross-examine Ms. Briggs.”

Attached to and incorporated herein are the records of the Chesterfield County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State,

286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges misconduct on the part of the prosecution at the time of trial because an officer with the Chesterfield County Sheriff's Office relayed the contents of a video to the victim. This allegation should be summarily dismissed as a direct appeal issue. An application for post-conviction relief does not serve as a substitute for direct appeal, and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Trial court error is not a cognizable claim for PCR. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's allegations regarding the video in question were raised by counsel at the time of trial in the form of a motion to strike prior to trial. See Tr. 33-35. Counsel was therefore aware of the issue, raised to the Court, and it could have been raised thereafter on appeal. Therefore, Applicant's allegation of prosecutorial misconduct should be dismissed as not cognizable under the Uniform Post-Conviction Procedure Act.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se

filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

[Conclusion and signature on following page]

VII.

WHEREFORE, Respondent respectfully requests that this Court grant its partial motion to dismiss set forth in Section IV and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

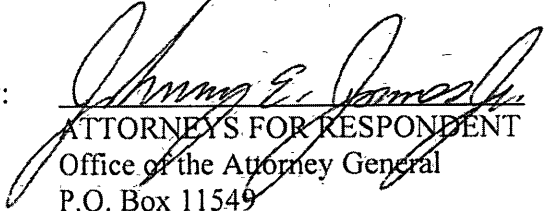
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

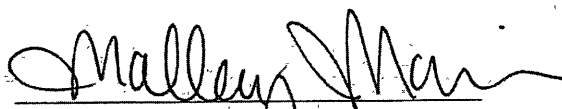
4 Dec., 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	
	)	
	)	2016-CP-13-0735
GARTHAREE JEQUA HINSON, #272766,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Lance Boozer, Esquire
 Boozer Law Firm, LLC
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201**

DATED this 4th day of December, 2017.


 Mallory Morris, Legal Assistant
 For Respondent

State of South Carolina)
County of Chesterfield)

In Circuit Court of the
Fourth Judicial Circuit
2016-CP-13-0735

THE STATE

Plaintiff,

VS.

Transcript of Record

GARTHAREE J. HINSON,

Defendant.

Dillon, South Carolina
January 16, 2018

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Johnny James, Esquire
Attorney for Plaintiff

Mr. Lance Boozer, Esquire
Attorney for Defendant

Lisa S. Carter
Circuit Court Reporter

I N D E X

WITNESSESPAGE

Gartharee J. Hinson:

Direct Examination by Mr. Boozer

7

Melvin Cockrell:

Direct Examination by Mr. Boozer

25

Cross Examination by Mr. James

44

Kenard Redmond:

Direct Examination by Mr. James

52

Cross Examination by Mr. Boozer

54

EXHIBITSNO.DESCRIPTIONEV.

(NO EVIDENCE WAS INTRODUCED DURING THIS HEARING)

P R O C E E D I N G S

MR. JAMES: I apologize, Your Honor, for the long break.

THE COURT: That's fine. No problem. Yes, sir.

MR. JAMES: If it may please, the Court? Your Honor, this is the matter of Gartharee J. Hinson versus State of South Carolina. It is docket number 2016-CP-13-00735. Mr. Hinson is present here today in the courtroom. He is represented by Mr. Lance Boozer. Mr. Hinson was indicted by the Chesterfield County Grand Jury during the February, 2013 term for armed robbery, kidnapping, and assault battery of a high and aggravated nature. Your Honor, he proceeded to trial and was found guilty on September 16, 2014. At that trial he was represented by Mr. Trey Cockrell and prosecuted by Mr. Kenard Redmond of the Fourth Circuit Solicitor's Office. The Honorable Steven H. John sentenced applicant to concurrent terms of twenty-one (21) years for armed robbery, twenty-one (21) years for kidnapping and ten (10) years for assault battery first degree. Applicant filed a timely notice of appeal and the direct appeal was perfected by Ms. Kathrine Hudgins at Appellate Defense who filed a brief pursuant to Anders v. California. The South Carolina Court of Appeals dismissed applicant's appeal by unpublished opinion and the remittitur was issued May 3, 2016.

1 Your Honor, upon review of State's return it appears
2 that we have a pending partial motion to dismiss.
3 Specifically, Your Honor, applicant alleges misconduct on
4 the part of the prosecution. Specifically, he complains
5 that the Chesterfield County Sheriff's Office relayed the
6 contents of a video to one of the victims. And, Your
7 Honor, if I'm remembering my cases correctly, going back on
8 the facts of the case, essentially, what occurred is that
9 the sheriff's office sent a deputy or an officer up to
10 Charlotte to a Enterprise Rent-A-Car. They showed him
11 stills of a video of an individual renting a car that was
12 ultimately used as part of the crime. And when they went
13 back to speak with the victim, the victim showed them a
14 picture of the applicant, his Facebook page, at which point
15 the sheriff's office went, "Oh, that's the guy we saw on
16 the Enterprise video." Your Honor, the State respectfully
17 submits that with that allegation it's a direct appeal
18 issue, not admissible under post conviction relief action.
19 And that applicant could have and should have raised on
20 direct appeal and cannot do so now. So, Your Honor, we
21 would respectfully request that, that particular allegation
22 be summarily dismissed.

23 THE COURT: Mr. Boozer?

24 MR. BOOZER: Thank you, Your Honor. If it please,
25 the Court? Judge, this is one of the allegations that's

1 contained in Mr. Hinson's original PCR application. And,
2 basically, in response to the argument by Mr. James and his
3 motion, Judge, on page 34 of the transcript there's some
4 reference to where Mr. Hinson's former lawyer actually
5 brings it up to the court. I haven't seen the video.
6 Although, it was subpoenaed it wasn't produced through
7 discovery. I think the aspect of the case is how
8 suggestive with reference to my client. Then it goes on to
9 talk about some written statements that he didn't have and
10 he request the identification of the defendant be
11 suppressed. And, judge, later on, I think the photos come
12 up in trial and are introduced without objection and our
13 claim can still fall under really the ineffective
14 assistance of counsel with that. I do understand that's
15 Mr. Hinson's claim as far as prosecutorial misconduct. I
16 think he's still able to raise it on appeal. I think
17 prosecutorial misconduct can be alleged in this form, Your
18 Honor. And, judge, if we can, we'll flush a lot of this
19 out throughout the hearing based on testimony and I think
20 it will make a lot more sense when we do it that way.

21 THE COURT: All right. Mr. Boozer, I'll let you
22 address it as far as your application so, therefore, I
23 respectfully deny Mr. James motion. We'll deal with that
24 throughout the course of his testimony.

25 MR. JAMES: Thank you, Your Honor. Otherwise, I'll

1 seek the floor to Mr. Boozer.

2 MR. BOOZER: Thank you, judge. We'll go ahead and
3 call Mr. Hinson to the stand.

4 THE CLERK: Place your left on the Bible and raise
5 right hand. Do you solemnly swear or affirm the testimony
6 you're about to give the court is the truth, the whole
7 truth, and nothing but the truth so help you God?

8 MR. HINSON: Yes, ma'am, I do.

9 THE CLERK: Be seated in the witness box and state
10 your full name for the court again please.

11 MR. HINSON: Gartharee Jequa Hinson.

12 MR. BOOZER: Your Honor, may I approach the witness?
13 He's got a number of legal materials.

14 THE COURT: Yes, sir.

15 GARTHAREE J. HINSON, first being
16 duly sworn, testified as follows:

17 **Direct Examination by Mr. Boozer:**

18 Q. Mr. Hinson, how are you doing today?

19 A. I'm doing great, sir.

20 Q. If you would just keep, it's a big courtroom, just
21 keep your voice up ---

22 A. Yes, sir.

23 Q. --- speak slowly and clearly so that Madam, court
24 reporter can take down everything you say, okay?

25 A. Yes, sir.

1 Q. All right. Mr. Hinson, do you know why you're here
2 today?

3 A. On a PCR due to the fact of ineffective of counselor,
4 sir.

5 Q. Okay. And you understand what it is that this court
6 can do for you?

7 A. Yes, sir.

8 Q. All right. And we've certainly discussed that, I
9 know.

10 A. Yes, sir.

11 Q. What are you currently serving a sentence for?

12 A. Armed robbery, kidnapping, and high and aggravated
13 assault with ---

14 Q. What type of sentence did you receive?

15 A. Twenty-one (21) for armed robbery, twenty-one (21) for
16 kidnapping, and ten (10) years for first-degree assault.

17 Q. What's your max out date for right now?

18 A. I try not to keep up with it, sir.

19 Q. Okay. So it's a ways out?

20 A. It's a ways out.

21 Q. All right. And you want to go forward because you
22 want a new trial?

23 A. Yes, sir.

24 Q. Okay. And you did have a trial in this case?

25 A. Yes, sir.

1 Q. Who represented you in that trial?

2 A. Mr. Cockrell, sir.

3 Q. All right. How did he come about representing you?
4 Did you hire him or was he appointed?

5 A. He was appointed.

6 Q. How many times do you think you met with him in total?

7 A. Only seen Mr. Cockrell close to like two times ---

8 THE COURT: I'm going to ask you to speak up a
9 little bit please.

10 A. I only seen Mr. Cockrell like two times in the county
11 when I first -- and the first time was when we put in for a
12 trial.

13 Q. All right. Were you pushing to have this case tried?

14 A. Yes, sir.

15 Q. All right. Did you file a motion for a speedy trial?

16 A. Yes, sir.

17 Q. All right. How long did it take before your case was
18 actually tried from the time you were arrested?

19 A. Actually, when I was arrested that trial was supposed
20 to have been done December of, I think, two thousand --
21 December of 2012, I think, if I'm not sure. But due to the
22 fact they brung me in and they said they couldn't do my
23 trial because they couldn't get in touch with the victim, I
24 believe. Okay. So they drop my bond close to, like, it
25 went from two-fifty to \$80,000. Then from \$80,000 to

1 \$5,000. I bonded out. And they continued -- they kept
2 pushing it off and pushing it off so I put in for a
3 dismissal. When I went in front of the judge, solicitor,
4 Mr. Kenard Redmond stated that he couldn't get in touch
5 with the victim. The judge ordered him to do my trial the
6 next time the courtroom opened up. And that was like
7 fifteen months -- that was December -- that was September,
8 September 9, 2014, I believe ---

9 Q. What ---

10 A. --- '14 ---

11 Q. Let me ask you ---

12 A. The trial was in two thousand -- they had it set for
13 2013 but they have pushed it off until 2014 of September.

14 Q. Okay. Let me ask you this, was there ever a plea
15 offer in the case?

16 A. No. We got one until the day of trial.

17 Q. What was it for, do you recall?

18 A. I think it was like around sixteen (16) years or
19 something.

20 Q. And what was your response to that?

21 A. I don't want it.

22 Q. Were you intent on exercising your constitutional
23 right to have a trial?

24 A. Yes, sir.

25 Q. You were never going to take a plea?

1 A. No. Never.

2 Q. Okay. Now, you filed, obviously, a PCR application
3 and you've made a number of allegations on your own ---

4 A. Yes, sir.

5 Q. --- and then I have filed, through consultation with
6 you, an amendment, is that right?

7 A. That's correct, sir.

8 MR. BOOZER: And, Your Honor, do you have a copy of
9 the amended application?

10 THE COURT: I'm sure I do. Hold on just a second.
11 (Whereupon, the judge takes a moment to look for document)

12 MR. JAMES: Your Honor, it should be in that stack.
13 If nothing else, the contents of the amendment should be
14 probably reflected on page 4 of the State's return.

15 MR. BOOZER: Your Honor, may approach with a copy.

16 THE COURT: Yes, sir. I found it after you pointed
17 it out.

18 MR. BOOZER: Great. Thank you, Your Honor.

19 Q. Mr. Hinson, now let's talk about your PCR application,
20 specifically. You made an allegation that you felt that you
21 were denied counsel in the critical stage of the
22 proceedings, is that one ---

23 A. That's correct.

24 Q. --- of your allegations?

25 A. That's correct, sir.

1 Q. All right. Explain that to the court. When did you
2 feel you were denied counsel?

3 A. Due to the fact my, um, ---

4 Q. And ---

5 A. --- the pretrial.

6 Q. Please keep your voice up.

7 THE COURT: Speak up.

8 A. Pretrial! Pretrial! At the, I mean, at the
9 preliminary hearing. At the preliminary hearing where they
10 had the evidence. Through the evidence I never had one in
11 which I requested one. But yet I still never got one.

12 Q. You requested a preliminary hearing?

13 A. Yes, sir.

14 Q. What, to your knowledge, was one ever held?

15 A. No, sir. It was never -- I have the paperwork right
16 here. They took me to the courtroom, they took me there
17 and they said due to the fact of ineffective of counsel
18 because three of my other, two of my other co-defendant's -
19 - two or three of my other co-defendant's had the same
20 attorney, same attorney. So they took me and brung me back
21 and I had the paperwork when the judge had assigned me Mr.
22 Cockrell, but I still hadn't had no preliminary hearing.

23 Q. And please just for the record because we've got to
24 make sure everything is taken down.

25 A. Yes, sir.

1 Q. So please speak slowly.

2 A. Yes, sir. I apologize.

3 Q. Keep your voice up. All right. You requested a
4 preliminary hearing and it's your understanding that when
5 you went to it apparently some of your co-defendants had
6 lawyers from the public defender's office?

7 A. Yes, sir.

8 Q. Okay. So you couldn't be represented by a member of
9 the PD's office?

10 A. That's correct, sir.

11 Q. And that's how you got Mr. Cockrell appointed to your
12 case?

13 A. Yes, sir.

14 Q. All right. And so you never actually had your
15 preliminary hearing?

16 A. No. Never, sir.

17 Q. Okay. And did you have a discussion about that with
18 your attorney?

19 A. Yes.

20 Q. What would he tell you?

21 A. He ain't never get, I mean, ---

22 THE COURT: Speak up.

23 A. He never came -- we never got into details about that.
24 Actually, we just gonna push for trial.

25 MR. BOOZER: Judge, can we go off the record for a

1 moment.

2 THE COURT: Yes, sir.

3 (Whereupon, Mr. Boozer ask for a brief recess)

4 MR. BOOZER: We back on the record, judge?

5 THE COURT: Yes, sir, back on the record.

6 MR. BOOZER: Thank you.

7 Q. All right. Mr. Hinson, talk to that back wall back
8 there. Tell these folks all about your case when you
9 testifying, okay?

10 A. Yes, sir.

11 Q. That's perfect.

12 THE COURT: Good.

13 Q. All right. What conversation did you have with Mr.
14 Cockrell about not having a preliminary hearing?

15 A. We didn't -- I just stated to him that I needed a
16 preliminary hearing for my case because pertaining to the
17 evidence there's things about it in which we didn't never
18 discuss back on it. Like I said again I only seen him like
19 twice while I was in the county.

20 Q. Okay. Let's also talk about your allegation that
21 during the trial an agent of the Chesterfield County
22 Sheriff's Office along other things, reviewed a video and
23 relayed the victim, relaying to the victim what was in the
24 video at the time of question and that you felt that was
25 highly suggestive, suggestive with reference to the ID of

1 the you. Explain that allegation to the court.

2 Q. Okay. How I feel about that when he interviewed the
3 picture and in which he said -- it's stated the subpoena --
4 the video was subpoenaed provided but yet he let a snapshot
5 picture into evidence but he never seen the video. Come to
6 find out the snapshot picture that he entered into evidence
7 came from Facebook. I got the picture right here in
8 which's Exhibit 8, sir, as well as I have the color
9 picture. Can I hand this to you?

10 Q. Hang on, Mr. Hinson. Just keep explaining.

11 A. Okay.

12 Q. Explain that allegation.

13 A. Sir?

14 Q. Keep going. You were explaining that allegation.

15 A. Yeah, due to the fact that, that picture came from
16 Facebook so I felt like it was prepped up to make fit due
17 to the fact that they never, he never seen the video and it
18 should have never been a snapshot picture entered into
19 evidence and he should have object.

20 Q. Okay. Your lawyer, tell us what your lawyer didn't do
21 and what you felt like he should have done?

22 A. I felt like he should -- I felt like he should've
23 suppressed the evidence. I feel like you should have never
24 -- he should have suppressed all the evidence.

25 Q. All right. You've also got an allegation that you

1 fill your lawyer failed to investigate the facts and
2 circumstances surrounding your case and that this, this
3 failure to investigate deprived the jury of some critical
4 information to your trial. Is that one of your
5 allegations?

6 A. Yes, sir.

7 Q. What you feel like your lawyer should've done to
8 investigate this case?

9 A. I feel like he should've put more time into the case.
10 I felt like he should've went back over the evidence his
11 self before he let all the evidence entered at the
12 beginning of trial.

13 Q. Okay. And, in fact, narrowing down or drilling down
14 on that issue, did your lawyer to your knowledge, ever
15 investigate whether there was any sort of deal between a
16 co-defendant and the State?

17 A. He stated about the deal -- stated about a deal but he
18 ask him -- he ask him in which this -- in which the
19 statement from Mr. Richard Martin which put me here, was
20 entered into evidence because of his statement. And come
21 to find out he was promised leniency from prosecution, the
22 charges dismissed.

23 Q. Okay. So you had a co-defendant named Richard Martin?

24 A. Yes, sir.

25 Q. All right. And actually ---

1 MR. BOOZER: Your honor, just for the court's
2 reference his testimony is on, beginning on page 152 of the
3 trial transcript.

4 Q. But, effectively, did Mr. Martin at your trial, did he
5 just get up and admit I was there. I was participating in
6 an armed robbery, is that correct?

7 A. That's correct.

8 Q. And he actually went -- he states, I went into a house
9 and I helped do this?

10 A. That's correct.

11 Q. Okay. And to your knowledge was he ever prosecuted
12 for that?

13 A. He was never prosecuted. I have the paperwork right
14 here. His charges were dismissed.

15 Q. Is it your understanding that those charges were nol
16 pros?

17 A. Excuse me?

18 Q. Is it your understanding as you said those charges
19 were dismissed?

20 A. Were dismissed.

21 Q. Okay. Did your lawyer do any investigation that you
22 know of into that?

23 A. No, he didn't, sir.

24 Q. Okay. Let's talk a little bit about the amendments
25 that I assisted you in filing in your PCR application,

1 okay?

2 A. Yes, sir.

3 Q. You've alleged that your lawyer failed to move to
4 suppress certain evidence and contemporaneous object,
5 right?

6 A. That's correct, sir.

7 Q. Are there specific pieces of evidence or statements
8 you feel should have been suppressed throughout your trial?

9 A. Statements I feel like the voice identification should
10 have been suppressed due to the fact you cannot remember a
11 person voice from childhood and I never got an opportunity
12 to speak again. This is my first time I got on the stand.

13 Q. And we'll get to that in just a moment. That's
14 related separately.

15 A. Yes, sir.

16 Q. Other than that, talking about evidence, is there
17 anything else?

18 A. In -- come again, sir. I apologize.

19 Q. That's all right. I mean, other than the voice
20 identification which we're going to talk about momentarily.
21 Is there anything else that you feel like your lawyer
22 should have objected to evidence wise or that he should've
23 tried to keep out?

24 A. Yes, sir.

25 Q. What?

1 A. He should have objected to the rental car contract. I
2 don't even have a license to rent a car. So I can't even -
3 - I can't rent a car without a license and my name is
4 nowhere on the rental car contract at all but yet it was
5 entered into evidence against me.

6 Q. Okay. Anything else?

7 A. Yes, sir.

8 Q. Take your time.

9 A. I think all of the evidence.

10 Q. All the evidence?

11 A. All of the evidence.

12 Q. He should have objected to everything?

13 A. He should have -- everything.

14 Q. Okay. All right. Let's nail down on some of your
15 other amendments. You've got an allegation that your
16 attorney failed to act when a current sheriff's deputies
17 wife was seated on the jury. That's one of your
18 amendments, is that right?

19 A. Yes, sir.

20 Q. And then you've got -- we've got an amendment that,
21 that this issue was actually brought to the attention of
22 the court by the State ---

23 MR. BOOZER: Your Honor, I'm looking at page 31 of
24 the trial transcript, where the solicitor says, "a brief
25 matter, I apologize to the court but there is a jury issue.

1 We noticed one of the jurors is actually a wife of a
2 current sheriff's deputy and I just want to put that on the
3 record and say that during the jury selection we observed
4 the defendant was actively involved in the jury selection
5 process. I apologize to the court. I just want to protect
6 the record for later on since she's on there." And the
7 court say, "well, I mean, that was, all of that information
8 was fully disclosed. So it was available." And further
9 down the defense says, nothing.

10 Q. Was it your understanding that there was on your jury
11 a current wife, a wife of a current sheriff's deputy?

12 A. No, sir.

13 Q. I'm sorry.

14 A. No, sir. I didn't know anything about a sheriff's
15 wife until he bring it to the attention.

16 Q. And did your lawyer take any action?

17 A. Yes, I did.

18 Q. No! No! Did your lawyer take any action ---

19 A. No, he did not.

20 Q. And actually didn't earlier on during the jury
21 selection process ---

22 MR. BOOZER: And, Your Honor, I'm specifically
23 referring to page 10. And Your Honor I'm looking at,
24 beginning at three.

25 Q. Didn't the court on its own actually remove a juror

1 who says his half-brother worked for the Chesterfield
2 County Sheriff's Office?

3 A. That's correct, sir.

4 Q. So the court on its own removed that person yet you've
5 got a juror sitting up there that's the wife of a deputy
6 that's on the jury?

7 A. That's correct, sir.

8 Q. Okay. And your lawyer took no action?

9 A. No action, sir.

10 Q. All right.

11 MR. BOOZER: And, Your Honor, just for the Court's
12 information that juror is identified on page 20 as Sandra
13 McQueen. I'll certainly delve with that a little deeper
14 with counsel.

15 Q. Now, Mr. Hinson, let's talk about another allegation
16 you've got that you started to touch on a minute ago. You
17 said and that is your lawyer failed to object or otherwise
18 act when the alleged victim identified you as being the
19 perpetrator based on recognizing the voice?

20 A. That's correct, sir.

21 Q. Okay.

22 MR. BOOZER: And, Your Honor, for the court's
23 information that would be on page 65 of the transcript.
24 Again this is a legal issue ---

25 MR. JAMES: If I may just intercede just briefly to

1 be absolutely clear about the transcript pagination and not
2 the record on appeal pagination. So the pagination at the
3 bottom.

4 MR. BOOZER: I will try and do that. I may have to
5 correct myself. So correct this is 65 strictly on
6 transcript, Your Honor.

7 Q. We'll get into that Mr. Hinson with your lawyer, okay?

8 A. That's correct.

9 Q. That's a legal issue.

10 A. Okay.

11 Q. Now, you've also got a claim that your lawyer failed
12 to object to the State improper voucher for witnesses
13 during closing remarks at page 207 and 208, is that one of
14 your allegations?

15 A. That's correct.

16 Q. And that is trial transcript, Your Honor. Again, it's
17 a legal issue that we'll touch on with your lawyer. But
18 any event, to your knowledge was any objection made to
19 vouching?

20 A. No, sir.

21 Q. Okay. You also have an allegation that your lawyer
22 was ineffective for failing to request a hearing pursuant
23 to Jackson v. Denno. Do you understand now that after
24 speaking with me that there is an opportunity or a motion
25 to keep out any statements you may have made?

1 A. That's correct

2 Q. Did you have that discussion with your lawyer?

3 A. No, sir.

4 Q. All right. Would you -- knowing that now, do you wish
5 you lawyer would've attempted to do that?

6 A. Yes, sir.

7 Q. Okay. Now, you've also got an allegation that I want
8 you to explain to the court and that you feel that your
9 lawyer failed adamantly cross-examining the witness by the
10 name of Briggs.

11 A. I feel if you've got two victims that stated that they
12 was together at the same time but you question one and does
13 not question the other and their statement comes up a
14 little different as in both with the trial transcript, it
15 state's on page 54, "Ms. Briggs" line 15, "and Hannah got
16 and she was coming out of the back door, she ran to the
17 living room to get my kids and she took them to the other
18 room. Then the taller guy took us into the living room and
19 was like give us your money, get down on the floor and I
20 kept saying my kids are in the other room and he said he
21 didn't care about the kids and 'f' the kids or something
22 like that." Go to page -- go to Mr. Merriman, page 63,
23 number 9, it said, "once we got into the house we was
24 separated. Hannah had gone into the back door and grab the
25 kids and we were taken to the back room which was our

1 bedroom. She stated -- Ms. Briggs stated they went into
2 the living room." There's a lot of other things containing
3 to this -- containing to this I just pointed out in which I
4 felt that she supposed to have been cross-examined because
5 she's a victim. So he didn't exercise his duty.
6 Especially when she stated it contained about me.

7 Q. Okay. But it was your lawyer -- you feel like your
8 lawyer did not bring out any of the inconsistencies through
9 examination?

10 A. None, sir.

11 Q. Okay. Now, Mr. Hinson, you're aware that most of your
12 allegations are legal issues that I need to address with
13 your attorney?

14 A. Yes, sir.

15 Q. Okay. And I will be doing so here in just a moment.
16 Other than that, is there anything -- this is your day in
17 court, is there anything that we have not or you have not
18 brought to the court's attention as it applies to your
19 application for post-conviction relief?

20 A. I think the ineffective -- I would like to bring this
21 to the attention due to the fact if he would have did a
22 more investigation on the case as well as my co-defendants
23 he would realize all of them was promise leniency from
24 prosecution because I'm the only one in prison.

25 Q. Okay. Other than that, though?

1 A. No, sir.

2 Q. Okay.

3 MR. BOOZER: Please answer any questions the State
4 might have for you.

5 MR. JAMES: I have no questions for this witness,
6 Your Honor.

7 THE COURT: All right. You can step down, sir.
8 Thank you.

9 MR. HINSON: Thank you, Your Honor, sir.

10 MR. BOOZER: Your Honor, we'll go ahead and call Mr.
11 Cockrell to the stand.

12 THE COURT: All right. Mr. Cockrell.

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you're about to give the court is the truth, the
15 whole truth, and nothing but the truth so help you God?

16 MR. COCKRELL: I swear.

17 THE CLERK: Thank you.

18 MR. COCKRELL: Thank you.

19 THE CLERK: Have a seat in the witness box and
20 state your full name for the court please, sir.

21 MR. COCKRELL: Melvin Wayne Cockrell, III.

22 MELVIN COCKRELL, first being
23 duly sworn, testified as follows:

24 **Direct Examination by Mr. Boozer:**

25 Q. Mr. Cockrell, how are we doing today?

1 A. I'm doing great. Hope you are.

2 Q. I'm doing well. Thank you.

3 A. Good.

4 Q. Did you have an occasion to represent Mr. Hinson?

5 A. I did.

6 Q. Do you recall sort of how that representation came
7 about?

8 A. I was appointed I believe by the clerk of court
9 because of the conflict with the public defender's office
10 in February or March of the year of the appointment. I
11 don't think it was -- I think it was 2013, possibly.

12 Q. About February of '13?

13 A. Correct.

14 Q. Okay. And do you know when he ended up going to trial
15 in this case?

16 A. It would -- it was mid September, 2014, I believe. It
17 was a full year because we were supposed to go into
18 December of the year that I was appointed and then it
19 didn't end up going until September the following year.

20 Q. Of '14?

21 A. Correct.

22 Q. How did you become involved in the case? How were you
23 -- why were you appointed?

24 A. There was a conflict with the public defender's
25 office. I think there were four total defendants or three

1 other defendants besides Mr. Hinson.

2 Q. Okay. Is that pretty typical if there's multiple
3 defendants represented in the PD's office they go to the
4 private bar?

5 A. Right. That's correct.

6 Q. Okay. How many times in total do you think you either
7 met with or spoke with Mr. Hinson prior to trial?

8 A. Probably less than twenty but more than ten. A pretty
9 high number. Reasonable.

10 Q. To your knowledge was there ever a plea offer in the
11 case?

12 A. Yes. Well -- yes. There was -- there wasn't a
13 written plea offer but there had been discussions with Mr.
14 Redmond.

15 Q. Do you recall what that may have been?

16 A. That -- yes. This was, I believe, in maybe February
17 or, um, of the following year, this would have been after
18 the December term of trial or potential trial, but before
19 the September actual trial. And Mr. Redmond, me and
20 Kenard, Mr. Kenard Redmond were speaking on the phone and
21 we were talking and he indicated to me that our target, our
22 focus is and I don't remember who the target was but it
23 wasn't Hinson and he said, Trey if you'll just stand down a
24 little bit worse case scenario you be looking at the time
25 served. Best case scenario I may even nol pros the matter.

1 Q. Okay. What was the -- he's telling you to stand down
2 and wait, our real target is someone else?

3 A. Right.

4 Q. Wait and you may have a really good deal?

5 A. Correct.

6 Q. Okay. Was there any specific, I think you were saying
7 time served, was that something you took to your client and
8 said, and told him that?

9 A. Yes.

10 Q. Okay. What was his response?

11 A. His response was they're, and I'm assuming he was
12 meaning specifically either the solicitor's office or the
13 sheriff's department, they are scared we're going to trial.

14 Q. Was he, and I say he, was my client your former
15 client, was he aggressive in wanting to push forward for a
16 trial?

17 A. Yes.

18 Q. Okay. So he pretty much wanted a trial the entire
19 time in this case?

20 A. Yes.

21 Q. Okay. And he really wasn't entertaining plea offers
22 if any were being made?

23 A. I don't know how he couldn't entertain that offer but,
24 you know, but he wasn't overly enthused about it.

25 Q. Even on a time served offer or what could potentially

1 be ---

2 A. I mean ---

3 Q. --- a time served?

4 A. Right.

5 Q. Yeah. Okay. Now, in his allegation he's got an issue
6 where he feels he was denied counsel at a critical stage in
7 the proceedings, he basically survive as being, he wasn't
8 able to have preliminary hearing, were you involved at all
9 at that point?

10 A. No -- I -- I was -- I believe by the time I and I
11 can't speak for the clerk of court, but I don't think that
12 it gets on the rotation for appointments until after the
13 grand jury true bill's somebody. But I don't know for sure
14 but I don't believe my appointment was until after he had
15 actually been indicted.

16 Q. Okay.

17 A. So -- I wasn't -- I was not involved in the
18 preliminary hearing manner.

19 Q. Okay. Let me ask you since you're, you're probably a
20 lot more familiar with this than I am, normally, if you are
21 appointed to a case to, do you ever appear at a preliminary
22 hearing with an appointed client?

23 A. I've attended a high volume of preliminary hearings.
24 I'm confident that I probably have but it would be
25 somewhere where the hearing request was put in and I was

1 appointed but I don't -- I can't speak a hundred percent on
2 an appointed case. I don't know.

3 Q. What's sort of the, in Chesterfield County if someone
4 gets arrested and they request to have the preliminary
5 hearing, what's the typical sort of process to have -- do
6 they have them, do they get a lawyer for them to come in
7 and represent them at the prelim?

8 A. Typically -- typically there's, you know, the defender
9 if your qualified or if you've got private counsel they
10 appear. They'll have the chief magistrate, I believe,
11 schedules a specific day of preliminary hearing day and
12 they'll be a day where they may have thirty preliminary
13 hearings that day.

14 Q. Okay. To your knowledge, did he ever have one?

15 A. No.

16 Q. Okay. Mr. Hinson has claimed that, I guess, you
17 should have taken some sort of action with regard to a
18 video and, I guess it later was sort of related to or made
19 to be related to a Facebook photo, do you -- can you
20 explain that?

21 A. In this particular situation there was a vehicle
22 rented at the Enterprise Rent-A-Car in Charlotte, North
23 Carolina and this is how I'm remembering it, specifically.
24 That video as I remember was never in the possession of the
25 sheriff's department or the solicitor's office. And I

1 kinda barked about it pretrial on that basis. But I don't
2 have subpoena power out-of-state and was not able to obtain
3 the video on that aspect of things. So ---

4 Q. So you ---

5 A. --- I don't -- that's kind of my total knowledge about
6 the, what we're talking about in the video.

7 Q. You had sort of, as you were saying, you had made an
8 issue out of it, sort of at the pretrial setting and you
9 felt like, you know, discovery is not being given to us,
10 right?

11 A. Right.

12 Q. Did you later -- did you make any objection to it
13 coming in later on in the trial? Or did you make any sort
14 of objection to anyone testifying about the video?

15 A. And I -- I don't know that I read the full transcript
16 all the way through. I don't think I did. So I'm going
17 off of pure memory. I don't think I made it like a formal
18 objection. I made a comment because I remember Judge John
19 scolding me about it. But it wasn't in a form of a formal
20 objection to something.

21 Q. If it's in there , it's in there. And if it's not ---

22 A. Right.

23 Q. --- it's not? Okay. Let me ask you this, do you
24 recall there being an issue and I know you haven't read the
25 transcript in while but all reflect back to it ---

1 A. Sure.

2 MR. BOOZER: And, judge, going back to page 31 of
3 the transcript.

4 Q. Where the solicitor brings it to the court's
5 attention, they realize that there is a wife of a current
6 sheriff's deputy sitting on the jury, do you recall that?

7 A. Yes.

8 Q. Okay. And then would you agree with me that earlier
9 that the court on it's own, this is back on page 10, they
10 actually removed a juror because I think his half-brother
11 worked at the sheriff's office, do you recall that?

12 A. Yes.

13 Q. All right. What was -- and in all fairness, you know,
14 going back before this is brought up that juror who was the
15 wife of the sheriff's deputy, looking back on page 20,
16 would it be fair to say at that moment on page 20 at line
17 9, this is after the court is questioning, you know, the
18 other law enforcement relationships, Juror Number 91,
19 Sandra McQueen, family members. And the court says, "All
20 right, ma'am, can you give the State of South Carolina and
21 the defendant a fair and impartial trial?" "Could you be a
22 fair and impartial juror in this case?" "Yes, sir." So
23 she only says family members so who knows what that is,
24 right?

25 A. Mmm, hmm. Right.

1 Q. But later on the solicitor somehow brings it up, hey,
2 this is wife of a current sheriff's deputy, had you known
3 that at that time, is that a juror that you would've seated
4 on the jury?

5 A. Well, as a matter fact I did know it at that time and
6 I'm just looking off of our roll call list panel and on my
7 comments, "husband a sheriff, CCSD" and then over in the
8 side -- and I'll be glad to let you have a copy of this, I
9 believe y'all got it. But then also -- and this is, Sarah
10 Campbell, another lawyer in my office handwriting, "Hinson
11 liked her because she seemed focused." And so in other
12 words we had thoroughly understood the circumstances
13 surrounding that juror.

14 Q. What's -- what are your thoughts on having a member of
15 a family that, that's close to a sheriff's deputy sitting
16 on a criminal case, is that something you particularly --
17 is that something you want or not want?

18 A. It's something you would want to be informed about,
19 certainly, and make an informed decision.

20 Q. But the court on his own just because of the
21 relationship of a half-brother being related to a juror or,
22 excuse me, to a sheriff's deputy, the court on it's own
23 removed that juror, do you think the court would have done
24 the same with her at that time?

25 A. I mean, I can't speak for the judge on that.

1 Q. But it's your position that y'all had discussed that.
2 He felt like she was focused or make a good juror?

3 A. I mean, that's what -- that's what these notes show
4 from -- I mean, this is the original list of notes that we
5 had from the very beginning or when we picked them on, it
6 looks like, on September 15th. And it says, "Hinson liked
7 her because she seemed focused." And I have an 'x' where I
8 was going to strike her but that's marked through like, no,
9 no, we don't strike her, keep her. And it specifically has
10 over here in the comment side and this is Juror 91 we're
11 talking about, correct?

12 Q. Correct. Yes.

13 A. Okay. Yeah. Over here, "CCSD/husband is a sheriff."
14 Probably deputy sheriff but with, you know, it was -- it
15 was an informed understanding of what was surrounding, you
16 know, Juror 91.

17 Q. But you had an 'x' as in ---

18 A. I had initially -- correct. But after discussing and
19 when I say, this would be before we even picked the jurors,
20 who I said oh, no, no, no and then after talking with the
21 client and talking it out and whatnot, no, that's somebody
22 we do want.

23 Q. You have a specific recollection of other than him
24 saying she looked focused what that conversation may have
25 been?

1 A. I mean, -- no, I do not.

2 Q. Okay. Now, I'm gonna jump to another allegation that
3 he's got and I'm looking specifically at page 67 through
4 68, using the appellant, judge, I'm not I'm looking around
5 a bit, but trial transcript number 64 to 65. This deals
6 with the testimony of Mr. Merriman.

7 A. Okay.

8 Q. All right. At the bottom of the trial transcript,
9 page 64 beginning at line 25, the question is asked, "Now,
10 let me talk to you about the voice and I need to lay some
11 foundation here. The person that you heard, the voice that
12 you heard, how, why was it that you recognized that voice?"
13 Before we identify who that person was how, tell us the
14 background as to how you recognize that voice?"

15 :Answer: Well, it was from when I was a kid. His
16 grandparents living right down the road from my grandmother
17 so they were friends as well as we were in school at that
18 point in time. I've been around him and seeing him on a
19 regular basis."

20 "Question: And based on that knowledge of the persons
21 voice you heard, whose voice was it that you heard that
22 night?"

23 "Answer: It was him, Clay."

24 "Solicitor: Let the record reflect that he is pointing to
25 the defendant."

1 "Question: "You're referring to him as Clay?"

2 "Yeah, Gartharee, that's what I knew him as." Mr. Merriman
3 is he one of the victims in the case?

4 A. Yes.

5 Q. Okay. And say this testimony he saying that he
6 recognizes Mr. Hinson based on his voice from when he was a
7 kid, correct?

8 A. Correct.

9 Q. Did you make any sort of objection?

10 A. No, I did not.

11 Q. Do you think, looking through that, do you think there
12 was an objectionable bases to challenge that?

13 A. Oh, um, yes.

14 Q. Okay. Do you know any reason why you may not have
15 objected?

16 A. When a solicitor or a witness is being questioned you
17 or I, maybe not everybody, in any event, what I tried to do
18 is I'm watching the jury panel and I'm watching the witness
19 and I'm seeing in trying to evaluate every trial has its
20 own theories and whatnot or themes. However, when this
21 specific question was asked by Mr. Redmond I focused in on
22 and I saw four different jurors roll eyes or that's
23 unbelievable and give that type of an expression. As such
24 rather than I thought was better to leave that alone and
25 hey, had you on that to have those potential jurors

1 recognize that, that does, you know, has no validity to it.
2 That was -- that was the strategy.

3 Q. So your strategy was you felt that based on your
4 observations of the jury they felt like what he was saying
5 was not legit?

6 A. Right.

7 Q. Okay. If that is -- if that is --- I'm sorry, Your
8 Honor -- if that is the case then on cross-examination
9 wouldn't it have been beneficial to then get up and just
10 hammer that oath and say this guy thinks he recognizes the
11 voice of some guy he heard that's thirty years old and he
12 says he can recognize his voice as a kid, that's
13 preposterous. Did you make any sort of attempt to do that
14 on the cross examination or your closing?

15 A. No. But I didn't want him to rehabilitate his
16 incredible testimony.

17 Q. Okay. Other than that person saying they identified
18 Mr. Hinson based on his voice and other and than Mr. Martin
19 who is the co-defendant, was there anything else that
20 identified Mr. Hinson?

21 A. I don't -- I don't believe so.

22 Q. Help me out on this where the solicitor's asking again
23 on page 65, "lay some foundation the person that you heard,
24 the voice that you heard, why did you recognize that
25 voice?" At this point he has not yet identified Mr.

1 Hinson, right?

2 A. Right.

3 Q. So do you -- why are you not already objecting? You
4 know it's coming?

5 A. Correct.

6 Q. Right? So why at that point aren't you already start
7 doing the objection then at that point? Because you
8 haven't seen the jurors react yet, I wouldn't think.

9 A. No! No! You're -- you're correct. And, again, from
10 just the strategy point we were just, I mean, we know where
11 he's going but I want to see what he is going to do. And
12 ultimately again I think the result or that identification
13 was flimsy at best and effectively brought to our point,
14 brought out the point we were trying to make of the
15 sloppiness of the investigation.

16 Q. And looking at this, had you objected, do you think
17 that would've been a successful objection in keeping out
18 his identification of Mr. Hinson based on him recognizing
19 his voice from when he was a kid and he lived with his
20 grandparents?

21 A. Um, I think the court would've required the solicitor
22 to probably bring out more, I mean, if that's solely -- but
23 that's again, that's going to the strategy of the case,
24 we're wanting to keep this as limited as we can of the only
25 thing he had to ID was on, "I remember when I was five

1 years old talking to Clay," if you follow me you want to
2 keep it limited.

3 Q. Okay. Let's flip over to ---

4 MR. BOOZER: This is trial transcript, Your Honor,
5 207 to 208.

6 A. Okay.

7 Q. And specifically on 207 if you look at lines 12
8 through 14, and this is in the solicitor's closing remark
9 and this is the solicitor referencing Mr. Martin who was
10 one of Mr. Hinson's co-defendants, let me flip back to
11 this, Mr. Martin, the co-defendant what was sort of -- and
12 I think this probably applies to a lot of cases where you
13 have a testifying co-defendant or corroborating witness or
14 whatever want to call them, what's generally your strategy
15 with that type of witness?

16 A. That they're getting something for, you know, their
17 testimony.

18 Q. And would be safe to say that they're a liar, is their
19 credibility important?

20 A. Oh, I think they're probably the weakest witnesses
21 that are there.

22 Q. And you would agree with me that along with trying to
23 elicit that he's got some sort of deal with the solicitor,
24 your strategy is to completely discredited, would it not
25 be?

1 A. Sure.

2 Q. Okay. Now -- and line 12 the solicitor says, "and
3 then you heard from Mr. Martin and Mr. Martin told you he
4 had no idea of what was going to be the outcome of his
5 case." Talking about his deal. The solicitor says, "he's
6 telling you the absolute truth."

7 A. Mmm, hmm.

8 Q. You consider that, essentially, the state vouching for
9 that witness?

10 A. Yes.

11 Q. Okay. And would you agree with me that, that is
12 objectionable?

13 A. Yes.

14 Q. Okay. And you agree that no objection was made?

15 A. Agree.

16 Q. Do you think you should have?

17 A. Objecting during closing, I mean, -- I don't -- I
18 can't -- I mean, there's so much leniency, I mean, if it
19 had been something a whole lot more boisterous,
20 inflammatory than just trying to puff up, the jury already
21 knows that this is, you know, the State's witness, that
22 there is a deal that Kenard wants the jury to believe that
23 he's truthful. And so I think you've got to be careful.
24 I'm not saying it's not objectionable but you got to be
25 careful strategy wise in objecting during opening and

1 closing in creating the appearance that you're trying to
2 get them off of their story and you can potentially
3 infuriate the jury. That's the last thing you want to do.
4 You can make the judge mad all you want. He'll deal with
5 you another day, but the jury and your client is a
6 different story. So I don't know that, that would be a
7 good idea on my theory and theme of this particular case
8 and defense.

9 Q. Well, let me ask -- let me ask you this, if the only
10 way that, that issue, if that is in fact is an option, it's
11 preserved for another court or later on, if an objection is
12 made, is that fair to say?

13 A. Sure.

14 Q. So without objection in appellate setting there is no
15 way from an appellate court to look back at this even if
16 you had made the objection and said, "I think it's
17 vouching," the judge says, "that is not vouching.
18 Overruled." And, you know, the solicitor goes through his
19 argument. The appellate court can look back and say well,
20 wait a second that actually is vouching, we'll overturn
21 this case. Without the objection being made it can never
22 get that to that point, right?

23 A. Right.

24 Q. Okay. Did you have any discussion with Mr. Hinson
25 about trying to suppress or keep out any sort of statements

1 that he may have given?

2 A. Yes. In regards to Detective Wayne Jordan?

3 Q. Correct.

4 A. Yes.

5 Q. What was that discussion?

6 A. Our theme or our theory strategy here was, you know,
7 specifically, you know, muddying the waters whatever, you
8 know, is the cliché you would like to use, but the point is
9 on the sloppiness of the investigation here and, you know,
10 nothing but grasping at straws to try to tie Mr. Hinson
11 into this conspiracy or whatever you want to call it to go
12 score some marijuana and robbed these, this couple. And it
13 gets back to or -- I'm trying to look for -- but the State
14 filed a motion to collect the DNA and then if you look at
15 the, um, the log of, the evidence log, I'm looking for it
16 but, you know, they had a mask, they had a jacket or coat,
17 I don't see it right now but it's in here somewhere.

18 Numerous articles, they got an order that we fought them
19 about to get a DNA swab because they needed it. And they
20 never got it. And so that theory or theme was to point out
21 that Mr., Officer Jordan, you really didn't do anything,
22 did you? You didn't do your job. So that, I mean, which
23 again gets to, you know, him saying he was told by Hinson
24 that he did it so to speak.

25 Q. Going back to Mr. Martin, were you aware that Mr.

1 Martin's, it is my understanding according to the public
2 index, is it your understanding that Mr. Martin's charges
3 that he had which were similar or identical to what Mr.
4 Hinson's were dismissed?

5 A. No, I mean, -- I -- do I know that? I know that now
6 that you're ---

7 Q. Sure.

8 A. --- that you're telling me.

9 Q. Right. In your experiments when you have a co-
10 defendant testifying and admitting, and in fact, Mr. Martin
11 admitted that he did his actions, right, that he did an
12 armed robbery?

13 A. Yes.

14 Q. Okay. Is it your experience that under oath he's
15 getting up and admitting this, hand to God, I did that, is
16 it your experience that the solicitor's office would drop
17 those charges and not have him at least plead to something
18 or -- what's your experience to that?

19 A. I mean, to a degree it would be surprising, but I
20 don't know the facts specifically in that circumstance. If
21 he had been detained without bond for three years and they
22 very well may just nol pros it or there may be another
23 diversionary program that he may have been eligible for or
24 they may give him time served. But, you know, obviously
25 the gentleman you're speaking of, Merriman, not Merriman, -

1 --

2 Q. Mr. Martin---

3 A. --- or whoever it is -- Martin. Thank you. He,
4 obviously, got a similar deal so to speak that I referenced
5 that Mr. Redmond -- he, obviously, wasn't with target. I
6 guess, is what I'm saying.

7 Q. Okay.

8 MR. BOOZER: I beg the court's indulgence, Your
9 Honor.

10 THE COURT: Yes, sir.

11 Q. My client has asked me to ask ---

12 A. Sure.

13 Q. --- a question for the record. Did you receive a
14 complete copy of discovery from the State?

15 A. Yes.

16 Q. Do you know if you ever turn that over, gave a copy,
17 to Mr. Hinson?

18 A. Yes. And, I mean, he actually -- he actually grieved
19 me with the Supreme Court saying he didn't have a copy of
20 it. But I gave him a copy when I was representing him. I
21 also mailed him a copy on January 10, 2014, excuse me,
22 January 10, 2014, I mailed a copy to his PO Box in
23 Charlotte. And then on July 27, 2016, I mailed him a copy
24 in the jail at Lee Correctional. So I've got copies of
25 these letters. Y'all should have copies.

1 Q. That's fine.

2 MR. BOOZER: That's all the questions I have

3 A. Okay.

4 MR. BOOZER: Thank you.

5 THE COURT: Mr. James?

6 **Cross-Examination by Mr. James:**

7 Q. Mr. Cockrell?

8 A. Yes, sir.

9 Q. How long have you been practicing law?

10 A. May 20, 2001.

11 Q. How much of that has been criminal?

12 A. Forty percent.

13 Q. There was some discussion earlier about the
14 preliminary hearing and I just want to touch on that very
15 briefly one more time. Did Mr. Hinson ever inform you or
16 complain about not getting a preliminary hearing?

17 A. I looked through my notes, not that I'm aware of.
18 This is the first time that I am aware that he is saying he
19 never had a preliminary hearing. I don't -- I don't -- when
20 I say this, I'm talking about in the last like three months
21 when this application came through.

22 Q. Did Mr. Hinson give you any leads to pursue
23 investigating this case ---

24 A. No.

25 Q. --- or witnesses to talk to?

1 A. No.

2 Q. And did you conduct any additional investigation into
3 the facts either personally or through an investigator?

4 A. Yeah, no, absolutely. This is -- this is -- the
5 incident occurred -- a lot of the scene of the incident is
6 at the Piggly Wiggly grocery store in Chesterfield and the
7 mobile home area right behind it and I'm very familiar with
8 it. I walked the area. I talked to Beth Stepp. It was
9 one of the witnesses just trying to get an understanding of
10 what may or may not have gone on. Beth Stepp, she's either
11 the floor manager or one of the deputy chief managers of
12 the Piggly Wiggly store. And, you know, that's, you know,
13 that's the aspects that I did kind of on my own PI work not
14 that I'm a PI but did what I could.

15 Q. Of course your representation -- well, strike that
16 question, you've already went over on direct examination.
17 What was your gauge of the strength of the State's case
18 against your client?

19 Q. It was reasonably strong. I gauge cases on, criminal
20 cases I look at them and there's dog cases that you have no
21 shot at winning. And then there's triable cases which
22 would be in the 50-50 range. And then there's winnable
23 cases that are eighty percent win from the defense
24 perspective. His case was in between a dog and a triable.

25 Q. Why didn't you ask any questions on cross-examination

1 of the victim, Ms. Ashley Griggs? (sic)

2 A. Her testimony wasn't damaging and you've got to be
3 extremely careful beating up a mom who was armed at
4 gunpoint with her two children.

5 Q. I would direct, do you have a copy of the transcript
6 up there?

7 A. Yes, sir.

8 Q. I would direct your attention and the court's
9 attention to page 139 to 140 of the record on appeal. That
10 would be 136 and 137 by the transcript pagination. And I
11 bring this to your attention because on direct examination
12 you briefly discussed that Judge John scolded you and,
13 specifically, looking on 140 of the record on appeal ---

14 A. Mmm, hmm.

15 Q. --- lines 5 to 14, do you recall now, precisely, why
16 it is and why it was that Judge John scolded you?

17 A. Yeah. That's -- that's -- they had a still shot of
18 the video and the video apparently was destroyed by
19 Enterprise or something and so I was a bellyaching about
20 not having the video, but they didn't have it either, but
21 they had the still shot and I had the still shot. And I
22 think I said something in front of the jury that made the
23 judge mad. Not for sure. I don't remember exactly why I
24 got scolded but it had something to do like that.

25 Q. If you'll look back on page 138 of the record lines 11

1 to 14, you allegedly ---

2 A. Okay.

3 Q. You allegedly see pictures of defendant, on Mr.
4 Hinson, that still hasn't been produced to the defense at
5 which point the solicitor intervenes and the jury is
6 excused?

7 A. There you go that's it. Thank you.

8 Q. So going over that testimony briefly, you did get the
9 photographs still shot ---

10 A. Correct.

11 Q. --- from Enterprise but not the video?

12 A. That's correct.

13 Q. And it is your understanding that the video was not in
14 possession of the State?

15 A. Well, yes -- yes -- I mean, whether intentional or not
16 I think either the sheriff's department or solicitor's
17 office went to Enterprise and screenshoted one and then
18 Enterprise -- never took possession of the video and the
19 videos either had been destroyed or no longer exist. But
20 it's never been in the possession of the State.

21 Q. You explained earlier that your general trial strategy
22 was a mix of two things. One, to muddy the waters so to
23 speak and; two, to emphasize the sloppiness of the State's
24 investigation as you described it, did you explain this
25 strategy to your client ahead of trial?

1 A. Yes.

2 Q. And did he agree with your proposed strategy or ---

3 A. Yeah.

4 Q. --- otherwise expressed feedback?

5 A. Certainly, I mean, he was, you know, confident they
6 had no case against him.

7 Q. And did you feel adequately prepared to seek trial on
8 that strategy?

9 A. Yes. Yes.

10 MR. JAMES: I beg the court's indulgence just one
11 moment.

12 THE COURT: All right, sir.

13 Q. One of the allegations is that you failed or that you
14 were deficient in failing to seek a Denno hearing or
15 otherwise object to the introduction of applicant's
16 statements to law enforcement, correct, well, that is one
17 of the allegations? And earlier you indicated that, that
18 testimony that statement leads to your argument about the
19 DNA evidence and the investigation, there two, being sloppy
20 and incomplete, correct?

21 A. Right.

22 Q. Okay. Isn't it also true that you crafted your
23 closing argument around, essentially, admitting that
24 statement in large part? If you'll direct your attention
25 to pages 193 and 194 of the record on appeal. And,

1 specifically, page 194 of the record on appeal, lines 1 and
2 2 or 1 to 4.

3 A. Correct.

4 Q. So even on your own closing arguments you crafted
5 around admitting, "yeah, he came down to get some
6 marijuana. He didn't know all of this other stuff was
7 going to happen."

8 A. Right. Well, and that kinda gets to where my or our
9 chances of success where we've got a dog of the case but
10 when you tie in that the solicitor arm wrestles us for a
11 DNA swab and then doesn't get one, then you've got all
12 these things that could be cross reference with the DNA
13 swab. I darn sure I'm not going to get a DNA swab on my
14 client because the chances are linking to that stuff are
15 high, likely. Almost certain. However, I can sure argue
16 the point when they're arm wrestling me about a DNA swab
17 and then they don't get it there's all this evidence that
18 they can't tie to anybody. Makes it look like, hey, y'all
19 are just trying to create a situation. It doesn't make it
20 necessarily rise to the level of a triable case but, you
21 know, it gives us something.

22 Q. Did you talk to your client about the right to present
23 witnesses and the right to remain silent?

24 A. Certainly.

25 Q. Okay. You did not present him or any other witnesses,

1 why not?

2 A. Amazingly on day two my client was so confident after
3 the first day that before we started he informed me that he
4 had, he had purchased all expense prepaid trip to Disney
5 World with him and his wife and five children to go
6 celebrate this victory. He was confident.

7 Q. If I may direct your attention back to page 210 of the
8 transcript or 210 on the record of appeal, page 207 on the
9 transcript.

10 A. Okay.

11 Q. And you heard from Mr. Martin and Mr. Martin told you
12 "he had no idea of what was going to be the outcome of this
13 case. He's telling you the absolute truth." Earlier you
14 indicated that yes, that is vouching, did those lines occur
15 in a forum or was there a broader discussion on credibility
16 in closing arguments?

17 A. Maybe I don't -- I'm not sure I understand your
18 question.

19 Q. Is that the only time in the State's closing, as you
20 recall, that the State talked about the credibility of a
21 witness?

22 A. Yeah. I think that's the only spot that I recall.

23 MR. JAMES: Just one moment, Your Honor.

24 THE COURT: Yes, sir.

25 MR. JAMES: No further questions from this witness,

1 Your Honor.

2 THE COURT: Mr. Boozer?

3 MR. BOOZER: Nothing further.

4 THE COURT: All right. You can step, Mr. Cockrell.

5 MR. COCKRELL: Thank you.

6 MR. BOOZER: Nothing further on the applicant by the
7 applicant.

8 MR. JAMES: Your Honor, the State calls Kenard
9 Redmond to the stand.

10 THE CLERK: Do you solemnly swear or affirm the
11 testimony you're about to give the court is the truth, the
12 whole truth, and nothing but the truth so help you God?

13 MR. REDMOND: I do. I apologize in advance for
14 blowing my hands but I think Madam, Clerk remembers when I
15 was trying cases in this courtroom I would end up doing
16 that a lot. I apologize.

17 THE CLERK: And it is cold in here.

18 KENARD REDMOND, first being
19 duly sworn, testified as follows:

20 **Direct Examination by Mr. James:**

21 Q. Mr. Redmond, with whom do you work?

22 A. Fourth Circuit Solicitor's Office.

23 Q. Did you work for the Fourth Circuit at the time of
24 this trial in question?

25 A. I did.

1 Q. All right. And did you prosecute this trial?

2 A. I did.

3 Q. All right. Did you receive any motions pursuant to
4 Rule 5 or Brady?

5 A. I did.

6 Q. Okay. Did you provide to opposing counsel all the
7 materials in which he was entitled?

8 A. I did. Yes.

9 Q. So did you withhold any materials at all?

10 A. No.

11 Q. Did you ever have in your possession -- did you ever
12 get a video from Enterprise Rent-A-Car?

13 A. And let me explain that, no, I did not. And one of
14 the things in looking at the transcript, we touch on it is
15 not flushed out, probably, as well as it should have been.
16 But the video was actually never obtain. Enterprise
17 couldn't download it. We enhanced the snapshot. And so
18 during the trial it's referring to the snapshot of the
19 video and that's why because they couldn't figure out how
20 to download the video from my recollection. So that
21 snapshot was actually introduced as State's Exhibit 8. I
22 think from just listening just so the court's not confused
23 you've got State's 5, which is a Facebook snapshot that the
24 victim pulled up on his own and brought it to law
25 enforcement. State's Exhibit 8 is the snapshot from the

1 Enterprise Rental that corresponds with that, I think
2 State's 7, may have been the rental agreement..

3 Q. Right. So to go back a little bit, when you say they,
4 do you mean Enterprise couldn't ---

5 A. That's right. Enterprise.

6 Q. --- because it ---

7 A. Exactly. Exactly.

8 Q. You never told enterprise, "No, please keep that?"

9 A. No, I didn't. By the time I got involved in it that
10 ship had sailed.

11 MR. JAMES: No further questions, Your Honor.

12 THE COURT: Mr. Boozer?

13 MR. BOOZER: The court's indulgence.

14 **Cross-Examination by Mr. Boozer:**

15 Q. Mr. Redmond, how are you?

16 A. Doing fine.

17 Q. Good. Do you have a clear recollection of this case?

18 A. I -- well, it's been what, three years ago, maybe a
19 little more than three years. A clear enough recollection.
20 Not perfect on everything.

21 Q. After three years, enough to --, um, Richard Martin
22 was a co-defendant of my client?

23 A. Yes.

24 Q. Okay. And, obviously, he testified at trial?

25 A. He did.

1 Q. And he actually admitted, I went and I robbed some
2 people and had a gun ---

3 A. And not meaning to interrupt you, if the question is
4 regarding the outcome, I've heard that and I've been
5 wanting to address that with the court. Actually, and I
6 remember this vividly, the -- actually, I had, if you look
7 at the transcript, Maurice Anderson was also scheduled to
8 testify as well. He was on the witness list. I didn't call
9 Maurice because after Richard Martin's testimony and, quite
10 frankly, the jury, in my opinion, seem to really be, I
11 mean, you can tell in trying cases as long as I have, you
12 can tell when a jury is really engaged with a witness. And
13 that was the situation with Richard Martin. And so and I
14 do remember and I don't know if it's in the transcript or
15 if it happened after the fact or both, but once he
16 testified he may have said something on the record to the
17 family, but after he testified he actually spoke to the
18 victim and his family and apologized to them. It was
19 something I hadn't seen very often in my career and that's
20 why remember this. The reason that's important was if you
21 look at the transcript and I even remember before the trial
22 they were, the, I think it was, Ashland (sic),
23 particularly, kept talking about how he seemed like he
24 didn't want to be there. Talking about Richard Martin. He
25 seemed like he didn't want to be there. I think he held the

1 gun down, you know, the only time he would hold it up is
2 when the defendant would come around in the house. And
3 this is something the victim's, the mother of the children,
4 was saying. And so once everything transpired to get, and
5 I'm taking the long route, but what ended up happening with
6 those cases was that he went through and I'm probably
7 violating the statute but I don't think Mr. Martin would
8 mind me doing so as it relates to pretrial intervention,
9 with the victim's blessing he went into pretrial
10 intervention. That's what ended up happening with his
11 case. That was not something that was not predetermined.
12 In fact, that whole discussion didn't take place until
13 after the trial.

14 Q. You had indicated that you had saw something you
15 hadn't seen which I think it was Mr. Martin apologizing to
16 ---

17 A. To -- Merriman, Mr. Merriam and his family.

18 Q. That happened in front of the jury?

19 A. No! No! This was after. This was after. As a
20 matter of fact, if I recall correctly, it was during a
21 break. The jury had already been excused. So, no, none of
22 this took place in front of the jury.

23 Q. Other than Mr. Hinson and other than the PTI, I guess,
24 then obviously it must okay with him, you know,
25 satisfactory with him, was anyone else with any other

1 convictions here in this case ---

2 A. No. And the main person I was after, to be honest
3 with you, was Richard Smith because Richard Smith was right
4 there living in Chesterfield. Mr. Hinson, I think, had
5 previously lived in Chesterfield before moving to
6 Charlotte. But Richard Smith ended up getting various
7 other charges after this trial and so he ended up pleading
8 -- he ended up pleading on those other charges and so we
9 just dismiss the case on Mr. Smith. And it says in the
10 index he pled to other charges. If you look he pled to a
11 whole bunch of other charges unrelated to this case. But
12 as part of the plea we just said, look we've got
13 convictions on this. And I actually talk to Mr. Merriam
14 before we did that and Mr. Merriman was okay with us doing
15 that.

16 Q. Was there ever an offer in this case for Mr. Hinson to
17 plead guilty to something else ---

18 A. Yeah. Because like I said ---

19 Q. --- or a time served?

20 A. At the time my target was Mr. Hinson. I can't
21 remember exactly -- I know there was a discussion, you know
22 how it is especially in the heat of the moment, there are
23 discussions that go back and forth. But I do vividly
24 remember telling Mr. Cockrell that I was interested in Mr.
25 Hinson testifying against Mr. Smith because at that time

1 Mr. Smith was the main target. Fortunate for us and
2 unfortunate for other victims, Mr. Smith got himself and
3 other trouble which after the trial which, you know,
4 eliminated the need to go forward on this case with him.
5 But at that time, during the time of this case while this
6 case was pending, I had approach Mr. Cockrell about trying
7 to work something out to get Richard Smith because Richard
8 Smith was the one that was not actually there. Our
9 contention is and based on the statements, Mr. Smith was
10 the one who sort of set it up and was the one that went and
11 case out the joint, for the lack of a better term, coast
12 was clear in his mind and that's when the robbery took
13 place.

14 MR. BOOZER: I may the court's indulgence.

15 THE COURT: Yes, -sir.

16 MR. BOOZER: Thank you, Mr. Redmond. That's all I
17 have.

18 MR. JAMES: No further questions, Your Honor.

19 THE COURT: Okay.

20 MR. REDMOND: Thank you, Your Honor.

21 MR. JAMES: The State has no further witnesses and,
22 Your Honor, I respectfully request that this witness be
23 excused.

24 THE COURT: Any objection?

25 MR. BOOZER: No objection, Your Honor.

1 THE COURT: Mr. Redmond, you may be excused. How
2 about Mr. Cockrell?

3 MR. JAMES: The same for Mr. Cockrell.

4 THE COURT: Both you gentlemen may be excused.

5 MR. BOOZER: Your Honor, if I may have a brief
6 moment to just address the law on a couple of issues in a
7 brief closing.

8 THE COURT: Yes, sir.

9 MR. BOOZER: Thank you, Your Honor. If it pleases,
10 the Court? Judge, I will let some of these allegations
11 stand on their own based on the testimony that's been
12 presented today. But I do want to focus on, specifically,
13 two of the allegations.

14 Judge, in particular, I want to kinda go out of order
15 and look at what we contend was improper vouching and
16 counsel's failure to object to that. Your Honor, I want to
17 look at that in context of two cases and they are South
18 Carolina cases. Unfortunately, I have one copy of this
19 case with me today. I thought I had three but only have
20 one. But the case is State vs. Schuler
21 which is 545, S.E. 2nd 805 and that's a 2001 South Carolina
22 Supreme Court case. That case goes on to cite, has a
23 really good analysis of another South Carolina case which
24 is called State vs. Kelly which is found at 343, S.C. 350
25 that's a 2001 case as well. Judge, essentially, those two

1 cases discussed the options. And, basically, what it says
2 is, "a solicitor cannot vouch for the credibility of a
3 witness by expressing or implying personal opinion." In
4 the Schuler case it's interesting. It's an appellate case
5 and what happened in that case, judge, is basically one of
6 the appellate issues was that "did the solicitor vouched
7 for a witness, co-defendant", similar to what we've got
8 here but a lot different and this is where is different.
9 The solicitor and that case is asking a co-defendant about
10 any sort of agreement or deal he may have had and the
11 objectionable portion was actually objected to by counsel
12 at trial. And what it is the solicitor said, "okay, is
13 what you're testified to the jury here today as far as what
14 happened to that rifle, true?" "Yes." Defense counsel,
15 "objection, Your Honor, thus bolstering the witness." And
16 the court says,-- the court, "sustains" it. And then
17 that's what goes up on appeal. And the appellate court
18 does not think that's, they don't think that's vouching.
19 And this is the reason that they give and they go and
20 compared it to State vs. Kelly and that's the case we're
21 going to rely on in this one, judge. Basically, in the
22 State vs. Kelly the court found, "an assistant solicitor
23 bolstered a witness is credibility through improper
24 questioning." And what happened and this is the solicitor
25 ask the witness, "what did I tell you that I absolutely

1 require regarding your testimony today?" Then the other
2 question that the solicitor ask and said, "did I tell you
3 to tell the truth to this jury?" And the court found that
4 the jury could have perceived that the assistant solicitor
5 held the opinion that his witness was telling the truth.
6 And they found that to be vouching. In the first instance
7 the way that they distinguish that from Schuler's is they
8 say well in Schuler the solicitor just asking a general
9 question about, you know, are you telling the truth.

10 Judge, I think spot on what we have in Mr. Hinson's
11 case is the State with its prestige and power to their
12 personal opinion that, that witness who is one of their
13 main witnesses, his co-defendant, where they say, "then you
14 heard from Mr. Martin and Mr. Martin told you he had no
15 idea of what was going on in the outcome of his case. He
16 is telling you the absolute truth." I want to know how
17 more clear cut that could be as vouching. Counsel did not
18 object to it. He gave a reason that he didn't want to call
19 attention to it. But, fortunately, judge, in this case had
20 he objected to it that probably would've been addressed by
21 the appellate court. I would submit, Your Honor, at this
22 point his application alone, on that issue alone, could be
23 and should be granted as ineffective assistance of counsel.

24 Judge, I do want to just touch back on another
25 allegation and that deals with the identification, the

1 voice identification of the applicant. The testimony is
2 pretty incredible that this guy can represent, at the time
3 this man is thirty years old, can say hat he recognize this
4 guy based on his voice because he remembers being a kid
5 living near his grandma's house or something like that.
6 Counsel gave the testimony that it was strategy to not do
7 that. I certainly understand what counsel has said today
8 but I certainly don't agree with that. It would impress,
9 you know, he said, "I didn't make the objection because I
10 saw jury kind of rolled their eyes at it." But when were
11 they rolling their eyes? He had an opportunity to object
12 to it immediately when he sees that, that's when they're
13 headed down that road but he doesn't. Judge, I certainly
14 think that was objectionable and I do not believe that,
15 that would have been allowed to come in where you got
16 supposedly the guy who is being robbed identify Mr. Hinson
17 has been the perpetrator. Without that the only other
18 person that could have testified to that was Mr. Martin,
19 the co-defendant, whose credibility has been vouched by the
20 solicitor.

21 So just for those reasons just on those two issues I
22 believe the application should be granted and that's what
23 we would respectfully request. Thank you.

24 THE COURT: Thank you, Mr. Boozer. Mr. James?

25 MR. JAMES: Your Honor, briefly I'll narrow the

1 scope of the State's argument in response to those two
2 issues as well.

3 As to the vouching issue, Your Honor, he is telling
4 you the absolute truth and I tried to get into this on
5 cross-examination with trial counsel and he could not
6 recall the entirety of the State's closing argument. But a
7 substantial portion of the State's closing argument is
8 going over the facts and evidence that tend to show and to
9 corroborate one another that the testimony that Mr. Martin
10 gave was, in fact, credible. And so vouching is prohibited
11 because we don't want the State to get up and say, "oh, I
12 know he's telling the truth," wink, wink, "because there's
13 something else out there that the jury hasn't seen." And
14 that's not just what's occurring here, this is his -- this
15 is in the middle of an entire closing argument and I would
16 say it's a practice or a conclusion, conclusionary
17 statement at the end of a long argument. But it's in the
18 middle of it that "Mr. Martin is telling you the absolute
19 truth." He does not put the State's prestige on the line.
20 He does not indicate that it's his own opinion. He does
21 not indicate that it is based on anything else outside the
22 record or before the jury. And, Your Honor, I would cite
23 to you Matthew vs. State that is 350, S.C. 272, 565 S.E.
24 2nd, 766. If I may approach Your Honor?

25 THE COURT: Yes, sir.

1 MR. JAMES: And I always hate to cite the cases
2 where PCR is granted but this is a good case for
3 establishing what the standards here is on an improper
4 statement by the solicitor. If you will flip over to page
5 3, of the indict that I have handed to you it's the first
6 column of the third paragraph starting with headnotes, 6
7 and 7, "a solicitor may argue the credibility of a State's
8 witnesses if the argument is based on the record and its
9 reasonable inferences a solicitor may not vouched for the
10 credibility of a State's witness based on personal
11 knowledge or other information outside of the record." And
12 in Matthew's what was tossed out as infamous and vouching
13 was when the solicitor stated, "I don't trust any of these
14 people and so I corroborate their testimony and once I
15 corroborate their testimony as I put them on the witness
16 stand," which is clearly vouching. That's not what we have
17 here. This is a, not a vouch, it's an assertion based on
18 the surrounding evidence that is discussed by the State in
19 his closing argument. As to -- and to furthermore, even if
20 it was an incidence of impermissible vouching, even if the
21 court finds, well, you can discuss any other materials
22 around it, this comment and isolation, "he's telling you
23 the absolute truth" is a single sentence in a rather
24 extensive closing argument. And, Your Honor, I would
25 respectfully submit that to the extended that it is

1 improper that it certainly didn't prejudiced Mr. Hinson.

2 As to the voice identification issue, Your Honor, if I
3 beg a moment of your indulgence, the voice identification
4 does not come as the consequence of any misleading line-up
5 or representation or presentation by the State. It comes
6 by the immediate and voluntary statements of the victims
7 who law enforcement, as soon as they started investigating
8 this case. They say, did you recognize any of the guys and
9 he informed them I recognize the voice of one of them and
10 it was so-and-so. And he comes back with that again at
11 trial. Your Honor, I would respectfully submit that,
12 that's not objectionable on the basis Neil vs. Biggers or
13 any other case law that I can think of off the top of my
14 head. Simply put, "our courts consistently recognize the
15 general rule that a trial court must when identification of
16 a defendant is an issue hold an in camera hearing. When
17 the State offers a witness whose testimony identifies the
18 defendant as the person who committed the crime and the
19 defendant challenges the in court identification as being
20 tainted by a previous illegal identification or
21 confrontation." And so that's partially on point to what
22 opposing counsel has been arguing. But the mere reliability
23 of that identification is ultimately an issue that should
24 go to the jury. They're the ones who weigh the credibility
25 of the witnesses. They're the ones who weigh the evidence

1 that sent to them and would not be appropriate for Mr.
2 Cockrell or for the court to have thrown out that evidence
3 simply because, oh, can you believe that. Well, whether or
4 not to believe that is, ultimately, an issue for the jury.
5 And, Your Honor, since I was quoting directly from a case I
6 was quoting from State vs. Keller, that is 399, S.C. 157,
7 731, S.E. 2nd, 312. If I may approach, Your Honor, with a
8 printed handout. Your Honor, from that printed handout
9 portion in which I was quoting was near the very end on
10 page 11 of your handout in the middle of the paragraph
11 demarcated headnote 11.

12 And, Your Honor, the State respectfully submit that
13 counsel was not deficient for failing to object to the
14 supposedly alleged vouching. Counsel was not deficient for
15 failing to object to the voice identification. Even if he
16 was one, clearly identified and articulated each reasons
17 for his decisions not to object to both of those pieces of
18 evidence and all the other pieces of evidence to which he
19 did not object and that have been discussed in the court
20 here today.

21 And, furthermore, Your Honor, I don't believe any of
22 those matters ultimately prejudiced Mr. Hinson. The victim
23 identified him. He photo-identified him. And the
24 investigation ultimately led that to him. And so I think
25 any essential error on the part of counsel would be

1 harmless in any event. So, Your Honor, I respectfully
2 request the court to deny the relief in this allegation.

3 THE COURT: Thank you, Mr. James. All right,
4 counselors, as I did in the last case, I'm going to have to
5 take this matter under advisement so I can review this case
6 law and go back through the transcript. I'll let you hear
7 from you soon as you possibly can.

8 MR. BOOZER: Thank you, Your Honor.

9 MR. JAMES: Thank you, Your Honor.

10 (CONCLUSION OF THE HEARING HELD ON JANUARY 16, 2018)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned, Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Dillon County, South Carolina, on the 16th day of January, 2018.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

October 20, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Gartharee Hinson, #272766,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2016-CP-13-735

ORDER GRANTING APPLICATION
FOR POST-CONVICTION RELIEF

Wanda H. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2016 MAY -7 AM 8:31

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is currently confined in the South Carolina Department of Corrections pursuant to the Chesterfield County Clerk of Court's orders of commitment. Applicant was indicted by the Chesterfield County Grand Jury for armed robbery (2013-GS-13-89), kidnapping (2013-GS-13-90) and assault and battery of a high and aggravated nature (2013-GS-13-91). Applicant was tried by jury before the Honorable Steven H. John on September 16, 2014. Applicant was represented by M.W. "Trey" Cockrell, Esquire ("counsel"). The jury found Applicant guilty as indicted for armed robbery and kidnapping and the lesser included offense of assault and battery in the first degree. Judge John sentenced the Applicant to 21 years imprisonment for armed robbery and kidnapping, concurrently, and 10 years concurrent for assault and battery, first degree. Applicant filed a timely Notice of Appeal. The South Carolina Court of Appeals dismissed the appeal. State v. Hinson, Opinion No. 2016-UP-164 (S. Ct. App. April 6, 2016). The Remittitur was issued on May 3, 2016.

Applicant initially filed an Application for post-conviction relief on October 3, 2016. Applicant raised the following allegations:

1. "Denial of Counsel at Critical State of Proceedings"
 - a. "Immediately after his arrest Applicant requested a preliminary hearing. A preliminary hearing was held in this case without the assistance of counsel. The reasons for this is a conflict of interest with the Public Defender. There is no waiver of right to counsel."
2. "Prosecutorial Misconduct"
 - a. "During Applicant's trial, an agent of the Chesterfield County Sheriff's Office, among other things, viewed a video and then interviewed the victim relaying to the victim what was in the video at the time in question. This aspect is highly suggestive with reference to the identification of the Applicant."
3. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to investigate adequately the facts and circumstances surrounding the Applicant's case. Counsel's failure to conduct such an investigation deprived the jury of critical information relevant to an accurate assessment of Applicant's guilt or innocence."

Applicant subsequently filed an amendment on October 26, 2017, alleging:

- (a) Counsel failed to move to suppress evidence or contemporaneously object.
- (b) Counsel failed to act when a current sheriff deputy's wife was seated on the jury. The issue was then brought to the attention of the Court by the State. Tr. p. 31. The Court own its own removed a potential juror when it was revealed his half-brother worked for the Chesterfield County Sheriff's office. Tr. p. 10.
- (c) Counsel failed to object or otherwise act when alleged victim identified Defendant as perpetrator based on recognizing his voice. Tr. p. 65.
- (d) Counsel failed to object to the State's improper vouching for witnesses during closing remarks.
- (e) Counsel was ineffective for failing to request a hearing pursuant to Jackson v. Denno.
- (f) Applicant believes counsel failed to adequately cross-examine Ms. Briggs.

The State made its Return on December 4, 2017. An evidentiary hearing was convened on January 16, 2018, at the Dillon County Courthouse before the Honorable Roger E. Henderson. The Applicant was present and represented by Lance S. Boozer, Esq. The State was

present and represented by Johnny E. James, Jr., Esq. This Court makes the following findings of fact and conclusions of law.

STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Based on the record and testimony presented at

the PCR hearing, this Court finds that the Applicant has met his burden of proof as it relates to Applicant's allegation counsel failed to object to the State's improper vouching for a witness during closing arguments. This Court denies Applicant's other allegations.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Counsel failed to object to the State's improper vouching for witness during closing remarks.

Applicant alleged and testified counsel was ineffective for failing to object to the State's improper vouching for witnesses during closing remarks.

During the trial, Applicant's co-defendant Richard Martin testified on behalf of the prosecution. During the State's direct examination, Martin admitted that he faced the same charges as Applicant and testified he was an active participant in the armed robbery. The State asked the following on direct examination:

Q: Do you have pending charges?

A: Yes, I do.

Q: And let's get this out in front here first. Have you been promised anything in exchange for your testimony?

A: No, sir.

Q: And why did you agree to testify here in (sic) behalf of the State?

A: Because of the situation and I felt that something should be done.

Trial tr. p. 150, ll. 13-22.

The State went on to ask Martin the following:

Q: And, again, and this is the last time I'll ask you. Have I or has the State promised you anything in exchange for your testimony?

A: No.

Q: And you basically are testifying today not knowing what will happen on your case?

A: Yes, sir.

Trial tr. p. 163, ll. 7-13.

During closing remarks to the jury, the State asserted:

Then you heard from Mr. Martin, and Mr. Martin told you he had no idea of what was going to be the outcome of his case. *He is telling you the absolute truth.*

Trial tr. p. 207, ll. 12-14.

The State went on:

I don't want a witness to get up here and lie or whatever. I want a witness to tell the truth, and if something has to be explained, so be it.

Trial tr. p. 208, ll. 15-17.

At the PCR hearing, counsel testified that during his cross-examination of Martin, his strategy was to attack his credibility and put before the jury that Martin was potentially receiving a deal in exchange for his testimony. Upon questioning by Applicant, counsel admitted that the statements cited above in the State's closing remarks constituted impermissible vouching. Counsel acknowledged he did not object.

A prosecutor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness. Elmer v. Maryland, 353 Md. 1, 724 A.2d 625 (1999). Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony. State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001). In Kelly, the Supreme Court found an assistant solicitor improperly bolstered a witness' credibility through improper questioning. While the assistant solicitor in Kelly did not assert he had personal knowledge his witness was testifying truthfully, he improperly phrased his questions in the first person. Kelly, 343 S.C. at 369. The solicitor asked a witness, "What did I tell you that I

absolutely required regarding your testimony to this jury today?" and "Did I tell you to tell the truth to this jury." Id. at 368, 540 S.E.2d at 860, State v. Shuler, 545 S.E.2d. 805, 344 S.C. 604 (S.C. 2001.) The Court found the jury could have perceived the assistant solicitor held the opinion the witness was, in fact telling the truth. Id. at 369, 540 S.E.2d at 861. The witness's testimony, there, carried with it the imprimatur of the government, and this bolstering may have induced the jury to trust the State's judgment at the witness. Id.

Similarly, this Court finds the State's comments in closing argument relating to Martin constituted improper vouching. This Court further finds counsel should have objected and counsel failed to articulate a valid strategic reason for failing to do so. This Court finds counsel's failure to object prejudiced Applicant and that his failure to object fell below an objective standard of reasonableness. This failure to object led to a reasonable probability that the outcome of the trial would have been different had he objected. Accordingly, this Court must grant Applicant's Application as it relates to this allegation and a order a new trial.

2. "Denial of Counsel at Critical State of Proceedings"

Applicant alleged and testified he was forced to proceed to a preliminary hearing without counsel even after having requested counsel. This Court finds based on the record and testimony presented at the hearing, no constitution violations occurred with respect to Applicant's preliminary hearing.

3. "Prosecutorial Misconduct"

Applicant alleged and testified that during his trial, an agent of the Chesterfield County Sheriff's office viewed a video and then interviewed the victim relaying to the victim what he saw in the video creating an invalid and suggestive positive identification of the Applicant.

This Court finds Applicant's claims with regard to the State's viewing of any video in conjunction with interviewing any witnesses or other visual evidence relating to Applicant's identity are without merit either in the form of prosecutorial misconduct or ineffective assistance of counsel. Applicant failed to prove the prosecution committed any sort of prosecutorial misconduct in this regard or that counsel should have objected to any use of the video. Accordingly, these allegations are dismissed.

4. "Ineffective Assistance of Counsel"

Applicant alleged and testified counsel was ineffective for failing to investigate and move to suppress evidence. At the PCR hearing; Applicant failed to present any evidence that counsel's investigation into the facts and circumstances of the case was deficient. Counsel testified that he met with Applicant multiple times prior to trial, that he received and reviewed Rule 5 materials and was prepared for trial. This Court also finds Applicant failed to prove counsel was deficient in failing to suppress evidence such as videos or photographs at trial. This Court finds counsel was not ineffective in investigating the case or moving to suppress evidence and must deny these allegations.

5. Counsel failed to act when a current sheriff deputy's wife was seated on the jury.

Applicant alleged and testified counsel was ineffective for failing to act when a current sheriff deputy's wife was seated on the jury. Counsel testified and acknowledged that the trial court removed a potential juror who indicated he had a half-brother who worked for the Chesterfield County Sheriff's office. Counsel further testified that Juror Number 91 was the wife of a Chesterfield County Deputy and that both he and the Applicant were aware of this

relationship. However, counsel testified Applicant actually wanted to seat this juror and he did so because Applicant told him he thought she "looked focused." This Court finds that because both Applicant and counsel were aware of the juror's relationship and that the Applicant actually wanted her seated on the jury, counsel was not ineffective in this regard. Accordingly, this allegation must be denied.

6. Counsel failed to object or otherwise act when alleged victim identified Applicant as perpetrator based on recognizing his voice.

Applicant alleged and testified counsel was ineffective for failing to object or otherwise act when the alleged victim identified Applicant as a perpetrator based on recognizing his voice. Specifically, at trial, victim testified that he recognized the Applicant's voice because when he was a kid, his grandmother lived down the road from Applicant's grandparents and they had been friends and attended school together at that time. No objection was made. Counsel testified at the PCR hearing he did not object because he believed the jury thought this was incredible and believed it benefited Applicant to hear this testimony. Accordingly, this Court finds counsel was not ineffective for failing to object to the witness testifying that he recognized the Applicant's voice. This Court finds counsel articulated a valid strategic reason for not objecting. This allegation must be denied.

7. Counsel was ineffective for failing to request a hearing pursuant to Jackson v. Denno.

8. Applicant believes counsel failed to adequately cross-examine Ms. Briggs.

Applicant alleged and testified counsel was ineffective for failing to request a hearing pursuant to Jackson v. Denno to challenge any statements Applicant may have made and failed to

effectively cross-examine witness Ashlyn Briggs. Based on a review of the record, the testimony of counsel and Applicant, this Court finds counsel was not ineffective in failing to request a hearing pursuant to Jackson v. Denno or failing to adequately cross-examine Ms. Briggs. Accordingly, these allegations must be denied.

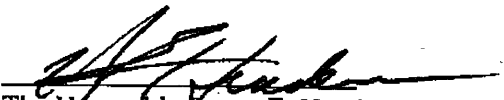
CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has met his burden of proof in showing he received ineffective assistance of counsel for failing to object to improper vouching and counsel's performance prejudiced him. This Court finds, but for counsel's ineffectiveness, the outcome of the trial would have been different. Accordingly, this application for post-conviction relief must be granted as it relates to this allegation. Applicant's remaining allegations are denied.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be granted as it relates to counsel's failure to object to improper vouching;
2. The Applicant's convictions and sentences are vacated;
3. Applicant is entitled to a new trial;
4. Applicant is remanded to the custody of Chesterfield County;
5. Applicant's remaining allegations are denied.

AND IT IS SO ORDERED this 17th day of April, 2018.


The Honorable Roger E. Henderson
Presiding Judge
Fourth Judicial Circuit

Chesterfield, South Carolina

2018 MAY -7 AM 8:31
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	
Gartharee Hinson,	)	Case No.: 2016-CP-13-00735
S.C.D.C. No. 272766,	)	
	)	
Applicant,	)	
	)	MOTION TO RECONSIDER
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to Order Granting Application for Post-Conviction Relief dated April 17, 2018, and filed May 7, 2018, Respondent would respectfully motion this court reconsider its ruling pursuant to Rule 59(e), SCRCF.

I.

In the above described Order, the Court granted Applicant post-conviction relief on the ground that Counsel was constitutionally defective in failing to object to certain remarks made by the prosecution during the State's closing argument, deemed to be impermissible vouching by the State. The Court should reconsider its ruling because the unobjected remarks did not constitute vouching and, to whatever extent they did constitute improper vouching, Applicant was not prejudiced in light of the other evidence establishing his role in the crime.

II.

A prosecutor may neither vouch for nor bolster the testimony of a government witness in arguments to the jury. U.S. v. Sanchez, 118 F.3d 192, 198 (4th Cir. 1997). "Vouching occurs when the prosecutor indicates a personal belief in the credibility or honesty of a witness; bolstering is an implication by the government that the testimony of a witness is corroborated by

evidence known to the government but not known to the jury.” *Id.* at 198. A prosecutor “vouching for the credibility of witnesses and expressing his personal opinion concerning the guilt of the accused pose two dangers: such comments can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant’s right to be tried solely on the basis of the evidence presented to the jury; and the prosecutor’s opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government’s judgment rather than its own view of the evidence.” *U.S. v. Young*, 470 U.S. 1, 18-19 (1985).

However, the United States Supreme Court has made clear that an applicant is not entitled to relief based upon the closing argument of a prosecutor, including comments that vouch for witnesses, unless that argument so infected the trial with unfairness as to make the resulting conviction a denial of due process. *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974). The *Donnelly* standard is very difficult for a defendant to meet. “[I]t is not enough that the remarks were undesirable or even universally condemned.” *Darden v. Wainwright*, 477 U.S. 168, 181 (1986); see also *Parker v. Matthews*, 567 U.S. 37, 47 (2012) (“even if the comment is understood as directing the jury’s attention to inappropriate considerations, that would not establish that Kentucky’s rejection of the *Darden* prosecutorial misconduct claim ‘was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement’”). “In order to make an appropriate assessment, the reviewing court must not only weigh the impact of the prosecutor’s remarks, but must also take into account defense counsel’s opening salvo.” *Young*, 470 U.S. at 12.

Further, “a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw

that meaning from the plethora of less damaging interpretations.” Donnelly, 416 U.S. at 641; see also State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975).

III.

The Order at issue zeroes in on two separate statements offered by the solicitor in closing, each in isolation:

Then you heard from Mr. Martin, and Mr. Martin told you he had no idea what was going to be the outcome of his case. He is telling you the absolute truth.

...

I don't want a witness to get up here and lie or whatever. I want a witness to tell the truth, and if something has to be explained, so be it.

(Tr. 207, ll. 12-14; p. 208, ll. 15-17). The comments presented do not constitute vouching, either in isolation or in the surrounding context.

The bald assertion of truth alone neither implies evidence outside of the jury's knowledge, nor imputes the deeply personal belief of the prosecutor acting as the government. If the plain assertion that a witness should be believed, alone, were not permissible, there would be little purpose or room for closing argument. The whole point of closing argument is to sharpen and clarify the issues for resolution by the trier of fact, and argue the inferences to be drawn from all testimony, and remark upon both the strengths of their own case and the weaknesses of the opposing party's case. See Herring v. New York, 422 U.S. 853, 862 (1975); State v. Mouzon, 321 S.C. 27, 467 S.E.2d 122 (Ct. App. 1995), aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997) (quoting Herring). After stating that Martin was telling the truth, the State cited to instances in the record to support Martin's credibility: Martin admitted his role in the crime alongside Applicant, Martin admitted his prior record, and Martin corrected the solicitor in the presentation of evidence where he had no obligation or benefit of doing so. That review of the evidence and

testimony properly presented to the jury led into the second part of the excerpted remark, which merely cast approval upon Martin's testimony correcting the solicitor.

To whatever extent the remarks, taken together, do constitute vouching, they hardly rise to the level of fundamental unfairness necessary to find that Applicant was denied proper due process as is necessary for a prejudice finding under Strickland v. Washington, 466 U.S. 668 (1984). First, the third sentence after the solicitor's remark unequivocally places the power to ascertain credibility in the jury: "You find what the truth is in this case, ladies and gentlemen." (Tr. 208, ll. 20-21). Second, the trial judge clearly and unequivocally instructed the jury during the jury charge it was their responsibility to determine the credibility of witnesses and the facts of the case. (Tr. 211-12; p. 213, ll. 21-23). Third, the trial judge clearly and unequivocally told the jury before closing arguments that the attorneys' arguments "are not evidence and cannot be considered by you as the evidence in the case." (Tr. 189, ll. 19-21).

Fourth, the competent evidence to establish Applicant's role in the crime, even setting aside Martin's testimony, was sufficiently substantial that a finding of prejudice is inappropriate. Applicant, by his own statement to law enforcement, placed himself with the other actors in the area of the crime on the day in question. (Tr. 113-15). The victim *immediately* identified the Applicant to law enforcement by recognizing his voice, gave law enforcement Applicant's truncated middle name "Qua" (from Jequa) and later provided law enforcement a picture of Applicant pulled from Facebook. (Tr. 102-03; 106-08). Law enforcement also confirmed Applicant's involvement in renting the vehicle used in the crime from Enterprise in Charlotte, North Carolina. (Tr. 104-06). All of these facts combined provide to corroborate one another such that the positive identification of Applicant by the victim should be afforded tremendous credibility; it is not reasonable to cast aside Victim's voice identification of Applicant as

inadequate where Applicant himself told law enforcement he traveled all the way from Charlotte in the car used in the crime. There was no evidence otherwise to show that the victim knew Applicant was in the area from out of state. It was no mere providential coincidence that the victim told law enforcement Qua ransacked his house and put a gun to his head when Qua had been right around the corner in the Piggly Wiggly parking lot. As such, this Court erred in finding Applicant was prejudiced by the prosecution's remarks about Martin—even without the co-conspirator's damning testimony, Applicant's involvement in the crime is firmly established and corroborated by the totality of the circumstances.

IV.

WHEREFORE, Respondent respectfully requests the Court vacate its order granting Applicant relief and deny relief for the reasons herein stated, in addition to those arguments already presented at the evidentiary hearing.

Respectfully submitted,

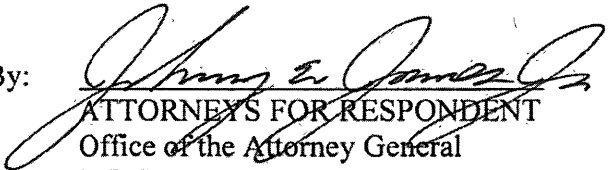
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN JAMESON HARRISON
Senior Assistant Deputy Attorney General

JOHNNY E. JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

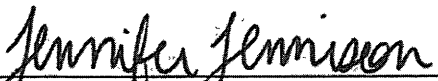
17 May, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	
	)	
	)	2016-CP-13-00735
GARTHAREE HINSON, #272766,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion to Reconsider** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Lance Boozer, Esquire
 Boozer Law Firm, LLC
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201**

DATED this 17th day of May, 2018.


 Jennifer Jennison, Legal Assistant
 For Respondent

381

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Gartharee Hinson, #272266

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-13-00735

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Lance S. Boozer, Esq, Bar No. 75803

Address:

1400 Laurel St., Ste 4A, Columbia, SC 29201

phone: fax:

e-mail: other:

Defendant's Attorney:

Johnny E. James Jr, Bar No. 101260

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

May 17, 2018

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support(check reason) ☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	C/A NO: 2013-CP-13-735
	)	
Gartharee Hinson, #272266.	)	
	)	
Applicant,	)	
	)	RETURN TO RESPONDENT'S
v.	)	MOTION TO ALTER OR AMEND
	)	ORDER GRANTING PCR
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

This Court granted Applicant's PCR application by Order dated April 17, 2018. On March 1, 2017, Respondent submitted a Motion to Alter or Amend Judgement pursuant to Rule 59(e).

In its Motion, Respondent argues this Court erred in granting Applicant's PCR application. Applicant submits that this Court's Order Granting PCR contains the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRPC. Applicant further submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Respondent's Motion should be denied.

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 1419 Pendleton Street
 Columbia, SC 29201
 Phone: (803) 608-5543

May 23, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Gartharee Hinson, #272266.

Applicant,

v.

State of South Carolina,

Respondent.

)
)
)
)
)
)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2013-CP-13-735

AFFIDAVIT OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Return to Respondent's Motion to Alter or Amend Judgment upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Johnny E. James, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1419 Pendleton Street
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
May 23, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

Gartharee Hinson, #272266.

Applicant,

vs.

State of South Carolina,

Respondent,

) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT

Case No.: 2016-CP-13-0735

ORDER

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2018 JUL 23 AM 11:42

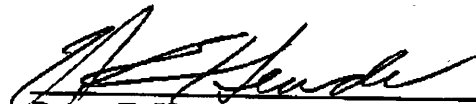
HEARING DATE:
PRESIDING JUDGE:
APPLICANT'S ATTORNEY:
RESPONDENT'S ATTORNEY:

April 17, 2018
Roger E. Henderson
Lance S. Boozer
Johnny E. James, Jr.

Having read and considered the Motion to Alter or Amend Judgement filed by the Respondent, after hearing argument of counsel for the Applicant and Respondent, it is hereby

ORDERED that the Respondent State of South Carolina's Motion to Alter or Amend Judgement in the case of Gartharee Hinson, #272266 vs. State of South Carolina is respectfully denied.

AND, IT IS SO ORDERED.


Roger E. Henderson
Circuit Court Judge

Date: July 16, 2018
Chesterfield, South Carolina